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Report to the Secretary of Agriculture

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Evaluation of the Office of Civil Rights' Efforts to Implement Civil Rights Settlements

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UNITED STATES DEPARTMENT OF AGRICULTURE

OFFICE OF INSPECTOR GENERAL

Washington D.C. 20250

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REPORT TO THE SECRETARY ON CIVIL RIGHTS ISSUES - PHASE VI

FROM: Roger C. Viadero
Inspector General

SUBJECT: Evaluation of the Status of USDA Agreements Entered Into To Resolve Complaints Alleging Program Discrimination

On September 4, 1998, you asked the Office of Inspector General (OIG) to audit the settlements of complaints of discrimination in the administration of the Department's programs concluded since January 1, 1997. You asked us specifically to determine whether these settlements have been fulfilled expeditiously and completely, and whether all forms of compensatory damages and program relief have been implemented. You also asked us to include recommendations to remedy any deficiencies.

This represents our sixth evaluation of the Department's efforts to resolve its program complaints. We reviewed 101 settlement and conciliation agreements negotiated by the Office of Civil Rights (CR) and other Department agencies since January 1, 1994. This included 17 settlement agreements and 84 conciliation agreements. Settlement agreements can contain terms for compensatory damages, while conciliation agreements typically contain terms for program relief only.

The Department has fully implemented 8 of the 17 settlement agreements and has implemented most of the terms of the remaining 9. It has paid all compensatory damages settled by CR in a timely manner. It has also implemented most of the terms of the conciliation agreements calling for program relief. Most agreements that have not been implemented contain terms (e.g., calling for priority consideration on future loans) that do not expire for up to 6 years.

In only one case did the Department not fulfill the terms of its agreement. The agreement required the Farm Service Agency (FSA) to give the complainant priority selection of Government inventory property, but FSA did not notify the complainant whether or not property was available. FSA did not believe that this program participant was eligible for priority consideration since the participant was not considered a Socially Disadvantaged Applicant. We are recommending the Department implement the agreement, but because the complainant is not a member of any socially disadvantaged group, we are recommending the Department first obtain a legal opinion concerning

the complainant's eligibility for priority selection of property. We are also recommending that CR track all agreements and report to you twice a year the terms that have not been implemented.

Even though there was a high probability that discrimination did indeed occur in the 17 cases that led to settlement, no disciplinary action has been taken against any discriminating officials. CR has provided agencies with no formal guidance on how to proceed in these cases. We have consistently urged CR to provide guidance on all stages of the complaints resolution process, and we are reemphasizing this need.

Several agreements contained terms that were inappropriately or vaguely worded, or provided monetary damages that may not be allowed by law. We are recommending that CR assemble and chair a team of the Office of the General Counsel (OGC) attorneys and program officials that would meet prior to each agreement negotiation to analyze the proposed terms of the agreement for legal sufficiency.

Executive Summary

Purpose

We performed this evaluation to determine the status of agreements entered into by the U.S. Department of Agriculture (USDA) in its efforts to resolve complaints made by program participants who alleged civil rights violations by the Department in its administration of Federal programs. The evaluation was requested by the Secretary during our Phase V review of operations of the Office of Civil Rights (CR), the agency assigned to investigate and resolve civil rights complaints. Our Phase V review determined that CR did not track settlement agreements after they were executed and did not know how many agreements the Department had entered into. Consequently, the Secretary asked us to determine whether the agreements had been fulfilled expeditiously and whether all forms of compensatory damages and program relief had been implemented. We expanded our evaluation coverage to include conciliation agreements, because these agreements are similar to settlement agreements, and are also based on a complaint of discrimination.

For this evaluation, we reviewed 101 agreements, 17 of which were settlement agreements and 84 of which were conciliation agreements. A conciliation agreement is typically used to resolve a complaint soon after it is lodged, while a settlement agreement is used after an investigation and adjudication has arrived at a finding of discrimination. A conciliation agreement typically offers the complainant only program relief, while a settlement agreement may include compensatory damages as well as program relief.

Because a settlement agreement is reached after a high probability of discrimination has been found, the case should be referred for disciplinary action. We included in our evaluation a review of CR activities to determine if USDA agencies took disciplinary actions against the discriminating official(s).

Results in Brief

Even though settlement and conciliation agreements entered into by the Department were generally being implemented in a timely manner, CR remained unaware of the number and status of all agreements. CR was not tracking the implementation of the agreements, and it had offered no formal guidance on cases that had been referred for disciplinary action. We found that no disciplinary actions had been taken in any of the cases involving proven or probable discrimination. We also found that in one case, the Farm Service Agency (FSA) did not agree to the propriety of one term of an agreement that CR had entered into with a complainant and consequently did not fulfill that term. In this case, FSA maintained that it was precluded by statute from offering the program relief stipulated in the agreement term. FSA had not

informed CR of its decision, and it had not sought advice from the Department's attorneys. We are recommending that the Department seek a legal opinion about the propriety of the agreement term and implement the term, if appropriate.

In order to determine the total number of settlement and conciliation agreements entered into during our scope period of 1994 through October 1998, we sent letters to all USDA agencies. We requested each agency to provide us copies of the agreements entered into during our scope period, and notify us of any disciplinary actions recommended or taken against agency officials involved in discriminatory acts against USDA program applicants or participants during this same timeframe. Based on responses to our inquiry, we determined that there were 17 settlement and 84 conciliation agreements entered into during our scope period.

The 17 settlement agreements were reached either after an investigation resulted in a finding of discrimination or after the CR Director concluded there was a high probability that discrimination had occurred. However, no disciplinary action has been taken against any discriminating officials in reference to these 17 settlement agreements. CR has not provided either FSA or the Department's Office of Human Resources Management with individual names or other documentation needed to initiate disciplinary action. CR has also not issued any formal guidance on how agencies should proceed with disciplinary action, and it has not monitored any of the 17 settlement cases to determine if such actions have been carried out.

One agency official believed that his agency could not proceed with disciplinary action without absolute proof of employee wrongdoing. The Department's Office of the General Counsel (OGC) has stated that the evidence used to arrive at a finding of discrimination is sufficient grounds to proceed with disciplinary action, but in more recent communications, OGC attorneys have suggested that a finding of discrimination should itself initiate a process of identifying the sufficiency of evidence. We concluded that CR should define in its departmental regulations when such a process is warranted.

CR has made an effort to apprise itself of settlement agreements, but it relies on data received from FSA, the only agency with settlement agreements to date, to track their status. Although agencies are encouraged to resolve cases through the more efficient and less costly process of conciliation, CR has not formalized this policy.

We also found that the Department was entering into agreements that contained terms that were inappropriately worded, or provided monetary damages that may not be allowed by law. Many agreements that offered debt forgiveness and priority consideration for future loans may have waived the law in effect at the

time that forbid individuals who received prior debt forgiveness from getting future USDA loans. OGC attorneys noted that USDA may override the law only in cases in which the debt was forgiven as part of a settlement (i.e., the debt was a proven result of discrimination), not if it had been forgiven through the normal implementation of the law. According to the attorneys, stipulating such a waiver of the law in the agreement might void the entire agreement. We believe that OGC civil rights attorneys should consult with OGC program attorneys during the settlement agreement review process, in order to avoid terms that could result in further litigation.

In spite of CR's inability to account for all complaint agreements, the Department has generally implemented those agreements. It has implemented all of the terms of 8 settlement agreements, most of the terms of the remaining 9 settlement agreements, and most of the terms of the conciliation agreements. The Department has paid all compensatory damages settled by CR. The 101 agreements we reviewed, both conciliation and settlement, contained 293 terms. The status of those terms is summarized in the following table.

STATUS OF 293 TERMS OF AGREEMENT IN 101 AGREEMENTS REVIEWED

	Type of Agreements and Number of Terms		
	CONCILIATION	***SETTLEMENT***	
Status of Terms	Program Relief	Compensatory Damages	Program Relief
Implemented	57	9	68
Outstanding	1		50
Failed to Implement			1
Improperly Closed			1
Not Monitored			9
Not in OIG sample	97		
Total	**155**[1]	**9**	**129**

Although many agreement terms covering programmatic relief have not yet been fulfilled, this situation is largely a result of the scope of the agreements. These agreements contain terms (e.g., calling for priority consideration on future loans or for providing technical assistance) which do not expire for up to six years from the date the agreements were signed. In some cases, these terms will not

[1] Of the 155 terms we judgmentally selected 58 for review. Our selection was based on trying to review agreements from a variety of States. The 58 terms reviewed were from 30 different conciliation agreements.

be fully implemented until after the year 2002. We found no evidence that Department agencies intentionally delayed the implementation of the agreements.

Before our audit began, we received a letter from the Congressional Black Caucus that raised several issues concerning settlement agreements and the Department of Justice's (DOJ) involvement in them. The information we provide in the General Comments section of this report responds to these issues.

Key Recommendations

We recommended that for negotiated settlements, CR assemble and chair a team of OGC civil rights attorneys and cognizant agency program officials that will meet prior to any agreement negotiation to analyze the proposed terms of the agreement for legal sufficiency prior to the presentation of the agreement to the claimant. We also recommended that CR, in coordination with OGC and the Office of Human Resources Management, provide procedural guidance on disciplinary action and formalize its policy of encouraging agencies to reach some conciliation with complainants early in the complaints process. CR and the agencies also need to track all conciliation and settlement agreements and report all outstanding agreement terms to the Secretary semiannually.

Finally, we recommended that FSA implement the one agreement term we found outstanding.

Agency Response

We discussed the contents of this report with the Director of CR, the General Counsel, and the Associate General Counsel, Civil Rights Division. We have incorporated their comments in the report. A response to the recommendations in this report is due from the Director of CR within 60 days from the date of this report, and we will work with the Director to implement the recommendations.

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Introduction

Background

A settlement agreement is one possible outcome of a program discrimination complaint made against an agency of the U.S. Department of Agriculture (USDA) under Title VI of the Civil Rights Act of 1964 and the Equal Credit Opportunity Act (ECOA) of 1974.[2] These Acts provide that no citizen shall be subjected to discrimination under any Government program or activity because of race, color, national origin, or other such characteristics. The Department seeks to resolve program discrimination complaints by urging the agency against which the complaint was filed to attempt conciliation with the complainant. However, a maximum of 24 days is permitted for conciliation.

The nature of a conciliation agreement is to make good on any program losses suffered by the complainant as a result of improper adverse USDA actions. Depending on the merits of the complaint, programmatic relief at this stage can amount simply to a rereview by county officials of the claimant's loan application, or it can include payment of program benefits, issuance of a loan, or provisions of loan servicing. Conciliation agreements also establish that USDA does not acknowledge any wrongdoing or liability for discrimination or for the complainant's loss.

Prior to the establishment of the Office of Civil Rights (CR), the agencies and not the Department resolved a number of the cases. The Department civil rights staff, who had responsibility for assuring that complainants received due process before the cases were closed, neither reviewed the terms of the agreements nor assured that they were implemented.

A Secretary's Memorandum, dated May 16, 1997, established CR and made the CR Director responsible for supervising the performance of all civil rights functions assigned to the Assistant Secretary for Administration. These functions include investigating, adjudicating, and resolving all complaints of program discrimination, and allowing compensatory damages to be awarded for cases involving discrimination in programs subject to the ECOA.

If conciliation at the agency level is unsuccessful, CR then becomes involved and may complete an investigation of the case. The Department must then respond to the facts gathered and acknowledge whatever blame is apportioned to it. For cases that have resulted in findings of discrimination, or where the CR

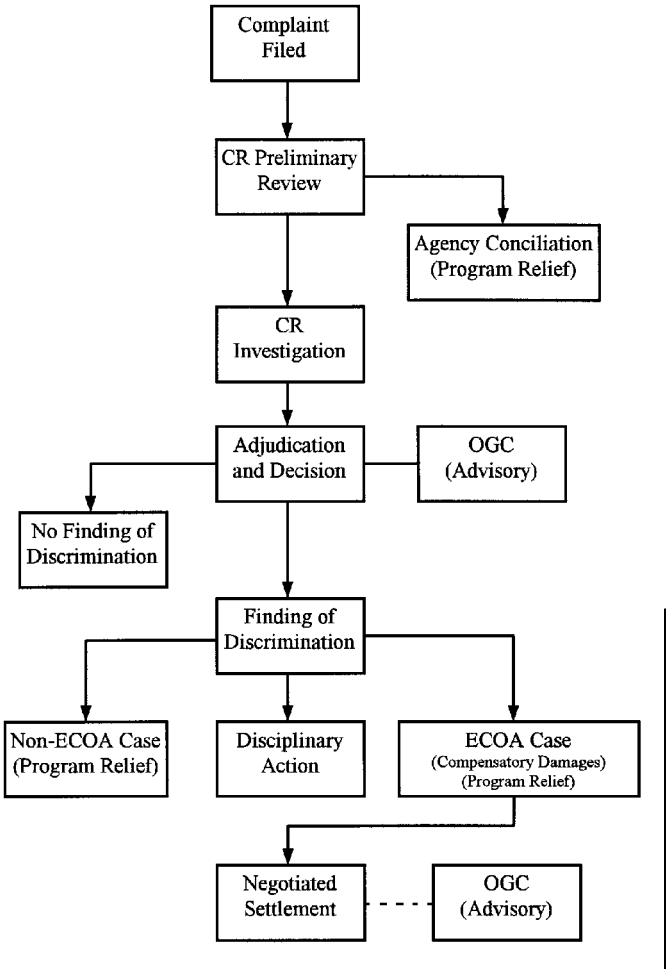
[2] Other laws and regulations could apply. These may include the Fair Housing Act of 1968, the Rehabilitation Act of 1973, and 7 CFR Part 15, dated June 11, 1982.

Director determined there was a high probability that discrimination occurred, the Department may reach an agreement with the complainant, now known as a "settlement agreement," and also recommend the agency take action to correct the cause of discrimination. Corrective actions could include requiring an employee to take civil rights training or administering disciplinary action. Currently, CR may recommend that disciplinary action be taken following a settlement, but it is the agency's responsibility to determine the type of action to be taken and to administer the action.

The ECOA also prohibits discrimination in Government programs, but it extends the scope of relief by allowing complainants in credit cases to sue for compensatory damages. Complainants whose cases do not involve loan programs or are settled prior to an investigation are typically entitled to programmatic relief. However, complainants whose cases involve loan programs may be entitled to compensatory damages. These damages are the losses that were caused by the discrimination over and above any program benefits that the complainant was denied. The complainant must submit documentary evidence of this loss. CR reviews the evidence and either issues a decision on damages or negotiates with the complainant to arrive at a settlement agreement. The agency against which the complaint was brought is responsible for implementing the agreement.

Because of pending litigation, the Department of Justice (DOJ) also reviewed some settlement agreements in which compensatory damages were awarded. If DOJ determined that the settlement agreements reached between CR and the complainants were unreasonable based on the evidence of loss or other facts surrounding the case, it voided the settlement agreement as written. DOJ is required to approve any settlement for plaintiffs involved in litigation.

Figure 1: The Process of Arriving at Settlement Agreements in Program Discrimination Cases[3]



[3] As observed by OIG and based on discussions with CR and OGC officials. As noted in the General Comments section of this report, certain settlement agreements were also reviewed by the Department of Justice after the negotiated settlement phase.

In our Phase V report, dated September 30, 1998, we concluded that CR was uninformed about all agreements and did not know whether the terms were implemented. CR did not track the agreements after they were executed, and it did not require agencies to implement corrective actions prior to closing the cases. Complainant casefiles did not include evidence to show that agreements were implemented or that required corrective actions were taken. Without a system to monitor implementation of the agreements, there was no assurance that complainants were receiving timely redress.

Objectives

This evaluation was performed in response to a request from the Secretary regarding the status of settlement agreements. The Secretary's request came during our Phase V review, which disclosed that the Department did not know how many settlement agreements had been executed and whether those agreements had been implemented. The objectives of this evaluation were to determine (a) if the settlements, including all forms of compensatory damages and program relief, had been implemented expeditiously and completely, and (b) if the Office of Civil Rights and its predecessor followed up to ensure that USDA agencies took recommended disciplinary actions against the discriminating official(s).

Before our audit work began, OIG received a letter, dated August 31, 1998, from the Congressional Black Caucus raising several other issues regarding settlement agreements. Specifically, the Caucus asked us to determine (a) if CR investigators are being coerced and intimidated by USDA's Office of the General Counsel (OGC) and the Department of Justice (DOJ) to reverse findings of discrimination and to reduce proposed settlement awards in certain black farmer discrimination cases; (b) if any investigator has been asked by anyone to reverse a finding of discrimination or modify, reduce, or eliminate a proposed award; (c) the number of proposed black farmer settlements that have been reviewed by DOJ since December 31, 1996; (d) the number of such settlements where DOJ requested USDA to reduce, modify, or eliminate proposed settlements or change any finding of discrimination; and (e) the average settlement amounts of such cases with DOJ review and the average settlement amounts of such cases without DOJ review.

Our responses to the five specific issues raised by the Congressional Black Caucus are included in the General Comments section of this report.

Scope

The Secretary requested that we review settlements of discrimination complaints in the Department's programs concluded since January 1, 1997. We expanded our scope, however, to include both settlement and conciliation agreements concluded since January 1, 1994. The expanded scope allowed us to review a larger sample of

agreements, and we concluded it was appropriate to include conciliation agreements since they are also based on discrimination complaints and are similar to settlement agreements. Also, in order to respond to the request made by the Congressional Black Caucus, we broadened our review of OGC and DOJ's involvement in the settlement process. We reviewed 101 agreements, 17 settlements and 84 conciliations.

All 17 settlement agreements resulted from complaints brought against the Farm Service Agency (FSA). For these 17 settlement agreements, USDA paid nearly $2.7 million in compensatory damages and forgave over $1.7 million of debt. (See exhibit A.) These 17 settlement agreements contained 138 terms. We verified the implementation of all 138 terms.

Of the 84 conciliation agreements, 64 resulted from complaints brought against Rural Development; 16 resulted from complaints brought against FSA; 3 resulted from complaints brought against the Forest Service; and 1 resulted from a complaint brought against the Natural Resources Conservation Service. These 84 conciliation agreements contained 155 terms. We judgementally selected and verified the implementation of 58 terms.

We also identified four settlement agreements that were negotiated through DOJ. These four settlement agreements resulted from four FSA customers who filed lawsuits against the Secretary, and as such, they fell under DOJ's jurisdiction. These four included $817,000 in compensatory damages and $789,028 in debt forgiveness. (See exhibit C.) We did not include these 4 in our total of 101 agreements since they fell under DOJ's jurisdiction. However, CR is aware of these agreements, and FSA is tracking the implementation of their terms.

Audit fieldwork was conducted between October 13, 1998, and December 18, 1998.

This evaluation was conducted in accordance with the quality standards for inspections issued by the President's Council on Integrity and Efficiency.

Methodology

To accomplish our objectives, we:

- sent a letter to all Departmental agencies, requesting them to provide us information on all of their settlement agreements and on any agreements similar to settlement agreements that were entered into during our scope period.

- conducted interviews with cognizant CR officials and contacted officials of FSA, Forest Service, Rural Development, the Department's Office of the General Counsel, and the U.S. Department of Housing and Urban Development.

- reviewed the laws and Department regulations applicable to settlement and conciliation agreements reached since January 1, 1994.

- reviewed the organizational responsibilities, tracking systems, and reconciliation processes of the CR, FSA, and Rural Development.

- reviewed the status of USDA settlement and conciliation agreements by conducting interviews, making contacts with agency officials, or reviewing documentation.

- reviewed documentation pertinent to the financial system used for payments of cash settlements.

- collected data on OGC and DOJ’s timeframes for reviewing civil rights cases referred by USDA.

Agreements Are Generally Being Implemented in a Timely Manner

Conclusion 1

In spite of CR's inability to account for all complaint agreements and their status, the Department has generally implemented the terms of those agreements. It has fully implemented 8 of its 17 settlement agreements, most of the terms of the remaining 9 settlement agreements, and most of the terms of the 84 conciliation agreements. The Department has paid all compensatory damages settled by CR and agreed to by DOJ. Although many agreement terms covering programmatic relief have not yet been fulfilled, this situation is largely a result of the scope of the agreements. These agreements contain terms which do not expire for up to 6 years from the date the agreements were signed. We found no evidence that Department agencies intentionally delayed the implementation of the agreements. However, we did find that CR had agreed to one term in one agreement concerning FSA program relief that FSA, citing statutory requirements, did not believe it could fulfill. This case concerned a complainant who was not a Socially Disadvantaged Applicant and who therefore may not have been eligible for the program relief granted in the agreement term.

During our Phase V review, we identified differences between the number of settlement agreements provided to us by the CR Director and the number found during our review of the casefiles and other documentation. We also noted that CR's data base included nearly four times the number of cases closed by settlement that had been provided to us. To determine the total number of agreements in the Department, we sent a letter to all agency heads requesting all settlement and conciliation agreements entered into from January 1, 1994, through October 1998. From what was sent to us and from what we additionally found during the course of our review, we identified 101 agreements entered into by USDA, 17 settlement agreements and 84 conciliation agreements. All 17 settlement agreements involved complaints against FSA.

For the 17 settlement agreements, the FSA National office maintains separate casefiles for each agreement, monitors the implementation of the terms, and produces a monthly report on its progress. To determine the status of the terms, we reviewed documentation located in these casefiles. We also verified the payment of the compensatory damages through discussions with officials in FSA's Finance office in St. Louis, Missouri and the review of various payment documents.

Compensatory Damages. The Department awarded compensatory damages in 9 of its 17 settlement agreements. We reviewed all nine of these agreements. (See exhibit A.) The amounts awarded in the agreements ranged from $114,000 to $495,000.[4] All damage awards had been paid within the timeframes stipulated in the agreements. Three of the awards stipulated a 60-day timeframe, five stipulated a 30-day timeframe, and one stipulated a 15-day timeframe. For the agreement with the 15-day timeframe, $474,725 in damages was awarded and paid within 2 days, the shortest response time. For one of the agreements with a 60-day timeframe, $495,000 in damages was awarded and paid within 56 days, the longest response time.

Program Relief. All of the 17 settlement agreements contained some form of program relief. (See exhibit A.) Altogether, there were 129 terms of program relief in these 17 settlements, and all terms related to FSA programs. (Complaints against all other USDA agencies were resolved through conciliation and did not result in settlement agreements). Of these 129 terms, 68 have been implemented, and 50 are still outstanding because of implementation timeframes that extend for up to 6 years.

Of the remaining 11 terms, 9 called for CR to monitor implementation of the agreements, but it did not do so (see Conclusion 2). One agreement term called for CR to leave a case open which CR nevertheless closed. The last agreement term required FSA to allow the complainant to receive priority selection of inventory property when it became available. In this case, FSA did not notify the complainant about whether or not inventory property was available. A senior loan officer with FSA stated that since this individual was not a Socially Disadvantaged Applicant, priority consideration for inventory property could not be given.

In this last case, the complainant was a white male who was disabled. CR agreed with the complainant that FSA improperly based its denial of a loan solely on the individual's disability and offered to settle with the complainant by granting him priority consideration for inventory property. However, FSA did not believe it was authorized to fulfill this term of the agreement. An FSA loan officer stated that only Socially Disadvantaged Applicants were eligible for priority consideration for inventory property and that the statute governing Socially Disadvantaged Applicants did not apply to white males. Consequently, FSA did not notify the complainant of the availability of inventory property. However, FSA also did not notify CR that it believed it could not fulfill the agreement term, and it did not seek the advice of OGC attorneys. We are

[4] One of the nine agreements included compensatory damages paid in part by Rural Development; however, the complaint was filed against FSA. We verified the payment of the compensatory damages with Rural Development fiscal personnel.

recommending that the Department seek a legal opinion about the propriety of the agreement term. (See Conclusion 5.)

The 50 terms that are still outstanding include 10 terms that have expiration dates that have not expired, and 36 terms that cannot be implemented until the complainant applies for a new loan. The cases of prolonged expiration dates usually call for the complainant to receive priority consideration on future loans or for providing technical assistance over the next 4 or 5 years. The remaining four outstanding terms are for the payment of attorney fees and the notification of credit bureaus.

Of the 68 terms that have been satisfied, 50 were implemented when 5 complainants received their disaster payments. Of the remaining 18 satisfied terms, 9 called for debt forgiveness; 4 called for a property conveyance or release of liens; and 2 required the issuance of new loans. The other 3 terms were for the payment of attorney fees, the notification of credit bureaus, and the endorsement of a certified check.

Two of the agreements that contained terms for debt forgiveness were not implemented within the timeframes stipulated in the agreements. These two agreements required debt forgiveness to be completed within 15 days of the signing of the agreements. The agreements also required DOJ approval. DOJ approval did not occur until 26 and 28 days respectively after the agreements were signed. The agreements, as written, did not allow time for DOJ approval before the deadline for these terms was reached. Debt forgiveness for both of these agreements was completed, one in 62 days and the other in 158 days.

In addition to the 17 settlement agreements, we reviewed 84 conciliation agreements, 64 entered into by Rural Development, 16 entered into by FSA, and the remaining 4 entered into by the Forest Service and NRCS. These 84 agreements contained 155 terms. We verified the status of 58 terms and found only 1 to be outstanding. In this case, the term cannot be implemented until the complainant applies for a new loan, and to date he has not done so.

Lack of Guidance from the Office of Civil Rights Has Resulted in Uncertainty Over the Settlement Process and Little or No Disciplinary Action Taken in Cases of Discriminatory Behavior

No disciplinary actions have been taken in reference to the 17 settlement agreements entered into by the Department, and only 2 letters of reprimand have been given in reference to conciliation agreements that have been negotiated between claimants and the agencies.

Our review of settlement and conciliation agreements disclosed that CR has not issued any formal departmental guidance to ensure that agencies process agreements consistently. There is no guidance to provide for centralized monitoring of agreements, and there are no procedures to implement disciplinary action. In the absence of guidance, the Department has no accurate accounting of the agreements executed, and there has been no unified effort to discipline officials whom CR has identified as the source of the discrimination.

Lack of guidance has been a longstanding problem with CR. As we stated in our Phase V report, dated September 30, 1998, CR has been slow to finalize its procedures and eliminate deficiencies. We found that its draft regulations were incomplete and did not properly assign responsibilities to the USDA agencies and OGC in the complaint process. CR subsequently issued a revised draft of 7 CFR Part 15d for comments, and it is currently assessing those comments. It plans to begin working with OGC to prepare a final version of the regulation.

During this evaluation, CR also provided us with the revised draft versions of DR 4330-1 and DR 4330-2. These documents did not include all of the changes we recommended in our Phase V report. Nevertheless, CR forwarded the drafts to the Secretary and is awaiting his approval. These revised Department regulations do not contain any specific reference to disciplinary action.

The CR Director informed us that the complaints procedure manual is being revised and will include more specific instructions not incorporated into the Department regulations.

Conclusion 2
Accountability Needed in the Review and Monitoring of Agreements

CR has not issued procedures to establish accountability for the implementation of settlement and conciliation agreements arrived at by either CR or the USDA agencies. Agencies are not required to track their agreements (both settlement and conciliation), and CR itself neither reviews conciliation agreements when they are entered into, nor takes an interest in monitoring the implementation of the terms included in those agreements. As a result, neither CR nor the agencies are aware of the total number of agreements entered into by the Department nor the status of those agreements.

Settlement Agreements

As we reported in our September 30, 1998, Phase V report on CR operations, the total universe of settlements is not known to CR management. At the time of the Phase V review, CR provided us with 17 settlement cases. These cases were not the only settlements in existence, and some had been incorrectly coded in CR's tracking system as settlements. (CR's data base itself designated nearly four times this number of cases as settlements.) CR's Accountability Division had responsibility to track settlement agreements but did not do so because the division lacked the resources. Our Phase V report recommended that CR establish a system to monitor the implementation of these settlement agreements, and CR responded that it had developed such a system. However, during our current review, we found that this system consisted only of a few new fields in the data base and that these fields had not been used.

In August 1998, the CR Director appointed a special assistant to track the implementation of agreements and ensure compliance with their terms and conditions.

The special assistant prepared "Procedures for Monitoring the Implementation of Settlement Agreements in Program Complaints," which remains in draft form while awaiting review by the CR Director and CR's Program Investigations Division. According to the procedures, the special assistant should be issuing biweekly inquiries to the agency head or designee requesting updated information and documentation of implementation activities and keeping the CR Director informed of the agency's progress or failure to implement the terms of the settlements.

In October 1998, in response to our Phase V review, FSA established a system to track its settlement agreements. FSA provided CR data from its system. The special assistant stated that she had knowledge of only the FSA settlement agreements provided to her by the Director of CR. The special assistant had not

made inquiries to other USDA agencies about whether or not they had any civil rights agreements, either settlement or conciliation. (However, CR's own data base as of November 16, 1998, shows 65 cases coded as settlements, 35 of which were against agencies other than FSA.)

Conciliation Agreements

A former departmental civil rights official stated that prior to the establishment of CR, conciliation agreements were reached between the agency and the complainant. The agreement was later forwarded to the Department-level staff for final approval and closure, but the Department-level staff neither reviewed the terms of the agreements nor ensured they were implemented. The staff would follow up if complainants contended that the terms of their agreements had not been implemented, but this rarely happened.

The Secretary's May 16, 1997, Memorandum that established CR made it responsible "...for investigation, adjudication, and resolution of complaints of discrimination arising out of ... conducted or assisted programs...." We believe that this gave CR responsibility for ensuring that settlement and conciliation agreements, past and future, were implemented.

Although CR has exercised its responsibility to negotiate settlement agreements, it has not exerted its right to review and approve the conciliation agreements reached between the agencies and the complainants. CR also has not determined if the agencies established adequate systems for monitoring and tracking these conciliation agreements to ensure that they have been completely and expeditiously implemented.

In the absence of any required accountability for the implementation of conciliation agreements, not all agencies could readily determine the status of their agreements. During our evaluation, we found that Rural Development did not have a central tracking system and did not know the number of conciliation agreements it had entered into since January 1, 1994. Headquarters personnel relied on the State Civil Rights Coordinators to forward all such agreements. However, when we reviewed the civil rights staff's general correspondence files, we identified six additional agreements that the coordinators had not provided us.

Rural Development officials were also unable to tell us the status of the implementation of the agreements. According to a Rural Development official, each State Civil Rights Coordinator is supposed to maintain documentation that the terms of each agreement are properly implemented. We contacted 14 State coordinators to obtain documentation on 18 conciliation agreements. In some

instances, State Civil Rights Coordinators were unable to provide documentation from their files that agreement terms were implemented, and had to contact the county offices against which the complaints were filed.

Rural Development is currently developing a system to track conciliation agreements and ensure that their terms are met. The system should be on-line by February 1999.

The CR Director has emphasized that she does not plan to review conciliation agreements reached at the agency level nor does she plan to monitor the implementation of these agreements. Based on the Secretary's memorandum that constituted CR as the Department agency responsible for resolving all civil rights issues, we concluded that CR should review and monitor the implementation of both settlement and conciliation agreements. In addition, we believe the CR Director should keep the Secretary informed of the implementation of these agreements in a semiannual report.

Recommendation 1a

Require the CR Director to immediately implement procedures to review conciliation agreements reached at the agency level, and to monitor and track all settlement and conciliation agreements applicable to all USDA agencies, and ensure their complete and expeditious implementation.

Recommendation 1b

Direct CR to provide guidance to agencies regarding the establishment of appropriate systems for monitoring and tracking conciliation agreements.

Recommendation 1c

Direct CR to report to the Secretary on a semiannual basis those terms which have not yet been implemented.

Conclusion 3 Accountability Needed in Cases of Disciplinary Action

Of the cases we reviewed with findings of discrimination, CR referred only one for disciplinary action, and to date no action has been taken in that case. Disciplinary actions are rare because there are no formal procedures for carrying out such actions and no formal procedures for monitoring any disciplinary requirements of a discrimination review. Also, the Director of FSA's Human Resources Division (HRD) stated that disciplinary action cannot be implemented until actual guilt is proven, a process

that would typically begin only after CR has issued a finding of discrimination. In the absence of implementing and monitoring procedures, the Department has no assurance that agencies are taking appropriate disciplinary action against discriminating employees.

A proposed "Policy on Accountability for Discrimination Complaint Issues" was drafted to require CR to forward to the Office of Human Resource Management a copy of any settlement and attached analysis in which discipline might be appropriate. The Office of Human Resource Management will consult with the involved agency to determine the appropriate corrective actions to be proposed. As of December 1998, this policy remains an informal one.

Beginning in August 1998, the CR Director assigned a special assistant to track settlement agreements through the implementation phase. According to the proposed policy, CR officials are to give the Office of Human Resources Management all copies of agreements having indications of significant wrongdoing by the responsible official(s) or any others that CR determines should be reviewed for disciplinary action. The agencies taking the actions should be working with the Department's Office of Human Resources Management to ensure that the proposed actions are appropriate.

We reviewed all 17 settlement agreements. In 12 of these, the Department's civil rights office issued a decision with a finding of discrimination. For 9 of these 12, CR stated it would forward the case file to the Department's Human Resources Management so it could determine whether any action against FSA personnel was warranted in light of the finding. Of the remaining three, two inexplicably made no mention of taking disciplinary action and one directed FSA to initiate disciplinary action.

For the remaining five settlement agreements (five members of the same family), the Department did not issue a decision with a finding of discrimination. However, the former CR Director wrote on July 15, 1997, that for these five a high probability of discrimination existed. CR settled with the complainants prior to issuing a finding of discrimination in order to avoid the cost of a full inquiry, repair the damage to the customer immediately, and eliminate adverse publicity. Despite the fact that no formal finding of discrimination was declared, CR did require FSA to conduct an impartial misconduct investigation into the specifics of the alleged inappropriate comments by the county official. This misconduct investigation found the county official had used racial slurs in reference to African Americans. That county official retired prior to the misconduct inquiry.

CR Requested Action in Only One Case

In 1 of the 12 cases with a finding of discrimination, CR required both the Office of Human Resource Management and FSA to inquire about the actions of FSA personnel. For this case, CR determined a finding of discrimination was warranted and asked FSA to implement the terms of a settlement agreement. In CR's transmittal letter to FSA, dated March 11, 1998, CR wrote it would forward the case file to Human Resources Management so they could determine whether any action against FSA personnel was warranted. The CR Director went on to write, "The Agricultural Credit Manager involved in this case was found to have discriminated against the [complainants] for the second time, as well as to have taken retaliatory action against them. In addition, FSA in its own preliminary inquiry on this case found that the Manager treated minorities different than other customers, and that some sort of training was required. There have been problems with the relationship between the Manager and the [complainants] for a number of years, and I am concerned that FSA has taken no action to resolve the situation. Accordingly, I strongly recommend that [the Administrator] look into this situation to determine what action is warranted." However, based on our various interviews, we noted that the case file was never forwarded to either Human Resources Management or FSA. As a result, FSA's HRD was not aware of any action taken against the Agricultural Credit Manager as requested.

CR Provided Information in Only One Case

In 1 other of the 12 cases, we found that CR forwarded FSA's HRD enough information regarding the alleged discriminating official to initiate a disciplinary review. This information had not been forwarded for other cases, despite numerous requests.

In a letter to the CR Director, dated February 13, 1998, FSA requested the final decisions on civil rights complaints from CR for 10 complainants. In that request, FSA stated it intended to take necessary remedial actions where employees had discriminated in program delivery. FSA requested a copy of the analysis/findings along with the letter of settlement. CR responded by providing FSA with the decision documents for each case. In a letter to the CR Director, dated April 1, 1998, FSA’s director of civil rights requested documentation which contained the names of agency officials involved in the discrimination, since the documents previously provided did not specifically identify employees, only positions in the agency. In the April 1, 1998, letter, the requested information for complainants increased from 10 to 12. According to the director of FSA HRD, CR never sent the requested information.

On October 2, 1998, FSA's director of civil rights again requested detailed information about a complainant's case, this time for only one complainant. The FSA official stated that while CR's decision document discussed acts deemed to be discriminatory, it did not contain the level of specificity needed to defend justification for a disciplinary action, if appealed. Therefore, the FSA official requested a copy of the investigation file for this one complaint or a letter detailing the specific acts of discrimination. FSA received the details it needed.

In a letter to FSA's director of civil rights, dated October 19, 1998, CR's Director wrote, "We are pleased to see that FSA is beginning to consider disciplinary action for those persons found to be responsible for findings of discrimination." [Emphasis added.] The CR Director seemed to be unaware that FSA had been requesting information about this case from CR for over 6 months.

Agencies Adhere to No Standard Policy

We also determined that an FSA official did not believe he could rely on CR findings of discrimination to prove that USDA employees had indeed acted in an improper manner. The Director of FSA's HRD stated his agency could not take adverse actions without absolute proof of employee wrongdoing in cases alleging discrimination. Such proof would require a more indepth investigation than those undertaken by CR.

CR requested an opinion from OGC on the evidentiary standard for adjudicating program discrimination complaints. In its April 3, 1998, response, OGC stated that the preponderance of evidence used by CR to arrive at a finding of discrimination is the proper standard for the agencies to use in adverse actions and is consistent with applicable law. However, in subsequent communications, OGC attorneys have suggested that the preponderance of evidence standard may not apply to all cases and that a higher standard may be required. The attorneys concluded that CR may need to provide a mechanism by which the Department agencies can identify the evidence required to support the level of disciplinary action contemplated.

We also noted during our review of 84 conciliation agreements that 2 Rural Development employees who had been the subject of complaints in 2 of the cases were required to take sensitivity training for their actions. Although conciliation agreements do not apportion blame to USDA and therefore do not normally result in disciplinary actions, there are conciliation cases in which the agency deems some form of discipline warranted. We found that CR is unaware of these cases, has made no provisions to monitor them, and has provided no

guidance to agencies on tracking and reporting them. (For a complete discussion of CR's monitoring activities, see Conclusion 2.)

We found CR had not taken the lead in recommending or assuring that discriminating officials are disciplined. From our review of the 17 cases with settlement agreements, we found 2 instances where no disciplinary actions were mentioned, 9 instances where the Department's staff was responsible for disciplinary actions, and 7 instances where the onus was put on the agency (one case mentioned that both the Department and FSA were to review the allegations). There is also some confusion as to the evidentiary standard needed to discipline employees. Although the current CR Director had assured FSA that a written explanation of the discriminatory behavior along with copies of supporting documents would be provided to them in the future, this assurance does not go far enough. We feel this policy needs to be formalized into departmental regulations that cover all agencies, not just FSA.

Recommendation 2a

Direct CR, in consultation with OGC and the Office of Human Resources Management, to include a "disciplinary action" section in the departmental regulations as a means of formalizing general requirements and procedures applicable to employees cited by complainants in program discrimination cases who have acted in an improper manner. In the interim, direct CR to immediately issue guidelines to the agencies detailing how to proceed with disciplinary action based on a finding of discrimination by CR and how to determine when further evidence is required to support the level of disciplinary action contemplated.

Recommendation 2b

Direct CR to forward to the Office of Human Resources Management all prior settlement agreement cases in which discipline might be appropriate, and direct CR to follow up on the cases to determine if any actions are taken.

Conclusion 4 Agencies Should Be Encouraged To Conciliate Agreements

In the absence of guidance from CR, two agencies, the Forest Service and FSA, either routinely had complaints settled where a conciliation may have been more efficient, or included monetary damages for non-ECOA issues in conciliation agreements. Although CR urges agencies to seek some form of conciliation with the complainant as early in the process as possible, not all agencies do this. Rather the agencies adhere to their own separate policies of when conciliation should be attempted and what it should consist of.

During 1998, the Department reached agreements with 10 FSA complainants; 8 were settlement agreements; 2 were conciliation agreements. Even though FSA personnel are required to seek conciliation, the trend has been towards settling FSA complaints after an investigation has been completed. This is costly and time-consuming for both the Government and the complainant. All 17 settlement agreements in the Department resulted from complaints made against FSA, and the cost of compensatory damages associated with these agreements totaled nearly $2.7 million. (See exhibit A.) Also CR invested considerable time and resources in investigating and adjudicating cases that, in some instances, may have been settled more efficiently through conciliation. The complainant may also be denied immediate programmatic relief, which if granted, may have made a difference in the success of the complainant's farming operation.[5]

By contrast, Rural Development tries to conciliate complaints before they get to the investigation stage. Rural Development uses its program authorities to satisfy the complainant, resulting in a more timely and cost-effective resolution to the complainant and the Government. For instance, if during the agency fact-finding phase the State Civil Rights Coordinator determines that the complainant's application for a loan or loan servicing was not handled properly, he or she tries to resolve the complaint by having the application reevaluated. Conciliations of this type make the aggrieved party "whole" while being more cost effective to the Government.

We also noted that while the Forest Service enters into conciliation agreements early in the complaint process, 2 of its agreements with complainants have included monetary damages. The OGC believes this to be an inappropriate term of the agreements based on a Department of Justice opinion. See Conclusion 5 for a full discussion of this issue.

We concluded that CR should formalize its conciliation policy to encourage conciliation with complainants in program discrimination cases early in the complaints process.

[5] We did not conduct a complete analysis of these complainants' farming operations; however, complainants have stated that if benefits had come sooner, it may have saved their farming operations.

Recommendation 3

Direct CR to formalize its conciliation policy in the Department regulations to encourage conciliation with complainants in program discrimination cases early in the complaints process.

Agreement Terms Should Be Agreed To Within USDA Prior To Negotiations With the Claimants

Conclusion 5

Although the Office of the General Counsel (OGC) has been involved in the process of finalizing settlement agreements, attorneys at the OGC, Civil Rights Division, believe that CR does not allow them sufficient time to review the source materials used by CR to formulate the terms that will be proposed during the settlement negotiations. The attorneys stated that they and the OGC program division, along with cognizant program officials, should be given sufficient time to analyze all components of the agreements to ensure their conformance with applicable statutes, Departmental regulations, and program regulations. They agreed that the review should not deter cases from being completed within the 180-day limit.

OGC is divided into several divisions which cover specific mission areas of the Department. OGC's Associate General Counsel for Rural Development has responsibility for programmatic legal matters of Rural Development and loan programs for FSA. OGC's Associate General Counsel for Civil Rights is responsible for all program-related civil rights legal matters.

OGC Civil Rights Division's role in the complaints resolution process is to determine the legal sufficiency of the decisions issued by CR and the settlements arrived at. The CR Director has emphasized that the Assistant Secretary for Administration delegated responsibility to CR for negotiating agreements and that OGC has only an advisory role. However, OGC disagrees with this opinion. Currently, OGC's Civil Rights Division reviews proposed decisions and participates in negotiation of settlements if so requested by CR.

Attorneys for OGC's Associate General Counsel for Rural Development (program attorneys) have had no participation in the settlement negotiation process. These attorneys have legal expertise in particular USDA programs; however, this staff reviews agreements only if requested by cognizant program officials. Because CR and not the agency negotiates settlement agreements, agency program officials and OGC program attorneys become aware of the agreements' terms in many cases only after CR forwards them for implementation.

We found that some agreements contained unauthorized terms or were inappropriately worded, leaving the terms open to interpretation by both the

agency and the complainant. The agreements with unauthorized terms inappropriately waived provisions of a statute, or granted monetary damages when the agency was apparently limited to providing only program relief.

Agreements That Waive Provisions of a Statute

A typical term in these settlement agreements calls for the release of all USDA debt. However, the term also stipulates that "this release will not trigger the statutory provisions found at Section 648 of the Federal Agriculture Improvement and Reform Act [FAIR] of 1996 that preclude an individual who has received debt forgiveness from obtaining further farm loans from USDA or from obtaining future debt forgiveness." The Associate General Counsel for Rural Development stated, "The situation is, of course, that section 648 of FAIR is going to apply if it is applicable and it is not going to apply if it is not. Placing this clause in the agreement only causes all of these agreements to be null and void, even though substantially completed, if it is later determined that section 648 does apply."

The Department's General Counsel informed the Secretary in a September 17, 1998, memo that debt forgiveness as a result of a settlement agreement would not trigger provisions of FAIR; however, debt forgiveness granted prior to the discriminatory act would. One complainant, with these terms in his agreement, had received a debt forgiveness prior to the period of discrimination. This prior debt forgiveness would trigger section 648 of the FAIR Act making the complainant ineligible for future loans. According to OGC's Associate General Counsel for Rural Development, this material breach would make the complete settlement agreement "null and void."

We believe the terms in these agreements might be clarified if OGC program attorneys and agency program officials were consulted during the negotiation phase. These individuals would have the statutory expertise and the personal knowledge of the program history of each of these complainants, which may be necessary for full implementation of the agreements. The Associate General Counsel for Legislation, Litigation, and General Law in a June 27, 1997, memo to FSA stated, "the ASA [Assistant Secretary for Administration] and the Director [CR] must still follow the relevant statutes and regulations in determining corrective action, such as ensuring that an individual is qualified for a loan or other benefit. It is for this reason that it is crucial that the ASA and the Director give the agency a full opportunity to air its views on a given case before issuing a final determination."

Agreements May Have Inappropriately Contained Monetary Damages

Conciliatory agreements do not acknowledge blame on the part of the Department and therefore are typically limited to program relief. However, we found that the Forest Service paid $6,200 in monetary awards for three conciliation agreements through the use of cash funds from small purchase authority. Two of the agreements were for $2,500 each and the third was for $1,200. A decision relating to one of the agreements, issued by the Forest Service civil rights director, stated, "We recommend the [complainant] be compensated for their hardship in the maximum amount allowable under Small Purchasing Authority, $2,500." The third conciliation agreement, in which $1,200 was paid, indicated it was a reimbursement of expenses but did not indicate what type of expenses were incurred by the complainant. As part of our review, we presented these agreements to OGC civil rights attorneys who also questioned the permissiveness of these awards.

The CR Director stated that it was permissible to compensate complainants based on the "nuisance value" of the complaint, and upon provisions of the Alternative Dispute Resolution Act. She also stated that DOJ has been known to pay under Title VI of the Civil Rights Act of 1964.

We question the permissiveness of the payments in the first two Forest Service conciliation agreements based on an OGC informational memorandum to the Secretary, dated October 16, 1998. In general, OGC concluded, based upon DOJ opinions, that the Department cannot make compensatory damage awards, even when using an alternative dispute resolution process, unless the complaint involves a credit case as recognized by the ECOA. Because the Forest Service does not administer any direct loan programs, none of its operations fall under the provisions of the ECOA.

In regard to the third Forest Service conciliation agreement, OGC also concluded that attorneys' fees and costs may be awarded pursuant to provisions in the Equal Access to Justice Act; however, this Act is specific on what types of costs may be reimbursed and under what circumstances reimbursement can be awarded. The third Forest Service conciliation agreement did not provide us with sufficient information to determine whether the Equal Access to Justice Act applied.

Some Agreement Terms Were Misleading

In six of the conciliation or settlement agreements we reviewed, one or more terms were unreasonable. The wording of the terms was either misleading or too

vague, allowing for broad interpretation. We concluded that some wording could leave the Department open to further litigation.

For five of the agreements, the term read, "[the complainant] will be given priority consideration for the purchase, lease, or other acquisition of any inventory property from USDA." [Emphasis added.] The term, as written, does not give specific boundaries for this inventory property and could be interpreted to mean anywhere in the United States.

The last agreement, also dealing with inventory property, did limit the selection of property to property that was in "close proximity" to the complainant, but it did not limit the priority consideration to just one loan or for a limited period of time. This term could be literally interpreted to mean priority consideration for all future inventory property.

In this case, the complainant is a white male who filed a complaint against FSA based on its denial of a loan. The complainant alleged FSA denied the loan based on his disability. CR investigated the charge and determined FSA improperly considered the complainant's disability when determining loan eligibility. In order to settle, CR offered the complainant program relief including priority consideration for inventory property (the complainant was not eligible for compensatory damages since ECOA does not include disability as a protected base).

The agreement, which was not reviewed by OGC program attorneys, was finalized on September 23, 1997. As of the date of our review, FSA had not contacted the complainant regarding the availability of inventory property. For other agreements with similar terms, FSA had notified complainants regardless of whether inventory property was or was not available. FSA had not provided this complainant with the same notification.

A senior loan officer with FSA stated that, by statute, priority consideration for inventory property can only be given to Socially Disadvantaged Applicant's (SDA) and by definition, a white male cannot be an SDA. According to agency regulations,[6] the agency has identified socially disadvantaged groups as women, Blacks, American Indians, Alaskan Natives, Hispanics, Asians, and Pacific Islanders. Since the complainant did not fall under any SDA category, FSA did not inform him of whether or not inventory property was available. Even though disabled Americans are not included in this definition, we feel FSA should have

[6] Instruction 1943-A Section 1943.4, dated November 3, 1993 .

obtained an OGC opinion as to whether this complainant could be considered for priority consideration for inventory property.

We concluded that the finalization of settlement and possibly some conciliation agreements should include greater representation by Department program and legal staffs. All interested parties within the Department should determine before negotiations begin with the complainant what terms can be agreed to and what terms may be inconsistent with laws and regulations. Every effort should be made to ensure that these procedures do not inhibit cases from moving through the process within 180 days.

Recommendation 4a

Require the CR Director to instruct FSA to obtain an OGC opinion on whether the one complainant is eligible for priority consideration for inventory property under the definition of a Socially Disadvantaged Applicant; and if so, immediately notify the one complainant of the availability or unavailability of inventory property in accordance with his settlement agreement.

Recommendation 4b

Require the CR Director to assemble and chair a team of OGC civil rights attorneys and cognizant agency program officials that will meet prior to each agreement negotiation to: (a) perform an expeditious review of the economic analyses and other information compiled as support for the terms proposed in the settlement agreement and (b) analyze all components of the agreement prior to presentation to the complainant to assure they conform with applicable statutes, Departmental regulations, and program regulations. Every effort should be made to assure that these procedures do not inhibit cases from moving through the process within 180 days.

General Comments

No Evidence That Investigators Have Been Coerced

We found no evidence that CR investigators were being coerced or intimidated to reverse findings of discrimination, or that anyone had asked them to reduce proposed settlement awards. Program complaint investigations are solely CR's responsibility, and there is no indication that OGC or DOJ interfered in the investigation process, so as to change the results of the investigations. OGC's involvement in the complaints process does not occur until after cases are investigated. OGC personnel generally have little or no contact with either CR investigators or contract investigators while an investigation is in process. DOJ's involvement occurs later still in the process and only includes reviews of settlement agreements where litigation was involved. Insofar as CR adjudicators are responsible for arriving at findings of discrimination, and not investigators, investigators would not be in a position to reverse such a finding or to modify, reduce, or eliminate any proposed award. We did not find any evidence that any investigator had been asked to do so. However, there have been cases during OGC's legal sufficiency reviews where OGC has requested CR to revise or change some of the language in a written decision, because OGC attorneys believed that it was incorrect as written or not in accordance with a law, or they had questions as to how much weight certain situations should have in the making of the decision. These situations appear to be matters of judgement or clarification, and we have no basis to believe that they were intended to be coercive or intimidating in nature.

Department of Justice Involvement in Settlements Seems Reasonable

DOJ has negotiated and signed four settlement agreements during the scope of our review. These four settlement agreements resulted from lawsuits filed against the Secretary, and as such, they fell under DOJ's jurisdiction. CR has copies of these settlement agreements, and FSA is tracking the implementation of the terms. All four had provisions for compensatory damage awards, and three included provisions for program relief. The compensatory damage awards totaled $817,000, and the debt forgiveness portion of the program relief totaled $789,028. (See exhibit C.)

DOJ has also reviewed six USDA negotiated settlement agreements since January 1, 1994. (See exhibit B.) (Because the scope of our audit included all settlements arrived at since January 1, 1994, we used this broader scope period to consider the issue of DOJ involvement, rather than the more limited scope period proposed by the Congressional Black Caucus in their August 31, 1998, letter.) For three of the six settlements, DOJ voided the awards. In two cases,

the Statute of Limitations barred compensatory damages at the time of settlement.[7] In one of these cases, the award was voided; in the other it was renegotiated. In the third case, the complainant had failed to file his complaint within 2 years of the discriminatory act, as specified by the ECOA. In this case, the award was also voided.

The award that DOJ voided because the complaint was filed late amounted to $312,000. DOJ found that this complaint concerned an application for preservation loan servicing and was filed after the 2-year deadline set by regulations. This nullified USDA's agreement to pay the complainant the compensatory damages, plus reasonable attorney's fees.

The award that DOJ denied because the case fell outside the Statute of Limitations amounted to $490,000. DOJ was required by court order to review this case because the complainant was a putative member of a class action lawsuit against the Department. Among the problems DOJ noted were: (a) The complainant's ECOA claim fell outside the Statute of Limitations at the time of the administrative settlement, and (b) the economic analysis and other materials provided little or no support for the income loss and pain and suffering portions of the total claim. DOJ determined on the strength of USDA's case and the likelihood that the Government would prevail in court that an appropriate compromise should provide the complainant with not more than $10,000 in cash, nominal debt relief of up to $25,000 and a nominal sum (up to $5,000) for attorney's fees and costs.

In the other agreement that fell outside the Statute of Limitations, the settlement agreement negotiated by CR covered two complaints filed in 1993 and two complaints filed in 1994, and included $542,395 in compensatory damages. DOJ determined that the 1993 complaints fell outside the Statute of Limitations and voided this part of the agreement. FSA renegotiated the agreement based on this limitation and subsequently awarded the complainant $474,725.

Settlement amounts for the six cases that DOJ reviewed between January 1, 1994, and the present ranged from $114,000 to $490,000 and averaged $282,954. During the period December 31, 1996, to the present, there were 13 cases with settlement agreements that DOJ did not review. The damage amounts for these 13 cases ranged from $225,000 to $495,000 and averaged $135,308. However, 8 of these 13 did not receive compensatory damages. The average of the five which received compensatory damages was $351,800.

[7] Subsequent congressional action has waived the statute of limitations in these cases. Both cases are now considered active.

Tax Forms Are Issued in Conformance With Internal Revenue Service Rules

Complainants who entered into settlement agreements with the Department and received monetary awards (compensatory damages, debt forgiveness, etc.) have also received a Form 1099, or report of income. Internal Revenue Service (IRS) rules stipulate that all recipients of Government funds must receive a Form 1099, including those who received settlement agreements and debt relief.

Complainant	Agency	Compensatory Damage	Days Allotted for Payment	Days Used	Reviewed By DOJ? 2/	Amount of Program Relief 1/	Number of Terms of Program Relief	Number Implemented	Number Outstanding	Other	Fully Implemented	
											Yes	No
A	FSA/RD	$495,000	60	56	No	$292,172	1	1			x	
B	FSA	$0	N/A	N/A	No	$0	3	1	1	1		x
C	FSA	$0	N/A	N/A	No	$121,867	10	10			x	
D	FSA	$0	N/A	N/A	No	$121,867	10	10			x	
E	FSA	$0	N/A	N/A	No	$121,867	10	10			x	
F	FSA	$0	N/A	N/A	No	$121,867	10	10			x	
G	FSA	$0	N/A	N/A	No	$121,867	10	10			x	
H	FSA	$0	N/A	N/A	No	$48,314	10	2	6	2		x
I	FSA	$439,000	60	36	No	$70,597	1	1			x	
J	FSA	$114,000	30	22	Yes	$287,078	9	2	6	1		x
K	FSA	$162,000	30	27	Yes	$34,655	12	3	8	1		x
L	FSA	$260,000	60	49	No	$45,383	1	1			x	
M	FSA	$340,000	30	12	No	$0	5		3	2		x
N	FSA	$474,725	15	2	Yes	$296,753	11	2	8	1		x
O	FSA	$145,000	30	28	Yes	$78,181	10	3	6	1		x
P	FSA	$0	N/A	N/A	No	$26,020	9	2	6	1		x
Q	FSA	$225,000	30	26	No	$0	7		6	1		x
		$2,654,725				$1,788,488	129	68	50	11	8	9

Average compensatory damage award for cases not reviewed by DOJ was $351,800
(Complainants A, I, L, M, and Q).

1/ Program Relief only includes amount of debt forgiven and disaster benefits paid.

2/ DOJ reviewed a total of 6 USDA negotiated settlement agreements. DOJ voided 2 of these agreements. We did not include these 2 agreements in our total of 17 settlement agreements since USDA was not obligated to fulfill the terms of these agreements. See Exhibit B for a listing of all 6 agreements reviewed by DOJ.

EXHIBIT B - Results of Cases Sent to DOJ for Review

Complainant	Number of Days at Department of Justice	Approved	Voided
J	26	x	
K	28	x	
N	57[b]		x[c]
O	7	x	
R	178[a]		x[d]
S	26		x[e]
Average Days	29		

a/ We did not include the 178 days in the average since part of the delay can be attributed to USDA's OGC. During DOJ's review, it had requested additional information from OGC. Over a month later, DOJ made a second request for the same information.

b/ We were unable to obtain documentation showing the date the case went to DOJ for review. We estimated this date based on an average of the number of days USDA took to forward the other five cases to DOJ.

c/ DOJ voided the inclusion of the 1993 complaints and required USDA to renegotiate the settlement based only on the 1994 complaints.

d/ DOJ determined the case fell outside the Statute of Limitations.

e/ DOJ determined the complainant had not filed his complaint within 2 years of the discriminatory act.

EXHIBIT C - DOJ-Negotiated Settlement Agreements

DOJ-Negotiated Settlement Agreements[a]		
Complainant	Compensatory Award	Program Relief
DOJ1	$ 150,000	N/A
DOJ2	220,000	$ 432,799
DOJ3	129,000	30,255
DOJ4	318,000	325,974
Totals	**$ 817,000**	**$ 789,028**

a/ We did not verify the payment of compensatory awards since they were paid from DOJ's Judgement Fund. However, we did verify with FSA program officials and a review of payment documents that the program relief (debt forgiveness) had been implemented.