

**REVIEW OF THE OFFICE OF THE INSPECTOR
GENERAL REPORT ON *USDA OVERSIGHT OF
CIVIL RIGHTS COMPLAINTS***

HEARING

BEFORE THE

SUBCOMMITTEE ON NUTRITION, OVERSIGHT, AND
DEPARTMENT OPERATIONS

OF THE

COMMITTEE ON AGRICULTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTEENTH CONGRESS

SECOND SESSION

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**REVIEW OF THE OFFICE OF THE INSPECTOR
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TUESDAY, FEBRUARY 15, 2022

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON NUTRITION, OVERSIGHT, AND DEPARTMENT
OPERATIONS,
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The Subcommittee met, pursuant to call, at 12:00 p.m., via Zoom, Hon. Jahana Hayes [Chairwoman of the Subcommittee] presiding.

Members present: Representatives Hayes, McGovern, Adams, Brown, Rush, Sablan, Lawson, Bishop, Bacon, Baird, Jacobs, Cloud, Letlow, and Thompson (*ex officio*).

Staff present: Lyron Blum-Evitts, Chu-Yuan Hwang, Katherine Stewart, Ricki Schroeder, Patricia Straughn, Jennifer Tiller, and Dana Sandman.

**OPENING STATEMENT OF HON. JAHANA HAYES, A
REPRESENTATIVE IN CONGRESS FROM CONNECTICUT**

The CHAIRWOMAN. I now call to order the hearing of the Subcommittee on Nutrition, Oversight, and Department Operations.

Good afternoon, everyone. This hearing of the Subcommittee on Nutrition, Oversight, and Department Operations entitled, *Review of the Office of Inspector General Report on **USDA Oversight of Civil Rights Complaints***, will come to order. Welcome, and thank you all for joining us here today.

After brief opening remarks, Members will receive testimony from our witness today, and then the hearing will be open to questions. In consultation with the Ranking Member and pursuant to Rule XI(e), I want to make Members of the Subcommittee aware that other Members of the full Committee may join us today.

Thank you to the Inspector General, accompanied by the Assistant Inspector General for Audit, for joining us today to provide testimony and answer our questions. I appreciate you taking time out of your schedules to provide us with this expertise. I look forward to a productive conversation about the USDA Office of the Inspector General report on the USDA Office of the Assistant Secretary for Civil Rights' (OASCR) oversight of the civil rights complaint process.

The mission of OASCR is to provide leadership and direction for the fair and equitable treatment of all USDA customers and employees while ensuring the enforcement of civil rights. However, as

we know, USDA has a documented history of race- and gender-based discrimination in its role as an administrator of Federal programs, an employer, and processor of civil rights complaints. Discriminatory actions have resulted in several class action lawsuits and settlements over the years.

While the USDA's civil rights complaints process should provide recourse for employees and program participants who face discrimination in hiring, employment, and program delivery, serious issues have plagued the Department's complaint processing for more than half a century and undermined the ability to timely and effectively resolve civil rights complaints.

And, while these problems are not new, OIG's September 2021 report on *USDA Oversight of Civil Rights Complaints*, which reviewed complaints processed between October 2016 and June 2019 had some very concerning findings. OIG's findings show that, under the previous Administration, USDA regressed in terms of the timeliness of its civil rights complaint processing. Of the complaints OIG sampled, more than 85 percent took longer than 180 days to process. In Fiscal Year 2019, it took 799 days on average, or more than 2 years, to process complaints.

We are also aware that, at that time, massive cuts were requested for OASCR's budget, almost \$3.5 million in cuts in Fiscal Year 2021, for example, and [the Administration was] realigning the office in 2018 to eliminate redundancies.

Among other concerning changes, as part of the 2018 reorganization of the Office of the Assistant Secretary for Civil Rights, Secretary Perdue proposed eliminating Deputy Assistant Secretary for Civil Rights at OASCR, and eliminating the Policy Division within OASCR because it was: "no longer necessary in an era of decreased regulations."

Furthermore, the budget proposed by the Trump Administration repeatedly proposed that they would not fill critical vacancies in the program and employment complaint areas. As a result, between 2016 and 2020, OASCR lost a substantial portion of their workforce.

The OIG report* makes clear that the Biden Administration has their work cut out for them in the area of civil rights at USDA, both—I am sorry—because of USDA's historic struggle to appropriately process and adjudicate civil rights complaints.

I am hopeful that today's hearing will help us better understand OIG's findings and recommendations for complaint processing at USDA. Further, I am hopeful that this hearing brings forth productive solutions to ensure that this process works and that OASCR has the staffing and support necessary to meet its mission.

Thank you again to our Members and to OIG for joining us today. I look forward to today's conversation.

[The prepared statement of Mrs. Hayes follows:]

*The report referred to is located on p. 25.

PREPARED STATEMENT OF HON. JAHANA HAYES, A REPRESENTATIVE IN CONGRESS
FROM CONNECTICUT

Thank you to the Inspector General, accompanied by the Assistant Inspector General for Audit, for joining us today to provide testimony and answer our questions. I appreciate you taking time out of your schedules to provide us with your expertise.

I look forward to a productive conversation about the USDA Office of the Inspector General (OIG) report on the USDA Office of the Assistant Secretary for Civil Rights' (OASCR) oversight of the civil rights complaints process.

The mission of OASCR is 'to provide leadership and direction for the fair and equitable treatment of all USDA customers and employees while ensuring the enforcement of civil rights.'

However, as we know, USDA has a long history of race- and gender-based discrimination in its role as an administrator of Federal programs, an employer, and processor of civil rights complaints. Discriminatory actions against program participants, as well as against its own employees, have resulted in several class action lawsuits and settlements over the years.

While USDA's civil rights complaints process should provide recourse for employees and program participants who face discrimination in hiring, employment, and program delivery, serious issues have plagued the Department's complaint processing for more than half a century and undermined its ability to timely and effectively resolve civil rights complaints.

And, while these problems are not new, OIG's September 2021 report on *USDA Oversight of Civil Rights Complaints*, which reviewed complaints processed between October 2016 and June 2019 had some very concerning findings.

OIG's findings show that, under the Trump Administration, USDA regressed in terms of the timeliness of its civil rights complaint processing.

Of the complaints OIG sampled, more than 85 percent took longer than 180 days to process. In Fiscal Year 2019, it took 799 days on average—or more than 2 years—to process complaints.

We are also aware that, at the same time, the Trump Administration was undermining OASCR by requesting massive cuts in its annual budget—by \$3.5 million in Fiscal Year 2021 alone, for example—and realigning the office in 2018 to supposedly 'eliminate redundancies.'

Among other concerning changes, as part of the 2018 reorganization of the Office of the Assistant Secretary for Civil Rights, Secretary Perdue proposed eliminating OASCR's Deputy Assistant Secretary for Civil Rights position, with little to no justification, and eliminating the Policy Division within OASCR because it was 'no longer necessary in an era of decreased regulations.'

Furthermore, the Trump Administration's budget repeatedly proposed that they would 'not fill' critical vacancies . . . in the program and employment complaint area.' As a result, between 2016 and 2020, OASCR lost a substantial portion of its workforce.

The OIG report makes clear that the Biden Administration has their work cut out for them in righting the ship on civil rights at USDA, both because of USDA's historic struggle to appropriately process and adjudicate civil rights complaints, and because of the actions of the prior Administration.

I am hopeful that today's hearing will help us better understand OIG's findings and recommendations and the decades of issues that have plagued civil rights complaint processing at USDA.

Further, I am hopeful that this hearing helps us come together around productive solutions to ensure that this process works and that OASCR has the staffing and support necessary to meet its mission.

Thank you again to our Members and to OIG for joining us today. I look forward to today's conversation.

The CHAIRWOMAN. I now would like to welcome the distinguished Ranking Member, the gentleman from Nebraska, Mr. Bacon, for any opening remarks he would like to give.

**OPENING STATEMENT OF HON. DON BACON, A
REPRESENTATIVE IN CONGRESS FROM NEBRASKA**

Mr. BACON. Thank you, Chairwoman Hayes. I appreciate your comments, and also your comments on OASCR and what has happened in the past. I also want to thank our witness today. I welcome Inspector General Fong to the Subcommittee, and I look for-

ward to your discussion and learning from you. I also look forward to the opportunity to bring in the Office of the Assistant Secretary for Civil Rights at OASCR, even if it involves a second panel.

After years of issues—and I agree, it has crossed multiple Administrations—it would be beneficial to question Deputy Assistant Secretary Raigne about our agency, its future, how it is going to work to ensure the program and employee complaints are processed timely and with integrity.

OASCR provides the overall leadership, coordination, and direction of USDA's civil rights programs, including matters related to program delivery, compliance, equal employment opportunity, [inaudible] provides leadership and direction for the fair and equitable treatment of all USDA customers and employees, ensuring the delivery of quality programs and enforcement of civil rights. So, it is indeed one of the more important agencies of the Department. So, I hope we get an opportunity to talk to Deputy Assistant Secretary Raigne as well.

Also, if you may indulge me for just a moment, I also hope to, sometime soon we can bring up the business of oversight with the 2018 Farm Bill. I would like to hear from our FNS personnel publicly regarding implementation or pandemic-related policies and spending, and of course, the \$256 billion baseline update done by this Administration.

So, with that, I thank the Inspector General for joining us today, and thank you, Chairwoman Hayes, for leading this Subcommittee. I yield back.

The CHAIRWOMAN. Thank you, Representative Bacon.

I now would like to recognize the Ranking Member of the full Committee, Representative Thompson, who has joined us today, for any opening remarks he would like to make.

**OPENING STATEMENT OF HON. GLENN THOMPSON, A
REPRESENTATIVE IN CONGRESS FROM PENNSYLVANIA**

Mr. THOMPSON. Madam Chairwoman, thank you so much. Good afternoon, everybody, and much appreciation to you, Madam Chairwoman and Ranking Member Bacon.

Welcome, Inspector General Fong. Thank you for being with us today. I would like to associate myself with the comments of the Ranking Member. OASCR should be with us today, and I hope we will have the chance to speak with them soon about this, and other matters, including how employee complaints are handled.

The September 2021 report under discussion today highlights longstanding issues within OASCR. Regardless of the Administration, it appears the office has an outdated and inefficient approach to program complaints. I look forward to the discussion and any updates Inspector General Fong may have relating to her recommendations. And again, I do hope this Subcommittee starts to contemplate the 2023 Farm Bill. My colleagues and I have many questions about the 2018 Farm Bill implementation, including issues related to quality control. And on the heels of billions of pandemic-related spending, an additional \$256 billion over 10 years in new spending. Everything in this space requires intense scrutiny and engagement.

Once again, thank you so much for the opportunity to join this Subcommittee hearing. With that, I yield back.

The CHAIRWOMAN. Thank you, Representative Thompson. The chair would request that other Members submit their opening statements for the record so the witnesses may begin their testimony, and to ensure that there is ample time for our questions.

Our witness today is the Honorable Phyllis K. Fong, the Inspector General of the U.S. Department of Agriculture. Ms. Fong was nominated to serve as Inspector General for USDA by President George W. Bush and was subsequently confirmed by the U.S. Senate and sworn in as Inspector General for USDA in 2002. As Inspector General, Ms. Fong is responsible for audits, investigations, and other oversight activities related to USDA programs and operations. In addition to her work for USDA, Ms. Fong has also served as the acting Inspector General for the Federal Housing Finance Agency since July 2021. Prior to her appointment at USDA, Ms. Fong was nominated and confirmed as Inspector General of the Small Business Administration, where she served as Inspector General from April 1999 to December of 2002.

Ms. Fong is accompanied today by Mr. Gil Harden, the Assistant Inspector for Audit at the U.S. Department of Agriculture. In his role as Assistant Inspector for Audit, Mr. Harden is responsible for all audits of USDA, and its operations and programs.

Welcome to both Ms. Fong and Mr. Harden. We will now proceed to hearing testimony from Ms. Fong. You will have 5 minutes to give your testimony. The timer should be visible for you on your screen and will count down to 0, at which point your time has expired.

Ms. Fong, if you are ready, please begin your testimony.

STATEMENT OF HON. PHYLLIS K. FONG, INSPECTOR GENERAL, OFFICE OF INSPECTOR GENERAL, U.S. DEPARTMENT OF AGRICULTURE, WASHINGTON, D.C.; ACCOMPANIED BY GIL H. HARDEN, ASSISTANT INSPECTOR GENERAL FOR AUDIT, OIG, USDA

Ms. FONG. Thank you very much, Chairwoman Hayes, Ranking Member Bacon, and Ranking Member Thompson. We really appreciate the opportunity to be here today to talk about our recent report, as you all have mentioned. With me today is Gil Harden, whose office performed the audit work that we will be discussing today. So, he's got a good grasp of all the details.

As you know, our mission in the IG's office is to help the Department deliver its programs effectively and with integrity. We do that through audits, investigations, and other reviews, and we make recommendations to help the Department improve program delivery. In the end, however, it is the Department itself and program officials who must take the necessary corrective actions. We do not have the authority to do that.

My written statement provides a detailed description of our report, so I would like to just spend a few minutes talking about some of the key themes that we have seen in over 20 years, 20 years of oversight work involving the Department's civil rights programs.

Our work has focused on three broad areas. We have looked at various USDA programs and outreach activities to underserved communities. The second area we have looked at is USDA's handling of the claims resolution process for class action litigation filed by various groups, as alluded to in the Chairwoman's opening remarks, and the third area that we have focused on is USDA's handling of program and EEO employment complaints under the Civil Rights Acts and other legislation, and it is this third area relating to the importance of a timely and responsive complaint process that we believe is critical to addressing perceived discrimination in USDA programs and building public trust and confidence that the Department can serve all the people.

Our most recent report found that the Office of the Assistant Secretary for Civil Rights, that their program complaint process has fallen short of their goals. The report underscores a number of longstanding challenges, as many of you have pointed out today, that must be addressed if the Department is to move forward. We have identified these same themes 14 years ago in testimony to Congress, and civil rights and outreach activities have been a management challenge on our list of key challenges facing the Department for 20 years now.

The themes that we have seen are as follows: strong leadership is essential to make it a priority to process complaints in a timely fashion; adequate resources need to be brought to bear, including sufficient staffing and an effective information technology system; monitoring and oversight of partnerships with other agencies is necessary to ensure that all are doing their part; and finally, clear performance measures need to be set and used so that success can be measured and reported.

These challenges are not new. They will take concerted effort to address. I do want to acknowledge publicly that under the current OASCR leadership, Deputy Assistant Secretary Monica Rainge has agreed to act on all of our recommendations in the audit report, and we have accepted OASCR's proposed actions to address our recommendations.

So, in closing, I want to thank this Committee for your interest in our work, and we look forward to discussing our report with you and answering your questions.

[The prepared statement of Ms. Fong follows:]

PREPARED STATEMENT OF HON. PHYLLIS K. FONG, INSPECTOR GENERAL, OFFICE OF INSPECTOR GENERAL, U.S. DEPARTMENT OF AGRICULTURE, WASHINGTON, D.C.

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 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.⁴⁻⁶

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 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 com-

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

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.

plaints 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 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 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.

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).

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.

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 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[woman], the Ranking Member, and Members of the Subcommittee for the opportunity to testify today. I welcome any questions you may have.

The CHAIRWOMAN. Thank you, Ms. Fong.

At this time, Members will be recognized for questions in order of seniority, alternating between Majority and Minority Members. You will be recognized for 5 minutes each in order to allow us to get to as many questions as possible. Please keep your microphones muted until you are recognized in order to minimize background noise.

I will recognize myself at the end so that we can get to our Members first, so I now recognize Representative Bacon, the Ranking Member of the Subcommittee.

Mr. BACON. Thank you, Madam Chairwoman, I appreciate that.

Inspector General Fong, has the President provided any indication as to when he will appoint a permanent Inspector General for the Federal Housing Finance Agency, a role in which you have

¹³Department of Justice 28 CFR § 42.408.

been in acting capacity since August of 2021, simultaneous to your current role in the Department? Thank you.

Ms. FONG. Thank you for that question. I have a great personal interest in that, and, actually, the President has nominated a candidate who is going through the confirmation process. The most recent status is that he has made it out of the Banking, Housing, and Urban Affairs Committee and is awaiting a Senate vote. So, it could be soon.

Mr. BACON. Thank you.

One more question. For the OIG 2022 annual plan, three factors were identified that could hamper your ability to meet objectives, factor one, relating to hiring including challenges recruiting and maintaining sufficient personnel to meet stakeholder demands. Has this factor become a reality, and if so, what are the challenges you are currently facing, and is there a plan in motion to help mitigate those issues? Thank you.

Ms. FONG. Yes, thank you for that question.

Capacity is a key issue for us, and last year, we lost a number of people due to normal attrition. We have had challenges filling those positions, and that is probably our top internal management priority right now—to fill our vacancies. We are down about 40 or 50 positions—not positions, but people in those positions, and so, we are very much focused on filling them. We need auditors and investigators to do our work.

Thank you.

Mr. BACON. And with that, I will just say I know how important the Inspector General is. I did 30 years in the Air Force. I need a very good IG team to hear complaints and be a neutral sounding board, so I appreciate the role that you play.

And with that, Madam Chairwoman, I will yield back and allow others to have their turn. Thank you.

The CHAIRWOMAN. Thank you, Ranking Member Bacon.

I now recognize the gentlelady from Ohio, Representative Brown. You have 5 minutes for questions.

Ms. BROWN. Thank you, Chairwoman Hayes and Ranking Member Bacon, for holding this important hearing, and thank you, Ms. Fong and Mr. Harden, for being here today and for your many years of service and dedication to supporting this Department.

The Department of Agriculture has a longstanding track record of controversy on civil rights, from inconsistent access to farm programs for minority farmers and ranchers, to unfair treatment of minority, women, and disabled employees. So, it is no secret that the Department must do better.

So, my question is: in your report, you raised concerns that, when faced with lengthy timeframes to process their complaints, individuals who have had a legitimate claim of discrimination and would otherwise be eligible for USDA programs may not continue to pursue their complaint. Ms. Fong, how will your recommendations help to rebuild public confidence in the USDA Office of Civil Rights and ensure that wrongdoers in the Agency are held accountable?

Ms. FONG. Yes, thank you for that question.

I think it is essential that the Department have an effective and timely process to deal with incoming complaints from employees

and program participants who are concerned that they may have legitimate grievances, and as a complainant, if you file a complaint and it is not appropriately investigated and adjudicated within a reasonable amount of time, the concern is that you could lose confidence in the Department's ability to address your needs and to give you the assistance that you need, and that is just a very critical issue of credibility.

Ms. BROWN. So, is it your opinion that additional oversight will be needed?

Ms. FONG. Well, our report found that the Office of the Assistant Secretary needs to really oversee these activities, both within its own program as well as within the agencies within the Department. And of course, it is our responsibility to also do oversight work to make sure that our recommendations are implemented.

Ms. BROWN. Okay, thank you.

Chairman Bacon—Ranking Member Bacon, I am sorry—touched on the Assistant Secretary for Civil Rights at USDA which requires Senate confirmation and remained vacant for the entirety of the previous Administration. President Biden has nominated a candidate who is still waiting for Senate confirmation. Can you speak to the importance of confirming this position to all of the Department, the USDA?

Ms. FONG. Yes, I think it is essential that whenever a position is designated as one requiring a Presidential appointee, there is a reason for that. That person sets a certain tone, has leadership responsibilities, and sets policies at the highest level, which all sets the tone for the organization. And so, we believe that it is critical that these positions be filled, and I think our work led a number of years ago to the creation of the position of a Presidentially appointed Assistant Secretary for Civil Rights. So, we are very supportive of that.

Ms. BROWN. Thank you so much.

And as we move into appropriations season, the previous Administration requested decreases in appropriations for the Office of Civil Rights, including a cut of \$3.5 million in Fiscal Year 2021. Conversely, the Biden Administration has requested an increase of \$6.5 million in this fiscal year. Do you think that President Biden's budget request is sufficient to carry out all the recommendations your office has presented, Ms. Fong?

Ms. FONG. We have not done that analysis. We do understand that the Deputy Assistant Secretary has agreed to implement all of our recommendations, and, so, we believe in giving her that opportunity.

Ms. BROWN. Well, let me ask you this. What would be your top three recommendations that the Agency should prioritize?

Ms. FONG. For the Office of Civil Rights?

Ms. BROWN. Yes.

Ms. FONG. Well, in our set of recommendations there were 21 of them. I think it is key that the Office be very clear about its time for processing complaints, and then come up with a plan to actually achieve those goals, whether it is through staffing or IT resources or other means.

They also need to revisit their strategic plan to make sure that they are focused on what they need to do and they set it out very

clearly, and they measure their performance. And third, they need to focus on making sure they have the data to actually report back on how well they are doing.

Ms. BROWN. Well, thank you, Ms. Fong.

As I expressed, I have some concerns about the findings in the report, and Chairwoman Hayes, if I have any additional questions, I will submit them for the record.

Thank you, Madam Chairwoman, and I yield back.

The CHAIRWOMAN. Thank you, Representative Brown.

I now recognize the Ranking Member of the full Committee, Representative Thompson. You have 5 minutes for questioning.

Mr. THOMPSON. Madam Chairwoman, thank you so much, and once again, Inspector General Fong, thank you for your service. You play a critical role within USDA, and you and your colleagues, we appreciate what you do.

Last week, USDA announced a \$1 billion pilot program for climate-smart commodities. It is my understanding this money will not go directly to farmers, but rather be doled out to companies or other entities who will, in turn, pay farmers for certain practices. So, I am concerned with the lack of transparency at this point. It is certainly concerning to me. Do you intend to audit the Partnership for Climate-Smart Commodities pilot and its financing by the Commodity Credit Corporation? That would be my first question, I guess.

Ms. FONG. We don't have current plans to do that audit. We just became aware of the program announcement, and we are keeping an eye on it. We know that there are a number of concerns that are being expressed about it, and we need to learn a little bit more about the situation. But we will definitely consider that in our planning process.

Mr. THOMPSON. Well, I appreciate that. I appreciate your due diligence of learning more about it. There is just a real lack of transparency, and to me, that those types of situations always lend themselves to audits. I find them helpful. I know our Members—all of our Members would. So, I appreciate that.

Inspector General Fong, are you aware of a complaint filed with FNS Civil Rights Division alleging discrimination in FNS SNAP retailer administrative enforcement system, and, if so, has there been a formal investigation? Has a formal investigation been opened?

Ms. FONG. Okay. We receive, as you know, a lot of allegations through our hotline and through whistleblowers.

Mr. THOMPSON. Right.

Ms. FONG. I can't really discuss anything that is an open and ongoing investigation, but we do work very closely with FNS. When they have concerns, they know that they can come to us to request assistance and we will give it every consideration and evaluation.

If there is a particular situation that you would like to discuss, we would be happy to reach out to your staff and coordinate further.

Mr. THOMPSON. Oh, I would appreciate that. If that is the case, I would be curious to know what the expected timeline for completion might be estimated to be. So, I appreciate those future communications.

I think with that, Madam Chairwoman, I just once again thank you and the Ranking Member, and more specifically, Inspector General Fong, for joining us here today, and I yield back the balance of my time.

The CHAIRWOMAN. Thank you, Representative Thompson.

We have another Member from the full Committee joining us today, the Representative from Georgia, Mr. Bishop, and the Members of the Committee have agreed to let him ask questions out of order, because he cannot stay with us for the entirety of this hearing. So, I now recognize the gentleman from Georgia, Representative Bishop, for 5 minutes for questioning.

Mr. BISHOP. Thank you, Madam Chairwoman, and thank you to the Members of the Committee for allowing me to speak out of turn. Thank you so much for this hearing. It is very timely and let me welcome Ms. Fong and thank her and her staff for her decades of extraordinary work in the Office of Inspector General.

Ms. Brown of Ohio referenced earlier the efforts by the Administration, and you commented on the fact that the new director of that office has agreed to the recommendations to try to implement them. And I think Ms. Brown referenced and asked you whether or not the—you thought that the budget requests would allow them to comply with the recommendations. And of course, you indicated that you had not had an opportunity to analyze them.

But as a Member of the Appropriations Committee, in fact, as Chair of that Subcommittee, I noticed that there were several, several requests that were made which we proposed to fund in the Fiscal Year 2022 bill. That is an increase for staff of 128 to 191, which is a cost of about \$11 billion that would allow the office to reestablish alternative dispute resolution center, new program adjudicators to work exclusively with the Heirs Property Lending Program, new equal employment specialists and assistants to ensure that all of the employment complaints are handled in a timely manner, new employment specialists in the conflict complaints division to ensure that this model, which was set by the Equal Employment Opportunity Commission Program, would be able to process sensitive complaints efficiently, and additional hires would enhance their audit functions, increasing the program investigators for face-to-face investigations, enhance collaborative efforts with community-based organizations, increasing funding for employment investigation contract support, and replacing the current Civil Rights Enterprise System for processing the complaints. And of course, those proposed to be funded and both the House and the Senate seem favorably disposed to it.

If, in fact, those provisions are all funded in the appropriations bill, will that give an opportunity, do you think, give them the resources that they need to comply with the recommendations that you made?

Ms. FONG. Thank you for that information. A number of things that you said caught my ear. If, in fact, they receive that appropriation and are able to hire an additional 60+ people, that should make a significant difference in their ability to investigate and adjudicate claims.

I also heard you say that they are planning to replace their CRES system, which sounds like a tremendous step forward in

terms of getting an effective management information system to manage their caseload and keep track of what is going on and all the deadlines. So, that sounds very promising, and I hope to hear good things.

Mr. BISHOP. Thank you very much, Ms. Fong, and I understand that in the previous Administration, there were drastic cuts in that agency, and of course, that resulted in an exacerbation of what was already a bad problem. And so, I think that this Administration, as you have recognized, is trying to move forward to remediate that and to take steps forward, and I think the authorizing committee and the appropriations committees on both sides of the Capitol, I should say, appear to be supportive of that. And so, thank you for your consistency in highlighting the failure to comply with the recommendations, and we hope that in this instance we will be able to provide the resources that will allow those recommendations to be followed.

So, thank you very much, and with that, Madam Chairwoman, I will yield back my time and I thank you again for allowing me to go out of turn.

The CHAIRWOMAN. Thank you, and thank you for joining us today.

I now recognize the gentleman from Indiana, Representative Baird. You have 5 minutes for questioning. Please begin.

Mr. BAIRD. Well, thank you, Madam Chairwoman, and thank you and the Ranking Member for holding this important session.

I appreciate Inspector General Fong for being here and sharing her perspective on this office.

I am curious. I am kind of curious. It looks like that we reported 911 complaints from 2016 to 2019. That would appear to me to be almost 1 a day in that 3 year period. I also am kind of curious about why we focused on the previous Administration and those 3 years. And so, what is your perspective on how we might move forward in analyzing this data and as we implement the suggestions that OASCR has suggested?

Ms. FONG. Yes. Let me offer a few comments. We, as you pointed out, designed this review to focus on the 3 years of data that were available at the time. It was not intended to focus on any particular Administration, and we have done work throughout the 20 years that I have been at USDA. We have done work every few years on these issues. We had done work in 2014 and 2015 on similar issues through our investigative side, and found similar processing delays with complaints. And so, it was again time to go back in. And so, this covered the next group of years. And I think, we just are here to report the data as we found it, and I think that the facts are set out in our report.

Mr. BAIRD. Well, thank you. I am really glad to hear that, and I appreciate your perspective and I appreciate your comments in that regard.

I would like to understand the relationship between the OIG or the OASCR and the Department through Memoranda of Understanding, and I would just like to understand that relationship and how that relates to the process of handling these complaints. And then I would like to have your idea on how long you think what period of time is sufficient for handling these complaints.

Ms. FONG. Yes, those are very insightful questions, and I will take the second question first in terms of the appropriate timeframe for handling complaints. There is no Federal regulation that sets out an appropriate timeframe for program complaints. The Justice Department just says you have to do it in a prompt way. And so, our recommendation to OASCR is that they should figure out, do an assessment, perhaps do some benchmarking, think about what an appropriate timeframe might be, and then be very clear about communicating that to the public as well as to their own people. We have seen the timeframes expand over the years from 180 days until where it currently is. There has to be a standard that would be appropriate that they can adopt and hold themselves to.

In terms of the relationships between OASCR and the Department and the MOUs, my understanding—and Gil might be able to step in here—is that OASCR basically oversees the handling of complaints within the Department, but with respect to two program areas, because of the expertise that resides in FNS for the nutrition programs, and with HUD for the housing programs, that there is an agreement there to have those two entities handle those program complaints, and OASCR is responsible for then overseeing the timeliness and the effectiveness of those processes, and they do that through an MOU.

And Gil, I will turn the microphone over to you if you have any additional things to offer on that.

Mr. HARDEN. Thanks, Phyllis.

I think the only thing that I would add is, it really goes back to their oversight and monitoring of the process. They had agreements in place that they just weren't effectively overseeing, and they needed to update those agreements. So, renewed efforts there, there could be better processing times for both of those entities.

I will also point out just in the report, the number or the percentage of cases processed by FNS and HUD of that 911 for that time period was 59 percent, so they processed a significant portion during that time period of the complaints to be processed. And so, having a good relationship with those entities and providing effective oversight is critical.

Mr. BAIRD. Thank you, and I have overrun my time, but anyway, I appreciate those answers very much.

So, Madam Chairwoman, I yield back.

The CHAIRWOMAN. Thank you. It was a very important question, so I wanted to hear the answer. You are forgiven.

Mr. BAIRD. Thank you.

The CHAIRWOMAN. I now recognize the gentleman from the Northern Mariana Islands. Mr. Sablan, you are recognized for 5 minutes for questioning.

Mr. SABLAN. Yes, thank you, Madam Chairwoman, for holding this hearing. I want to welcome our witness, Inspector General Fong, and of course, her assistant.

Inspector General Fong, I will eventually reach out to your office for an issue with operations in my district in the Northern Mariana Islands, and it is sometimes a difficult relationship with the region office in Hawaii, but for today, in your report on the USDA Office of the Assistant Secretary for Civil Rights, OASCR, would you con-

firm whether civil rights complaints from the U.S. Territories were examined?

Ms. FONG. I do not know the answer to that, whether we had any of those complaints in our sample. If I had to say, I would say that USDA's jurisdiction would—OASCR's jurisdiction would extend to any USDA programs, wherever they are offered so that the jurisdiction and the authority is there, but I don't know if we looked at any complaints specifically from your district.

Mr. SABLAN. Okay, and how do we get your office to look at complaints, if there are any out there that have not been looked at? We are just so isolated, so remote, and we get looked over so many times.

Ms. FONG. We would be happy to reach out to your staff and discuss the most effective way to do that.

Mr. SABLAN. Okay, thank you.

Ms. FONG. And if you have anything else to offer, Gil, please comment.

Mr. HARDEN. Yes, I was just going to offer that we can first take a look at the 28 complaints that are in our sample just to confirm where they are and if there are any complaints from the Northern Mariana Islands, and also reach out and have a discussion about concerns with complaints in that area.

[The information referred to is located on p. 66.]

Mr. SABLAN. Yes. Mr. Harden, when you are looking for it, look for the Northern Mariana Islands and Guam, because we are an outpost that are several times removed from the region office. But thank you for that. I appreciate it.

And so, Inspector General, in your testimony, you state that the OASCR does not evaluate and process all complaints for USDA, and it relies on the assistance of two organizations, FNS and HUD, these two organizations completed 59 percent of USDA's civil rights complaints during the period that your OIG evaluated and processed complaints more quickly than OASCR, more than 600 days and more than 200 days on average respectively in Fiscal Year 2019, as compared to 799 days on average for all complaints. Why do you believe that FNS and HUD processed complaints more quickly than OASCR?

And are there lessons from the processes that could be applied to OASCR's process itself?

Ms. FONG. Well, I think you make a very interesting point, that the complaints handled by FNS and HUD were handled in a more timely manner than some of the others. I think what we would be concerned about is that none of those timeframes really comport with the timeframes that the agency was holding itself to, and were much too lengthy. But Gil may have some further insight on that.

Mr. HARDEN. I agree, it is a very interesting question that I would have to go back and talk to the team and see if we have any information that would inform discussion in that area, and if we do, we can get back to the Congressman, either way, whether we do or we don't.

[The information referred to is located on p. 67.]

Mr. SABLAN. Thank you again for that.

Madam Chairwoman, I have no other questions. I thank the witness and I yield my time. Thank you.

The CHAIRWOMAN. Thank you, Mr. Sablan.

I am looking. I don't see any of my Republican colleagues, so I will now recognize, I see Mr. Rush has joined us. I now recognize the gentleman from Illinois, Mr. Rush, for 5 minutes if you have questions.

Mr. Rush, you are muted.

Mr. RUSH. I am unmuted now.

The CHAIRWOMAN. Yes. Please begin. Thank you.

Mr. RUSH. Thank you, Madam Chairwoman. I am so delighted to be here with you this morning, and thank you for today's oversight hearing.

This oversight hearing is critical for ensuring that the civil rights complaints brought by farmers are taken seriously, that they are met in a timely manner, and that they are resolved in such a way that Black and minority farmers receive both the justice and the assistance that they need in order to prosper.

I am somewhat, I am very disheartened, Madam Chairwoman, by how often the Federal Government and the Department of Agriculture are falling short over the years at the expense of Black farmers, their livelihood, their property, and their trust. At the same time, I am also hopeful that under the leadership of the Biden Administration and the bright spotlight provided by the Office of Inspector General, we can regain the public's confidence.

Madam Chairwoman, I am a descendant. My grandfather was a Georgia farmer on the farm, and my grandfather's farm was—we lost the farm under what I think are some very, very questionable circumstances.

My question is to Ms. Fong. Ms. Fong, can you expand on how the USDA is addressing their history of failing to review complaints in a timely manner. What initial steps should the Department take to increase buy-in from minority farmers?

Ms. FONG. Yes, I think it is critical that the Department exercise leadership in this arena, and we have made a number of recommendations where the Office of the Assistant Secretary for Civil Rights could exercise leadership to start addressing some of these longstanding issues. It was very good to hear from Chairman Bishop about the resources that he hopes Congress will appropriate to enable OASCR to have the staff that it needs to move forward. And I think we have a commitment from the current leadership of the Office of the Assistant Secretary for Civil Rights to take action on all of our recommendations, and that is a very encouraging sign.

Mr. RUSH. Ms. Fong, I have also heard multiple reports of outright hostility at local ag field offices toward Black farmers. Did the OIG's report drill down into the geographic distribution of complaints, and if so, were there any specific recommendations that were made by state or regional offices? And if not, is that something that will be possible for the Department to research and issue a report on? I think we might create a bright light on the attitudinal obstacles to fairness that Black farmers, particularly, are experiencing at the local level.

Ms. FONG. That is a very interesting question. I don't know if in the sample of cases that we looked at in our audit if we have geo-

graphical data on the distribution. I think we could certainly take a look at that and get back to you and your staff on that to see if we have data by state or region. And I think you also raised a very interesting question looking forward as we plan our future work, whether there is any way to address that question if the data exists. So, we will think about that and get back to your staff on that.

[The information referred to is located on p. 66.]

Mr. RUSH. Last thing, quickly. What is the appeal process for rulings by field offices?

Ms. FONG. The appeal process for—I think that would lie with the program agencies. My office, what we do is we audit and we investigate allegations of wrongdoing or fraud, and people are free to come to us at any time. We have public hotlines and intake mechanisms, and if there are issues that we see, we will either investigate or audit them, or we will work with the agencies on that.

Mr. RUSH. Thank you, Madam Chairwoman. You have been magnificent. Thank you so very much.

The CHAIRWOMAN. Thank you so much for your questions, Representative Rush.

I now recognize the—oh, I am sorry. Seeing none of my Republican colleagues on the platform, I will now recognize the gentlelady from North Carolina, Representative Adams. You have 5 minutes for questions.

Ms. ADAMS. Thank you, Chairwoman Hayes and Ranking Member Bacon, for hosting the hearing today, and to Inspector General Fong, thank you for your testimony as well.

The USDA's history of discrimination, discriminatory actions against employees and program participants, particularly socially disadvantaged farmers and ranchers, is well-documented. It is critical that USDA employees and participants in USDA programs have confidence in the Department's ability to properly resolve complaints in a timely manner.

So, my question has to do with processing. Processing times for complaints steadily increased from Fiscal Year 2017, 571 days, to Fiscal Year 2018, 594 days, Fiscal Year 2019, 799 days. What do you believe were the factors behind these increases?

Ms. FONG. Well, when we did our work and we talked with the employees of the Office of the Assistant Secretary for Civil Rights, they identified insufficient resources as a key reason for the delays, insufficient staff resources, the need for a really good IT system, and I think that's probably a good place to start in terms of addressing the issues.

Ms. ADAMS. Okay. So, the decreasing staff levels during the last Administration, was that, in your opinion, a contributing force?

Ms. FONG. We did not specifically address that issue, but the fact that the staff of that office indicated that it was a force would seem to be credible.

Ms. ADAMS. Okay.

Ms. FONG. And, any office that loses staff is going to lose capacity to do what it needs to do.

Ms. ADAMS. Okay. So, do you have any thoughts about why the action was not taken at USDA as the processing time increased year after year after year to address the issue?

Ms. FONG. I don't know, and part of it may be, and Gil, please comment on this. Part of it may be that the data may not have been either available or wasn't being reviewed to really identify the fact that these delays were growing.

Ms. ADAMS. Okay. So, let me ask, has OIG looked at the impact to the civil rights apparatus in the Department since the Trump Administration ended the assessment process, and why has the Department conducted or why hasn't the Department conducted any compliance reviews since 2017?

Ms. FONG. Yes, that is one of our findings and the source of our recommendations. We recommended that the Office of Civil Rights really missed an opportunity here by not conducting those assessments and compliance reviews. That would be a tremendous source of data for OASCR to determine whether its programs are working or not, and we recommend that they find a way to obtain and do that kind of oversight.

Ms. ADAMS. Okay. Your office reviewed a sample of 48 case files, 28 of which were part of the 911 complaints closed between October 1, 2016, and June 30 of 2019. What kinds of cases were these? Race, gender, disability, discrimination, and what agencies? Was it Farm Service, Food and Nutrition, were these 48 cases for?

Ms. FONG. I do not have that data specifically. Gil, would you like to comment, or should we get that information for you?

Mr. HARDEN. What I was going to ask is if you would allow us to pull that data from our work. We can give you a very specific answer as to what made up the cases that we looked at.

[The information referred to is located on p. 65.]

Ms. ADAMS. Okay, fine.

Mr. HARDEN. We can get back to you on that.

Ms. ADAMS. Okay, if you would do that.

Your office identified five settlements, six findings of discrimination in the sample of cases. What kinds of cases, in terms of race, gender, disability, discrimination—were these?

Mr. HARDEN. And similarly, I would like to gather the specific information on that and get that back to you. The report itself focuses on the process as opposed to the individual cases, so I don't have that right in front me.

[The information referred to is located on p. 65.]

Ms. ADAMS. Okay. Well, thank you very much. I appreciate your responses.

Madam Chairwoman, I am going to yield back.

The CHAIRWOMAN. Thank you, Representative Adams.

Seeing none of my Republican colleagues on the platform, I now recognize the gentleman from Florida for 5 minutes. Mr. Lawson, if you would like to ask your questions?

Mr. LAWSON. Am I unmuted? Can you hear me?

The CHAIRWOMAN. We can hear you, sir. We can hear you, sir.

Mr. LAWSON. Okay. Thank you very much, Madam Chairwoman. Ms. Fong, welcome too. Let me see if I can put my glasses on here.

Ms. Fong, my statement is: according to 2017 Census of Agriculture, my district in Florida, District 5 ranked 29th out of 435 Congressional districts in the population of self-reported Black farmers. Therefore, the adequate processing of civil rights complaints is a major priority for me.

The question is, are the actions outlined in your recommendation where the Office of Inspector General has identified a role for Congress in addressing some of the actions in the Office of the Assistant Secretary for Civil Rights issues, have these been taken care of? You mentioned something about it earlier, but I just want to know what has been done in the—with the Assistant Secretary of Civil Rights on these issues?

Ms. FONG. Yes. We, as you point out, we made a number of recommendations to the Assistant Secretary's office. They have reviewed those recommendations and given thought to how to address them, and I am pleased to testify that very recently, their office has agreed to take responsive action on all of the recommendations we have made. They have set different timeframes for doing that, but they have agreed to take action.

And so, we look forward to seeing the action that they take.

Mr. LAWSON. Okay. Ms. Fong, in your testimony you mentioned that in 2021, the audit followed up on five recommendations for the 2012 and 2008 audit reports. Although corrective action was taken by the Office of the Assistant Secretary of Civil Rights, the OASCR, to address these recommendations, weaknesses still exist. Is there any reason why so many of those recommendations would still exist?

Ms. FONG. I will offer some general comments, and then Gil may have some additional insights.

We have, over the course of the last 20 or 30 years, made a significant number of recommendations. The problems remain, and I think if we look at the course of the program over the years, at times there is progress and then at other times, due to change in priorities or change in focus, other priorities take precedence, and then we come back in and review it again. We have done reviews every few years. I think the current report documents the current state of affairs, and I am looking forward to working with the Assistant Secretary's office as they make progress in addressing our newest set of recommendations.

Gil, is there anything that you might want to add to that?

Mr. HARDEN. Yes, I would just build on comments that you have made throughout the hearing that this has been a sensitive area and one that we have worked on with the Department for 20+ years. It has gone through a rise and fall in terms of things were implemented and there may have been some backsliding. Because of this issue, that is why the Office of Inspector General does periodically review this area, because we have seen that history and we want to continue to keep it in the forefront to make sure that they have a very good quality program.

Mr. LAWSON. Thanks for that information.

One other thing I would like to ask, do you feel that you are adequately staffed? Because I know that Congressman Bishop kind of mentioned something like that in the appropriations process, in order to get a lot of these things resolved. Do you feel like the Department [inaudible] can you speak on that?

Ms. FONG. Okay. I will just say a few things.

I appreciate Rep. Sanford Bishop's information today. It was very helpful, and with respect to the resources that he hopes that Congress will appropriate to the Office of the Assistant Secretary, I

think that could go a long way to addressing some of the recommendations we have made.

Until it actually—the funds are actually appropriated and the Office has a chance to invest in the resources it needs and they can actually set their goals and objectives and their measures, and we see how they do at meeting their program intent, then I think we will be able to see how that is going.

Mr. LAWSON. Okay, thank you.

Madam Chairwoman, with that, I yield back.

The CHAIRWOMAN. Thank you, Representative Lawson.

Seeing no other Republican colleagues on the platform, I now recognize myself for 5 minutes of questioning.

Just a few things. First of all, I am very happy to hear—thank you for joining us today. I am very happy to hear that this position will soon be filled on a permanent basis. I am deeply concerned by the fact that this position has not been filled, especially as we have heard at this hearing, there are so many challenges with addressing civil rights complaints. So, I am happy that we are moving forward in that direction.

There have been troubling reports about the failure to adequately investigate discrimination complaints. In fact, several OASCR employees have alleged that there is a focus on closing complaints to meet processing timeframes, rather than investigating and assessing the substance of complaints. The report also found that OASCR did not adequately support or process half of the final agency decisions sampled by OIG.

My question, I guess I have changed my question based on what Representative Adams asked and then subsequently Mr. Lawson. It seems so obvious that if there is a decrease in staffing and that there is an increase in the times to process, Ms. Fong, you said that you didn't specifically address staffing or look at that. I don't understand that. If you didn't address staffing, then what did you address? I read through [the report] and one of the recommendations was to develop and implement a strategy to routinely evaluate and address OASCR staffing and funding resources to ensure program complaints are processed in a timely manner. If staffing levels wasn't one of the things that was considered in that recommendation, I guess my question is how did you come to that conclusion?

Ms. FONG. I think I will defer to Gil on that, because he has probably got a more precise formulation on it.

Mr. HARDEN. Yes. It is not that we didn't consider staffing. I guess the way that I would say it is that I am not in a position and my team is not in a position to say you need x number of staffing. One of the things that fed into that recommendation was a recognition on the Assistant Secretary of Civil Rights Office's part. If they needed to look at their staffing levels and they had made a commitment internally to themselves to do that and then they did not act on that. And so, when we came in and saw that they didn't process things timely, they had very outdated guidance that they were following and it was inconsistent, that was just another piece that they need to internally look at to see where they needed to be as experts in the field as to what should happen.

The CHAIRWOMAN. Thank you. Is there a plan to look into any of the allegations involving failure to adequately investigate discrimination complaints as opposed to just closing them out in the essence of time?

Mr. HARDEN. I do not have anything specific that I am working on at this point in time. I know that later this year we are wanting to look at, and some of that is driven by priorities and risk and the different things that the Department does. I don't mean to do that as a push away answer, but we also want to look at the processing of EEO complaints. I know that when we have looked at settlement agreements in the past we raised similar questions, and had recommendations because they were not adequately supported.

The CHAIRWOMAN. Thank you.

I am also deeply concerned about the effects of reorganization on capacity. In March of 2018, former Secretary Perdue published a notice announcing a realignment of OASCR, which would consolidate civil rights resources at the mission area level through reducing staffing and functions. OIG submitted a comment that it planned to consider looking at the effectiveness of this realignment as part of its future audit planning.

Based on that review, how did the 2018 realignment impact the effectiveness and efficiency of USDA's civil rights activities, namely the processing of complaints?

Mr. HARDEN. I would have to go back and look at the—go ahead, Phyllis.

Ms. FONG. Go ahead, Gil.

Mr. HARDEN. No, I would have to go back and look at the timing of when we made that comment and if we were already looking at—if we were in the midst of the review that was reported on that September. We would be talking about a future review, and so, I would say that that may still be on the table to look at.

Ms. FONG. And let me just add to Gil's comments. My recollection at the time was that there was an interest in having us look at the proposed reorganization and do an audit of that, and it wasn't ready or ripe for audit work. And so, what we were trying to communicate was that we would look at the results of the reorganization, the impact on program activities, and whether or not there is an effective delivery of programs. And in effect, that is what this audit is doing. The reorganization took effect, and then we did our review and looked at several years of data, and we found a number of issues, as reported in our report. Which, due to the change in priority and the reorganization, led to OASCR's admission that their strategic plan was no longer effective, that they were no longer going to do oversight and compliance reviews and agency head reviews, and a number of other things like that, which I think answers the question [of] what happened as a result of the reorganization.

The CHAIRWOMAN. Well, thank you for that answer. My time has expired, but I will make sure I follow up to get some of the answers to these questions, because it is clear that there is a challenge with investigating civil rights complaints, and we have the information, and, as we plan to go forward, we have to come up with some solutions to close these loops and address these problems. It is unac-

ceptable that this has gone on for this long with no clear end in sight.

I think that is all we have for Member questions. Before we adjourn today, I invite the Ranking Member, Mr. Bacon, to share any closing comments that you may have.

Mr. BACON. Thank you, Madam Chairwoman. I have no further questions. I appreciate, Inspector General Fong, your comments today, and being with us. Thank you.

The CHAIRWOMAN. Thank you, Mr. Bacon, and thank you to Ms. Fong and Mr. Harden for joining us today. Our Committee deeply values OIG's important work and the insight it provides, and I particularly want to thank you for your continued work to oversee and improve the civil rights complaint process at USDA.

Thank you as well to our Members who joined us here today. I am hopeful that today's hearing will lead us towards productive solutions in this critical area. I am committed to ensuring that those participating and applying to USDA programs have confidence that they will be treated fairly, and, in the unfortunate event that a civil rights violation does occur, that they have appropriate and timely recourse. Thank you all again for your time and attention to this matter.

Under the Rules of the Committee, the record of today's hearing will remain open for 10 calendar days to receive additional materials and supplementary written responses from the witness to any questions posed by a Member.

This hearing of the Subcommittee on Nutrition, Oversight, and Department Operations is adjourned. Thank you all for your time.

[Whereupon, at 1:11 p.m., the Subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

SUBMITTED REPORT BY HON. JAHANA HAYES, A REPRESENTATIVE IN CONGRESS FROM CONNECTICUT



USDA Oversight of Civil Rights Complaints



September 2021
Office of Inspector General

Important Notice

This report contains sensitive information that has been redacted for public release due to concerns about the risk of circumvention of the law.

USDA Oversight of Civil Rights Complaints

Audit Report 60601-0001-21

OIG evaluated OASCR's oversight of the civil rights complaints process.

Objective

We evaluated OASCR's controls over the civil rights complaints process to ensure that program complaints are processed in accordance with requirements and timely and efficiently resolved. We also followed up on prior audit recommendations from Government Accountability Office Audit GAO-09-62 and Office of Inspector General Audit 60601-0001-23 related to the program complaint process.

Reviewed

We reviewed 28 of the 911 complaints that OASCR closed between October 1, 2016, and June 30, 2019.

Recommends

We made 21 recommendations, including: (1) updating guidance to improve complaint resolution timeliness, (2) [Redacted] (3) reviewing processes to ensure sufficient documentation and support, (4) requiring agencies and OASCR to review and assess compliance with USDA civil rights regulations and policies, and (5) reviewing and updating the strategic plan.

What OIG Found

The United States Department of Agriculture's (USDA) Office of the Assistant Secretary for Civil Rights (OASCR) is responsible for making final determinations on complaints of discrimination filed by any persons who believe they have been subjected to prohibited discrimination in a USDA program.

We concluded that, overall, 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. First, OASCR did not timely process civil rights program complaints. Specifically, in Fiscal Year (FY) 2019, OASCR averaged 799 days to process program complaints compared to the 180 day standard. Furthermore, two other agencies that OASCR coordinated with to resolve complaints took more than 220 days and more than 600 days, respectively, to process complaints.

[Redacted] We also determined that 9 of 28 complaint determinations and closures were not adequately supported and processed. Additionally, OASCR missed an opportunity to track and measure USDA's progress in achieving the Department's civil rights goals and objectives. Finally, these issues could have been identified and better rectified had OASCR used its strategic plan to measure or assess its progress toward established goals and objectives relating to program complaints.

We accepted management decision on 10 of the 21 recommendations. Further action from the agency is needed before management decision can be reached on the remaining recommendations.



Date: September 22, 2021

Audit Number: 60601-0001-21

To: Monica Raigne, Deputy Assistant Secretary for Civil Rights, Office of the Assistant Secretary for Civil Rights

Attn: Winona L. Scott, Associate Assistant Secretary for Civil Rights, Office of the Assistant Secretary for Civil Rights Name

From: GIL H. HARDEN, Assistant Inspector General for Audit

Subject: USDA Oversight of Civil Rights Complaints

Gil H. Harden

This report presents the results of the subject review. Your written response to the official draft is included in its entirety at the end of the report. We have incorporated excerpts from your response, and the Office of Inspector General's (OIG) position, into the relevant sections of the report. Based on your written response, we are accepting management decision for 10 of the 21 audit recommendations in the

report. However, we are unable to reach management decision on Recommendations 2, 3, 4, 8, 9, 10, 12, 13, 15, 16 and 20. The information needed to reach management decision is set forth in the OIG Position section following the recommendation.

In accordance with Departmental Regulation 1720-1, please furnish a reply within 60 days describing the corrective actions taken or planned, and timeframes for implementing the recommendations for which management decisions have not been reached. Please note that the regulation requires management decision to be reached on all recommendations within 6 months from report issuance, and final action needs to be taken within 1 year of each management decision to prevent being listed in the Department's annual Agency Financial Report. Please follow your internal agency procedures in forwarding final action correspondence to the Office of the Chief Financial Officer.

We appreciate the courtesies and cooperation extended to us by members of your staff during our audit fieldwork and subsequent discussions. This report contains publicly available information and only publicly available information will be posted to our website (<http://www.usda.gov/oig>) in the near future.

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Background and Objectives

Background

The United States Department of Agriculture's (USDA) Office of the Assistant Secretary for Civil Rights (OASCR) is responsible for making final determinations on complaints of discrimination filed by any person or group of persons who believe

they have been subjected to prohibited discrimination in a USDA program.¹ The Secretary of Agriculture established the position of the Assistant Secretary for Civil Rights to comply with the Farm Security and Rural Investment Act of 2002.²

In October 2018, OASCR realigned and reorganized to streamline the delivery of program complaint services at the mission area level and ensure USDA projects a unified voice on all civil rights issues affecting program recipients, customers, and applicants. Within OASCR, the Center for Civil Rights Enforcement supports OASCR's mission largely through its program directorates—the Program Complaints Division (PCD)³ and the Program Adjudication Division (PAD).

Program Complaint Process

The program complaint process begins in PCD's Intake Division, which receives complaints from persons alleging discrimination in USDA's Federally conducted or assisted programs.⁴ PCD determines which Federal civil rights laws, regulations, and policies the complaint pertains to, and chooses a course of action as discussed below.

Administrative Closure

OASCR can administratively close a complaint at any stage in the process if it determines that procedural grounds exist warranting administrative closure, such as: untimely filing of a complaint, lack of jurisdiction, failure to state a claim, failure of the complainant to pursue the complaint, settlement, or voluntary withdrawal. If PCD's Investigations Division proposes to close a complaint administratively, the investigator will prepare a recommendation for closure (RFC), which is then provided to the Adjudication Division to approve and close the complaint.

Programmatic Referral

If the complaint states an issue pertaining to a USDA agency, but does not include a jurisdictional basis of discrimination covered under the civil rights statutes, the complaint is forwarded to the respective agency for review and processing as a programmatic referral.

Investigation

If a complaint is accepted for investigation,⁵ PCD's Intake Division converts the case file to a complaint and issues an acceptance letter to the complainant conveying the issues OASCR will investigate based on the allegations. PCD's Investigation Division then obtains an agency position statement⁶ and conducts an investigation to gather the facts and evidence that will be used in OASCR's determination.

The assigned investigator determines the facts and evidence surrounding the complaint and establishes a fact-based and evidence-supported record of the accepted allegations. After the investigation has been completed, the investigator prepares a report of investigation (ROI).

After PCD transmits the ROI to PAD, the assigned adjudicator within PAD reviews the ROI, analyzes the evidence, applies the applicable laws, and drafts a final agency decision (FAD) on whether discrimination was present.⁷ If

¹Discrimination in Federal programs is prohibited by a number of statutes, including Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000(d) *et seq.*), the Rehabilitation Act of 1973 (Pub. L. No. 93-112), and the Equal Credit Opportunity Act of 1974 (ECOA) (15 U.S.C. § 1691 *et seq.*). Program discrimination complaints are governed by 7 *Code of Federal Regulations* (CFR), pt. 15. ECOA prohibits creditors from discriminating against applicants with respect to any aspect of a credit transaction[.]

²Pub. L. No. 107-171, 116 Stat. 518. Prior to establishing the position of the Assistant Secretary for Civil Rights and OASCR, USDA's Office of Civil Rights processed complaints of discrimination under the leadership of Departmental Administration. The first USDA Assistant Secretary for Civil Rights was sworn in during April 2003.

³In 2009, the Intake and Investigations Divisions were combined into one division, PCD.

⁴Federally conducted programs and activities are program services, benefits, or resources delivered directly to the public by USDA. Federally assisted programs involve Federal financial assistance to a recipient, who in turn provides the benefit or service to the beneficiary.

⁵To be accepted, the complaint must: (1) be timely, (2) pertain to a USDA program, and (3) state an issue and basis of discrimination under OASCR's jurisdiction with the dates of each alleged incident.

⁶For accepted complaints in conducted programs, the agency position statement is a written statement providing the agency's position that binds the agency responding to the allegations made by the complainant in the complaint.

⁷An FAD is a written statement signed by the Assistant Secretary for Civil Rights setting forth the issues and allegations, related facts, evidence, findings, and legal conclusions identified by OASCR in response to a complaint.

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.

Program Complaints Relating to the Food and Nutrition Service and Rural Development-Assisted Programs

Through Memoranda of Understanding (MOU), USDA established agreements to coordinate civil rights program complaint processing with the Food and Nutrition Service (FNS) and the United States Department of Housing and Urban Development (HUD).⁸ According to the MOU with FNS, OASCR refers any program complaints relating to FNS programs to FNS officials to evaluate and process the complaints. A similar MOU with HUD states that USDA will refer any complaints alleging a potential Fair Housing Act (FHA) violation in an assisted program to HUD.⁹ Investigations and resolutions of FHA-related complaints are coordinated with HUD, with Rural Development serving as an intermediary between OASCR and HUD. Although program complaint processing was coordinated with these agencies, OASCR retains responsibility, oversight, and final authority for these complaints.

Program Complaints Management System

OASCR processes all program complaints in its Program Complaints Management System (PCMS). PCMS is a web-based database that allows OASCR to track, process, and manage complaints. Users can process, store, and view complaints, including case events, contact information, electronic documents, and any other associated correspondence. PCMS allows each user to be given a role with specific permissions regarding data entry, updating, deleting, and queries. OASCR also uses PCMS to develop internal and external reports, including OASCR's annual farm bill report to Congress, regarding civil rights complaints, resolutions, and actions.

Prior Audits

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 determined that:

- OASCR needed to develop operating procedures that would allow it to complete cases in a timely manner;
- data contained in PCMS did not accurately depict the Department's activities regarding complaints that resulted in settlement agreements; and
- OASCR's official case files did not always contain the documentation needed to support the decisions made by its officials when reaching settlement agreements in civil rights cases.¹⁰

To address these concerns, we issued a total of five recommendations. We determined that all five recommendations made in this report were related to our current audit objective. Although OASCR agreed to take corrective action to address all five prior Office of Inspector General (OIG) recommendations in August 2012, we note in the findings of this report that control weaknesses continue to exist.

In 2008, the Government Accountability Office (GAO) reported that OASCR needed to address several fundamental concerns about resolving discrimination complaints. Specifically:

- OASCR lacked specified time frames and management controls for resolving complaints;
- OASCR lacked credible data on the numbers, status, and management of complaints;
- GAO questioned the quality of complaint investigations;
- GAO questioned the integrity of final decision preparation;
- Much of the data that USDA reported to Congress and the public on the participation of minority farmers in USDA programs was unreliable, according to USDA; and

⁸The MOU with FNS was established in December 2014. The MOU with HUD was established in July 1998.

⁹Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (42 U.S.C. § 3601–3619). Under the MOU, when USDA receives a claim or complaint alleging a violation of FHA, USDA forwards a copy to HUD for determination of jurisdiction and further processing over the FHA-related allegation. HUD is responsible for enforcing FHA.

¹⁰Audit 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.

- OASCR's strategic planning did not address key steps needed to ensure USDA provided fair and equitable services to all customers and upheld the civil rights of its employees.¹¹

We determined that three of six recommendations made in this report were related to our current audit objective. Although OASCR agreed to take corrective action to address GAO's concerns in October 2008, we note in the findings of this report that control weaknesses continue to exist.

Objectives

Our objective was to evaluate OASCR's oversight of the civil rights complaints process. Specifically, we evaluated OASCR's controls to ensure that program complaints are processed in accordance with applicable regulations, policies, and procedures and resolved in a timely and efficient manner. Additionally, we followed up on prior audit recommendations related to the program complaint process.

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. (See Findings 1, 2, 4, and 6.)

Finding 1: OASCR Needs to Timely Process Civil Rights Program Complaints

OASCR did not timely process civil rights program complaints.¹² In FY 2019, OASCR processed program complaints within 799 days on average—significantly in excess of its 180-day goal stated within Departmental guidance.¹³ Furthermore, OASCR's processing time of 799 days greatly exceeded even its more liberal 540-day goal stated in its internal pilot policy.¹⁴ This occurred because the Departmental guidance is inconsistent and outdated—and does not accurately reflect best practices or OASCR staffing limitations. OASCR officials noted that limited staffing has caused delays in processing program complaints. 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 or not file a complaint at all. This, in turn, diminishes public confidence that the Department can appropriately and expeditiously resolve complaints.

Federal regulation states that agencies shall establish and publish guidelines and procedures for the prompt processing and disposition of complaints.¹⁵ Accordingly, two Departmental directives—issued in 1999 and 2000—established 180-day timeframes for processing program complaints.¹⁶ In September 2013, OASCR expanded this timeframe to 540 days on a pilot basis through an internal policy memorandum that was never made public.¹⁷ OASCR still operates under the 2013 pilot timeframes and has not updated the two Departmental directives that officially outline the timeframes for processing program complaints.

We concluded that OASCR does not timely resolve program complaints in compliance with Federal and Departmental guidance. From October 1, 2016, through June 30, 2019, USDA processed 911 program complaints. Of the 911 complaints, we non-statistically sampled 28 and determined that 24 program complaints (more than 85 percent) took longer than 180 days to process—the timeframe established in the Departmental directives. Furthermore, 19 of the 28 program complaints (more than 67

¹¹ GAO, *Recommendations and Options to Address Management Deficiencies in the Office of the Assistant Secretary for Civil Rights*, GAO-09-62 (Oct. 2008).

¹² Similarly, in 2012, OIG recommended that OASCR develop operating procedures that would allow it to complete cases in a timely manner. See 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.

¹³ USDA, *Procedures for Processing Program Complaints and Conducting Civil Rights Compliance Reviews in USDA Conducted Programs and Activities*, DEPARTMENTAL MANUAL (DM) 4330-001 (Oct. 18, 2000); and USDA Departmental Regulation 4330-002, *Nondiscrimination in Programs and Activities Receiving Federal Financial Assistance from USDA* (Mar. 3, 1999).

¹⁴ USDA OASCR, *2013 Office of the Assistant Secretary for Civil Rights Policy Memorandum* (Sept. 18, 2013).

¹⁵ Department of Justice 28 CFR § 42.408.

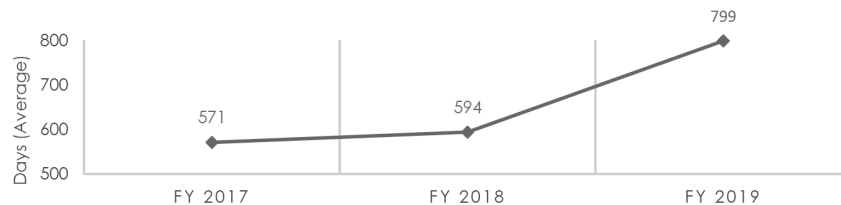
¹⁶ USDA, *Procedures for Processing Program Complaints and Conducting Civil Rights Compliance Reviews in USDA Conducted Programs and Activities*, DM 4330-001 (Oct. 18, 2000); and USDA Departmental Regulation 4330-002, *Nondiscrimination in Programs and Activities Receiving Federal Financial Assistance from USDA* (Mar. 3, 1999).

¹⁷ USDA OASCR, *2013 Office of the Assistant Secretary for Civil Rights Policy Memorandum* (Sept. 18, 2013).

percent) took longer than the 540 days outlined in OASCR’s 2013 internal policy memorandum. The 28 program complaints in our sample had an average processing time of over 630 days, and in FY 2019, OASCR processed program complaints within 799 days on average.

Of the 24 program complaints that took longer than 180 days to process, ten had considerable periods when progress halted between steps in the process. This occurred because OASCR officials had not assigned the complaints to an investigator or adjudicator, or the individual assigned was not yet ready to work on the complaint due to a backlog of complaints. This led to further delays. For example, of the 830 days it took OASCR to process one complaint, more than 330 days elapsed between PCD receiving the agency position statement and the next step in the process—completing the investigative plan. Once PCD completed the investigation and forwarded it to PAD, the complaint sat idle for more than 180 days before an adjudicator was assigned to the complaint. We identified multiple, similar instances with complaints that ranged from 645 to 1,024 days to process. Furthermore, as Figure 1 below demonstrates, OASCR’s average processing time for program complaints increased between FY 2017 and FY 2019.¹⁸

Figure 1. Average OASCR Program Complaint Processing Time, FYs 2017–2019



This occurred because guidance concerning timeframes for resolving program complaints is inconsistent and does not reflect best practices for prompt complaint resolution. First, Departmental and agency guidance provided different timeframes for processing program complaints. For example, the Departmental manual states that a FAD will be issued within 180 days of OASCR’s receipt of the program complaint.¹⁹ However, the Departmental regulation states that a program complaint investigation, which occurs prior to the issuance of an FAD, will be finalized within 180 days following complaint acceptance.²⁰ Furthermore, the 2013 internal policy memorandum states that a program complaint should be processed within 540 days from OASCR’s receipt of the program complaint. To illustrate the inconsistencies even more, a 2014 MOU between OASCR and FNS requires that FNS process all accepted program complaints within 180 days. (See Finding 2.) In our view, inconsistent and conflicting timeframes lead to unclear expectations for personnel processing program complaints and for complainants filing them.

OASCR officials explained that they were operating exclusively under the 540-day timeframe established in the 2013 policy memorandum—not the 180-day timeframe set forth in the Departmental manual. However, we question whether the 540-day timeframe serves as a suitable best practice for the Department. OASCR officials could not provide support for how they determined 540 days to be an adequate timeframe. Federal regulations require agencies to establish and make public in their guidelines procedures for the “*prompt* [emphasis added] processing and disposition of civil rights program complaints.”²¹ During the course of our audit, OASCR officials agreed that 540 days is a lengthy time to process program complaints. OASCR should consider assessing its program complaint process, benchmarking with similar departments, documenting its assessment, and sharing its decision with the public of what may be a reasonable complaint processing time for USDA.

We also consider the 2013 pilot guidance temporary and not a long-term replacement for permanent Departmental guidance because OASCR did not update and make available to the public its directive outlining timeframes for processing program complaints. The Departmental directives establishing civil rights complaint

¹⁸ According to data from PCMS.

¹⁹ USDA, *Procedures for Processing Program Complaints and Conducting Civil Rights Compliance Reviews in USDA Conducted Programs and Activities*, DM 4330–001 (Oct. 18, 2000).

²⁰ USDA Departmental Regulation (DR) 4330–002, *Nondiscrimination in Programs and Activities Receiving Federal Financial Assistance from USDA* (Mar. 3, 1999).

²¹ Department of Justice 28 CFR § 42.408.

processing timeframes are in effect until canceled.²² Because there was no evidence that OASCR officials canceled the directives, OASCR would be expected to follow them. Additionally, because the directives are publicly available on USDA's website, the public may reasonably expect that USDA officials are following the 180-day timeframes when processing program complaints. OASCR's decision to operate differently than established timeframes outlined in guidance would further diminish public confidence that USDA is carrying out its responsibility to process complaints in a timely manner. Processing times of such a lengthy nature could discourage complainants from following up on their complaint, or simply not file a complaint at all. Any delay in resolving complaints could potentially lead to the exclusion of otherwise eligible individuals from rightfully benefitting from USDA programs.

Because these directives are 20 years old, they should be assessed to determine if revisions and updates are needed. OASCR officials acknowledged that the outdated directives are still enforceable, and added that they are in the process of updating them. This is a necessary step, and we encourage OASCR officials to strategically assess how best to meet requirements for prompt complaint resolution. OASCR officials previously committed to performing such an assessment, but did not conduct it. Specifically, the 2013 policy memorandum states that an analysis would be conducted to determine the success rate of the new timeframes and whether to keep them or adjust them based on the results. However, OASCR officials stated they were unaware of any analysis or report on the results of the pilot guidance. Such an assessment becomes even more crucial considering OASCR's current difficulties with staffing levels. OASCR officials stated that insufficient staffing was the primary cause of the prolonged complaint processing. Specifically, delays in assigning program complaints to personnel were a direct result of low staffing levels combined with backlogged inventory.

We similarly concluded that OASCR needs to take steps to assess its staffing levels in order to appropriately and timely resolve program complaints. OASCR's FY 2016–2020 *Strategic Plan* includes a goal to “strengthen resource management” by annually establishing core requirements for staffing and funding of all organizational functions and annually obtaining adequate resources to address program complaints immediately upon receipt. However, OASCR had not adequately addressed this goal within its strategic plan. (See Finding 6.) When we asked OASCR officials if they had completed an assessment that looked at staffing levels, they provided a June 2020 approved staffing list of full-time employees that would be added to each division. According to this document, OASCR would add one full-time employee to PCD and one to PAD. Based on previous staff reductions and the current complaint processing time, this minimal increase in staffing levels does not appear to address the actual needs of these divisions.²³ Additionally, because the document did not offer any justification as to why only two employees would be added, we do not consider this list an adequate assessment.

We acknowledge the challenges of processing program complaints in a timely manner with limited staffing resources. As such, we recommend that OASCR implement a strategy to routinely evaluate and address its staffing and funding resources to improve the timeliness of processing complaints. This evaluation should not be limited to staff and funding, but can include alternative ways to improve timeliness, such as updating the information technology (IT) system. Given its current staffing levels, we also recommend that OASCR strategically assess and determine its timeframe to better fit best practices and staffing levels. Specifically, to ensure program complaints are processed in a prompt and timely manner, OASCR needs to evaluate, develop, and implement complaint processing timeframes and establish a success rate. In our view, the new timeframe should be comparable to guidance and goals of similar Federal agencies responsible for processing civil rights program complaints. These steps would set a standard by which OASCR could operate its program complaint processing in a more efficient manner. However, until new timeframes have been developed and implemented, OASCR should adhere to the 180-day timeframe established within the Departmental guidance.

Recommendation 1

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.

²² USDA Departmental Regulation 0100–001, *Department Directive System* (Sept. 2011). Although this directive was updated in January 2018, the September 2011 Departmental Regulation was the policy in effect at the time OASCR issued its 2013 policy memorandum expanding its timeframes.

²³ PAD had six adjudicators in FY 2018 and had only four adjudicators in FY 2020.

Agency Response

In its June 11, 2021, response, OASCR stated:

In FY 20, OASCR designed and implemented a pilot program to expand effectiveness of policies that ensure compliance with, and enforcement of, USDA's prohibition against discrimination in its conducted programs or activities of recipients of Federal financial assistance from USDA. Under the pilot, the Alternative Dispute Resolution (ADR) process moved from post acceptance to pre-acceptance of a complaint. Additionally, agencies have 30 days to attempt resolution by counseling the complaint. OASCR will finalize and fully implement this process at the beginning of FY 22.

Additionally, OASCR will reevaluate the timeframes to process program complaints by September 30, 2021. As suggested in the audit findings, OASCR will evaluate the timeframes based on historical average processing times and current staffing levels. OASCR will also query other Federal agencies regarding complaint processing times, best practices, and quantitative metrics for measuring success.

OASCR provided a completion date of September 30, 2021, for this action.

OIG Position

We accept management decision for this recommendation.

Recommendation 2

Based on the analysis performed in Recommendation 1, update Departmental guidance outlining timeframes for processing program complaints. Once updated, publish the Departmental guidance on OASCR's public website.

Agency Response

In its June 11, 2021, response, OASCR stated:

In June of FY 21, OASCR will conduct a 6-month review and update of Departmental Manual 4330-001 to ensure consistent and adequate language is provided within all Departmental Directives. As OASCR informed OIG during the Exit Conference, Departmental Regulation 4330-002 and 4330-003 have been updated and are going through Departmental clearance, which is outside of the purview of OASCR. OASCR is anticipating clearance of the updated guidance by the end of this fiscal year.

The latest known iterations of the updates of DR-4330-002 and DR-4330-003 (circulated on February 4, 2021) do not include timeframes for complaint processing. The prior language in DR-4330-002 providing a 180-day timeframe for a civil rights investigation to be conducted was removed from the updated regulation.

OIG Position

We do not accept management decision for this recommendation. We agree with OASCR's proposed corrective action to conduct a 6-month review and update of the Departmental Manual 4330-001 to ensure consistent and adequate language is provided within all Departmental Directives. However in its response, OASCR did not state whether the Departmental guidance will: (1) include new timeframes for processing program complaints, based on the analysis performed in Recommendation 1, and (2) be published on OASCR's website once the guidance is updated. To achieve management decision, OASCR needs to update its Departmental guidance with new timeframes to process program complaints, publish the updated Departmental guidance on OASCR's public website, and provide an estimated completion date for these actions.

Recommendation 3

Develop and implement a strategy to routinely evaluate and address OASCR's staffing and funding resources to ensure that program complaints are processed in a timely manner.

Agency Response

In its June 11, 2021, response, OASCR stated:

The OASCR Program Directorate routinely evaluates staffing needs to ensure timely processing of program complaints. Each budget formulation cycle, OASCR management provides proposed justifications for increases in staffing and funding based upon a need for improved efficiency, change in demand, policy direction changes, improved customer service and reduced risks. OASCR has a limited discretionary budget from which to add addi-

tional resources. OASCR is optimistic Congress will favorably approve a request to increase the office's appropriated funding for FY2022 by September 30, 2021.

OIG Position

We do not accept management decision for this recommendation. As noted in our report, this evaluation should not be limited to proposing additional staffing and funding, but should also include identifying alternative strategies to improve timeliness, such as evaluating if efficiencies can be achieved through updates to their IT system. To achieve management decision, OASCR needs to develop and implement a strategy to routinely evaluate and address OASCR's staffing and funding limitations to ensure that program complaints are processed in a timely manner. In addition, OASCR needs to provide an estimated completion date for this action.

Recommendation 4

Adhere to the 180-day timeframe established within the Departmental guidance until new timeframes have been developed and implemented.

Agency Response

In its June 11, 2021, response, OASCR stated:

Without a significant increase in staffing, OASCR will not maintain a 180-day timeframe for all phases of program complaint processing to include Intake, Investigation, and Adjudication. OASCR acknowledges the inconsistent language regarding timeframes between the Departmental Manual (stating that a Final Agency Decision will be issued within 180 days of OASCR's receipt of the program complaint) and the Departmental Regulation (stating that a program complaint investigation, which occurs prior to the issuance of a Final Agency Decision, will be finalized within 180 days following complaint acceptance).

OIG Position

We do not accept management decision for this recommendation. In Recommendation 1, OASCR committed to evaluating the 180-day timeframe and establish a timeframe to process complaints that are more suitable to the resources they have available by September 30, 2021. However, until those actions are complete, OASCR leadership should instruct its personnel to work toward adhering to Departmental guidance, to the extent possible or at a minimum, to process program complaints more timely. To achieve management decision, OASCR needs to instruct its personnel to adhere to Departmental guidance, to the extent possible, to process program complaints more timely until new timeframes have been developed and implemented. In addition, OASCR needs to provide an estimated completion date for this action.

Finding 2: OASCR Needs to Strengthen Oversight of Civil Rights Complaint Processing by FNS and Rural Development

Based on established agreements, FNS and HUD process certain civil rights program complaints.²⁴ However, similar to Finding 1, these agencies did not timely resolve program complaints.²⁵ Specifically, between October 1, 2016, and June 30, 2019, FNS took an average of more than 220 days and HUD took an average of more than 600 days to process complaints referred to them by OASCR—including two cases that were not resolved until after 1,700 days. This occurred because OASCR did not implement or update effective processes to monitor and track the referred complaints. Without adequate oversight, OASCR cannot ensure that agencies promptly or appropriately resolve complaints in compliance with relevant directives and guidance. When complaints are not resolved timely, complainants potentially miss opportunities to participate in or receive program benefits, which in turn can diminish the public's confidence in USDA programs.

USDA entered into agreements to coordinate program complaint processing activities with FNS and HUD for select areas of purview.²⁶ According to the agreement with FNS, OASCR refers any program complaints relating to FNS programs to FNS

²⁴ HUD receives relevant USDA civil rights complaints through Rural Development.

²⁵ Similarly, in 2012, OIG identified the issue of OASCR untimely processing program complaints and recommended that OASCR develop operating procedures that would allow it to complete cases in a timely manner. See 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.

²⁶ USDA entered into its agreement with FNS in December 2014 and with HUD in July 1998.

officials to evaluate and process the complaints within 180 days.²⁷ Similarly, USDA's agreement with HUD states that USDA will refer any complaints relating to potential FHA violations to HUD,²⁸ with Rural Development serving as an intermediary between OASCR and HUD. However, USDA's agreement with HUD did not include any complaint processing timeframes. This coordination allows subject matter experts to process complaints pertaining to their respective areas. From the beginning of FY 2017 to June 30, 2019, USDA closed a total of 911 program complaints. FNS processed, investigated, and closed 332 of the 911 program complaints. Additionally, OASCR referred 208 of the 911 program complaints to HUD for processing during this time. Therefore, more than 59 percent of all civil rights program complaints closed during this time were processed under the agreements with FNS and HUD.

Although OASCR coordinates complaint processing with FNS and HUD, OASCR retains responsibility, oversight, and final authority for these complaints. Therefore, as part of these agreements, OASCR is required to conduct audits, reviews, and evaluations of FNS. The agreements also state that OASCR must have annual meetings with HUD, maintain a cumulative list of FHA-related allegations, and monitor the status of these complaints. These oversight activities help ensure that all complaints are handled and resolved in accordance with statutory, regulatory, and policy requirements.

During our audit period, we determined that FNS and HUD did not timely resolve complaints.²⁹ OASCR's agreement states that FNS must process, investigate, and resolve referred program complaints within 180 days. However, according to PCMS, FNS processed and resolved its complaints, on average, within 222 days—one complaint took 1,777 days to resolve.³⁰ Unlike its agreement with FNS, USDA's agreement with HUD does not include any timeframes for resolving program complaints. However, we still identified complaints that were not resolved timely.³¹ According to PCMS, these complaints were resolved on average within 604 days—and one complaint was not resolved for 1,722 days.

In our view, FNS' processing times could improve with OASCR oversight. OASCR is responsible for ensuring that all program complaints are resolved in accordance with requirements—including promptness.³² However, OASCR stopped conducting audits, reviews, and evaluations of FNS in October 2017—the same year that OASCR also discontinued assessments of agency heads and compliance reviews for all USDA agencies. (See Finding 6.) According to an OASCR official, rather than implement a formal oversight mechanism, OASCR informally met with the FNS civil rights director in conjunction with OASCR's monthly meetings that are attended by all other Departmental civil rights directors. However, the OASCR official was not able to provide evidence of discussions specifically related to oversight of FNS.

USDA's ability to accurately and timely resolve complaints involving housing-related programs and activities is dependent on Rural Development's processes. OASCR does not communicate directly with HUD. Rather, Rural Development's Civil Rights Office acts as an intermediary between OASCR and HUD. OASCR officials acknowledged that processing times for these complaints were untimely due to its lack of oversight of Rural Development. To improve processing and complaint resolution, OASCR officials told us they implemented quarterly meetings in 2017 with Rural Development and obtained quarterly status reports of the civil rights complaints USDA had referred to HUD. While we agree that this line of communication and these reports are important oversight tools, it is still insufficient on its own; as *Figure 2* indicates, we did not see considerable improvement in processing times for complaints referred to HUD through Rural Development after OASCR officials implemented the quarterly status updates.³³

²⁷This 2014 MOU between OASCR and FNS expired in December 2019. However, both parties agreed to extend the terms and conditions of the agreement until June 2021.

²⁸Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (42 U.S.C. § 3601–3619). Under the Act, HUD is required to complete its investigation of any alleged discriminatory housing violations within 100 days of the filing of the complaint.

²⁹Our audit period was between October 1, 2016, and June 30, 2019.

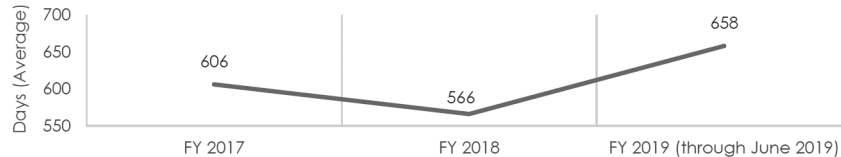
³⁰FNS closed 332 complaints between October 1, 2016, and June 30, 2019.

³¹OIG concluded that complaints referred to HUD were not resolved timely based on timeframes OASCR established for similar complaints (such as 180 days and 540 days. See Finding 1).

³²28 CFR § 42.408.

³³According to data from PCMS.

Figure 2. Average Processing Time for Complaints Referred to HUD Through Rural Development, FYs 2017–2019



We understand that some complaints are more complex and may take longer to resolve—particularly with an inter-departmental arrangement. Based on OASCR’s results of the analysis recommended in Finding 1, OASCR should update the complaint processing timeframes in the agreements with FNS and HUD to accommodate challenges in timely resolving complaints. Additionally, the agreement with HUD should specify OASCR’s responsibilities to oversee Rural Development’s role in processing complaints. In the event of any revised timeframe, OASCR should resume its oversight role as established in the agreement by reviewing FNS’ and HUD’s complaint processing through audits, reviews, or evaluations. OASCR’s oversight of complaint resolution is critical to ensuring that complaints are resolved in accordance with Departmental and Federal requirements. Additionally, with regular oversight, OASCR should be able to identify developing issues better—such as untimely resolution—and work with FNS, HUD, and Rural Development to take corrective action.

FNS and HUD processed more than 59 percent of all USDA civil rights complaints (540 of 911) during the period of our audit. In light of this high volume, there is a strong need for OASCR to oversee FNS’, HUD’s, and Rural Development’s civil rights processing activities in a more formal manner. Ultimately, OASCR is responsible for ensuring equitable and fair treatment in USDA programs. When complaints are not resolved timely, complainants potentially miss opportunities to participate in or receive program benefits, which in turn can diminish the public’s confidence in USDA programs and the Department’s commitment to resolve complaints in a timely manner. By establishing timeframes in the agreements and implementing effective controls over FNS’, Rural Development’s, and HUD’s complaint processing responsibilities, OASCR can help ensure complaints are handled appropriately and timely.

Recommendation 5

Revise and update the Memorandum of Understanding with FNS with timeframes for processing complaints based on OASCR’s analysis (see Recommendation 1) to ensure program complaints are processed in a timely manner.

Agency Response

As part of its June 11, 2021, response, OASCR provided a copy of the revised MOU, dated June 2, 2021. However, since the MOU is voluminous, we will not be including it in the agency response section of this report.

OASCR provided a completion date of June 2, 2021, for this action.

OIG Position

We accept management decision for this recommendation.

Recommendation 6

Revise and update the Memorandum of Understanding with HUD with timeframes for processing complaints based on OASCR’s analysis (see Recommendation 1) to ensure program complaints are processed in a timely manner.

Agency Response

In its June 11, 2021, response, OASCR stated:

The current MOU with HUD was executed on July 11, 1998. USDA and OASCR have undergone significant organizational changes since that time, which necessitates revisiting the HUD MOU. OASCR will implement a process to exact timely completed housing complaints referred to HUD and update the MOU accordingly.

OASCR provided an estimated completion date of September 30, 2022, for this action.

OIG Position

We accept management decision for this recommendation.

Recommendation 7

Revise and update the Memorandum of Understanding with FNS to implement effective controls over FNS, such as conducting audits or compliance reviews, on a recurring basis to evaluate FNS' complaint process and improve the timeliness of complaints referred to FNS.

Agency Response

As part of its June 11, 2021, response, OASCR provided a copy of the revised MOU, dated June 2, 2021. However, since the MOU is voluminous, we will not be including it in the agency response section of this report.

OASCR provided a completion date of June 2, 2021, for this action.

OIG Position

We accept management decision for this recommendation.

Recommendation 8

Revise and update the Memorandum of Understanding with HUD to implement effective controls over Rural Development, such as conducting audits or compliance reviews of Rural Development, on a recurring basis to evaluate Rural Development's complaint process and improve the timeliness of complaints referred to Rural Development.

Agency Response

In its June 11, 2021, response, OASCR stated:

During the timeframe reviewed by OIG, OASCR's Program Complaints Division (PCD) monitored HUD referred complaints with limited accountability in communications with Rural Development (RD). In FY 2019, PCD shifted priorities and established a quarterly review with RD of all complaints maintained with HUD. PCD provides an excel report of HUD referred complaints from PCMS to the RD Civil Rights Director who in turn updates the status of HUD complaints.

OASCR's beginning FY 2020 HUD referral inventory (PCMS Fact-Finding) was 94 complaints (Average Age 388 days). Over the last year this inventory has been reduced by $\frac{1}{3}$ (60). The average age of these complaints is 297 days (<1yr) and continues to decrease each month. OASCR will continue to monitor and prioritize communication with RD for accountability purposes. While PCD has not been tasked with monitoring the status of HUD complaints, it will ensure these matters are handled timely and in accordance with the MOU requirements. In addition, OASCR will collaborate with the Rural Development Civil Rights Director to amend the existing MOU to be compliant with processing and data entry requirements for housing complaints.

OIG Position

We agree with the actions taken by PCD to monitor and prioritize communication with Rural Development but are unable to accept management decision at this time. As noted in our report, this line of communication and these reports are important oversight tools, but they are still insufficient on their own. The agreement with HUD should specify OASCR's oversight responsibilities of Rural Development's role to process complaints, including actions OASCR intends to implement to evaluate Rural Development's complaint process and improve the timeliness of complaints referred to Rural Development. To achieve management decision, OASCR needs to amend the existing MOU with HUD and document its oversight controls of Rural Development's complaint process within the MOU. These controls can include actions to audit Rural Development to ensure complaints are processed timely and accurately. In addition, OASCR needs to provide an estimated completion date for this action.

Finding 3: [Redacted]

[Redacted].*

Finding 4: OASCR Needs to Strengthen Its Procedures to Ensure Complaint Determinations and Closures Are Adequately Supported and Processed

OASCR did not ensure that complaint determinations and closures were adequately supported and processed for 9 of the 28 complaints of discrimination we re-

* **Editor's note:** the redactions encompass pages 17–23, as well as footnotes 34–49.

viewed in our sample.^{50–51} This occurred because, although OASCR performs second-level reviews at several stages in the complaints process, Departmental guidance did not include adequate procedures to document the results of these reviews. Therefore, OASCR officials cannot demonstrate that they have provided effective oversight to ensure that complaint determinations and closures are appropriate, which can erode public trust in USDA’s complaint resolution process.

OASCR is responsible for investigating, making determinations for all discrimination complaints, and notifying the complainant of their final determination.⁵² OASCR’s PCD receives complaints from persons alleging discrimination in USDA programs, and, based on Federal civil rights laws and regulations, PCD will determine whether to:

- administratively close the complaint,
- refer the matter to the respective agency for review and processing as a programmatic referral, or
- investigate the issues raised in the allegation of discrimination.

When a complaint is accepted, an investigation will result in either an ROI or RFC.⁵³ For matters that are investigated, investigators gather facts and evidence—which are compiled into the case file—and summarize the results of the investigation in an ROI. Once the Investigations Division Chief reviews and approves the ROI for completeness, the ROI is forwarded to the Adjudication personnel to develop its FAD as to whether discrimination occurred based on the merits of the allegations. (See the Background section of this report for a more detailed explanation of OASCR’s discrimination complaint processing.) For each allegation, Adjudication personnel must weigh the information contained in the ROI and develop a FAD of whether discrimination occurred based solely on the record of evidence and facts presented in the ROI. Therefore, the ROI must support the FAD’s analysis and conclusions.⁵⁴

However, our analysis disclosed that actions pertaining to 9 of the 28 complaints of discrimination in our sample were not adequately supported or processed.⁵⁵ For these nine complaints, we identified issues with five FADs and four administrative closures.

Final Agency Decisions

We concluded that OASCR did not adequately support or process five of the ten FADs in our sample in accordance with Departmental guidance. For example, for two of the five FADs, we determined the analysis OASCR personnel performed to support its determinations was incorrect, specifically documentation did not support the conclusion noted in the FAD. In each of the two instances we identified, OASCR performed multiple second-level reviews of the FAD. However, the reviews did not identify the erroneous analysis performed. When we discussed these errors with OASCR officials, they acknowledged the errors in the analysis. However, OASCR concluded that there was sufficient evidence to support the overall determinations, when considered in totality. We acknowledge that OASCR based its determinations on the totality of evidence and make no assessment to the correctness of OASCR’s determinations. However, OASCR must also ensure that the analyses that justify determinations are accurately presented and supported by the ROI, as required.

Second, OASCR inadequately processed three of the five FADs. For example, in some instances, we discovered that OASCR allowed the introduction of new issues at the adjudication stage that were not cleared as part of OASCR’s investigation. We acknowledge that internal procedures allow the Adjudication staff to return a case file for supplemental investigative work on a case-by-case basis. However, to ensure the integrity of its determinations are not questioned, it is

⁵⁰ As part of our sample, we reviewed 48 total case files—28 of which OASCR closed. FNS processed 19 case files, and OASCR determined 1 case file was a programmatic referral.

⁵¹ In 2012, OIG found a similar issue. Specifically, OASCR’s official case files did not always contain the documentation needed to support the decisions made by its officials when reaching settlement agreements in civil rights cases. See 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.

⁵² 7 CFR § 2.25(a) and 7 CFR § 15d(5).

⁵³ Under certain circumstances, it may be appropriate to close a case before completing an investigation, such as when a complainant voluntarily withdraws or fails to pursue the complaint.

⁵⁴ USDA, *Procedures for Processing Program Complaints and Conducting Civil Rights Compliance Reviews in USDA Conducted Programs and Activities*, DM 4330–001 (Oct. 18, 2000).

⁵⁵ Of the 28 complaints of discrimination in our sample, ten resulted in a FAD and 18 were administrative closures.

important that OASCR adequately process its complaints and collect sufficient evidence to support agency determinations. As such, when a new issue is introduced, OSCAR should return the complaint to the Investigations Division to investigate the complaint and obtain sufficient facts and evidence. By allowing Investigations staff the opportunity to ensure sufficient evidence has been collected to support both the complainant and the agency, OASCR can ensure its processes maintain the appearance and actuality of neutrality, independence, and objectivity.

Administrative Closures

We also determined that 4 of 18 administrative closures were not adequately supported or processed. Specifically, we noted that key documentation included in the case file was incorrect or missing. These discrepancies were missed, even though they should have been identified during the second-level review of the case files. For example, while discussing one case file with officials, OASCR acknowledged that personnel used the wrong letter template when notifying the complainant and that the error should have been identified during the second-level review of the RFC. However, in this second-level review, PAD is only required to review the recommendation for closure to evaluate if PAD agreed with the decision to close the complaint. OASCR officials agreed that the statements used to support its determinations needed to be adequately supported by the evidence in the case file so that their decisions are not challenged or questioned.

These issues occurred due to the lack of consistency and depth of the second-level reviews being performed. OASCR has procedures to conduct second-level reviews at each stage of the complaint process to ensure complaints are adequately supported and processed.⁵⁶ OASCR instituted these reviews based on recommendations from previous OIG reports.⁵⁷ However, it was unclear: (1) whether OASCR consistently implemented these reviews, (2) how OASCR documented the reviews, or (3) how effective the reviews have been. To address these shortcomings, OASCR needs to evaluate its current review process and procedures performed within the case files to: (1) identify and address why reviews are not discovering the discrepancies noted within this finding, and (2) ensure OASCR properly processes case files.

A prior GAO audit recommended that OASCR obtain an expert, independent, and objective legal examination of the basis, quality, and adequacy of a sample of USDA's prior investigations and decisions on civil rights complaints, along with suggestions for improvement.⁵⁸ In response, USDA created a task force in 2009 that reviewed a large number of previous case files; this task force identified that further processing was warranted for about 3,800 complaints.⁵⁹⁻⁶⁰ While the task force's large-scale quality control review evaluated cases at that time, OASCR should incorporate ongoing, periodic quality control reviews of a sample of case files.

We recommend that OASCR evaluate the procedures for documenting reviews performed at each stage of the complaint process to ensure facts and events are presented accurately and appropriately. Considering USDA's long history of discrimination complaints, it is critical that OASCR adequately support its determinations.⁶¹ When OASCR administratively closes a case file without proper documentation to support the action taken, complainants may not receive the appropriate consideration from the Department on their complaint of discrimination. By improving OASCR's review process to ensure documentation appropriately justifies the actions taken, OASCR can better build up public trust and ensure that complainants are given fair consideration in the resolution of their complaints.

⁵⁶ Intake staff review the complaint determinations, Investigations staff review Investigation Plans, ROIs and recommendations for closure, Adjudication staff and OASCR leadership review determinations and findings, and at times, the Office of the General Counsel (OGC) reviews OASCR's findings and FADs at OASCR's request.

⁵⁷ 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.

⁵⁸ GAO, *U.S. Department of Agriculture: Recommendations and Options to Address Management Deficiencies in the Office of the Assistant Secretary for Civil Rights*, GAO-09-62 (Oct. 2008).

⁵⁹ GAO, *U.S. Department of Agriculture: Progress Toward Implementing GAP's Civil Rights Recommendations*, GAO-12-976R (Aug. 29, 2012).

⁶⁰ The 2009 task force reviewed more than 17,000 program complaints filed with OASCR from FYs 2000-2008.

⁶¹ 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.

Recommendation 14

Evaluate procedures for documenting reviews performed at each stage of the complaint process to ensure facts and events are presented accurately and appropriately.

Agency Response

In its June 11, 2021, response, OASCR stated:

Unlike other Federal agencies, USDA provides approximately 300 programs to the public ranging from nutrition, farm subsidies, rural housing and utilities, forest management, conservation practices, *etc.* It is OASCR's responsibility to ensure these programs are not administered discriminately and are accessible to all—not to supplant or supersede calculations and/or technical determinations made by agency subject matter experts. Currently, division specific checklists are utilized throughout the Program Directorate (see attached PAD Checklist). However, these checklists are utilized on an individualized case by case basis for each specialist prior to producing a work product. The proposed checklist would identify what should be included in each acceptance letter, ROI, and FAD for an end user to audit annually. The checklists are currently in place for manual implementation of data integrity verification. This process will also be automated within CRMS to support accuracy and consistency and both the checklist and CRMS will be implemented by September 30, 2021.

OASCR provided a completion date of September 30, 2021, for this action.

OIG Position

We accept management decision for this recommendation.

Recommendation 15

Revise internal procedures to require that case files are returned to Investigations to document the review of the ROI by PCD for sufficient facts and evidence collected by Investigations when a new issue is introduced after the investigation is completed and the ROI has been approved.

Agency Response

In its June 11, 2021, response, OASCR stated:

At present, OASCR has determined if additional issues are identified during the course of the investigation, the Program Complaints Division will issue an amended acceptance letter. In accordance with *Departmental Manual* 4330-001, the Program Adjudication Division will make determinations with respect to each allegation identified in the Report of Investigation. If the Program Adjudication Division determines the ROI contains sufficient facts/evidence to introduce a new issue, the Program Adjudication Division will seek concurrence from the Program Complaints Division Director. If there are insufficient facts/evidence to address the new issue, the Program Adjudication Division will return the complaint to the Program Complaints Division for a supplemental investigation.

OIG Position

We do not accept management decision for this recommendation. We agree with OASCR's proposed corrective actions to work with and seek concurrence from the PCD Director when a new issue is introduced after the investigation is completed and the ROI has been approved.

However, OASCR needs to document the actions taken by PAD when additional issues are introduced at the Adjudication stage. To achieve management decision, OASCR needs to revise its internal procedures to document its process when a new issue is introduced after the investigation is completed and the ROI has been approved and provide a proposed completion date for this action.

Recommendation 16

Establish and maintain a system of quality control that is designed to periodically review a sample of case files to ensure evidence to support OASCR's determinations and closures is adequate, accurate, and documented.

Agency Response

In its June 11, 2021, response, OASCR stated:

OASCR accepts this recommendation. A second-level review of data is currently conducted by each division. To further ensure the complaints are

being processed as efficiently as possible, a comprehensive “end-of-case” checklist will be developed, and a random sampling of cases will occur on an annual basis, starting in the 4th quarter of this fiscal year. OASCR will incorporate an in-depth quality control system into its process pending additional staffing resources allocated to the Program Directorate. OASCR management provided proposed justifications for increases in staffing and funding based upon a need for improved efficiency, change in demand, policy direction changes, improved customer service and reduced risks in the FY 2023 budget cycle.

OASCR prefers keeping the review process within the organization as to limit ceding any delegated authority. However, the independent review process could be delegated to the new Equity Commission to be done quarterly.

OIG Position

Although OASCR agrees with this recommendation, we are unable to accept management decision at this time. We agree with OASCR’s proposed actions to develop a comprehensive “end-of-case” checklist, and periodically review a sample of case files to further ensure the complaints are being processed as efficiently as possible. However, OASCR needs to provide more clarity as to how it will improve its review process to ensure proper documentation adequately supports OASCR’s determinations. To achieve management decision, OASCR needs to implement a strategy to establish and maintain a system of quality control to ensure evidence to support OASCR’s determinations and closures is adequate, accurate, and documented and provide an estimated completion date for this action.

Finding 5: OASCR Needs to Strengthen its Oversight Efforts of USDA Agencies

OASCR missed an opportunity to track and measure USDA’s civil rights progress. There are two oversight tools to help assess agencies’ compliance with civil rights requirements: agency head assessments and compliance reports. These require input from both agencies and OASCR. However, these reviews were not being completed. This occurred because OASCR directed USDA agencies to stop completing required reports and stopped reviewing agency compliance reports due to limited resources, but did not implement alternative controls. These civil rights reports are intended to provide OASCR with vital data concerning whether agencies are fairly and equally administering USDA programs. Without them, OASCR cannot effectively fulfill its oversight role, or identify and correct areas of concern in how USDA agencies handle civil rights issues.

Federal regulations require that OASCR oversee USDA agencies’ efforts to conduct USDA programs fairly and equally by monitoring two reports—agency head assessments and agency compliance reports. OASCR is required to review agencies’ annual civil rights performance plan and accomplishment reports and rate their accomplishments through an agency head assessment. In addition, OASCR is required to review agencies’ compliance reviews and issue compliance reports that monitor agency compliance efforts.⁶² These assessments, when implemented properly, are designed to help OASCR determine if agencies are adhering to the Department’s civil rights regulations and policies.⁶³

Despite these requirements, OASCR did not fulfill its oversight responsibilities to ensure that agencies were fairly and equally administering USDA programs.

Agency Head Assessment

Agencies are required annually to review their civil rights activities and accomplishments by assessing objectives such as accountability, and non-discriminatory program delivery, and submitting a civil rights performance plan and accomplishment report to OASCR. The report establishes civil rights goals, objectives, and measurable outcomes which agencies use to assess their activities. OASCR is then required to review agencies’ reports and assessments before providing agencies with a civil rights accomplishment rating. Both agencies’ and OASCR’s reviews constitute the agency head assessment.⁶⁴

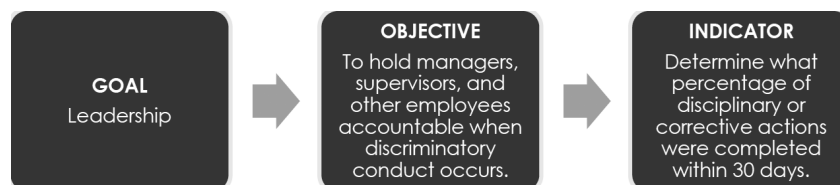
Agencies’ civil rights performance plan and accomplishment reports are divided into goals, performance objectives, and related indicators—or actions that agencies should take to measure progress towards each objective and address

⁶² 7 CFR § 15(d).

⁶³ *Ibid.*

⁶⁴ *Ibid.*

USDA's regulations, policies, and strategic goals. This report provides agencies with measurable milestones that can help them accomplish their goals—such as timely resolution. See below for an example of a goal, performance objective, and related indicator.



Compliance Reports

Like agency head assessments, compliance reports need to occur at both the agency and Departmental level. Unlike the agency head assessments, which evaluate the agency's overall compliance with civil rights requirements, compliance reports focus on targeted, potential areas of concern at the local office level. First, according to Departmental regulations, agencies must conduct compliance reviews to ensure that they are managing and administering programs and activities without discrimination.⁶⁵ Second, Federal regulation states that OASCR must: (1) oversee the compliance reviews and evaluations, and issue compliance reports that monitor compliance efforts, and (2) monitor all findings of non-compliance to ensure they are corrected.⁶⁶ Similarly, OASCR must conduct its own compliance reviews of agencies and their programs and activities, and monitor compliance review activity within agencies.⁶⁷

We identified deficiencies during the period of our review at both the agency and OASCR level. First, we determined that agencies did not always take the necessary action to submit reviews; and second, OASCR did not track whether agencies were conducting compliance reviews. For example, agencies did not submit proposed compliance review schedules—a preliminary step in the compliance report process—the majority of the time. However, even when agencies did submit schedules, OASCR did not follow up with agencies to determine if the agencies had conducted the scheduled reviews. In addition, OASCR has not conducted its own compliance reviews or issued any compliance reports since 2017. Although OASCR officials stated that they would develop standard operating procedures and begin conducting compliance reviews in calendar year (CY) 2020, as of February 2021, OASCR had not conducted any compliance reviews.

This occurred because, in October 2017, in an effort to reduce redundancies and inefficiencies, OASCR directed agencies to stop conducting agency head assessments. OASCR also ended its review of agency compliance reports. According to an FNS official, completing the agency head assessment was “extremely resource-intensive,” and OASCR wanted to allow agencies to focus their efforts on achieving civil rights compliance rather than reporting on it. OASCR officials also stated that the compliance reviews required considerable resources and time but agreed that, in some capacity, OASCR needs to conduct compliance reviews. OASCR officials stated that, because OASCR already reviewed existing reports such as the MD-715,⁶⁸ Form 462,⁶⁹ and No FEAR reports,⁷⁰ it was assessing the agencies' compliance and performance. However, because these existing reports only assess agencies' internal employment civil rights activities performance, they are not a replacement for assessing agencies' program civil rights practices with external stakeholders.

⁶⁵ USDA, *Procedures for Processing Discrimination Complaints and Conducting Civil Rights Compliance Reviews in USDA Conducted Programs and Activities*, DM 4330-0001 (Oct. 18, 2000).

⁶⁶ 7 CFR § 5(d).

⁶⁷ USDA, *Procedures for Processing Discrimination Complaints and Conducting Civil Rights Compliance Reviews in USDA Conducted Programs and Activities*, DM 4330-0001 (Oct. 18, 2000).

⁶⁸ EEOC Management Directive 715 requires each agency to report annually on the status of activities pursuant to its equal employment opportunity program.

⁶⁹ EEOC Form 462 provides data to produce an annual report on the Federal workforce that includes, among other data, information on Federal equal employment opportunity complaints and alternative dispute resolution activities.

⁷⁰ This is an annual report mandated by Pub. L. No. 107-174, Notification and Federal Employee Anti-discrimination and Retaliation Act of 2002 (NO FEAR Act).

While we acknowledge time and resource constraints, OASCR needs to identify alternative methods and implement these critical oversight controls over USDA agencies. Ultimately, OASCR is responsible for overseeing USDA agencies' efforts to conduct USDA programs fairly and equally. Agency-submitted assessments and reports contain valuable performance information that OASCR could have used to ensure agencies are achieving program goals and objectives set by the Department's civil rights regulations and policies. If OASCR does not require agencies to assess and report on their civil rights compliance, the responsibility for gathering oversight information falls upon OASCR. However, if OASCR were to require agencies to submit civil rights reports and assessments, OASCR could develop a methodology to regularly review agencies based on program complaints, settlements or findings of discrimination, and other risk factors identified in agency assessments. OASCR officials agreed that it was necessary to implement an effective method to assess agencies' compliance with program civil rights activities.

Ultimately, by effectively implementing oversight controls, such as agency head assessments and compliance reviews, OASCR can move from a reactive to a proactive position in addressing potential civil rights violations. For example, OASCR's compliance division currently is required to follow up on corrective actions after individual complaints are resolved. By assessing agencies' civil rights activities performance, in addition to individual allegations presented in complaints, OASCR could further evaluate and monitor other civil rights processing activities to see if this was a widespread or repeated occurrence and potentially prevent future non-compliances. Furthermore, with information collected from agency head assessments and compliance reviews, OASCR can provide the Department with valuable information to help USDA take steps towards improving civil rights activities, when necessary.

Recommendation 17

Require agencies to assess their program effectiveness and compliance with the Department's civil rights regulations and policies and, furthermore, oversee these agency assessments.

Agency Response

It its June 11, 2021, response, OASCR stated:

From 2005 to 2017, OASCR conducted annual assessments of agency civil rights performance to determine the effectiveness and adherence to the Department's civil rights policies and regulations by each USDA agency in accordance with 7 CFR Part 15d (Nondiscrimination in programs or activities conducted by the USDA and Departmental Regulation 4300-010, *Civil Rights Accountability Policy and Procedures*). In 2017, the Office of the Secretary directed OASCR to end the annual assessment process so as to allow USDA agencies to focus on their civil rights efforts. OASCR is revising the agency head assessment request to be less cumbersome and focused on civil rights accomplishments and challenges within the agencies. OASCR will implement this new process by September 30, 2021.

OASCR provided a completion date of September 30, 2021, for this action.

OIG Position

We accept management decision for this recommendation.

Recommendation 18

Develop new controls to review the agency assessments and identify factors that could warrant further review of agencies and their civil rights practices.

Agency Response

It its June 11, 2021, response, OASCR stated:

OASCR will ensure any new agency assessment procedure incorporates quality and quality review methodologies.

Based on its response for Recommendation 17, OASCR provided a completion date of September 30, 2021, for this action.

OIG Position

We accept management decision for this recommendation based on OASCR's response for Recommendation 17.

Recommendation 19

Develop and implement a process to select USDA agencies and program offices for compliance reviews (on a recurring basis) based on program complaint activity, set-

tlements or findings of discrimination, and other risk factors identified in agency assessments.

Agency Response

On its June 11, 2021, response, OASCR stated:

OASCR led a task force designed to amend USDA's Departmental Regulation (DR) which provides guidance and instructions on Civil Rights Compliance Reviews. The team consisted of representation from Mission Areas, agencies, and key staff offices. The DR specifically establishes USDA's policies and procedures for conducting civil rights compliance reviews of all USDA Federally conducted and Federally assisted programs and employment activities. The DR has been submitted to the Department for review and clearance. Once cleared by the Department, the following criteria will be required of OASCR, Mission Areas, agencies, and staff offices.

CCRO will reignite its compliance review program by serving as embeds with mission area and agency civil rights directors. One compliance review with the Food and Nutrition Service will be completed by September 30, 2021. The decision to conduct a compliance review will be based on neutral criteria or evidence of a violation.

OASCR provided a completion date of September 30, 2021, for this action.

OIG Position

We accept management decision for this recommendation.

Finding 6: OASCR Needs to Assess Progress Towards Established Goals and Objectives

Although OASCR developed its *Strategic Plan FY 2016–2020*, it did not use the plan to measure or assess its progress toward established goals and objectives relating to program complaints.⁷¹ This occurred because OASCR 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 identified in this report. Because OASCR has not established measurable and implementable measures, OASCR officials cannot determine whether they are achieving intended goals and objectives. This further hinders OASCR's ability to make well-informed decisions and improve the program complaint process.

The Government Performance and Results Act (GPRA) requires agencies to develop a strategic plan, set performance goals, and annually report on actual performance compared to goals.⁷² GPRA also requires agencies to use performance indicators to measure or assess progress toward established goals. Similarly, GAO states that management should establish activities to monitor performance measures and indicators.⁷³

OASCR's *Strategic Plan FY 2016–2020* encourages periodic performance review sessions as an essential part of strategic planning—at least quarterly. Management can use the results of these performance reviews to assess and analyze how the agency is doing and, if necessary, make decisions and reprioritize due to changing resources, evolving stakeholder needs, or other new realities.

In 2008, GAO reported that OASCR's strategic planning was limited and did not address key steps needed to achieve its mission. According to GAO, results-oriented organizations follow three key steps in their strategic planning: (1) they define a clear mission and desired outcomes, (2) they measure performance to gauge progress, and (3) they use performance information for identifying performance gaps and making program improvements. Accordingly, GAO recommended that OASCR develop a results-oriented, Department-level strategic plan for civil rights that unifies USDA's approach with OASCR. GAO specified that the plan should be transparent about USDA's efforts to address stakeholder concerns.^{74–75}

⁷¹ USDA OASCR, *Strategic Plan FY 2016–2020* (2015).

⁷² Government Performance and Results Act of 1993, Pub. L. No. 103–62, 107 Stat. 287 and 288.

⁷³ GAO, *Standards for Internal Control in the Federal Government*, GAO–14–704G (Sept. 2014).

⁷⁴ GAO, *Recommendations and Options to Address Management Deficiencies in the Office of the Assistant Secretary for Civil Rights*, GAO–09–62 (Oct. 2008).

⁷⁵ Following the 2008 GAO Report, OASCR developed the *Strategic Plan FY 2011–2015*. We did not include this strategic plan in our review because it was outside the scope of our audit.

In response, OASCR developed a strategic plan that provides goals, outcomes, and performance indicators that monitor the programs, policies, and services that OASCR administers in an effort to produce results and improve the organization's performance. In addition, the performance indicators measure performance against the strategies for each outcome, and inform management whether it is achieving the desired result. OASCR's *Strategic Plan FY 2016–2020* included three strategic goals, two of which were relevant to our audit:

Goal 1. Improve civil rights complaints processing for internal and external customers in keeping with Federal laws, mandates, and Departmental Regulations and guidelines.

Goal 3. Demonstrate effective engagement within USDA by ensuring all USDA employees have the necessary resources to support the civil rights of all employees and customers of USDA.⁷⁶

We concluded that OASCR did not use the plan as a tool to measure or assess progress towards Goals 1 and 3 and their respective objectives, performance indicators, and strategies. Specifically, OASCR did not adequately address 13 of the 14 performance measures to measure or assess progress toward established goals. (For a full list and explanation, see *Exhibit A*.) OASCR personnel explained the processes they have in place that could be used to satisfy performance measures and indicators in the strategic plan. However, after reviewing these processes, we found that they did not completely address indicators and strategies to achieve specific goals. Overall, the issues we identified in this report could have been mitigated had OASCR used its strategic plan to monitor progress and to establish strong internal controls.

Timeframes for Civil Rights Complaint Processing

In Goal 1 of its strategic plan, OASCR established a performance indicator, baseline, and target data for the number of days to process program complaints at each stage in the process: intake, investigation, and adjudication. The expected outcome was that timeframes for civil rights complaint processing be consistent with statutory and regulatory requirements. However, as identified in Findings 1 and 2 of this report, both OASCR and agencies it coordinated with to process complaints did not meet these timeframes.

[Redacted]

Program Complaint Processing Audits

Goal 1 of OASCR's strategic plan also established a performance indicator to implement a program complaint processing audit in the fourth quarters of FYs 2017 and 2019. OASCR instructed the staff units (Intake, Investigations, and Adjudication Divisions) to use a checklist to conduct a self-assessment of all cases on an on-going basis. However, OASCR did not consolidate the results from each checklist into one overall report. As a result, we determined that the checklists alone had not constituted a program complaint processing audit. If OASCR had appropriately conducted program complaint processing audits, OASCR might have been better positioned to address the issues we identified in Finding 4.

Compliance Reviews

Within Goal 3 of the strategic plan, OASCR established a performance indicator to complete 24 compliance reviews in, or by, 2020. As stated in Finding 5, OASCR did not conduct any compliance reviews since 2017.

OASCR has not prioritized the strategic plan as a resource in developing strong internal controls, since officials stated that the strategic plan was outdated due to a 2018 reorganization and changing priorities. We acknowledge that OASCR's priorities may have changed, and its strategic plan became outdated. In this instance, officials should have reprioritized and revised the plan accordingly to include performance measures to assist the agency in meeting desired outcomes. OASCR should regularly review its strategic plan and update it to reflect the current environment and its priorities.

OASCR officials further added that the goals were incorporated into their everyday processes. However, OASCR 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

⁷⁶For the purpose of this finding, we will only report on outcomes and performance indicators relative to the program civil rights complaint processing. We plan to conduct a similar review of OASCR's EEO civil rights complaint process in the near future.

and objectives. Until OASCR utilizes the strategic plan as a tool to regularly monitor and achieve its goals, it may not accurately measure its performance, identify points of concern, and strategically develop a course of action to address these issues. A results-oriented strategic plan provides a road map that clearly describes what an organization is attempting to achieve. It can also serve as a focal point for communication with Congress and the public about what OASCR and USDA agencies have accomplished. By implementing the goals, objectives, and performance indicators in a plan, OASCR can monitor measurable outcomes, identify points of weakness, and develop courses of action to address identified issues.

Recommendation 20

Develop and implement a process to perform periodic reviews of the strategic plan and regularly update the strategic plan.

Agency Response

In its June 11, 2021, response, OASCR stated:

OASCR has revised its strategic plan for FY 2020–2024 to reflect the goals and priorities of the current political leadership. The Deputy Assistant Secretary for Civil Rights and the Associate ASCR are involved in the drafting of the USDA Strategic Plan to include a civil rights/racial equity goal. OASCR Strategic Plan must link to the new USDA plan scheduled for release Q2 of FY 2022 before OASCR can release its separate strategic plan.

OIG Position

We do not accept management decision for this recommendation. We acknowledge that OASCR revised its strategic plan for FY 2020–2024 to reflect the goals and priorities of the current political leadership. However, in its response, OASCR did not mention how it planned to regularly review its strategic plan and update it, if necessary, to reflect the current environment and its priorities, as noted in our report. To achieve management decision, OASCR needs to develop and implement a process (guidance) that describes how OASCR will perform periodic reviews of each strategic plan they establish and regularly update them, if necessary, based on the changing environment and priorities. In addition, OASCR needs to provide an estimated completion date for this action.

Recommendation 21

Establish a mechanism to measure performance against established goals and report on actual program activity performance data.

Agency Response

In its June 11, 2021, response, OASCR stated:

The revised OASCR Strategic Plan will include key performance measures and objectives linking directly to programmatic activity. In addition, by September 30, 2021, OASCR, will launch a Civil Rights dashboard to provide real-time data to the Secretary on employment and program complaint activity.

OASCR provided a completion date of September 30, 2021, for this action.

OIG Position

We accept management decision for this recommendation.

Scope and Methodology

We conducted an audit of OASCR's civil rights program complaint process. We performed fieldwork from June 2019 through April 2021 at OASCR's offices in Washington, D.C. During this time, we met with OASCR leadership officials and staff within PCD, PAD, the Center for Civil Rights Operations, the Program Alternative Dispute Resolution, the Data and Records Management Division, the Center for Civil Rights Enforcement, the Program Planning and Accountability Division, and the Compliance Division.

According to PCMS records, OASCR closed 2,321 correspondences and 911 complaints between October 1, 2016, and June 30, 2019.⁷⁷ We non-statistically selected a total of 20 correspondences and 28 complaints to review based on: (1) correspond-

⁷⁷ When a complainant submits a complaint of discrimination, OASCR produces a correspondence number for the incoming communication. For those accepted as complaints, it is converted to a complaint and assigned a complaint number for further processing.

ence and complainant category types,⁷⁸ and (2) the percentage the category type represented in the universe.⁷⁹ Based on the sampling methodology, we would have only included minimal settlements and zero findings of discrimination. However, to review the entire program complaint process, we included all findings of discrimination that occurred during our scope period.⁸⁰

To accomplish our audit objectives, we:

- Reviewed applicable regulations and guidance established for OASCR's program complaint process.
- Reviewed prior audit reports from GAO and OIG and identified recommendations relative to our current audit work.⁸¹
- Obtained and reviewed OASCR's most recent *Strategic Plan FY 2016–2020* to determine whether OASCR established performance measures related to areas covered by the engagement, and to determine if goals were met and adequately supported.
- Obtained and reviewed documentation to support OASCR's implementation of performance measures from *Strategic Plan FY 2016–2020*.
- Interviewed OASCR staff regarding the administration and oversight of the program complaints process.
- Interviewed OASCR staff to obtain an understanding of their roles and responsibilities as they relate to the program complaint process at all three stages: intake, investigation, and adjudication.
- Identified and evaluated key controls to ensure program complaints were processed in compliance with program requirements at all three stages: intake, investigation, and adjudication.
- Developed a *pro forma* to review and test OASCR's controls to ensure that program complaints were processed in accordance with the requirements outlined in DM4330–0001,⁸² DR4330–0002,⁸³ and OASCR standard operating procedures for our sampled complaints.
- Identified and evaluated OASCR MOUs with FNS, HUD, and OGC to determine whether controls were in place to ensure program complaints are processed timely and accurately and in accordance with Departmental guidance.
- [Redacted].

To assess the reliability of data, we interviewed agency officials knowledgeable about OASCR's information system to process program complaints. Through these interviews, we gained an understanding of the existence, relationship, impact, and pervasiveness of the information system. We accessed PCMS to obtain documentation such as complaint forms, acknowledgement letters, acceptance letters, agency position statement letters, ROIs, FADs, and closure letters in order to review program complaint case files. We assessed the reliability of data by replicating the OASCR-provided universe with a universe obtained from PCMS by OIG. We determined that the data were sufficiently reliable for purposes of this report. Because evaluating the effectiveness of PCMS was not one of our engagement objectives, we did not review, analyze, or verify the system's general and application controls.

⁷⁸The 13 categories for correspondences include: closed data entry error, closed duplicate, closed failure to pursue, closed failure to state a claim, closed issue in court, closed non-judicial correspondence, closed referral to other government agency, closed *res judicata*, closed resolved, closed untimely, closed withdrawn, programmatic referral, and save correspondence entered. The 15 categories for complaints include: duplicate record, failure to cooperate, failure to pursue, failure to pursue closed letter/withdrawal, failure to state a claim, filed in court, finding, HUD decision, lack of jurisdiction, no finding, programmatic referral, referral to other government agency, settlement, untimely filing, and withdrawal.

⁷⁹For instance, programmatic referrals represented 44 percent of the universe of correspondences closed during our scope. We then applied this percentage to 20, the total number determined for the sample, to select how many from each category to review. Therefore, we determined that we would review nine programmatic referrals (44 percent × 20).

⁸⁰Within our sample, there were five settlements and six findings closed between October 1, 2016, and June 30, 2019.

⁸¹GAO, *Recommendations and Options to Address Management Deficiencies in the Office of the Assistant Secretary for Civil Rights*, GAO–09–62 (Oct. 2008); and OIG 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.

⁸²USDA, *Procedures for Processing Program Complaints and Conducting Civil Rights Compliance Reviews in USDA Conducted Programs and Activities*, DM 4330–001 (Oct. 2000).

⁸³USDA Departmental Regulation 4330–002, *Nondiscrimination in Programs and Activities Receiving Federal Financial Assistance from USDA* (Mar. 1999).

We conducted this audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Abbreviations

CFR	<i>Code of Federal Regulations</i>
[Redacted]	[Redacted]
CY	calendar year
DM	<i>Departmental Manual</i>
DR	Departmental Regulation
ECOA	Equal Credit Opportunity Act of 1974
EEO	equal employment opportunity
FAD	final agency decision
FedRAMP	Federal Risk and Authorization Management Program
FHA	Fair Housing Act
FNS	Food and Nutrition Service
FY	fiscal year
GAO	Government Accountability Office
GPRA	Government Performance and Results Act
HUD	United States Department of Housing and Urban Development
IT	information technology
MOU	Memorandum of Understanding
NIST	National Institute of Standards and Technology
OASCR	Office of the Assistant Secretary for Civil Rights
OGC	Office of the General Counsel
OIG	Office of Inspector General
OMB	Office of Management and Budget
PAD	Program Adjudication Division
PCD	Program Complaints Division
PCMS	Program Complaints Management System
PIA	privacy impact assessment
PII	personally identifiable information
PTA	privacy threshold analysis
RFC	recommendation for closure
ROI	report of investigation
USDA	United States Department of Agriculture

Exhibit A: Summary of OASCR's Performance Indicators and Strategies

This exhibit summarizes the action taken by OASCR to address its performance indicators and strategies included in its *Strategic Plan for FY 2016-2020*.

No.	Performance Measures ⁸⁴	Adequately Implemented?	OIG Conclusion
Goal 1: Improve civil rights complaints processing for internal and external customers in keeping with Federal laws, mandates, and Departmental Regulations and guidelines.			
1	Performance Indicator: 1.1 Develop and implement a 5-year Internal Audit plan within the Office of Adjudication. This includes: 1.1.3 Implement a Program Complaint Processing Audit in the 4th quarters of 2017 and 2019. 1.1.4 Conduct quality control assessments in PCMS quarterly.	No	OASCR did not conduct a program complaint processing audit in the fourth quarters of 2017 and 2019. OASCR was unable to demonstrate that they conducted quarterly quality control assessments of PCMS. See Findings 3 and 4.

⁸⁴ Each performance measure is listed in order as it appears in OASCR's *Strategic Plan FY 2016-2020*. OASCR's *Strategic Plan FY 2016-2020* included three strategic goals, two of which were relevant to our audit. For the purpose of this report, we will only report on outcomes and performance indicators relative to program complaint processing.

**Exhibit A: Summary of OASCR's Performance Indicators and Strategies—
Continued**

No.	Performance Measures ⁸⁴	Adequately Implemented?	OIG Conclusion
2	Performance Indicator: 1.4 Build Coalitions with Stakeholders to Improve Complaint Processes. This includes: 1.4.1 Conduct Civil Rights Directors Meetings quarterly, 1.4.2 Conduct Agency Partnership Meetings quarterly, and 1.4.3 Implement Agency Liaison Initiatives monthly.	No	OASCR documentation supports the DOJ Title IX, Title VI, and the Civil Rights Directors meetings. However, there was no evidence to support that these meetings occurred consistently between FYs 2016–2020. OASCR officials stated that they never implemented the quarterly agency partnership meetings during the time period of the strategic plan. There is also no evidence to support that OASCR implemented monthly agency liaison initiatives.
3	Performance Indicator: 1.5 Expand Internal Professional Development and Training. This includes 1.5.1 Mandate annual specialized training on case law updates, recent case decisions, evidence gathering, technology advances and information security annually, and 1.5.2 Identify career paths and progressions, and developmental opportunities to transition staff from entry to middle and middle to senior level positions annually.	No	OASCR officials provided us with training agendas; however, the agendas do not specify which OASCR personnel participated in these trainings or that these trainings were conducted quarterly. OASCR officials stated that personnel have taken barrier analyses training, but these trainings have not been consistent. OASCR officials could not provide a documented mandate for annual, specialized training on case law updates, recent case decisions, evidence gathering, technology advances and information security. Although OASCR officials mentioned developmental opportunities for staff, OASCR does not have a formal process in place to track this on an annual basis.
4	Performance Indicator: 1.6 Strengthen Resource Management. This includes 1.6.1 Establish core requirements for staffing and funding of all OA functions annually, and 1.6.2 Obtain adequate resources to address complaints immediately upon receipt annually.	No	OASCR could not provide supporting documentation to show what they implemented consistently to strengthen resource management.
5	Performance Indicator: Number and percent reduction in complaint processing time. OASCR established target number of days for 2016–2020 for each step in the program complaint process: Programs Intake, Programs Investigation and Programs Adjudication. ⁸⁵	No	Although OASCR established and tracked target number of days for each step in the complaint process in an effort to reduce complaint processing time, OASCR did not provide supporting documentation showing a reduction in complaint processing time. In addition, as reported in Finding 1, OASCR has not met its 180-day processing requirement and the complaint processing time has been increasing since FY 2017.
6	Performance Indicator: Number and percent of reduction in the inventory of complaints.	Yes	According to annual farm bill reports, OASCR decreased its inventory of open complaints from 549 to 392 between FY 2016 and FY 2019. ⁸⁶
7	Performance Indicator: 4.1 Commit sufficient staff resources to update OASCR Departmental rules, guidelines, and regulations; 4.2 Create and post manuals on OASCR website; and 4.3 Review and update templates for the Age Discrimination Act, No FEAR Act, and annual farm bill reports.	No	OASCR dedicated seven positions in the Compliance Division to update and revise USDA and civil rights Departmental regulations, policies, and Executive Orders, as well as updated templates. However, we determined that Departmental directives related to processing program complaints have not been updated or published [publicly] since October 2000. See Finding 1.

Goal 3: Demonstrate effective engagement within USDA by ensuring all USDA employees have the necessary resources to support the civil rights of all employees and customers of USDA.

8	Performance Strategy: 2.4: Develop technology solution for monitoring and tracking settlement agreements, compliance reviews, EEOC Orders, Orders in-agency issued FADs with findings of discrimination, and number of employees who received agency/office civil rights training.	No	OASCR did not develop a technology solution for monitoring and tracking settlement agreements, compliance reviews, EEOC orders, orders in-agency issued FADs with findings of discrimination, and number of employees who received agency/office civil rights training as it relates to program complaints.
9	Performance Strategy: 2.5: Recognize agencies and offices with minimal number of EEO and program complaints and examine their best practices for supporting civil rights and fair treatment.	No	OASCR did not examine best practices for supporting civil rights and fair treatment.
10	Performance Strategy: 2.7 Develop reporting mechanism for agencies and offices with higher number of EEO/program complaints and noncompliance with settlement agreements and EEOC Orders.	No	OASCR confirmed that they have not completely developed reporting mechanisms for agencies with higher program complaints.
11	Performance Indicator: 2.1 Complete 24 compliance reviews in (or by) 2020.	No	OASCR officials stated that they did not conduct any compliance reviews since 2017. See Finding 5.

⁸⁵ Numbers 5 and 6 in the exhibit do not include performance indicator numbers, as they were the only performance indicators under a particular outcome and therefore not numbered.

⁸⁶ Food, Conservation, and Energy Act of 2008 Section 14010 Report of Civil Rights Complaints, Resolutions, and Actions for Fiscal Year 2019, dated September 2020, was the most recent report available.

**Exhibit A: Summary of OASCR's Performance Indicators and Strategies—
Continued**

No.	Performance Measures ⁸⁴	Adequately Implemented?	OIG Conclusion
12	Performance Indicator: 3.1 Complete internal audit of annual EEO/program evaluations, and establish planning priorities to eliminate systemic barriers, trends, and programmatic challenges; 3.2 Assign Data & Records Management Department responsibility to produce/conduct program participant civil rights surveys; and 3.3 Review and analyze survey response from USDA customers within 1 week.	No	OASCR officials stated that they did not conduct an internal audit of annual EEO/program evaluations or establish planning priorities to eliminate systemic barriers, trends, and programmatic challenges.
13	Performance Indicator: 4.1 Select task groups to revise departmental civil rights regulations by 2017; 4.2 Create bulletins for OASCR staff regarding possible changes to legislative rulings.	No	In response to this indicator, OASCR provided a status of eight Departmental civil rights regulations that indicated that one regulation was revised in April 2018, one was scheduled to be rescinded in the fourth quarter of 2019, five were scheduled to be revised in 2020 and one in 2021.
14	Performance Indicator: 8.1 Develop, institutionalize, and lead an ongoing annual process to review, analyze, and report on "lessons learned" from (a) EEO complaints, and (b) program complaints, closed during the year. This should include identification of recurring themes underlying the analysis of complaints, results of investigations (which often turn up areas for improvement in communications, training, and other areas even when there is no finding of discrimination, and certainly do so when there is such a finding), and recommendations for improving practices to avoid such complaints in the future. These reports should be distributed on the intranet to all employees, and to all USDA senior officials and managers; 8.2 Create two reports one for program complaints and the other for employment complaints that list complaints by state, agency, issue, and basis, which will be submitted to the Office of the Secretary monthly, quarterly, and annually, highlighting significant accomplishments in complaint processing and resolution, compliance, policy and training.	No	OASCR officials stated that they did not implement a process to review, analyze, and report on lessons learned from program complaints closed during the year because past leadership did not require that it be done.

Agency's Response—OASCR's Response to Audit Report



To: Gil H. Harden, Assistant Inspector General for Audit, Office of the Inspector General

From: Monica Armster Rainge, /S/ Deputy Assistant Secretary for Civil Rights

Subject: Response to OIG Audit on "*USDA Oversight of Civil Rights Complaints, 60601-00012.*"

This letter responds to your request for management's response to the audit recommendations in the draft audit report No. 60601-0001-21.

U.S. Department of Agriculture (USDA) appreciates the Office of Inspection General's (OIG) review of the civil rights complaint process within the Office of the Assistant Secretary for Civil Rights (OASCR). This report, which reviews OASCR's program complaint activity from October 1, 2016 through June 30, 2019, will help inform and guide our work moving forward.

As you noted in your report, there were many significant changes to the program complaint process as it relates to OASCR from FY October 1, 2016–June 30, 2019, and although you identified some issues, OASCR has taken action to rectify many issues identified.

Again, we thank OIG for your attention to the matter of OASCR's program complaint process. These recommendations, in part, underscore the work underway at USDA to enhance, modernize, and provide meaningful assistance to OASCR and USDA as a whole.

If you have any questions or need additional information, please contact my office at (202) 720-3808.

Attachment(s)**Office of the Assistant Secretary for Civil Rights Response To Audit Number: 60601-0001-21 Executive Summary***What OIG Found*

The U.S. Department of Agriculture's (USDA) Office of the Assistant Secretary for Civil Rights (OASCR) is responsible for making final determinations on complaints of discrimination filed by any persons who believe they have been subjected to prohibited discrimination in a USDA program.

We concluded that, overall, 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. First, OASCR did not timely process civil rights program complaints. Specifically, in Fiscal Year 2019, OASCR averaged 799 days to process program complaints compared to the 180-day standard. Furthermore, two other agencies that OASCR coordinated with to resolve complaints took more than 220 days and more than 600 days respectively to process complaints.

[Redacted] . . . We also determined that 9 of 28 complaint determinations and closures were not adequately supported and processed.

Additionally, OASCR missed an opportunity to track and measure USDA's progress in achieving the Department's civil rights goals and objectives. Finally, these issues could have been identified and better rectified had OASCR used its strategic plan to measure or assess its progress toward established goals and objectives relating to program complaints.

OASCR'S Response

OASCR has historically responded favorably to most OIG audits as a way to improve the organization's efficiency and effectiveness in meeting its mission goals and objectives. The responses below provide OIG with progress made by OASCR during the time in question while identifying challenges in meeting specific internal control objectives.

Finding 1: ASCR Needs to Timely Process Civil Rights Program Complaints

OASCR did not timely process civil rights program complaints. In Fiscal Year (FY) 2019, OASCR processed program complaints within 799 days on average—significantly in excess of its 180-day goal stated within Departmental guidance. Furthermore, OASCR's processing time of 799 days greatly exceeded even its more liberal 540-day goal stated in its internal pilot policy. This occurred because the Departmental guidance is inconsistent and outdated—and does not accurately reflect best practices or OASCR staffing limitations. OASCR officials noted that limited staffing has caused delays in processing program complaints. 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 or not file a complaint at all. This, in turn, diminishes public confidence that the Department can appropriately and expeditiously resolve complaints.

Federal regulation states that agencies shall establish and publish guidelines and procedures for the prompt processing and disposition of complaints. Accordingly, two Departmental directives—issued in 1999 and 2000—established 180-day timeframes for processing program complaints. In September 2013, OASCR expanded this timeframe to 540 days on a pilot basis through an internal policy memorandum that was never made public. OASCR still operates under the 2013 pilot timeframes and has not updated the two Departmental directives that officially outline the timeframes for processing program complaints.

We concluded that OASCR does not timely resolve program complaints in compliance with Federal and Departmental guidance. From October 1, 2016, through June 30, 2019, USDA processed 911 program complaints. Of the 911 complaints, we non-statistically sampled 28 and determined that 24 program complaints (more than 85 percent), took longer than 180 days to process—the timeframe established in the Departmental directives. Furthermore, 19 of the 28 program complaints (more than 67 percent) took longer than the 540 days outlined in OASCR's 2013 internal policy memorandum. The 28 program complaints in our sample had an average processing time of over 630 days, and in FY 2019, OASCR processed program complaints within 799 days on average.

Of the 24 program complaints that took longer than 180 days to process, ten had considerable periods when progress halted between steps in the process. This occurred because OASCR officials had not assigned the complaints to an investigator or adjudicator, or the individual assigned was not yet ready to work on the com-

plaint due to a backlog of complaints. This led to further delays. For example, of the 830 days it took OASCR to process one complaint, more than 330 days elapsed between PCD receiving the agency position statement and the next step in the process—completing the investigative plan. Once PCD completed the investigation and forwarded it to PAD, the complaint sat idle for more than 180 days before an adjudicator was assigned to the complaint. We identified multiple, similar instances with complaints that ranged from 645 to 1,024 days to process. Furthermore, as Figure 1 below demonstrates, OASCR's average processing time for program complaints increased between FY 2017 and FY 2019.

This occurred because guidance concerning timeframes for resolving program complaints is inconsistent and does not reflect best practices for prompt complaint resolution. First, Departmental and agency guidance provided different timeframes for processing program complaints. For example, the Departmental manual states that a FAD will be issued within 180 days of OASCR's receipt of the program complaint. However, the Departmental regulation states that a program complaint investigation, which occurs prior to the issuance of an FAD, will be finalized within 180 days following complaint acceptance. Furthermore, the 2013 internal policy memorandum states that a program complaint should be processed within 540 days from OASCR's receipt of the program complaint. To illustrate the inconsistencies even more, a 2014 MOU between OASCR and FNS requires that FNS process all accepted program complaints within 180 days. (See Finding 2.) In our view, inconsistent and conflicting timeframes lead to unclear expectations for personnel processing program complaints and for complainants filing them.

OASCR officials explained that they were operating exclusively under the 540-day timeframe established in the 2013 policy memorandum—not the 180-day timeframe set forth in the Departmental manual. However, we question whether the 540-day timeframe serves as a suitable best practice for the Department. OASCR officials could not provide support for how they determined 540 days to be an adequate timeframe. Federal regulations require agencies to establish and make public in their guideline's procedures for the "**prompt** [emphasis added] processing and disposition of civil rights program complaints." During the course of our audit, OASCR officials agreed that 540 days is a lengthy time to process program complaints. OASCR should consider assessing its program complaint process, benchmarking with similar departments, documenting its assessment, and sharing its decision with the public of what may be a reasonable complaint processing time for USDA.

We also consider the 2013 pilot guidance temporary and not a long-term replacement for permanent Departmental guidance because OASCR did not update and make available to the public its directive outlining timeframes for processing program complaints. The Departmental directives establishing civil rights complaint processing timeframes are in effect until canceled. Because there was no evidence that OASCR officials canceled the directives, OASCR would be expected to follow them. Additionally, because the directives are publicly available on USDA's website, the public may reasonably expect that USDA officials are following the 180-day timeframes when processing program complaints. OASCR's decision to operate differently than established timeframes outlined in guidance would further diminish public confidence that USDA is carrying out its responsibility to process complaints in a timely manner. Processing times of such a lengthy nature could discourage complainants from following up on their complaint, or simply not file a complaint at all. Any delay in resolving complaints could potentially lead to the exclusion of otherwise eligible individuals from rightfully benefitting from USDA programs.

Because these directives are 20 years old, they should be assessed to determine if revisions and updates are needed. OASCR officials acknowledged that the outdated directives are still enforceable, and added that they are in the process of updating them. This is a necessary step, and we encourage OASCR officials to strategically assess how best to meet requirements for prompt complaint resolution. OASCR officials previously committed to performing such an assessment, but did not conduct it. Specifically, the 2013 policy memorandum states that an analysis would be conducted to determine the success rate of the new timeframes and whether to keep them or adjust them based on the results. However, OASCR officials stated they were unaware of any analysis or report on the results of the pilot guidance. Such an assessment becomes even more crucial considering OASCR's current difficulties with staffing levels.

OASCR officials stated that insufficient staffing was the primary cause of the prolonged complaint processing. Specifically, delays in assigning program complaints to personnel were a direct result of low staffing levels combined with backlogged inventory.

We similarly concluded that OASCR needs to take steps to assess its staffing levels in order to appropriately and timely resolve program complaints. OASCR's FY

2016–2020 Strategic Plan includes a goal to “strengthen resource management” by annually establishing core requirements for staffing and funding of all organizational functions and annually obtaining adequate resources to address program complaints immediately upon receipt. However, OASCR had not adequately addressed this goal within its strategic plan. (See Finding 6.) When we asked OASCR officials if they had completed an assessment that looked at staffing levels, they provided a June 2020 approved staffing list of full-time employees that would be added to each division. According to this document, OASCR would add one full-time employee to PCD and one to PAD. Based on previous staff reductions and the current complaint processing time, this minimal increase in staffing levels does not appear to address the actual needs of these divisions. Additionally, because the document did not offer any justification as to why only two employees would be added, we do not consider this list an adequate assessment.

We acknowledge the challenges of processing program complaints in a timely manner with limited staffing resources. As such, we recommend that OASCR implement a strategy to routinely evaluate and address its staffing and funding resources to improve the timeliness of processing complaints. This evaluation should not be limited to staff and funding, but can include alternative ways to improve timeliness, such as updating the information technology (IT) system. Given its current staffing levels, we also recommend that OASCR strategically assess and determine its timeframe to better fit best practices and staffing levels. Specifically, to ensure program complaints are processed in a prompt and timely manner, OASCR needs to evaluate, develop, and implement complaint processing timeframes and establish a success rate. In our view, the new timeframe should be comparable to guidance and goals of similar Federal agencies responsible for processing civil rights program complaints. These steps would set a standard by which OASCR could operate its program complaint processing in a more efficient manner. However, until new timeframes have been developed and implemented, OASCR should adhere to the 180-day timeframe established within the Departmental guidance.

OIG Recommendation 1

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.

OASCR Response to Recommendation 1

In FY 20, OASCR designed and implemented a pilot program to expand effectiveness of policies that ensure compliance with, and enforcement of, USDA’s prohibition against discrimination in its conducted programs or activities of recipients of Federal financial assistance from USDA. Under the pilot, the Alternative Dispute Resolution (ADR) process moved from post acceptance to pre-acceptance of a complaint. Additionally, agencies have 30 days to attempt resolution by counseling the complaint.

Previously, ADR was offered after complaint acceptance and contributed significantly to increased timeframes for complaint processing by 205 days between FY 2019 and FY 2020. The chart below highlights the reduction in average processing time based on this process improvement. OASCR will finalize and fully implement this process at the beginning of FY 22.

Additionally, OASCR will reevaluate the timeframes to process program complaints by the end of calendar year 2021. As suggested in the audit findings, OASCR will evaluate the timeframes based on historical average processing times and current staffing levels. OASCR will also query other Federal agencies regarding complaint processing times, best practices, and quantitative metrics for measuring success. Though USDA is a large Federal agency with significantly different and wider ranging programs than other Federal agencies, OASCR has determined such efforts are appropriate. It is noteworthy that OASCR has significantly reduced the inventory of discrimination complaints from FY 2016–FY 2020.

Fiscal Year	USDA APT (days)	# of complaints pending OASCR decision *
2016	654	476
2017	571	366
2018	594	333
2019	799	309
2020	545	238

Editor’s note: there is no corresponding table note to the “*” annotation.

OIG Recommendation 2

Based on the analysis performed in Recommendation 1, update Departmental guidance outlining timeframes for processing program complaints. Once updated, publish the Departmental guidance on OASCR's public website.

OASCR Response to Recommendation 2

In June of FY 21, OASCR will conduct a 6-month review and update of Departmental Manual 4330-001 to ensure consistent and adequate language is provided within all Departmental Directives. As OASCR informed OIG during the Exit Conference, Departmental Regulation 4330-002 and 4330-003 have been updated and are going through Departmental clearance, which is outside of the purview of OASCR. OASCR is anticipating clearance of the updated guidance by the end of this fiscal year.

The latest known iterations of the updates of DR-4330-002 and DR-4330-003 (circulated on February 4, 2021) do not include timeframes for complaint processing. The prior language in DR-4330-002 providing a 180-day timeframe for a civil rights investigation to be conducted was removed from the updated regulation.

OIG Recommendation 3

Develop and implement a strategy to routinely evaluate and address OASCR's staffing and funding resources to ensure that program complaints are processed in a timely manner.

OASCR Response to Recommendation 3

The OASCR Program Directorate routinely evaluates staffing needs to ensure timely processing of program complaints. Each budget formulation cycle, OASCR management provides proposed justifications for increases in staffing and funding based upon a need for improved efficiency, change in demand, policy direction changes, improved customer service and reduced risks. OASCR has a limited discretionary budget from which to add additional resources. OASCR is optimistic Congress will favorably approve a request to increase the office's appropriated funding for FY 2022.

OIG Recommendation 4

Adhere to the 180-day timeframe established within the Departmental guidance until new timeframes have been developed and implemented.

OASCR Response to Recommendation 4

Without a significant increase in staffing, OASCR will not maintain a 180-day timeframe for all phases of program complaint processing to include Intake, Investigation, and Adjudication. OASCR acknowledges the inconsistent language regarding timeframes between the Departmental Manual (stating that a Final Agency Decision will be issued within 180 days of OASCR's receipt of the program complaint) and the Departmental Regulation (stating that a program complaint investigation, which occurs prior to the issuance of a Final Agency Decision, will be finalized within 180 days following complaint acceptance).¹

In fact, the Government Accountability Office (GAO) Audit 09-62 made a recommendation for OASCR to prepare and implement an improvement plan for resolving discrimination complaints that sets time frame goals and provides management controls for resolving complaints from beginning to end based on this inconsistency.

In the processing of EEO complaints there are finite types of personnel issues that are adjudicated. The Program Adjudication Division is expected to synthesize, analyze, and adjudicate complaints in all of the approximately 300 programs offered by the USDA to the public. These programs range from nutrition, farm subsidies, rural housing and utilities, forest management, and conservation practices, to name a few. Considering the alleged weaknesses identified in Finding 4, drastically reducing the timeframe from 135 days to 60 days would likely cause a decrease in the qualitative analysis of Final Agency Decisions.

Currently, each Adjudicator receives 30 days to produce a written work product in each complaint. The draft is peer reviewed, reviewed by the Team Lead, and reviewed and signed by the Division Director. Additionally, all findings of discrimination are reviewed and signed by the Assistant Secretary for Civil Rights.

For employment complaint processing, USDA/OASCR staff only conducts legal sufficiency reviews of ROIs, resulting from investigations completed by contractors. Furthermore, Federal employees are compelled to respond timely to inquiries/affidavits. Unlike employment staff, USDA Program Investigators are required to conduct

¹Pg. 15 of DR-4330-002, (f)(4) Investigations, establishes 180 days for CR to conduct an investigation. It does not provide a timeframe for Adjudication.

inquiries and obtain affidavits from external stakeholders, who are not compelled by EEO timelines. Additionally, USDA investigators are responsible for completing an investigation, drafting the ROIs, as well as review of ROIs to meet legal sufficiency standards. Program investigations often requires a more extensive implementation in review of practices, policies, and regulations involving multifaceted USDA programs available to the public.

Finding 2: OASCR Needs to Strengthen Oversight of Civil Rights Complaint Processing by FNS and Rural Development

Based on established agreements, FNS and HUD process certain civil rights program complaints. However, similar to Finding 1, these agencies did not timely resolve program complaints. Specifically, between October 1, 2016, and June 30, 2019, FNS took an average of more than 220 days and HUD took an average of more than 600 days to process complaints referred to them by OASCR—including two cases that were not resolved until after 1,700 days. This occurred because OASCR did not implement or update effective processes to monitor and track the referred complaints. Without adequate oversight, OASCR cannot ensure that agencies promptly or appropriately resolve complaints in compliance with relevant directives and guidance. When complaints are not resolved timely, complainants potentially miss opportunities to participate in or receive program benefits, which in turn can diminish the public's confidence in USDA programs.

USDA entered into agreements to coordinate program complaint processing activities with FNS and HUD for select areas of purview. According to the agreement with FNS, OASCR refers any program complaints relating to FNS programs to FNS officials to evaluate and process the complaints within 180 days. Similarly, USDA's agreement with HUD states that USDA will refer any complaints relating to potential FHA violations to HUD, with Rural Development serving as an intermediary between OASCR and HUD. However, USDA's agreement with HUD did not include any complaint processing timeframes. This coordination allows subject matter experts to process complaints pertaining to their respective areas. From the beginning of FY 2017 to June 30, 2019, USDA closed a total of 911 program complaints. FNS processed, investigated, and closed 332 of the 911 program complaints. Additionally, OASCR referred 208 of the 911 program complaints to HUD for processing during this time. Therefore, more than 59 percent of all civil rights program complaints closed during this time were processed under the agreements with FNS and HUD.

Although OASCR coordinates complaint processing with FNS and HUD, OASCR retains responsibility, oversight, and final authority for these complaints. Therefore, as part of these agreements, OASCR is required to conduct audits, reviews, and evaluations of FNS. The agreements also state that OASCR must have annual meetings with HUD, maintain a cumulative list of FHA-related allegations, and monitor the status of these complaints. These oversight activities help ensure that all complaints are handled and resolved in accordance with statutory, regulatory, and policy requirements.

During our audit period, we determined that FNS and HUD did not timely resolve complaints. OASCR's agreement states that FNS must process, investigate, and resolve referred program complaints within 180 days. However, according to PCMS, FNS processed and resolved its complaints, on average, within 222 days—one complaint took 1,777 days to resolve.

Unlike its agreement with FNS, USDA's agreement with HUD does not include any timeframes for resolving program complaints. However, we still identified complaints that were not resolved timely. According to PCMS, these complaints were resolved on average within 604 days—and one complaint was not resolved for 1,722 days.

In our view, FNS' processing times could improve with OASCR oversight. OASCR is responsible for ensuring that all program complaints are resolved in accordance with requirements—including promptness. However, OASCR stopped conducting audits, reviews, and evaluations of FNS in October 2017—the same year that OASCR also discontinued assessments of agency heads and compliance reviews for all USDA agencies. (See Finding 6.) According to an OASCR official, rather than implement a formal oversight mechanism, OASCR informally met with the FNS civil rights director in conjunction with OASCR's monthly meetings that are attended by all other Departmental civil rights directors. However, the OASCR official was not able to provide evidence of discussions specifically related to oversight of FNS.

USDA's ability to accurately and timely resolve complaints involving housing-related programs and activities is dependent on Rural Development's processes. OASCR does not communicate directly with HUD. Rather, Rural Development's Civil Rights Office acts as an intermediary between OASCR and HUD. OASCR officials acknowledged that processing times for these complaints were untimely due to

its lack of oversight of Rural Development. To improve processing and complaint resolution, OASCR officials told us they implemented quarterly meetings in 2017 with Rural Development and obtained quarterly status reports of the civil rights complaints USDA had referred to HUD. While we agree that this line of communication and these reports are important oversight tools, it is still insufficient on its own; as *Figure 2* indicates, we did not see considerable improvement in processing times for complaints referred to HUD through Rural Development after OASCR officials implemented the quarterly status updates. We understand that some complaints are more complex and may take longer to resolve—particularly with an inter-departmental arrangement. Based on OASCR’s results of the analysis recommended in Finding 1, OASCR should update the complaint processing timeframes in the agreements with FNS and HUD to accommodate challenges in timely resolving complaints.

Additionally, the agreement with HUD should specify OASCR’s responsibilities to oversee Rural Development’s role in processing complaints. In the event of any revised timeframe, OASCR should resume its oversight role as established in the agreement by reviewing FNS’ and HUD’s complaint processing through audits, reviews, or evaluations. OASCR’s oversight of complaint resolution is critical to ensuring that complaints are resolved in accordance with Departmental and Federal requirements. Additionally, with regular oversight, OASCR should be able to identify developing issues better—such as untimely resolution—and work with FNS, HUD, and Rural Development to take corrective action.

FNS and HUD processed more than 59 percent of all USDA civil rights complaints (540 of 911) during the period of our audit. In light of this high volume, there is a strong need for OASCR to oversee FNS’, HUD’s, and Rural Development’s civil rights processing activities in a more formal manner. Ultimately, OASCR is responsible for ensuring equitable and fair treatment in USDA programs. When complaints are not resolved timely, complainants potentially miss opportunities to participate in or receive program benefits, which in turn can diminish the public’s confidence in USDA programs and the Department’s commitment to resolve complaints in a timely manner. By establishing timeframes in the agreements and implementing effective controls over FNS’, Rural Development’s, and HUD’s complaint processing responsibilities, OASCR can help ensure complaints are handled appropriately and timely.

OIG Recommendation 5

Revise and update the Memorandum of Understanding with FNS with timeframes for processing complaints based on OASCR’s analysis (see Recommendation 1) to ensure program complaints are processed in a timely manner.

OASCR Response to Recommendation 5

OASCR updated and executed the Memorandum of Understanding with FNS on June 2, 2021 (See attached FNS MOU—OIG Exhibit 1).

OIG Recommendation 6

Revise and update the Memorandum of Understanding with HUD with timeframes for processing complaints based on OASCR’s analysis (see Recommendation 1) to ensure program complaints are processed in a timely manner.

OASCR Response to Recommendation 6

The current MOU with HUD (attached OIG Exhibit 2) was executed on July 11, 1998. USDA and OASCR have undergone significant organizational changes since that time which necessitate revisiting the HUD MOU. OASCR will implement a process to exact timely completed housing complaints referred to HUD and update the MOU accordingly.

OIG Recommendation 7

Revise and update the Memorandum of Understanding with FNS to implement effective controls over FNS, such as conducting audits or compliance reviews, on a recurring basis to evaluate FNS’ complaint process and improve the timeliness of complaints referred to FNS.

OASCR Response to Recommendation 7

See attached FNS MOU[.]

OIG Recommendation 8

Revise and update the Memorandum of Understanding with HUD to implement effective controls over Rural Development, such as conducting audits or compliance reviews of Rural Development, on a recurring basis to evaluate Rural Development’s

complaint process and improve the timeliness of complaints referred to Rural Development.

OASCR Response to Recommendation 8

During the timeframe reviewed by OIG, OASCR's Program Complaints Division (PCD) monitored HUD referred complaints with limited accountability in communications with Rural Development (RD). In FY 2019, PCD shifted priorities and established a quarterly review with RD of all complaints maintained with HUD. PCD provides an excel report of HUD referred complaints from PCMS to the RD Civil Rights Director who in turn updates the status of HUD complaints.

OASCR's beginning FY 2020 HUD referral inventory (PCMS Fact-Finding) was 94 complaints (Average Age 388 days). Over the last year this inventory has been reduced by $\frac{1}{3}$ (60). The average age of these complaints is 297 days (<1yr) and continues to decrease each month. OASCR will continue to monitor and prioritize communication with RD for accountability purposes. While PCD has not been tasked with monitoring the status of HUD complaints it will ensure these matters are handled timely and in accordance with the MOU requirements. In addition, OASCR will collaborate with the Rural Development Civil Rights Director to amend the existing MOU to be compliant with processing and data entry requirements for housing complaints.

Finding 3: [Redacted]

[Redacted].*

Finding 4: OASCR Needs to Strengthen Its Procedures to Ensure Complaint Determinations and Closures Are Adequately Supported and Processed

OASCR did not ensure that complaint determinations and closures were adequately supported and processed for 9 of the 28 complaints of discrimination we reviewed in our sample.⁵⁰⁻⁵¹** This occurred because, although OASCR performs second-level reviews at several stages in the complaints process, Departmental guidance did not include adequate procedures to document the results of these reviews. Therefore, OASCR officials cannot demonstrate that they have provided effective oversight to ensure that complaint determinations and closures are appropriate, which can erode public trust in USDA's complaint resolution process.

OASCR is responsible for investigating, making determinations for all discrimination complaints, and notifying the complainant of their final determination.⁵²** OASCR's PCD receives complaints from persons alleging discrimination in USDA programs, and, based on Federal civil rights laws and regulations, PCD will determine whether to:

1. administratively close the complaint,
2. refer the matter to the respective agency for review and processing as a programmatic referral, or
3. investigate the issues raised in the allegation of discrimination.

When a complaint is accepted, an investigation will result in either an ROI or recommendation for closure. For matters that are investigated, investigators gather facts and evidence—which are compiled into the case file—and summarize the results of the investigation in an ROI. Once the Investigations Division Chief reviews and approves the ROI for completeness, the ROI is forwarded to the Adjudication personnel to develop its FAD as to whether discrimination occurred based on the merits of the allegations. (See the Background section of this report for a more detailed explanation of OASCR's discrimination complaint processing.) For each allegation, Adjudication personnel must weigh the information contained in the ROI and develop a FAD of whether discrimination occurred based solely on the record of evidence and facts presented in the ROI. Therefore, the ROI must support the FAD's analysis and conclusions.

However, our analysis disclosed that actions pertaining to 9 of the 28 complaints of discrimination in our sample were not adequately supported or processed. For these nine complaints, we identified issues with five FADs and four administrative closures.

Final Agency Decisions

We concluded that OASCR did not adequately support or process five of the ten FADs in our sample in accordance with Departmental guidance. For example, for

* **Editor's note:** the redactions encompass pages 10–14.

** **Editor's note:** the OASCR submitted document contained OIG's original footnote references, it has been reproduced herein as submitted.

two of the five FADs, we determined the analysis OASCR personnel performed to support its determinations was incorrect, specifically documentation did not support the conclusion noted in the FAD. In each of the two instances we identified, OASCR performed multiple second-level reviews of the FAD. However, the reviews did not identify the erroneous analysis performed. When we discussed these errors with OASCR officials, they acknowledged the errors in the analysis. However, OASCR concluded that there was sufficient evidence to support the overall determinations, when considered in totality. We acknowledge that OASCR based its determinations on the totality of evidence and make no assessment to the correctness of OASCR's determinations. However, OASCR must also ensure that the analyses that justify determinations are accurately presented and supported by the ROI, as required.

Second, OASCR inadequately processed three of the five FADs. For example, in some instances, we discovered that OASCR allowed the introduction of new issues at the adjudication stage that were not cleared as part of OASCR's investigation. We acknowledge that internal procedures allow the Adjudication staff to return a case file for supplemental investigative work on a case-by-case basis. However, to ensure the integrity of its determinations are not questioned, it is important that OASCR adequately process its complaints and collect sufficient evidence to support agency determinations. As such, when a new issue is introduced, OSCAR should return the complaint to the Investigations Division to investigate the complaint and obtain sufficient facts and evidence.

By allowing Investigations staff the opportunity to ensure sufficient evidence has been collected to support both the complainant and the agency, OASCR can ensure its processes maintain the appearance and actuality of neutrality, independence, and objectivity.

Administrative Closures

We also determined that 4 of 18 administrative closures were not adequately supported or processed. Specifically, we noted that key documentation included in the case file was incorrect or missing. These discrepancies were missed, even though they should have been identified during the second-level review of the case file. OASCR acknowledged that personnel used the wrong letter template when notifying the complainant and that the error should have been identified during the second-level review of the recommendation for closure. However, in this second-level review, PAD is only required to review the recommendation for closure to evaluate if PAD agreed with the decision to close the complaint. OASCR officials agreed that the statements used to support its determinations needed to be adequately supported by the evidence in the case file so that their decisions are not challenged or questioned.

These issues occurred due to the lack of consistency and depth of the second-level reviews being performed. OASCR has procedures to conduct second-level reviews at each stage of the complaint process to ensure complaints are adequately supported and processed. OASCR instituted these reviews based on recommendations from previous OIG reports. However, it was unclear: (1) whether OASCR consistently implemented these reviews, (2) how OASCR documented the reviews, or (3) how effective the reviews have been. To address these shortcomings, OASCR needs to evaluate its current review process and procedures performed within the case files to: (1) identify and address why reviews are not discovering the discrepancies noted within this finding, and (2) ensure OASCR properly processes case files.

A prior GAO audit recommended that OASCR obtain an expert, independent, and objective legal examination of the basis, quality, and adequacy of a sample of USDA's prior investigations and decisions on civil rights complaints, along with suggestions for improvement. In response, USDA created a task force in 2009 that reviewed a large number of previous case files; this task force identified that further processing was warranted for about 3,800 complaints. While the task force's large-scale quality control review evaluated cases at that time, OASCR should incorporate ongoing, periodic quality control reviews of a sample of case files.

We recommend that OASCR evaluate the procedures for documenting reviews performed at each stage of the complaint process to ensure facts and events are presented accurately and appropriately. Considering USDA's long history of discrimination complaints, it is critical that OASCR adequately support its determinations. When OASCR administratively closes a case file without proper documentation to support the action taken, complainants may not receive the appropriate consideration from the Department on their complaint of discrimination. By improving OASCR's review process to ensure documentation appropriately justifies the actions taken, OASCR can better build up public trust and ensure that complainants are given fair consideration in the resolution of their complaints.

OIG Recommendation 14

Evaluate procedures for documenting reviews performed at each stage of the complaint process to ensure facts and events are presented accurately and appropriately.

OASCR Response to Recommendation 14

Unlike other Federal agencies, USDA provides approximately 300 programs to the public ranging from nutrition, farm subsidies, rural housing and utilities, forest management, conservation practices, *etc.* It is OASCR's responsibility to ensure these programs are not administered discriminately and are accessible to all—not to supplant or supersede calculations and/or technical determinations made by Agency subject matter experts. Currently, division specific checklists are utilized throughout the Program Directorate (see attached PAD Checklist). However, these checklists are utilized on an individualized case by case basis for each specialist prior to producing a work product. The proposed checklist would identify what should be included in each acceptance letter, ROI, and FAD for an end user to audit annually. The checklists are currently in place for manual implementation of data integrity verification. This process will also be automated within CRMS to support accuracy and consistency.

OIG Recommendation 15

Revise internal procedures to require that case files are returned to Investigations to document the review of the ROI by PCD for sufficient facts and evidence collected by Investigations when a new issue is introduced after the investigation is completed and the ROI has been approved.

OASCR Response to Recommendation 15

At present, OASCR has determined if additional issues are identified during the course of the investigation, the Program Complaints Division will issue an amended acceptance letter. In accordance with *Departmental Manual* 4330-001, the Program Adjudication Division will make determinations with respect to each allegation identified in the Report of Investigation. If the Program Adjudication Division determines the ROI contains sufficient facts/evidence to introduce a new issue, the Program Adjudication Division will seek concurrence from the Program Complaints Division Director. If there are insufficient facts/evidence to address the new issue, the Program Adjudication Division will return the complaint to the Program Complaints Division for a supplemental investigation.

OIG Recommendation 16

Establish and maintain a system of quality control that is designed to periodically review a sample of case files to ensure evidence to support OASCR's determinations and closures is adequate, accurate, and documented.

OASCR Response to Recommendation 16

OASCR accepts this recommendation. A second level review of data is currently conducted by each division. To further ensure the complaints are being processed as efficiently as possible, a comprehensive "end-of-case" checklist will be developed, and a random sampling of cases will occur on an annual basis, starting in the 4th quarter of this fiscal year. OASCR will incorporate an in-depth quality control system into its process pending additional staffing resources allocated to the Program Directorate. OASCR management provided proposed justifications for increases in staffing and funding based upon a need for improved efficiency, change in demand, policy direction changes, improved customer service and reduced risks in the FY 2023 budget cycle.

OASCR prefers keeping the review process within the organization as to limit ceding any delegated authority. However, the independent review process could be delegated to the new Equity Commission to be done quarterly.

Finding 5: OASCR Needs to Strengthen its Oversight Efforts of USDA Agencies

OASCR missed an opportunity to track and measure USDA's civil rights progress. There are two oversight tools to help assess agencies' compliance with civil rights requirements: agency head assessments and compliance reports. These require input from both agencies and OASCR. However, these reviews were not being completed. This occurred because OASCR directed USDA agencies to stop completing required reports and stopped reviewing agency compliance reports due to limited resources, but did not implement alternative controls. These civil rights reports are intended to provide OASCR with vital data concerning whether agencies are fairly and equally administering USDA programs. Without them, OASCR cannot effectively fulfill

its oversight role, or identify and correct areas of concern in how USDA agencies handle civil rights issues.

Federal regulations require that OASCR oversee USDA agencies' efforts to conduct USDA programs fairly and equally by monitoring two reports—agency head assessments and agency compliance reports. OASCR is required to review agencies' annual civil rights performance plan and accomplishment reports and rate their accomplishments through an agency head assessment. In addition, OASCR is required to review agencies' compliance reviews and issue compliance reports that monitor agency compliance efforts. These assessments, when implemented properly, are designed to help OASCR determine if agencies are adhering to the Department's civil rights regulations and policies.

Despite these requirements, OASCR did not fulfill its oversight responsibilities to ensure that agencies were fairly and equally administering USDA programs.

Agency Head Assessment

Agencies are required annually to review their civil rights activities and accomplishments by assessing objectives such as accountability, diversity, and non-discriminatory program delivery, and submitting a civil rights performance plan and accomplishment report to OASCR. The report establishes civil rights goals, objectives, and measurable outcomes which agencies use to assess their activities. OASCR is then required to review agencies' reports and assessments before providing agencies with a civil rights accomplishment rating. Both agencies' and OASCR's reviews constitute the agency head assessment.

Agencies' civil rights performance plan and accomplishment reports are divided into goals, performance objectives, and related indicators—or actions that agencies should take to measure progress towards each objective and address USDA's regulations, policies, and strategic goals. This report provides agencies with measurable milestones that can help them accomplish their goals—such as timely resolution. See below for an example of a goal, performance objective, and related indicator.

Compliance Reports

Like agency head assessments, compliance reports need to occur at both the agency and Departmental level. Unlike the agency head assessments, which evaluate the agency's overall compliance with civil rights requirements, compliance reports focus on targeted, potential areas of concern at the local office level. First, according to Departmental regulations, agencies must conduct compliance reviews to ensure that they are managing and administering programs and activities without discrimination. Second, Federal regulation states that OASCR must: (1) oversee the compliance reviews and evaluations, and issue compliance reports that monitor compliance efforts, and (2) monitor all findings of non-compliance to ensure they are corrected. Similarly, OASCR must conduct its own compliance reviews of agencies and their programs and activities, and monitor compliance review activity within agencies.

We identified deficiencies during the period of our review at both the agency and OASCR level. First, we determined that agencies did not always take the necessary action to submit reviews; and second, OASCR did not track whether agencies were conducting compliance reviews. For example, agencies did not submit proposed compliance review schedules—a preliminary step in the compliance report process—the majority of the time. However, even when agencies did submit schedules, OASCR did not follow up with agencies to determine if the agencies had conducted the scheduled reviews. In addition, OASCR has not conducted its own compliance reviews or issued any compliance reports since 2017. Although OASCR officials stated that they would develop standard operating procedures and begin conducting compliance reviews in CY 2020, as of February 2021, OASCR had not conducted any compliance reviews.

This occurred because, in October 2017, in an effort to reduce redundancies and inefficiencies, OASCR directed agencies to stop conducting agency head assessments. OASCR also ended its review of agency compliance reports. According to an FNS official, completing the agency head assessment was “extremely resource-intensive,” and OASCR wanted to allow agencies to focus their efforts on achieving civil rights compliance rather than reporting on it. OASCR officials also stated that the compliance reviews required considerable resources and time but agreed that, in some capacity, OASCR needs to conduct compliance reviews. OASCR officials stated that because OASCR already reviewed existing reports such as the MD-715, Form 462, and No FEAR reports, it was assessing the agencies' compliance and performance. However, because these existing reports only assess agencies' internal employment civil rights activities performance, they are not a replacement for assessing agencies' program civil rights practices with external stakeholders.

While we acknowledge time and resource constraints, OASCR needs to identify alternative methods and implement these critical oversight controls over USDA agencies. Ultimately, OASCR is responsible for overseeing USDA agencies' efforts to conduct USDA programs fairly and equally. Agency-submitted assessments and reports contain valuable performance information that OASCR could have used to ensure agencies are achieving program goals and objectives set by the Department's civil rights regulations and policies. If OASCR does not require agencies to assess and report on their civil rights compliance, the responsibility for gathering oversight information falls upon OASCR. However, if OASCR were to require agencies to submit civil rights reports and assessments, OASCR could develop a methodology to regularly review agencies based on program complaints, settlements or findings of discrimination, and other risk factors identified in agency assessments. OASCR officials agreed that it was necessary to implement an effective method to assess agencies' compliance with program civil rights activities.

Ultimately, by effectively implementing oversight controls, such as agency head assessments and compliance reviews, OASCR can move from a reactive to a proactive position in addressing potential civil rights violations. For example, OASCR's compliance division currently is required to follow up on corrective actions after individual complaints are resolved. By assessing agencies' civil rights activities performance, in addition to individual allegations presented in complaints, OASCR could further evaluate and monitor other civil rights processing activities to see if this was a widespread or repeated occurrence and potentially prevent future non-compliances. Furthermore, with information collected from agency head assessments and compliance reviews, OASCR can provide the Department with valuable information to help USDA take steps towards improving civil rights activities, when necessary.

OIG Recommendation 17

Require agencies to assess their program effectiveness and compliance with the Department's civil rights regulations and policies and, furthermore, oversee these agency assessments.

OASCR Response to Recommendation 17

From 2005 to 2017, OASCR conducted annual assessments of agency civil rights performance to determine the effectiveness and adherence to the Department's civil rights policies and regulations by each USDA agency in accordance with 7 CFR Part 15d (Nondiscrimination in programs or activities conducted by the USDA and Departmental Regulation 4300-010, *Civil Rights Accountability Policy and Procedures*). In 2017, the Office of the Secretary directed OASCR to end the annual assessment process so as to allow USDA agencies to focus on their civil rights efforts. OASCR is revising the agency head assessment request to be less cumbersome and focused on civil rights accomplishments and challenges within the agencies.

OIG Recommendation 18

Develop new controls to review the agency assessments and identify factors that could warrant further review of agencies and their civil rights practices.

OASCR Response to Recommendation 18

OASCR will ensure any new agency assessment procedure incorporates quality and quality review methodologies.

OIG Recommendation 19

Develop and implement a process to select USDA agencies and program offices for compliance reviews (on a recurring basis) based on program complaint activity, set elements or findings of discrimination, and other risk factors identified in agency assessments.

OASCR Response to Recommendation 19

OASCR led a task force designed to amend USDA's Departmental Regulation (DR) which provides guidance and instructions on Civil Rights Compliance Reviews. The team consisted of representation from Mission Areas, agencies, and key staff offices. The DR specifically establishes USDA's policies and procedures for conducting civil rights compliance reviews of all USDA federally conducted and federally assisted programs and employment activities. The DR has been submitted to the Department for review and clearance. Once cleared by the Department the following criteria will be required of OASCR, Mission Areas, agencies and staff offices:

CCRO will reignite its compliance review program by serving as embeds with mission area and agency civil rights directors. The decision to conduct a compliance re-

view will be based on neutral criteria or evidence of a violation. Criteria to be considered in a compliance review include:

1. Issues identified for special attention in strategic plans, annual work plans, plans of operations, *etc.*;
2. Issues frequently identified as problems faced by program applicants and participants;
3. Geographic areas where problems have been identified or geographic areas in which there has been little compliance activity;
4. Issues raised in complaints or identified during examination of complaints that could not be fully covered within the scope of the complaint examination process;
5. Issues or problems raised by community groups, advocates, Congressional inquiries, and fact-finding examinations;
6. Issues flagged by the agency head or regional and state leadership officials;
7. Issues and problems identified by other Federal, state, or local civil rights agencies;
8. Routine review cycle driven by the need to review all programs and activities on a regular schedule; and
9. Required as a result of terms required in a settlement agreement or a finding of discrimination.

In addition, the DR requires the ASCR, amongst other actions, to:

1. Require Mission Areas, agencies, and staff offices to provide an annual listing of proposed fiscal year compliance reviews and/or desk audits. This listing will be provided to OASCR no later than October 31st each fiscal year;
2. Select by November 30th of each fiscal year two or three Mission Areas, agencies, or staff offices' compliance activity to monitor and provide oversight; and
3. Conduct a Mission Area, agency, or staff office compliance review, desk audit or fact-finding review based on current events, issues identified through Civil Rights Impact Analysis, Congressional reviews or items identified in the criteria cited above.

Finding 6: OASCR Needs to Assess Progress Towards Established Goals and Objectives

Although OASCR developed its *Strategic Plan FY 2016–2020*, it did not use the plan to measure or assess its progress toward established goals and objectives relating to program complaints. This occurred because OASCR 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 identified in this report. Because OASCR has not established measurable and implementable measures, OASCR officials cannot determine whether they are achieving intended goals and objectives. This further hinders OASCR's ability to make well-informed decisions and improve the program complaint process.

The Government Performance and Results Act (GPRA) requires agencies to develop a strategic plan, set performance goals, and annually report on actual performance compared to goals. GPRA also requires agencies to use performance indicators to measure or assess progress toward established goals. Similarly, GAO states that management should establish activities to monitor performance measures and indicators.

OASCR's *Strategic Plan FY 2016–2020* encourages periodic performance review sessions as an essential part of strategic planning—at least quarterly. Management can use the results of these performance reviews to assess and analyze how the agency is doing and, if necessary, make decisions and reprioritize due to changing resources, evolving stakeholder needs, or other new realities.

In 2008, GAO reported that OASCR's strategic planning was limited and did not address key steps needed to achieve its mission. According to GAO, results-oriented organizations follow three key steps in their strategic planning: (1) they define a clear mission and desired outcomes, (2) they measure performance to gauge progress, and (3) they use performance information for identifying performance gaps and making program improvements. Accordingly, GAO recommended that OASCR develop a results-oriented, Department-level strategic plan for civil rights that unifies USDA's approach with OASCR. GAO specified that the plan should be transparent about USDA's efforts to address stakeholder concerns.

In response, OASCR developed a strategic plan that provides goals, outcomes, and performance indicators that monitor the programs, policies, and services that OASCR administers in an effort to produce results and improve the organization's performance. In addition, the performance indicators measure performance against the strategies for each outcome, and inform management whether it is achieving the desired result. OASCR's *Strategic Plan FY 2016–2020* included three strategic goals, two of which were relevant to our audit:

Goal 1. Improve civil rights complaints processing for internal and external customers in keeping with Federal laws, mandates, and Departmental Regulations and guidelines.

Goal 3. Demonstrate effective engagement within USDA by ensuring all USDA employees have the necessary resources to support the civil rights of all employees and customers of USDA.

We concluded that OASCR did not use the plan as a tool to measure or assess progress towards Goals 1 and 3 and their respective objectives, performance indicators, and strategies.

Specifically, OASCR did not adequately address 13 of the 14 performance indicators and strategies to measure or assess progress toward established goals. (For a full list and explanation, see *Exhibit A*.) OASCR personnel explained the processes they have in place that could be used to satisfy performance measures and indicators in the strategic plan. However, after reviewing these processes, we found that they did not completely address indicators and strategies to achieve specific goals. Overall, the issues we identified in this report could have been mitigated had OASCR used its strategic plan to monitor progress and to establish strong internal controls.

Timeframes for Civil Rights Complaint Processing

In Goal 1 of its strategic plan, OASCR established a performance indicator, baseline, and target data for the number of days to process program complaints at each stage in the process: intake, investigation, and adjudication. The expected outcome was that timeframes for civil rights complaint processing be consistent with statutory and regulatory requirements. However, as identified in Findings 1 and 2 of this report, both OASCR and agencies it coordinated with to process complaints did not meet these timeframes.

[Redacted].

Program Complaint Processing Audits

Goal 1 of OASCR's strategic plan also established a performance indicator to implement a program complaint processing audit in the fourth quarters of FYs 2017 and 2019.

OASCR instructed the staff units (Intake, Investigations, and Adjudication Divisions) to use a checklist to conduct a self-assessment of all cases on an on-going basis. However, OASCR did not consolidate the results from each checklist into one overall report. As a result, we determined that the checklists alone had not constituted a program complaint processing audit. If OASCR had appropriately conducted program complaint processing audits, OASCR might have been better positioned to address the issues we identified in Finding 4.

Compliance Reviews

Within Goal 3 of the strategic plan, OASCR established a performance indicator to complete 24 compliance reviews in, or by, CY 2020. As stated in Finding 5, OASCR did not conduct any compliance reviews since 2017.

OASCR has not prioritized the strategic plan as a resource in developing strong internal controls, since officials stated that the strategic plan was outdated due to a 2018 reorganization and changing priorities. We acknowledge that OASCR's priorities may have changed, and its strategic plan became outdated. In this instance, officials should have reprioritized and revised the plan accordingly to include performance measures to assist the agency in meeting desired outcomes. OASCR should regularly review its strategic plan and update it to reflect the current environment and its priorities.

OASCR officials further added that the goals were incorporated into their everyday processes. However, OASCR 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. Until OASCR utilizes the strategic plan as a tool to regularly monitor and achieve its goals, it may not accurately measure its performance, identify points of concern, and strategically develop a course of action to address these issues. A results-oriented strategic plan provides a road map that clearly describes

what an organization is attempting to achieve. It can also serve as a focal point for communication with Congress and the public about what OASCR and USDA agencies have accomplished. By implementing the goals, objectives, and performance indicators in a plan, OASCR can monitor measurable outcomes, identify points of weakness, and develop courses of action to address identified issues.

OIG Recommendation 20

Develop and implement a process to perform periodic reviews of the strategic plan and regularly update the strategic plan.

OASCR Response to Recommendation 20

OASCR has revised its strategic plan for FY 2020–2024 to reflect the goals and priorities of the current political leadership. The Deputy Assistant Secretary for Civil Rights and the Associate ASCR are involved in the drafting of the USDA Strategic Plan to include a civil rights/racial equity goal. OASCR Strategic Plan must link to the new USDA plan scheduled for release Q2 of FY 2022 before OASCR can release its separate strategic plan.

OIG Recommendation 21

Establish a mechanism to measure performance against established goals and report on actual program activity performance data.

OASCR Response to Recommendation 21

The revised OASCR Strategic Plan will include key performance measures and objectives linking directly to programmatic activity. In addition, by the end of FY 2021 OASCR, will launch a Civil Rights dashboard to provide real-time data to the Secretary on employment and program complaint activity.

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SUPPLEMENTARY MATERIAL SUBMITTED BY HON. PHYLLIS K. FONG, INSPECTOR GENERAL, U.S. DEPARTMENT OF AGRICULTURE, OFFICE OF INSPECTOR GENERAL

Insert 1

Ms. ADAMS. Okay. Your office reviewed a sample of 48 case files, 28 of which were part of the 911 complaints closed between October 1, 2016, and June 30 of 2019. What kinds of cases were these? Race, gender, disability, discrimination, and what agencies? Was it Farm Service, Food and Nutrition, were these 48 cases for?

Ms. FONG. I do not have that data specifically. Gil, would you like to comment, or should we get that information for you?

Mr. HARDEN. What I was going to ask is if you would allow us to pull that data from our work. We can give you a very specific answer as to what made up the cases that we looked at.

We non-statistically selected a total of 28 complaints to review based on complainant category types¹ and the percentage the category type represented in the universe. In summary, we sampled a total of 28 complaints from the following agencies: Food and Nutrition Service (4), Forest Service (2), Farm Service Agency (5), Natural Resource Conservation Service (3), and Rural Development (14). As requested, the basis for complaint is described below for each complaint:

Sample #	Agency	Protected Bases
1	Food and Nutrition Service	Disability
2	Food and Nutrition Service	Age
3	Food and Nutrition Service	Disability
4	Food and Nutrition Service	Sex, Age, Color
5	Forest Service	Race, National Origin
6	Forest Service	Disability
7	Farm Service Agency	Race
8	Farm Service Agency	Race
9	Farm Service Agency	Age
10	Farm Service Agency	Disability, Race, Sex
11	Farm Service Agency	Retaliation
12	Natural Resources Conservation Service	Race, Sex, Color, National Origin
13	Natural Resources Conservation Service	Race, Sex, Age
14	Natural Resources Conservation Service	Disability, Retaliation
15	Rural Development	Disability
16	Rural Development	Disability
17	Rural Development	Income Derived
18	Rural Development	Race, Color, National Origin
19	Rural Development	Disability, Age
20	Rural Development	Race
21	Rural Development	Race
22	Rural Development	Race
23	Rural Development	Sex
24	Rural Development	Disability
25	Rural Development	National Origin
26	Rural Development	Disability
27	Rural Development	Disability, Marital Status
28	Rural Development	Race

Insert 2

Ms. ADAMS. . . .

Your office identified five settlements, six findings of discrimination in the sample of cases. What kinds of cases, in terms of race, gender, disability, discrimination—were these?

Mr. HARDEN. And similarly, I would like to gather the specific information on that and get that back to you. The report itself focuses on the process as opposed to the individual cases, so I don't have that right in front me.

The kinds of cases as bases for the five settlements were:

¹The 15 categories for complaints include: duplicate record, failure to cooperate, failure to pursue, failure to pursue closed letter/withdrawal, failure to state a claim, filed in court, finding, HUD decision, lack of jurisdiction, no finding, programmatic referral, referral to other government agency, settlement, untimely filing, and withdrawal.

Sample #	Protected Bases
15	Disability
18	Race, Color, National Origin
22	Race
23	Sex
24	Disability

The kinds of cases as far as bases for the six findings were:

Sample #	Protected Bases
1	Disability
3	Disability
5	Race, National Origin
7	Race
8	Race
14	Disability, Retaliation

Insert 3

Mr. RUSH. Ms. Fong, I have also heard multiple reports of outright hostility at local ag field offices toward Black farmers. Did the OIG's report drill down into the geographic distribution of complaints, and if so, were there any specific recommendations that were made by state or regional offices? And if not, is that something that will be possible for the Department to research and issue a report on? I think we might create a bright light on the attitudinal obstacles to fairness that Black farmers, particularly, are experiencing at the local level.

Ms. FONG. That is a very interesting question. I don't know if in the sample of cases that we looked at in our audit if we have geographical data on the distribution. I think we could certainly take a look at that and get back to you and your staff on that to see if we have data by state or region. And I think you also raised a very interesting question looking forward as we plan our future work, whether there is any way to address that question if the data exists. So, we will think about that and get back to your staff on that.

When conducting our audit, the objective was to assess OASCR's oversight of the civil rights complaint process. Specifically, we evaluated OASCR's controls to ensure that program complaints were processed in accordance with applicable regulations, policies, and procedures and resolved in a timely and efficient manner. Additionally, we followed up on prior audit recommendations related to the program complaint process. To address our objectives, we non-statistically selected a total of 20 correspondences and 28 complaints to review based on: (1) correspondence and complainant category types and (2) the percentage the category type represented in the universe. Since the geographic location was not part of our sampling decision, we did not make a determination of the geographic distribution of complaints for the entire universe. Likewise, we did not provide any specific recommendations to state or regional offices. However, the states involved included: Alabama, Arizona, California, Georgia, Hawaii, Illinois, Minnesota, New Jersey, New York, North Carolina, Oklahoma, Oregon, South Carolina, Tennessee, Texas, Washington, and West Virginia.

Insert 4

Mr. SABLAN. . . .

Inspector General Fong, I will eventually reach out to your office for an issue with operations in my district in the Northern Mariana Islands, and it is sometimes a difficult relationship with the region office in Hawaii, but for today, in your report on the USDA Office of the Assistant Secretary for Civil Rights, OASCR, would you confirm whether civil rights complaints from the U.S. Territories were examined?

Ms. FONG. I do not know the answer to that, whether we had any of those complaints in our sample. If I had to say, I would say that USDA's jurisdiction would—OASCR's jurisdiction would extend to any USDA programs, wherever they are offered so that the jurisdiction and the authority is there, but I don't know if we looked at any complaints specifically from your district.

Mr. SABLAN. Okay, and how do we get your office to look at complaints, if there are any out there that have not been looked at? We are just so isolated, so remote, and we get looked over so many times.

Ms. FONG. We would be happy to reach out to your staff and discuss the most effective way to do that.

Mr. SABLAN. Okay, thank you.

Ms. FONG. And if you have anything else to offer, Gil, please comment.

Mr. HARDEN. Yes, I was just going to offer that we can first take a look at the 28 complaints that are in our sample just to confirm where they are and if there are any complaints from the Northern Mariana Islands, and also reach out and have a discussion about concerns with complaints in that area.

Our Office of Audit confirmed that none of the 28 complaints in our sample were from either the Northern Mariana Islands or Guam.

Insert 5

Mr. SABLAN. . . .

And so, Inspector General, in your testimony, you state that the OASCR does not evaluate and process all complaints for USDA, and it relies on the assistance of two organizations, FNS and HUD, these two organizations completed 59 percent of USDA's civil rights complaints during the period that your OIG evaluated and processed complaints more quickly than OASCR, more than 600 days and more than 200 days on average respectively in Fiscal Year 2019, as compared to 799 days on average for all complaints. Why do you believe that FNS and HUD processed complaints more quickly than OASCR?

And are there lessons from the processes that could be applied to OASCR's process itself?

Ms. FONG. Well, I think you make a very interesting point, that the complaints handled by FNS and HUD were handled in a more timely manner than some of the others. I think what we would be concerned about is that none of those timeframes really comport with the timeframes that the agency was holding itself to, and were much too lengthy. But Gil may have some further insight on that.

Mr. HARDEN. I agree, it is a very interesting question that I would have to go back and talk to the team and see if we have any information that would inform discussion in that area, and if we do, we can get back to the Congressman, either way, whether we do or we don't.

Comparing FNS and HUD processing methods to OASCR's was not a part of the objectives of the audit. Our objective was to assess OASCR's oversight of the civil rights complaint process. Specifically, we evaluated OASCR's controls to ensure that program complaints were processed in accordance with applicable regulations, policies, and procedures and resolved in a timely and efficient manner. Additionally, we followed up on prior audit recommendations related to the program complaint process.

SUBMITTED QUESTION

Response from Hon. Phyllis K. Fong, Inspector General, U.S. Department of Agriculture, Office of Inspector General

Question Submitted by Hon. Jahana Hayes, a Representative in Congress from Connecticut

Question. In March 2018, OIG submitted a comment in response to USDA's Request for Information outlining the Department's proposed realignment of the Office of the Assistant Secretary for Civil Rights (FR Doc. 2018-05051), which indicated that OIG planned to consider looking at the effectiveness of this realignment as part of our future audit planning process.

Has OIG determined if such a review is appropriate? If so, please share the timeline for the review. If not, please share OIG's reasoning for foregoing a review of the 2018 realignment.

Answer. At this point, we have not specifically assessed USDA's 2018 reorganization of the Office of the Assistant Secretary for Civil Rights (OASCR). However, the findings in our recent 2021 audit, reflect that OASCR's operations, during our audit scope period and after the reorganization, were not effective in terms of processing program complaints timely. As we start our next engagement in OASCR to assess the Equal Employment Opportunity Complaint Process, we will assess, as appropriate, the impact the 2018 reorganization had over OASCR's ability to process EEO

complaints efficiently and timely. We are scheduled to start this assignment in Fiscal Year 2022.

