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United States General Accounting Office
Washington, DC 20548

April 12, 2001

The Honorable Larry Combest
Chairman, Committee on Agriculture
House of Representatives

Subject: U.S. Department of Agriculture: Resolution of Discrimination
Complaints Involving Farm Credit and Payment Programs

Dear Mr. Chairman:

Discrimination complaints by minority farmers—including African-Americans, Hispanics, and American Indians—who were denied benefits under the U.S. Department of Agriculture's (USDA) farm assistance programs¹ have been a long-standing issue. Compounding this concern has been USDA's inability to address discrimination complaints through its administrative processes in a timely manner. These issues came to a head in 1997 when a group of African-American farmers consolidated their claims of racial discrimination in farm lending and benefit programs into one class action suit against USDA—*Pigford v. Glickman*. On April 14, 1999, a federal District Court approved a consent decree between the parties for settling the suit that included a framework for resolving the individual claims. USDA continues to operate its internal administrative process for resolving discrimination complaints that are outside the class action settlement.

Concerned about certain aspects of the class action settlement and about USDA's administrative process for resolving program-related discrimination complaints, you asked us to examine (1) the status of claims under the class action settlement and (2) the results of the Department's efforts to resolve discrimination complaints by minority farmers through its administrative processes.² As requested, in addressing the second objective, we focused on minority farmers' discrimination complaints involving USDA's farm credit and payment programs, which are operated by USDA's

¹A program complaint might allege, for example, that a USDA official discriminated against a minority farmer on the basis of race by failing to process a loan application.

²There have also been long-standing concerns about USDA's treatment of minority employees. As requested, however, this report focuses on program-related discrimination complaints and not on employees' discrimination complaints. In *U.S. Department of Agriculture: Problems Continue to Hinder the Timely Processing of Discrimination Complaints* (GAO/RCED-99-38, Jan. 29, 1999), we reported on the problems in processing discrimination complaints by both program participants and employees.

Farm Service Agency (FSA). This report summarizes the information we provided during a March 2, 2001, briefing of the Committee's staff.

In summary, we found the following:

With regard to the class action settlement, the consent decree approved in April 1999 provides for various parties outside the federal government to make decisions on the individual claims on the basis of information submitted by the claimants and USDA. Although USDA participates in the process, it does not make decisions on the individual claims. As of January 17, 2001, more than 25,000 people had filed claims under the consent decree; of these, more than 10,300 received settlement payments totaling approximately \$520 million. Many claims are still being processed, which will likely result in substantially more payments to resolve this class action. At the same time, however, more than 3,600 claimants (about 15 percent of those who filed claims) were rejected as not being eligible class members, and more than 7,900 who met the class eligibility criteria were found not to be entitled to a payment. As provided in the consent decree, many of these people appealed these decisions to a court-appointed party. Furthermore, the court extended the deadline for filing a claim, and more than 57,000 individuals have submitted written requests to file late claims. While most of the costs of settling the class action are paid from a fund maintained by the Department of the Treasury for paying judgments against the federal government, some are made from USDA's funding accounts, including FSA's salaries and expense account.

The resolution of discrimination complaints through USDA's administrative process differs significantly from the resolution of the class action. In particular, for cases handled under USDA's administrative process, USDA makes decisions on the discrimination complaints. Its Office of Civil Rights (OCR) investigates allegations of discrimination, decides if there is evidence of discrimination, and negotiates settlements with complainants when it finds that discrimination has occurred. USDA's Office of the General Counsel reviews the cases in which OCR found evidence of discrimination to determine the legal propriety of the finding and of the proposed award. Finally, FSA implements settlement agreements in which discrimination was found to have occurred in the programs that the agency operates. From fiscal year 1999 through January 31, 2001, FSA made settlement payments to 28 complainants that totaled \$3.2 million; 25 of these payments were made in fiscal year 1999. The payments in settling these complaints were made from FSA's farm loan program accounts. In addition, 11 of these 28 complainants received debt relief on existing farm loans totaling \$2.6 million.

Process for Settling and Status of Discrimination Cases Under the Class Action Consent Decree

Process Established Under the Consent Decree

The following material summarizes four key aspects of the class action consent decree, which was approved by the U.S. District Court for the District of Columbia on

April 14, 1999,³ as well as the status of the claims filed and payments made under the decree as of January 17, 2001.

1. *Class eligibility criteria:* In summary, to be eligible for the class, a farmer must be African-American and have

farmed or attempted to farm between January 1, 1981, and December 31, 1996;

applied to USDA during that time period for a farm loan (credit) or a farm payment (noncredit benefit) but did not receive what he or she had requested; and

filed a racial discrimination complaint by July 1, 1997, regarding USDA's consideration of the application.

Also, the consent decree provided claimants the opportunity to opt out of the class action resolution procedure and continue their individual cases through administrative or judicial avenues. Claimants had until August 12, 1999, to exercise this option.

2. *Court-appointed parties in the decision process:* Four parties—a facilitator, adjudicator, arbitrator, and monitor—are involved in the decision-making process under the decree on the basis of information that they received from the claimants and USDA. The first three parties were designated by the court in the consent decree; the court appointed the monitor in January 2000. While USDA provides information that it has on the claimants, it does not make decisions on the individual claims. The following summarizes the functions of the four parties.

Facilitator—the Poorman-Douglas Corporation—processes claims and decides if a person is eligible to be in the class.

Adjudicator—JAMS-Endispute, Inc., with some assistance from the Poorman-Douglas Corporation—decides if claimants who select the resolution of their claims under one procedure, referred to as Track A and described below, are entitled to receive a payment.

Arbitrator—Michael K. Lewis of ADR Associates—decides if claimants who select the resolution of their claims under an alternative procedure, referred to as Track B and described below, are entitled to receive a payment and, if so, the award amount.

Monitor—Randi Ilyse Roth, Executive Director of the Farmers Legal Action Group, Inc.—reviews appeals of eligibility or award decisions. The monitor can direct the other parties to reexamine a claim when the monitor determines that a significant error occurred in the decision. The monitor is also to report on the implementation of the decree to, among others, the court and USDA.

³A complete copy of the court-approved consent decree and the court's opinion paper can be found at <http://www.dcd.uscourts.gov/district-court-1999.html>.

To support that a discrimination complaint was filed, the decree states that the claimant must provide the facilitator with one of the following: (1) a copy of either the complaint filed with USDA or a USDA document that references the complaint; (2) a copy of correspondence to a Member of Congress, the White House, or some other government official stating that the claimant had been discriminated against; (3) a declaration by a nonfamily member stating that he or she has first-hand knowledge that the claimant filed a complaint with USDA and describing the manner in which the complaint was filed; or (4) a declaration by a nonfamily member stating that he or she has first-hand knowledge that a USDA official told the claimant that the claimant's oral discrimination complaint would be investigated.

3. *Resolution procedures:* Claimants who meet class eligibility requirements select one of the following two tracks for processing their claims.

Track A—Under this procedure, an adjudicator reviews the claim and information submitted by USDA regarding the claim. Specifically, to support a claim of discrimination involving farm credit, the person must show the adjudicator that (1) he or she owned, leased, or attempted to own or lease farmland; (2) he or she applied for a farm loan or loan servicing during the 1981 through 1996 period; (3) his or her loan or servicing application was not approved as requested and such treatment was less favorable than the treatment that specifically identified, similarly situated, white farmers received; and (4) USDA's treatment of the application led to economic damage to the person. To support a claim of discrimination involving a farm payment program, the person must show the adjudicator that (1) he or she applied for the program payment during the 1981 through 1996 period and (2) his or her application was not approved as requested and such treatment was different from the treatment received by specifically identified, similarly situated, white farmers.

Under this track, claimants who provide substantial evidence of discrimination involving farm loans are entitled to receive, among other things, a payment of \$50,000. Claimants who provide substantial evidence of discrimination involving farm payments are entitled to receive a payment of \$3,000. (The \$3,000 payment amount was approved by court order dated Feb. 7, 2001.) The consent decree defines "substantial evidence" as relevant evidence that a reasonable person might accept as adequate to support a conclusion after considering other evidence that detracts from the conclusion.

Track B—This alternative procedure offers claimants who believe they have suffered extreme damages a more detailed review through an arbitration hearing. This track has a higher standard of proof than the evidence required in Track A and provides for a tailored award based on the individual's proof of damages. Specifically, a preponderance of evidence is required, which the consent decree defines as relevant evidence necessary to prove that something is more likely true than not true.

4. *Time frame for entering the class:* The consent decree states that a claimant must have submitted a completed claim to the facilitator within 180 days of the decree (that is, by Oct. 12, 1999). Should that deadline be missed, a person could ask the

court for permission to file late but must show that his or her untimely submission was due to extraordinary circumstances beyond his or her control.

The court ruled on July 14, 2000, that timely, but defective, claims that were corrected and resubmitted to the facilitator after October 12, 1999, are to be treated as though they had been properly filed. Also, since many people either filed late claims or requested claim forms after the filing deadline, the court delegated to the arbitrator the authority to approve or deny petitions for late filings. The July 14th order also required that late claims had to be submitted to the facilitator by September 15, 2000.

Status of Claims Filed Under the Class Action Consent Decree

As table 1 shows, more than 25,000 people had filed claims with the facilitator under the consent decree as of January 17, 2001; the facilitator accepted 85.5 percent of these claims for processing by the adjudicator or the arbitrator and rejected 14.5 percent on eligibility grounds.

Table 1: Status of Claims Filed Under the Class Action Consent Decree, as of January 17, 2001

Status category	Number of claims
Claims accepted for processing	
Under Track A	21,202
Under Track B	198
Total claims accepted for processing	21,400
Claims rejected for processing (claimant not an eligible class member)	3,636
Total claims filed under the consent decree	25,036

Source: USDA.

On the Track A claims that were accepted for processing, the adjudicator ruled in favor of 12,076 claimants and against 7,919. Through mid-January 2001, as table 2 shows, more than 10,300 claimants who prevailed on Track A farm loan claims received payments, which totaled more than \$517 million. The amount of money to be paid on the remaining Track A claims will likely be substantial, since the adjudicator ruled that 1,529 claimants are eligible for a \$50,000 farm loan award and 204 claimants are eligible for a \$3,000 farm payment award. Also, 1,207 cases are still under consideration by the adjudicator. In addition to receiving payments, 130 claimants have also received debt relief on existing farm loans that totaled \$8.3 million.

Table 2: Status of Claims Accepted for Processing Under Track A, as of January 17, 2001

Status of claims	Number of claimants
Adjudicator's decision	
In favor of claimant	12,076 (57 percent)
Against claimant	7,919 (37 percent)
Total completed decisions	19,995 (94 percent)
Adjudicator's decision not completed	1,207 (6 percent)
Total Track A claimants	21,202 (100 percent)
Track A farm loan claims	
Claimants who received a \$50,000 payment	10,343 ^a
Claimants ruled eligible by the adjudicator to receive a payment	1,529
Total found eligible for a \$50,000 payment	11,872
Track A farm payment claims ^b	
Claimants who received a payment	0
Claimants ruled eligible by the adjudicator to receive a payment	204

^aThe payments to these claimants totaled \$517.2 million.

^bA February 7, 2001, court order provides that the payment on approved Track A farm payment claims is to be \$3,000 per claimant.

Source: USDA.

Also, through mid-January 2001, according to the arbitrator, there had been rulings in favor of seven Track B claimants with award payments totaling \$3.6 million; two other Track B claimants settled their discrimination complaints late in 2000 before an arbitration hearing was held—their award payments totaled about \$150,000.⁴ In addition, the number of remaining Track B claimants has been reduced for several reasons: For example, some switched their claims to Track A; some had their complaints dismissed by the arbitrator; and after going to hearings, some had arbitration rulings against them. According to the arbitrator, in early April 2001, about 100 Track B cases still needed to be resolved.

As stated above, the consent decree authorizes the monitor to review the appeals of eligibility or award decisions and to direct the other court-appointed parties to reexamine a claim when the monitor determines that a significant error has occurred in the decision. Many of the people who the facilitator ruled were not eligible to be admitted to the class or who the adjudicator ruled were not entitled to a payment award have appealed those decisions. According to USDA, more than 5,500 claimants have requested reviews by the monitor. Also, USDA appealed some decisions that were in favor of claimants. Specifically, an attorney in USDA's Office of the General Counsel told us that USDA has almost 500 requests for reviews by the monitor. In commenting on a draft of this report, the USDA attorney told us that the monitor issued four decisions during March 2001—two directing the adjudicator to reexamine decisions and two ruling that the decisions did not need to be reexamined.

⁴The arbitrator told us in early April 2001 that 25 additional Track B cases with award payments totaling about \$3.5 million were resolved through settlement agreements negotiated by the Department of Justice in February 2001.

Furthermore, many late requests to participate in the resolution process still need to be processed. According to USDA, the facilitator has received more than 57,000 late claim petitions, which the arbitrator needs to review to decide if the people will be allowed to file late claims.

Table 3 shows the various funding sources that are used to make payments to the claimants, their counsel, and the other parties involved in this matter.

Table 3: Sources of Funds for Payments Under the Class Action Consent Decree

Party to receive payment	Funding account for payments
Track A claimants with approved farm loan claims	Judgment Fund ^a
Track A claimants with approved farm payment claims	USDA's noncredit program funding account or FSA's salaries and expense (S&E) account if noncredit program account funds are not available
Track B claimants with favorable rulings	Judgment Fund
Class counsel and related attorney's fees	Judgment Fund ^b
Facilitator, adjudicator, arbitrator, and monitor	FSA's S&E account ^c
Other ^d	FSA's S&E account ^d

^aThe Judgment Fund is a Treasury account that is generally available for payment of most court judgments and Department of Justice compromise settlements of actual or imminent lawsuits against the federal government.

^bAccording to Justice officials, a total of \$8 million had been paid through mid-February 2001.

^cA total of about \$17.7 million was obligated in fiscal years 1999 and 2000; FSA estimates that obligations will total more than \$13 million in fiscal year 2001.

^dTwo contractors are providing administrative assistance with the class settlement. Also, FSA is reimbursing Justice and USDA's Office of the General Counsel for certain class-related expenses. FSA's obligations totaled \$4.5 million in fiscal years 1999 and 2000; FSA estimates that obligations will total \$2.5 million in fiscal year 2001.

Source: Information obtained from USDA and Justice.

Information on Claimants Who Opted Out of the Class Settlement

The consent decree allowed claimants who met the class eligibility criteria to opt out of the resolution procedure and to continue their cases through administrative or judicial avenues. According to USDA, more than 200 claimants have exercised this option. Two of these cases have been resolved through settlement agreements negotiated by Justice; one through an arbitration ruling; and five through USDA's administrative process. The payment awards for these eight claimants totaled about \$3.1 million. The payments in the cases settled by Justice came from the Judgment Fund. The payments in the arbitration case and in the cases settled by USDA were from FSA's farm loan program accounts, which, as discussed below, are accounts for paying the costs associated with the agency's loans. In addition, two of these claimants received debt relief totaling slightly over \$350,000.

Settlement of Discrimination Cases Under USDA's Administrative Processes

Unlike the class settlement procedure in which reviews and decisions are made by court-appointed parties, the process for resolving discrimination complaints administratively resides within USDA. Specifically, USDA's Office of Civil Rights investigates allegations of discrimination, decides if the evidence supports the

allegations, and reaches settlement agreements with complainants when discrimination is found to have occurred. USDA's Office of the General Counsel reviews discrimination cases and agreements to ensure the legal propriety of the finding and the proposed award. FSA implements the agreements by making compensatory damage payments to the complainants and, if provided for, by writing off existing loans and paying complainants' legal expenses.

In making payments, FSA uses funds in its farm loan program accounts. FSA uses these accounts on the basis of guidance that USDA received from the Office of Management and Budget (OMB) in the early part of fiscal year 1998. Specifically, if the complaint involves fiscal year 1991 or earlier loans, funds in the liquidating account (a funding account to pay costs associated with such loans) are used to make the payment; if the complaint involves fiscal year 1992 or later loans, funds in the financing account (a funding account to pay the costs of post-fiscal year 1991 loans) are used. However, GAO issued a legal opinion in October 1999 concluding that the farm credit program's financing and liquidating accounts, which are the subsidy accounts for the farm loans, are not available for paying compensatory damages in settling discrimination claims against USDA.⁵ Notwithstanding GAO's position, FSA continues to follow OMB's guidance and use these accounts for making settlement payments.

From the start of fiscal year 1999 through January 31, 2001, FSA made payments totaling \$3.2 million on 28 administratively settled discrimination complaints.

Settlement payments totaling \$2.8 million were made to 25 complainants in fiscal year 1999. Payments totaling about \$400,000 were made to two complainants in fiscal year 2000 and to one complainant in the first 4 months of fiscal year 2001.

The payments for administratively settled complaints were made from FSA's subsidy accounts that support the farm loan programs. Of the \$3.2 million, 28 percent (\$900,000) was paid from the financing account and 72 percent (\$2.3 million) from the liquidating account.

Payments totaling approximately \$110,000 were made to attorneys for 13 of the 28 complainants. These payments were also made from the loan subsidy accounts—about \$40,000 from the financing account and \$70,000 from the liquidating account.

Eleven of the 28 complainants received debt relief on existing farm loans totaling \$2.6 million.

The bases of the discrimination complaints by these 28 complainants varied considerably. Some complained that they had been discriminated against because of their race or gender; others cited more than one reason for their complaint. For example, six African-Americans and two Native Americans filed racial discrimination complaints; one other Native American complained of race and age discrimination; seven females filed complaints of sexual discrimination; and six other females

⁵See GAO opinion letter B-280396.2 (Oct. 28, 1999).

complained of being discriminated against because of their gender and other factors, such as marital status (for example, divorced or widowed) or age.

USDA spent considerable time resolving the cases in which OCR found that discrimination had occurred. On average, 3.5 years elapsed from the date of the discrimination complaint to the payment date for the 28 complainants who received payments. The quickest payment was made in 20 months; the slowest took over 7 years.

Agency Comments

We provided USDA with a draft of this report for review and comment. We met with USDA officials, including OCR's acting Director and FSA's Deputy Administrator for Farm Loan Programs. The Department's officials agreed with the material contained in the report. They also provided suggestions for clarifying the report, which we incorporated as appropriate.

Furthermore, we provided officials in the Civil Division of the Department of Justice with a draft of this report for review. Justice's officials suggested various technical corrections and clarifications, which we made as appropriate.

Scope and Methodology

In conducting this review, we interviewed, among others, OCR's former Director and Deputy Director, who is currently the acting Director; FSA's farm credit program officials, including the Director of the Loan Making Division and the Director and Deputy Director of the Loan Servicing and Property Management Division; an attorney in USDA's Office of the General Counsel; and officials in Justice's Civil Division who are directly involved in the class action settlement. Also, to compile information on the resolution of claims under the class action settlement, we reviewed, among other things, the court-approved April 1999 consent decree and other related documents, including the court's opinion paper on the decree and the orders and stipulations that the court has issued since then. We reviewed USDA's reports on the status of settlements, including payments; the most recent report at the time of our review was as of January 17, 2001. We obtained from Treasury's Financial Management Service selected information on payments from the Judgment Fund and obtained from FSA's Budget Division information on payments to the various outside parties that are involved in the class action settlement. The payment information obtained included the funding accounts used for paying the claimants, their attorneys, and the outside parties. We also obtained from the offices of the arbitrator information on complaint cases settled through arbitration and settled before an arbitration hearing was held.

In addition, to compile information on USDA's efforts to resolve discrimination complaints by minority farmers through its administrative process, we reviewed, among other things, OCR's guidance manual for reviewing and settling complaints and its case files for most of the complaints settled administratively from fiscal year 1999 through the first 4 months of 2001. We obtained from FSA's Financial Management Division information on, among other things, payments and debt relief

for each complainant whose case was resolved during this period by OCR. The payment information obtained included the funding accounts used for the settlements.

We performed our work from December 2000 through March 2001 in accordance with generally accepted government auditing standards. We did not verify the accuracy of the information contained in USDA's status reports or in the various financial reports that we were provided.

As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this letter until 30 days after the date of this letter. At that time, we will send copies to the appropriate House and Senate committees; interested Members of Congress; the Honorable Ann M. Veneman, Secretary of Agriculture; the Honorable John Ashcroft, Attorney General; the Honorable Mitchell E. Daniels, Jr., Director, Office of Management and Budget; and other interested parties. The letter will also be available on GAO's homepage at <http://www.gao.gov>.

Please call me at (202) 512-3841 if you or your staff have any questions about this letter. Key contributors to this letter are listed in enclosure I.

Sincerely yours,



Lawrence J. Dyckman
Director, Natural Resources and
Environment

Enclosure

Enclosure

GAO Contacts and Staff Acknowledgments

GAO Contacts

Lawrence J. Dyckman, (202) 512-3841
Jerilynn B. Hoy, (202) 512-9837

Staff Acknowledgments

In addition to those named above, Jacqueline A. Cook, Robert G. Crystal, Richard B. Shargots, and Patrick J. Sweeney made key contributions to this letter.

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