

United States Senate

WASHINGTON, DC 20510

May 05, 2022

The Honorable Tom Vilsack
Secretary of Agriculture
U.S. Department of Agriculture
1400 Independence Avenue, SW
Washington, D.C. 20250

Dear Secretary Vilsack,

We write to express concerns regarding U.S. Department of Agriculture Inspector General Phyllis K. Fong's findings that the backlog of processing civil complaints continues to grow at the Office of Assistant Secretary for Civil Rights (OASCR).¹ Specifically, the Inspector General's September 2021 audit found that a sample of 28 complaints out of 911 cases closed between Oct. 1, 2016, and June 30, 2019, resulted in an average processing time of 630 days.² Overall, more than 85 percent of cases in the sample took longer than 180-days to process.³ Further, the audit found that 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.⁴ Further, the 2021 audit found that "OASCR missed an opportunity to track and measure USDA's progress in achieving the Department's civil rights goals and objectives."⁵

This is not a new problem. Since 2016, the Assistant Secretary for Civil Rights position at USDA has remained vacant. Further, over more than two decades and multiple Republican and Democratic presidential administrations, the USDA is unable to effectively process civil rights complaints in a timely manner. In testimony before the House Agriculture Subcommittee on Nutrition, Oversight and Department Operations, Ms. Fong said that the Inspector General's most recent audit from 2021 found comparable shortcomings previously identified in a 2012 audit and a 2008 report from the Government Accountability Office (GAO).⁶ The 2012 audit found that the office "needed to strengthen its procedures for settlement agreements so that it could support its decisions, process cases timely, and report them accurately."⁷

In 2008, GAO found that OASCR failed to process civil rights complaints in a timely manner, which in some cases negatively affected the producers involved.⁸ There is a two-year limit to process certain claims; and in the cases when USDA's processing time extends beyond the two-

¹ <https://www.usda.gov/oig/audit-reports/usda-oversight-civil-rights-complaints>

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ CRS Report

year time limit, USDA may be unable to compensate farmers who have experienced discrimination. In one particularly troubling case, Native American farmers of the Fort Berthold Reservation in North Dakota, USDA failed to process the complaint for over 18 years and some of the farmers in that case had died without receiving a decision.⁹

In June 2007, OASCR reported to a congressional subcommittee that it had a backlog of 1,275 civil rights complaints to be processed at the end of FY2005. One month later, OASCR reported that in fact it had 404 cases to be processed by the end of FY 2005. GAO stated in its audit report, “The lower numbers reported to the public were not qualified and provided a more favorable impression than the data reported to the subcommittee.”¹⁰ GAO reports dating back at least as far as the late 1990s found that the “USDA’s efforts to process discrimination complaints are falling short of its goals for closing its complaint backlog”.¹¹

Like many U.S. institutions, the USDA has a history of discrimination against minorities.¹² And as you noted in your March 2021 testimony to Congress “[u]nfortunately, the racism that resulted in the precipitous decline of Black Farmers over the last century has also been evidenced among other groups of socially disadvantaged farmers.” In 2002, in an effort to remedy USDA’s history of discrimination, Congress established OASCR, charging the office with the responsibility 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.¹³ However, when faced with lengthy wait times for resolutions of complaints, individuals may be discouraged from coming forward. This in turn “diminishes public confidence that the Department can appropriately and expeditiously resolve complaints.”¹⁴

In order to better understand the scope of the problem at OASCR and what the agency is doing to remedy processing delays, we request responses to the following questions by May 19, 2022:

- 1) As noted in Ms. Fong’s March 2022 testimony to Congress, “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.”
 - a. Why is the Department processing complaints using a 540-day pilot timeline rather than a 180-day timeline?
 - b. Will the Department commit to processing complaints within a 180-day timeline?
 - i. If not, will the Department commit to updating Departmental guidance regarding timeframes for processing program complaints and publish the updated Departmental guidance on OASCR’s public website?

⁹ *Id.*

¹⁰ CRS Report

¹¹ <https://www.gao.gov/assets/rced-99-38.pdf>

¹² https://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/nrcs142p2_011689.pdf;

<https://www.usda.gov/media/press-releases/2021/03/25/opening-statement-thomas-j-vilsack-house-committee-agriculture>

¹³ <https://www.usda.gov/oig/audit-reports/usda-oversight-civil-rights-complaints>

¹⁴ *Id.*

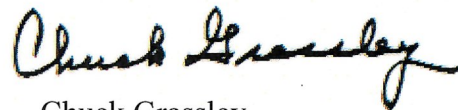
- 2) The September 2021 audit found that “although OASCR developed its Strategic Plan FY 2016–2020, [...] it did not use the plan to measure or assess its progress toward established goals and objectives relating to program complaints because OASCR’s management did not establish specific ways to: (1) 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.”
 - a. Please explain why OASCR’s management failed to implement its Strategic Plan FY 2016-2020.
- 3) According to the September 2021 audit, “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.”
 - a. Please provide details and qualitative and quantitative metrics on the “civil rights/equity goal” and the basis upon which OASCR set the goal.
 - b. How does OASCR plan to regularly review and update its strategic plan?
 - c. What additional resources are needed for OASCR to meet its goals and objectives in any future strategic plan?

Thank you in advance for your work on this important issue.

Sincerely,



Ben Ray Lujan
United States Senator



Chuck Grassley
United States Senator