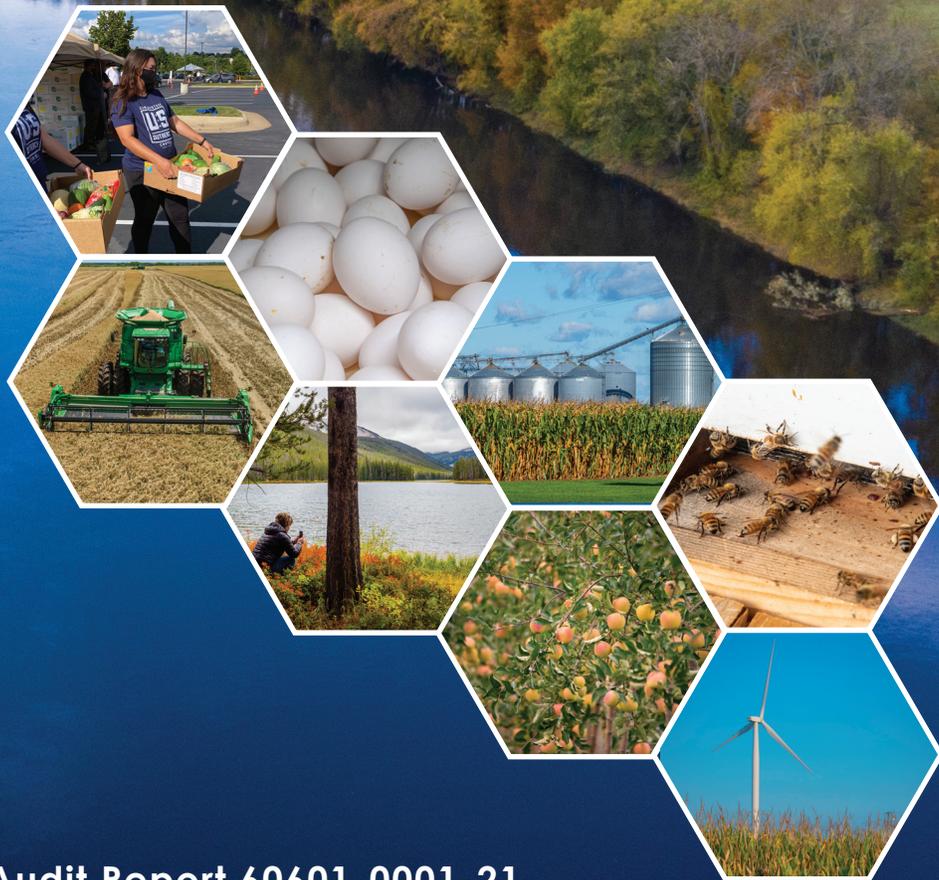


USDA Oversight of Civil Rights Complaints



Audit Report 60601-0001-21

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.



OFFICE OF INSPECTOR GENERAL

United States Department of Agriculture



DATE: September 22, 2021

AUDIT

NUMBER: 60601-0001-21

TO: Monica Rainge
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

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.

¹ Discrimination 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 (C.F.R.), pt. 15. ECOA prohibits creditors from discriminating against applicants with respect to any aspect of a credit transaction.

² Pub. 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.

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

⁴ Federally 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.

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 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

⁵ To 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.

⁶ For 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.

⁷ An 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.

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

⁹ Title 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,

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;

USDA forwards a copy to HUD for determination of jurisdiction and further processing over the FHA-related allegation. HUD is responsible for enforcing FHA.

¹⁰ 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.

- 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
- 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.)

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

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 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.

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).

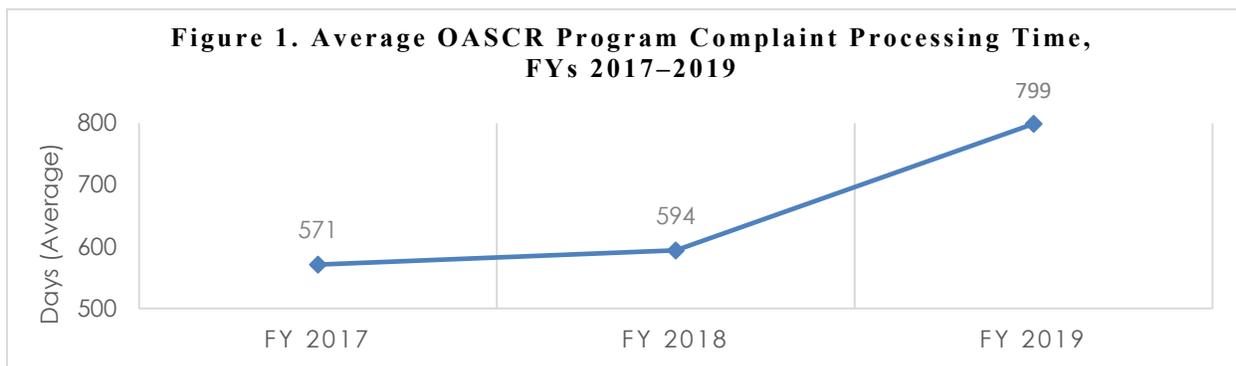
¹⁴ USDA OASCR, *2013 Office of the Assistant Secretary for Civil Rights Policy Memorandum* (Sept. 18, 2013).

¹⁵ Department of Justice 28 C.F.R. § 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).

Of the 24 program complaints that took longer than 180 days to process, 10 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



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

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).

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 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

²¹ Department of Justice 28 C.F.R. § 42.408.

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.

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.

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.

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

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 additional 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 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

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.

²⁷ This 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.

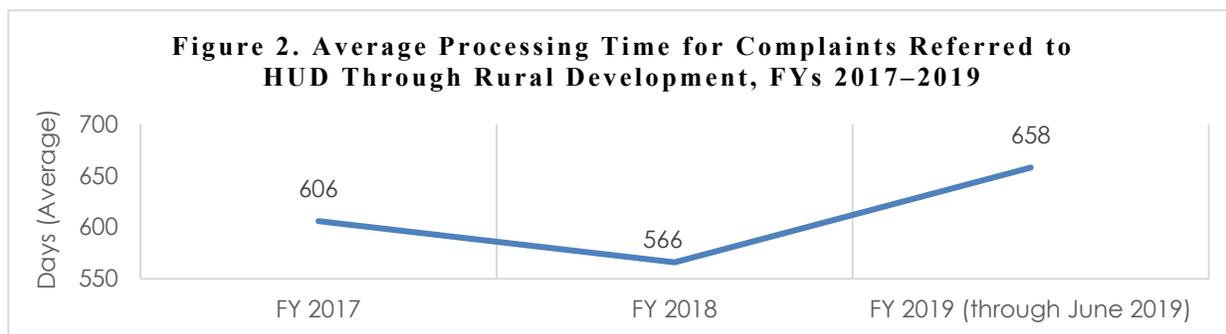
²⁸ Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (42 U.S.C. § 3601–3619). Under the Act, HUD is required to complete its investigation of any alleged discriminatory housing violations within 100 days of the filing of the complaint.

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,



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

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

³¹ OIG 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).

³² 28 C.F.R. § 42.408.

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

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.

³³ According to data from PCMS.

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 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.

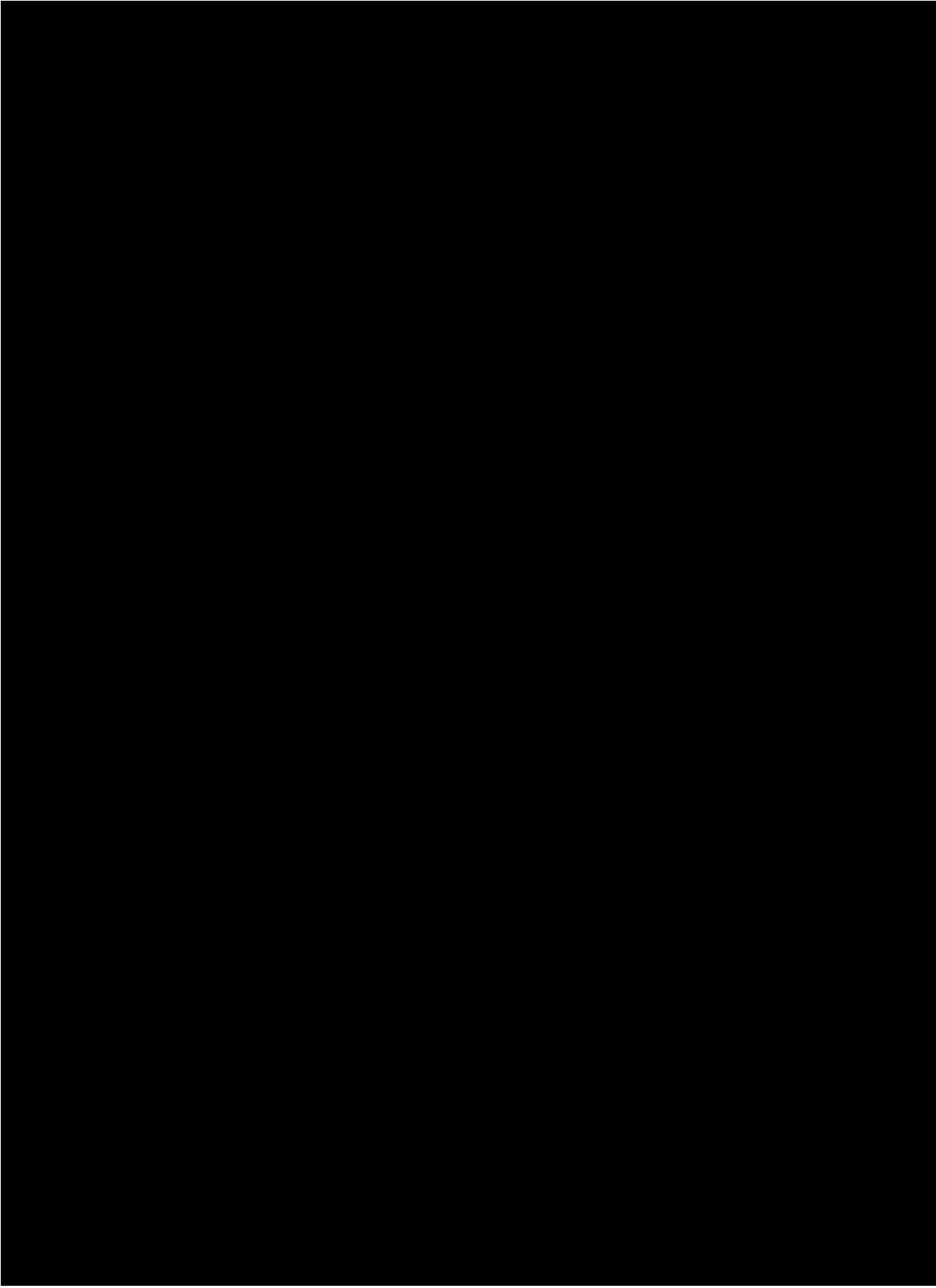
OIG Position

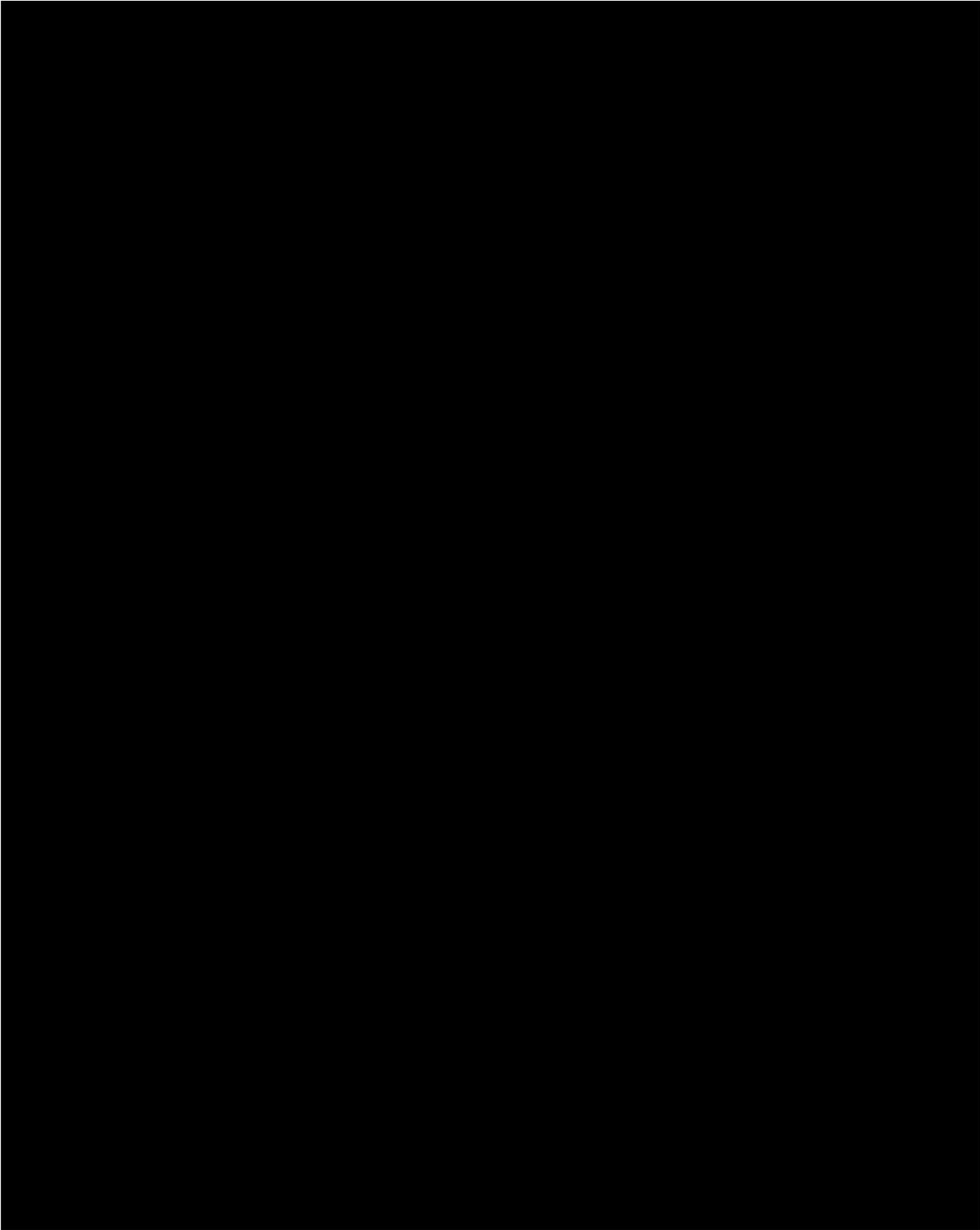
We agree with the actions taken by PCD to monitor and prioritize communication with Rural Development but are unable to accept management decision at this time. As noted in our report, this line of communication and these reports are important oversight tools, but they are still insufficient on their 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.

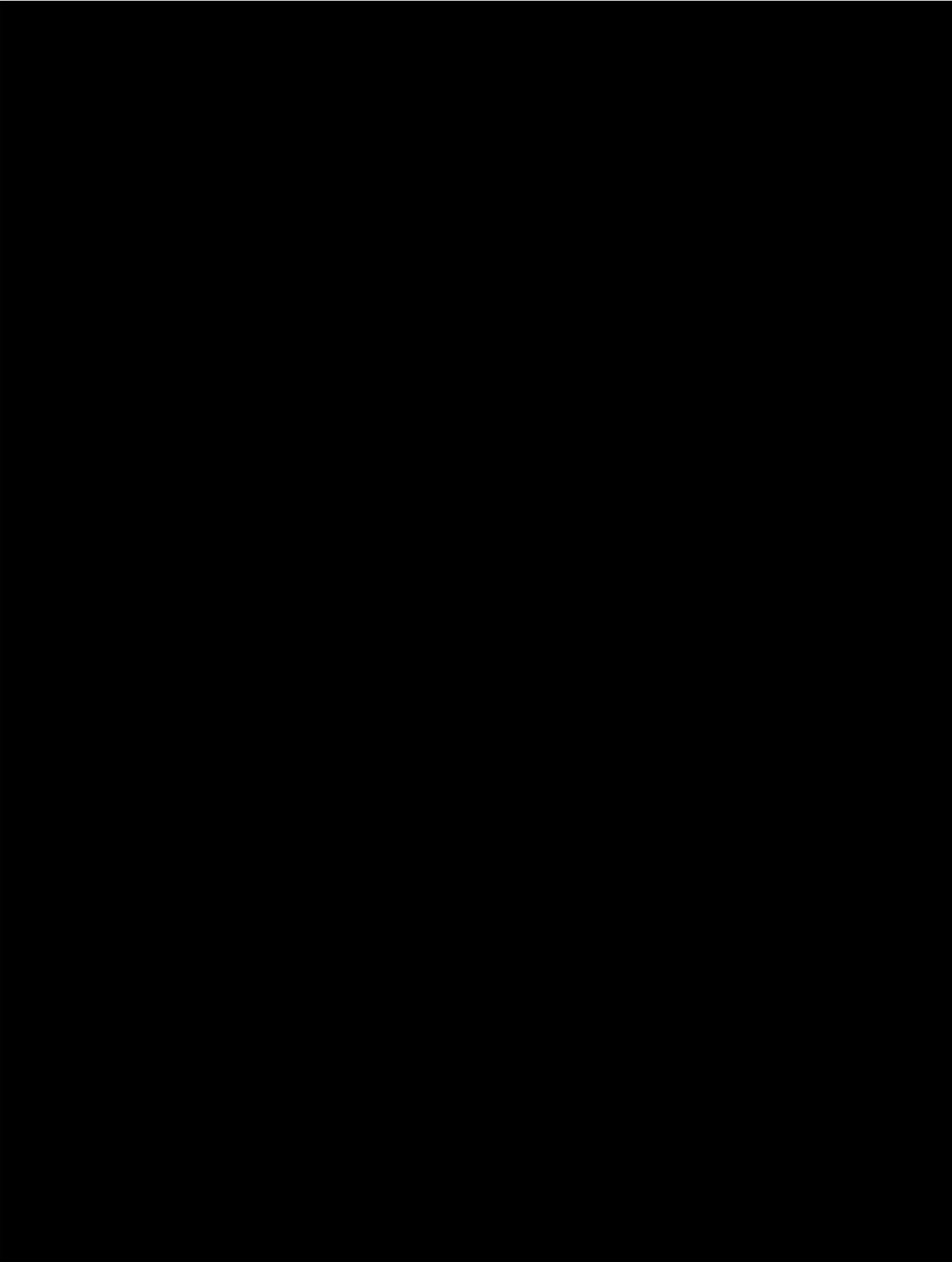
Finding 3:

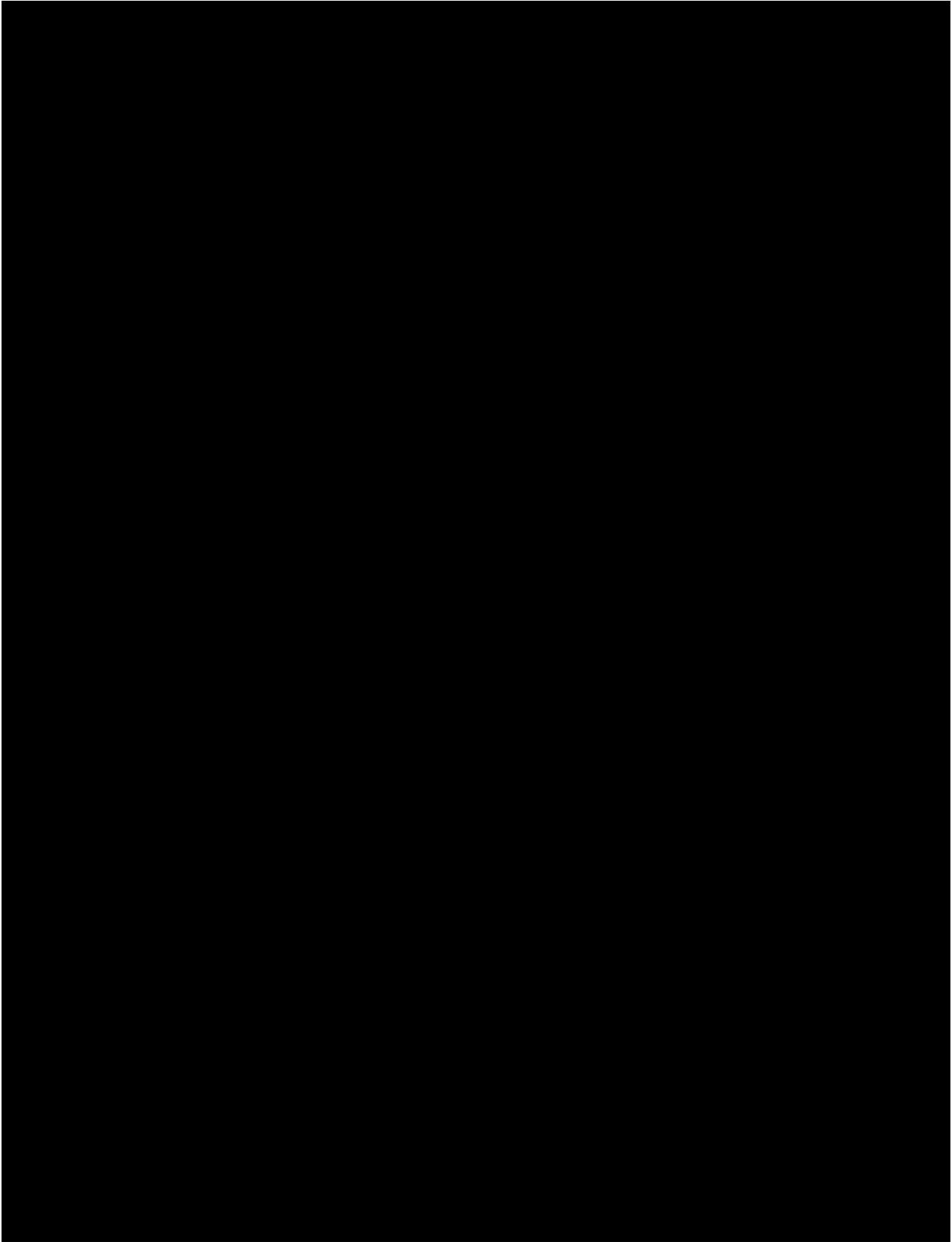
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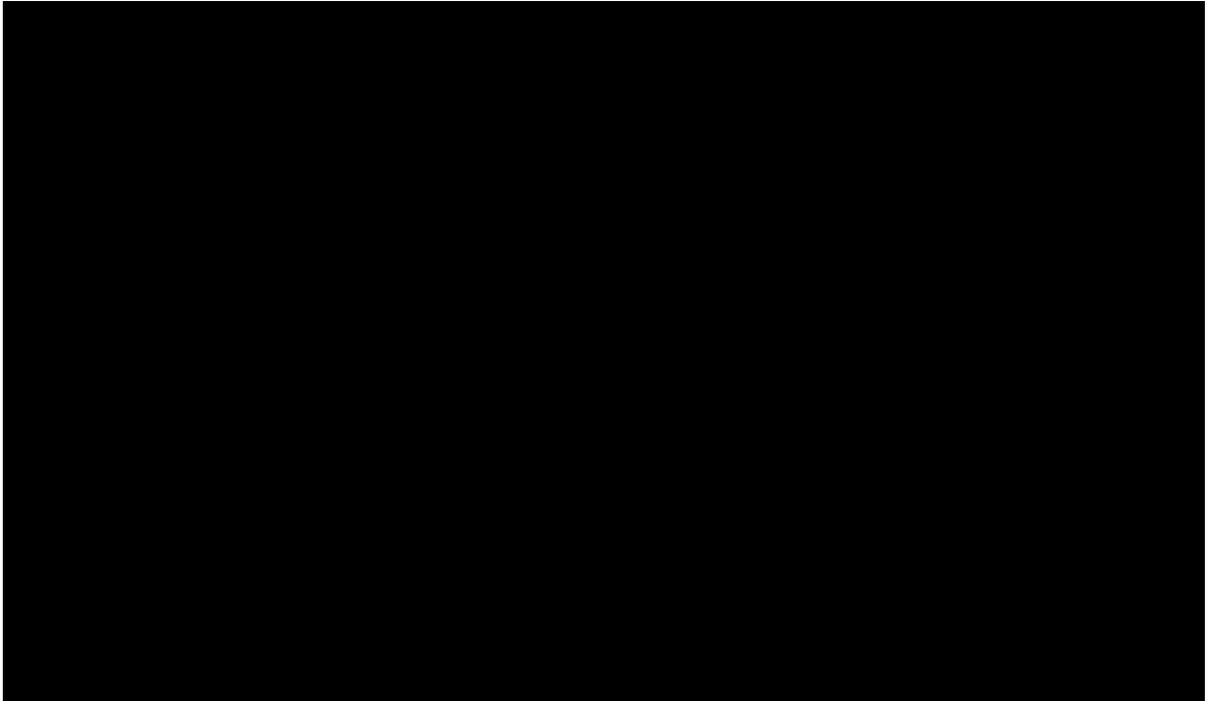
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Finding 4: OASCR Needs to Strengthen Its Procedures to Ensure Complaint Determinations and Closures Are Adequately Supported and Processed

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:

- 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

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 C.F.R. § 2.25(a) and 7 C.F.R. § 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).

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 5 of the 10 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 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

⁵⁵ Of the 28 complaints of discrimination in our sample, 10 resulted in a FAD and 18 were administrative closures.

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 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.

⁶² 7 C.F.R. § 15(d).

⁶³ Ibid.

⁶⁴ Ibid.



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,

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 C.F.R. § 15(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).

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.

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.

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).

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 C.F.R. 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, settlements or findings of discrimination, and other risk factors identified in agency assessments.

Agency Response

It 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}

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

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.

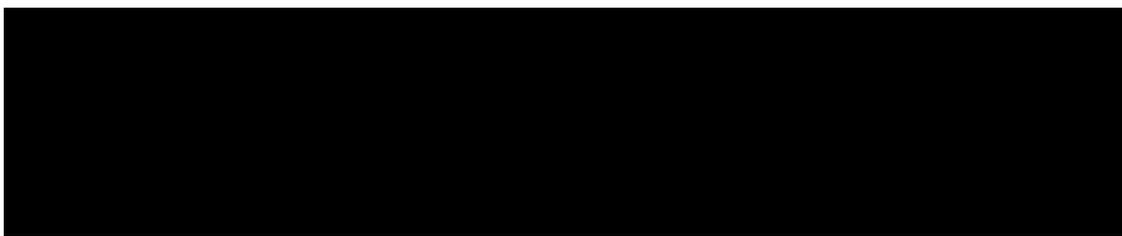
whether it is achieving the desired result. OASCR's *Strategic Plan FY 2016–2020* included three strategic goals, two of which were relevant to our audit:

- 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.



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,

⁷⁶ For 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.

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 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) correspondence 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*.

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.

⁷⁸ The 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-jurisdictional 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.

⁷⁹ For 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).

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

⁸¹ GAO, *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.

- 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.

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.

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

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

Abbreviations

C.F.R.	Code of Federal Regulations
CY	calendar year
DM	Departmental Manual
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.
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

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.

			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 publically 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	No	OASCR did not develop a technology solution for monitoring and tracking settlement agreements, compliance reviews, EEOC orders, orders in-

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.

	in-agency issued FADs with findings of discrimination, and number of employees who received agency/office civil rights training.		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.
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 one 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	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.

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.

**OASCR's
Response to Audit Report**



**United States
Department of
Agriculture**

Office of the
Assistant Secretary
for Civil Rights

1400 Independence
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Washington, DC
20250

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.



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, 10 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.

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 cancelled 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- FY2020.

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

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 FY2022.

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 inquiries and obtain affidavits from external

¹ Pg. 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.

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.

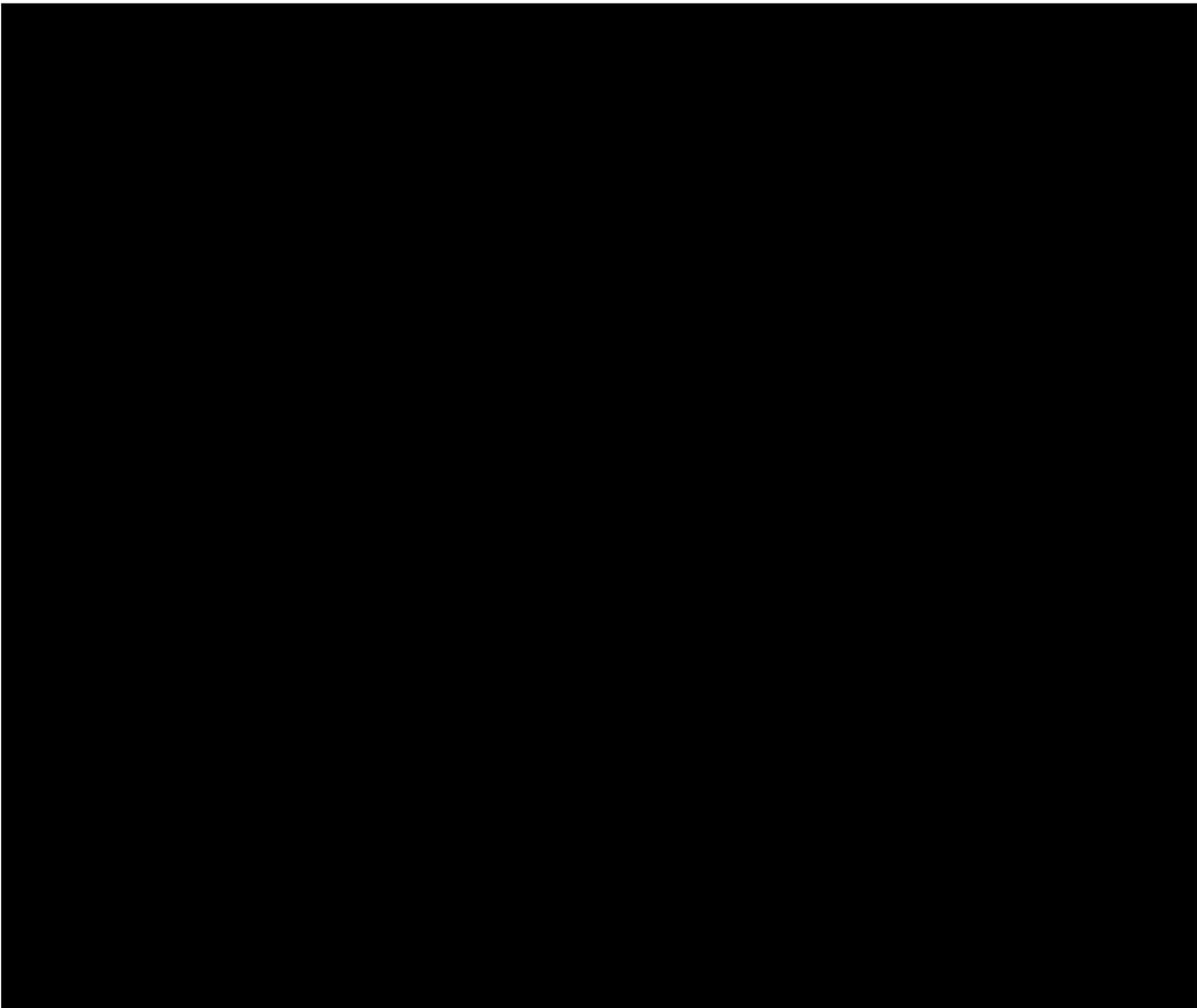
OASCR Response to Recommendation 8:

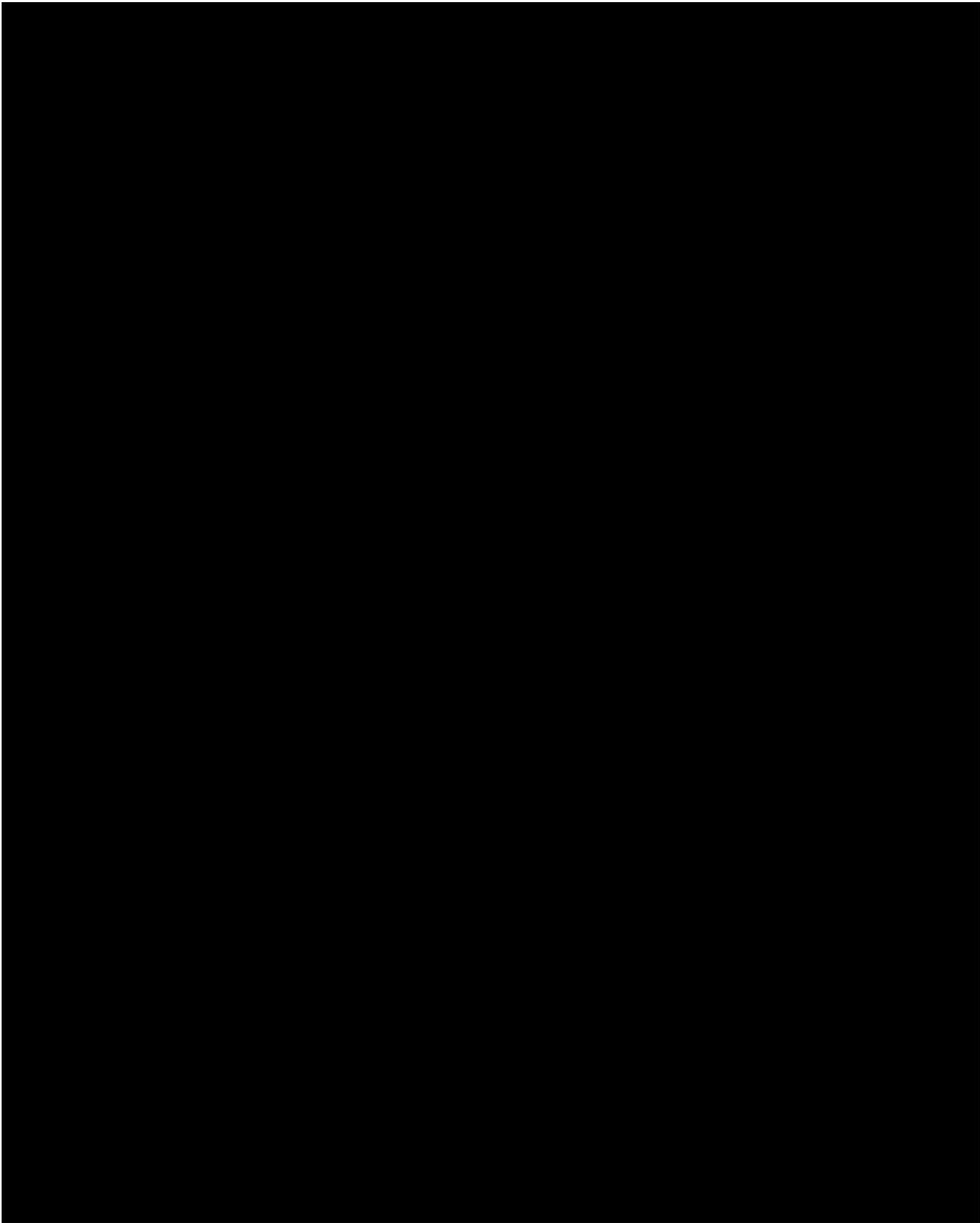
During the timeframe reviewed by OIG, OASCR's Program Complaints Division (PCD) monitored HUD referred complaints with limited accountability in communications with Rural Development (RD). In FY 2019, PCD shifted priorities and established a quarterly review with RD of all complaints maintained with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

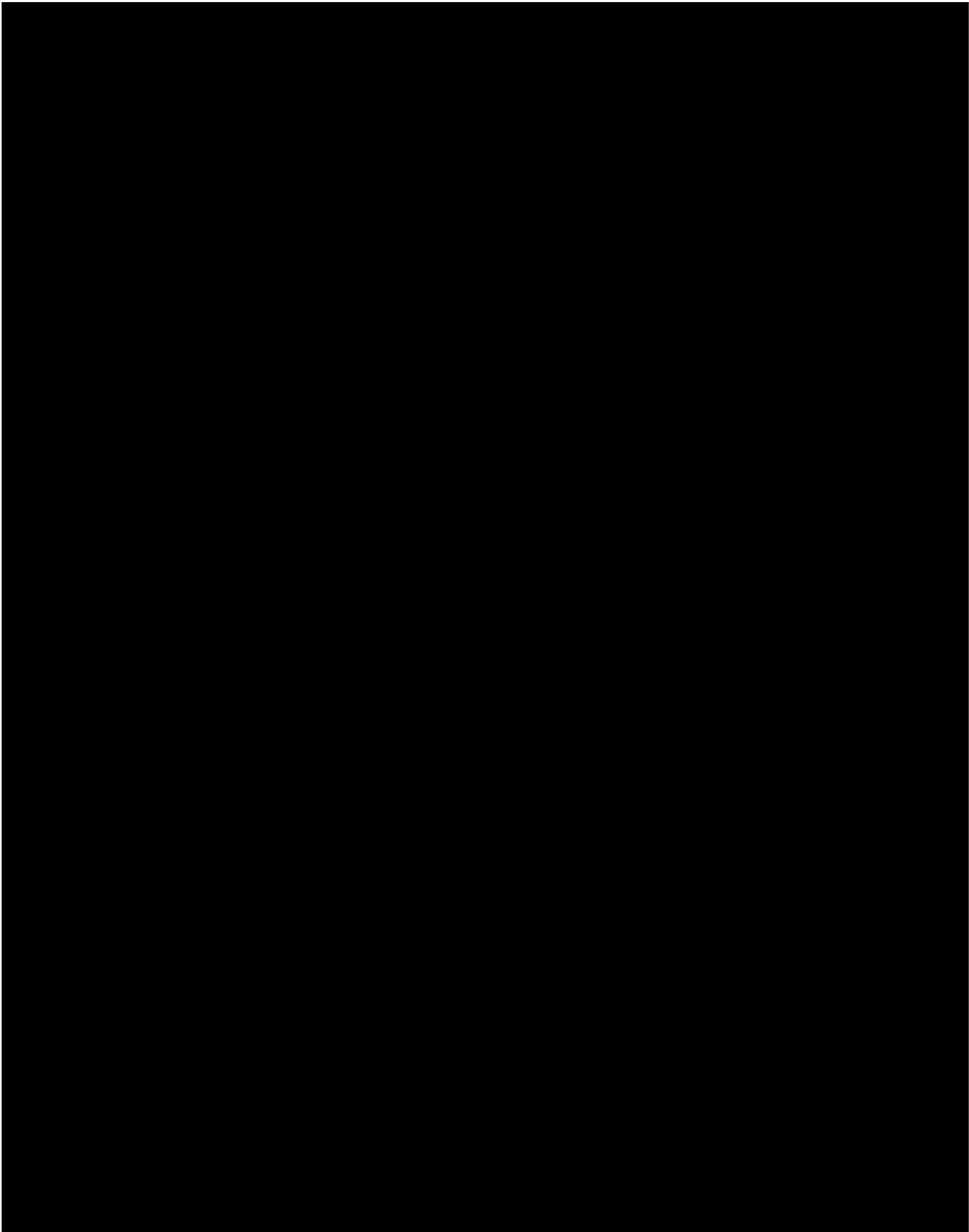
complaints from PCMS to the RD Civil Rights Director who in turn updates the status of HUD complaints.

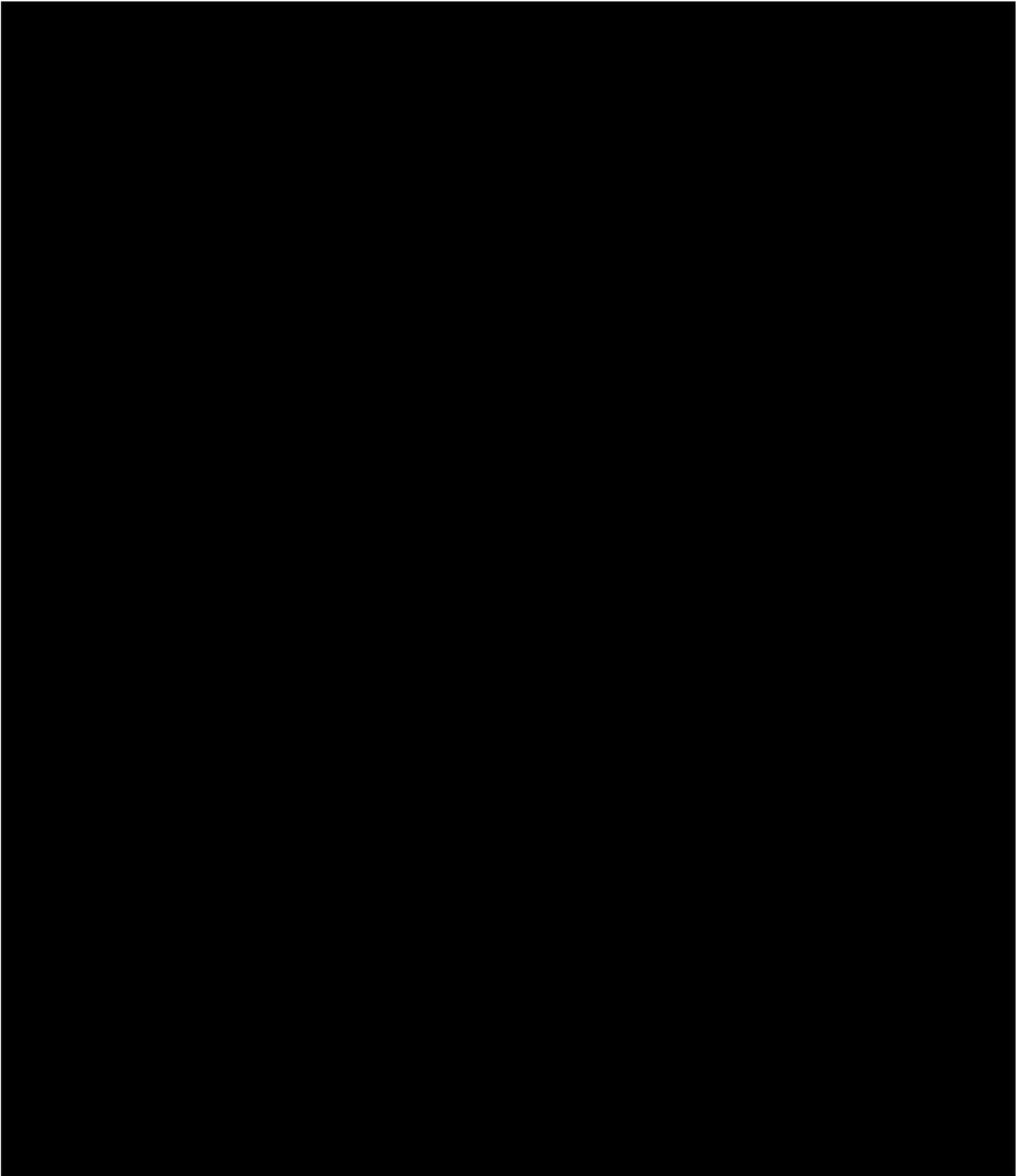
OASCR's beginning FY 2020 HUD referral inventory (PCMS Fact-Finding) was 94 complaints (Average Age 388 days). Over the last year this inventory has been reduced by 1/3 (60). The average age of these complaints is 297 days (< 1yr) and continues to decrease each month. OASCR will continue to monitor and 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.

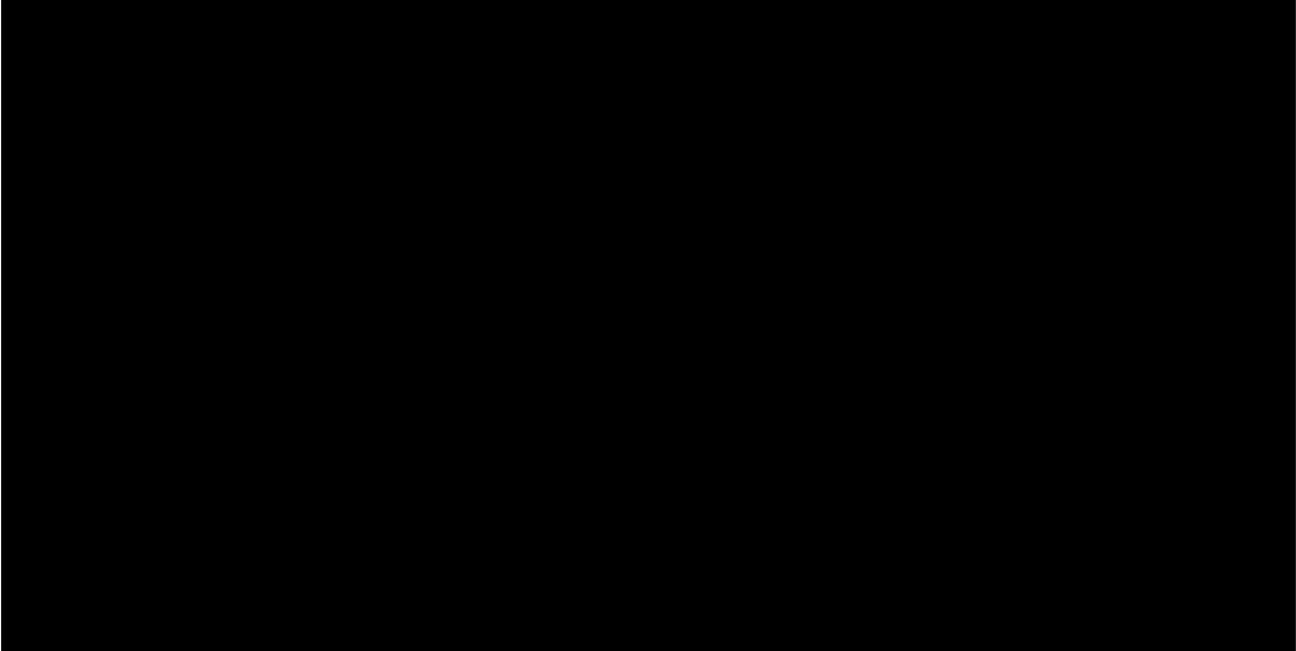
Finding 3: [REDACTED]











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 5 of the 10 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 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 C.F.R. 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 review 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.

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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