

United States Senate
WASHINGTON, DC 20510

June 2, 2022

The Honorable Thomas J. Vilsack
Secretary
Department of Agriculture
1400 Independence Ave., S.W.
Washington, DC 20250

Dear Secretary Vilsack:

We write to you today requesting information on the Department of Agriculture's (USDA) efforts to remedy historical discrimination towards Black farmers and staff at USDA.

For decades, farmers of color have experienced discrimination, including land and wealth loss, been denied access to federal relief and support programs, and had their civil-rights claims ignored. Currently, less than two percent of all farmers in the U.S. are Black, a precipitous decline from 14 percent a century ago.¹ Systemic discrimination and civil-rights concerns at USDA have been well documented over the last century. As early as 1965, the U.S. Commission on Civil Rights (USCCR) found that USDA discriminated against Black farmers when providing loan and conservation payments.² In 1982, the USCCR published a report that found that USDA's discriminatory actions directly contributed to the drastic decline of the number of Black farmers.³ This was further confirmed in 1999 through the landmark *Pigford* case when a group of Black farmers won a class-action lawsuit against USDA for its racially discriminatory handling of loan and other credit applications.⁴ In 2008, the Government Accountability Office published a report detailing the Office of the Assistant Secretary for Civil Rights (OASCR)'s failures to sufficiently address civil-rights claims filed.⁵ Black and minority farmers and USDA staff who have spoken up against these actions have faced retaliation and further discrimination in their attempts to access USDA programs or conduct their work.⁶

¹ New York Times, "Two Biden Priorities, Climate and Inequality, Meet on Black-Owned Farms," Hiroko Tabuchi and Nadja Popovich, January 31, 2021, <https://www.nytimes.com/2021/01/31/climate/black-farmers-discrimination-agriculture.html>.

² U.S. Commission on Civil Rights, "Equal Opportunity in Farm Programs: An Appraisal of Services Rendered by Agencies of the United States Department of Agriculture. A Report of the United States Commission on Civil Rights," 1965, p. 76, <https://files.eric.ed.gov/fulltext/ED068206.pdf>.

³ U.S. Commission on Civil Rights, "The Decline of Black Farming in America," February 1982, p. 32, <https://files.eric.ed.gov/fulltext/ED222604.pdf>.

⁴ *Pigford v. Glickman*, 185 F.R.D. 82 (D.D.C. 1999), April 14, 1999.

⁵ U.S. Government Accountability Office, "U.S. Department of Agriculture Recommendations and Options to Address Management Deficiencies in the Office of the Assistant Secretary for Civil Rights," October 2008, <https://www.gao.gov/assets/gao-09-62.pdf>.

⁶ USA Today, "A new USDA commission asks how to end discrimination in farming, but Black farmers are skeptical," Andrew Marquardt and Hannah Schoenbaum, February 10, 2022, <https://www.usatoday.com/story/news/politics/2022/02/10/black-farmers-usda-names-members-new-commission-discrimination/6728343001/>; Environmental Working Group, "Obstruction of Justice: USDA Undermines Historic Civil Rights Settlement with Black Farmers," July 20, 2004, <https://www.ewg.org/research/obstruction-justice>.

In September 2021, USDA’s Office of the Inspector General (OIG) released a report, the “USDA Oversight of Civil Rights Complaints.”⁷ The report evaluated OASCR’s handling of a number of civil-rights complaints received between 2016 and 2019, finding that it took an average of more than 630 days for a complaint to be processed. This review period became increasingly longer during this timeframe, jumping from 594 days in 2017 to 799 days in 2019. Additionally, the report found instances where cases were closed altogether without an adequate investigation.⁸ The report made 21 recommendations including updating the existing guidance to expedite the complaint processing time and calling for OASCR to address their past failure to implement USDA’s civil-rights goals and objectives when reviewing complaints.⁹

In March 2022 during a hearing of the House Agriculture Committee’s Subcommittee on Nutrition Oversight and Department Operations, USDA Inspector General Phyllis Fong testified on the findings of the September 2021 report.¹⁰ Ms. Fong noted in her testimony that the current Deputy Assistant Secretary at OASCR, Monica Rainge, agreed to act on the recommendations laid out in the report and submitted a proposed action plan that the OIG’s office approved. Ms. Fong noted that the report found it was critical that the complaint process be reformed in order to address the “perceived discrimination in USDA programs and [build] public trust and confidence that the department can serve all the people.”¹¹

Also in March 2022, the USDA established the Equity Commission to “objectively confront the hard reality of past discrimination and its lingering harm; helping USDA build back better, and serve our customers more fairly and equitably.”¹² The Commission was created following President Biden’s Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government and funding under the *American Rescue Plan Act*.¹³ While we are glad to see that you and USDA leadership are taking these concerns seriously, more must be done.

My colleagues and I have taken steps in Congress to address the historical discrimination at USDA and ensure long-term, sustainable equity. Last February, we reintroduced the *Justice for Black Farmers Act* to remedy USDA’s documented decades of discrimination against Black farmers.¹⁴ Our bill would create an independent oversight board that would review the civil-rights complaints made against USDA. The bill would reform OASCR by codifying a moratorium on farm

⁷ U.S. Department of Agriculture, “Audit Report: USDA Oversight of Civil Rights Complaints,” September 2021, https://www.usda.gov/sites/default/files/audit-reports/60601-0001-21_FR_508_FOIA_redacted_public_930%20%28signed%29.pdf.

⁸ *Id.* pp. 5-6.

⁹ *Id.* p.4.

¹⁰ U.S. House Committee on Agriculture, Subcommittee on Nutrition, Oversight, and Department Operations, “Review of the Office of the Inspector General Report on ‘USDA Oversight of Civil Rights Complaints’”, February 15, 2022, <https://agriculture.house.gov/calendar/eventsingle.aspx?EventID=2421>.

¹¹ *Id.*

¹² U.S. Department of Agriculture, “Advancing Equity at USDA,” <https://www.usda.gov/equity-commission>.

¹³ American Rescue Plan Act of 2021, H.R.1319, <https://www.congress.gov/bill/117th-congress/house-bill/1319/text#toc-HC796C24EF87745D2AFF9F9676E627D6E> ; Executive Order 13985, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,” press release, January 20, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>.

¹⁴ Office of Senator Elizabeth Warren, “Warren, Booker, Gillibrand Announce Comprehensive Bill to Address the History of Discrimination in Federal Agricultural Policy,” press release, November 19, 2020, <https://www.warren.senate.gov/newsroom/press-releases/warren-booker-gillibrand-announce-comprehensive-bill-to-address-the-history-of-discrimination-in-federal-agricultural-policy>.

foreclosures when a civil-rights complaint is being considered. It would also protect the remaining communities of Black farmers from further land loss, and it would work to restore the land loss many Black farmers have already experienced by establishing new land grants. Legislative action, however, is only one option for the federal government to reverse the decades-long mistreatment of Black farmers.

USDA has not had a Senate-confirmed Assistant Secretary for Civil Rights to lead OASCR in over four years.¹⁵ We are pleased that the President has taken steps to rectify this with his nomination of Margo Schlanger.¹⁶ During her confirmation hearing, Ms. Schlanger acknowledged the past issues of distrust between USDA and communities that have been previously excluded from USDA programs, such as Black farmers.¹⁷ She also committed to addressing problems with the complaint process and ensuring that complaints would be accurately and swiftly assessed.¹⁸ Furthermore, Ms. Schlanger acknowledged the need for “backward- and forward-looking action—to repair past mistakes and to ensure there are no new ones.”¹⁹

OASCR has repeatedly failed to protect the rights of Black farmers and staff. While Schlanger’s nomination is pending, it is within your authority to take immediate action to address the concerns raised by Black farmers and work to put the USDA on a more equitable path moving forward, and we ask you to do so without delay. Specifically, we ask that you establish an independent oversight board to supervise OASCR’s handling of civil-rights complaints. This new board must have the ability to examine any dismissals of complaints, including initial dismissals when OASCR has previously determined there is a “non-complaint” due to lack of jurisdiction. We also ask that you appoint a civil-rights ombudsperson to assist farmers in navigating the complaints process.

In addition to reforms needed more broadly at OASCR, it is critical that you address the current complaints process. As noted in the most recent USDA OIG’s report, complaints can languish for years, and some claimants have even died while waiting for a decision to be reached.²⁰ Former USDA employees have also noted that at times OASCR has closed complaints without thoroughly investigating them to cut down on processing times. USDA must pause the statute of limitations on a case when a complaint is filed with OASCR and reinstate a moratorium on foreclosures while their discrimination complaint is pending. Farmers must also have the right to

¹⁵ Roll Call, “USDA official to resign, leaving civil rights post vacant,” Ellyn Ferguson, January 17, 2020, <https://rollcall.com/2020/01/17/usda-official-to-resign-leaving-civil-rights-post-vacant/>.

¹⁶ U.S. Department of Agriculture, “Statement by Agriculture Secretary Tom Vilsack on the Intent to Nominate Margo Schlanger to Serve as USDA Assistant Secretary for Civil Rights,” press release, September 16, 2021, <https://www.usda.gov/media/press-releases/2021/09/16/statement-agriculture-secretary-tom-vilsack-intent-nominate-margo>.

¹⁷ U.S. Senate Committee on Agriculture, Nutrition, & Forestry, “Nomination Hearing to Consider the Following Nominations: Chavonda J. Jacobs-Young to be Under Secretary of Agriculture for Research, Education, and Economics, USDA and Margo Schlanger to be an Assistant Secretary of Agriculture, USDA,” November 17, 2021, <https://www.agriculture.senate.gov/hearings/to-consider-the-following-nominations-chavonda-j-jacobs-young-to-be-under-secretary-of-agriculture-for-research-education-and-economics-usda-and-margo-schlanger-to-be-an-assistant-secretary-of-agriculture-usda>.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ U.S. Government Accountability Office, “U.S. Department of Agriculture Recommendations and Options to Address Management Deficiencies in the Office of the Assistant Secretary for Civil Rights,” October 2008, p. 15, <https://www.gao.gov/assets/gao-09-62.pdf>.

appeal decisions made by OASCR and the new board to an administrative law judge for a final adjudication.

Additionally, for too long USDA's Office of the General Counsel (OGC) has inappropriately inserted itself in OASCR's complaint process.²¹ Reports from recent and former USDA employees have documented that for over a decade, the OGC has "review[ed] and resolv[ed] discrimination complaints received by [OASCR]." One recent OASCR employee stated, "I often hear my managers say that whatever OGC says is what we're going to do." As the USDA OGC represents the USDA as legal counsel against these claims, it cannot impartially engage in reviewing complaints filed with OASCR. The USDA must immediately ensure OGC is not inappropriately interfering with the OASCR complaint process. OGC senior officials must recommit to protecting and defending the civil rights of Black and other marginalized farmers.

Under existing regulations and statutes, USDA has the authority to implement changes to address decades of discrimination. Existing law and regulations presently give a wide range of authorities that the Secretary may delegate to OASCR to ensure compliance with civil rights laws. For example, USDA could establish an independent oversight board to supervise OASCR's handling of civil-rights and appointing a civil-rights ombudsperson to assist farmers in navigating the complaints process.²² OASCR has the authority to make "final determinations as to the merits of [discrimination] complaints" independently from other offices at USDA, including OGC.²³ USDA must comply with existing regulations that prohibit farm foreclosures while discrimination complaints are pending before USDA.²⁴ Under current administrative law regulations, USDA has the authority to "appoint as many administrative law judges as are necessary" to review appeals of OASCR's rulings on discrimination cases,²⁵ which could alleviate backlogs. Current regulations also describe the adjudication process for administrative law judges to review cases of alleged discrimination by USDA in directing its federal programs.²⁶

In addition to taking these steps, we also ask that you respond to the following questions by no later than June 16, 2022:

1. What actions have already been taken to implement the recommendations made in the USDA OIG's September 2021 report? What action items are currently still being planned but are not yet fully operational? Are there any barriers that USDA faces in implementing the recommendations of the OIG's report? If so, please describe them.
2. As this is your third term leading USDA, what has changed in your approach to addressing civil rights concerns over your tenure? What steps failed or were never fully operationalized? What do you plan to do differently going forward?

²¹ The Counter, "How USDA distorted data to conceal decades of discrimination against Black farmers," Nathan Rosenberg and Bryce Wilson Stucki, June 26, 2019, <https://thecounter.org/usda-black-farmers-discrimination-tom-vilsack-reparations-civil-rights/>.

²² 7 U.S.C. § 6918(c)

²³ 7 C.F.R. § 15d.5(b)

²⁴ 7 C.F.R. § 766.358

²⁵ 5 U.S.C. § 3105

²⁶ 7 C.F.R. part 15

3. The Equity Commission established earlier this year has been tasked with “confront[ing] the hard reality of past discrimination and its lingering harm[s]” at USDA. Please share the policy agenda the Commission has established and the criteria the Commission will use to evaluate USDA’s past actions. Does the Equity Commissions have the resources and authority it needs to execute its mission?
4. What was the average processing time for all civil rights complaints adjudicated in 2021? What steps are you taking to reduce this processing time?
5. Will USDA commit to using its authority under existing law to establish an independent oversight board to supervise OASCR’s handling of civil-rights complaints? If not, please explain.
6. Will USDA commit to using its authority under existing law to appoint a civil-rights ombudsperson to assist farmers in navigating the complaints process? If not, please explain.
7. Will USDA commit to using its authority under existing law to (a) comply with the existing regulatory moratorium on foreclosures while discrimination complaints are pending; (b) modify the OASCR process by providing farmers the right to appeal decisions made by OASCR and the new board to an administrative law judge for a final adjudication. If not, please explain.
8. Will USDA commit to using its authority under existing law to remove OGC officials from having influence over the resolution of complaints? If not, please explain.

Sincerely,



Elizabeth Warren
United States Senator



Cory A. Booker
United States Senator



Raphael G. Warnock
United States Senator



Bernard Sanders
United States Senator