

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

RoseMary Love :
P.O. Box 1399 :
Great Falls, MT 59403 :

and :

Lind Marie Bara-Weaver :
4845 Belle Terre Parkway C-8 :
Palm Coast, FL 32164 :

and :

Margaret Odom :
P.O. Box 143 :
Sardis, GA 30456 :

Case Number 1:00CV02502

and :

Judge: Robertson, J.

Gail Lennon :
295 County Road 149 :
Lookout, CA 96054 :

**THIRD AMENDED CLASS
ACTION COMPLAINT**

and :

Joyce L. Acomb :
8317 State Route 63 N :
Dansville, NY 14437 :

and :

Edith L. Scruggs :
1106 Brentwood :
Pine Bluff, AR 71601 :

and :

Maryland B. Wynne :
9209 Dyson Road :
Pine Bluff, AR 71603 :

and :

Joyce A. King :
211 Dan Gill Road :
Dumas, AR 71639 :

and :

Phyllis L. Robertson :
318 S. Persimmon Street :
Pine Bluff, AR 71601 :

and :

Mary L. Brown :
1306 6th Street :
Winter Haven, FL 33880 :

ON BEHALF OF THEMSELVES :
AND ALL :
OTHERS SIMILARLY SITUATED, :

Plaintiffs, :

vs.

ANN VENEMAN, Secretary
THE UNITED STATES DEPARTMENT :
OF AGRICULTURE :
14th and Independence Avenue, S.W. :
Washington, D.C. 20250, :
Defendant. :

**THIRD AMENDED CLASS ACTION COMPLAINT
(FOR DECLARATORY JUDGMENT,
VIOLATIONS OF EQUAL CREDIT OPPORTUNITY ACT,
AND ADMINISTRATIVE PROCEDURE ACT AND OTHER RELIEF)**

The representative and individual plaintiffs listed in the caption (“plaintiffs”), on behalf of themselves and all others similarly situated, complain of defendant as follows:

NATURE OF THE CASE

The Department of Agriculture (the “Department” or “USDA”) administers a nationwide program which makes loans to undercapitalized farmers at favorable terms. From 1981 through 1996 and October 19, 1998 to the present, women have been denied the opportunity to apply for these loans because of gender discrimination (Subclass A), were denied loans after having applied because of gender discrimination (Subclass B), and when loans have been granted, experienced delays in receiving the loans, or difficulty in obtaining loan servicing, or received less than the loan amount needed, or less servicing than needed, or were refused other loans, because of gender discrimination (Subclass C). When, in response, plaintiffs complained to USDA, USDA failed to investigate the complaints, willfully avoided processing or resolving the complaints, stretched the review process out over many years, conducted meaningless or “ghost” investigations, or simply failed to do anything. This nationwide pattern of discrimination against

women has deprived them of equal and fair access to farm loans and loan servicing, and of consideration of their administrative complaints, resulting in substantial damages to them.

JURISDICTION

1. Jurisdiction is founded upon 15 U.S.C. § 1691, 15 U.S.C. § 1691e, 28 U.S.C. § 1331, 28 U.S.C. § 1343, 28 U.S.C. § 2201, 5 U.S.C. § 706 and 7 U.S.C. § 2279.

VENUE

2. Venue lies in this judicial district pursuant to 28 U.S.C. § 1391(b) and (e).

PARTIES

3. Plaintiff and proposed class representative (Subclass C) RoseMary Love is a woman and has operated ranches in Blaine and Glacier Counties, Montana. She started raising sheep with her husband in 1975, and at the height of their operation, in 1983, they were raising approximately 3,300 sheep.

4. In 1978, following a devastating flood in the area, the Loves began dealing with the Farm Service Agency, or its predecessor, the Farm and Home Agency (collectively here, “FSA”).

5. Ms. Love applied for a 1982 farm operating loan, and she completed the ranch’s Farm and Home Plan in the Fall of 1981. But by June 1, 1982, the Blaine County FSA office had still not finished processing it, having revised it 4 times in the interim. Then, when the loan was finally approved, it was both late (funds were not received until the end of July) and provided Ms. Love with approximately \$100,000 less than needed to operate the ranch. FSA also imposed unreasonable and unnecessary demands on Ms. Love as conditions of the loan.

6. Then, in May 1983, FSA improperly accelerated all the Loves' loans, demanding payment in full of the entire principal and interest in 30 days. This forced the Loves into Chapter 11 bankruptcy.

7. On December 16, 1988, Ms. Love applied for loan servicing with the FSA. On March 2, 1989, she was notified that the State FSA office had determined that they were eligible to receive loan servicing, but they did not actually receive any.

8. While all these adverse actions were being conducted against Ms. Love, similarly situated male farmers were receiving substantial loan servicing benefits to allow them to deal with the stresses caused by natural disasters, low commodity prices, and record high interest rates. A prime example is Neil Johnson (and his family), doing business as the Johnson Cattle company of Glacier County, who received loans in the same time frame as the Loves. In 1981, FSA deemed him eligible for low interest limited resource loans, provided him with an emergency loan in 1985, and forgave \$2 million in debt in 1989.

9. Ms. Love filed a complaint with the Department in May 1993, and a complaint with USDA's Office of Civil Rights ("OCR") on April 10, 1997. The case was investigated in 1998 and the USDA investigator indicated to her that he had found evidence of unfair treatment. However, in June 2000, the Director of OCR denied Ms. Love any administrative relief.

10. Plaintiff and proposed class representative (Subclasses A and B), Lind Marie Bara-Weaver is a woman and farmed for more than 20 years in Virginia, where she raised Welch ponies, holly trees, and worms.

11. In October 1984, Ms. Bara-Weaver attempted to apply for farm ownership and operating loans at the Loudon County FSA office in Leesburg, Virginia for assistance in purchasing and operating a 16.5 acre farm. At the FSA office, the loan officer, Mr. Faulk,

informed Ms. Bara-Weaver that neither funds nor forms were available and would not give her an application. A month or so later, she went back to the Leesburg FSA office, and was told a second time that neither funds nor forms were available. But when Ms. Bara-Weaver's husband then called that FSA office, an application form was mailed to him. Ms. Bara-Weaver filled out that form as the sole borrower and delivered it to Mr. Faulk at the Leesburg FSA office. Two days later her application was denied without explanation.

12. In the Summer of 1988, Ms. Bara-Weaver again attempted to apply for a farm operating loan through the Loudon County FSA office. Although she was told that an application would be mailed to her, she never received one. She had to go the FSA office in person to obtain an application, with which the office did not offer any assistance. She submitted her application to Mr. Reid, the loan officer in Loudon County. He, however, told Ms. Bara-Weaver that women could not run farms. He called her patronizing names like "cutie" and "honey," and made sexual advances toward her. As part of the loan application process, Ms. Bara-Weaver's property had to be appraised by Mr. Reid. During the appraisal visit, Mr. Reid again made sexual advances toward her, which Ms. Bara-Weaver again rejected. Her loan application was denied.

13. Ms. Bara-Weaver made formal complaints to the FSA state office in Richmond and to the USDA Office of the Inspector General in Washington, D.C., but never got a response to her complaints.

14. In 1992, Ms. Bara-Weaver's equine breeding stock was poisoned by contaminated feed. Ms. Bara-Weaver applied for an operating loan to help with veterinarian expenses and special feed, but her application was denied. She was told that FSA did not provide loans for such expenses.

15. In January 1998, after her husband's death, Ms. Bara-Weaver attempted to refinance the farm through a trust for her daughter, and sought FSA financing at the Fredericksburg FSA office. She was told that USDA did not deal with trusts, despite the fact that USDA program regulations specifically refer to trusts.

16. Additionally, in 2000, after Ms. Bara-Weaver relocated to Florida, she visited the Flager County FSA office to request an application for a farm ownership loan to assist in the purchase of a new 70-acre farm there. On her first two visits, she was unable to obtain an application, and when she finally got one on her third visit, she was offered no help in completing the application. When she brought it back to the office, a male loan officer told her that the business plan would not work and that her farm would not be profitable. He asked her how she expected to farm without a man around, and then right in front of Ms. Bara-Weaver, he threw her application into the waste basket.

17. Plaintiff and proposed class representative Margaret Odom (Subclasses B and C) is a woman farmer and resident of Sardis, Georgia. She raised cattle and row crops on a large farm for almost 20 years.

18. In December 1991, Ms. Odom applied for a farm operating loan at the Waynesboro, Georgia FSA office in Burke County and was denied. She was told by FSA loan officer Alphonzo Andrews that she did not qualify as a beginning farmer, and that she would not be able to get a loan from that office until she had been farming for a year, even though she had farmed with her husband for years.

19. As a result, Ms. Odom in 1992 could only farm a small portion of her land. The next year, she again applied for an operating loan at the same FSA office, and was again denied. She then hand-delivered a complaint to the USDA State Director, Gene Carr, at the State Office

in Athens, Georgia. Mr. Carr and 3 loan servicing specialists met with Ms. Odom that same day to discuss her complaint, and the next day Mr. Andrews called her and informed her that she had been approved for the loan.

20. In the following year, 1994, Ms. Odom applied for farm ownership and operating loans at the Waynesboro FSA office. She was denied for both, but appealed the denials to NAD. NAD ruled in her favor.

21. Based on the NAD decision, in 1995, Ms. Odom went back to FSA to reapply for the same loans which had been wrongfully denied to her in 1994. She was told she had to fill out new applications, which she did. This time her applications were denied for farming in an “unworkmanlike manner.” She appealed the 1995 decision as well, and again, NAD ruled in her favor.

22. In 1996, Ms. Odom tried to get loan servicing to try to reduce her loan debt, but she was told she was not eligible for any loan servicing. In 1997, and again in 1998, Ms. Odom reapplied for farm operating and ownership loans, and her applications were likewise denied.

23. Because FSA had discriminatorily denied Ms. Odom’s loans applications for years, despite NAD rulings in her favor, Ms. Odom’s finances were severely strained. In 1998, FSA denied her the debt restructuring for which she had applied.

24. Ms. Odom is aware of male farmers who received loans from FSA at the time she was denied loans.

25. Ms. Odom complained multiple times to USDA about the wrongful denial of her farm loan applications. She filed at least four civil rights complaints with USDA alleging gender discrimination. To date, USDA has not resolved all of these complaints.

26. Plaintiff and proposed class representative (Subclass C) Gail Lennon is a woman and resident of Lookout, California who operated a ranch in Day, California where she raised crops, pigs and cows. In July 1983, Ms. Lennon and her husband applied for farm ownership and operating loans at the Modoc County FSA office. She needed the loans to purchase a ranch in neighboring Lassen County, where she planned to expand her cattle and crops base. FSA demanded excessive collateral for the loans (more than twice the amount of the loans). In 1984, the loans were granted, but the funds were placed in a supervised account, which meant that the funds could not be released for any purpose without the consent of FSA. Ms. Lennon is aware of male farmers who received loans without excessive collateral and restricted access to the funds.

27. Pending the processing of these USDA loans, County Supervisor Lloyd Leighton promised Ms. Lennon that (a) if she obtained a short-term loan from the local production credit association that said loan would be paid out of her USDA loan funds, and (b) Ms. Lennon would not be required to make payments on the USDA loans until 1986. USDA did not keep these promises. In 1985, the Modoc County Supervisor Jim Van Ness improperly canceled \$18,240 of Ms. Lennon's operating loan without her consent or knowledge and required that she apply for another operating loan. Though he approved the loan, he subsequently recommended foreclosure and denied Ms. Lennon access to the operating funds.

28. The documents for the 1985 loans listed incorrect interest and payment amounts, which Ms. Lennon has spent years attempting to correct but instead has just led to more accumulation of debt and foreclosure notices. Forced into extreme financial difficulties due to FSA, on numerous occasions beginning in 1984, Ms. Lennon requested FSA loan servicing, including debt set-aside, deferrals and interest rate reduction. FSA denied Ms. Lennon servicing on each occasion, even in 1986, when the NAD ordered the Modoc County Office to provide her

with maximum servicing. Ms. Lennon is aware of male farmers who also owed large amounts of money to FSA but did receive servicing of their debts, which Ms. Lennon never received.

29. After years of being denied any type of servicing, in 1997 Ms. Lennon filed a civil rights complaint with the Department alleging gender discrimination. The Department finally responded to the complaint years later, but only to say that it was unable to handle the case.

30. Plaintiff and proposed class representative (Subclasses B and C) Joyce Acomb is a woman who operated a 190-acre farm in Livingston County, New York, growing corn and raising livestock. Between 1978 and 1984, Ms. Acomb received annual farm operating loans averaging \$100,000 per year, which were held in a supervised account. She made her payments on those loans to FSA without a problem, but in 1981, Mr. William Humphrey, the FSA County Supervisor, refused to allow Ms. Acomb to use any of the proceeds from the sales of her livestock, hogs, or crops to repay another loan she had received from the Commodity Credit Corporation (“CCC”). Because Ms. Acomb could not repay her CCC loan without those proceeds, CCC sued her, thus creating significant financial hardship for Ms. Acomb and her family. The case was ultimately dismissed when a judge found FSA’s refusal to release her proceeds had relieved Ms. Acomb of her obligation.

31. Thereafter, in 1985, when Ms. Acomb applied for an annual operating loan, it was denied. This denial was followed by a letter from Mr. Humphrey stating that he would not release any sale proceeds to her, and that any money she made by selling her security (the hogs, livestock and corn) must be applied to her FSA loans. Humphey then accused her of illegally selling her hogs, which resulted in the foreclosure of her farm in 1996.

32. Ms. Acomb filed a civil rights complaint with the USDA alleging discrimination. The USDA responded that it found no evidence of discrimination after reviewing only a portion of her file.

33. Plaintiff and proposed class representative Mary L. Brown (Subclass A) is a woman who farmed 100 acres of peanuts, cotton, corn, and tobacco in Fitzgerald, Georgia. She had over 15 years of experience when she approached the FSA. In 1985, she applied for an operating loan, to be used for general expenses. She waited for quite a while after submitting her application, but did not hear anything from the FSA office. When she called to check on her application, she was told she was not qualified for a loan. Unsatisfied with that explanation, she went back to the office and spoke with a male loan officer who expressed surprise that a woman would apply for a farm operating loan for herself. When Ms. Brown pressed him for a more specific reason for the denial of her application, the loan officer offered her none other than she “did not qualify.” Because she did not receive the needed operating loan, Ms. Brown was forced to quit farming. Ms. Brown believes that there were men who were able to apply and be accepted for FSA loans at the time she was seeking to apply for a loan. She called the FSA office multiple times to complain, however, the FSA staff refused to speak with her about her complaint.

34. Plaintiff and proposed class representative (Subclass A) Joyce A. King is a woman farmer who wished to raise soybeans on the 40 acres she leased in Lincoln County, Arkansas. In January 1983, she went to the FSA office in Star City, Arkansas to obtain a farm loan operating application. She was told it was too early, and she did not receive an application. So she returned to that office shortly thereafter, in February or March of that year, but was then told it was too late to apply for funds. She then complained to the county supervisor, Mr. Ben

Reynolds. Mr. Reynolds refused to help and informed her that “women were not cut out for farming” because they were a risk and could not make a profit.

35. Plaintiff and proposed class representative (Subclass A) Phyllis L. Robertson is a woman farmer in Arkansas who sought a farm operating loan to raise soybeans on her leased land. She had many years of experience. On several occasions in 1982 and 1983, she went to the FSA office in Lincoln County, Arkansas and attempted to obtain an application. She was repeatedly told, however, that no applications were available. Determined to obtain an application, she began to visit the office frequently but was told again and again that there were no applications available. Ms. Robertson knew that around this time a male farmer, Lee Owens, had not only received an application, but had also received an operating loan. On at least 3 occasions she tried to speak to a manager about not being able to obtain an application, but was only able to speak to the area manager once. When she spoke with him, Ms. Robertson complained that as a woman she was refused an application, while men were able to get applications. He insisted that all Ms. Robertson had to do was come to the office and pick up an application. She began visiting the loan office twice a week, but still never received an application. On one occasion, she witnessed a male farmer receive an application, but when she confronted the receptionist about this, the receptionist told her it was the last one.

36. Plaintiff and proposed class representative (Subclass B) Edith Scruggs is a woman farmer who has a farm in Lincoln County, Arkansas and has been farming for her entire life. In 1983, she went to her local FSA office to apply for an operating loan. A loan officer gave her an application, but no assistance in completing the application. After she completed the application, a male loan officer interviewed her and made clear he did not think that women could farm. He told her that women cannot be serious about trying to farm, and that it was a joke that she was

actually trying to farm for her living. He did not take her seriously when she offered her house and farm equipment as collateral, and he actually laughed at her. Then, after not hearing anything about her application for several months, she received a notice that her application had been rejected. Ms. Scruggs went back to the Lincoln County FSA office to demand an explanation for the rejection and was told there was not enough money. She was aware that male farmers in the area were receiving farm operating loans. During her return visit to the FSA office, she complained about being treated differently than male farmers who had applied for loans from FSA.

37. Plaintiff and proposed class representative (Subclass B) Maryland B. Wynne is a woman farmer in Pine Bluff, Arkansas, who was several times rejected for farm operating loans. She had a great deal of experience when she first approached the FSA office in Star City, Arkansas in the Winter of 1983 about a small operating loan. She was forced to wait an entire day and then return the next in order to obtain an application, which the receptionist only reluctantly provided. After completing the application with no assistance from the office, the county supervisor Mr. Floyd Gaylord informed her that she would have to put up her house, car, and several other assets worth \$57,000 as collateral for the \$2,000 loan. Reluctantly, Ms. Wynne complied. But as months passed, she did not receive the loan funds. So she went back to the office to speak to Mr. Gaylord again, and he told her that all the loan funds had been exhausted, that he did not believe women could farm, and that women were wasting their time in farming and applying for farm loans. While waiting for the loan, Ms. Wynne was compelled to plant her seeds late in the season and thus had a low yield. This process was repeated every year for the next 6 years: she would apply for an operating loan, the FSA Office would drag its feet in processing her loan application, her planting would be delayed, ultimately she would not get the

loan and she would have a low crop yield. In 1987, Ms. Wynne tried to obtain a larger (though still modest) operating loan of \$6,000, but Mr. Gaylord laughed in her face. Because of the lack of operating loans and the resulting poor production, Ms. Wynne was forced to stop farming in 1990. Throughout the years she was denied loans, Ms. Wynne was aware that Mr. Gaylord was actually soliciting loan applications for male farmers and helping them complete the complicated applications.

38. Ms. Wynne knew of men who applied for loans from FSA at the same time as her, with similar farming experience and acreage. The men received farms loans but she did not. Ms. Wynne complained to the county supervisor alleged gender discrimination.

39. Defendant Ann Veneman is Secretary of the Department and is the federal official responsible for the administration of the statutes, regulations and programs which are the focus of this action.

THE DEPARTMENT'S FARM LOAN PROGRAMS

40. FSA provides farm loans and other farm credit benefits, commodity program benefits (such as deficiency payments, price support loans, Conservation Reserve Program ("CRP") benefits), and disaster payments to U.S. farmers. The agency was created in 1994 as a result of a reorganization of USDA, primarily by the merger of the Agricultural Stabilization and Conservation Service ("ASCS"), which previously had handled commodity program benefits, price support loans, CRP payments, disaster payments, and related services, with the Farmers' Home Administration ("FmHA"), which previously had provided farm loans and other farm credit benefits.

41. FmHA had been created to provide loans, credit and technical assistance for farmers. FmHA made loans directly to farmers or guaranteed the loans made to farmers by

private, commercial lenders. These loans included “farm ownership” and “operating” loans, as well as loans that “restructure” existing loans and “emergency disaster” loans. FmHA’s key responsibilities were to work with small, minority and disadvantaged farmers - farmers who could not get credit elsewhere, and to assist these farmers in developing their financial plans and loan applications.

42. Defendant Veneman is responsible for the administration of the FSA. FSA, like its predecessors FmHA and ASCS, administers the federal farm programs through a three-tiered system consisting of (1) county offices and committees, (2) state offices and committees, and (3) the NAD, a federal level of review in Washington, D.C. The local county committees consist of producers from counties who have been elected by other producers in those counties; they oversee the county offices. There is also a county supervisor in each office. The state committees consist of producers from each state selected by the Secretary of USDA; they oversee the state offices. At the federal level, the NAD renders final determinations of administrative appeals. (Prior to the 1994 consolidation, FmHA had its own administrative appeal process.)

43. The Minority and Socially Disadvantaged Program Offices within USDA have the primary responsibility for coordinating USDA programs serving minorities and the socially disadvantaged. USDA defines women as minorities and as socially disadvantaged.

44. When a farmer or prospective farmer applies for any federal farm loan, she goes to her county FSA office (formerly the FmHA office) and fills out a Farm and Home Plan, a financial plan for the farm, along with her loan application. Assistance and guidance are often critical for the success of the application because of the complexity of the programs and forms. Indeed, regulations require that USDA officials assist applicants in preparing the appropriate

paperwork to apply for farm loans. The application process is governed by regulations found at 7 C.F.R. § 1910.3, *et seq.*

45. At all relevant times, the county committee and the county supervisor were to exercise broad discretion in connection with the loan. For example, when the federal farm loan application with its supporting documents is completed, it is presented to the county committee. The committee makes an initial eligibility determination based upon the criteria in 7 C.F.R. §1941.12(a) (operating loans) and §1943.12(a) (ownership loans) or § 764.4 (emergency loans), many of which are subjective. The application is then reviewed by the county supervisor, who evaluates the feasibility of the applicant's Farm and Home Plan. If the county supervisor approves the applicant for participation, the loan is processed. However, the local FSA county offices have virtually unfettered discretion in reviewing loan applications and granting or denying them because many of the criteria for granting or denying loans are largely subjective and, as a result, susceptible to arbitrary application.

46. If an FSA loan or loan servicing is denied on discriminatory grounds, the applicant can file a complaint of discrimination with the USDA through the FSA Civil Rights Office (for FmHA, the Equal Opportunity ("EO") office) or with the office of Civil Rights ("OCR"), formerly known as the Office of Civil Rights Enforcement and Adjudication ("OCREA").

WHAT USDA DID IN RESPONSE TO COMPLAINTS OF DISCRIMINATION

47. Unbeknownst to plaintiffs and members of the class, the enforcement capability of EO and OCREA was severely curtailed in 1983, leaving USDA with virtually no ability to investigate discrimination complaints. In a May 25, 1997 Richmond News Dispatch article and interview of Lloyd Wright, Director of USDA's Office of Civil Rights, Mr. Wright stated that no

systematic probes or investigations into farmer allegations of discrimination in the administration of USDA loan programs had been conducted since 1983, when the Civil Rights investigative staff was disbanded. In a January 5, 1999 New York Times article, Rosalind Gray, who succeeded Mr. Wright as head of the Office of Civil Rights, stated that USDA “would agree that its procedures in handling bias claims had been flawed.” Further evidence of USDA’s willful failure to investigate discrimination complaints is evident in the February 27, 1997 Office of Inspector General Report (“OIG Report”) and the February 1997 Civil Rights Action Team Report (“CRAT”), among other documents.

48. On March 10, 2000, USDA’s Office of Inspector General released its seventh audit report, “Office of Civil Rights Status of the implementation of Recommendations Made in Prior Evaluations of Program Complaints - Phase VII (“OIG Report VII”). The report acknowledged that the Office of Civil Rights’ processing of civil rights complaints remained flawed: “This is our *seventh* attempt to provide [OCR] with constructive ways to overcome its inefficiencies. Based on the results of our review and on the operating environment we observed at [OCR], we cannot report encouraging news.” OIG Report VII, Viadero cover letter at 1 (emphasis in original). “[N]o significant changes in how complaints are processed have been made.” OIG Report VII at i (emphasis omitted).

49. During the relevant time period, OCR or its predecessor offices were legally obligated to investigate complaints of discrimination, make findings and, if appropriate, attempt conciliation with the complainants. In its 1997 OIG Report, the Office of the Inspector General found that FSA and OCREA failed to conduct investigations or otherwise follow proper procedures. *See* OIG Report at 1-2. Since the release of the OIG Report in 1997, upon

information and belief, OCR processes and procedures have similarly failed to adequately address complaints of discrimination.

50. As recently as 2003, the U.S. Equal Employment Opportunity Commission (“EEOC”) found that USDA still failed to adequately address complaints of discrimination. In a February 23, 2003 report of its on-site review of USDA’s compliance with equal employment opportunity statutes, rules, regulations and directives (“EEOC Report”), the EEOC concluded that “[d]elays of processing EEO complaints, the absence of effective oversight of EEO programs, and the lack of proper separation between the Office of General Counsel and the Office of Civil Rights, has severely impacted the integrity, efficiency, and professionalism of the Office of Civil Rights, the programs it administers, and its staff.” EEOC Report at 21.

51. USDA has codified regulations, 7 C.F.R. Part 15 -“Nondiscrimination,” which state USDA’s policy of nondiscrimination in federally assisted and conducted programs in compliance with Title VI of the Civil Rights Act of 1964. The regulations should have served as a basis for civil rights compliance and enforcement with respect to participants in FSA programs; however, USDA admitted that the regulations have long been outdated and never accurately reflected the Department’s agencies, programs and laws. *See* OIG Report at 5.

52. The February 27, 1997 OIG Report addressed complaints of discrimination within FSA as well as 10 other agencies within USDA. OIG found, *inter alia*, that the discrimination complaint process within FSA lacked integrity and accountability, was without a tracking system, had no process for reconciliation, was in disorder, did not resolve discrimination complaints, and had a massive backlog. OIG found that the FSA staff responsible for processing the discrimination complaints consisted of two untrained and unqualified people. Hundreds of unresolved complaints were over a decade old. OIG found no management oversight within

FSA with respect to the handling of civil rights complaints.

53. At the same time that OIG released its report in February 1997, USDA also released the CRAT Report condemning USDA's lack of civil rights enforcement and accountability as a cause of the drastic decline in the number of minority farmers.

54. In the CRAT Report, the USDA admitted to certain disparate treatment of minority and small farmers applying to USDA for loans:

The minority or limited-resource farmer tries to apply for a farm-operating loan through the FSA county office well in advance of planting season. The FSA county office *might claim to have no applications available* and ask the farmer to return later. Upon returning, the farmer might receive an application *without any assistance* in completing it, then be asked repeatedly to correct mistakes or complete oversight in the loan application. Often those requests for correcting the application could be stretched for months, since they would come only if the minority farmer contacted the office to check "on the loan processing." *By the time processing is completed, even when the loan is approved, planting season has already passed* and the farmer either has not been able to plant at all, or has obtained limited credit on the strength of an expected FSA loan to plant a small crop, usually without the fertilizer and other supplies necessary for the best yields. The farmer's profit is then reduced.

CRAT Report at 15 (emphasis added).

55. USDA admitted in the CRAT Report that discrimination complaints at USDA were often ignored, and that farmers reported that even when there was a finding of discrimination, USDA refused to pay damages. CRAT Report at 22-23.

56. USDA admitted in the CRAT Report that its record-keeping on discrimination complaints was "non-existent," that a backlog existed, and that the largest number of complaints against a single USDA sub-agency was against FSA. CRAT Report at 24-25.

57. USDA admitted in the CRAT Report that a lack of diversity in FSA county offices combined with a lack of outreach to small and limited-resource farmers directly affects

the participation of minorities in USDA programs. CRAT Report at 26-27. Similarly, USDA admitted that the lack of diversity at USDA adversely affects program delivery to minorities and women. CRAT Report at 45.

58. USDA admitted that cultural insensitivity interferes with female participation:

Customers at the recent listening sessions reiterated the special needs of different minority and socially disadvantaged communities. All communities agreed that they are overlooked when information is released about available USDA programs. USDA agencies do not make use of minority community organizational and media outlets to be sure all eligible participants know about their programs. Cultural barriers prevent the communication necessary for good service by USDA programs.

Young men and women who want to follow in the family footsteps, either by taking over the family farm or by buying their own, oftentimes find it difficult to obtain financing for their ventures. According to several speakers at the listening sessions, FSA has denied loans to new or beginning farmers despite years of working on their family farm or receiving advanced degrees in agriculture.

CRAT Report at 27.

59. On September 29, 1997, USDA's Office of Inspector General issued Phase II of the OIG Report on Civil Rights Issues, entitled "Minority Participation In Farm Service Agency's Farm Loan Programs - Phase II" ("OIG Report II"), which found, *inter alia*, that (a) USDA had resolved only 32 of the 241 outstanding discrimination complaints reported in the OIG Report (back in February 1997) and (b) the backlog of discrimination complaints had increased from 241 to 474 for FSA and from 530 to 984 for all of USDA.

60. On September 30, 1998, the USDA's Office of Inspector General released its "Report to the Secretary on Civil Rights Issues - Phase V" ("OIG Report V") which found that significant problems within OCR persisted:

a. We found that the Department through [OCR], has not made significant progress in reducing the complaints backlog. Whereas the backlog stood at 1,088 complaints on November 1, 1997, it still remains at 616 complaints as of September 11, 1998. OIG Report V, cover letter to the Secretary.

b. The backlog is not being resolved at a faster rate because [OCR] itself has not attained the efficiency it needs to systematically reduce the caseload. Few of the deficiencies we noted in our previous reviews have been corrected. *The office is still in disarray, providing no decisive leadership and making little attempt to correct the mistakes of the past.* We noted with considerable concern that after 20 months [OCR] has made virtually no progress in implementing the corrective actions we thought essential to the viability of its operations. OIG Report V at i (emphasis added).

c. Most conspicuous among the uncorrected problems is the *continuing disorder within* [OCR]. The data base [OCR] uses to report the status of cases is *unreliable and full of errors*, and the files it keeps to store needed documentation are *slovenly and unmanaged*. Forty complaint files could not be found, and another 130 complaints that were listed in USDA agency files were not recorded in [OCR]'s data base. *Management controls were so poor* that we could not render an opinion on the quality of CR's investigations and adjudications. OIG Report V at iii (emphasis added).

d. Of equal significance is the absence of written policy and procedures. OIG Report V at iii.

e. The absence of formal procedures and accurate records raises questions about due care within the complaints resolution process. *We found critical quality control steps missing at every stage of the process.* Staff members with little training and less experience were put to judging matters that carry serious legal and moral implications. *Many of [OCR]'s adjudicators, who must determine whether discrimination occurred, were student interns.* Legal staffmembers with the Office of General Counsel (OGC), who review [OCR]'s decisions for legal sufficiency, have had to return over half of them because they were based on incomplete data or faulty analysis. We noted that a disproportionately large percent of the 616 cases of unresolved backlog had bottlenecked in the adjudication unit. OIG Report V at iii (emphasis added).

61. Upon information and belief, this systemic pattern of ineffectiveness has continued. The March 10, 2000 OIG Report VII stated:

a. This is our *seventh* attempt to provide CR with constructive ways to overcome its inefficiencies. Based on the results of our review and on the operating environment we

observed at [OCR], we cannot report encouraging news. OIG Report VII, Viadero cover letter at 1 (emphasis in original).

b. Based on the findings of our current review on [OCR]'s poor record of responding to our past recommendations, it is difficult to recognize any significant level of progress. Unless [OCR] implements a management plan that addresses effective leadership, changing organizational culture, customer focus, and process re-engineering, we question whether future complaints of discrimination in the distribution of program benefits will receive due care. OIG Report VII, Viadero cover letter at 1-2.

c. Many other critical issues remain unresolved. Most notably, [OCR] did not re-engineer its complaints resolution process. Although, [OCR] officials had previously agreed that the system they used to process complaints was neither effective nor efficient and although we recommended a major transformation of this system, *no significant changes in how complaints are processed have been made*. As a result, we cannot conclude that all complaints are processed with due care. OIG Report VII at i (emphasis in original).

d. Since February 1997, we have issued six reports on civil rights issues relating to the program complaints process administered by CR. Those six reports contained 67 recommendations, 54 of which were directed at CR (the remaining 13 were directed at the Farm Service Agency). During the current review, we found that 41 recommendations (all directed at [OCR]) have not been adequately addressed by [OCR], based on the actions taken as of December 1, 1999. As a result, we still have concerns that [OCR] may not be providing due care when processing complaints alleging discrimination in USDA programs. OIG Report VII at 14.

62. Upon information and belief, the systematic pattern of ineffectiveness is still affecting USDA today. Among other things, in its February 2003 report, the EEOC found that:

a. Units within USDA's OCR "do what they want to do' because they have no accountability to [OCR]", EEOC Report at 9;

b. OCR does not investigate complaints of discrimination within the regulatory time period. Data supplied by USDA indicates that it takes OCR on average 594 days to complete an EEO investigation. The EEOC regulations require such an investigation to be completed within 180 days, unless the

complainant agrees to an extension of time in writing, for a maximum of 270 days. *Id.* at 16-17;

c. OCR does not have an effective EEO complaint tracking system and process. *Id.* at 18;

d. Data entered into the system is unverified and unreliable. *Id.* at 20; and

e. OCR's current interpretation of what is a complaint and when it is officially received undercounts the actual number of complaints being made to OCR and provides a distorted picture of complaint activity. *Id.*

63. In sum, USDA's willful disregard of, and failure to properly investigate discrimination complaints from women began with the disbanding of civil rights enforcement functions back in 1983, and continues today. Even after February 1997, when the enforcement staff of the OCR was re-established, USDA has failed to afford meaningful investigation and review of complaints of discrimination.

STATUTE OF LIMITATIONS IS WAIVED

64. On October 21, 1998, President Clinton signed into law the Omnibus Consolidated Appropriations Act for Fiscal Year 1999, P.L. 105-277, Div. A, § 101(a) [§ 741], 112 Stat. 2681 (codified at 7 U.S.C. § 2279). Said legislation waives the statute of limitations for plaintiffs in this case.

CLASS ACTION ALLEGATIONS

65. Plaintiffs bring this class action on behalf of women farmers who farmed or attempted to farm who were discriminated against on the basis of gender in obtaining a farm loan, including the servicing and continuation of a loan from USDA during the period from January 1, 1981 through December 31, 1996, and timely complained about such treatment, or from the period October 19, 1998 through the present.

66. There are three distinct groups of class members:

a. *Subclass A* - includes women who are representative of this subclass who sought to receive applications for loans, but because various USDA officials around the country practiced discrimination on the basis of gender, never were provided applications.

b. *Subclass B* - includes women who applied for but were denied loan(s) because of gender discrimination.

c. *Subclass C* - includes women who obtained farm loans but experienced delays in receiving the loans, or received less than needed, or did not receive loan servicing, had difficulty in obtaining loan servicing, or received less servicing than needed, or were refused other loans because of gender discrimination.

67. This action is brought and may properly be maintained as a class action pursuant to the provisions of Federal Rules of Civil Procedure 23(a)(1) - (4) and, as appropriate, 23(b)(1), (b)(2) and/or (b)(3). This action satisfies the numerosity, commonality, typicality, adequacy and predominance and superiority requirements of those provisions.

68. The class is so numerous that the individual joinder of all its members is impracticable. Upon information and belief, there are more than 100,000 women farmers in the United States. During the period January 1, 1981 to 1996 and October 18, 1996 to present, USDA has acknowledged receipt of at least 100 formal written discrimination complaints on behalf of the class members, which appears to be a significant underestimate of the number of actual complaints. *See* EEOC Report at 20. Moreover, many complaints of discrimination were never properly docketed in USDA's "system" and therefore were never acknowledged by or responded to by USDA. Upon information and belief, the number of class members exceeds 1,000.

69. Common questions of law and fact exist as to all members of the class and predominate over any questions affecting only individual members of the class. These common legal and factual questions arise from one central issue, which does not vary from class member to class member and which may be determined without reference to the individual circumstances of any particular class member: USDA's institutional and systematic conduct in permitting county committees and county supervisors to grant or deny loan requests or loan servicing on a wholly subjective basis. As a result of this subjectivity and lack of oversight, a national pattern and practice of discrimination against women farmers emerged and was perpetuated in violation of law.

70. Additional common questions include:

a) Whether and when USDA's officials discriminated against plaintiffs and class members in failing to process discrimination complaints;

b) Whether and when USDA's officials discriminated against plaintiffs and class members in denying loans and loan servicing;

c) Whether USDA's officials failed to provide plaintiffs and class members equal access to loans and loan servicing;

d) Whether USDA's institutional and systematic failure to provide plaintiffs and class members equal opportunity for and access to loans and loan servicing was arbitrary, capricious, an abuse of discretion, and in excess of statutory jurisdiction in violation of the Administrative Procedure Act, 5 U.S.C. 701, *et seq.*; and

e) Whether USDA's actions violated plaintiffs' and class members' rights under the Equal Credit Opportunity Act, 15 U.S.C. § 1691(a).

71. Plaintiffs' claims are typical of the claims of the members of the class, all of whom have been denied equal access to loans or loan servicing and due process in the

enforcement of their discrimination complaints, and have been subject to USDA's institutional and systematic failure to enforce the civil rights laws intended to benefit plaintiffs and members of the class, due to USDA's arbitrary and unlawful actions.

72. Plaintiffs are adequate representatives of the class because they are members of the class and their interests do not conflict with the interests of the members of the class they seek to represent. The named plaintiffs' claims are consistent with the claims of other class members. Plaintiffs' counsel are experienced class action lawyers who will adequately represent the class.

73. A class action is superior to other available methods for the fair and efficient adjudication of this litigation since individual litigation of class members' claims regarding USDA's institutional and systematic deprivation of their civil rights as described in this Complaint is impracticable. Even if any class members could afford to litigate, it would be unduly burdensome to the courts to litigate each individual case. Individual litigation further presents a potential for inconsistent or contradictory judgments and increases the delay and expenses to all parties and the court system in resolving the legal and factual issues of the case. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication of what essentially is one problem, economies of scale, and comprehensive supervision by a single court. Notice of the pendency of any resolution of this class action can be provided to class members by publication and broadcast; in addition, defendant has each class member's farm number, address, application date and payment results on computer, readily available.

74. The various claims asserted in this action are additionally or alternatively certifiable under the provisions of Federal Rules of Civil Procedure 23(b)(1) and 23(b)(2) because:

a) the prosecution of separate actions by the individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual class members, thus establishing incompatible standards of conduct for defendant;

b) the prosecution of separate actions by individual class members would create a risk of adjudications that would, as a practical matter, be dispositive of the interests of the other class members not parties to such adjudications or would substantially impair or impede the ability of such non-party class members to protect their interests; and

c) defendant has acted on grounds generally applicable to the class, thereby making appropriate final declaratory relief with respect to the class as a whole.

COUNT I
(Declaratory Judgment)

75. Plaintiffs, on behalf of themselves and all others similarly situated, re-allege all paragraphs above as if fully set forth herein.

76. An actual controversy exists between plaintiffs and class members and defendant as to their rights with respect to defendant's farm programs.

COUNT II
(Violation of Equal Credit Opportunity Act)

77. Plaintiffs, on behalf of themselves and all others similarly situated, re-allege all paragraphs above as if fully set forth herein.

78. USDA's acts of denying plaintiffs' and class members' loans and loan servicing and systematically failing to properly process their discrimination complaints was gender

discrimination and contrary to the requirements of the Equal Credit Opportunity Act, 15 U.S.C. § 1691(a).

COUNT III
(Violation of Administrative Procedure Act)

79. Plaintiffs, on behalf of themselves and all others similarly situated, reallege all paragraphs above as if fully set forth herein.

80. USDA's acts of systematically failing to properly investigate and/or process their discrimination complaints was contrary to the requirements of the Administrative Procedure Act, 5 U.S.C. § 701, *et seq.*

Prayer for Relief

Wherefore plaintiffs respectfully request this Court to:

1. declare that the practices described in this Complaint exist at the USDA and that they are unlawful;
2. issue a permanent injunction prohibiting the USDA, its officers, agents, employees and successors, from engaging in the discriminatory lending practices alleged herein, including but not limited to: (a) refusing applications to, or otherwise deterring, women farmers from applying for farm loans; (b) applying more stringent underwriting standards or otherwise discriminatorily denying women loans who otherwise were qualified; (c) providing inadequate or less assistance to women farmers in completing farm loan applications and/or farm and home plans; (d) granting loans to women on differential and less advantageous terms than similarly situated male farmers; and (e) discriminatorily denying women servicing on their loans, or providing less advantageous servicing to women farmers than that offered to similarly situated male farmers.

3. issue a permanent mandatory injunction requiring that the USDA adopt lending practices in conformity with the requirements of the Equal Credit Opportunity Act and the Administrative Procedure Act.

4. issue an Order mandating that USDA remedy its discriminatory practices, such as: (a) implementation of a procedure whereby denials of female farmer loan applications are subject to secondary review from an independent reviewing body with authority to reverse an initial rejection decision; (b) implementation of a program designed to provide specific assistance to female farm loan applicants in completing loan applications and apprising female farmers of their rights under ECOA and USDA regulations; and (c) implementation of a program designed to review USDA farm loan practices in the aggregate, through sampling or other methods, to assure that women and male farmers are being treated similarly and equally in the entire loan process.

5. issue an Order mandating that USDA institute an effective system for investigating and timely responding to complaints of gender discrimination in connection with the provision of applications for the granting of and the servicing of farm loans;

6. issue a permanent mandatory injunction requiring that the USDA adopt recordkeeping practices that are in conformity with the requirements of the Equal Credit Opportunity Act and that otherwise permit future monitoring of the USDA's treatment of women farmers;

7. award compensatory damages appropriate to the proof at trial;

8. award reasonable attorneys' fees and costs, including expert fees, and interest;

and

9. order such other and further relief as the Court deems just and proper.

Respectfully submitted,

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