

**United States Department of
Agriculture**

**Independent Assessment of the
Delivery of Technical and Financial
Assistance**

Contract AG-3142-C-09-0049

“Civil Rights Assessment”

FINAL REPORT

March 31, 2011

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**INDEPENDENT ASSESSMENT OF THE DELIVERY OF TECHNICAL
AND FINANCIAL ASSISTANCE (“CIVIL RIGHTS ASSESSMENT”)
PRIME CONTRACT AG-3142-C-09-0030**

FINAL REPORT

MARCH 31, 2011

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EXECUTIVE SUMMARY

A. Introduction

The United States Department of Agriculture (“USDA”) awarded a competitive contract to the Jackson Lewis LLP Corporate Diversity Counseling Group (“Group” or “Assessment Team”) to conduct an Independent Assessment of the USDA Delivery of Technical and Financial Assistance to all Americans (“Civil Rights Assessment” or “Assessment”). The Contract sets forth the Scope of Work for this Assessment to address areas requiring Department-wide action, focused initially on four USDA Agencies: Farm Service Agency (“FSA”); Rural Development (“RD”); Natural Resources Conservation Service (“NRCS”); and Risk Management Agency (“RMA”). The essential objective of the Assessment is:

The Contractor shall . . . examine USDA’s program delivery at State and local levels . . . The Assessment shall focus on the effectiveness of USDA’s programs in reaching America’s diverse population in a non-discriminatory manner, with particular attention on accessibility, equity, fairness, and accountability. Based on this Assessment, the Contractor will develop recommendations of actions USDA can take to ensure its program delivery and organizational structure is providing all Americans with fair and equal access to USDA Programs.

RFP, p. 3 (C.2 Objectives). The key areas of analysis were specified as: “review of existing laws, policies, and procedures; an analysis of [USDA’s] current customer base and constituencies in comparison to the existing population; an evaluation of current outreach efforts; and reviews of cultural competencies and considerations.” As noted above, the key deliverable specified is “recommendations of actions USDA can take to ensure its programs provide fair and equal access.”

The Contract originally required interviews of Headquarters as well as State, county, and regional personnel of the four Agencies in six counties

in each of 14 States. The States selected by USDA (as subsequently modified)¹ were:

- | | |
|----------------|--------------------|
| 1. Arizona | 9. North Dakota |
| 2. California | 10. North Carolina |
| 3. Florida | 11. Oklahoma |
| 4. Georgia | 12. Pennsylvania |
| 5. Louisiana | 13. South Carolina |
| 6. Michigan | 14. Vermont |
| 7. Mississippi | 15. Washington |
| 8. New Mexico | |

B. Jackson Lewis Corporate Diversity Counseling Group/USDA Assessment Team

Jackson Lewis LLP (“JL”) is a law firm of more than 650 lawyers with 46 offices around the country. The JL Corporate Diversity Counseling Group consists of attorneys who specialize in addressing issues of diversity and inclusion, fairness, non-discrimination, equal treatment and access, and related matters. The entire JL USDA Assessment Team (“Assessment Team,” or “Team”) consists of a highly diverse and experienced group of 22 professionals,² led by Project Manager and senior partner Weldon H. Latham, nationally-recognized for his leadership and expertise in the areas of diversity, inclusion, equal opportunity, and civil rights matters; and Deputy Project Manager, partner John M. Bryson, II, who maintains responsibility for day-to-day project operations. Advising and consulting with the Team is a four-member Senior Leadership Oversight Team (“SLOT”) of professionals with significant high-level USDA experience, also led by Mr. Latham, and a number of consultants with additional USDA-related experience.

The SLOT is chaired by Mr. Latham and co-chaired by Mr. Bob Nash, a former USDA Rural and Community Development Under Secretary and former Assistant to President Clinton. The SLOT’s other members include Mr. Alvin Brown, former USDA Deputy Administrator for

¹ USDA originally selected 14 States; during the course of the Assessment, the Contract was modified to delete one State and add two others, for a total of 15 States to be included in the final Assessment.

² Of the 22 JL professionals (not including SLOT and other consultants), 50% are women and 59% are members of three different minority groups. The consultants include representatives of the fourth (Federally recognized) minority group.

Community Development, Senior Advisor to the Secretary of Commerce and Secretary of Housing and Urban Development, and Vice Chair of the Community Empowerment Board; and Mr. Larry Mitchell, former USDA FSA Deputy Administrator for Farm Programs (also a family farmer), and former Vice President of the National Farmers Union.

C. Methodology

Pursuant to the Contract requirements, the Team organized the Assessment into four Phases:

- Phase I: Orientation, Planning, Initial Meetings
- Phase II: Fact Gathering/Analysis: Headquarters/Field Assessments
- Phase III: Data Validation and Analysis
- Phase IV: Final Report Preparation and Submission

The Assessment Team created four Agency Teams, one to lead the assessment of each Agency.

1. Phase I: Initial Orientation and Planning

Phase I, Initial Orientation and Planning, commenced in October 2009 with planning and conducting a series of meetings with numerous officials of each of the four Agencies, and concluded on January 10, 2010.

2. Phase II: Headquarters/Field Assessments

Phase II, Headquarters/Field Assessments, commenced with field interviews of USDA employees in California on January 11, 2010. Field interviews concluded during the week of October 4, 2010, with interviews of USDA employees in South Carolina and Mississippi. The Assessment Team interviewed 1,752 USDA employees, including FSA County Employees and County Committee Members. As described below, due to various delays, Phase II continued until March 31, 2011.

The Contract directed that the Assessment Team obtain USDA *customer* input by written surveys which were originally scheduled to conclude in August 2010 for inclusion in the Final Report by October 26, 2010. During the course of the Contract, however, USDA decided that the

survey methodology was less likely to secure the type of reliable data necessary for this Assessment, and the Department replaced this approach with 30 customer Focus Groups in 10 of the 15 Assessment States, which required an extensive and time-consuming approval process by the Executive Office of the President, Office of Management and Budget (“OMB”). The OMB process delayed the Assessment Team’s efforts by at least 90 days. As a result, the Focus Group sessions began in Mississippi on January 6, 2011, and concluded in California, with the completion of the 30 sessions on February 3, 2011.

Focus Group recruiting was difficult in large part because of low interest, and attendance was generally below normal expectations. While helpful customer input was elicited from the Focus Groups, the Assessment Team recognized the need to supplement the Focus Group input by interviewing 30 Community-Based Organizations (“CBOs”) to obtain additional customer input, essential to the process but not originally required by the Contract.

3. Phases III and IV: Data Validation and Analysis And Final Report Preparation and Submission

Substantial time incurred in obtaining OMB, USDA Office of General Counsel (“OGC”), and other necessary approvals to conduct the Focus Groups necessitated a substantial revision to the schedule. The revision required the Focus Group process to be delayed by three months (originally scheduled to be completed in Phase II), and they were ultimately conducted during Phases III and IV, the Data Validation and Analysis/Final Report Preparation Phases, concurrently. This schedule compression slowed parts of the process and condensed time in the final weeks to finalize the report, after all data was provided. Due to the compression of the schedule, Phases II, III, and IV overlapped in January, February, and March 2011, with the Assessment Team continuing to obtain information from Focus Groups and CBOs while analyzing and validating data already received, receiving additional data and documents provided by USDA, working with USDA to obtain corrections of numerous errors in provided data, and simultaneously working to complete preparation of the Final Report. The Assessment Team received data from USDA as late as March 29, 2011, and it is reflected in this Final Report.

D. Approved Insurance Provider and Agent/Broker Interviews

The Assessment Team also secured OMB approval to interview four Approved Insurance Providers (“AIPs”) and 20 agents/brokers regarding 1) the AIPs’ non-discrimination policies, procedures, and practices; 2) recruitment of minority and female agents/brokers; 3) requirements/goals to sell risk management products to socially disadvantaged groups (“SDGs”); 4) incentives offered to encourage agents/brokers to outreach and sell insurance products to SDGs; and 5) level of sales to SDGs, among others.

E. Regular Communications with USDA During the Assessment

In addition to the Contracting Officer (“CO”) and Contracting Officer’s Technical Representative (“COTR”), the Assessment Team worked with additional USDA-designated “liaisons” for this Contract, the “Governing Council” (consisting of senior Department and Agency officials), and the “Working Group” (representatives of each of the four Agencies who worked directly with the Assessment Team on a regular basis to assist with daily activities). In addition to formal interviews with Department and Agency top officials, the Project Manager and Deputy Project Manager participated in formal meetings with the Secretary and Assistant Secretaries whenever they deemed necessary, usually for the purpose of progress reports.

F. Additional Activities in Support of the Assessment

In coordination with USDA, Assessment Team members attended a variety of additional meetings and conferences across the country, such as the USDA 2010 Cooperators Conference (St. Louis, Missouri), 2010 Professional Agricultural Workers Conference (Tuskegee, Alabama), and the 2010 Congressional Black Caucus Political Education and Leadership Institute Policy Conference (Tunica, Mississippi).

G. Department-wide Organization, Functions, and Equitable Access Performance

For USDA to effectively address its prime objective for this Assessment—reducing barriers to full program participation and achieving equitable access (both externally and internally)—it must make changes at both the Agency *and* Department level. The Secretary

recognizes the *critical importance of Departmental leadership to Departmental transformation*. His “New Civil Rights Era” Memorandum, the Cultural Transformation Initiative, and other initiatives at the Department level all have the capacity to profoundly impact the delivery of services in the field, when appropriately communicated, structured, monitored, and implemented.

The Final Report identifies 10 key areas for Department-wide change that are needed to assist in transforming the Department. These changes enhance the key elements of structure, accountability, incentives and penalties, cultural transformation, performance management, and other essential tools and measures of success. Equally importantly, the changes will assist in de-emphasizing the somewhat negative connotation of the historical term “Civil Rights,” by replacing it with the broader, more descriptive, positive aspirational goals of “diversity, inclusion, and accessibility” (“DIA”). While Civil Rights compliance and enforcement activities must and will continue as statutorily required, substantial other programmatic efforts to enhance DIA, outreach, and marketing must appropriately be carried out by others. Key recommendations to enhance Department-wide performance in equitable service delivery are:

1. Create an *external* DIA Executive Advisory Board, and an *internal* Executive DIA Leadership Council.
2. To achieve a dramatically enhanced diverse workforce, adopt new workforce analytical processes patterned after the U.S. Department of Labor Office of Federal Contract Compliance Programs (“OFCCP”) methodology, with goals and objectives to be included in managerial performance plans.
3. To enhance identification of and service to under-served populations, develop and conduct regular customer service Market Penetration Analyses and annual objectives for service to SDGs and other under-served groups; create performance plan requirements and oversight/accountability reporting mechanisms to ensure goal achievement.
4. To foster a customer-service imperative for USDA programs, aggressively expand upon, then implement the Cultural Transformation Initiative and dramatically upgrade mandatory

nationwide DIA in-person training, covering both the USDA workplace and marketplace.

5. To increase accountability for DIA results, design and incorporate specific, meaningful, measurable DIA objectives in all senior official and managerial performance plans, and use them to appropriately affect compensation, promotion potential, and other areas of performance and progression.
6. To resolve USDA's long-standing problem with unreliable data, organize and implement an intra-agency data validation and integrity team to verify/correct existing data, and dramatically improve integrity and maintenance of all future data gathered, including program race/ethnicity and gender performance statistics.
7. To increase public/Congressional awareness and institutional accountability, comply with statutory SDG reporting requirements for "Transparency and Accountability" (under the Farm Bills) with respect to program participation by SDGs, and institute additional Annual Reports to Congress on USDA DIA performance.
8. To further enhance accountability for results, require annual DIA Business Plans from all major Agency Headquarters and State Offices, with measurable metrics, deadlines, evaluations of performance against goals, and end-of-year reports to the Secretary.
9. Reconstruct the Program and EEO Complaint processes, eliminating complexity and unnecessary review levels, to expedite processing to no more than 60 days. Annually outsource to a highly-rated private sector entity 10% of Program and EEO complaints for investigations on 60-day tracks and compare the findings, timing, and hours invested per matter with USDA-conducted investigations, and take appropriate follow-up actions. Internally publicize documented, confirmed acts of USDA discrimination, harassment, and retaliation, and corresponding penalties (consistent with applicable law).
10. Complete the Secretary's 2009 re-organization of the Department, including creation of an Under Secretary for DIA, Civil Rights, and

Departmental Management position, and USDA Chief Diversity Officer position; create Chief Diversity Officer positions in each Agency and State Office, along with Offices of Emerging Customer Development.

H. Overview of Four Agency Assessments

During the first year of this Assessment, the Team spent much of its time interviewing 1,752 USDA and County System employees at both Headquarters and field offices. Notably, the Team obtained equally critical input from current and potential customers, primarily through Focus Groups and Community Based Organizations (“CBOs”), as well as from review and analysis of a wide range of USDA-provided Department-wide and selected Agency-related documents and data.

Data and information obtained during this Assessment, in addition to the lawsuit background and settlements, including customer input and USDA-provided objective data, substantiated claims of denial of equal program access and continuing institutional discrimination. Despite this background, the vast majority of USDA employees interviewed (in some Agencies, 80-90%) disclaimed knowledge of discriminatory practices or unequal treatment of SDG customers or potential customers. Clearly, significant numbers of USDA employees do not accept eradication of barriers to equal access or Agency discrimination as enforceable and important Department-wide priorities. *The very fact that so many USDA employees did not recognize the real problems of inequitable program delivery is a very serious concern, but may explain, in part, why previous efforts to address USDA discrimination problems have been less than fully successful.* As in any large organization, problems cannot be solved until recognition of the problems is generally accepted throughout the organization, and efforts to correct the problems are a clear and obvious executive priority.

The Assessment Team conducted 30 Focus Group sessions across 10 States, and interviewed leaders of 30 CBOs, representing a broad range of geographic and SDG farming, ranching, and rural interests. A number of customers and CBO representatives described a system where the deck was always stacked, not only against access to USDA programs, but also against their ultimate success solely due to their status as minorities or women. These are the same USDA programs that, over the past decades, have assisted in elevating thousands of majority farmers

and ranchers into their current successful status, internationally among the most professional, highly skilled, and productive farmers and agribusinesses in the world.

The Assessment Team's analysis of documents and data provided by USDA, along with other information, substantiated in part the anecdotal claims of neglect, at best, and wide-spread discrimination, at worst, that SDGs reported, including findings that SDGs are under-represented or under-served in many USDA programs. Customers and potential customers stated that USDA policies and practices, often unintentionally, and sometimes purposely by "bad actors," result in the unfair treatment and denial of program access which have had a broad and longstanding negative impact.

Sporadically over the last 15-18 years, USDA has begun to recognize and more effectively address these problems. Through actions such as the Civil Rights Action Team ("CRAT") Report in 1997 during the Clinton Administration, USDA has sought to acknowledge the discriminatory problems, dramatically improve Department performance and service delivery, and create an environment for positive SDG inclusive change, seeking to enhance program accessibility and more fairly deliver those programs to all Americans. In 2009, Secretary Vilsack took steps, on behalf of the Obama Administration, including accepting GAO recommendations to conduct this Independent Assessment, that demonstrate the Secretary's commitment to fairness and his efforts to create the "New Era of Civil Rights" at USDA. This Assessment focuses on what needs to be done and provides specific recommendations of actions to be implemented *immediately*. For this Assessment to fully achieve the goals sought by the Secretary, the Department *must* devote equal time, resources, and energy to implementing the Recommendations, as it did to the Assessment that created them. Otherwise, USDA will fail to make critically-needed programmatic changes, as it has after each of the previous similar studies, task forces, and action plans on discrimination and Civil Rights inadequacies.

The following four Sections summarize the results of the four Agency Assessments.

I. Farm Service Agency Assessment

1. Contract Objective

The FSA Assessment Team's objective was to evaluate fairness and equity in delivery of financial and technical programs by FSA, with a particular emphasis on the equitable delivery of programs to SDGs.

2. Assessment Process

The Assessment Team (1) held 10 Focus Group sessions in 10 Assessment States with FSA customers, potential customers, and applicants whose applications for FSA program services were denied; (2) interviewed the leadership of 30 Community Based Organizations ("CBOs") from around the country representing a variety of farming and ranching interests, with an emphasis on those focused on issues of importance to SDGs; (3) interviewed 738 FSA employees, including County employees and County Committee members/advisors in six counties in each of the 15 USDA-selected Assessment States (total of 90 counties) at both the Headquarters and field levels; and (4) reviewed and analyzed statutes, regulations, policies, handbooks, reports, statistical data, and other information and documents provided by USDA. In addition, the Assessment Team conducted research on a wide variety of topics, including, among others, the history of the Agency, media and other public reports of FSA activities, and the major class-action discrimination lawsuits filed on behalf of African American, Hispanic, Native American, and female farmers and ranchers.

Focus Group participants, CBOs, and FSA employees were asked a series of questions designed to ascertain facts and perceptions regarding, among others, the equitable delivery of services to SDG customers and potential customers in their particular State, District, or county.

3. Agency Mission

FSA's mission is "to equitably serve all farmers, ranchers, and agricultural partners through the delivery of effective and efficient agricultural programs for all Americans."³

³ www.fsa.usda.gov.

4. Key Barriers to Equitable Delivery of Programs

The Assessment Team's analysis highlights positive aspects of the Agency's performance along with potential and actual barriers to equitable participation in programs, including the following *key* barriers to equitable program delivery:⁴

- County Committee system regarded as discriminatory by many SDGs; some Committee members regarded as untrained, biased, and disconnected from concerns of SDGs.
- Workforce diversity issues: lack of diversity in the composition of certain offices, groups, and committees; extremely low diversity in County Employees who service Farm Programs; low to no recognition of diversity/civil rights issues by field staff.
- Strong perception among SDGs that FSA continues to discriminate against SDG customers and potential customers.
- Insufficient and ineffective SDG outreach; some field staff hostility to SDG outreach; ineffective assistance to SDGs; inadequate visibility in the SDG community.
- Complexity of the application process, particularly for SDGs.

5. Key Recommendations

1. Modify the FSA County Committee system to eliminate opportunities for bias in program delivery and build the perception and reality of FSA delivering programs on a fair and equitable basis.
2. Make workforce diversity and inclusion among FSA's highest priorities; in concert with the Department-wide recommendations, immediately adopt OFCCP-type workforce analytical tools, use results to create remedial plans, and enforce through serious,

⁴ The list of Key Barriers is not exhaustive. A more comprehensive list as well as a more detailed analysis are included in the FSA Assessment Section.

meaningful performance measures with appropriate rewards and penalties.

3. Develop aggressive national SDG marketing (replacing “outreach”) model, beginning with market penetration studies, and work with new State Offices of Emerging Customer Development to implement the model at the state and local levels. Require annual State SDG Marketing Plans with clear performance measures, quarterly progress reports, and end-of-year reports of performance against goals, with corrective action plans addressing areas of under-performance for the next year.
4. Conduct periodic disparity studies and adverse impact analyses on the Farm Loan Guaranteed Loan program, and all Farm Programs, to identify areas of disparate/adverse impact on SDGs. Develop corrective action plans to address disparate impacts.
5. Simplify Farm Loans and Farm Programs application forms for SDG user-friendliness and streamline the paperwork necessary to apply for Farm Loan Programs and Farm Programs, in part by eliminating requests for redundant information.

J. Rural Development Assessment

1. Contract Objective

The RD Assessment Team’s objective was to evaluate fairness and equity in the delivery of financial and technical programs by RD, with a particular emphasis on the equitable delivery of programs to SDGs.

2. Assessment Process

The Assessment Team (1) conducted 698 interviews of RD employees at Headquarters and in 15 USDA-selected states; (2) held Focus Group sessions in 10 Assessment States; (3) interviewed 30 CBOs across the country; and (4) reviewed and analyzed statutes, regulations, policies, manuals, reports, and documents provided by USDA. In addition, the Assessment Team conducted research on a wide variety of topics, including, among others, the history of the Agency, media and other public reports of RD activities, and the major class-action

discrimination lawsuits filed on behalf of African American, Hispanic, Native American, and female farmers and ranchers.

RD employees, Focus Group participants, and CBOs were asked a series of questions designed to ascertain facts and perceptions regarding, among others, fairness and equity in program delivery by RD, the work environment, practices and policies as they relate to outreach to SDGs, awareness of discriminatory conduct, and recommendations to improve program delivery and the working environment.

3. Agency Mission

The core mission of RD is to ensure that rural America thrives by improving the quality of life for *all* rural Americans. RD programs are delivered through three major program areas: 1) Rural Housing and Community Facilities; 2) Rural Business; and 3) Rural Utilities.

4. Key Barriers to Equitable Delivery of Programs

The Assessment Team's analysis highlights positive aspects of the Agency's performance along with potential and actual barriers to equitable participation in programs, including the following *key* barriers to equitable program delivery:

- SDG lack of knowledge and awareness regarding RD programs, eligibility requirements, application procedures, and terms and conditions of assistance.
- Multiple office staff workplace issues, including office-specific diversity concerns, which ultimately impact delivery of programs.
- Eligibility/qualification requirements, which may impede SDG participation in programs.
- Insufficient outreach to SDGs and other under-served groups.
- Geographic inaccessibility of office locations to many SDGs.

5. Key Recommendations

1. RD should establish a comprehensive education and information program to target under-served populations, particularly in areas with high SDG concentrations. The communication and education program should be multi-faceted, using the most cost-efficient

existing organizations, such as CBOs, 1890 Institutions, Tribal Colleges and Universities, public schools, churches, employers, military installations, and other Federal, state, and local government agencies to reach intended audiences. RD should provide information to these organizations and secure cooperation for them to disseminate broadly, to their employees, students, members, and other constituents.

2. In order to expand RD's presence and successful utilization of existing program dollars that are not reaching SDG communities, RD should seek organizations such as CBOs able to 1) identify RD programs appropriate for their constituents; 2) educate potential applicants to build capacity; 3) assist with the application process; and 4) work with borrowers to increase the likelihood of success after funding is provided. RD should create *certified* outreach partnerships by training organizations with technical and substantive knowledge as well as strong ties to SDGs, particularly in states that have not fully obligated funds or are serving under-served populations.
3. RD should reinstitute a Direct Lending Business Program to assist small and SDG-owned businesses, which often require smaller loans to facilitate growth and success.

K. Natural Resources Conservation Service Assessment

1. Contract Objective

The NRCS Assessment Team's objective was to evaluate fairness and equity in the delivery of financial and technical programs by NRCS, with a particular emphasis on the equitable delivery of programs to SDGs.

2. Assessment Process

The Assessment Team (1) conducted 540 interviews of NRCS employees in 15 USDA-selected states; (2) held Focus Group sessions in 10 Assessment States; (3) interviewed 30 CBOs across the country; and (4) reviewed and analyzed statutes, regulations, policies, manuals, reports, and documents provided by USDA. In addition, the Assessment Team conducted research on a wide variety of topics, including, among

others, the history of the Agency, media and other public reports of NRCS activities, and the major class-action discrimination lawsuits filed on behalf of African American, Hispanic, Native American, and female farmers and ranchers.

NRCS employees, Focus Group participants, and CBOs were asked a series of questions designed to ascertain perceptions regarding, among others, fairness and equity in NRCS's program delivery, the work environment, practices and policies as they relate to outreach to SDGs, awareness of discriminatory conduct, and recommendations to improve program delivery and the working environment.

3. Agency Mission

The core mission of NRCS is to provide conservation planning and assistance to landowners with a goal of protecting soil, water, air, plants, and animals. NRCS accomplishes its conservation goals by providing both financial and technical assistance to landowners to implement conservation practices on their land.

4. Key Barriers to Equitable Delivery of Programs

The Assessment Team's analysis highlights positive aspects of the Agency's performance along with potential and actual barriers to equitable participation in programs, including the following *key* barriers to equitable program delivery:

- Program design, ranking, and application processes favor larger producers over smaller producers, which are often SDGs.
- SDG customers are not kept informed of important program information and timelines.
- There is insufficient outreach/marketing to SDGs and other under-served groups.
- Application processes, eligibility requirements, technical practices, and timelines are inconsistent with unique needs of tribal and Native American customers.
- Minorities and females are under-represented in Headquarters, state- and field-level NRCS offices.

5. Key Recommendations

1. *Program design:* a) A specific conservation program should be designed and funded for SDG farmers and ranchers taking into account their unique characteristics as landowners; b) technical requirements of all programs should be reviewed and modified to ensure that they do not disparately impact and are not unnecessarily onerous to SDGs; and c) the Conservation Stewardship Program should not be funded at the expense of the Environmental Quality Incentives Program, which has higher levels of SDG participation and SDG eligibility.
2. a) Fund applications for SDG producers continuously; b) implement protocols for tracking applications, informing applicants of the status of their application in writing, giving reasons for rejected applications, and providing meaningful guidance for re-applying; c) ensure that all customer-facing NRCS employees are trained and knowledgeable about new programs and initiatives; and d) allow sufficient lead-time for distribution of handbooks, training materials, forms, and other documents before public announcements of new initiatives.
3. In concert with the Department-wide Recommendations, NRCS should a) establish the position of Chief Diversity Officer at the Agency and State levels, along with State Offices of Emerging Customer Development, to develop marketing plans, coordinate initiatives, report program participation results, and create annual corrective action plans for areas of under-performance; and b) develop metrics to track/quantify outreach/marketing efforts to assist in establishing concrete, meaningful performance measures with appropriate, enforced incentives and penalties.
4. NRCS should develop and fund a specific program for Native American land, taking into account the ownership structure of reservation land that makes it difficult to establish program eligibility, and addressing those parts of the application, particularly Adjusted Gross Income disclosures, that deter participation by Native Americans.
5. Make workforce diversity and inclusion among NRCS's highest priorities; in concert with the Department-wide recommendations,

immediately adopt OFCCP-type workforce analytical tools, use results to create remedial plans, and enforce through serious, meaningful performance measures with appropriate rewards and penalties.

L. Risk Management Agency Assessment

1. Contract Objective

The objective of the RMA Assessment was to evaluate fairness and equity in financial and technical delivery of programs by RMA, with a particular emphasis on the equitable delivery of programs to SDGs.

2. Assessment Process

The Assessment Team (1) conducted more than 155 RMA employee interviews throughout the Headquarters, Regional, Regional Compliance, and Product Management Division offices; (2) held Focus Group sessions in 10 Assessment States; (3) interviewed 30 CBOs across the country; (4) interviewed senior officials of four Approved Insurance Providers (“AIP”), and 20 agents/brokers who were associated with the four AIPs; and (5) reviewed and analyzed statutes, regulations, policies, manuals, handbooks, reports, and documents and data provided by USDA. In addition, the Assessment Team conducted research on a wide variety of topics, including the history of the Agency, media and other public reports of RMA activities, and the major class-action discrimination lawsuits filed on behalf of African American, Hispanic, Native American, and female farmers and ranchers.

RMA employees, Focus Group participants, and CBOs were asked a series of questions designed to ascertain facts and perceptions regarding fairness and equity in program delivery by or through RMA, the work environment, practices and policies as they relate to SDG targeted outreach, awareness of discriminatory conduct, and recommendations to improve program delivery and the working environment. The Assessment Team interviews of the AIPs and agents/brokers sought to learn about, among others, the AIPs’ non-discrimination policies, procedures and practices; recruitment of minority and women agents/brokers; requirements/goals to sell risk management products to SDGs; incentives offered to encourage agents/brokers to outreach and sell insurance products to SDGs; and the level of sales to SDGs.

3. Agency Mission

The mission of RMA is to help agricultural producers and ranchers (collectively “producers”) manage an array of natural, financial, and market risks by developing and making effective risk management solutions (such as crop and livestock insurance (collectively “crop insurance”)) and other risk management tools available to producers. Through the Federal Crop Insurance Corporation (“FCIC”), RMA makes crop insurance programs available to producers, with independent AIPs responsible for selling and administering RMA’s crop insurance programs.

4. Key Barriers to Equitable Delivery of Programs

The Assessment Team’s analysis highlights positive aspects of the Agency’s performance along with potential and actual barriers to equitable participation in programs, including the following *key* barriers to equitable program delivery:

- AIPs do not currently collect demographic data regarding applicants or customers and therefore do not know the extent to which they are serving SDGs.
- The Standard Reinsurance Agreement (“SRA”) with AIPs does not adequately ensure that AIPs and their agent/brokers sell crop insurance products to SDGs, and equitably service those products.
- AIPs and their agents/brokers conduct little outreach/marketing to SDGs; they have no additional monetary incentives to market/sell insurance products to SDGs.
- RMA’s crop insurance programs do not sufficiently meet the needs and practical realities of SDGs.

5. Key Recommendations

1. Require all AIPs to collect, maintain, and report (quarterly and annually) comprehensive demographic data, including at a minimum race/ethnicity and gender for all applicants, and all customers. Require annual analyses by AIPs of percent of applicants and customers that are SDGs compared with the AIPs’ service territory, and corrective action plans for identified under-representations.

2. Incorporate explicit, comprehensive, measurable SDG outreach/marketing requirements for AIPs into regulations and SRAs, and rigorously enforce the requirements; require annual reports from AIPs describing all outreach/marketing efforts, performance against goals, and corrective action plans for identified deficiencies.
3. Provide incentives, such as enhanced commissions and bonuses, for agents/brokers to sell RMA products to SDGs.
4. Develop, and encourage private entities to develop new, innovative, reasonably priced insurance products covering crops typically grown by SDGs.

M. Additional Assessments and Analyses

1. Internal and External Reports

The Contract required the Assessment Team to “Compile and examine internal and external reports that examine USDA program delivery’s impact on USDA customers and potential customers, including customers that have been denied services in the past.” Comprehensive research and requests to USDA generated a relatively small number of internal and external reports published in recent years which examine the equity and fairness of USDA program delivery for customers, potential customers, and customers that have been denied services. The Assessment Team included descriptions of 10 such reports in this Report, along with tangential but related reports (such as customer surveys). These reports range in time from the seminal 1997 “Civil Rights Action Team” (“CRAT”) Report, to a March 2011 Arkansas Community-Based Organization report. Each of the reports provides history, context, and background for this Assessment, and many, particularly the CRAT Report, included recommendations to address identified issues. Some of the various report recommendations have been implemented by USDA, and many others are currently under consideration for implementation. The Assessment Team took note of the recommendations, and some of them are included, in modified or updated form, in this Report.

2. USDA's Customer Base and Inclusion of SDGs: FSA, RD, and NRCS

The Contract required the Assessment Team to “Analyze USDA’s current customer base and constituencies in comparison to the existing population.” At the Assessment Team’s request, FSA, RD, and NRCS each provided information regarding customers for various programs by number of customers and dollars spent with/attributable to such customers, and race/ethnicity and gender data, where available, to enable a comparison with their respective population percentages. (Neither RMA nor the AIPs collect demographic information on applicants or insureds, so no such comparative data was available for RMA. Clearly, USDA should require the collection of this data as soon as authority to authorize it can be secured.)

The Assessment Team analyzed the information provided and compiled aggregate race/ethnicity and gender information for customers nationwide and by State, where data was available, along with associated numbers of transactions and associated dollars, for the 15 USDA-selected States covered in this Assessment. USDA-provided data was compared with appropriate population figures for each SDG; for example, in examining FSA loan data, the 2007 *AgCensus* Principal Operator data (the latest available) was used as the comparison population, because Principal Operators are those producers who apply for loans. The results are presented in this Report in a series of spreadsheet Exhibits for each of the three Agencies, FSA, RD, and NRCS.

Caveat: This Report includes repeated cautionary references to a *caveat* regarding the *unreliability of USDA data*. In addition to numerous past reports critical of the unreliability of USDA data (such as General Accountability Office and Office of Inspector General reports), the Assessment Team identified numerous errors, conflicts, inconsistencies, and omissions in the wide variety of data provided by USDA for this Assessment. Most of those problems were *apparently* corrected by provision of supplemental information, but some of them—such as inherent unreliability of race/ethnicity data collected by “physical observation”—could not be corrected or confirmed. Thus, all of the data analyzed and presented in this Report must be understood as based on questionable data.

Subject to that *caveat*, the following is a brief summary of the customer base comparisons for FSA, RD, and NRCS:

a. **FSA:** FSA provided customer data for Farm Loans (Direct and Guaranteed Loans, FY 2010 and existing Portfolio), and Farm Programs.

1) Direct Loans: SDG participation reasonably well reflected their respective Principal Operator populations, with the *exception of Female participation*, which was substantially less than the Female Principal Operator population.

2) Guaranteed Loans: With the exception of Asians and Native Hawaiians/Pacific Islanders, SDG participation was less, and *with some SDGs substantially less*, than their respective Principal Operator populations.

3) Farm Programs: *For all Farm Programs* on a nationwide aggregate basis, SDG participation was less, and *with some SDGs substantially less*, than their respective Principal Operator populations.

b. **RD:** RD provided customer data for its FY 2010 Single Family Housing (“SFH”) Direct and Guaranteed Loans, and listings of “beneficiaries” (tenants) for its Multi-Family Housing Loans (which are made to entities, not individuals).

1) SFH Direct Loans: SDG participation for all groups *exceeded* their respective rural populations, with some by substantial margins.

2) SFH Guaranteed Loans: With the exception of Females and American Indians/Alaskan Natives, *SDG participation exceeded* the respective rural populations.

3) MFH Loan “Beneficiaries”: All SDGs in FY 2010 were beneficiaries in percentages *greater* than their respective rural population percentages.

c. **NRCS:** NRCS provided customer data for several of its key programs. While some of the *data was inconsistent*, it appeared that:

- 1) Percentage participation by SDG groups (with the exception of Females) exceeded their respective Principal Operator percentages for most key programs.
- 2) One Easement Program (“Wetlands Reserve”) showed relatively low participation by race/ethnic SDGs (although the data is incomplete).

This Report provides a number of Recommendations for addressing both (a) data collection, recording, accessing, and reporting, and (b) improving areas of apparent under-service (based on population figures) to SDGs.

3. Statutory/Regulatory Policies

The Contract required the Assessment Team to “Identify statutory and regulatory policies that may lead to discrimination and bar individuals from participating.”

The Team identified, reviewed, and assessed hundreds of statutes, regulations, and handbooks (some of them comprehensive and lengthy, such as Farm Bills and regulations found in the Code of Federal Regulations). *The Team concluded that, while none of these sources are discriminatory against SDGs on their face*—indeed, some have special provisions for the benefit of SDGs—many allow discretion in decision-making in such a way as to permit the possibility for discrimination in the application of the statute, regulation, or handbook provisions. This Report provides Recommendations for addressing those discretionary opportunities for discrimination.

4. Program Information Technology Tools

The Contract required the Assessment Team to “Examine program delivery information technology tools to ensure equity and access. Systems to be reviewed are: Protracts, AERT, SCIMS, GLS, DLOS, and Farm Business Plans.” The Assessment Team reviewed the elements of these tools and compiled results of the USDA field employee interviews regarding their user-friendliness and any problems identified with using

them. (Customers are generally not familiar with USDA IT tools, so the Team did not receive comments on the tools from them.) *Less than seven percent of employees identified barriers associated with the IT tools.* Those employees that identified barriers focused on the complexity, unreliability, and other problems in using them, and on the unavailability of on-line forms to many SDGs, who do not have computers, or cannot access the web. This Report provides Recommendations for improving the tools and user-friendliness of the on-line forms for SDGs, including a Recommendation that field personnel proactively assist customers and applicants in completing forms and providing necessary data.

5. Program Office Staff Demographics

The Contract required the Assessment Team to “Assess program office staff demographics for areas served versus area census data, including demographics of committees used by USDA to implement programs, such as FSA county and state committees, local working groups, and State Technical Committees.” The intent of this task is to compare the demographics of the USDA workforce and committees with those of customers and other constituents, to determine the extent to which USDA “looks like the customer base it serves.”

The Assessment Team reviewed and evaluated a vast volume of data, including Department and Agency workforces, State, Regional, Area, and County workforces, and associated State and County Committees. The Team compared those results with the appropriate populations—in most instances, the 2000 Census U.S. Civilian Labor Force (“CLF”) (the latest available data). The results are presented in a series of spreadsheets, charts, and graphs, identifying “under-utilizations” of personnel: areas where the USDA workforce, or committees, have SDG representation less than the associated population. The results, summarized as follows (omitting minor under-representations), demonstrated several different types of diverse representation inadequacies by location:

- a. **FSA:** Under-representations in the National workforce include Minorities (as a group), Hispanics/Latinos, and Asians (as separate groups); under-representations in State Offices include Hispanics/Latinos and Blacks/African Americans in several States; *County (non-Federal) Employees include substantial under-representations of all race/ethnic SDGs*; other FSA employees (non-

State, non-County) in the 15 USDA-designated States include Females (*several States*), Hispanics/Latinos (*several States*), and Blacks/African Americans (*several States*).

- b. **RD:** Under-representations in the National workforce include Hispanics/Latinos, and Asians; under-representations in State Offices include Hispanics/Latinos; Area Personnel in the 15 USDA-selected States include Hispanics/Latinos (*several States/Areas*), and Blacks/African Americans (*several States/Areas*).
- c. **NRCS:** Under-representations in the National workforce include *Females, Minorities, Hispanics/Latinos, Blacks/African Americans, and Asians*; under-representations in State Technical Committees include Females (*several States*), Hispanics/Latinos (*several States*), and Blacks/African Americans (*Mississippi*); under-representations in State Conservationist Offices include Females (*several States*), Hispanics/Latinos (*several States*), and Blacks/African Americans (*several States*); Field employees in the 15 USDA-selected States include under-representations in Females (*numerous Areas*), Hispanics/Latinos (*numerous Areas*), Blacks/African Americans, Asians (*several Areas*), and American Indians/Alaskan Natives (*several Areas*).
- d. **RMA:** Under-representations in the National workforce include Minorities, Hispanics/Latinos, and Asians; under-representations in RMA Regional Offices include Females (*several Offices*), and Hispanics/Latinos (*several Offices*).

This Report includes numerous Recommendations for improving the diverse representation of the USDA and Agency workforces, and committees, the most important of which is to conduct utilization analyses using available labor pools, along with appropriate geography and job categories, to identify genuine under-utilizations, and prepare remedial plans with clear objectives included in hiring managers' performance plans. Obviously, to the extent any unfairness or bias exists within the USDA workforce, it adversely impacts USDA equitable program service delivery.

6. USDA Discrimination Complaint System

Although not required by the Contract, the Assessment Team determined that analysis of USDA's discrimination complaint system was important to this Report's findings and therefore conducted an overview assessment of USDA's discrimination complaint systems, including processes for (a) program, and (b) EEO workplace complaints. These two areas have been the subject of historic criticism for general ineffectiveness, arising out of (a) unreliable data, (b) delays in processing that allow backlogs to accumulate, and (c) at times, failure to investigate complaints.

The Assessment Team found some improvements in data collection and access, and slightly reduced processing times, but the persistent problem is the sheer complexity of the process, particularly in light of the simplicity of most of the claims, that inevitably leads to unnecessarily long investigation and adjudication periods—leading to what appears to be an almost foregone conclusion: in 97%+ of the claims, there is no finding of discrimination. Delays sabotage the very purpose of an internal complaint system, which is to demonstrate to employees and customers that USDA can provide swift, fair justice. Delays in and of themselves undermine confidence in the process, enable complainants to assume the worst, and damage the integrity of fact-finding (memories fade, witnesses become unavailable, documents and other physical evidence disappears).

Major corporations have adopted informal internal complaint processes over the past few decades, and have found that they can complete the process for most complaints in a matter of weeks, rather than months and years. The Assessment Team recommends a wholesale simplification of the process, along with a periodic auditing mechanism, that would lead to dramatically shortened processing times, and better results.

7. Protected Classes

The USDA RFP listed 19 separate characteristics (*e.g.*, race, color, gender, religion, parental status, marital status) with respect to which USDA seeks to provide “equal and fair access for all customers.” At the same time, USDA regulations, Departmental Regulations, Departmental Manuals, the website, civil rights compliance review criteria, and other

USDA sources cite varying numbers and differing descriptions of these “protected classes.” To avoid confusion by employees, customers, and other constituents, and avoidable difficulties in claims and litigation, the Assessment Team recommends that USDA, in consideration of applicable Federal statutes and regulations, along with internal policy considerations, decide upon a consistent approach to these protected classes, and reflect that decision in all pertinent publications.

I. INTRODUCTION

A. Background

At the time the Jackson Lewis Corporate Diversity Counseling Group (“the Group”) was awarded a competitive contract to conduct the U.S. Department of Agriculture (“USDA”) “Independent Assessment of the Delivery of Technical and Financial Assistance” (“Civil Rights Assessment,” or “Assessment”), the Group was informed that USDA had for many years developed a negative image for its perceived failure to fairly and equitably serve various groups of minority Americans eligible for USDA assistance. USDA has even been called “the Last Plantation” and, according to some, is viewed as the worst Federal Department for its unfair dealings with African Americans and other minority groups. USDA’s poor reputation for allegedly failing to provide non-discriminatory treatment to its constituents and employees was exacerbated by the filing of highly public lawsuits, *i.e.*, five major class-action lawsuits brought by African American, Hispanic, Native American, and female farmers and ranchers—resulting in billions of dollars in settlements to date. The Department, and specifically Secretary Thomas Vilsack, stated during his confirmation hearings and, in statements following his confirmation, that he decided to improve the Department’s record of service to the entire public, including an assessment of what the barriers are, if any, to equitable treatment, and what USDA can do to reduce and, hopefully, eliminate those barriers.

Secretary Vilsack well understood his Department’s history and reputation at the time of his appointment and confirmation, and shortly thereafter he announced that civil rights would be one of his top priorities. Three months into his tenure, the Secretary issued a Memorandum, “A New Civil Rights Era for USDA.” (See Exhibit 1, Secretary Memorandum, April 21, 2009.) In that Memorandum, the Secretary committed to

take definitive action to improve USDA’s record on civil rights and to move USDA into a new era as a *model employer and premier service provider*.

(Emphasis added.) The Secretary outlined 14 discrete actions in furtherance of this goal. The first action was to “*obtain an independent external analysis of program delivery in USDA’s Farm Service Agency*

(FSA), Natural Resources Conservation Service (NRCS), and Rural Development (RD) field offices.” The analysis was to “provide specific recommendations and methodologies to ensure that programs are delivered equitably and that access is afforded to all constituents, *with particular emphasis on socially disadvantaged farmers, ranchers, and other constituents.*” (Emphasis added.)

Pursuant to the Secretary’s directive, a Request for Proposals (“RFP”) was issued on May 28, 2009. Proposals were due on July 20, 2009, and several proposals were received, reviewed, and evaluated. Jackson Lewis LLP was subsequently awarded the Contract on September 16, 2009. The Project formally commenced with the Initial Meeting at USDA Headquarters on October 26, 2009.

B. Scope of Assessment

The RFP, Proposal, and resulting Contract provide the Scope of Work for this Assessment regarding *four* discrete USDA Agencies: Farm Service Agency (“FSA”); Rural Development (“RD”); Natural Resources Conservation Service (“NRCS”); and Risk Management Agency (“RMA”), in addition to the general directive to address areas requiring Department-wide action. (Note that RMA was not among those Agencies mentioned in the Secretary’s April 2009 Memorandum; USDA added RMA in the RFP.) The essential requirements for the Assessment are stated in the RFP:

USDA requires an independent civil rights assessment that examines the delivery of its financial and technical programs at the State and local level by the Agencies mentioned above. This assessment shall focus on the effectiveness of USDA’s programs in reaching America’s diverse population in a non-discriminatory manner, with particular attention on accessibility, equity, fairness, and accountability.

RFP, p. 3. The key areas of analysis were specified as: “review of existing laws, policies, and procedures; an analysis of its current customer base and constituencies in comparison to the existing population; an evaluation of current outreach efforts; and reviews of cultural competencies and considerations.” The key deliverable specified was “recommendations of actions USDA can take to ensure its program

delivery and organizational structure is providing all Americans with fair and equal access to USDA Programs.” RFP, p. 3.

The RFP originally required interviews of State, county, and regional personnel of each of the four specified Agencies in six counties in each of 14 States. Those States and counties were not designated in the RFP, but were provided by USDA officials after award of the Contract. The States selected by USDA (as subsequently modified)¹ were:

- | | |
|----------------|----------------------|
| 1. Arizona | 9. North Dakota |
| 2. California | 10. North Carolina |
| 3. Florida | 11. Oklahoma |
| 4. Georgia | 12. Pennsylvania |
| 5. Louisiana | 13. South Carolina |
| 6. Michigan | 14. Vermont |
| 7. Mississippi | 15. Washington State |
| 8. New Mexico | |

C. Jackson Lewis Corporate Diversity Counseling Group/USDA Assessment Team

Jackson Lewis LLP (“JL”) is a law firm of more than 650 lawyers with 46 offices around the country. The JL Corporate Diversity Counseling Group consists of attorneys who specialize in addressing issues of diversity, fairness, nondiscrimination, equal access, and related matters. The entire JL USDA Assessment Team (“Assessment Team,” or “Team”) consists of a highly diverse and experienced group of 22 professionals, led by Senior Partner and Project Manager Weldon H. Latham, nationally-recognized for his leadership and expertise in the areas of diversity, inclusion, equal opportunity, and civil rights matters. (See brief biographical data, Exhibit 3, and Team photographs, Exhibit 4). Advising and consulting with the Team is a four-member Senior Leadership Oversight Team (“SLOT”) of professionals with significant high-level USDA experience, led by Mr. Latham, and a number of consultants with additional USDA-related experience. (See SLOT Photographs, Exhibit 5, and Consultant Photographs, Exhibit 6).

¹ USDA originally selected 14 States; during the course of the Assessment, the Contract was modified to delete one State and add two others, for a total of 15 States to be included in the Assessment. The Counties selected are listed in Exhibit 2.

The Senior Leadership Oversight Team is chaired by Mr. Latham and co-chaired by Mr. Bob Nash, a former USDA Rural and Community Development Under Secretary and former Assistant to President Clinton. The SLOT's other members include Mr. Alvin Brown, former USDA Deputy Administrator for Community Development, Senior Advisor to the Secretary of Commerce and Secretary of Housing and Urban Development, and Vice Chair of the Community Empowerment Board; and Mr. Larry Mitchell, former USDA FSA Deputy Administrator for Farm Programs (also a family farmer), and former Vice President of the National Farmers Union.

D. Methodology of Assessment

Pursuant to the Contract requirements, the Team organized the Assessment into four Phases (as described below, Phase II includes a number of significant sub-phases/tasks, as USDA modified its approach during the Assessment).

Phase I: Orientation/Planning/Initial Meetings –
Commenced October 2009, completed January 2010.

Phase II: Fact Gathering and Analysis – Commenced January 2010, completed with the completion of the Final Report, March 31, 2011; efforts expanded to include:

1. Headquarters/Field Assessments: conducted interviews of over 1,750 USDA personnel, County Office staff, and County Committee members in 15 USDA-selected states.
2. Meetings with Members of Congress/
Congressional Committee staff/attended Congressional Black Caucus Conference and meetings.
3. Attended various USDA and Community Based Organization (“CBO”)-sponsored conferences and Listening Sessions.
4. Customer Focus Groups: planned and conducted 30 sessions in 10 states.
5. Meetings with/interviewed representatives of:
 - CBOs.

- Approved Insurance Providers (“AIP”).

Phase III: Data Integration and Analysis – Ongoing issues of data integrity and timeliness dramatically slowed this process throughout; completed with the finalization of the Report, March 31, 2011.

Phase IV: Final Report Preparation and Submission – Continuing data checks and analysis, while completing the finalization of Report, March 31, 2011.

The Assessment Team created four Agency Teams, one to lead the assessment of each Agency. During the course of the Assessment, regular full-Team meetings were held; each Agency Team was responsible for investigation, factual development, and creation of recommendations for its respective Agency as well as for assistance and development of the cross-cutting Department-wide Assessment and Recommendations.

1. Phase I: Initial Orientation and Planning

Phase I, Initial Orientation and Planning, commenced in October 2009 with planning and conducting a series of meetings with numerous officials of each of the four Agencies. These meetings were designed to obtain background information on Headquarters and Field organizations, Agencies’ missions and objectives, key Agency programs and delivery methodologies, and other information needed to plan Phase II. (See list of Phase I Meeting attendees, Exhibit 7). By mid-December 2009 the initial orientation meetings had concluded, and planning for Phase II was underway. Phase I concluded on January 10, 2010.

On December 15, 2009, anticipating Phase II interviews in the Field, the Secretary issued a Memorandum to Senior USDA Officials entitled, “Cooperation in Independent Assessment of Fairness and Equality of USDA Program Delivery.” (See Memorandum, Exhibit 8). The purpose of the Memorandum was to alert the Agencies, particularly their State, County, and Regional Offices, to the Assessment and the upcoming interviews, and to direct their cooperation in the Assessment. The Memorandum concluded: “USDA is poised for positive, transformational change. I know you share my commitment and I am relying on each of you to be a valued partner in this process.”

2. Phase II: Headquarters/Field Assessments

Phase II, Headquarters/Field Assessments, commenced with field interviews of USDA employees in California on January 11, 2010 and proceeded over the subsequent nine months in each of the designated states and counties. Phase II field interviews in the 15 States concluded during the week of October 4, 2010, with interviews of USDA employees in South Carolina and Mississippi. All told, the Assessment Team interviewed 1,752 USDA employees, including FSA County Employees and County Committee Members. (The job titles of those interviewed are contained in each Agency Assessment, below.)

The Contract directed that the Assessment Team obtain USDA *customer* input by written/electronic surveys. During the course of the Contract, USDA decided that the survey methodology was less likely to secure the type of reliable data necessary for the Assessment, and the Department elected to replace this methodology with Focus Groups in 10 of the 15 States (discussed in detail, below). USDA, the Assessment Team, and Subcontractor Westat sought the necessary Office of Management and Budget (“OMB”) approvals to conduct Focus Groups. Following several months of OMB scrutiny of the proposed approach and OMB approval, the Assessment Team commenced scheduling the Focus Groups in December 2010. Focus Groups began in Mississippi on January 6, 2011, continued in the other nine states, and concluded in California on February 3, 2011.

As discussed in greater detail below, Focus Group recruiting was difficult and attendance was generally below expectations. While helpful customer input was elicited from the Focus Groups, the Assessment Team supplemented the information received by contacting a number of Community-Based Organizations (“CBOs”) located among the 15 USDA-selected States to obtain additional input (described in detail, below). (This effort was not required by the Contract, but the Assessment Team deemed it necessary to supplement the content of the Focus Group sessions.) This Report therefore includes useful customer input from not only Focus Groups, but from CBOs as well.

3. Phases III and IV: Data Validation and Analysis/Report Preparation

Substantial time incurred in obtaining OMB, USDA Office of General Counsel (“OGC”), and other necessary approvals to commence Focus Groups necessitated a revision to the schedule that would require the Focus Groups to be delayed by three months and conducted during Phase III and IV, the Data Validation and Analysis/Report Preparation Phases. Due to the compression of the schedule, Phases II, III, and IV overlapped in January and February 2011, with the Assessment Team continuing to obtain information from Focus Groups and CBOs while analyzing and validating data already received, receiving additional data and documents from USDA, working with USDA to obtain corrections to numerous errors in the data, and preparing the Final Report. During this time, additional updated information became available for the first time, such as the voluminous Department and Agencies’ FY 2010 “MD-715-01” workforce analysis reports submitted by USDA to the U.S. Equal Employment Opportunity Commission (“EEOC”), as well as other updated FY 2010 data (such as customer information) from each Agency. The Team received data from USDA as late as March 30, 2011. The Assessment Team incorporated this latest-available data and information into the analysis, and it is reflected in this Final Report.

E. Focus Groups

As noted above, the Contract initially required written/electronic *surveys* of current and potential USDA customers, including customers who had been denied services in the past (collectively “customers”). After commencement of the Contract, USDA determined that Focus Groups would be the most effective method of collecting information about customer experiences with USDA with respect to financial and technical assistance.

Once USDA determined that an alternative means of customer input was needed to replace written surveys, namely, customer Focus Groups, the Team developed a series of alternative proposals for obtaining the maximum benefit from Focus Groups, including a process for selecting the 10 States, from among the 15 USDA-selected States, in which Focus Groups would be conducted. USDA’s ultimate decision was to have one Focus Group day in 10 of the 15 Assessment States and covering all four

Agencies (FSA, RD, NRCS, and RMA).² A Contract Modification was entered into on June 16, 2010, formally substituting Focus Groups for the Contract-specified surveys.³

1. Focus Group State Selection Process

Data used to select the 10 recommended States was compiled from the 2007 NASS Census of Agriculture Report (“*AgCensus*”) and from data USDA provided detailing the number of program discrimination complaints filed between 2008 and 2010 in the 15 States against the USDA Agencies covered by the Assessment.

The Assessment Team used a multi-step process to identify 10 recommended Focus Group States.

Step 1: Identify percentage of SDG Principal Operators. The percentage of socially disadvantaged group (“SDG”) farmers/ranchers (Black/African-American, Hispanic/Latino, American Indian/Alaskan Native, Asian, and female) was calculated separately for each State, using the 2007 *AgCensus* (most recent available) “Principal Operator” data. The number of Principal Operators for a given State was divided into the number of Principal Operators for each SDG to determine the percentage of all Principal Operators in the State comprising each SDG.⁴

² To maximize customer participation from each of the six counties per Focus Group State, the Team attempted to identify Focus Group sites that were as centrally located as possible. Despite the Team’s efforts, in some instances, because of the size of the State, potential participants were required to drive hundreds of miles to attend a Focus Group. Many did.

³ To minimize the burden on the public and ensure the greatest possible benefit from Federal government collections of information from the public, among other reasons, Congress enacted the Paperwork Reduction Act of 1995, 44 U.S.C. §3501, *et seq.* as amended. Pursuant to the Act, proposed Federal “information collections” involving standardized questions to ten or more individuals must be submitted (using an “Information Collection Request”) to the Office of Management and Budget (“OMB”) for review, evaluation, and approval. *Id.* §3502. Since the information to be collected from Focus Groups was covered by the Paperwork Reduction Act, Focus Groups could not commence before approval was received from OMB. The Team prepared and provided the draft OMB submission to USDA, which USDA and the Team revised, and USDA subsequently submitted to OMB. OMB approved the submission on September 24, 2010.

⁴ For example, the Louisiana *AgCensus* data, “Table 54, *Selected Farm Characteristics by Race of Principal Operator: 2007 and 2002*,” was used for Louisiana (“Table 54”). The number of African-American Principal Operators listed in Table 54 for 2007 (1,914) was divided by the number of all Principal Operators for 2007 (30,106), resulting in an African-American Principal

Step 2: Rank States by percentage of SDG Principal Operators. Using the percentages derived from Step 1, the 15 Assessment States were ranked separately for each SDG, from 1 to 15, with 1 being the State with the highest percentage of Principal Operators, and 15 the lowest.

Step 3: Identify percentage of civil rights complaints per State, and rank States accordingly. A similar process was followed in determining the Average Annual Civil Rights Complaints per 100,000 Principal Operators. The number of complaints for a State was divided by three (the number of years covered) to obtain an annual number. This result was then divided by the number of Principal Operators in the State, which provided the number of complaints per Principal Operator. To arrive at the percentage of complaints per 100,000, the result from the previous calculation was multiplied by 100,000. The States were then ranked from 1 to 15, that is, high percentage to low percentage.

Step 4: Create a total ranking score for each State. The ranking numbers for each of the six categories (four races/ethnicity, one gender, and one Average Annual Civil Rights Complaints) were combined by State to calculate a Total Ranking Score for each State, from highest to lowest.

Step 5: Joint evaluation with USDA of final Focus Group States. The rankings from Step 4 were used in discussions with USDA on the Focus Group State selection process. Additional input concerning geographic concerns and the like was also discussed.

The 10 States selected for Focus Groups were Arizona, California, Georgia, Louisiana, Mississippi, New Mexico, North Carolina, North Dakota, Oklahoma, and South Carolina.

2. Participant Selection Process

One primary goal for Focus Group customer input was for each Focus Group to comprise a mix of participants by race/ethnicity/gender that would roughly reflect the SDG population in the individual State. Consistent with the Contract, potential participants were limited to those in USDA's database who were customers or had submitted applications

Operator percentage of 6.4% for Louisiana. Similar calculations were prepared for each of the SDGs.

for technical or financial assistance to the Assessment Agencies during the previous three years. Identifying individuals for the Focus Groups proceeded as follows:

1. FSA, RD, NRCS, and RMA provided lists of individuals and organizations composed of customers and applicants who, in the past three years, either applied for or received technical or financial assistance from the Assessment Agencies. The lists were limited to USDA customers who lived within the six USDA-selected counties in each Focus Group State. The customer lists provided by each Agency included demographics (customer and applicant race/ethnicity and gender), program information, dates of participation, and addresses/contact information.⁵
2. The customer/applicant lists were sorted by gender and race/ethnic identification. The profile design for each Focus Group included two randomly-selected White participants, in order to compare their experiences with SDGs.
3. The female and minority farmers/ranchers for each Focus Group were randomly selected and recruited roughly in proportion to their percentage representation among farmers/ranchers within a State.⁶ Through the random selection process, it was anticipated that the Focus Groups would have a mix of program participation offered by the applicable Agencies.

⁵ There were numerous problems with the lists supplied by the Agencies, including, for example, incomplete program information, missing participants, missing addresses and telephone numbers, and missing coding. The lists were first requested on June 24, 2010, and the first customer list from an Agency was received on August 19, 2010. The lists had to be rerun/recompiled a number of times and were not ready to be used for the recruitment process until November 23, 2010. Although the lists were then deemed sufficiently complete and accurate to use for recruiting Focus Group participants, some of the files were still missing telephone numbers and other contact information. To minimize the impact of the missing information, the Assessment Team conducted independent research in an attempt to locate the missing information. (USDA's inability to quickly and efficiently prepare complete and accurate customer lists forms the basis for some of the Recommendations contained in this report.)

⁶ For example, if African Americans constituted 80% of the female and minority farmers/ranchers in the State, then the goal would be for 80% of the Focus Group members, not including two White participants, to be African American. The participants were selected randomly within each SDG.

3. Participant Recruitment

The recruitment process proceeded as follows:

1. Letters were sent to potential participants explaining the background and objectives for the Focus Groups, inviting them to participate, and explaining that they would be contacted by telephone.
2. Telephone calls, including multiple follow-up calls as necessary, were placed to recipients of the letters.
3. Reminder postcards were sent to those who agreed to participate.
4. Reminder calls were made two to three days before the scheduled Focus Groups to those recruits who had agreed to participate.

Subcontractor Westat, which routinely recruits Focus Group participants and also conducts Focus Groups, initially estimated that 20% of those who were recruited would agree to participate, and that 20% of those who agreed to participate would nonetheless not attend their Focus Group session. Based on Westat's projection, it was decided that 2,250 customers would need to be contacted to secure 15 firm commitments to participate in each Focus Group (for a total of 450 participants for 30 Focus Groups), which, according to Westat's extensive experience, would yield 12 actual participants per Focus Group.⁷

During the early stage of the recruiting process, it became clear that the response rate was and would likely continue to be lower than anticipated. Therefore, the participant pool was expanded to 3,521 potential participants.⁸ Despite diligent efforts to increase the number of firm commitments to participate, of those in the expanded participant pool, 340 customers/applicants (9.7% of those recruited) made firm commitments to participate. This represented an average of 11.3 firm commitments per Focus Group, somewhat lower than the target of 15. Based on feedback received during the Focus Groups and the

⁷ Although focus group experts, and a variety of literature on the subject, suggest that the maximum number of focus group participants should be between 6 and 10, the Team attempted to recruit a larger number to maximize customer/applicant input.

⁸ Of the 3,521 customers/applicants identified for the recruitment pool using USDA customer lists, 245 (7%) had disconnected telephones, 516 (15%) were not locatable, and 124 (3.5%) were deceased.

Community Based Organization (“CBO”) interviews (discussed further below), it appears that farmers, ranchers, and rural residents, many of whom work multiple jobs, are more reluctant and less available than other populations to participate in Focus Groups. This might be even more pronounced for minority and female farmers and ranchers, many of whom (as discussed further below) question USDA’s credibility, and possess a general lack of trust of USDA or government in general.

It was initially anticipated that the Focus Group sessions would be held in the July to September, 2010 time-frame. Because of (1) the delay, until September 24, 2010, in receiving OMB approval to proceed with the Focus Groups, (2) problems with securing usable customer lists from USDA, and (3) the need to independently research telephone numbers and other contact information not included in the lists provided by USDA, among other reasons, the Focus Group sessions did not begin until January 6, 2011, and were completed on February 3, 2011.

As delays in securing Focus Group approval and customer/applicant data pushed the schedule into mid-winter, severe snow and/or ice storms reduced Focus Group participation rates in South Carolina, Georgia, North Dakota, and Oklahoma. Even in some States where weather was not an issue, the turnout was often lower than scheduled. For example, of those who committed to attend Focus Groups, only 46% participated in Louisiana, 47% in Mississippi, 57% in California, and 61% in New Mexico. Of the total 174 Focus Group participants, 43 attended the RD sessions, 75 the NRCS sessions, and 56 the FSA/RMA sessions.

Despite the lower-than-anticipated attendance at Focus Groups, the 30 two-hour sessions generated nearly 3,000 pages of transcribed comments by SDG and other participants, and likely resulted in more *detailed* information—more depth and less breadth—than might have been secured from larger groups.

F. Community Based Organization (“CBO”) Interviews

The Contract did not require or anticipate that Community Based Organizations (“CBO”) would be interviewed as part of the Assessment process. Nonetheless, the Assessment Team decided after commencement of the project that broader customer input would be essential to secure the most comprehensive experiences and perspectives

on USDA program delivery. Moreover, as USDA and other stakeholders repeatedly referred the Assessment Team to additional credible sources of information, CBOs were regularly included among those sources. Thus, the Team included within the Focus Group Information Collection Request (“ICR”) submitted to OMB a separate section seeking approval for conducting CBO interviews. As explained to OMB, a cross-section of CBO insights would provide a more complete picture of USDA customer opinions, and likely result in additional recommendations for improvements. As with Focus Groups, OMB approved the ICR for CBOs.

Once it became clear that—notwithstanding substantial efforts to maximize participation—Focus Group recruitment numbers would be lower than initially expected, the Assessment Team worked with USDA and other referral sources, and conducted independent research, to identify numerous CBOs in the 15 USDA-selected States, focusing on CBOs that represented and/or worked primarily with SDG customers of the Agencies. The Assessment Team contacted more than 50 CBOs in all 15 of the Assessment States. While some CBOs declined participation and others did not return telephone calls, ultimately the Team conducted 30 interviews following the OMB-approved questions, with each interview lasting between one and several hours.

G. Approved Insurance Provider and Agent/Broker Interviews

The purpose of interviewing RMA’s Approved Insurance Providers (“AIPs”) and their agents/brokers was to obtain a more comprehensive understanding of how AIPs and their agents/brokers service, reach out to, and interact with (for example, in claims processing), SDG producers. The Assessment Team developed and included with the OMB Focus Group and CBO ICR’s a third ICR for AIPs and agents/brokers, including proposed questions and other technical requirements. These proposed questions inquired about, among other areas, the AIPs’ non-discrimination policies, procedures, and practices; recruitment of minority and female agents; requirements/goals to sell risk management products to SDGs; incentives offered to encourage agents/brokers to outreach and sell insurance products to SDGs; and level of sales to SDGs. Again, following a process of meetings, discussions, and ICR revisions, OMB approved the AIP/agent/broker interviews. As a result, the Assessment Team interviewed corporate officials from four of the 17 AIPs (25% of all AIPs), and 20 agents/brokers working for or associated with those AIPs.

A discussion of the information collected during the AIP and agent/broker interviews is included in the RMA Assessment, below.

H. Regular Communications with USDA During the Assessment

At the commencement of the Assessment, USDA, through the Contracting Officer (“CO”) and Contracting Officer’s Technical Representative (“COTR”), established two additional “liaisons” for this Contract, the “Governing Council” (consisting of senior Department and Agency officials), and the “Working Group” (representatives of each of the four Agencies who worked directly with the Assessment Team on a regular basis to assist with daily activities). The Assessment Team met several times with the Governing Council, and worked regularly with the Working Group throughout the Assessment, including participation in conference calls and meetings.

During the course of the project the Assessment Team interacted daily with USDA, primarily through the CO and COTR, to coordinate scheduling, planning, data/document receipt, and other activities. The Assessment Team prepared and submitted written Weekly Progress Reports (see Exhibit 9), two interim reports (Initial Assessment Report, see Exhibit 10 (without attachments), and Interim Assessment Report, see Exhibit 11 (without attachments)), and provided formal briefings to the USDA Governing Council and Working Group on both interim reports. The Assessment Team leads also participated in periodic meetings with USDA senior officials, including the Secretary, Assistant Secretary for Administration, and Chiefs of Staff, for briefings and to obtain ongoing additional input.

I. Additional Activities in Support of the Assessment

In coordination with USDA, Assessment Team members attended a variety of additional meetings and conferences across the country, such as:

1. USDA 2010 Cooperators Conference (St. Louis, MO).
2. Professional Agricultural Workers Conference (Tuskegee, AL).

3. Federal Interagency Diversity Partnership Meeting (Washington, D.C.).
4. 2010 Congressional Black Caucus Political Education and Leadership Institute Policy Conference (Tunica, Mississippi).
5. Meetings/briefings of several Members of Congress and their staff.
6. Meeting with National Black Growers Council Board (Washington, D.C.).
7. Tour of an African-American-owned family farm (Tanner, AL).
8. Rural Development Site Visits (Single-Family/Multi-Family Housing Developments, Tribal Community Center) (Halifax, NC).
9. Meeting with U.S. State Department Chief Diversity Officer.
10. Meeting with President, USDA Coalition of Minority Employees.
11. Meeting with President and CEO, National Coalition on Black Civic Participation.

J. Fact-Checking/Validation of Data

In part because of the number of errors in data received from various USDA sources detected by the Team during the analytical process, the Team provided USDA with draft spreadsheets reflecting analyses of workforce and committee demographics, and customer demographics, throughout March 2011 to permit the Department and Agencies to double-check and, where necessary, correct the data that had been provided. There were a number of changes provided by USDA, resulting in unplanned additional time-consuming efforts to correct factual errors (which otherwise would have been incorporated into this Final Report).

K. Final Report Preparation

Preparation of the Final Report commenced in January 2011, and was subject to multiple delays awaiting completion of Focus Groups, CBO interviews, and substantial data/document request submissions (including USDA error corrections and re-submissions). Notwithstanding these delays, the Assessment Team was committed to completing, and in fact completed, the Final Report by March 31, 2011.

II. USDA ORGANIZATION⁹

USDA is headquartered in Washington D.C. and has field offices in all 50 U.S. states, plus U.S. territories, and in over 50 foreign countries. USDA has a workforce of approximately 123,000 permanent and part-time employees.

USDA is led by Secretary Thomas Vilsack. Reporting directly to Secretary Vilsack are the following positions (see USDA Organization Chart, Exhibit 12):

- A. Deputy Secretary
- B. Director of Communications
- C. Inspector General
- D. General Counsel
- E. Assistant Secretary for Administration (Departmental Management)
- F. Assistant Secretary for Congressional Relations
- G. Under Secretaries: There are seven Under Secretaries who report to the Secretary concerning their respective responsibilities (“Mission Areas”), described immediately below.

USDA’s key activities are organized by seven “Mission Areas,” led by Under Secretaries. Each Mission Area is “a collection of agencies that work together to achieve USDA’s strategic goals.”¹⁰ Each Mission Area has one or more agencies reporting to it. Descriptions of USDA’s seven Mission Areas and agencies are as follows:

- A. Natural Resources and Environment (“NRE”):** NRE’s mission is to ensure the health of the land through sustainable management. NRE’s agencies are:

⁹ Sources: USDA website; USDA 2010 Performance and Accountability Report.

¹⁰ USDA 2010 Performance and Accountability Report, p. 4.

1. **Forest Service (“FS”):** FS is responsible for managing public lands in national forests and grasslands.
 2. **Natural Resources Conservation Service (“NRCS”):** NRCS is responsible for providing leadership in a partnership effort to help America's private landowners and managers conserve their soil, water, and other natural resources.
- B. Farm and Foreign Agricultural Services (“FFSA”):** FFSA helps keep America’s farmers and ranchers in business as they face the uncertainties of weather and markets. FFSA’s agencies include:
1. **Farm Service Agency (“FSA”):** FSA administers and manages farm commodity, credit, conservation, and disaster programs.
 2. **Foreign Agricultural Service (“FAS”):** FAS is responsible for working to improve international market access for U.S. products, build new markets, improve the competitive position of domestic agriculture in the global marketplace, and provide food aid and technical assistance to other countries.
 3. **Risk Management Agency (“RMA”):** RMA is responsible for helping producers manage their business risks through effective, market-based risk management solutions.
- C. Rural Development (“RD”):** RD focuses on helping improve the economy and quality of life in rural America. RD’s agencies include:
1. **Rural Utilities Service (“RUS”):** RUS provides financial programs to support essential rural public facilities and services such as water and sewer systems, health clinics, emergency service facilities, and electric and telephone broadband services.
 2. **Rural Housing and Community Facilities Programs (“RH”):** RH is responsible for expanding economic opportunities and improving the quality of life for rural residents by assisting in purchasing single family housing,

developing multi-family housing, and constructing or improving community facilities.

3. **Rural Business Cooperative Service (“RB”):** RB is responsible for promoting a successful business environment in rural America through loans, grants, and other business development vehicles.

D. Food, Nutrition, and Consumer Services (“FNCS”): FNCS works to harness the Nation’s agricultural abundance to end hunger and improve health in the United States. FNCS agencies include:

1. **Food and Nutrition Service (“FNS”):** FNS administers USDA’s Federal nutrition assistance programs.
2. **Center for Nutrition Policy and Promotion (“CNPP”):** CNPP works to improve the health and well-being of Americans by developing and promoting dietary guidance that links scientific research to the nutrition needs of consumers.

E. Food Safety (“FS”)

1. **Food Safety and Inspection Service (“FSIS”):** FSIS is the public health agency responsible for ensuring that the Nation’s commercial supply of meat, poultry, and egg products is safe, wholesome, labeled, and packaged correctly.

F. Research, Education, and Economics (“REE”): REE is responsible for the maintenance of a safe, sustainable, competitive U.S. food and fiber system, as well as supporting communities, families, and youth through integrated research, analysis, and education. REE is composed of:

1. **Agricultural Research Service (“ARS”):** ARS conducts research to develop and transfer solutions to agricultural problems of high national priority.
2. **National Institute of Food and Agriculture (“NIFA”):** NIFA is responsible for advancing knowledge of agriculture, the environment, human health and well-being, and communities by supporting research, education, and extension programs

in the Land-Grant University System and other partner organizations.

3. **Economic Research Service (“ERS”)**: ERS conducts a research program to inform public and private decision-making on economic and policy issues involving food, farming, natural resources, and rural development.
4. **National Agricultural Statistics Service (“NASS”)**: NASS is responsible for providing timely, accurate, and useful statistics, including the “*AgCensus*,” in service to U.S. agriculture.
5. **National Agricultural Library (“NAL”)**: NAL is responsible for advancing access to global information for agriculture.

G. Marketing and Regulatory Programs (“MRP”): MRP facilitates domestic and international marketing of U.S. agricultural products and is responsible for ensuring the health and care of animals and plants. MRP agencies include:

1. **Agricultural Marketing Service (“AMS”)**: AMS administers programs that are responsible for facilitating the efficient, fair marketing of U.S. agricultural products, including food, fiber, and specialty crops.
2. **Animal and Plant Health Inspection Service (“APHIS”)**: APHIS is responsible for providing leadership in ensuring the health and care of animals and plants.
3. **Grain Inspection, Packers, and Stockyards Administration (“GIPSA”)**: GIPSA is responsible for facilitating the marketing of livestock, poultry, meat, cereals, oilseeds, and related agricultural products.

Additionally, the **Office of the Assistant Secretary for Civil Rights (“OASCR”)** (the USDA-wide Civil Rights Office) is located within Departmental Management. The Assistant Secretary for Civil Rights reports to the Assistant Secretary for Administration. Each Agency has its own Civil Rights Office.

III. Department-Wide Organization, Functions, and Equitable Access Performance: High-Level Changes for High-Level Results

A. Introduction

For USDA to effectively address its prime objective for this Assessment—reducing barriers to full program participation and achieving equitable access—it must make changes at both the Agency *and* Department level. The Secretary recognizes the *critical importance of Departmental leadership to Departmental transformation*. His “New Civil Rights Era” Memorandum, the Cultural Transformation Initiative, and other initiatives at the Department level all have the capacity to profoundly impact the delivery of services in the field, when appropriately communicated, structured, monitored, and implemented.

There are 10 key areas for Department-wide change that will assist in transforming the Department and achieving the Secretary’s “New Era of Civil Rights.” Each of these proposed changes (or variations thereof) is currently utilized in Corporate America and is consistent with organizational “best practices.” Many of these proposed changes also mirror and support, in more generalized fashion applicable Department-wide, the Recommendations provided for each Agency, discussed in detail below.

These changes enhance the key elements of structure, accountability, incentives and penalties, performance management, and other essential tools and measures of success. Equally importantly, they will assist in de-emphasizing the somewhat negative connotation of the historical term “civil rights,” and replacing it with the broader, more descriptive, positive aspirational goals of “diversity, inclusion, and accessibility” (“DIA”). While civil rights compliance and enforcement activities must and will continue as statutorily required, substantial other programmatic efforts to enhance DIA and outreach/marketing will appropriately be carried out by others.

B. 10 Fundamentals of Successful Implementation of Diversity, Inclusion, and Accessibility at the Department Level

1. Mission/Leadership

a. Background

One critical fundamental of successfully integrating diversity, inclusion, and accessibility into any organization is placing a high-priority on leadership commitment and drilling that commitment down through a consistent, sustained message. Specifically, organizational leadership must emphasize that diversity, inclusion, and accessibility (“DIA”) is among its highest priorities and an integral part of achieving success of the Departmental mission. The commitment must be clear and the message must be compelling, sustained, and broadly publicized. This is particularly true in an organization with a workforce exceeding 120,000 and operating with Federal, state, and local employees in all 50 states. This commitment begins with a clear understanding of the “business case” for DIA: the unique nature of the USDA’s services, employees, and customer base and how these critical elements relate to America’s changing culture.

USDA has recently begun to institutionalize the concept of diversity and inclusion (for example, with issuance in 2010 of “The Diversity Road Map”), but has not completed the process of defining, in succinct terms, the Department and individual Agency “business case” for DIA and the unique importance of program “accessibility” to USDA. The USDA Cultural Transformation Initiative contains a lengthy discussion of factors comprising the business case, but because of its length, format, and generic content, it is not compelling to all employees, and is difficult for leadership to effectively communicate.

The process of elevating DIA at USDA must be reinforced by high leadership visibility throughout the Department, starting with the Secretary and continuing with Departmental and Agency leadership, communicating the importance of the DIA mission in all key planning and performance documents and communications. (USDA’s current Strategic Plan, for example, contains scant references to the importance of DIA or equitably serving SDGs). This is not “PR” or “spin,” but rather, substantive and sustained communications broadly disseminating an unwavering commitment to DIA. The effectiveness of the message will be

measured by enhanced recruiting of minorities, women, and others, to work for USDA; increased trust in the Department by socially disadvantaged groups; and achievement of equitable and fair service to all under-served customers and potential customers. The following are Department-wide recommendations to assist the Secretary and the Department in defining the DIA Mission and broadly communicating it to all stakeholders.

Note: Each of the Recommendations contained in this Section and throughout this Report requires extremely busy USDA personnel to assume responsibility for additional DIA efforts over and above their current responsibilities. Recognizing both the Contract's directive that the Assessment Team propose recommendations for implementation and provide assistance therewith, and USDA's need for specific technical expertise in DIA matters, the Assessment Team can assist USDA with implementation planning, development, scheduling, methodology, content, presentation, and other specific implementation activities, utilizing the Group's extensive and practical experience.

b. Recommendations

- DW-1** Building on the cultural transformation message developed and disseminated by the Cultural Transformation Initiative Task Force, the Secretary's entire senior team, including Under Secretaries, Assistant Secretaries, and Administrators, ***should each personally lead a DIA communications campaign***—for example, “Re-birth of [All] the People's Department”—***targeting selected key stakeholders*** (for example, employees, customers, beneficiaries, CBOs), and the general public.
- DW-2** Building on the USDA Cultural Transformation Initiative Statement of Purpose, the Secretary's Office should prepare and issue the Secretary's “***Diversity, Inclusion, and Accessibility Statement***” to all employees, to be posted in all facilities, on the website, blog, and other prominent locations, and to be included in personal mailings to employee homes, such as the annual mailing of W-2 statements.
- DW-3** The Secretary should re-issue, and emphasize to all senior leadership and managers/supervisors (along with the entire workforce) ***rigorous enforcement of a comprehensive USDA***

“Zero Tolerance” Policy, clearly prohibiting all forms of discrimination, harassment, and retaliation, along with related standards of conduct, and including mandatory discipline for violations regarding both employment and program delivery.

- DW-4** The Secretary’s Office should develop, in writing, a customized persuasive *statement*, *i.e.*, “the business case,” **clarifying how effective DIA measures facilitate better achievement of the USDA Department-wide mission, vision, and strategic objectives**. Under Secretaries should lead the development of “business cases” specific to each of their Agencies.
- DW-5** The USDA **Strategic Plan should include a section on DIA**, including measurable goals and objectives. Progress against the DIA components of the Strategic Plan should be reported at a minimum in USDA Annual Performance and Accountability Reports, and more often as appropriate.
- DW-6** The Secretary’s Office should lead the development and implementation of a **sustained employee DIA education/communications plan**, educating all employees about the business imperative of DIA at USDA via their customized Agency business cases, including each employee’s individual responsibilities.
- DW-7** The Secretary’s Office should lead in the development and implementation of a **sustained DIA public communications plan**, emphasizing the business imperative of DIA at USDA and how it serves the public interest.
- DW-8** The Secretary’s Office should prepare a **video on the Secretary’s DIA commitment**, featuring the Secretary and participation by a diverse group of senior USDA officials, for wide distribution at National, state, and local levels, on the USDA website, during employee on-boarding, and for other internal and external uses, maximizing distribution into rural communities (Community-Based Organizations, 4-H Clubs, Farm Bureaus, National Farmers Union, National Grange, 1890’s, Land-Grant Institutions, County Committees, Job Fairs, *etc.*).

- DW-9** The Secretary's Office should develop and implement the next phase of a "New Era of Civil Rights and DIA" **OSEC Communications/Educational Campaign**, commencing no later than Fourth Quarter 2011. The Campaign should target broadcast and narrow-cast media and be led by a diverse group including the Secretary, Under Secretaries, Administrators, and others focusing on outlets such as television, radio, print and web-based media, and other major outlets, such as *DiversityInc* (interview), regarding "turning the page" at USDA. Ensure that narrow-casting outlets include those relevant to African Americans, Hispanics/Latinos, Native Americans, Asians, Females, other groups, and the farming/ranching industry.
- DW-10** To highlight implementation of these Recommendations, the Secretary should issue **a Department-wide Memorandum (including distribution to all employees, key Congressional Committees, and concerned Caucuses) emphasizing the Secretary's expectations with respect to the Report**. The Secretary should also conduct DIA visits, no later than the First Quarter 2012, to the top 10 states with highest concentrations of under-served and socially disadvantaged populations, and involve key Congressional, state, and local participation from those Districts visited.
- DW-11** Senior USDA leadership should assume an active role in the Federal Interagency Diversity Partnership, an organization dedicated to increasing diversity in the Federal workforce (in which USDA has had low-level participation, to date). Participation should be at the Assistant Secretary/Administrator level or above.

2. Optimal DIA Organization/Structure

a. Background

The key deliverable specified in the RFP was "recommendations of actions USDA can take to ensure its program delivery and **organizational structure** is providing all Americans with fair and equal access to USDA Programs." RFP, p. 3 (emphasis added). As part of this Assessment, the Team continuously analyzed USDA's organizational structure, both at the Department level, and at the

Agency/field level, with respect to civil rights, DIA, and equitable program delivery.

It has been the Group's experience over the past 20 or more years, solidified in this instance by comments from USDA employees, that the term "civil rights," like "affirmative action," has taken on a somewhat pejorative, compliance and enforcement-focused meaning. Many USDA employees noted that their expectations regarding a visit or other contact from anyone in USDA with civil rights responsibilities consisted of *criticism* rather than *assistance, innovation, resources, or positive reinforcement*. Corporate America long ago largely drew a distinction between "equal opportunity/civil rights" and the compliance approach, on one hand, and the more positive, constructive concepts of diversity and inclusion, on the other—emphasizing not the punishment that will be visited on violators as much as the rewards to the companies, their employees and other stakeholders from understanding the business case for, and embracing, diversity and inclusion. The additional concept of "accessibility" relates to creating fair and equitable access by all potential customers to USDA programs, which is particularly important given the pervasive allegations of denial of program access at USDA.

USDA is not optimally organized to effectively lead, manage, and express a needed dramatic change in emphasis from solely civil rights enforcement toward broader DIA objectives. Unlike the healthy trend in Corporate America, and a beginning trend in Federal Departments/Agencies, the current USDA structure reflects the emphasis on civil rights enforcement and compliance rather than diversity and inclusion. The Departments of State and Interior, and the Federal Communications Commission, for example, have created the positions of "Chief Diversity Officer." At USDA, there are no agencies or offices with "Diversity," "Inclusion," or "Accessibility" in the title, which reflects the organizational priority placed on those concepts. "Civil Rights" and "outreach" offices should fall under the aegis of DIA offices. They would continue and, indeed, enhance their enforcement activities, but they would also support the Secretary's proactive and strategic DIA functions.

In the 2009 USDA reorganization to improve Department-wide Civil Rights performance, among other reasons, the Secretary brought the Office of Civil Rights ("OCR") under the Office of the Assistant Secretary for Administration ("ASA"). One of the Secretary's aspirations at the

time, the Assessment Team was advised by USDA, was to create the position of Under Secretary for Administration, which would also include OASCR. That change has not yet been effected. USDA has since received some criticism from civil rights groups and others that OCR no longer reports directly to the Secretary. The Team's recommendation is to complete the process started by the Secretary by creating the position of "Under Secretary for Diversity, Inclusion, and Accessibility; Civil Rights; and Departmental Management" ("Under Secretary for DIA"). The Under Secretary for DIA would be responsible for three key components: (1) Administration (including such areas as Human Resources, Finance/Budget, Technology, Procurement, and Property Management); (2) Civil Rights Compliance and Enforcement (currently a role of the OASCR); and (3) DIA (including "outreach" and other DIA functions, such as those currently conducted under the auspices of the Office of Advocacy and Outreach, and various Human Resources functions, discussed below.) Administration, particularly Human Resources and Procurement, working with Civil Rights (compliance) and DIA (proactive diversity, inclusion, and accessibility initiatives), should be much more effective in identifying and remedying barriers to equitable participation and under-utilization of SDGs in the workforce, programs, and minority and women-owned business procurement. This reorganization would accomplish the goal of raising DIA/Civil Rights and Administration to the Under Secretary level—emphasizing the New Era of Civil Rights and DIA at USDA by elevating DIA to a direct report to the Secretary, and placing under the Under Secretary the position of USDA Chief Diversity Officer.

Additionally, there are no external or internal leadership boards or committees which would (1) assist the Secretary and senior leadership with expert, independent advice on strategies and tactics for identifying and improving DIA functions and performance, and (2) provide a level of monitoring, reporting, and ultimately accountability at the highest levels. Diversity-focused external leadership boards have been successfully utilized by corporations and other Government agencies as part of an integrated, strategic approach to accountability. For example, the Department of Defense established the Defense Department Advisory Committee on Women in the Services ("DACOWITS") in 1951 to provide "independent advice and recommendations to the Secretary of Defense on matters and policies relating to women in the Armed Forces."¹¹ DACOWITS is now a Federal Advisory Committee, authorized by

¹¹ Source: Defense Department Advisory Committee on Women in the Services at. <http://dacowits.defense.gov>.

Congress and composed of 35 civilian women and men appointed by the Secretary of Defense.¹² DACOWITS members include experts in women’s workforce issues, former service-members, and military family members who come from demographically and geographically diverse backgrounds. Historically, DACOWITS’ recommendations have been regarded as effective in facilitating instrumental changes to laws and policies pertaining to women in the military. *Id.*

Other historical terminology at USDA reflects outdated and ineffective approaches; for example, the term “outreach” is widely misunderstood by field personnel (few of whom can define it or identify the Department’s objectives related to it), but it is often regarded as a task that takes time away from their “real duties.” What is missing is the fundamental, positive concept of “marketing,” instigated by a clear and decisive mandate to serve *all* Americans. USDA employees should not be vaguely “outreaching” to under-served communities only when time and resources allow it. They should understand clearly that some SDGs are not being served appropriately or at all, and that the remedy is to “market” them to fulfill the USDA mission (as an *equitable*, and not a preferential, measure). As a Federal Department committed to fair and equal access to all “constituents,” USDA should be applying marketing philosophy and techniques to reach *all* constituents, educating them about USDA programs, assisting them with the application processes, and expanding USDA’s service to *all* potential customers, particularly the demonstrably “under-served.” The Team recommends that marketing be conducted by Offices of Emerging Customer Development, as shown below.

The following Recommendations are designed to bring about the organizational/structural changes that USDA needs to *institutionalize and emphasize* the Department’s sustained commitment to *all* DIA, Civil Rights, and Administration functions combined under an Under Secretary.

b. Recommendations

The RFP anticipates that the contractor “may assist the government in implementation of the Assessment report and

¹² Authority for DACOWITS arises from the Secretary of Defense, under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix 2), and 41 CFR § 102-3.50(d).

recommendations.” (RFP, para. C.8). The Assessment Team is prepared to assist USDA to effectively enhance fair and equitable program delivery.

DW-12 Create an *external* USDA Diversity, Inclusion, and Accessibility (“DIA”) Executive Advisory Board, consisting of external stakeholders/experts to provide broad, independent advice on enhancing DIA efforts at USDA.

Board Members: Chaired by Secretary; Members drawn from notable CEOs and national constituent leaders from: national civil rights organizations such as Leadership Conference on Civil Rights; Community-Based Organizations; major agri-business companies; major corporations; foundations and 1890’s/Land Grants; and selected other Federal Departments/Agency senior officials with particular DIA experience; staffed by Jackson Lewis.

Objective: Obtain independent, objective advice and counsel from diverse, experienced professionals, including best practices from other organizations; achieve enhanced accountability for results; and create greater external and internal visibility of USDA DIA efforts.

DW-13 Create an *internal* USDA Executive Diversity, Inclusion, and Accessibility Leadership Council consisting of senior officials drawn from across USDA.

Council Members: Chaired by the Secretary or his designee; Members: all Under Secretaries, and select Agency Administrators (on rotating terms); Assistant Secretary for Administration; staff assistance from Assistant Secretary for Civil Rights and Jackson Lewis *ex officio*.

Objective: Internally elevate visibility and stature of DIA matters; “invest” and educate senior officials in USDA and Agency-specific DIA issues and solutions; provide senior-level oversight, advice, and counsel to the Secretary and Chief Diversity Officer; create consistency and strategic alignment in DIA practices across USDA; and enhance accountability for results.

DW-14 *Supplementing the external Advisory Board, USDA should establish “strategic alliances” or informal “partnerships” with one or several nationally-recognized corporate diversity leaders, for regular exchange of information on policies and practices, particularly “best practices.”* These public/private partnerships would specifically address issues of workforce and marketplace DIA; marketing to a diverse constituency; use of customer and workforce surveys; strategies for diverse and inclusive recruiting, retention, and advancement; most effective methods of monitoring, reporting, and accountability; and other related topics. This relationship should include mutual workplace speaking engagements; co-authoring articles; joint sponsorships of DIA Conferences with multiple corporate and government sponsors, speakers, brainstorming workshops, and best practice sharing sessions; and other ongoing synergistic interactions.

DW-15 *Establish by Secretarial Reorganization an Under Secretary for Diversity, Inclusion, and Accessibility; Civil Rights; and Departmental Management* (see Exhibit 13, Proposed Organizational Chart). The combined and enhanced roles of the Assistant Secretary for Administration, which include human resources, budgeting, marketing, outreach, as well as civil rights enforcement and compliance, would be trifurcated under a new direct report to the Secretary, an Under Secretary position responsible for three functions: (1) Administration; (2) Civil Rights compliance and enforcement (under the OASCR); and (3) Diversity, Inclusion, and Accessibility led by the USDA “Chief Diversity Officer” (including the Office of Advocacy and Outreach, and an Office of Emerging Customer Development). Civil Rights and Administration would remain under an Assistant Secretary and DIA would report to a Chief Diversity Officer. The Secretary has already taken some preliminary actions in this direction, but more formal action is essential to send a strong positive message of priority to internal and external stakeholder groups.¹³

¹³ According to the USDA Office of General Counsel, the Secretary can create the Under Secretary position and CDO positions under the authority granted to him by Section 4 of Reorganization Plan No. 2 of 1953; June 4, 1953, 18 F.R. 3219, 67 Stat. 633, as amended Oct. 15, 1982, Pub. L. 97-325, § 8(d), 96 Stat. 1606; Oct. 13, 1994, Pub. L. 103-354, Title II, § 218(e)(1), 108 Stat. 3213.

- DW-16** *Appoint Chief Diversity Officers for every major Agency*, reporting directly to the Agency Administrators/Chiefs, with matrix reporting to the USDA CDO and the Assistant Secretary for Civil Rights. Conduct monthly meetings with all Agency CDOs, chaired by the USDA CDO.
- DW-17** *Appoint Chief Diversity Officers in every State Office* with dual diversity/compliance functions, with staffs and budgets, and direct reporting to State Directors and matrix reporting to the USDA CDO.
- DW-18** **Create within every major Agency CDO Office an “Office for Emerging Customer Development,”** to replace “outreach” positions.
- DW-19** Study and implement optimal, efficient means of staffing of both CDO and ASCR activities, both previously under-staffed in the field.

3. Effective Workforce Demonstrating DIA Commitment

a. Background

USDA can achieve the Secretary’s vision of full and equitable participation in the Department’s programs only if the employees charged with delivering those programs are committed to DIA principles, and themselves reflect the changing demographics of the U.S. workforce. As discussed more fully below, the Department-wide demographics, with several exceptions, fall short of meeting even the Department’s expectations of reflecting “Civilian Labor Force” demographics. There are areas, such as FSA County Employees, where the workforce is *overwhelmingly white*—95%, in a country that was more than 30% minority in the 2000 Census, and will likely be “majority-minority” within the next 40 years. [Note that, at the time of release of this Final Report, final 2010 Census data was not yet available, but early reports indicate substantial growth in the aggregate minority population since the 2000 Census.]

The Department has been making some progress in diversifying its workforce, but progress has been and continues to be very slow. To some extent this is a factor of lower turnover (*e.g.*, deferred retirements,

long tenures), which generally reduces the opportunities for improvement through recruiting and hiring.

There is an additional complicating factor. Because its annual workforce evaluations are based on aggregate data (the “Civilian Labor Force”), the Department does not know precisely where its workforce does and does not adequately reflect the labor pool. This is due to (a) failure to analyze the workforce at a regional, area, or local level, and (b) use of the aggregate Civilian Labor Force numbers rather than the availabilities of certain job categories for the areas where the hirings occur.

As a result, the Department has not localized the responsibility for improvements in representation of minorities, females, and other under-represented constituencies. While at times the labor pool for certain USDA jobs will be national, most often hirings occur at or near the offices where the job openings are. (This topic is discussed in detail in the workforce/committee demographics discussion at Section IX, below). Moreover, tools that could assist in diversifying the workforce—such as *requiring mandatory diverse candidate pools*—are not used. USDA can place more direct responsibilities on hiring officials whose organizations have poor diverse representation (including incorporating this specific factor into performance evaluation objectives). Once USDA knows exactly where those shortages are, it must set clear objectives and directives, and rigorously implement accountability for results.

Federal contractors are required by Federal regulations enforced by the U.S. Department of Labor Office of Federal Contract Compliance Programs (“OFCCP”) to create annual affirmative action plans, which accomplish three key purposes. First, pursuant to a “utilization analysis,” analyzing workforce minority/female composition at “establishment” (office or collection of offices) levels against “available” workforce (using localized Census and occupational data), employers are expected to create “goals” where there are shortcomings with respect to minority and female representation (“under-representations”). Second, pursuant to additional analyses, analyzing various workforce equity indications such as hiring, terminations, compensation, promotions, awards, transfers, discipline, and other areas, employers must determine potential “adverse impacts” on minorities and females. Finally, employers must develop individual, specific, and comprehensive plans for remediating under-representations and any identified adverse impacts. USDA’s (and the EEOC’s) Affirmative Employment Plan regulations are

similar to the OFCCP requirements, but they are not executed by USDA in the same manner. Agencies are not performing localized utilization analyses with respect to geography and job categories (only Civilian Labor Force analyses), nor are they performing all of the adverse impact analyses or developing the appropriate remedial plans. Tools long mandated for Federal contractors to improve the representation of minorities and females throughout their organizations, and reduce or eliminate practices that cause adverse impacts, should be adapted by USDA to its workforce efforts.

There is another area where USDA needs but does not have critical data: employee survey feedback on diversity, inclusion, and accessibility, in the workplace and in servicing customers. Employee surveys are often referred to as “Organizational Health Surveys,” reflecting the notion that the results provide an indication of the “well-being” of an organization. They are also used as “early warning systems” because the information developed from the surveys can be used to find problems before they escalate, assisting organizations in identifying and implementing remedial measures (such as training targeted to the issues) and avoiding employee discrimination lawsuits similar to the major customer lawsuits for which, unfortunately, USDA has become known.

USDA does receive the results of the Federal Employee Viewpoint Surveys specific to USDA (such as the 2010 Survey, the results of which the Team reviewed), but those surveys do not include significant direct questions regarding DIA. USDA posts on its website the results of the 2007 “Annual Employee Survey” (thus, four year-old data), and while it includes several questions relating to diversity (“Employees in my organization are willing to bring up a discrimination issue if it occurs,” and “My supervisor treats me with respect”), the questions are of marginal utility in disclosing potential issues. For example, there are no questions asking whether the respondent feels he/she has been the victim of discrimination, or harassment, or reprisal, in the workplace; no questions asking about the credibility and effectiveness of the internal complaint system; and no questions regarding equitable treatment of customers, or lack thereof.

Some “best practices” can be found within the Department. For example, with the assistance of NRCS’s Civil Rights Office, NRCS’s Florida State Office conducted an employee survey which included a few discrimination and harassment questions. As reported in NRCS’s

February 2010 Civil Rights Compliance Review Report (at p. 20), **20.4%** of the respondents “*believed they had experienced discrimination in the workplace within the last 3 years,*” and **15.2%** of the respondents “*believed they had experienced harassment in the workplace within the last 3 years.*” (In our experience, these are very high numbers for such questions. There is no indication of demographic breakdown of the respondents, which makes it difficult to analyze attitudes and opinions by race/ethnicity, gender, age, and other factors.) USDA’s failure to capitalize on the potential opportunities for improvement provided by such surveys, in an area as important to the Department’s mission as equal treatment, diversity, inclusion, and accessibility, is a “missed opportunity.”

The Department should develop and conduct its own, USDA-unique surveys. Most importantly, USDA needs to maximize the value of such an “early warning system” by promptly and rigorously reviewing and analyzing the results of such surveys to identify and isolate problem areas, units and offices, or shortcomings, and work with Department or Agency leadership to develop corrective plans and continuous monitoring of remedial actions, including comparing results with previous surveys, and incorporating goals into key leaders’ and managers’ performance evaluation objectives.

Finally, the recommendations below provide several additional workplace enhancement “best practices,” including actively recruiting senior officials from corporations and other agencies (to import greater and more diverse business and related expertise into USDA’s operations); working with the Office of Personnel Management (“OPM”) as necessary in re-assessing job descriptions in areas of under-utilization of minorities and women to eliminate unnecessary qualifications that limit the labor pool and might operate to disqualify otherwise qualified minorities and women; upgrading the nature and format of DIA training for all personnel (described in detail in the Agency summary sections; designed to incorporate live DIA training and educate workforce that, among other areas, “targeting” under-served constituencies is lawful and appropriate); and creating mentor/knowledge transfer and succession planning programs (particularly needed in light of the anticipated wave of “baby-boomer retirements”), to maximize the recruitment, retention, involvement, and performance of under-represented groups in USDA’s workforce.

b. Recommendations

DW-20 *To improve and ensure enhanced accountability for diverse workforce representation, USDA and its Agencies should expand beyond the EEOC-required MD-715-01 analytical requirements and voluntarily utilize the more rigorous OFCCP-model Federal contractor self-evaluative requirements.* This would include analyses of (a) current personnel utilizations against pertinent labor pools, and (b) potential adverse impacts of all key aspects of workplace DIA functions, including identifying under-representations and under-performances, and preparing and implementing specific remedial action plans, along with annual reports to senior management on progress against goals.¹⁴ The effort should commence with a planning process that designs geographically-based Annual Employment Action Plans for all Agencies and all Federal/State/Area/County offices, using appropriate job category populations.

DW-21 *USDA should hold all managers accountable for utilizing a diverse pool of applicants for all vacancies/promotions,* with limited exceptions to be approved/denied by the USDA CDO. The CDO would direct follow-up actions to remedy the reasons for exceptions, where such exceptions are temporarily approved.

DW-22 *The scope of the USDA CDO responsibilities should include conducting, analyzing, and reporting on Annual Organizational Health surveys of all USDA employees.* The

¹⁴ Pursuant to 42 U.S.C. § 2000e-16; 5 U.S.C. § 901 *et seq*; Executive Order 11748; and Section 501 of the Rehabilitation Act of 1973, as amended by Pub. L. 99-506, 100 Stat. 1807, October 21, 1986, Equal Employment Opportunity Commission Management Directive 715 (MD-715) requires heads of all executive agencies to submit an annual report on their workforces that includes workforce demographic data, in an effort to ensure that all employment decisions are free from discrimination. Pursuant to Executive Order 11246 and implementing regulations, the Office of Federal Contract Compliance Programs (“OFCCP”) requires Federal contractors to annually conduct a workforce analysis, comparing incumbent personnel with “availability” in the relevant job categories and labor pools; if the analysis demonstrates that women and/or minorities are underrepresented, the contractor must implement affirmative action to increase the participation of minorities and women in the workplace. The regulations further require numerous analyses of applicant flow, hiring, promotions, terminations, and other aspects of workforce management, to detect any “adverse impacts,” and remediation of any such impacts disclosed. *See* Executive Order 11246; 41 CFR § 60; Section 503 of the Rehabilitation Act of 1973; 38 U.S.C. § 4212. While OFCCP requirements apply only to Federal contractors, not to Federal departments and agencies, the Team recommends that USDA voluntarily adopt these well-established, effective methodologies and make them mandatory throughout the Department.

Surveys must include comprehensive DIA questions (covering the workplace and “marketplace”), to broadly measure job satisfaction, morale, and effectiveness of USDA policies, programs, and performance. USDA should simultaneously establish a methodology for regular Department, Agency, and Office reviews, summaries, reports to the Secretary, feedback to the workforce, trend tracking, and responsive actions (such as setting supervisory performance objectives, as detailed above, and training).

DW-23 *USDA should enhance active recruitment from major corporations and other Federal Agencies for senior positions*, including “Exchange” and “Lend an Executive” programs, and focus on diversity in such recruitment.

DW-24 Following the model of President Obama’s May 2010 Memorandum mandating recruiting/hiring process changes (“Hiring Reform Action Plan,” see Exhibit 14), USDA should work with OPM as necessary to ***re-assess and revise, as needed, all job descriptions in job categories of minority and female under-utilization***. The goal would be to ensure that job descriptions are not unduly restrictive in order to reduce instances of unfair disqualification of diverse applicants. This effort should begin at the senior and supervisory level.

DW-25 In concert with the Secretary’s Cultural Transformation training initiative and recommendations in the individual Agency Sections below, beginning with an RFP/RFI/RFQ process in FY 2011, ***USDA should dramatically upgrade mandatory nation-wide DIA in-person training, covering both the workplace and the marketplace (customer service)***. The materials should include an educational module designed to counteract employee resistance to “targeting” under-served populations.

DW-26 *USDA should establish a knowledge transfer/mentorship program* using, among others, senior/near-retirement USDA employees to transfer institutional knowledge and mentor rising high-potential minorities and women.

DW-27 USDA should implement a rigorous succession planning methodology for incorporating minorities and women in higher positions at USDA.

4. Incentives/Penalties for DIA Performance

a. Background

The Team is often told by organizational leaders that, while training, education, and effective supervision are key components of employee motivation, there is no substitute for setting clear performance expectations and both rewarding exemplary performance, and penalizing substandard performance.

With respect to USDA performance management to achieve DIA objectives, the Team heard varying accounts of the extent to which employees' Performance Plans ("Performance Plan, Progress Review and Appraisal Worksheet") include specific, measurable requirements in the areas of civil rights/outreach/equitable service to all. During the course of the USDA field interviews, the Team often heard that there is a "Civil Rights/EEO" component in the Performance Plan, but that it is vague, it is not taken seriously, and the typical rating is "Fully Successful."

The Assessment Team reviewed a number of senior level Performance Plans and note that some of them contain an "Element" for "Equal Opportunity/Civil Rights" that includes a listing of generalized factors (such as "conduct one's self in a manner that avoids even the appearance of favoritism in recruitment, promotion, awards, and other Human Resources functions"), and some specific factors ("ensure that at least two staff members are properly trained to conduct EEO complaint investigations"). (Several senior officials' Performance Plans rate the Civil Rights Element on a Pass/Fail basis, and their requirements are quite general.) While the general statements are helpful, they are neither comprehensive (for example, covering the wide range of outreach requirements) nor adequately specific (for example, identifying an under-performing program, the percent of under-performance, and the expected percent rate of improvement). In order to truly obtain desired DIA performance, these plans need to be thorough, specific, measurable, and, most importantly, *implemented* (through rewards and penalties, as with other Elements of the Performance Plan).

The Team proposes two key recommendations in this area that need to be customized to the specific Agencies, job positions, programs, and geographic areas as indicated. These are critical recommendations that, when properly implemented, will lead to enhanced performance.

b. Recommendations

DW-28 *USDA should expand upon actions of the Cultural Transformation Initiative by designing and incorporating specific, meaningful, and measurable DIA objectives in all senior official and managers' performance plans, and using them to appropriately affect compensation, promotion potential, and other areas of employee performance and progression.* Standards will vary depending on job category (e.g., "bonus-eligible" positions), but new, specific DIA objectives will be impactful. (As noted above, with some exceptions, employees generally do not regard the "Civil Rights/EEO" component of their performance evaluations as meaningful or having any positive or negative impact on their careers.)

DW-29 Building on the recent addition of a diversity category to the Secretary's Honors Awards in 2010, *regularly recognize and publicly reward outstanding performance in diverse workforce development and marketing practices* and results at Departmental, Agency, and State levels.

5. Access to Reliable Data/Metrics/Technology Regarding DIA

a. Background

One of the more difficult tasks in this Assessment was securing prompt responses to data/document requests in areas in which USDA should have already been compiling, maintaining, and reporting data. GAO and other reports have been critical of USDA for the unreliability of much of its data, as have several senior USDA officials and many field employees during the course of this Assessment. Some of the data does not exist, at least not in reliable, usable form, because of delays in creating a mechanism for collecting it (for example, in some instances, race/ethnicity and gender data from customers, that has been

statutorily required to be collected and reported on since the 2002 Farm Bill, is still not regularly collected, or readily available, or reported).

Other data that is collected is often out-of-date, marginally accessible, or otherwise inaccurate. For example, to recruit farmers, ranchers, and other customers for Focus Groups, the Assessment Team asked USDA for Customer Lists for the 10 Focus Group States for each of the four Agencies. This should have been a relatively simple task, as it asks for (presumably) basic existing information. Nevertheless, the effort to gather this data took weeks and numerous iterations and interactions, and, as the Team later learned from the recruiting effort (contacts with customers), a substantial portion of the information provided was inaccurate. Many telephone numbers were wrong, numerous customers had moved to another state, and some listed customers who had died years before.

As discussed below, the Contract requires a comparison of the Agencies' current customer base with the existing population. Agencies were therefore asked to produce program data regarding number of customers and dollars per customer, by race/ethnicity and gender, nationwide and for the 15 USDA-designated States. The Agencies do not currently maintain this information by race/ethnicity and gender in the format required by the Contract, so they were required to conduct searches and other computer manipulations to generate the data. In a few cases this process took many weeks to provide the requested information, and errors the Assessment Team subsequently found in the data—some of them very obvious—required significant review and correction. In one instance, for example, there were multiple, obvious errors in an annual workforce report that had recently been filed with the EEOC; the Team flagged the errors and returned the filing to USDA to provide corrections for use in its analysis (and, of course, a new USDA filing with the EEOC). In another instance, an entire data set was incorrect and had to be prepared again, with some major corrections (for example, an under-report of approximately 1,000 loans (out of about 8,000)).

There are other areas where USDA does not effectively collect information that would be useful in managing programs. For example, the Program Adjudication Directorate does not track the source of Program complaints (such as customer letter, local service center filing, Congressional referral, website filing, *etc.*). This data would be useful in determining future policy regarding complaint filing modes. All USDA

units should consider their data collection policies and practices to determine areas where enhanced metrics and analysis could be helpful to effective management.

The rigorous, accurate, ongoing collection of race/ethnicity and gender data is critical to determine the effectiveness of USDA's service to SDGs. Many USDA field employees, and several USDA officials, seriously questioned the reliability of much of the data in the USDA system. For example, for many years now FSA has been collecting race/ethnicity and gender data for its direct loan programs, but this data has some built-in unreliability (where race/ethnicity is entered on a form by "physical observation" by the USDA employee, see below) and FSA believes that the data collected by financial institutions for guaranteed loans may be inaccurate. Currently, some Agencies (for some programs) collect race/ethnicity and gender data only by "physical observation." Other agencies, such as RMA and their Approved Insurance Providers, do not collect the information at all and therefore cannot provide any information about the race/ethnicity and gender of insureds, or applicants for insurance.

Although provisions of the 2008 Farm Bill (and its predecessor) require the collection and reporting on race/ethnicity and gender data of USDA customers, USDA does not collect and report this data. The Department commenced a process with OMB years ago to obtain approval for such an "information collection request," but the effort was deferred and USDA did not follow through and obtain approval. There is a current effort underway with OMB, and, when completed, it will authorize the collection of this necessary race/ethnicity and gender data.

USDA needs a comprehensive data validation effort to include: validating information from all current customers; re-vitalized training and quality assurance efforts to enhance the collection and recording of accurate data; completing the OMB approval process; instructing all Agencies to collect race/ethnicity and gender information from applicants and customers; and creating programs/software capable of promptly generating reliable data on such important products as customer lists and customer penetration data. Without accurate data, USDA will continue to experience unnecessary problems managing its programs, especially in the DIA area, and suffer from diminished credibility both internally and with the public at large.

b. Recommendations

DW-30 *Organize and Implement an Intra-Agency Data Validation and Integrity Team* to verify the validity of existing data, and dramatically improve the integrity of all data gathered in the future:

- a. Obtain the Race/Ethnicity/Gender OMB approval as soon as possible. Implement the requirements to collect such data from applicants and customers in the four USDA Agencies (FSA, RD, NRCS, and RMA), and other customer-service Agencies as appropriate. Provide necessary roll-out materials, training, and early monitoring of compliance to correct deficiencies. Regularly report to the Office of the Secretary on progress.
- b. Require AIPs and financial institutions with USDA-guaranteed loan programs to collect the same data from their applicants and customers, and design templates for recording and retrieving race/ethnicity and gender information about applicants and insureds.
- c. Establish a USDA management priority to improve data collection/retrieval throughout USDA.

DW-31 FSA, RD, NRCS, and RMA (and other customer-serving Agencies as appropriate) should ***develop a template (such as that used in this Assessment) for regularly collecting and reporting on customers served, by race/ethnicity and gender.*** The information should be reported to the Agency heads on a monthly basis, and the Secretary on a quarterly basis. It should be used to develop marketing plans (discussed below) and measures for performance evaluations.

DW-32 ***USDA should commence reporting to Congress under Section 14006 of the 2008 Farm Bill in FY 2011 using best available data, and prepare annual reports to Congress as required thereafter.*** USDA should provide not only numbers and percentages of customers by race/ethnicity and gender, but also dollars awarded/paid/obligated and percentages for each SDG, along with comparisons to the percentages of SDGs in the

relevant populations. USDA should include customers for all Agencies and all programs, not just farmers and ranchers (as required by Section 14006).

6. Organizational Accountability for DIA Performance

a. Background

USDA has fallen short on its obligations to measure the extent of its service to under-served populations, particularly SDGs, and to report on its current performance and progress going forward. This has allowed the programs to operate somewhat “under the radar.” As noted above, the data available is often unreliable, race/ethnicity and gender programmatic information is not rigorously collected, customer service to SDGs is difficult to even estimate, and when such information is prepared, it is not presented to Congress or the public in any meaningful way. This approach has been the subject of GAO investigations and reports critical of USDA performance. Without adequate measurements and visibility of issues, accountability for results suffers. Agency officials, therefore, have not felt consistent peer or other pressure to improve their performance, particularly in providing better accessibility to USDA programs for under-served populations. Shining a light on these inadequacies will change expectations and ultimately improve performance and accountability. As a Department, USDA needs high-level mechanisms for performance measurement and reporting.

There are also areas where USDA has an abundance of data but does not effectively capitalize on it. For example, there is no current process for determining and institutionalizing “lessons learned” from the thousands of customer and employee civil rights complaints filed over the years. These complaints and investigation files are valuable sources of information about the circumstances leading to the filing of a complaint, that could be analyzed, reported, and used to change practices that contributed to the customer’s, or employee’s, belief that the Department discriminated against, or harassed, the complainant. Such lessons can be used to focus on helping an office where there are recurring complaints, and in developing supervisory and employee training modules.

The Team proposes several Department-wide approaches to creating responsibilities, reporting relationships, and accountabilities for equitable delivery of USDA services to all constituencies. These include (1) annual Agency DIA business plans and quarterly assessments based on those Plans, (2) quarterly reports to the Secretary, and (3) annual reports to Congress.

b. Recommendations

DW-33 USDA should prepare ***Annual Reports to Congress*** (Senate/House Agriculture and other interested Committees) from the Secretary (prepared by the Under Secretary for DIA) covering:

- Employment diversity goals and performance/improvements;
- Under-served, including socially disadvantaged, customer service goals and performance/improvements;
- Civil rights employment complaint metrics, performance, and “lessons learned”;
- Program civil rights complaint metrics, performance, and “lessons learned”; and
- New initiatives to better serve the under-served.

DW-34 ***USDA should require Annual DIA Business Plans from all major Agency Headquarters and State/County Offices***, showing goals/objectives for inclusion of under-served, including socially disadvantaged, populations, with metrics, deadlines, evaluations of performance against goals, and end-of-year results reports to the Secretary.

DW-35 ***The ASCR should 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 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.

7. Monitoring and Enforcement

a. Background

USDA has numerous policies, procedures, and practices in place for monitoring and enforcement of civil rights employment and program complaints. These include a fairly complex system of compliance audits, investigation processes, and reporting requirements (such as annually to the EEOC). The complaint processing system should be substantially simplified and streamlined—USDA’s historic, recurring, nearly intractable problem is timeliness of completing investigations and processing complaints. Further, several external auditing measures need to be adopted to (1) improve and validate complaint intake (to avoid acceptance of unauthorized or otherwise insufficient complaints that are on their face invalid), and (2) evaluate the reliability of USDA’s judgments about whether valid initial complaints are meritorious, or not. In this respect, note 28 C.F.R. Section 42.408, which applies to USDA and provides in pertinent part as follows:

Complaint Procedures

(a) Federal agencies shall establish and publish in their guidelines procedures for the prompt processing and disposition of complaints. The complaint procedures shall provide for notification in writing to the complainant and the applicant or recipient as to the disposition of the complaint. Federal agencies should investigate complaints having apparent merit. Where such complaints are not investigated, good cause must exist and must be stated in the notification of disposition. In such cases, the agency shall ascertain the feasibility of referring the complaint to the primary recipient, such as a State agency, for investigation.

b. Recommendations

- DW-36** *USDA should reconstruct the Program Complaint process, commencing with completing its implementation (already underway by ASCR) of a simple complaint form* (rather than the current “letter” requirement), similar to the EEOC Charge Form, and simplifying all steps in the process, including eliminating unnecessary review levels, to enable more expedient investigations and decision-making. All Program Complaints should be filed at Headquarters, not at the State or local level (provide pre-paid envelopes addressed to USDA).
- DW-37** *USDA should install and widely publicize two toll-free Hotlines (one for employees; one for customers)*, integrated with the Complaint System, which would log in and create files for all complaints received, and follow normal processes for investigation and closure.
- DW-38** *USDA should annually outsource to a highly-rated private sector entity 10% of Program and EEO complaints* for investigations on 60-day tracks and compare the findings, timing, and hours invested per matter with USDA-conducted investigations. Take appropriate follow-up actions with respect to USDA practices.
- DW-39** Building on the EEO Accountability Program, recently established in OHRM through the Cultural Transformation Initiative, *USDA should develop and produce a simplified policy manual for all employees, which includes permissible and effective methods to discipline employees* who violate anti-discrimination, anti-harassment, and anti-retaliation laws and policies.
- DW-40** Following the IRS-announcement model (capitalizing on the deterrent effect of audits, prosecutions, and punishment), *USDA should internally publicize documented, confirmed acts of USDA discrimination, harassment, and retaliation, and corresponding penalties consistent with applicable restrictions*, such as privacy laws, as a way of educating the workforce as to “real-world experiences,” recent developments,

and reminding them of the importance of a shared commitment to DIA values and processes.

- DW-41** *USDA should now and annually remind all Agencies of the fundamental requirements for Civil Rights Impact Statements (DR 4300-002) (“CRIS”)*—which have strong potential for integrating DIA in administrative policy and transformational change efforts—and OASCR and the Agencies should rigorously enforce those requirements, as appropriate, by requiring and providing additional information and concluding with denials, conditions, and monitoring of performance, as appropriate. OASCR should communicate as needed with the Department and Agencies as to lessons learned, evolving standards, and new initiatives regarding CRIS.
- DW-42** *USDA should work with OPM and Congress as necessary to enable streamlined discipline for civil rights violators,* including suspensions/terminations, to maximize availability of effective, message-sending disciplinary measures.
- DW-43** For a provisional, one-year-period (until confidence and trust is restored in USDA’s operations), *USDA should require immediate referral and review of all denied (and perhaps inordinately delayed) loan/program applications, and all foreclosures, of SDGs, at USDA CDO-Headquarters.*
- DW-44** *USDA should re-establish a “Testing Program”* (using accepted protocols of farmers and RD customers, such as HUD Testers) for customer service equity evaluations.
- DW-45** In concert with various moratoria on such foreclosures, *USDA should create within the office of the Under Secretary for DIA responsibility for review of all proposed foreclosure actions impacting SDGs;* USDA should take all reasonable steps to re-structure non-performing loans with, and avoid foreclosures against, SDGs whenever feasible.

8. Rebuilding the Department's Reputation

a. Background

Judging by media reports, along with internal employee and external criticism, USDA is better known for its civil rights problems (“the Last Plantation”) than for any of its contributions to agriculture, safe food, and building rural America. *USDA’s ability to dramatically improve its performance in DIA will be inextricably linked to improvement of its overall reputation.* Successful and potentially successful SDG farmers, ranchers, landowners, developers, small rural businesses, and other entrepreneurs are more likely to want to do business with a Department known for its fairness and equity, and when their experiences are positive, they are likely to be among its strongest advocates. The best and brightest employment recruits, including minorities and women, will be more likely to seek a job at such a Department. USDA needs to begin the process of educating its workforce, its customers, and the public about its powerful and persuasive impact on America, its contributions to SDGs, and its commitment to DIA.

As noted earlier, such a communications campaign should never be regarded as a “spin” or “PR” initiative. It is, rather, a realistic approach to getting the accurate word out to a skeptical public and labor pool and to support the overall DIA effort. USDA has a deep credibility hole from which to emerge, but it is making progress and, if this Report’s Recommendations are rigorously implemented, it will continue to do so. USDA needs to make its new commitment and enhanced performance visible internally and externally, and continue on the path to a restored reputation. ***Reputational improvement typically lags behind performance. Improved performance must be the #1 priority, and a strong public information and program education campaign to communicate those new commitments and all genuine accomplishments must be the #2 priority.***

The following recommendations are based on time-tested best practices designed to assist USDA in informing the public about its commitment to equality and fairness, and its current and future successes in executing that commitment.

b. Recommendations

- DW-46** Beginning in FY 2012, initiate “Rebirth of ‘All The People’s Department,’” or similarly-themed, messaging approach.
- DW-47** In addition to OSEC communications, the Office of Communications should establish and develop a high-volume “Model Department” Education/Communications Campaign designed to educate the public, customers, and potential customers about USDA vital programs and communicate a positive, proactive Departmental message and leverage the Secretary’s “New Era of Civil Rights” (and now, DIA) mission.
- DW-48** Myth/rumor-busting: USDA should develop a strategy for improved information flow to anticipate and dispel key myths about and within USDA (examples of such *myths* include: FSA County Committees decide who get USDA loans; the number of minority farmers is decreasing; “targeting” under-served populations is “reverse discrimination;” all minority farmers are small, *etc.*).
- DW-49** “Re-brand” and educate the public about USDA in *recruiting efforts* to SDGs and others by emphasizing not just agriculture but important USDA workforce skill sets such as asset management, finance and accounting, risk management, insurance, science and engineering, and economics.
- DW-50** USDA should apply for the designation “Best Federal Agencies” at *DiversityInc*—the result is a “free” analysis, comparisons with benchmarks, and suggestions for improvement, all which can be used as additional input for DIA enhancements at USDA. This effort should be led by the new USDA CDO.
- DW-51** USDA should adopt a semantic/philosophical change to eliminate negative and mis-impressions: for example, the term “outreach” should be expunged in favor of “marketing,” and “diversity” should be used in place of “civil rights” when the real intent is “diversity.”

9. Ensuring Equitable Customer Service

a. Background

In its planning and execution, USDA has increasingly moved in the direction of developing and sustaining a *business model*. The Department uses the lexicon of the marketplace: referring to its borrowers and program participants as “customers;” applying certain well-established corporate (and other agency) practices in lending, business development, and expansion of services into under-served markets; implementing compliance models such as reviews and improvement plans; and occasionally “mining” data to improve service delivery.

To build on those efforts, there are many areas in which USDA could dramatically improve its information collection, analysis, and dissemination activities—so that USDA and affected employees have the necessary, reliable data to create “business” strategies and plans. As an example, many interviewed field employees stated that they had “never” been provided information about concentrations of SDGs in their areas or the level of USDA support the SDGs do or do not receive; and some stated that they had been provided such information, but they believed it to be inaccurate.

Developing and organizing accurate data, and incorporating it into the planning, execution, and performance management process, will assist field personnel—where the “rubber meets the road”—to accomplish the Department’s, and their own, DIA objectives. The following Recommendations are designed to achieve this goal.

b. Recommendations

DW-52 Expanding upon current statutory requirements for assembling program customer data by race/ethnicity and gender (“Transparency and Accountability for Socially Disadvantaged Farmers and Ranchers”), ***USDA should develop a rigorous process for conducting annual utilization (“Market Penetration”) analyses of its customer base focusing on relevant SDG populations, including numbers, dollars, and types of assistance***, and identifying under-utilizations to serve

as the basis for Annual Marketing Plans (see next Recommendation, below).

- DW-53** Based on the results of the Market Penetration Analyses, **each Agency, State Office, and Region/Area/County Office as appropriate, should work collectively to prepare and implement Annual Marketing Plans**, including “outreach,” grants, and other goals, objectives, and corrective actions to remediate areas of under-service to SDGs (in a similar manner as the Team has proposed that USDA collect and analyze under-utilization data for USDA employment categories, with plans for corrective actions).
- DW-54** Based on each respective *Annual Marketing Plan*, **each Agency, State Office, and Region/Area/County Office as appropriate, should prepare Monthly and End-of-Year Performance Reports**, reflecting performance against goals and including actions to be taken in the next Annual Marketing Plan. Performance evaluations for leadership in each Agency should be positively (or negatively, as appropriate) and measurably affected by performance against goals.
- DW-55** USDA should establish and disseminate within each customer-serving Agency **annual customer satisfaction surveys**, including DIA questions. The USDA CIO and Agency leadership should analyze and publish the results, and work with the Department and all Agencies on needed improvements indicated from the surveys.
- DW-56** USDA should develop and implement, or facilitate/sponsor the implementation of, a *Mentor-Protégé Program* (similar to that in other Federal Departments, such as DOD) wherein “Mentors” provide **broad business advice and assistance to small/beginning/disadvantaged farmer/rancher/business owner “Protégés,”** to assist them in operating and growing their businesses.
- DW-57** The USDA CDO should **study and develop a Model Marketing (formerly “outreach”) Program** for each Agency, and provide the model to all State/local offices.

DW-58 USDA should require ***NASS to send an Annual Report to all State and County Offices with their State/County statistics on socially disadvantaged farmers and ranchers*** (the “denominator” for market penetration analyses), requiring an acknowledgement of receipt.

DW-59 Consistent with other Agency Section Recommendations herein and based in part upon the Market Penetration Analyses, ***USDA should create regular USDA Office Days*** (and/or “bookmobile” visits) in government-owned or other appropriate facilities *for all significant remote populations of under-served customers*, to be staffed on those days by existing employees.

DW-60 ***USDA should establish a National Customer Hotline*** to assist all customers with applications processes and other requests for information and assistance. All hotline operators should be well-trained to answer questions or forward calls to knowledgeable Agency personnel.

10. Equitable Accessibility/Delivery of Programs: Other Agencies/States

a. Background

USDA provides service to the public through 300-plus programs. Pursuant to the Contract, this Assessment focused on the programs delivered by four USDA-selected Agencies, FSA, RD, NRCS, and RMA, as well as Department-wide statutes, policies, and practices that may adversely impact program delivery. These are all discussed in greater detail in the Agency Assessment sections, below. Included in those discussions are recommendations arising from the USDA employee interviews, Focus Group sessions, and CBO interviews, as well as USDA-provided materials, data and statistics, where available, to improve USDA’s customer accessibility/equitable delivery of services to “all” customers.

As noted above, USDA selected the four Agencies and 15 States for this Assessment. During the course of the Assessment it became clear that there are, at least, three additional Agencies with unique missions, high public visibility issues, and a reputation for having problems with either external (customers) or internal (employees) diversity, that should also be

assessed in order to achieve USDA's objective to develop effective Department-wide efforts to enhance diversity, inclusion, and accessibility. Over the past 18 months, the Assessment Team heard from USDA personnel, subcontractors/advisors (almost all of whom are former USDA officials), and SDGs that U.S. Forest Service ("Forest Service"), Animal and Plant Health Inspection Service ("APHIS"), and Food Safety and Inspection Service ("FSIS") would benefit from a review similar to this "Civil Rights Assessment" of the four initial Agencies, particularly in certain States with high concentrations of SDGs and Agency offices/personnel.

As part of the implementation of recommendations to achieve the Contract objective to "ensure [USDA's] program delivery and organizational structure is providing all Americans with fair and equal access to USDA Programs," USDA should conduct a streamlined Civil Rights Assessment of Forest Service, APHIS, and FSIS to assess the reported diversity problems and concerns. The Assessment of additional agencies in additional states will also assist in achieving USDA's goal of ensuring that fair and equitable treatment is enhanced Department-wide. Based on the Assessment Team's review of the additional Agencies, the Team recommends that such an assessment occur in the following ten States: California, Colorado, Illinois, Iowa, Maryland, New Jersey, New York, Oregon, Texas, and Virginia.

Forest Service ("FS")

The Forest Service should be included in the additional Assessment for a number of reasons, including that it is the largest of the USDA Agencies, with 32,293 employees (as of December 2010¹⁵) and because it has been described as "the most abusive and discriminatory agency in all of USDA."¹⁶ In fact, one high-level USDA official the Assessment Team

¹⁵ See www.fedscope.opm.gov. (The OPM filing is the only reasonably accessible document showing agency employment and demographics by State.) Forest Service employees represent 32.9% of all USDA employees. The FY 2012 estimated budget for Forest Service is \$5.89 billion, 4% of the overall USDA estimated budget.

¹⁶ Lawrence Lucas, President of the USDA Coalition of Minority Employees, wrote the following in a letter to USDA officials dated November 10, 2001, available at www.beforeitsnews.com: "The USDA Forest Service remains the most abusive and discriminatory agency in all of USDA. The claims predominantly from women include: hostile work environment, reprisal, intimidation, sexual harassment, bullying and other abuses. Few officials are being held accountable. Priority should be placed on resolving cases in Forest Service Region 5 [California]."

interviewed expressed surprise that Forest Service was not within the scope of the initial Assessment. The official described the Forest Service environment as “military,” “male dominated,” and, in the interviewee’s view, gender discrimination and harassment issues are widespread. USDA employees have indicated that there have been management and diversity-related problems at the Forest Service for many years.

Additionally, according to USDA reports, there is a significant under-utilization of minorities in the Forest Service workforce. The Forest Service would need to hire 3,428 additional women (10.62% of the total workforce) and 5,212 additional minorities (16.14% of the total workforce) to raise the proportion of women and minorities in the USDA workforce to the level of female and minority representation in the U.S. Civilian Labor Force (“CLF”), which is the pool from which the Forest Service draws its employees and the comparator by which USDA judges its appropriate level of minority and female representation.¹⁷

In the Team’s experience, under-representation of racial/ethnic groups or women in the workforce often leads to poor service to members of those groups. Additionally, while the numbers of formal EEO complaints by Forest Service employees are relatively low, the very lack of diversity at the Agency may be the reason for low numbers of claims. Further, low rates of formal EEO complaints can be indicative of a lack of trust in the employer’s EEO complaint systems or fear of reprisal. An Assessment will enable USDA to identify the precise problems and implement a plan to address those problems.

Diversity-related problems at Forest Service are not new. The Civil Rights Action Team (“CRAT”) pointed to several issues at Forest Service in its February 1997 Report and made recommendations to resolve them. “Female [Forest Service] employees . . . said that those who refused to engage in sexual relationships with their supervisors often were denied promotions and/or transfers.”¹⁸ “Several employees said that when confronted by complaints, agency leadership at higher levels adopts an attitude of ‘defending the troops’—the managers—rather than listening to

¹⁷ Note that the number of female and minority employees may overlap, *i.e.*, the total number of positions that would need to be filled to resolve the deficit could be filled by a minority, a female, or a minority female, according to the “USDA Organizational Profile, Hirings Required to Bring Agency Values Up to CLF, Values based on staffing levels as of Dec. 13, 2010.”

¹⁸ See *Civil Rights at the United States Department of Agriculture: A Report by the Civil Rights Action Team*, Feb. 1997, p. 37.

employees or customers.”¹⁹ Without conducting an Assessment, there is no way to know what progress Forest Service has made, if any, toward resolving these issues since the 1997 Report.

Another reason Forest Service should be assessed is that its employees interface with the public through a number of customer-centered programs. Forest Service manages public lands in national forests and grasslands.²⁰ Forest Service also provides technical and financial assistance to State and private forest landowners, as well as cities and communities. As acknowledged by Forest Service on its website and by initiatives aimed at increasing diversity at the Agency, the more diverse an organization, the more effectively it can respond to the needs of the diverse public it serves.²¹ A targeted Assessment conducted by the Assessment Team will assist the Agency in uncovering ongoing inequitable treatment, if any, and achieving its stated goals.

Food Safety and Inspection Service (“FSIS”)

The Assessment Team should conduct a streamlined Assessment of FSIS for a number of reasons, including that it is the third largest of the USDA agencies, with 10,036 employees, as of December 2010²². FSIS is the public health agency in USDA responsible for ensuring that the nation's

¹⁹ *Id.* p. 9.

²⁰ See <http://www.fs.fed.us/aboutus/>.

²¹ See <http://www.fs.fed.us/aboutus/meetfs.shtml> (“The job of Forest Service managers is to help people share and enjoy the forest, while conserving the environment for generations yet to come.” The Forest Service has “five main activities”:

- 1) Protection and management of natural resources on National Forest System lands,
- 2) Research on all aspects of forestry, rangeland management, and forest resource utilization,
- 3) Community assistance and cooperation with State and local governments, forest industries, and private landowners to help protect and manage non-Federal forest and associated range and watershed lands to improve conditions in rural areas,
- 4) Achieving and supporting an effective workforce that reflects the full range of diversity of the American people, and**
- 5) International assistance in formulating policy and coordinating U.S. support for the protection and sound management of the world's forest resources.” (Emphasis added).

²² FSIS employees represent 10.22% of total USDA employees. The FSIS estimated budget for FY 2012 is \$1.02 billion (.71% of the total USDA budget).

commercial supply of meat, poultry, and egg products is safe, wholesome, and correctly labeled and packaged.²³ According to USDA reports, there is a significant under-utilization of minorities and females in the FSIS workforce. The Agency would need to hire 1,120 additional females (11.16% of the total workforce) and 572 additional minorities (5.7% of the total workforce) to raise their proportion of the USDA workforce to the level of female and minority representation in the CLF, which is the pool from which the FSIS draws its employees and the comparator by which USDA judges its appropriate level of female and minority representation.²⁴

Animal and Plant Health Inspection Service (“APHIS”)²⁵

APHIS should be included in the additional assessment because it is the fifth largest USDA Agency by number of employees, has a \$1 Billion plus budget, women and minorities are significantly under-represented in its workforce, and the Agency has a reputation for diversity problems (including being accused recently by a group of USDA minority employees of having a generally hostile work environment).

APHIS reported that it had 8,966 total employees as of December 2010. According to USDA’s analysis, there is high female and minority employee under-utilization at APHIS. APHIS would need to hire 638 additional women (7.12% of the total workforce) and 387 additional minorities (4.32% of the total workforce) to raise the proportion of women and minorities in the APHIS workforce to the level of female and minority representation in the CLF, which is the pool from which APHIS draws its employees and is the standard by which USDA judges its appropriate level of minority and female representation.²⁶

²³ See http://www.fsis.usda.gov/About_FSIS/index.asp.

²⁴ “USDA Organizational Profile, Hirings Required to Bring Agency Values Up to CLF, Values based on staffing levels as of Dec. 13, 2010.”

²⁵ See http://www.aphis.usda.gov/about_aphis/index.shtml (“The Animal and Plant Health Inspection Service is a multi-faceted Agency with a broad mission area that includes protecting and promoting U.S. agricultural health, regulating genetically engineered organisms, administering the Animal Welfare Act and carrying out wildlife damage management activities”).

²⁶ “USDA Organizational Profile, Hirings Required to Bring Agency Values Up to CLF, Values based on staffing levels as of Dec. 13, 2010.”

Employees interviewed by the Assessment Team, as well as one of the subcontractors (based on prior experience as a USDA official), raised APHIS as a problem Agency warranting review. Additionally, in his letter dated November 10, 2010, Lawrence Lucas, President of the USDA Coalition of Minority Employees, stated: “The Animal and Plant Health Inspection Service Ames, Iowa laboratories has a long history of racial epithets and hostile work environment that includes: reprisal, intimidation and bullying. There is no evidence that has been shared with the Coalition that top and lower management officials at those laboratories are being held accountable, for past and present abuses.”²⁷

One of the organizational goals listed in the APHIS 2007-2012 Strategic Plan is to “[v]alue and invest in APHIS employees” and “[c]ontinue efforts to be a model civil rights organization: diverse, positive work environment and fair delivery of programs.”²⁸ A targeted Civil Rights Assessment conducted by the Assessment Team would assist APHIS and USDA in achieving its stated goals.

Recommended States

The Assessment Team recommends that the following States be included in the proposed streamlined Assessment, based on a variety of factors including the percentage of minorities in each State;²⁹ the overall state population; the numbers of Forest Service (“FS”), APHIS, and FSIS employees working in each State; and the locations of key offices of the three agencies. The proposed list of States also includes States with mixes of significant populations of minority sub-groups. The ten proposed States are as follows:

²⁷ Lawrence Lucas, President of the USDA Coalition of Minority Employees, Letter dated February 24, 2011, available at www.beforeitsnews.com.

²⁸ See http://www.aphis.usda.gov/about_aphis/index.shtml.

²⁹ Source: U.S. Census Bureau, Overview of Race and Hispanic Origin: 2010, 2010 Census Briefs. Note: “Minority,” according to the Census Bureau for the purpose of its report refers to “people who reported their ethnicity and race as something other than non-Hispanic White alone in the decennial census.”

1. California

- All three Agencies have a significant percentage of employees working in the state;³⁰
- Among the Top 10 largest minority populations in the U.S., primarily Hispanic/Latino (37.0%), Asian (12.7%), and Black/African-American (6.6%);
- Among the Top 10 largest Hispanic/Latino populations in the U.S.;
- Among the Top 10 largest Black/African American populations in the U.S.;
- Among the Top 10 largest Asian populations in the U.S.;
- Multiple offices for all three Agencies including an FS Regional Office, an FSIS Field Operations Office, an FSIS Regional Compliance & Investigations Division Office, an FSIS Import Inspection Division Office, and an APHIS Veterinary Services Area Office;
- One of the Top 10 most populous states.

2. Colorado

- FS and APHIS have a significant percentage of employees working in the state;
- Multiple offices for all three Agencies including an FS Regional Office, APHIS Regional Office, and FSIS Field Operations Office.

³⁰ The states with the highest numbers of Forest Service employees include California (19.07%), Oregon (10.24%), Montana (7.14%), New Mexico (6.99%), Colorado (4.43%), Arizona (4.18%), Washington (4.14%), Utah (3.77%), Alaska (2.25%), and Wisconsin (2.11%).

The states with the highest numbers of APHIS employees include Maryland (14.23%), Texas (8.36%), Colorado (6.70%), Hawaii (6.15%), Florida (6.03%), California (5.42%), Iowa (5.16%), North Carolina (4.24%), New York (3.40%), and Minnesota (2.99%).

The states with the highest numbers of FSIS employees include Georgia (7.51%), Texas (6.48%), California (5.68%), Arkansas (5.54%), District of Columbia (5.46%), North Carolina (4.48%), Iowa (4.02%), Missouri (4.01%), Nebraska (3.94%), and Mississippi (3.68%).

3. Illinois

- Multiple offices for all three Agencies including FS District Offices, FSIS Regional Compliance & Investigations Division Office, and APHIS Area Office;
- Among the Top 10 largest minority populations in the U.S., primarily Hispanic/Latino (15.2%) and Black/African American (14.9%);
- Among the Top 10 largest Black/African American populations in the U.S.;
- One of the Top 10 most populous states.

4. Iowa

- APHIS and FSIS have a significant percentage of employees working in the state;
- Multiple offices for all three Agencies including an FSIS Field Operations Office, APHIS National Veterinary Services Laboratories, and APHIS Wildlife Services State Office.

5. Maryland

- APHIS has a significant percentage of employees working in the state;
- Multiple offices for all three Agencies including FS District Offices, FSIS Field Operations Office, and an APHIS Area Office;
- Among the Top 10 largest minority populations in the U.S. by percentage, primarily Black/African-American (29.7%), Hispanic/Latino (7.2%), and Asian (5.2%);
- Among the Top 10 largest Black/African American populations in the U.S.;
- Among the Top 10 largest Asian populations in the U.S.

6. New Jersey

- Large minority population (40.7%), including 16.7% Hispanic/Latinos, 14.5% Black/African Americans, and 7.8% Asians;
- Among the Top 10 largest Asian populations in the U.S.;

- Multiple offices for FSIS and APHIS.

7. New York

- APHIS has a significant percentage of employees working in the state;
- Among the Top 10 largest minority populations in the U.S., primarily Black/African-American (17.2%), Hispanic/Latino (16.8%), and Asian (7.1%);
- Among the Top 10 largest Black/African American populations in the U.S.;
- Among the Top 10 largest Hispanic/Latino populations in the U.S.;
- Among the Top 10 largest Asian populations in the U.S.;
- Multiple offices for all three Agencies including FS District Offices, FSIS Field Operations Office, FSIS Import Inspection Division Office, APHIS Area Office;
- One of the Top 10 most populous states.

8. Oregon

- FS has a significant percentage of employees working in the state;
- Multiple offices for all three Agencies including FS Regional Office, FSIS Field Offices, and APHIS NWRC Field Station;³¹
- Minority population of 21.5%, including 11.2% Hispanic/Latinos.

9. Texas

- APHIS and FSIS have a significant percentage of employees working in the state;
- Multiple offices for all three Agencies including FS District Offices, APHIS NWRC Field Station, FSIS Regional Compliance & Investigations Division Office, and APHIS Area Office;
- Among the Top 10 largest minority populations in the U.S., primarily Hispanic/Latino (36.9%) and Black/African American (12.0%);

³¹ National Wildlife Reserve Center (“NWRC”)

- Among the Top 10 largest Black/African American populations in the U.S.;
- Among the Top 10 largest Hispanic/Latino populations in the U.S.;
- One of the Top 10 most populous states.

10. Virginia

- Multiple offices for all three Agencies including FS District Offices, FSIS Field Offices, and an APHIS Area Office;
- Large minority population (35.2%), primarily Black/African Americans (20.0%), Hispanic/Latinos (7.2%), and Asian (5.0 %);
- Among the Top 10 largest Black/African American populations in the U.S.;
- Among the Top 10 largest Asian populations in the U.S.;
- One of the Top 10 Most Populous States.

b. Recommendation

DW-61 USDA should authorize a streamlined civil rights/DIA assessment of Forest Service, APHIS, and Food Safety and Inspection Service, and include the following States in such an assessment: California, Colorado, Illinois, Iowa, Maryland, New Jersey, New York, Oregon, Texas, and Virginia.

C. Secretary’s “High-Level Recommendations”

At the Secretary’s request, in December 2010, the Assessment Team prepared and briefed the Secretary on a set of preliminary, “high-level,” Department-wide Recommendations for which implementation could begin immediately or in the near future. These were expressly subject to further analysis and development as the Assessment Team entered the report preparation phase. These Recommendations are included, some as modified, in this Final Report, in the preceding sections, and elsewhere, and the original set is included in Exhibit 15.

IV. OVERVIEW OF FOUR AGENCY ASSESSMENTS

This Report is the result of 18 months of investigation and analysis of Department-wide program delivery processes and practices at USDA, focused on four USDA-selected Agencies, to determine whether those processes and practices are fair and equitable to all Americans, or present barriers, particularly to socially disadvantaged group (“SDG”) program participation, and, if so, to make specific recommendations and assist in implementing efforts to eradicate those barriers.

As background, in recent years USDA has confronted five major class-action lawsuits from African-American, Native American, Hispanic, and female farmers, each alleging that program discrimination against their respective group was systemic and pervasive. Three of these cases have already settled for over **\$3 billion**³². These costs do not include the significant legal expenses associated with defending the lawsuits and the extensive efforts at settlement. In addition to the record levels of tangible monetary settlements incurred and paid by USDA, these lawsuits and public settlements have caused significant intangible costs, *i.e.*, damage to the Department’s reputation and its ability to most effectively perform its overall Mission, due to, among other things, management distraction; loss of employee morale; substantial time and resources being diverted from Department management to investigate allegations and respond to various Congressional, GAO, and agency inquiries; widespread adverse national and local publicity; and the resultant distrust of the Department by customers, potential customers, employees, and the taxpaying American public, at large. The aforementioned consequences do not begin to address the long-term harm to the socially disadvantaged farmers, ranchers, and other diverse American citizens that need to continue to try to do business with USDA, even in this adverse environment, while they *should have always been served* by the Department. The claimed systemic exclusion of SDGs from USDA program access (now generally accepted as factual, due to the lawsuits) has likewise denied those SDGs the ability to fully contribute to the nation’s world-class farming system and rural development efforts.

³² *Pigford I*, approximately **\$1.0 billion**; *Pigford II*, approximately **\$1.25 billion**; and *Keepseagle*, approximately **\$760 million**. The *Garcia* and *Love* cases, regarding alleged discrimination against Hispanic and female farmers and ranchers are still pending, but USDA has set up claims processes to address these two cases.

As the Assessment Team conducted this review, much of its time was spent interviewing 1,752 USDA and County System employees at both Headquarters and field offices (in a cross-section of counties in 15 USDA-selected states). Notably, the Team obtained equally critical input from current and potential customers, primarily through Focus Groups and Community Based Organizations (“CBOs”), as well as from review and analysis of a wide range of USDA-provided Department-wide and selected Agency-related documents and data. This massive compilation of information was analyzed utilizing the Group’s professional background, knowledge, and experience (more fully discussed in Section I, above) gained in dozens of successful efforts for other large, complex organizations in the private and public sectors. Those other efforts were also directed at assisting senior management achieve fair, equitable, and positive performance from diverse workforces, serving increasingly diverse customer bases.

Notwithstanding this background of systemic exclusion, the vast majority of USDA employees interviewed by the Assessment Team disclaimed knowledge of discriminatory practices or unequal treatment of customers or potential customers. In some Agencies, 80-90% flatly denied the existence of problems of unfair treatment, discrimination, barriers to participation, or unequal access. Other data and information obtained during this Assessment, in addition to the lawsuit background, including customer input and USDA-provided objective data, however, substantiated claims of denial of equal program access and continuing institutional discrimination. The very fact that so many USDA employees did not identify the real problems of inequitable program delivery is a very serious concern in and of itself, but may explain, in part, why previous efforts to address USDA discrimination problems have been less than fully successful. As in any large organization, problem resolution cannot be successful until recognition of the problem is generally accepted as factual throughout the organization, and efforts to correct the problem are a clear and obvious executive priority!

This situation is more troubling considering the apparent reasons for this denial of program delivery to under-served SDGs: (1) the employees are so insensitive, or desensitized, that they truly do not see the unequal treatment of SDG customers and potential customers; (2) the employees recognize the inequitable customer service, but do not see it as a problem because “it has always been done that way” and there is no penalty for continuing to do so; and/or (3) the employees recognize the problems

and understand that it is *wrong* but, as the interviewers were told, some employees would not discuss their concerns openly because they fear reprisal from their agency supervisors or senior co-workers. Clearly, significant numbers of USDA employees do not accept eradication of Agency discrimination as an important Department-wide priority.

It should also be noted that many of the employees who did not acknowledge the continuing problems of USDA program discrimination are a remarkably homogeneous group of predominantly White employees, many of whom have been with their Agencies for many years—including some who began employment when bias was much more open and prevalent, and nondiscrimination, mandated by Title VI of the Civil Rights Act of 1964, was not being enforced. (Some SDGs believe Title VI is still not being aggressively enforced today). The related problem uncovered by the Assessment Team is that there is substantial and at times serious under-representation of minority and female employees in the Department, in various Headquarters and field locations, particularly as compared to the qualified minorities and women in the available labor pool. Thus, the combination of large numbers of interviewed employees, many of whom are White, refusing to acknowledge that SDGs are under-served, and the under-representation of minority employees in the Agencies, raise serious concerns as to both inequitable service delivery (Title VI) and employment discrimination (Title VII) (Civil Rights Act of 1964, as amended.)

The Assessment Team conducted 30 Focus Group sessions across 10 States, and interviewed leaders of 30 CBOs, representing a broad range of geographic and SDG farming and rural interests. The CBO interviews added additional stakeholder perspectives that provided depth and detail to the descriptions offered by individual SDG customers and potential customers. A number of customers and CBO representatives described a system where the deck was not only stacked against access to USDA programs, but also against their ultimate success solely due to their status as minorities or women. These are the same USDA programs that, over the past decades, have assisted in elevating thousands of majority farmers and ranchers into their current successful status, internationally among the most professional, highly skilled, and productive farmers and agribusinesses in the world.

The Assessment Team's analysis of documents and data *provided by USDA* substantiated in part the anecdotal claims of neglect, at best, and

discrimination, at worst, that SDGs reported, in part by demonstrating that SDGs are under-represented or under-served in many USDA programs. Customers and potential customers stated that USDA policies and practices, often unintentionally, and sometimes purposely by “bad actors,” result in the unfair treatment and denial of program access which have had a broad and longstanding negative impact on the size, profitability, sustainability, business prospects, successes, and failures of SDG farmers and ranchers—including the loss of scarce or irreplaceable farm lands.

Sporadically over the last 15-18 years, USDA has begun to recognize and more effectively address these problems. Through actions such as the Civil Rights Action Team (“CRAT”) Report in 1997 during the Clinton Administration, USDA has sought to acknowledge the discriminatory problems and dramatically improve Department performance and service delivery, and create an environment for positive SDG inclusive change, seeking to enhance program accessibility and more fairly deliver those programs to all Americans. In 2009, Secretary Vilsack took steps, on behalf of the Obama Administration, including accepting GAO recommendations to conduct this Independent Assessment, that demonstrate the Secretary’s commitment to fairness and efforts to create his “New Era of Civil Rights” at USDA. This Assessment focuses on what needs to be done and provides specific recommendations of actions to be implemented immediately. It must be noted that for this Assessment to fully achieve the goals sought by the Secretary, the Department *must devote equal time, resources and energy to implementing the Recommendations, as it did to the Assessment*. Otherwise, USDA will fail to make critically-needed programmatic changes, as it has after each of the previous similar studies, task forces, and action plans relating to civil rights and equitable service to all of America.

The Recommendations are necessary to build upon the Secretary’s efforts and *create dramatic change* in the way USDA addresses bias, discrimination, and the lack of SDG and equal access to USDA programs. The Assessment Team concluded that each of the four Agencies and the overall Department need to improve equitable delivery of programs, which have disparately impacted SDGs, and need to eliminate other deficiencies, including under-representation of diverse employees. Decisive action to implement the Assessment Team’s Recommendations is clearly in the collective best interests of all farmers, ranchers (including SDGs), the entire Department, the nation, and all

Americans. Our nation *must* broaden the pool of talented, hard working, well supported, and successful farmers, ranchers, diverse businesses and individuals—particularly as the U.S. population and workforce become increasingly more diverse and the world marketplace becomes more competitive—*if* the United States is to retain global leadership in farming, ranching, and agribusiness.

V. FARM SERVICE AGENCY ASSESSMENT

A. Introduction³³

This section of the Report provides the results of 18 months of investigation and analysis of fairness and equity in program delivery by the Farm Service Agency (“FSA”). The Assessment Team relied on four primary sources of information: (1) interviews of 738 FSA employees at both the Headquarters and field levels, (2) 10 Focus Group sessions in 10 States with FSA customers, prospective customers, and potential customers whose applications for FSA program services have been denied, (3) interviews of the leadership of 30 Community Based Organizations (“CBOs”) from around the country representing a variety of farming and ranching interests, with an emphasis on those focused on issues of importance to socially disadvantaged groups (“SDGs”), and (4) review and analysis of statutes, regulations, policies, handbooks, reports, statistical data, and other information and documents provided by USDA. In addition, the Assessment Team conducted research on a wide variety of topics, including the history of the agency, media and other public reports of FSA activities, and the major class-action discrimination lawsuits that have been filed on behalf of African-American, Hispanic, Native American, and female farmers and ranchers.

The analysis of the data clearly indicated some serious failures to meet the Agency’s mandate to provide fair and equitable access to FSA programs and services, regardless of race/ethnicity, gender, and other characteristics. The recommendations at the end of this section of the Report will assist FSA to continue the work mandated by Secretary Vilsack to eliminate barriers to SDG participation in FSA programs and services. A key to understanding this Report and the Recommendations is to recognize that the perception expressed by most FSA employees – that inequitable treatment of customers and potential customers is, at worst, a series of isolated and independent incidents – is not accurate. The fact, as derived from all other sources of information, is that the inequities faced by SDGs have, over time, been systemic and ingrained in every-day FSA operations. The correction of this situation must begin

³³ As noted in Section IX below, the specific race/ethnicities references used by the Equal Employment Opportunity Commission are identified by the following categories: Hispanic/Latino; Black/African American; Asian; American Indian/Alaskan Native; and Native Hawaiian/Pacific Islander. For shorthand purposes, this section will refer to these categories as: “Hispanic,” African American,” “Asian,” “Native American,” and “Pacific Islander,” respectively.

with addressing the denial of the problem by the very people who must implement the solutions – the FSA employees.

B. Mission and History of the Farm Service Agency

FSA’s mission is “to equitably serve all farmers, ranchers, and agricultural partners through the delivery of effective and efficient agricultural programs for all Americans.”³⁴

FSA traces its beginnings to the Great Depression in 1933 and President Roosevelt’s “New Deal.” In 1935, the Farm Security Administration was established to relocate “farm communities to areas in which it was hoped farming could be carried out more profitably.”³⁵ In 1946, the Farmers Home Administration Act consolidated the Farm Security Administration with the Emergency Crop and Feed Loan Division of the Farm Credit Administration. This Act added responsibilities to the new Farmers Home Administration that included insuring loans made by other lenders. Later legislation established lending for “rural housing, rural business enterprises, and rural water and waste disposal agencies.”³⁶ During this same time period, State and County Committees of farmers were established to oversee Federal programs offering price support to commodities, including “dairy, rice, tobacco, sugar, wheat, cotton, corn and hogs.”³⁷

In 1953, the Commodity Stabilization Service was created to provide an “increased emphasis on the preservation of farm income.”³⁸ The Commodity Stabilization Service became the Agricultural Stabilization and Conservation Service (“ASCS”) in 1961, and in 1994, the Consolidated Farm Service Agency, renamed Farm Service Agency in November 1995, was created.³⁹ The new FSA encompassed the Agricultural Stabilization and Conservation Service, Federal Crop Insurance Corporation (“FCIC”) and the farm credit portion of the

³⁴ *www.fsa.usda.gov.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

Farmers Home Administration. In May 1996, FCIC became the Risk Management Agency, independent from FSA.⁴⁰

Today, FSA's responsibilities are organized into five areas: Farm Programs, Farm Loans, Commodity Operations, Management, and State Operations. The Agency administers farm commodity programs and *ad hoc* disaster programs. FSA conserves the nation's natural resources through the Conservation Reserve Program and provides credit to agricultural producers who are denied private, commercial credit (with a special emphasis on providing loans to beginning, minority and women farmers and ranchers). Its Commodity Operations division purchases and delivers commodities for use in humanitarian programs, and FSA programs "help feed America's school children and hungry people around the globe."⁴¹

C. Organization

FSA has a complex management and administrative structure that operates at USDA Headquarters, in all 50 states and in U.S. Territorial possessions. FSA falls within the purview of the Under Secretary for Farm and Foreign Agricultural Services (along with the Risk Management Agency and Foreign Agricultural Service). The Under Secretary reports directly to the Secretary of Agriculture.

The implementation of FSA's farm policy is the responsibility of field offices based in states and counties. Every state has an FSA State Executive Director ("SED") and State Advisory Committee. The states the Assessment Team assessed also have District Directors, who act as administrative liaisons between County Offices (described below) and the State Office. They oversee multiple counties within a District. The District Directors typically are physically located in one of the County Offices, the State Office, or may travel among County Offices.

County Offices operate as FSA's field offices to the local farming community. County Offices administer Farm Loan Programs and the Farm Programs, but *not all County Offices have a Farm Loan Program employee physically present.*

⁴⁰ *Id.*

⁴¹ *Id.*

The County Executive Director (“CED”) is responsible for daily operations of the FSA County Office, including administration and delivery of FSA services and benefits. The CED is hired by and reports to the local FSA County Committee (described in the following paragraphs). The CED oversees County Office staff who are tasked with the administrative functions of managing Farm Programs in the farming community.

The CED has no authority over the Farm Loan Programs staff. Instead, the Farm Loan Programs staff is managed by a Farm Loan Manager (“FLM”), who may or may not be physically located at a County Office, and travels among the counties administering Farm Loan Programs. Unlike the CED, who reports to a County Committee, the FLM reports to a District Director. As result, a “dual employment system” exists within FSA with the Farm Programs personnel and the Farm Loan Programs personnel being governed by different Handbooks and having differing lines of accountability.

As noted above, the CED and County Office employees are hired by a County Committee. County Committee members are nominated and elected by eligible farmers in the respective counties where FSA maintains a presence. Approximately 2,436 County Offices, with over 8,000 County Committee members, administer FSA Farm Programs.

The County Committees assist in the delivery of Farm Programs. *The County Committees have no express role in the delivery of Farm Loan Programs.*

D. Workforce Diversity: Summary

Section IX below presents in detail the results of the Team’s demographic analysis of the FSA workforce and FSA Committees, including State and County Committees. Comparators were chosen based on the pool from which the positions are filled (by appointment, hiring, or election). For example, State Executive Directors are appointed by the Secretary and may be chosen from the general workforce, so their demographics are compared with the U.S. Civilian Labor Force (“CLF”) (the CLF is the benchmark USDA uses in creating its annual workforce reports to the EEOC). FSA GS-system employees are also recruited and hired from the CLF. County Committees are elected from among FSA producers, and therefore are compared with Farmer/Rancher Principal

Operator populations taken from the 2007 *AgCensus*.⁴² The following is a summary of those areas of “under-representation,” that is, where the percent of employees in the group is substantially less than their comparator population:

- **FSA Nationwide Workforce – Under-Representation (not including County Committees or County Employees):**

Race/Ethnicity/Gender	Workforce	CLF
Total Minorities	17.7%	27.2%
Hispanic/Latino	3.9%	10.7%
Asian	1.4%	3.6%

- **FSA State Office Employees – Under-Representation** (15 USDA-selected States):
 - Hispanics/Latinos – 5 States, from 1 to 3 positions under-representation in each,⁴³ average office size 27.
 - Blacks/African-Americans – 8 States, from 1 to 3 positions under-representation in each, average office size 24.

⁴² As discussed more fully below, since Committee Members are USDA employees, their representation should be compared with the CLF. The 2007 Census of Agriculture (“*AgCensus*”) is the most current census compiled by the National Agricultural Statistics Service (“NASS”).

⁴³ When under-representation is described in terms of a stated number of “positions,” it means that FSA would have to hire the specified number of individuals of the indicated race/ethnicity or gender to bring the percentage representation in the position into line with percentage representation in the labor pool from which candidates are drawn.

- **County Employees Nationwide – Under-Representation:**

Race/Ethnicity/Gender	Workforce	USDA-wide	CLF
Hispanic/Latino	1.48%	5.69%	10.7%
Black/ African-American	1.98%	10.72%	10.5%
Asian	0.27%	2.82%	3.6%
American Indian/ Alaskan Native	0.89%	2.07%	0.60%
Native Hawaiian/ Pacific Islander	0.06%	0.15%	0.20%

- **County Executive Directors Nationwide – Under-Representation:**

Race/Ethnicity/Gender	Workforce	USDA-wide	CLF
Female	34.9%	43.01%	46.80%
Hispanic/Latino	1.32%	5.69%	10.7%
Black/ African-American	2.12%	10.72%	10.5%
Asian	0.37%	2.82%	3.6%
American Indian/ Alaskan Native	0.85%	2.07%	0.06%
Native Hawaiian/ Pacific Islander	0.00%	0.15%	0.20%

- **FSA GS-system Employees Including State and County Levels in the 15 States – Under-Representation:**

- Females – 3 States, largest under-representation in Mississippi, 8 positions of 72 total positions.
- Hispanics/Latinos – 6 States, largest under-representation in California, 7 positions of 55 total positions.
- Blacks/African-Americans – 10 States, largest under-representation in Mississippi, 13 positions of 72 total positions.

Thus, the most significant deficits of diverse representation in FSA's workforce are:

- Total Minorities—Nationwide workforce.
- Hispanics/Latinos—Nationwide workforce.
- Total Minorities (all SDGs)—County Executive Directors and County Employees.
- Females – County Executive Directors.
- Females, Hispanics/Latinos, and Blacks/African-Americans—FSA GS Employees.

E. Key Programs

As it relates to service to farmers and ranchers, FSA has two categories of programs: Farm Programs and Farm Loan Programs.

1. Farm Programs

Through its “Farm Programs” personnel, FSA implements and manages farm commodity, conservation, and disaster programs, which are designed to improve the economic stability of the agricultural industry and to help farmers adjust production to meet demand. There is a wide variety of farm programs, including:

- Commodity loans
- Loan deficiency payments
- Market loss assistance payment program
- Facility loan program
- Conservation reserve program
- Conservation reserve enhancement program
- Farmable wetlands program
- Source water protection program
- Biomass crop assistance program
- Public access program
- Emergency conservation program
- Direct and counter-cyclical payment program
- Average crop revenue election program
- Crop disaster program
- Dairy disaster assistance program III
- Livestock compensation program

- Livestock indemnity program
- Emergency forestry conservation reserve program

2. Farm Loan Programs

Through its “Farm Loan Programs” personnel, FSA makes direct and guaranteed farm ownership and operating loans to farmers and ranchers who cannot obtain commercial credit from a bank, Farm Credit System institution, or other lender.

FSA loans can be used to purchase land, livestock, equipment, feed, seed, and supplies, and to construct buildings or make farm improvements.

Targeted funds are set aside for socially disadvantaged groups, farmers and ranchers (“SDFR”). If unused, the funds are added into the general fund for all farmers and ranchers. The types of Farm Loan Programs are:

- Beginning farmers and ranchers (“BFR”)
- Direct farm ownership loans
- Guaranteed farm ownership loans
- Emergency farm loans
- Direct farm operating loans
- Guaranteed farm operating loans

F. Customer Demographics for FSA Programs

To determine the effectiveness of FSA Farm Loan and Farm Programs at equitably serving SDGs, the Assessment Team compared the financial assistance provided to SDFR Principal Operators (“Principal Operators”) with their percentage of the total Principal Operator population⁴⁴. For Farm Loans, the Assessment Team compared both Direct Loans (loans made by USDA/FSA directly to customers) and Guaranteed Loans (loans provided by commercial institutions with a USDA guarantee).

For Farm Programs, the Assessment Team compared SDG dollar participation in Farm Programs with their corresponding Principal

⁴⁴ The Principal Operator population data are based on the 2007 Census of Agriculture, which is the most current census compiled by the National Agricultural Statistics Service.

Operator percentages. The results are presented in detail in Section IX below. In summary:

1. Farm Loans

In general, direct loans to SDGs are approximately at or above the SDGs' share of the Principal Operator populations, but there is a significantly lower participation in guaranteed loans (with some exceptions).

a. Direct Loans

In FY 2010, all SDG sub-groups received percentages of direct loan proceeds *at or above* their respective Principal Operator population percentages, except Females (3.27 percentage point lag), and Blacks/African-Americans (a slight 0.06 percentage point lag).

b. Guaranteed Loans

In FY 2010, SDGs received percentages of guaranteed loan proceeds *below* their respective Principal Operator population percentages, some by substantial amounts (*e.g.*, Females, 7.34 percentage point lag), except Asians and Native Hawaiians/Pacific Islanders.

2. Farm Programs

On a national basis, all SDG sub-groups participation in FY 2010 Farm Programs, in terms of dollars received, lagged *substantially behind* the sub-group's percentage representation in the Principal Operator population, except Native Hawaiians/Pacific Islanders.

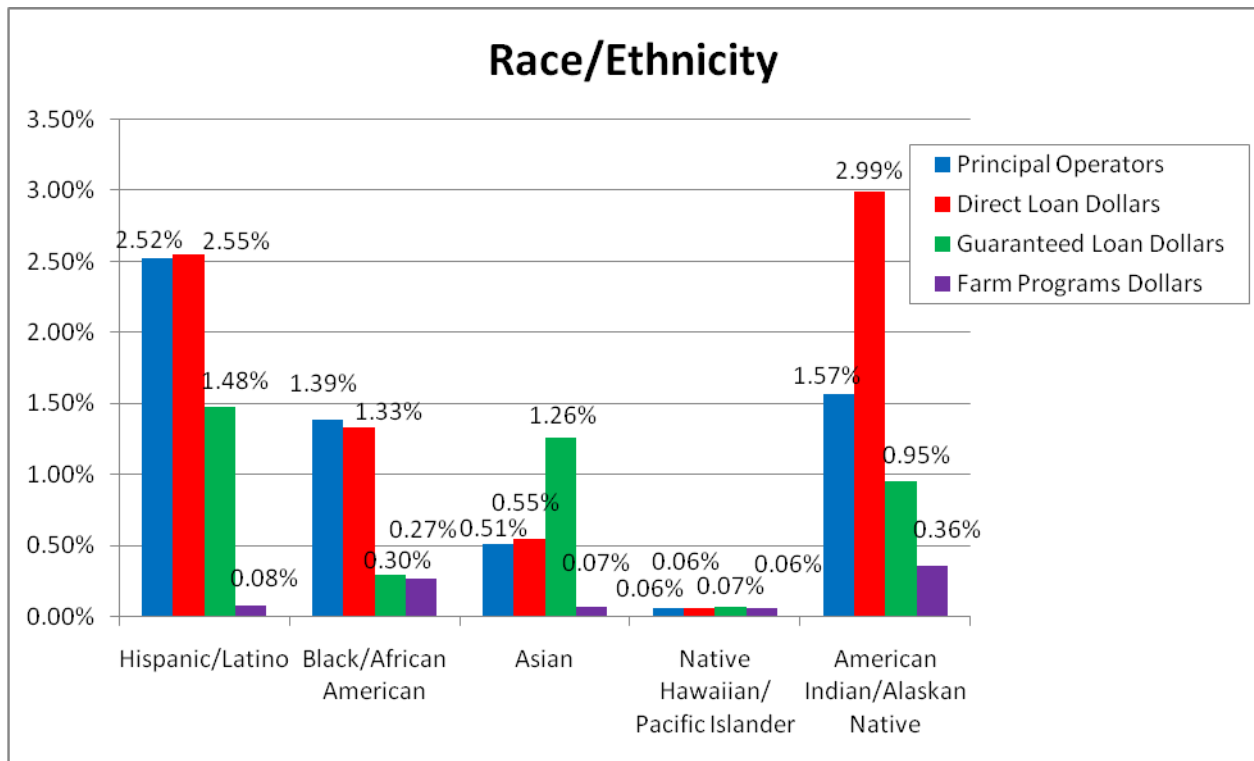
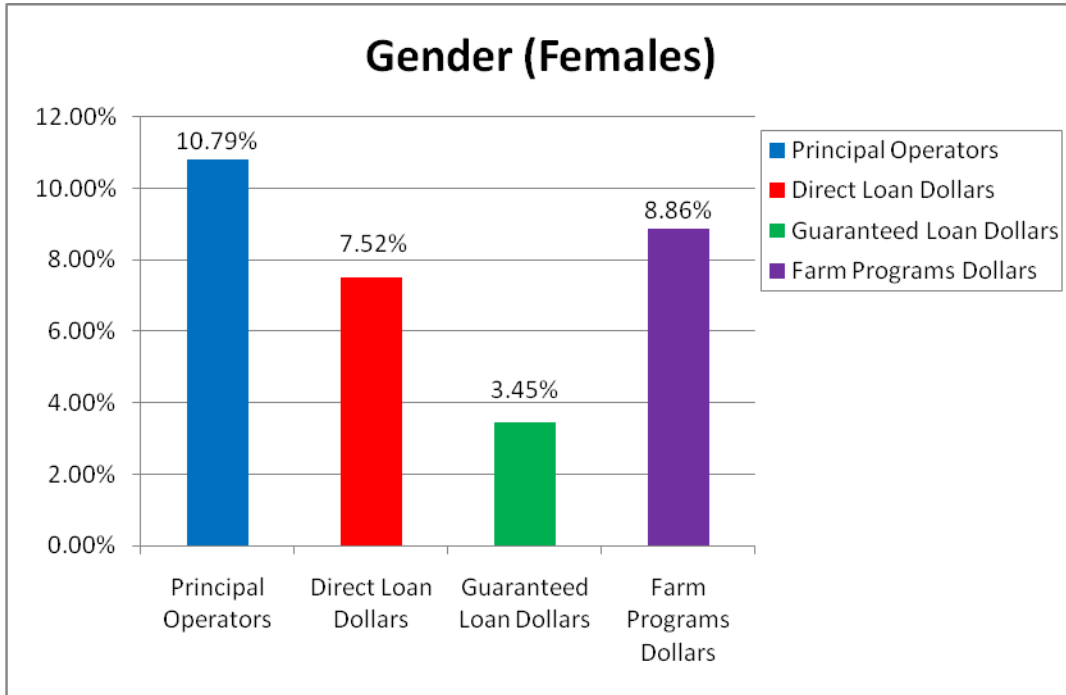
For example, Hispanic/Latino dollar participation was less than 1/30th of their percentage of Principal Operators; and, Black/African-American dollar participation was less than 1/5th of their Principal Operator percentage.

These results vary by State for the 15 USDA-selected States, but the State results showing SDG financial assistance lagging behind SDG share of the Principal Operator population generally reflect the national aggregate. For example, in New Mexico, Hispanics/Latinos are 30.94% of

the Principal Operators, but received only 0.86% of Farm Programs funds for the State. In Mississippi, Blacks/African-Americans constitute 12.65% of the Principal Operators, but received only 1.45% of Farm Program funds for that State. In Arizona, American Indians/Alaskan Natives constitute 53.95% of the Principal Operators, but received only 6.86% of Farm Program funds for that State.

The graphs on the following page provide a presentation of these results.

FSA FY 2010 Farm Loan Programs/Farm Programs Dollars



G. Customer Focus Group/CBO Input

1. Introduction

The first information the Assessment Team obtained about the *customer* perspective was through interviews of USDA employees. One of the questions asked of USDA employees was how *they* obtained feedback from customers and, specifically, whether they were aware of any customer surveys.

The majority of employees the Assessment Team interviewed were not aware of any surveys seeking customer input regarding FSA's customer service. Only about 14% of employees interviewed stated that there had been customer surveys performed in the past. Most of these interviewees stated that the surveys took the form of "customer comment cards" that FSA had in the County Offices "years ago." A few stated they believed that a survey similar to this Assessment had been done before, but they were not sure of the details. None of the employees who expressed awareness about customer surveys being performed in the past were aware of the results of the surveys, nor were they able to identify any policies or procedures that had changed as a result of the surveys.

To obtain direct customer input, during the months of January and February 2011, the Assessment Team conducted Focus Groups of FSA customers, in 10 States selected for this Assessment, and interviews of 30 CBOs. Some of the Focus Group participants had been denied service in the past, while some had not. The Focus Group participants were generally pleased with being asked to participate in the Assessment and offered views, regarding FSA's equitable customer treatment, which were often at odds with views expressed by the employees the Assessment Team interviewed. The CBO ranged in size from as few as 35 constituents in several counties and several states, and others with over 1,000 constituents throughout the U.S.⁴⁵ As with Focus Group participants, the views of the CBOs frequently were at odds with those expressed by USDA employees.

2. Initial Contacts with FSA

Most Focus Group participants stated that they learned of FSA

⁴⁵ With reference to CBOs that operate in multiple states, they will be referred to by the State in which they were interviewed.

through “word-of-mouth.” They learned of the Agency either from their neighbors, family members, or other farmers in the area. Some stated that their families had been farming for years, so they were familiar with FSA through years of experience. A few stated that they first learned of FSA through a mailing or other FSA Outreach efforts. CBOs generally stated that their members learned about FSA and specific FSA programs through their association with the CBO; some acknowledged that their members found out about available programs from FSA. Many Focus Group participants and CBOs stated that FSA could improve its visibility in the farming community by regularly sending out newsletters, conducting local listening sessions, and by running local newspaper, radio and/or TV advertisements. Focus Group participants and CBO interviewees were generally unaware of the job title of the employee who initially assisted them or their members, or of the hierarchical structure within the office.

3. Effectiveness of Outreach

Some Focus Group participants stated that they received regular correspondence and monthly, quarterly or semi-annual newsletters from FSA. Others stated that they received flyers and email communications. A Washington State CBO said it was on FSA’s e-mail list and, when it received information from FSA, the CBO forwarded the information to all its constituents. An Arizona CBO said newsletters are not published regularly and there is no local website. One Focus Group participant said that mailings were included with bills from USDA. Another participant stated that information was sent only to active FSA customers. A number of Focus Group participants and some CBOs stated that they had never received any mailings from FSA other than notices stating when their payments were due. These individuals and CBOs stated that the general public is unaware of FSA and the programs it has to offer farmers. Focus Group participants also showed visible signs of frustration when learning during the Focus Group that some farmers in their counties were receiving mailings, but they were not. They expressed both a sense of confusion and skepticism as to why they were not receiving mailings other than their payment statements.

Some Focus Group participants who received mailings from FSA stated that the mailings often contained information that they did not need. Some admitted to discarding the mailings. To improve the usefulness of mailings to the farmers/producers, some stated that mailings targeted to

the type of farm they had would be helpful. In other words, they would be more likely to review the mailings they received from FSA, if they did not contain information about programs for which they had no use.

Some African-American Focus Group participants stated that hiring more African-American employees would help improve outreach. They explained that because so much information is spread by word-of-mouth in the farming community, it would be helpful to have an African-American employee in the office, with relationships or who could develop relationships in the African-American community to spread the word about FSA programs within that community. The same recommendation was made by a Native American who said that information is most effectively distributed by word-of-mouth. Other Focus Group participants said FSA should telephone customers and potential customers directly (“They need to call one-on-one”), and include information in the print media, on television, and on the radio (including foreign language stations). One participant suggested that FSA employees could conduct outreach by attending county and state fairs. Participants also stated that FSA-sponsored workshops or seminars held in their community would be helpful. Most had not been to any such workshops or seminars and were not aware that FSA had ever held any in their area.

Many CBOs expressed views that were more negative regarding USDA’s outreach to SDGs than those of Focus Group participants; although some expressed favorable views. One Michigan CBO said FSA is not proactive in outreach; however, another Michigan CBO said its members are familiar with FSA programs because they attend USDA-sponsored workshops and outreach programs. An Arizona CBO said FSA conducts outreach at conferences and meetings and its members are satisfied with the information they receive. A Washington State CBO stated that FSA does not do a good job of outreach and FSA is not providing a level of outreach that is comparable to the funding FSA claims it receives. Another Washington State CBO said that FSA has done little strategic outreach; instead, “they have sat back and let the people come to them.” A CBO in Arizona said that FSA “needs to do a better job of getting the word out,” and another Arizona CBO said FSA needs do more outreach at the local level. An Oklahoma CBO, in describing the sum of FSA’s outreach, said it consisted of showing up at meetings, if asked; however, the CBO also said the FSA representative tends to minimize participation at the meetings. This CBO cited an example where an FSA

representative was asked to be part of a panel, but, instead, just gave a presentation. A North Carolina CBO said that FSA employees show up at meetings unprepared, do not participate, and “act like they do not know what they are doing.” A second Oklahoma CBO, when discussing outreach, said that FSA employees “just want to sit in their offices and draw a paycheck.” A Florida CBO, whose members consist primarily of Hispanic/Latino farmers, said that the local offices do not have specialized outreach programs to reach the Hispanic/Latino farming population. A California CBO said that the State Office does not do a “lot of outreach” and, at the local level, there seems to be a “closed door policy” because supervisors at the local level are not as open to outreach as they could be. Mississippi and Georgia CBOs said that outreach efforts are inconsistent and the level of local effort is limited. Overall, CBOs felt FSA needs to be more proactive in sponsoring events and “getting the word out.” Some CBOs said, if they were provided with funding from USDA, they could do more effective outreach than FSA.

A number of CBOs related outreach problems with workforce diversity, stating that FSA offices “should have greater diversity in terms of race and/or ethnicity.”

4. Complexity of Application Processes

Focus Group participants expressed opposing views regarding the ease of the application process. Some participants stated that the application process was relatively easy and pain-free, while others described the process as “gruesome” or “hellish.” Those who expressed positive experiences with the Farm Loan Programs application process stated that the application was “pretty simple,” “wasn’t difficult” and the Farm Loan Program personnel provided them with all of the assistance they needed to finalize their applications. A Michigan and an Arizona CBO also said their constituents were satisfied with the assistance they received from FSA staff during the application process.

Those Focus Group participants who expressed negative experiences about the application process (they were not clear on whether they were referring to Farm Loan Programs or Farm Programs) stated the application was “very difficult,” “not understandable,” “burdensome,” “cumbersome,” “frustrating,” “time consuming,” “long,” “grueling,” “hellish,” “is designed to discourage people from applying,” and had “so many little nuances.” Some participants believed that the office *required*

more of them than what was indicated on the application. Others said they received either little or no meaningful assistance from FSA staff during the application process (“You go in the office and there is no one ever willing to explain anything to you.” “You walk in and pretty much have to drag it out of them.”). Some participants said FSA employees provided them with incorrect information and that the employees did not understand the application or the process themselves. Others said FSA was “nitpicking everything,” making them “jump through hoops unnecessarily,” and giving them the “runaround.” They stated that it was difficult for them to stay abreast of everything they needed to submit and that they had to make multiple visits to the office in order to complete their applications. At least one participant felt compelled to hire an accountant to assist in completing the application.

A Mississippi CBO described the assistance received from FSA during the application process as being “woefully weak.” A Michigan CBO said it seems to its members that the rules are constantly changing, which gives its members the impression that FSA may use one set of rules for White farmers and another set of rules for SDGs. That same CBO said FSA is the “worst Agency” that its constituents deal with because “what they say and what they do is not the same.” An Arizona CBO said that the application process is a “nightmare” and, because the forms are changed constantly, its constituents constantly need to redo their applications. An Oklahoma CBO stated that its constituents are “overwhelmed” by the application and they have to rely on the CBO for assistance in completing the application. A Washington State CBO described the application process as “onerous.” Another Washington State CBO stated that they did all of the work FSA should be doing in assisting with the application process and the CBO had to go with a member/applicant to the FSA office to provide technical support. A Georgia CBO pointed out that many of its constituents are not well educated and the application is much too difficult for individuals with lower levels of education. This view was expressed by many of the CBOs. Many of the CBOs complained that FSA employees unnecessarily use too much technical jargon and acronyms which its constituents do not understand. Several CBOs complained that FSA offices do not have any pamphlets that explain the various programs.

In addition to the complexity of the application process, for some, the timing of receipt of the funds was identified as a problem. Many Focus Group participants and some CBO interviewees stated that even after

applications were completed and approved, they or their constituents did not receive the funds until the planting season was half-way finished. They stated that the delay in receiving funds prevented the farmers from taking full advantage of the program's benefits and contributed to their losses.

5. Independence and Fairness of Appeals Process

Many Focus Group participants stated that they had participated in the appeals process before the County Committee, State Committee, or USDA's National Appeals Division ("NAD"). Some stated that they were treated well throughout the process and were pleased with the final result, which was to award them benefits. Some felt vindicated because they had been accused by FSA employees of lying on their applications, and winning the appeal established, at least in their minds, that they did not. Some participants said the only way they could get funding from FSA was through the appeals process because the local offices routinely denied their applications. One participant stated, "I done been rejected for years. I mean, I'm serious. I mean I'm serious for every -- from the time I've been started with them for every -- every time I got money basically out of them from the majority of the programs was basically through appeal process." Others stated that the appeals process lacked independence and objectivity because the process was designed so the same people who rejected their applications also heard their appeals. Those who shared this view did not believe the appeals process afforded them due process.

A few stated their appeals were "not timely decided." At least one participant stated their appeal lasted for four years, while another stated that their appeal lasted for one year. No one knew whether the appeals process had any regulatory time limits.

Many Focus Group participants expressed that they were not aware they could appeal the denial of benefits. They stated that they first learned that an appeal was available through their participation in the Focus Groups.

None of the CBOs complained that their constituents were not made aware of the appeals process. A Michigan CBO recounted that one of its constituents was denied a loan to purchase land adjacent to the member's farm. The denial was appealed to the National level where the

denial decision was overturned. It was a Pyrrhic victory; however, the land the member planned to purchase had been sold to someone else by the time the appeals process was completed. CBOs in Florida, Mississippi, and Oklahoma said their constituents tended not to appeal because they believed it would be fruitless. Several CBOs did not know of any constituents who had appealed denials.

6. Fairness/Discrimination at the Hands of FSA Employees

Focus Group participants expressed that the type of service farmers receive depends largely upon the County Office. Some expressed glowing reviews of treatment they received from their County Office employees and stated that they received all the help they needed. Others described the employees as “lazy” and “only willing to help those with larger farms.”

Some Focus Group participants stated that FSA employees acted as if the money belonged to the employees themselves and not to the taxpayers. In support, they stated that employees are not forthcoming with information and gave them “the runaround” instead of trying to be helpful. One Focus Group participant stated that FSA employees look for reasons to deny loan applications from SDGs; he said the employee went back 30 years looking for a reason to deny his loan.

Other Focus Group participants stated that employees “do not understand the programs and do not know what they are doing.” They stated that they were “often asked to return to the office to receive an answer to a question.” Some did not believe the reason given for denied application; they almost always believed that the real reason was based on discrimination.

Other participants said:

- “If you are not one of the **‘good old boys’**, you are not in that ‘good old boy’ system, you ain't going nowhere.”
- “If you are not a big farmer today, then you are not a farmer because you are not going to get anything.”

- “[A]nother farmer can come along, and his dad just cosigned, and he gets a million dollars to operate with, but if I come along, I can't get nothing. It's a different standard.”
- “I thought I was really treated like dirt. . . . I mean, I don't know what this man had against me. I was just trying to get my fair share of everything out here, but he just -- oh, the experience was just really rotten.”
- “Well, I don't think they were fair with me.”
- “I don't think I was treated fairly ... I'm very upset with them.”
- One Hispanic/Latino participant felt he was discriminated against due to his Hispanic/Latino surname. As he said: “[W]e jump through all the hoops and dotted all the I's, and then the gal said, oh, it looks good. Everything's good. Go up to the top, and some guy would just kick it back.”
- “They discriminate.” This farmer was referencing his experience with the loan officer who told him his application was incomplete, and to come back with additional information, and then told him there were no funds left.
- “I think that it's not very fair, and I will tell you why. I always thought that the purpose of USDA and FSA was to help the farmer or the rancher ... And they, the FSA and higher ups particularly, do not seem to be fairly treating the rancher or farmer when he is in difficulty. They have a tendency to provide obstacles....”
- A Hopi tribe member stated: “Like I said about that Navajo lady that was employed by FSA, she wasn't really fair to me ... there have been some complaints ... about that lady.”
- “I will give you examples as to how I've been discriminated. . . . So they fabricated information and then they said there are seven instances where on my application, I lied ... They declined my application for that ... Then we went to appeal. The appeals agent said every single one of those seven reasons are absurd, are fabrication and they are not true.”

- “Everything is the color of the skin ... We was four black farmers in [the county], now it's none.”

CBOs in California, Florida, Georgia, Michigan, Mississippi, New Mexico, North Carolina, Oklahoma, and South Carolina all said their members believed that they were discriminated against because of their race and/or ethnicity.

The North Carolina CBO stated that FSA’s reputation in the community for fairness “did not exist” because FSA was “so bad.” The CBO did note, however, its members have seen some improvement in recent years (which began when Secretary Vilsack was appointed). A South Carolina CBO said that the vestiges of race discrimination continue in some FSA offices. Mississippi and Georgia CBOs both described the discrimination as being a product of the “good ole boy” network. Their constituents believe African Americans are denied loans at a higher rate than Whites, Whites are given more assistance, and African-Americans are treated rudely while Whites are not.

A Michigan CBO with a large African-American constituency said its constituents have lingering feelings/beliefs that FSA is not fair to minorities. This is the same CBO that mentioned that ever-changing rules left a perception that there were different rules for African Americans and Whites. This CBO also said that African-American farmers are singled out by FSA because loans they receive are frequently doled out in small amounts by FSA or subject to dual signature requirements, whereas Whites receive all their funding up front and do not have their funds supervised.

An Oklahoma CBO said that FSA employees are reluctant to deal with its constituents, who are primarily African American, since the *Pigford* lawsuits. The CBO said its constituents believe they are denied access to programs and are being discriminated against, because:

1. FSA is reluctant to work with them;
2. FSA does not provide assistance with applications;
3. FSA employees do not volunteer information;

4. African-American applicants, and not Whites, are required to repeatedly return to FSA offices to provide additional information;
5. There is an inconsistency between the treatment of minority and non-minority customers with regard to the way credit issues are resolved;
6. When loans are approved for African Americans, FSA tends to “control the purse strings” (uses supervised accounts), and the same is not true for Whites who receive loans;
7. There are a lot of judgment calls made by FSA in considering loan applications, and the judgment calls are routinely not in the African-American applicants’ favor; and,
8. African-Americans are denied loans at a much higher rate than Whites.

A CBO with constituents in southern Florida, who are primarily Hispanic/Latino, experience what they believe to be discrimination or unfair treatment in some FSA offices, and not in others. This CBO said its constituents came to this belief with respect to the “discriminatory offices” for a variety of reasons, including:

1. They believe they are stereotyped as being farm workers, rather than owners;
2. There is a cultural barrier because some offices do not have Spanish speaking employees, and written materials are poorly translated;
3. FSA does not know how to deal with “our people;”
4. The information they receive is inconsistent or incomplete;
5. Some offices are “flexible” with regard to program requirements, and others are not; and

6. In some offices its constituents are treated rudely.

A New Mexico CBO, with a large Hispanic/Latino constituency, ascribed the treatment as being “cultural” with neither its constituents nor the FSA employees giving the other “a break.”

A California CBO stated that “there is a general consensus among African-American and Southeast Asian clients that they are not always treated fairly by USDA; they do not feel comfortable, but USDA’s programs are their only option.”

7. Barriers to Participation

a. Office Location

Most Focus Group participants did not identify the location of the FSA office as a barrier. The few who did stated that they had to drive more than 50 miles each way to reach their local County Office. Even though most of the participants stated that the office location was not a problem, many stated that the office space was too open. They expressed that the openness, lack of walls, *etc.*, failed to provide the privacy they wanted while exchanging confidential information with FSA employees. A few gave examples of hearing about a farmer’s confidential information outside the office. They believed this information was disclosed when two farmers were in the office at the same time and one overheard the other speaking to an employee.

CBOs had mixed reactions to the distance to their FSA offices. For example, one CBO said a typical round-trip of 25 miles to an FSA office was inconvenient while another CBO, whose constituents typically had a two hour round-trip, did not believe the location was inconvenient.

b. Additional Barriers

Focus Group participants identified a number of additional barriers to participation, including:

1. The heavy use of acronyms and technical language by FSA staff;

2. The complex applications and the burdensomeness of the paperwork, which they described as having increased over the years;
3. The need to return to the FSA office multiple times;
4. The lack of information about available programs;
5. FSA employees served as barriers to participation because they provided incorrect or inconsistent information, were unwilling to help, not knowledgeable about programs, lied about applicants, and withheld information;
6. The requirement that applicants first had to be rejected by a commercial bank before they could be eligible for a farm loan; and
7. Some were told they needed to be rejected two times while others stated that they were told they needed to be rejected three times.

CBOs identified a number of barriers to participation, including:

1. Discrimination and the lack of trust in USDA caused by historical discrimination;
2. The difficulty of the application and the application process, and limited assistance given by FSA employees;
3. Incomplete or inconsistent information given by FSA employees;
4. Lack of awareness of its constituents about FSA programs caused by inadequate FSA outreach;
5. Apathy/rudeness/poor attitudes exhibited by FSA employees;
6. FSA's apparent inability to communicate program information at a level where customers can understand—"FSA-speak" and the use of acronyms;

7. The inability of FSA staff to deal with people of different cultures;
8. FSA offices are not staffed to accommodate customers who speak different languages; and
9. Absence of written materials explaining programs; inflexible policies concerning eligibility for loans; low staffing levels at FSA offices.

8. Lack of Interest in Website

Most Focus Group participants stated that they had never visited the FSA website. Those who had visited the website expressed differing views regarding the usefulness of the website's content. Some stated that the website was "user-friendly" and contained "a lot of useful information." Others stated that the website was "cumbersome" and required the visitor to "click on too many links to get the information you needed." A suggestion was provided that the website be rearranged so that information is organized by the type of farm. For example, those with crops would click on one button, while those with cattle would click on another.

A major issue raised by CBOs was that many of its constituents do not have internet access. One CBO said the website is "great" and needs no changes, and another said it was "intimidating—not welcoming." Most comments fell within these two extreme views. One CBO whose constituents routinely access the website suggested that FSA conduct webinars as part of its outreach efforts.

9. Effectiveness and Fairness of County Committees

Some Focus Group participants were not aware that FSA had County Committees. They stated that hearing about them in the Focus Group sessions was the first time they became aware that the County Committees existed. Some stated that they would be following up with their County Offices to obtain more information about the County Committees.

Those who were aware of the County Committees shared differing viewpoints about their effectiveness. Some stated that they liked the

County Committees because they represented the farmer's interest in the process. Many others stated that they comprised the same farmers each year and were a part of the "good ole boy" network. A few stated that the County Committees were largely invisible and members only reached out to farmers when they wanted their votes.

Those participants who were critical of County Committees also expressed a lack of trust in the County Committee system. They stated that the system was inherently flawed because the Committee members were generally larger farmers who were being asked to make decisions regarding the smaller farmers, whose land they believed the larger farmers often wanted. Thus, they believed that a conflict of interest exists between the large farmers on the Committee and the SDG farmers who are applying for benefits.

A few Focus Group participants had served on County Committees in the past. They stated that, in their experience, the process was fair and that Committee members followed the regulations in making determinations. They stated that, in their experience, they did not consider race or gender in their decision-making.

CBOs representing constituents in all Southern Assessment States stretching from North Carolina to Mississippi, and most other CBOs interviewed, stated that County Committees do not represent the interests of SDGs; they are dedicated to helping large, White farmers. Generally, in their view, placing minority farmers/ranchers on the County Committees as "advisors" does nothing to change their views, decisions, or operations. Several CBOs noted that advisors are not allowed to vote. One CBO said that decisions were made before the meetings, the minority advisor was allowed to give his/her views at the meeting, and then the Committee Members voted on matters in accordance with the decisions made prior to the meeting. None of these CBOs expressed support for the County Committee system. The CBOs whose constituents are primarily African American expressed strong hostility for the system and generally saw it as another example of FSA's past and present discriminatory practices.

10. Office Accessibility⁴⁶

Focus Group participants and CBOs were also asked to comment on the proximity of their County Office, whether the office is convenient, and whether there are physical barriers to individuals with disabilities. Most stated that the County Offices are geographically accessible, while a few stated that they are required to drive up to 50 miles each way to reach their County Office. CBOs had mixed reactions to the distance their constituents had to travel to reach their County Offices. For example, one CBO said a typical round trip of 25 miles to an FSA office was inconvenient, while another CBO, whose constituents typically had a two-hour roundtrip, did not believe the location was inconvenient. One Focus Group participant stated that county offices were “cold and uninviting.” None of the Focus Group participants mentioned any physical or structural issues with the County Offices that would negatively affect individuals with disabilities. The following are further examples of comments made by Focus Group participants and CBO interviewees regarding office accessibility:

1. In a session in Bismarck, North Dakota, one Focus Group participant stated, “I just think in that office they needed a total house cleaning;”
2. In Raleigh, North Carolina, one participant described the lack of privacy as an issue. The participant stated, “All the offices [are] set out, and they ain't got no cubicles or nothing where there's privacy, no confidentiality, for one;” and
3. In Orangeburg, South Carolina, it was stated, “They are accessible to go to. There is no problem about doing that. You go and ding the bell. They will come. And you can go back there and sit down and talk with them and stuff like that, but there again do I feel uncomfortable talking to certain ones about my farming business? Yes, sir.” Similar sentiments were expressed by Focus Group participants in the other States the Assessment Team visited and by CBOs that were interviewed.

⁴⁶ This section supplements the brief comments regarding FSA office accessibility above.

11. Summary

The Focus Groups and CBO interviews revealed that the type of service FSA customers are receiving largely depends upon the county in which they live. While some Focus Group participants/CBO interviewees expressed that they or their constituents are receiving services they need, and consequently, are receiving benefits necessary to keep their farming operations viable, others are not. Thus, despite the sentiments expressed by employees that they are treating everyone fairly and taking time to explain the programs to all customers, it is apparent that some County Offices are not succeeding at this task. To help alleviate the disparity in treatment afforded FSA customers, Headquarters should place a heightened emphasis on holding employees accountable for poor customer service and making it known within the Agency, as indicated above.

Although the employees the Assessment Team interviewed stated that they mailed newsletters and postcards to FSA customers, many of the Focus Group participants and CBOs stated that they or their members never received a mailing from FSA, despite being enrolled in its programs. The Assessment Team has been unable to determine whether this breakdown occurs at the State Office level or County Office level. Thus, to help alleviate this problem, a collaboration between State and County Offices on creating and maintaining updated contact lists should be implemented. Additionally, Headquarters should re-evaluate which office—State or County—should have primary responsibility for sending out mailings, and if necessary, reinstate the practice of having County Offices be responsible for mailing program-specific postcards, reminding producers of sign-up periods and deadlines, and advising them of new programs or program changes. Furthermore, the Farm Programs and Farm Loan Programs mailing list databases should be verified, purged, and merged to create one more complete mailing list of FSA customers. Finally, Headquarters should explore expanding the visibility of FSA within the farming community by including television, radio, newspaper or internet announcements, as appropriate.

The County Committee system generated differing views regarding the effectiveness of County Committees in administering Farm Programs. Some of the Focus Group participants questioned the fairness of the process, which they described as giving larger farmers power to review the applications of smaller farmers, whose land the larger farmers want

to acquire. CBOs on the other hand, almost universally stated that County Committees do not represent the interests of SDGs and instead represent those of large farmers. Generally, the CBOs reported that their members believed that the “minority advisor” position did not meaningfully represent their interests because the advisors cannot vote. Southern CBOs stated that County Committees were an example of the vestiges of past discrimination. They saw County Committees as being dominated by White farmers who were “looking out for their own” and trying to undermine African-American farmers. Although the effectiveness and usefulness of the County Committees will be explored in more detail below, FSA should, at a minimum, re-evaluate the application review process to ensure confidentiality and fairness and whether the County Committees provide any added value.

H. Headquarters Interviews: Summary

In November and December 2009, the Assessment Team interviewed 15 career employees and political appointees at Headquarters (including one State Executive Director). Many who were interviewed were accompanied by colleagues. Interviewees shared extensive information regarding the history and transformation of FSA from the 1930’s to its present-day form. In particular, the Assessment Team learned detailed information about the *Pigford* and other class-action discrimination lawsuits, County Committee election process, Farm Loan Programs, Farm Programs, and the backlog of Civil Rights complaints.

The Assessment Team interviewed the following individuals:⁴⁷

1. Administrator, FSA, Jonathan Coppess;
2. Deputy Administrator for Commodity Operations, James Monahan;
3. Deputy Administrator for Field Operations, Karis Gutter;
4. Deputy Administrator for Farm Loan Programs, Chris Beyerhelm;

⁴⁷ Titles listed are accurate as of the time of the interview.

5. Assistant Deputy Administrator for Farm Programs, Lynn Tjeerdsma;
6. Assistant to the Deputy Administrator for Field Operations, John Chott;
7. Associate Administrator, Operations and Management, Carolyn Cooksie;
8. Senior Advisor, Office of External Affairs, Mark Palmer;
9. Special Assistant to the Secretary, Office of Civil Rights, Lloyd Wright;
10. Director, Loan Making Division, Jim Radintz;
11. Director, FSA Office of Civil Rights, John Toles;
12. Director, Loan Servicing and Property Management Division, Veldon Hall;
13. Director, Outreach Staff (with Outreach Staff member present), Mike Hill;
14. Field Operations Manager, Ken Nagel; and
15. State Executive Director, Louisiana State FSA Office, Willie Cooper.

The interviews revealed a difference of opinion at Headquarters as to whether discrimination remains a real issue or simply reflects a perception influenced by extremely negative past history and allegations. All interviewees clearly stated there were problems in the past, but they divided into two groups of thought with respect to whether discrimination currently existed and if so, to what degree. The first group, the smaller group, believed there were still problems and that something needed to be done to correct it. The second group, the larger group, believed that FSA had eliminated the problems and there were few, if any, issues today because most had been caused by bad personnel at the County Office level, and those employees were no longer employed by FSA. At least one interviewee expressed a firmly-held belief that the

standard for relief in *Pigford I* was too low, thereby providing relief to many who were not harmed.

The interviews also revealed that there was ineffective communication among offices at FSA. The Assessment Team concluded that many of the offices operated in silos with very little interaction or coordination with each other. Interviewees often expressed inaccurate information regarding what the other offices at FSA Headquarters were doing. For example, interviewees from one office stated that there were 14,000 backlogged complaints that had never been investigated and were currently pending against the Agency, while interviewees from the office tasked with investigating the complaints, reported a far lower number of complaints that were still outstanding.

The Headquarters interviewees also expressed different opinions regarding FSA's effectiveness in outreach. Almost all stated that employees at the County Office level differed in their understanding of what constituted outreach. Headquarters' interviewees stated that some County Office employees would define outreach as an extension of public relations to everyone, while others would define outreach as getting materials into the hands of SDGs. In addition, some stated that the Outreach office at Headquarters was more interested in form than substance, for example, the Outreach office valued the number of outreach events performed over the number of actual enrollees in FSA programs as a result of the event.

Some interviewees questioned whether the dual employment system that exists within FSA—since the Farm Programs personnel and Farm Loan Programs personnel are governed by different Handbooks and have differing levels of accountability in the field—affected the equitable delivery of service to FSA customers and potential customers. The same sentiment was expressed regarding the County Committee system. Others questioned the effectiveness of the minority advisor position on the County Committees.

Some Headquarters interviewees expressed a concern that filling certain positions via political appointments has a negative impact on bringing about change within FSA. In support, they noted that long-term employees took the position that changes recommended by the incumbent appointee were not mandatory because a new individual would be appointed in a matter of time. Thus, long-term employees

would not bother to act on the proposed changes, because they knew the “changing of the guard” and different priorities were always forthcoming.

Other Headquarters’ interviewees noted that the absence of diversity among employees at the state and county levels hampered outreach. Some questioned the effectiveness of Civil Rights training.

Many interviewees referred to FSA as employing “legacy staff” with “legacy attitudes.” Although, as stated above, most believed that discrimination toward SDG customers and potential customers was a thing of the past, some of them acknowledged that the past discrimination has a current day impact on the number and success of minority farmers and ranchers today.

Interviewees with knowledge of Farm Loan Programs emphasized the work they have done to ensure the equitable delivery of farm loans. They stated that they have instituted detailed reports to track SDG loan applications from those that were approved, rejected, and withdrawn to the length of processing times. They indicated that FSA had made huge strides in this area and believed that Farm Loan Programs were currently being equitably administered by the County Offices in the field.

FSA Office of Civil Rights (“FSA OCR”)

FSA OCR is responsible for, among others, managing the enforcement of Civil Rights compliance throughout FSA by ensuring that programs are developed and administered without discrimination. In doing so, FSA OCR investigates complaints made by customers and potential customers against FSA personnel.

Before a complaint is investigated by FSA OCR, it must first go through an acceptance/authorization process. After a complaint is accepted/authorized, it is forwarded to FSA OCR, and FSA OCR investigates the allegations and recommends a resolution.

According to FSA OCR leadership, the lack of diversity among FSA personnel today can be traced back to the merger of Agricultural Stabilization and Conservation Service (“ASCS”) and the farm credit operations of the old Farmers Home Administration. Prior to the merger, significant gains in diversity had been made among employees who worked on the housing side of the old Farmers Home Administration.

When the merger occurred and the “new” FSA was created, the employees who worked on housing issues were transferred to Rural Development, leaving behind the ASCS and farm credit of the old Farmers Home Administration, which was less diverse.

FSA OCR noted that the current organizational structure, which has a Human Resources function under the Deputy Administrator of Farm Operations (“DAFO”), may impact program delivery. Personnel issues in the field are overseen by DAFO HR instead of by the State Executive Director; thus, according to FSA OCR, the State Executive Director’s power to discipline and/or transfer misbehaving employees is diminished by the existence of the DAFO HR function.

A final point FSA OCR raised regarded the limitations imposed upon the office’s ability to investigate customer complaints. FSA OCR is prohibited from speaking to the complainant and must prepare the Agency’s position statement within 24 days of the complainant’s filing. FSA OCR would like an opportunity to speak to the complainant within the first 30 days of the complaint’s filing and then have another 30 days to prepare the Agency’s position statement. This change would allow FSA OCR to more effectively resolve complaints because it would give the complainant an opportunity to be heard, save time and clarify issues, which the office believes is what most complainants want.

I. Field Interviews: Summary

Between January 2010 and October 2010, the Assessment Team interviewed 708 FSA employees in 15 States and County Offices selected by USDA. Each interviewee was asked to respond to a standardized set of questions to determine their experiences, views, and opinions regarding the equitable delivery of services to SDG customers and potential customers in their particular State, District or County. Field employees who were interviewed were informed that responses would be received on a “non-attribution” basis, meaning information obtained during the interview would not be attributed to any individual, without the individual’s permission, to anyone other than the Assessment Team members, or except as may be required by law.

The positions the Assessment Team interviewed were:

1. State Executive Director.

2. Administrative Officer.
3. Farm Loans Chief.
4. Farm Programs Chief.⁴⁸
5. State Outreach Coordinator.
6. District Director.
7. County Executive Director.
8. Farm Programs Technician.
9. Farm Loans Manager.
10. Farm Loans Officer/Farm Loans Program Technician.
11. County Committee Member.
12. County Committee Member/Advisor.

The following State-specific representatives (employees) provided information regarding issues specific to their States, as follows:

1. Arizona

The employees the Assessment Team interviewed in Arizona identified Native Americans and Hispanics as customers and potential customers in substantial numbers in Arizona. They described their efforts working with the Navajo Nation over the past several years to increase the trust between them and FSA. They stated that, among other things, they hold “office days” for Navajo tribes on their reservations.

The employees also stated that there is tension in the form of personality clashes between Farm Loan Programs personnel and Farm Programs personnel.

⁴⁸ The specific Farm Programs Chiefs interviewed varied from State to State depending upon availability and the number of Chiefs present at the State Office.

The Farm Programs personnel identified few outreach activities that they had engaged in, and stated that the low number of employees in some County Offices prevented them from doing more.

Some employees stated that FSA should not focus as much on SDG customers and potential customers. Most employees interviewed stated that they treat everyone equally.

2. California

Employees identified Hispanics and Asian Americans as customers and potential customers in substantial numbers in California. They stated that there are bilingual employees in many County Offices to assist Spanish-speaking customers. They also noted recent hires of Hmong-speaking employees to assist Hmong-speaking customers.

Employees stated that the complexity of the application was a barrier for those who did not speak English well.

Employees expressed dissatisfaction with what they described as a “one size fits all” approach to outreach. They stated that Headquarters should allow for outreach to be tailored to the local areas.

Some employees stated that the lack of a sufficient number of County Offices was a barrier to equal participation in FSA programs. Others stated that the County Committees were useful because they acted as FSA’s “eyes and ears.”

3. Florida

Employees identified African Americans, Hispanics, and women as customers and potential customers in substantial numbers in Florida. Most employees stated that their offices treat everyone equally. Some stated that they were aware of discrimination taking place in neighboring counties.

Employees stated that the priority given to outreach was good. They stated that they had interpreters available to help their Spanish-speaking customers and potential customers. Some expressed that if a farmer did not know about FSA, it was “the farmer’s problem.” They also stated that there was tension between the Farm Loan Program personnel and

the Farm Program personnel. Some stated that there was also tension between the State Office and County Offices.

In one County Office, the employees expressed concern about the safety of the office location.

Some employees questioned the lines of accountability on the Farm Programs side. They stated that to increase accountability, the County Committee should not hire the County Executive Director, and the County Executive Director should report directly instead to the USDA District or to the State Executive Director.

At least one County Committee member stated that Hispanic farmers in the area were not “real” farmers deserving of benefits under FSA programs. Other Committee members stated that they need more information to better understand their roles.

4. Georgia

Employees in Georgia identified African Americans as customers and potential customers in substantial numbers in Georgia. They also stated that the farming community was close-knit and that everyone, including the office staff, knew the farmers within the community. Some of the employees performed outreach targeted to SDGs, but some employees stated that too much time is spent on SDG farmers.

Many of the employees stated that they were related to other FSA employees or that they were aware of employees who were related to each other.

Some interviewees, including County Committee members and advisors, stated that African Americans are simply not interested in farming.

Interviewees also stated that the complexity of the application process was a barrier and that Headquarters should not announce programs before they are ready to administer them.

The employees also stated that there was tension between Farm Loan Programs personnel and Farm Programs personnel. At least one County Committee member stated that smaller farmers who have another job

during the day should not be considered “real” farmers under FSA programs.

5. Louisiana

Employees identified African Americans as customers and potential customers in substantial numbers in Louisiana. They stated that their offices treat everyone equally.

Some County (Parish) Office employees noted a decrease in effective communications with the State Office in recent years.

Some employees challenged the usefulness of the County Committees. They stated that they could administer Farm Programs without County Committee assistance.

Farm Loan Programs personnel stated that they were engaging in outreach activities that they believed were effective. In support, they stated that one County (Parish) made the highest number of loans to SDG borrowers in the state.

6. Michigan

Employees identified women as customers and potential customers in substantial numbers in Michigan. Employees stated that there were growing numbers of Hispanic farmers in certain counties, but not a substantial number of them.

Many employees expressed dissatisfaction with Headquarters’ decision to release/announce programs to the public before they are ready to administer them.

Employees in the Upper Peninsula stated that office location was a problem because some farmers were required to travel 3-4 hours to reach an FSA office. They also stated that Farm Programs personnel in the Upper Peninsula are doing little outreach.

Employees in the Lower Peninsula stated that they treat everyone the same. Some expressed hostility toward being required to participate in the Assessment and disagreed that women should be considered socially disadvantaged. One interviewee expressed fear of reprisal from within

the Agency for participating in the Assessment. Another interviewee expressed opposition to lending to small minority producers because, in his opinion, they would be competing with “existing customers.” The amount of outreach performed on the Farm Programs side varied.

7. Mississippi

Employees identified African Americans as customers and potential customers in substantial numbers in Mississippi. They stated that the *Pigford* lawsuits have given FSA a negative image within the African-American community, but also stated that the lawsuits have increased the publicity given to FSA, and thus, may have led more African-American customers to FSA than in the past.

Some County Office employees expressed concern that their offices were located in high crime areas. It was apparent that most of the outreach was being done by the State Outreach Coordinator.

Some employees expressed dissatisfaction with Headquarters’ decision to announce programs to the field before the Handbook is issued.

A County Committee advisor stated that there was not as much participation by African-American customers in FSA programs because they were not organized.

8. New Mexico

Employees identified Hispanics, Native Americans, and women as customers and potential customers in substantial numbers in New Mexico. They stated they had interpreters available to assist their Spanish-speaking customers and potential customers. They also described their efforts at servicing the Navajo through regular visits to Navajo Chapter Houses.

Some employees stated that there was tension between Farm Loan Programs personnel and Farm Programs personnel. Some employees stated that FSA should not focus as much on SDG customers and potential customers.

The Assessment Team was unable to interview all of the County Executive Directors on the schedule in New Mexico because one was

represented by counsel in connection with the *Garcia* lawsuit. Some employees stated that the lawsuit had a negative impact on Hispanic farmers coming to FSA for assistance.

The opinions regarding the usefulness of County Committees varied. Within the same county, some interviewees stated that they were needed while others stated that they were not needed because they were merely “pawns” of the County Executive Director. Some of the County Committee members expressed a lack of knowledge as to what specifically was their role.

9. North Carolina

Employees identified African Americans, Native Americans, and women as customers and potential customers in substantial numbers in North Carolina.

Employees stated that they performed outreach activities, but they defined outreach as marketing to all potential customers, rather than targeting under-served customers.

Employees stated that the priority given to outreach has increased under the current Administration.

10. North Dakota

Employees identified Native Americans and women as customers and potential customers in substantial numbers in North Dakota. They stated that there are 4-5 reservations in the State and described in detail their efforts at working with the Turtle Mountain Band and the Standing Rock Indian Reservation.

Most of the employees stated that they strive to treat everyone the same. Some stated that FSA should not focus on minority farmers because “if minority farmers are interested in FSA programs, they should come in and apply.” Others expressed their views that Native Americans receive too many “handouts” from the government. Despite these sentiments, the State Outreach Coordinator, the Farm Loan Programs personnel, and the County Executive Directors appeared to be making significant efforts and strides at reaching out to and servicing Native American farmers. North Dakota appeared to be one of the few States covered by the

Assessment where two USDA Field Delivery agencies—FSA and NRCS—were working hand-in-hand to assist farmers.

The Assessment Team was not permitted to interview all of the County Committee members on the schedule in North Dakota because some of them were represented by counsel in connection with the *Keepseagle* lawsuit. Interviewees noted that some Farm Loan Programs personnel had been transferred or placed on leave due to discrimination complaints made against them. They noted their views, however, that at least in one of the instances, the complaints did not seem to be well-founded.

11. Oklahoma

Employees identified Native Americans, specifically the Cherokee Nation, as customers and potential customers in substantial numbers in Oklahoma.

Many employees stated that they had not engaged in any outreach activities outside the office.

Some employees identified the complexity of the paperwork required to obtain FSA benefits as a barrier.

Employees identified a Farm Loan Programs team as receiving an award for high customer service to Native Americans. At least one of the County Committee advisors stated that one County Office was not welcoming to minority farmers.

12. Pennsylvania

Employees identified women as customers and potential customers in substantial numbers in Pennsylvania. Many employees questioned the selection of certain States and certain counties for this Assessment.

Employees described their efforts as “trying to build relationships with the Amish community.” Other than those efforts, employees stated that “not much outreach is being done because they do not have a lot of SDG customers and potential customers.”

Some employees stated that the dual employment system creates accountability problems within the Agency. Others stated that announcing programs to the public before there was a Handbook for employees was a problem.

13. South Carolina

Employees identified African Americans and women as customers and potential customers in substantial numbers in South Carolina. They stated that their offices treat everyone equally, but that FSA has a negative reputation within the African-American population.

Employees identified the following issues as problems: (1) the lack of a liaison between FSA and 1890 Land Grant Universities; (2) the lack of cross-training among employees on how to administer the various programs; (3) Headquarters decisions to announce programs to the farming community before they are ready to administer them; and (4) the dual employment system.

Some employees stated that the County Committee election system is unfair. They stated that African-American farmers have engaged in aggressive election campaigns, but do not win because the electorate numbers are not in their favor.

Some County Office employees expressed a desire to publish their own newsletters. Farm Loan Programs personnel and the County Executive Directors stated that they perform outreach activities. Some Farm Programs personnel stated that they resent FSA's focus on SDG customers and potential customers.

14. Vermont

The employees the Assessment Team interviewed stated that there were not any socially disadvantaged customers or potential customers in substantial numbers in Vermont. They stated that because of this, outreach was not a priority.

Most employees stated that they "treat everyone the same." The Farm Loan Managers and County Executive Directors were the ones who most often reached out to customers in the field.

Employees stated that the complexity of the application process is burdensome to all customers and potential customers, irrespective of protected characteristic. They expressed dissatisfaction with what they stated was a Headquarters decision to release programs to the public without first providing employees with a Handbook on how to administer the programs.

15. Washington State

Employees identified Hispanics, Native Americans, and women as customers and potential customers in substantial numbers in Washington State. They stated that they treat everyone the same.

Some employees stated that they were aware of an employee who used racial slurs in the workplace. It was their understanding that the employee was not disciplined, but was allowed to remain until the employee's retirement date.

Some employees identified office location as a barrier to equal access. Others stated that the complexity of the application process not only negatively impacts customers, but employees as well because it increased their workload.

Employees identified a Farm Programs employee as being recognized for outreach efforts.

16. Summary

Generally, interviewees were open to the Assessment and understood it was important to the Secretary's effort to improve fair and equitable delivery of services to USDA customers. On several occasions, however, interviewees expressed extreme discomfort with being asked to participate in the Assessment. As they stated, the discomfort was not due to a fear of reprisal from the Agency, but because our country "did not have a Civil Rights problem" and the Assessment's focus on the treatment afforded minorities constituted "reverse race discrimination."

The majority of interviewees expressed a belief that they treated everyone equitably because they strove to treat everyone the same. They would not acknowledge that treating everyone equitably may sometimes require additional effort, depending upon the circumstances.

Some interviewees approached the interview nervously because they believed it was going to be an “audit,” and they were not sure that they had prepared sufficiently for it. They stated that they had tried to “study” for the interview, usually at the request of their County Executive Directors, but they were not sure if they had studied everything they needed to know. Almost all interviewees left the interview expressing that they felt better having participated in the interview.

By the second half of the field interview schedule, it was evident that in their quest to “prepare” for the Assessment, interviewees had spoken with individuals who had previously been interviewed by the Assessment Team and received as many of the questions as they could. Oftentimes, they were not only anticipating the question, but asking the Assessment Team when the interviewer was going to ask them a particular question. The “grapevine process” or informal communications network continues to operate in FSA as it does in most organizations.

There was little racial, gender, or age diversity among the Farm Loan Chiefs, Farm Programs Chiefs, and District Directors that the Assessment Team interviewed. Generally, they were legacy employees who had been employed with the agency since before the merger of the Agricultural Stabilization and Conservation Service, Federal Crop Insurance Corporation, and the farm credit functions of the Farmers Home Administration in 1994-1995. There was also little racial diversity in the employees that the Assessment Team interviewed in the County Offices. The underrepresentation of minority employees was apparent, even in County Offices where racial minorities were largely present in the general population, for example, in Georgia, South Carolina, Mississippi, and Florida. Many employees believed that a diverse staff would better service SDG customers and potential customers because it would increase the comfort level for the SDG customers and potential customers who were in need of assistance, as well as produce a workforce that is likely to be more sensitive/knowledgeable about minority and female issues, needs and concerns.

When the subject of outreach was discussed, it became evident that many County Office employees view outreach merely as publicizing FSA programs to current FSA customers. There were exceptions to this, notably, in certain counties in California, New Mexico, Arizona, North Dakota, and Florida.

Those who were not performing targeted outreach generally expressed a sentiment that there were no SDG customers or potential customers in their area, and that if there were, they needed assistance from Headquarters in identifying them. Many expressed skepticism at National Agricultural Statistics Service (“NASS”) Census figures that revealed higher numbers of SDG farmers than they believed were in their counties.

Interviewees identified several barriers to equal participation in FSA programs. The barriers included discrimination, lack of budget and lack of staff, language, geography, office location, complexity of FSA programs, and statutory and regulatory provisions.

J. Additional Contract Tasks Analysis

The following analysis pertains to additional issues identified in the Contract.

- 1. “Assess current program delivery and strategies and their impact on constituencies in 6 counties in 15 States (consider whether USDA practices are discriminatory and whether all have equal access to USDA programs).”**

a. Introduction

The Assessment Team asked employees and County Committee members/advisors whether USDA practices were discriminatory and whether all customers and potential customers have equal access to USDA programs, irrespective of whether they were a member of an SDG. The employees and County Committee members/advisors interviewed by the Assessment Team discussed the impact of the dual employment system on equal participation in FSA programs, employee attitudes regarding equal opportunity, employee accountability for engaging in discriminatory behavior, and the existence of any barriers to equal participation in FSA programs. The Assessment Team also asked the Focus Group participants and CBOs to assess delivery of service by County Offices to them and their constituents.

b. Impact of Dual Employment System on Equitable Delivery of Service to SDG Customers and Potential Customers

Unique to FSA is a dual employment system with both groups reporting to a single State Executive Director. Farm Programs personnel are responsible for administering Farm Programs. In the County Offices, Farm Programs consists of Program Technicians who report to the County Executive Director (“CED”) who, in turn reports to the County Committee and then to the State Committee. Farm Loan Programs personnel are responsible for administering Farm Loan Programs. In the County Offices, the Farm Loan Program Technicians and Farm Loan Officers report to the Farm Loan Managers who report to the District Director, who reports to the SED.

Employees stated that when the “new” FSA was created in 1995, there was tension between the ASCS employees and those who came from the farm credit side of the old Farmers Home Administration. The tension was described as each side believing that the other was treated better in the terms and conditions of employment. Most of the employees expressed that little or no tension exists between the two groups of employees today. To the extent any tension remains, most interviewees believed it had little or no impact on the equitable delivery of service to SDG customers and potential customers because they stated that they all strive to treat customers the same, irrespective of their feelings toward their Farm Loan Programs or Farm Programs colleagues.

Employees further stated that the two groups of employees work independently of each other. They stated that they do not conduct outreach activities together, nor do they create and distribute newsletters together. They also stated that they are not cross-trained on each other’s programs. Thus, if a Farm Loan Programs applicant comes into an office seeking assistance and there is no Farm Loan Programs personnel available to assist, a Farm Programs employee merely provides the applicant with a Farm Loan Programs packet. They stated that the Farm Programs employees have only general knowledge of Farm Loan Programs, and therefore, do not sit down with the applicant and attempt to answer questions on how to complete the packet at that time. Instead, they provide the applicant with the written materials and the telephone number of a Farm Loan employee.

c. Employee, Focus Group, and CBO Attitudes and Perceptions Regarding Equal Opportunity, Discrimination, and Accountability for Discriminatory Conduct

Eighty-eight percent of the employees interviewed stated that their office strives to treat customers fairly.⁴⁹ On a scale of 1-5, with 5 as the highest, interviewees on average rated their office 4 in terms of providing equitable delivery of assistance to customers and potential customers irrespective of the customer's protected characteristics. County Committee Members/Advisors interviewed by the Assessment Team shared the same sentiments, giving their committees and County Office employees a 4 in terms of the equal delivery of assistance to customers, and potential customers irrespective of the customer's protected characteristics.

In support of their belief that they treated customers and potential customers fairly irrespective of the customer's protected characteristics, some employees stated that they were disturbed by this Assessment and what they believed was an unfair picture that had been painted of FSA as discriminators. These employees believed that FSA had been portrayed unfairly, and as a result, were viewed by the public and within USDA as "discriminating" and thus inferior to the other agencies.

Some employees also expressed that targeting SDGs for inclusion in programs and creating exceptions for them in certain programs constituted reverse discrimination. Those who shared this sentiment did not understand why specific attention toward SDGs was required. Some expressed discomfort when asked by non-SDG customers why there were different requirements for SDGs in some programs. Others were openly hostile toward the questions in the Assessment and sometimes embellished how unfair they believed the attention given to SDGs was to non-SDGs. For example, one Farm Loan Manager expressed that in the counties the Farm Loan Manager supported, the funds "set-aside" for SDG borrowers in the Farm Loan Programs were *never exhausted*. The Farm Loan Manager stated that non-SDG borrowers did not have funds "set-aside" for them, and thus, were harmed when too many of them

⁴⁹ As noted above, in interviewing FSA employees, the Assessment Team used a standardized, topical questionnaire. Some of the questions were conducive to a 5 point rating scale, which allows the quantification of results shown here. Other questions were more open-ended and responses were recorded in narrative form. In those instances, the Assessment Team used its judgment to characterize the results using terms such as "many," "few," "a majority," *etc.*

applied for loans. When asked what happened to the non-exhausted funds “set-aside” for SDG borrowers, the Farm Loan Manager stated that they were added back to the pool of funds for all borrowers and that no non-SDG applicants had ever been denied a farm loan in the area the Farm Loan Manager supported because the funds had been exhausted.

The majority of interviewees were aware that there were mechanisms in place to hold employees accountable for engaging in discriminatory behavior, but about 11% expressed a lack of knowledge as to those accountability mechanisms.

- Only 14% of the interviewees (excluding County Committee members/advisors), were able to identify any employees who had actually been disciplined for engaging in discriminatory behavior toward a co-worker, customer or potential customer. When pressed for details, interviewees either identified employees who they believed had been disciplined ten or more years ago, or revealed that their “awareness” was really based on rumor and not facts of which they had first-hand knowledge. The percentage of County Committee members/advisors who were able to identify employees who had been disciplined for engaging in discriminatory behavior was even less, approximately 4%.

About half the employees the Assessment Team interviewed noted an absence of incentives for employees who performed their jobs well, in a non-discriminatory manner.

- Less than 25% of employees were aware of an employee who had received a high performance rating or other incentive for customer service to SDG customers and potential customers.

Focus Group participants expressed differing experiences regarding their treatment by FSA employees. Within a single State, their comments evinced that their treatment depended largely upon the County Office serving them. For example, some stated that their County Office employees treated them well and went out of their way to provide them with assistance. One participant said that, in contrast to another local office, at one local office, FSA staff walks “you through everything. . . . [W]hen you leave there you feel like they give you better service.” Another participant said a local FSA staff member, in assisting with a loan application, “did all the paperwork pretty much.” And another

participant said, “[a]s far as them helping me and everything, I think they've done everything they can most of the time,”

Other Focus Group participants recounted very negative experiences saying that their County Office employees were “lazy, rude, would not assist them with loan applications, gave them the “runaround,” did not know what they were doing, and acted as if the funds belonged to the employees and not the taxpaying farmers who needed it.” One applicant said he had submitted a plan and then six or seven amended plans. Concerning his final visit to the office he explained:

The final meeting that I had in there turned out to be real ugly ... we were discussing stuff and in walked the head guy, sat on the desk and just chewed me up one side and down the other and said I didn't belong in the cattle business. I didn't know what I was doing ... what really torqued me off was his attitude was just so rude, just to sit down and point his finger at you and say it don't work. I'm not gonna give you a loan so just get up and leave.

One participant said FSA staff “really just blew us off like we were nothing or nobody. It was a horrible experience and I went from one to another.” Regarding FSA staff, another said, “not to be rude—but they don’t know what they’re doing.” One participant said FSA staff just gave him the paperwork, offered no assistance, and when he brought the application back they told him all of the many things he did wrong; he “just gave up.” Another participant said that FSA staff will “break a person down. . . [l]ike they keep screwing with you. . . .” One participant described his experience with FSA staff as follows: “everybody that I've dealt with has not been very professional in the way they should conduct business, from two directors, county director and three farm loan managers.” A participant said it was difficult getting help at the local office; he described going to the office and one staff member “is sitting down reading the newspaper on the back desk, you know, and doesn't want to get up.” A participant recalled an event where a staff member threw a book across the room in anger. One participant said, “[t]hey give you the runaround, if you have dark skin.” A belief that FSA staff discriminated against SDGs was expressed frequently during Focus Groups.

Some of the CBOs interviewed echoed the negative comments expressed by Focus Group participants. CBOs in Florida, Georgia, Mississippi, South Carolina, and Arizona said that the treatment and assistance their constituents (at times referred to as “members”) receive are dependent on the office or individual with whom they work.⁵⁰ A CBO that operates throughout the southern United States echoed the same sentiment and acknowledged improvement in some states. In speaking of FSA offices in Mississippi, the CBO stated of FSA employees, “some have found Jesus; now they need salvation.” He explained that what he meant was these FSA employees seem to recognize the need for change, but they have not gone the next step and “completed the transformation.” A Washington State CBO said that all FSA employees do is hand their constituents forms and say “fill them out.” According to the Washington State CBO, FSA employees tell customers they cannot help them fill out the forms and the FSA employees only do a “cursory job” of explaining the process and requirements. Several CBOs stated that FSA employees do not volunteer information (they only answer the specific question asked) but require farmers to seek out the information they need. A North Carolina CBO described a situation where one of its constituents asked for assistance and the FSA employee appeared to be “deliberately trying to frustrate the process, and was totally negative.” This same CBO said its members complain they are constantly made to feel “like they are not wanted, brushed off.” An Oklahoma CBO described the situation as follows:

FSA employees appear courteous and professional; nice to your face, but [they] do not give you what you want and do not volunteer any information. . . . People know John White [generic White farmer] gets all the assistance he needs, but if I [an African-American farmer] go in I get a bunch of crap.

CBOs in Mississippi and New Mexico said that they had received complaints from members that they were not being treated courteously or professionally. Frequently, CBOs described FSA offices as not welcoming and as an environment that was not nurturing to farmers. In addition, an Oklahoma CBO stated that employees withheld information

⁵⁰ The CBOs that have constituents in several states generally will be referred to by the state in which the CBO is located. When comments are made by these CBOs about other specific States where they have constituents, those States are identified.

from African-American farmers because they had stereotyped African-American farmers as “trying to work the system.” A Florida CBO echoed the same sentiment, but essentially substituted “Latino” for “African-American.” Multiple CBOs also described the overall culture of FSA as one in which FSA employees seek first to deny assistance to SDG customers and potential customers. A Michigan CBO described its constituents’ belief that the denial of assistance to SDGs is “embedded in FSA’s institutional culture.” Similarly, a Georgia CBO spoke of an “institutional bias” against African-Americans specifically and SDGs generally. An issue raised by several CBOs across the country is that when loans are denied, their constituents are given reasons for the denial, but they are not told what they need to do in the future to get a loan approved. These CBOs said that not providing notice to the SDGs of improvements that can be made perpetuates the applicants’ inability to succeed.

d. Barriers to Equal Access to FSA Programs

Fifty-four percent of FSA employees and one-third of County Committee members/advisors interviewed by the Assessment Team believed there were barriers to equal access to FSA programs. Among the barriers they identified were: budget, staffing levels, language, office location, lack of awareness of FSA, lack of knowledge regarding the programs offered by FSA, complexity of programs, and complexity of program application processes.

Among the barriers identified, the budget for internal operating needs was identified most often as a barrier to equal access to FSA programs. Interviewees stated that funding for internal operating needs, including hiring, outreach activities, newsletters, *etc.* was limited and prevented them from getting more information about FSA programs into the hands of customers and potential customers. Farm Programs personnel stated that, without reimbursement for travel expenses or flex/comp time for working in the evenings or on the weekends, they were prevented from performing outreach activities during the times that farmers/producers would most likely be available. Farm Programs and Farm Loans Programs employees both stated that the lack of funds available to provide food at outreach activities hosted by FSA or to pay for registration fees at fairs and seminars hosted by other organizations prevented them from more effectively publicizing FSA programs.

Interviewees also stated that the level of staffing in the offices and sometimes the demographics of staffing in the offices were barriers to equal access to FSA programs. They stated that hiring freezes and downsizing of the Agency had resulted in staffing levels that are too low for employees to perform activities outside the normal scope of their duties (which, to them, does not include outreach to SDGs).

Farm Loan Programs personnel overwhelmingly expressed that there were too few Farm Loan Officers to adequately assist all borrowers or potential borrowers. Farm Loan Officers and Farm Loan Managers cover areas comprising several counties—sometimes eight or more. As a result, they are rarely in the office to which they are nominally assigned. They stated that in the past, one of their functions was to educate borrowers in order to get them commercial-loan ready. With the current number of Farm Loan Programs personnel and the size of the loan portfolios they were servicing, it was stated that they were no longer able to assist borrowers in this way and some of the longer term employees expressed regret that they were not able to do so.

Interviewees also stated that it was important to have employees in the office, or access to employees, who could speak the language of non-English speaking customers and potential customers. It was stated that doing so would not only help applications be processed more quickly, but would also help applicants feel more comfortable with the application process. Interviewees in areas with high populations of individuals who spoke English as a second language were primarily those who identified language as a barrier. They stated that although FSA had addressed language issues facing Spanish-speaking customers and potential customers by having Spanish-speaking employees, interpreters and forms translated into Spanish, Spanish-speaking customers sometimes had to travel long distances to offices further away in order to receive this assistance. They also noted that FSA needed to have employees, interpreters and forms translated into languages other than Spanish. California appears to have taken this head-on. They have recruited Farm Loan Officers who speak Punjabi and Hmong to assist those populations of farmers. In addition to interpreting when necessary, these employees also announce FSA programs in Punjabi and Hmong on the local radio stations. They believe that this has led to an increase in applications from Punjabi and Hmong-speaking farmers.

With respect to office location, about 30% of interviewees stated that the remoteness of offices to many SDGs is a barrier, particularly for farmers and ranchers who grew non-traditional crops because they were required to drive long distances for assistance. The Assessment Team heard this most often in California.

In California, for example, an employee noted that there are 30 County Offices to cover approximately 158,000 square miles. In comparison, in Virginia, North Carolina, South Carolina, and Georgia *combined*, the interviewee noted that there are 226 County Offices to cover roughly 178,000 square miles. FSA employees in California stated that the low number of County Offices acts as a barrier to equal access to FSA programs. Farmers and ranchers in California, who are not raising traditional cotton, wheat and rice crops, are required to drive longer distances to get to a County Office for assistance. The Assessment Team did not interview any customers in California who expressed this sentiment. The Focus Group participants interviewed by the Assessment Team at a session in Fresno, California, stated that the office locations were satisfactory.

In the other states the Assessment Team conducted Focus Group sessions, the majority of those participants did not cite office location as a barrier. Those who did stated that they were required to drive more than 50 miles each way to reach their County Offices. The CBOs the Assessment Team interviewed expressed varying views on office location. Some stated that their members did not see office location/distance as a problem, while others stated their members did see office location/distance as a problem.

Lack of awareness of FSA and lack of knowledge of FSA programs were also identified as barriers. Some employees stated that their work load and lack of reimbursement for travel prevented them from being in the field/out of the office speaking to and educating farmers about FSA and its programs. Some stated that because of this, there is a perception among potential SDG borrowers that if they apply for a Farm Loan, they will automatically get the loan because of their protected status. In fact, many interviewees stated that there were special "SDG Loan Programs" instead of funds targeted for SDGs in the standard Farm Loan Programs. When the potential SDG borrower is subjected to the same eligibility requirements as other applicants and is not approved for the Farm Loan,

the interviewees stated that it is difficult for the potential SDG borrower to understand that this action was not discriminatory.

Employees also identified the complexity of FSA programs as another barrier to equal access to FSA programs. Many stated that the complexity negatively affected all farmers/producers irrespective of their protected characteristics or status as an SDG. Some employees also stated that the complexity of the programs made it difficult for them to understand and administer appropriately, particularly when the program was announced to the farming public before a Handbook was made available to the employees. The Biomass Crop Assistance Program was identified as one such program.

Focus Group participants stated that many employees lacked an understanding of the programs, which required them to return to the office at a later date to receive an answer to their questions. One participant recounted being given an application by an FSA staff member and filling it out. When he returned to the office he was told he was given the wrong application and was required to fill out the correct one. A participant, when discussing the difficulty of the application, said, "I don't think they [FSA employees] understand it themselves." Another participant, in discussing FSA employees generally, said "they don't know what they're doing." Another participant said of FSA employees, "they misinterpret regulations, and when they misinterpret them, they misapply them." A participant said that when he tries to receive assistance from FSA employees, "*they are always putting you off.*" Another participant in describing FSA employees said: "They know what not to say and what to say. So they really should be the technical assistants telling you that these programs are available and whether or not and asking the question how can we help you get this process finished and make it easier. That is not what they do."

Many Focus Group participants recounted being required to return repeatedly to bring additional information for their loan application; one participant said he had to return seven or eight times.

An Oklahoma CBO said that FSA made it a practice of making applicants return to the office repeatedly to provide additional information. Another Oklahoma CBO, as well as CBOs in Florida, Georgia, Mississippi and South Carolina, said "FSA staff sometimes give inconsistent or incomplete information." A Michigan CBO said FSA employees provide

incorrect information about programs. Several Focus Group participants and CBOs said that they or their constituents complained that they could not understand the information provided by FSA employees because they used technical terms and acronyms constituents were not familiar with and spoke to them on a level as if they were coworkers who already had extensive knowledge concerning the subject. Many CBOs said that there was no informational documents provided to their constituents that explained in layman's terms program eligibility requirements or the process from application through conclusion, or gave estimated timelines for next steps and related decisions.

Some Focus Group participants stated that the application process was straightforward with respect to Farm Loan Programs. Others stated that the application process was "gruesome," "cumbersome," "darn complicated," and required them to make multiple trips to the office to complete it. CBO comments roughly mirrored those of the Focus Group participants. The application process was described as "grueling," "complicated," "onerous," "discouraging," "overwhelming," a "nightmare," and "too long and confusing." Several CBOs also stated that language was a barrier in terms of speaking with customers and/or dealing with documentation. In contrast, a Washington State CBO noted that the approval rate for its constituents, who are primarily Hispanic and Latino, has increased dramatically over the past three years. A Michigan CBO said its members were satisfied with the assistance they receive from FSA staff during the application process.

Other participation barriers identified by Focus Group participants and CBOs included:

- "Too much paperwork;"
- Lack of employee knowledge of the programs that are available and their eligibility requirements;
- Receiving information about available programs too late to apply for them;
- Refusal of some FSA staff to provide assistance;
- Inefficiency of FSA staff;

- Being a small farmer when FSA concentrates on large farmers;
- FSA employees “passing the buck and every one of them come up with a different story to tell you every time, if they tell you anything;” and,
- Not being told by FSA employees why a loan was denied or what could be done to improve the applicants’ opportunity to receive technical or financial assistance in the future.

e. Sub-Section Summary

Employees and Focus Group participants identified many barriers to equal access to FSA programs. Employees stated they need a larger budget for outreach activities, travel reimbursement and to hire more employees to better service FSA customers and to make the Agency more visible to the public. In addition to hiring more employees, the demographic make-up of the staff is important. The Team’s interviews revealed a lack of racial diversity in State and County Offices even in areas where minorities comprise a large percent of the community. Because many interviewees stated that SDG customers and potential customers would feel more comfortable working with employees who shared the same characteristics, having a more racially diverse staff in proportion to the SDGs in the general population could help alleviate some of the barriers SDG customers and potential customers face in participating in FSA programs. This includes making it a priority to have a full-time employee in each County Office that can speak the language of the large groups of SDG farmers in the area.

Employees are generally aware of FSA’s civil rights policies and the Secretary’s vision. Nevertheless, Headquarters needs to reinforce the severity of the consequences associated with violating them by explaining that FSA is an Agency for the people and that its policies are designed to include all customers and potential customers irrespective of their protected characteristics. Employees and County Committee members/advisors need to be further reminded of the consequences associated with engaging in discriminatory conduct. Prompt and appropriate remedial action should be taken against employees who have been found to violate civil rights laws and policies. Although the privacy requirements applicable to publicizing a disciplinary action taken toward

an individual employee must be adhered to, FSA must find ways to inform employees, customers, and other stakeholders, that employees who have violated civil rights laws and policies are being held accountable. By the same token, Headquarters should acknowledge employees who are exceeding standards in the EEO/Outreach components of their performance reviews.

Although office location was not uniformly identified as a barrier across the States the Assessment Team assessed, many Focus Group participants and CBOs complained of the long distances (50 miles or more) many SDGs must drive to reach a County Office for assistance. Because the fuel costs and time away from their farming operation and/or jobs could deter SDG customers and potential customers from seeking benefits, FSA should evaluate opening more County Offices in non-traditional crop areas to facilitate Congress' and the Agency's decision to support non-traditional crops and livestock.

Employees generally stated that forms were widely available in Spanish, but not in other languages. Headquarters should address this potential barrier and create forms in other languages, as needed in the areas where other languages are spoken by customers and potential customers in sufficient numbers ("critical mass"). CBOs complained about the poor translation quality of the documents that have been translated and this issue should also be addressed. FSA should also seek to assist (by referral, for example, to resources that teach ESL) its customers to understand basic "business English."

Some employees also expressed resentment toward the heightened attention afforded to SDG customers and potential customers. They do not understand why exceptions and targeted funds were necessary for SDGs. Some employees suggested that employees who are opposed to outreach to SDGs receive training on the reasons for such outreach. This training should include template answers to educate antagonistic employees who oppose outreach, to help them understand and explain it to non-SDG customers who also question the differing programs. The explanation that the additional resources are necessary to ensure equitable treatment should be included, as well as an explanation of the importance of increasing assistance to under-served groups.

The Team recommends that FSA explore ways to ameliorate the lingering impacts of the dual employment system, at least to the extent that

employees be cross-trained on Farm Programs and Farm Loan Programs. While most interviewees stated that the tension inherent in the dual employment system did not impact the equitable delivery of service to SDG customers and potential customers, the existence of the dual employment and its inherent lack of efficiency itself appears to negatively impact service. For example, in some County Offices, there are only two full-time employees in the office, with neither of them from Farm Loan Programs. In those offices, an applicant seeking assistance applying for a farm loan will usually leave the office with a large and cumbersome packet of materials but no directed guidance on how to complete the packet. Unless the applicant has an understanding of the Farm Loan Programs application packet, application completion time is likely to increase because an appointment with a non-resident Farm Loan Manager or Farm Loan Officer will be necessary to fully understand what is required.

Employees also expressed difficulty in spending a sufficient amount of time in the field performing outreach activities. Moving to an “Office Hours” format, whereby customers and potential customers are informed that the employees from both Farm Programs and Farm Loan Programs will be in the office on certain days and then in the field on other days, might mitigate the effects of this barrier. Otherwise, offices should be regularly staffed with a Farm Loan Programs employee, in order to ensure that Farm Loan Programs borrowers/applicants are being served properly.

In addition, to increase the visibility of FSA and an understanding of the variety of programs it offers, the State Executive Director, District Directors, County Executive Directors, and Farm Loan Managers should be required to be in the field a certain percentage of their time. This time could be used to visit current customers, attend meetings of farmer organizations, and distribute newsletters and brochures containing information about FSA programs. To ensure that sufficient attention is given to increasing the visibility of FSA, Headquarters should allocate more funds to state and County Offices for outreach, publicity, interpreters, and translation services.

2. “Evaluate the effectiveness of local USDA leadership in assessing community and constituent needs and in adapting USDA programs, within applicable laws and regulations, to meet those needs.”

a. Assessing SDG Needs and Adapting FSA Programs to Meet Those Needs

Employees were asked to identify any processes, tools, or reports they utilized to identify the special needs of SDGs. The responses depended largely upon whether the interviewees were Farm Programs personnel or Farm Loan Programs personnel. Most of the Farm Programs personnel were unable to answer this question. This was particularly so of Program Technicians. They were not aware of any processes, tools, or reports to identify the special needs of SDGs. Their inability to identify any such tools was generally accompanied by a statement that SDGs did not have special needs.

On the other hand, the Farm Loan Programs personnel the Assessment Team interviewed identified internal reports they utilized to track SDG applicants. Their reports informed them of how many SDGs applied, when they applied, and whether their applications were approved, rejected, or withdrawn. Their reports also informed them how long their applications were pending before a determination was made. These reports, according to the Farm Loan Programs interviewees, assisted them in determining whether improvements were needed in certain phases of the application process. In addition, they set benchmarks for funding and measured whether they met or failed to meet those goals.

Despite the differences in responses above, most employees in both Farm Programs and Farm Loan Programs recognized that it was important to make efforts to accommodate the various needs of farmers when it came to assisting them with applying for FSA programs. Employees were able to provide examples of how they adapted the delivery of FSA programs to meet the needs of their customers and potential customers. Some examples given of how they adapted the delivery of FSA programs included the following:

- Use interpreters;
- Have fact sheets about the programs translated into other languages;
- Hang posters about FSA programs in Spanish and English in heavy Spanish-speaking areas;
- Publish newsletters in Spanish and English in heavy Spanish-speaking areas;
- Perform outreach activities;
- Host joint meetings for farmers with NRCS and RD;
- Assist disabled farmers in their vehicles when it was physically difficult for them to come into the office;
- Hold office hours at a sister USDA office located in a neighboring county for farmers who lived on the fringes of the county;
- Hold office hours on Native American reservations and schedule chapter house visits;
- Modify the County Committee elections process to ensure that a Native American farmer would be elected to a County Committee in counties containing reservations (this entailed having an at-large local administrative area that covered only the reservation);
- Limit the use of acronyms when speaking with customers and potential customers; and
- Spend extra time with those who need special attention in order to understand the programs and their requirements.

In addition, in some heavy Spanish-speaking counties, a few employees stated that they attempted to learn Spanish in order to more effectively assist their customers. They stated that they made these efforts on their own and were not provided with funds or assistance by the agency in learning a second language. They were also unaware of any programs to

train customers or potential customers that wanted to enhance their ability to speak and transact business in English.

Focus Group participants and CBOs agreed with all of the above “best practices” instituted by FSA employees, but would add additional recommendations. They recommended that:

- FSA employees provide “true customer service” where they not only answer questions, but also volunteer useful information;
- When reviewing applications, FSA should determine all missing information on the initial review, and thoroughly explain to customers what information is needed so that the customers need only return to the FSA office one time to supplement their applications;
- FSA employees should never stereotype SDGs;
- FSA employees should treat everyone with courtesy and respect; and,
- FSA employees, when an application is denied, should thoroughly explain the reasons for denial and explain what the customers can do to improve their chances for having an application approved in the future.

b. Sub-Section Summary

The employee interviews revealed that Farm Programs lags behind Farm Loan Programs in making efforts to identify and assess the special needs of SDG customers and potential customers. To become more aware of SDG participation in Farm Programs and to assess whether there are problems in the process that more negatively impact SDG customers and potential customers, Farm Programs personnel should adopt funding goals/benchmarks similar to the “best practices” that Farm Loan Programs employees utilize. Also, the Assessment Team understands that Farm Programs currently does not have an effective mechanism to accurately capture demographic data about its customers. Farm Programs should begin capturing this data, so that it can measure the success of efforts to enroll SDG customers and potential customers in FSA programs. In addition, Headquarters should provide State and

County Offices, on an annual basis, not only the statistics of the demographics of the farmers in their counties and states, but the names and contact information of SDG farmers in their counties and states.

3. “Assess and analyze the cultural climate, cultural competencies, and perceptions, as well as equity of business processes and timelines employed by USDA and its effect on the broad diversity of its constituents.”

a. Introduction

To assess USDA workplace cultural climate as it relates to serving customers and potential customers, irrespective of their protected characteristics, the Assessment Team asked employees a series of questions regarding attitudes toward performing targeted outreach to SDGs and the priority given outreach in their areas. The Assessment Team also asked employees to rate themselves and their colleagues on their cultural competence to serve a diverse customer base, as well as to provide their opinions regarding whether any aspects of the application process prevented or made it more difficult for SDG customers and potential customers to participate in FSA programs. Focus Groups and CBOs were also asked questions relating to their perception of the cultural climate at FSA and the cultural competencies of FSA employees.

b. Environment and Employee Attitudes Toward Targeted Outreach

On a scale of 1-5, with 5 as the highest, employees the Assessment Team interviewed rated their offices 4, in terms of their attitudes toward outreach. They described the employees in their offices as being open to outreach and having a positive attitude toward it. Many of these same employees also described the environment and attitude toward outreach as guarded or skeptical. They stated that lack of funding for outreach activities and redundancy in efforts (*i.e.*, National Office has a plan, State Office has a plan, and County Office has a plan) lowered the priority given outreach and decreased employees' enthusiasm about performing outreach activities. Some employees stated that outreach efforts were futile because SDG farmers are not interested in FSA programs or are not present in their counties. The latter sentiment was often expressed in Vermont, Pennsylvania, and Washington State. Some employees stated that they felt pressured to

conduct outreach and felt awkward about targeting SDG farmers. Still other employees stated they were uncomfortable targeting SDG farmers because doing so constitutes “reverse race discrimination.” In all States, there were some employees who stated that “outreach was not necessary because USDA employees treat everyone equally.”

Notably, the interviewees in States with large African-American farming populations (*see* exception below) specified the connection between historical discrimination and the reasons SDG-focused measures are being implemented by FSA today (*i.e.*, past discrimination impacted wealth, education, landownership, and access to resources in general). Interviewees in States with small African-American populations generally did not see the connection and often stated that outreach targeted to SDGs was awkward and made them uncomfortable because, in their opinion, it constitutes reverse race discrimination. The one exception was Michigan, which had a relatively low level of African-American farmers, but the FSA employees stated that they understand the reasons for outreach to SDGs.

More than half of the employees the Assessment Team interviewed stated that FSA could better service SDG customers and potential customers if FSA’s employee demographics better reflected the demographics and characteristics of the customers they serve. These interviewees stated that a diverse staff would increase SDG participation in FSA programs because it would increase SDGs’ trust of FSA and make SDG farmers more comfortable applying for benefits.

Employees often stated that outreach activities were generally performed by the State Outreach Coordinator, Farm Loan Managers, and County Executive Directors. In addition, the State Executive Director was identified as playing a key role in setting the tone regarding the priority given to outreach.

A significant number of Focus Group participants and most CBOs stated that FSA can and should do a much better and more comprehensive job of conducting SDG-focused outreach. Many Focus Group participants said they learned about FSA programs by “word-of-mouth” rather than from FSA. Most CBOs said their members find out about FSA program offerings from CBOs, rather than FSA. FSA outreach attitudes and/or efforts were described by Focus Group participants and CBOs as:

- Being hostile to outreach;
- Amounting to a “closed door policy” where outreach is not conducted;
- Not proactive;
- Not strategic;
- Not program- or crop- specific;
- Not specialized to meet the needs of individual minority groups; not good;
- Not keeping the customers up-to-date; ineffective;
- Not at the level one would expect, based on the amount of money FSA “claims” to spend on outreach;
- Not getting the word out to its customers;
- Just going through the motions with no real conviction that outreach is necessary;
- Needing to do more local outreach;
- Inconsistent, depending on the county and/or state;
- Only on the internet and “it’s too complicated”; and
- “There are no communications via radio or TV and . . . timeliness is an issue.”

c. Cultural Competence to Serve a Diverse Customer Base

Seventy-five percent of the employees the Assessment Team interviewed stated that their office received training on cultural sensitivity. Among this group, employees overwhelmingly identified the Civil Rights training they received each year through *AgLearn* as the

source of their training on cultural sensitivity. On a scale of 1-5, with 5 the highest, employees on average rated the effectiveness of the training as a 3. Most of them expressed skepticism of the effectiveness of on-line diversity training. Despite this figure, employees rated their office a 4 in terms of cultural competence to serve a diverse customer base, noting that the higher score was due to their inherent beliefs about how to treat people.

In order to increase cultural sensitivity and awareness, some employees said that live training and the celebration of multi-cultural days would help. *Others stated that training could not change the mentality of discrimination that was deeply held by the employees in their State.*

Focus Group and CBO opinions did not match those of the FSA employees. A common observation was that office staff does not match the demographics of the surrounding population and SDGs believe that they will be better and more fairly treated by diverse staff who identifies with their culture. Cultural competence also includes the ability to speak in the native language of customers. CBOs with constituents who speak languages other than English consistently cited this as an issue. The absence of translated, or use of poorly translated, materials is another cultural competence issue. FSA employees were perceived as stereotyping entire racial and/or ethnic groups to the disadvantage of individual customers. FSA employees were seen by some Focus Groups and CBOs as not being able to deal with “our people” or willing to give them “a break.” Purported rude treatment of minority customers is also seen as attributable to cultural incompetence or hostility.

d. Whether Application or Follow-up Processes Serve as Barriers to Equal Participation

Slightly more than half of the employees the Assessment Team interviewed stated that the complexity of the application or follow-up processes served as barriers to equal participation. They identified the amount of paperwork – credit score, credit history, and experience requirements – as barriers. Some stated that the differing definitions among FSA programs – “who constitutes an SDG” – added a layer of complexity to an already complicated process. Almost all of those who identified these barriers emphasized that the barriers applied to all customers and potential customers, irrespective of protected

characteristics. Some noted that it was more of a barrier to those who were less educated or who spoke English as a second language.

Some of the Focus Group participants stated that the application process was not cumbersome, while others stated that it was. Many Focus Group participants stated that even when they were approved, delays in the process negatively impacted them during the planting season.

Other comments from Focus Group participants included:

- Descriptions of the process as “darn complicated,” “grueling,” “hellish,” “difficult,” “burdensome,” “cumbersome;”
- The application process “was hard. I was ready to stop farming;”
- “It take[s] just about a rocket scientist to fill out that application...;”
- “I think they give you that big application to try to discourage you;”
- FSA employees “would always come up with something I didn’t have... Once I go back and get that and come back, I need” something else (applicant made four extra trips to supply FSA with additional information;
- A belief that FSA employees do not understand the applications or the process (“not to be rude—but [FSA employees] don’t know what they’re doing”);
- “[T]he personnel don’t know what the forms are;”
- Employees misinterpret and misapply the regulations;
- “There was a lot of mix-up with paperwork;”
- One person said that she initially was given a form, filled it out, was told it was the wrong form, and then had to complete the correct form — she also had to return to FSA numerous times to bring additional information;
- One participant said FSA made him “jump through a lot of hoops;”

- “[I]t just took too long, that's all;”
- “They'll break a person down there ... Like they'll keep screwing with you until you're broke. We're kind of in a timely business where we need our money;” and,
- “They just send you the paperwork back and said this wasn't correct, you need to do that. I just gave up.”

The vast majority of CBOs identified the application and follow-up processes as creating barriers to participation for their constituents. Various CBOs said their constituents believe that:

- The application itself is complex and overwhelming, and takes too long to complete;
- The application process is onerous and “a nightmare” because forms are constantly changing;
- They receive “woefully weak”/inadequate assistance from FSA with application completion;
- FSA employees will answer the question asked but not volunteer any useful information;
- Written materials explaining the programs, application, and process are either inadequate, or non-existent; not translated into languages other than English, or are poorly translated;
- Information from FSA employees is conflicting, inconsistent, or wrong;
- The rules for financial and technical decisions are constantly changing, which leads some to suspect that FSA may use one set of rules for White farmers/ranchers and another ever-changing set for SDGs;
- The application process takes too long from application to decision; and

- For many of those whose applications are approved, it takes too long, up to 90 days, for the funds to arrive (as a result, the funds often arrive too late in the crop season to be useful).

The CBOs also stated that the factors listed above are even more of a barrier to their less educated and/or non- or limited-English speaking/reading constituents who must rely heavily on resources outside USDA to have any opportunity to participate in FSA programs.

e. Sub-Section Summary

The Assessment Team interviews revealed a lack of racial diversity in many State and County Offices, even in States that had high numbers of minorities in the general population. Despite that, more than half of the interviewees stated that FSA could better serve SDG customers and potential customers if FSA's staff reflected the demographics/characteristics of SDGs. Several FSA offices located in counties where SDGs constituted the majority of the county population had either no minority employees or very few, especially in Georgia, South Carolina, Mississippi, and Florida. To address this racial imbalance, FSA should make it a priority to hire a more racially diverse staff reflective of the surrounding population and labor pool.

Employee interviews also revealed that despite the 4 rating employees gave their offices on outreach, based on their descriptions of employee attitudes and outreach activities being performed by a limited group of employees, it is apparent that the high outreach rating is based on their perceived outreach to everyone, not SDGs. Service to SDG customers and potential customers may be hampered by (1) the belief that reaching out to SDGs is futile; (2) the belief that an emphasis on making SDGs aware of FSA programs constitutes reverse race discrimination; (3) hostility some employees feel about targeting SDG customers and potential customers; (4) lack of racial/ethnic diversity among FSA personnel; (5) lack of assistance provided to County Offices in locating SDG farmers/producers; and (6) differing priorities placed upon outreach due to frequent changes in State Executive Directors and unclear USDA directives.

To eliminate or mitigate the effects of the barriers noted above, Headquarters should complement online *AgLearn* training with periodic in-person, interactive Civil Rights and diversity training. In addition, as

indicated above, Headquarters should provide training to all employees to help them understand and explain why there are exceptions and targeted funds for SDG customers and potential customers as a necessary part of the USDA mandate to fairly and equitably disburse Federal Program benefits.

Focus Group participants and CBOs do not know why outreach is inadequate; rather, many would simply like FSA to do a better job of conducting outreach and a dramatically better job of treating them fairly.

In addition, the employee interviews and Focus Groups revealed that the complexity of application processes may act as barriers to participation in FSA programs for some SDG customers and potential customers. To eliminate or mitigate the effects of this barrier, Headquarters should simplify application forms and streamline the paperwork to apply for Farm Loan Programs and Farm Programs in every way possible, including eliminating requests for unnecessary and redundant information and educating employees as to the assistance they can and should provide to applicants, as discussed in more detail below.

4. “Examine outreach efforts at the local level. Research the different outreach techniques employed by USDA staff and the priority that constituency outreach has in local Service Centers.”

a. Introduction

FSA, like other USDA field delivery agencies, administers its programs largely through directions contained in Handbooks. Although there are Handbooks for such areas as “Public Affairs,” outlining how to comply with requests for information and how to maintain the privacy of certain data, there is no Handbook outlining what is meant by “Outreach” and how effective outreach should be conducted. To assess the effectiveness of outreach at the State and County Office levels, the Assessment Team asked employees and County Committee members/advisors to define outreach, identify what outreach techniques they utilize and to rate their offices in creativity and effectiveness of outreach. The Assessment Team then asked the Focus Group participants and CBOs to identify and assess the outreach activities performed by their local County Offices.

b. What Constitutes Outreach

In the absence of a Handbook on outreach, the employees interviewed by the Assessment Team had varied views about what constituted outreach. Some stated that it reflected their efforts to publicize FSA programs to all customers and potential customers, while others stated that it reflected their efforts to target SDG customers and potential customers for FSA programs. The County Committee members/advisors interviewed by the Assessment Team rarely expressed an awareness as to what outreach meant. In addition, in the absence of a Handbook on outreach, interviewees stated that the priority given to outreach was dictated largely by the State Executive Director's commitment to outreach.

Despite the lack of an Outreach Handbook and the varied views on what constitutes outreach, State and County Office employees identified a variety of methods that they used to inform farmers about FSA programs. Among the outreach techniques employees stated they used were the following:

- Maintaining a mailing list of CBOs;
- Forwarding job vacancy announcements to the mailing list;
- Forwarding invitations to outreach activities to the mailing list (rare);
- Publishing newsletters and mailing them to producers enrolled, or who may wish to enroll, in FSA programs;
- Mailing postcards with deadlines to producers;
- Publicizing programs through print media and radio spots;
- Speaking at and attending meetings sponsored by the county extension services, local cooperatives, and universities;
- Attending meetings hosted by Native American producers (when invited);

- Holding office hours at Native American reservations or in the buildings where the tribal councils meet;
- Attending conferences or meetings held by various farmers groups, including but not limited to, Women in Agriculture, Cattlemen’s Association, Hispanic Farmers and Ranchers of America, Ladies’ Auxiliary, Women Involved in Farm Economics, Farmworker Association of Florida, Farm Bureau, Florida Nursery, Growers & Landscape Association, Native American Women in Agriculture, Cow Belles, and League of United Latin American Citizens;⁵¹
- Supporting local activities, such as Project Annie (educates women farmers), and the Farm Rescue Program (supports disabled farmers that need help putting in a crop), *etc.*;
- Manning booths at county fairs and the Black Cowboys Fair; and
- Forwarding job vacancy announcements to 1890 Land Grant Colleges/Universities.

Michigan has maintained a State Outreach Council to develop and coordinate the outreach efforts to historically underserved customers of USDA programs in its State. The Council comprises employees from the various USDA field delivery agencies and local “stakeholders” in agriculture and economics. These stakeholders include, but are not limited to, representatives from local agriculture universities, cooperatives, churches, private organizations, county extension services, Congressional and legislative staffs, *etc.*

c. Effectiveness of Outreach and Priority Given to Outreach

When outreach is being performed by FSA personnel, interviewees stated that it is generally being performed by the State Outreach Coordinator, Farm Loan Managers, and County Executive Directors. The State Executive Directors interviewed by the Assessment

⁵¹ This list is not exhaustive, but represents a sampling of organizations identified by the interviewees.

Team also participated in outreach activities, but their stated focus was more of generally reaching out to all customers and potential customers, without regard to protected characteristics. Some State Executive Directors expressed that they were in the field engaging SDG CBOs often, while others stated that their activities were geared toward reaching out to all farmers, without regard to SDGs.

On a scale of 1-5, with 5 the highest, employees gave their offices an average rating of 3 with respect to the creativity and effectiveness of outreach. About 40% of County Committee members/advisors were unaware of any steps taken by the County Offices to perform outreach targeted to SDGs and about 24% did not know whether the USDA field delivery agencies (FSA, NRCS, RD, and RMA) worked together in delivering information to customers or potential customers.

Fifty-five percent of employees rated the priority placed on outreach in their offices as high. Thirty-six percent rated it moderate and the remaining rated it low. To the extent that the priority was not high, interviewees identified several reasons for the lower rating. These reasons included lack of support or guidance from Headquarters, lack of funding, heavy workload, lack of emphasis/priority by State Office, lack of interest on behalf of SDG farmers, and lack of SDGs in their surrounding communities/service area.

Employees also noted that there were no incentives to conduct outreach and no penalties for failing to do so. Only 29% of employees the Assessment Team interviewed stated that there were incentives and penalties associated with participating or not participating in outreach activities.

In addition to the barriers to giving higher priority to outreach as identified above, Farm Programs personnel generally stated that they did not have any processes, tools, measures, or reports to tell them the extent to which SDGs were applying for and participating in Farm Programs. Farm Programs personnel stated that the inability to capture this information led them to believe that there were not any SDG farmers in their communities or that SDG farmers were not interested in FSA programs. Many Farm Programs personnel also expressed frustration with Headquarters. They questioned the NASS figures and stated that Headquarters should be more willing to help them locate the SDG

farmers living in their communities. It appears that FSA Farm Programs does not have SDG goals similar to those that Farm Loan Programs have.

On the other hand, most Farm Loan Programs personnel stated that they had reports available to tell them the extent to which SDGs were applying for and participating in Farm Loan Programs. The Farm Loan Chiefs, District Directors, Farm Loan Managers and Farm Loan Officers generally stated that this information was tracked and discussed regularly to ensure that SDG funding goals set by each state were being satisfied.

Many Focus Group participants stated they never received a mailing from their local County Office other than to inform them when their payments were due. Few CBOs interviewed by the Assessment Team stated that their constituents were receiving mailings from FSA and were satisfied with the information they received. Most CBOs were critical of the apparent low to non-existent level of outreach. Some CBOs said their constituents had never heard of FSA and questioned whether FSA personnel were truly performing outreach activities. They stated that FSA personnel rarely leave the office and do not initiate workshops or seminars. They stated that, instead, FSA personnel wait for the CBO to invite them to their own meetings and attend them only if the meetings are during the day.

d. Sub-Section Summary

Employee interviews confirmed what was learned during interviews of the Farm Loan Programs staff at Headquarters. Specifically, Farm Loan Programs personnel state that they are generally performing outreach activities, tracking SDG applicant data, setting funding goals, and in some instances, particularly in Louisiana and Oklahoma, surpassing those goals. In comparison, the employee interviews revealed that substantially less outreach is being done by Farm Programs personnel. As noted above, County Executive Directors were generally the only Farm Programs personnel stating that they perform any outreach activities. While many of the County Executive Directors stated that they were conducting outreach, they were often unable to identify any specific activities in recent years or identify any specific contacts at CBOs.

Farm Loan Programs has an advantage over its Farm Programs counterpart when it comes to outreach because, even if the Farm Loan Manager is not actively performing outreach activities, the State Outreach Coordinator is generally a full-time Farm Loan Programs employee with outreach as a collateral duty. Farm Programs has no employee with an equivalent focus. Moreover, while Farm Loan Officers occasionally performed outreach activities, Farm Program Technicians and County Committee members/advisors were generally not involved in outreach activities.

While the view of what constituted outreach differed among the interviewees, a majority of the County Office employees the Assessment team interviewed expressed frustration that they were not given direction on how or where to locate SDG customers and potential customers in their counties. This perception, coupled with the differing State Executive Directors' commitments to outreach, creates a justification for those employees who do not view outreach as important, or useful. Thus, to increase the priority given to outreach and ensure consistency in the priority given to it, Headquarters should develop a Handbook on outreach providing FSA personnel with clear guidance on how to meet their outreach obligations and providing sample activities that have proven effective, including reaching out to CBOs for assistance.

In addition, all employees, including District Directors, should be required to participate in at least several targeted "out of office" outreach functions per year. Headquarters should create more incentives for employees to conduct outreach and publicly praise those who are exceeding their outreach goals internally, as well as penalize those who fail to perform outreach duties.

Most of the State Outreach Coordinators interviewed by the Assessment Team had outreach as a collateral duty. To assure that outreach is receiving the attention Headquarters believes it should in the field, each state should have at least a full-time State Outreach Coordinator, as a demonstration of a commitment to outreach (as noted above, "Emerging Customer Development"). Similarly, Headquarters should consider requiring each state to re-establish the State Outreach Councils similar to the one currently in place in Michigan.

To aid in more fully assessing the effectiveness of outreach efforts, the County Offices should be required to submit an annual self-evaluation to

the State Outreach Coordinator rating themselves on the effectiveness and creativity of their outreach efforts and providing comprehensive details in support.

5. “Identify statutory and regulatory policies that may lead to discrimination and bar individuals from participating.”

a. Statutory and Regulatory Barriers to Equal Participation in FSA Programs

Only 25% of employees the Assessment Team interviewed stated that statutory and regulatory policies established barriers to equal access to FSA programs. The following issues were identified.

First, employees stated that the winter months are the best time to conduct outreach activities because farmers are not very busy. The process of funding state and local outreach activities is tied to the Federal Government’s Fiscal Year (October 1 to September 30). When Congress completes the appropriations process on time, the employees stated that it still takes several months for their allocations to reach the field. This timeline, according to the employees, often misses the optimum period for performing outreach activities. Employees stated that this issue is exacerbated when Congress misses its appropriations deadline. Thus, they noted that when the funding is finally made available, it is often too late to perform outreach during the winter months, and the funding for outreach cannot be deferred until the following fall/winter because the funding must be spent before the end of the fiscal year (September 30). (It should be noted that the timing issue raised is similar to that confronted by every other U.S. government program manager, *e.g.* in USDA, DoD, or any other agency.)

Second, employees identified several of the eligibility requirements for Farm Loans as a barrier. They stated that the three-year experience requirement to be eligible for a farm ownership loan is too restrictive with respect to what activities can be counted toward satisfying the three years. They also stated that the one-year experience requirement for beginning farmers prohibited many younger farmers from eligibility for farm loans. They further stated that the 50% down payment requirement for guaranteed loans to beginning farmers prevented many younger farmers from eligibility for a guaranteed loan and that the term limits prevented farmers from having adequate time to succeed.

Third, employees stated that the Farm Loan Programs packets (based on legal requirements) are unnecessarily burdensome and often request redundant information. They stated that although the paperwork burden applies to all applicants, it has a greater burden on SDGs because they (1) may speak English as a second language; or (2) do not have the funds to hire a certified public accountant or other advisor to assist in gathering their information and preparing their applications. When certified public accountants prepare the paperwork, the employees noted, the application will be completed sooner and a decision is more likely to be made quickly. On the other hand, SDGs who are good farmers, hard workers, and maintain adequate records but cannot afford professional assistance are still likely to lack 3-5 items to make their application complete, and thus, the process is more drawn out and the funds take longer to be disbursed.

Fourth, interviewees noted that the recordkeeping requirement acts as a barrier to equal participation. They noted that some SDG farmers, particularly smaller farmers, do not maintain records in the format or for the length of time required. Instead, they noted that these farmers tend to deal in cash or “notate their figures on the back of their work gloves.” They stated that neither of these methods is acceptable proof of recordkeeping per FSA standards.

Fifth, employees stated that potential borrowers question the requirement to provide their credit history, credit scores, social security numbers, and proof of land ownership to a governmental agency. Employees stated that these requirements often discourage SDG individuals from completing their applications due to mistrust of the government and belief that the Agency is not requesting this information from all applicants.

Sixth, employees identified the 150+% collateral requirement for a farm loan as a barrier. Employees stated that this requirement caused borrowers to put up their houses as collateral on a tractor loan. If the borrower defaults, which they believed will be more likely for SDGs, the borrower loses the tractor and the house.

Seventh, it was noted that the supervised bank account is a barrier to equal participation. The employees defined supervised bank accounts as requiring the borrower’s and the Farm Loan Officer or Farm Loan Manager’s signature before withdrawals could be made from the

borrower's bank account. The employees stated that SDG borrowers often stated that FSA was monitoring their bank accounts, while it was not monitoring the bank accounts of non-SDG borrowers, and this differential treatment discourages SDG participation.

Eighth, on the Farm Programs side, employees identified the amount of paperwork required to get into the system as "burdensome." After the farmer is enrolled in a Farm Program, the interviewees stated, in subsequent years, the farmer/producer is required to provide most of the same information provided to FSA in the prior year(s). It was stated that this request for redundant information increased mistrust of the government and engendered a belief among SDGs that they are being singled out for extra scrutiny.

Ninth, employees interviewed by the Assessment Team in Southern States reported that the Average Crop Revenue Election ("ACRE") Farm Program is not properly addressed to crops in the South because it requires farmers to commit to ACRE in future years, which SDGs are very reluctant to do. SDG participation in ACRE is artificially low due to this requirement.

Tenth, employees noted that the lack of a Grassland Reserve Program Handbook is a barrier to equal participation. Employees stated that they did not publicize the program because they are not as versed in how to administer it. Thus, they noted that for those farmers who do not already know about it, which could likely be SDGs, participation is artificially low.

Eleventh, employees stated that the way the Direct and Counter-Cyclical Program ("DCP") is administered creates a barrier to equal participation. Participation in DCP is limited to farms of ten base acres or more. There is an exception to this requirement, if the "landowner" is either an SDG or a Limited Resource producer. Employees stated that even with this exception, a problem arises when the landowner does not qualify as an SDG, but the person operating the farm (possibly a renter) is an SDG. In this scenario, the SDG does not qualify because the SDG is an operator and not a landowner.

Twelfth, employees stated that the increase of Noninsured Crop Disaster Assistance Program ("NAP") fees from \$100 to \$250 per crop, regardless of the size of the crop, poses a barrier to equal participation because

some small farmers, particularly SDGs, do not have the type of acreage to justify the NAP fees.

Thirteenth, employees in states with large populations of Native American farmer/producers stated that FSA requirements are often at odds with deadlines set by the Bureau of Indian Affairs and the way in which Native American property is owned. More specifically, they stated that some loans require FSA to place liens on the property in question. Because the land that is located on a Native American reservation is considered belonging to all recognized tribe members, the employees stated that FSA cannot put a lien on that property, which in turn prevents program participation.

While some Focus Group participants and CBOs expressed displeasure with certain requirements and deadlines, none had the depth of knowledge to point to any specific statute or regulation as creating a barrier to equal participation.

b. Sub-Section Summary

Only 25% of employees interviewed by the Assessment Team stated there were statutory or regulatory barriers to equal participation in FSA programs. Those who did identified a significant number of specific barriers in both Farm Loan Programs and Farm Programs, thereby identifying the need for a deeper review of the impact of these requirements on SDG customers and potential customers. Among the provisions that should be revisited are those listed above, including, for example, modifying the scope of the SDG exception in DCP to include not just landowners, but the operators; eliminating or extending the term limits for Farm Loans; revising the eligibility requirements to allow for greater flexibility in satisfying the experience requirements for Farm Loans; eliminating redundant requests for paperwork; and modifying the NAP fee so that it varies depending upon acreage.

6. “Examine national, state, and local policies that may lead to discrimination and bar individuals from participating.”

a. National, State, and Local Barriers to Equal Participation in FSA Programs

The majority of employees the Assessment Team interviewed stated that there were no national, state, or local policies that might lead to discrimination or bar individuals from participating in FSA programs. Only 11% of employees interviewed stated that there are such barriers.

Those who stated that there are national, state, or local policies that might lead to discrimination or bar individuals from participating in FSA programs stated that the timing of the announcement of new programs and the distribution of Handbooks to the employees informing them how to administer the programs is a problem. They stated that when an SDG customer or potential customer comes to the office for assistance on how to apply for a new program and the employee is not able to answer the customer’s questions, the employee’s lack of knowledge is a deterrent to the customer because it makes the customer or potential customer suspicious of the reasons why they were not fully helped—whereas, large farmers who frequently utilize a wide cross-section of USDA programs, including FSA’s, are often generally familiar with how to access government funds and programs, as well as having developed relationships with USDA employees they can call on to help them access a new program.

County Office employees also stated that requiring farmers to complete the applications on their own is problematic because less educated farmers often need assistance in completing their applications. Some viewed this requirement as preventing the County Office employees from offering any assistance to applicants, while others viewed this requirement as only preventing County Office employees from completing the applications in their handwriting as opposed to the farmers’ handwritings. This inconsistency in practice can generate impressions that an applicant is being discriminated against.

A few County Committee members expressed frustration with how FSA defined who was a “farmer.” They opined that FSA was overly inclusive in its definition and that individuals who were not physically tilling the land should not be considered farmers.

There was some confusion expressed among the Focus Group participants regarding whether there was actually a policy that required Farm Loan applicants to be rejected by three commercial banks in order to be eligible for a farm loan. Some stated that they were told this by Farm Loan personnel, others stated that it was a longstanding policy that they knew about when their fathers were farming, while others stated that they had never heard this and were approved for a Farm Loan without being required to meet this “alleged requirement.” CBOs did not mention a three-rejection policy or any other formalized policy, as opposed to practices, that led to discrimination against SDGs or barred their participation in FSA programs.

b. Sub-Section Summary

As indicated above, the vast majority of employees the Assessment Team interviewed did not believe that there were any national, state, or local policies that might lead to discrimination. Among those who did, the employees’ differing understandings regarding what they can and cannot do to help a customer or potential customer during the application process may present a barrier to equal participation -- because farmers who need assistance, more likely most SDGs, may not be receiving it. The belief that employees cannot assist a customer or potential customer at all is at odds with the Handbooks. Headquarters should clarify for employees what they can and cannot do in providing assistance.

Additionally, Focus Group participants stated that employees were often unable to help them because the employees lacked knowledge of the programs. Some employees agreed with this sentiment. Thus, Headquarters should ensure that the State Offices are providing County Office employees with the instruction and training they need to adequately assist customers and potential customers. This could include requiring County Office employees to develop a list of contact numbers for different agencies (USDA, County Extension Service, *etc.*) who should be able to help customers and potential customers solve their problems, as well as training existing and new employees on the answers to basic questions, *e.g.*, whether current FSA Loan policy requires one or three commercial bank rejections to be eligible for an FSA loan.

Finally, firmly-held beliefs concerning the definition of a “true” farmer may weigh into the County Committee approval process. To what extent is unknown, but local attitudes may deter SDG customers and potential customers from receiving program benefits. Clearly, use by both USDA and County Office employees of the same rules, better training of both, and better communication of those rules to existing customers and new potential customers will avoid misunderstandings and actual, or the appearance of, inconsistent application of those rules.

7. “Examine program delivery information technology tools to ensure equity and access. Systems to be reviewed are: Protracts, AERT, SCIMS, GLS, DLOS, and Farm Business Plans.”

a. Introduction

To ascertain the extent to which technology plays a role in erecting barriers to equal participation in FSA programs, if any, the Assessment Team asked employees to identify the information technology tools they had at their disposal; their opinions regarding the usefulness of these technology tools and potential impact on SDGs; and the ease with which customers could apply online.

b. Information Technology as a Barrier to Equal Access to FSA Programs

Ninety percent of interviewees stated that the software and information technology tools they use to deliver FSA programs did not create a barrier to equal access to FSA Programs. Approximately 10% of the interviewed employees stated that the information technology tools do create barriers.

Those interviewees who identified barriers stated that the online applications are “cumbersome” and “frustrating” to those not as familiar with computers. They also stated that the Outreach Tracking and Information System (“OTIS”)⁵² places emphasis on counting outreach activities and the number of attendees, but does not allow users to

⁵² Outreach Tracking Information System (“OTIS”) is an Intranet software application that is used for managing, tracking, and reporting outreach activity information at national, State, and county levels. OTIS users include State Outreach Coordinators and Service Center Outreach Coordinators, National Office users, and report users.

assess measurements of whether the outreach activities were successful. Indeed, one interviewee described OTIS as “frustrating, useless and a total disaster.”

The majority of interviewees who responded that technology was a barrier to equal FSA program access identified: (1) the inability to run accurate reports reflecting the race or gender of applicants from the SCIMS database, and (2) software glitches and overall slowness, as the primary issues. Farm Programs employees stated that they are not permitted to ask customers or potential customers their race or gender, so the employees visually identify the race and gender of the customer. Thus, they are unable to capture accurate information on applicant race and gender or run reports from SCIMS to assist in accurately reporting or tracking how many SDG customers are enrolled in Farm Programs.

Regarding the software glitches and slowness, employees stated they are often required to ask applicants to return to the office to re-do paperwork because the computer runs generated errors or the database crashed. They stated that an embarrassing situation occurs when employees are required to inform farmers/producers that the employee initially provided the wrong payment amount. These customer service issues appear to have a disproportionately negative impact on SDG customers and potential customers who often do not have the resources or time to make multiple trips to the FSA office. It also creates a perception among these customers and potential customers that they are being mistreated.

c. “Test” Online Application Process for Burdensomeness

To test the ease with which a potential borrower could apply for a farm loan online, one of the Team members with a farming background attempted to do so. He described navigating the national and state websites as a medium to difficult process. After finding the “eForms” section through trial and error, he later found the online section of the website, which gave instructions on how to create an account.

He described setting up an account as a medium to complex process for most farmers/producers. To do so, a potential borrower is required to complete an online form that asks for basic information. There, the applicant can apply directly for “Level 1” access, or, if he/she already has

Level 1 access, he/she can upgrade that to “Level 2.” Getting Level 1 access requires establishing a password that meets USDA requirements. Once the account is activated, the potential borrower has Level 1 access, which allows him/her to view the material but not take any action online. To apply for a farm loan online, the potential borrower needs Level 2 access.

The Team’s “test” applicant described the process for obtaining Level 2 access as requiring more detailed information, including creating security questions and answers. However, Level 2 access is obtained only after the potential borrower visits a County Office for identity-proofing. Thus, unlike the case with commercial online banks, a potential borrower cannot submit an application for a farm loan online without visiting an FSA office (which some thought undermined the value of “online access”) and the online process obviously is only available to customers and potential customers with access to a computer and internet.

d. Sub-Section Summary

Only a small percentage of employees stated that USDA’s IT tools were a barrier to equal participation in FSA programs. The Farm Programs personnel who did identify technology as a barrier expressed frustration that they were unable to accurately capture race/ethnicity and gender information in the SCIMS database.

8. “Examine outreach efforts at the national level. Research the different constituency outreach techniques dictated by USDA staff at the national level and the success of constituency outreach at the local level.”

a. Assessing Outreach Techniques Initiated at the National Level

Most of the employees the Assessment Team interviewed in the field were unable to identify with any specificity any outreach techniques dictated by Headquarters. This included employees in the State and County Offices, with a few notable exceptions: State Executive Directors and State Outreach Coordinators could identify outreach efforts or techniques dictated by Headquarters. The remaining employees in the State Office were occasionally able to answer this

question, but the majority deferred to the State Outreach Coordinator. Employees in the County Office, except for some Farm Loans personnel, were almost always unable to answer this question. They were unable to differentiate between outreach techniques that emanated from Headquarters versus those that emanated from the State Office.

When employees were asked to rate Headquarters outreach *effort* on a scale of 1 to 5, with 5 as the highest, they gave Headquarters 2 in terms of creativity and effectiveness in outreach. Often, they provided this rating because they were not aware of any Headquarters outreach initiatives and assumed that, if they did not know, Headquarters' outreach efforts must be poor.

For those who could identify outreach techniques dictated by Headquarters, Farm Loan Programs employees identified the marketing campaign that they stated began in late 2009. They described the marketing campaign as a re-branding of FSA from "the lender of last resort" to "the lender of first opportunity." Almost all believed that the marketing campaign had a favorable impact in the farming community because they reported an increase in loan applications. The marketing campaign coincided with a downturn in the economy, so they were unable to determine with certainty whether the increase was due to the marketing campaign or the increased need for farm credit. Farm Programs cited no equivalent marketing effort.

Others identified visits to their area by Secretary Vilsack or Assistant Secretary for Civil Rights Dr. Joseph Leonard. Almost all believed that these visits had a favorable impact in the farming community because the visits showed farmers that they are important to FSA. A few others identified the implementation of the OTIS program as an example. Varying views toward OTIS were positive, negative, or evidenced a lack of awareness of all of its features.

Some interviewees stated that the national outreach efforts could be improved by helping the County Offices identify SDG CBOs in their areas and assisting in introducing them to these organizations.

Focus Group participants and CBOs typically saw outreach efforts as coming from USDA or FSA and did not identify the effort as being local, State or National.

b. Sub-Section Summary

Headquarters' outreach efforts are generally known only to employees holding a select few job positions in the field. Those who do not have outreach goals tied to their performance or job duties generally do not make a connection between Headquarters outreach efforts and the outreach techniques being employed in the field. The low opinion of Headquarters outreach efforts, particularly among Farm Programs personnel at the State and County Office level, and Farm Loans Programs personnel (primarily at the County Office level), may negatively impact the delivery of service to SDG customers and potential customers because Headquarters best practices are not being fully utilized in the field. Promptly publishing a Handbook on outreach for employees should not only assist in making outreach a priority among employees in State and County Offices, but also increase the visibility of Headquarters Outreach efforts in the field.

In addition, Farm Programs should consider adopting a marketing campaign similar to the one initiated by Farm Loan Programs.

9. "Examine committee structures and the policies which govern these committees, which are used by USDA to deliver programs (e.g., FSA County Committees, State Technical Committees, and Local Work Groups)."

a. Introduction

Today's FSA County Committees are legacies of their forebears formed under the New Deal Agricultural Adjustment Acts in the 1930's. According to USDA:

Committee members are the local authorities responsible for fairly and equitably resolving local issues while remaining dually and directly accountable to the Secretary of Agriculture and local producers through the elective process. They operate within official regulations designed to carry out Federal laws and provide a necessary and important voice in Federal decisions affecting their counties and communities. Committee members make decisions affecting which FSA

programs are implemented county-wide, the establishment of allotment and yields, commodity price support loans and payments, conservation programs, incentive, indemnity, disaster payments for commodities and other farm disaster assistance.

See (<http://www.fsa.usda.gov/FSA/webapp?area=about&subjectlanding&topic=sao>).

Prior to the 1995 reorganization of USDA, appointed Farmers Home Administration (“FmHA”) County Committees had responsibilities for farm loan processing. The 1994 Statute that authorized the reorganization of USDA eliminated the FmHA appointed County Committees and passed the responsibility for farm loan processing to the elected County Committees of the Agricultural Stabilization and Conservation Service (“ASCS”), which later became the County Committees of the newly formed FSA.

In or around 1998, County Committees were removed from FSA loan processing, leaving them with formal authority only for the administration of Farm Programs, as described above.

It is noteworthy that in all four minority/female farmer class actions—*Pigford* (African-Americans), *Garcia* (Hispanics), *Keepseagle* (Native Americans), and *Love* (females)—County Committee members are alleged to have played primary roles in discriminating against minority and female farmers. As a result, many (including employees, Focus Group participants, and CBOs) have questioned the proper role of County Committees today in making decisions about how USDA funds and assistance are distributed.

County Committees exist in every state, although not in every county; some cover several counties. They typically consist of three to five members, with a Chairman and Vice Chairman elected by the Committee members. Terms are three years and are staggered. Members are limited to three terms.

b. Elections

County Committee elections are an annual process. The statutory, regulatory, and policy framework covering elections are comprehensive and somewhat complex. At least twelve separate FSA Handbooks relate to the County Committees.

Statutory Authority: 16 U.S.C. § 590h (2010) requires the Secretary of Agriculture to “establish committees in each county or area in which FSA activities are carried out,” and the committees “shall consist of producers who are representative of agricultural producers that participate or cooperate in programs within the area under jurisdiction of the committee.”

Regulatory Authority: Uniform Guidelines for Conducting Farm Service Agency County Committee Elections, 70 Fed. Reg. 11, 2837 (Jan 19, 2005), Federal Register Volume 70 #11 (January 18, 2005), sets forth the “Uniform Guidelines for Conducting Farm Service Agency County Committee Elections.”

FSA Handbook: FSA Handbook 15-AO (Rev. 5), “County Committee Elections,” is approximately 200 pages long with approximately 50 pages of attachments, and covers the topic of elections.

Pursuant to these authorities, the Handbook provides for a “districting” process, whereby “Local Administrative Areas” (“LAA”) are created from within a county or among several counties. The Handbook specifies that three to five LAAs are to be drawn for a single county and three to eleven LAAs for multiple counties. One County Committee member is to be elected from each LAA. The State Committee and County Committee draw the districting lines for the LAA’s and have considerable discretion in doing so. Among the nine “considerations” directed to be taken into account (such as number of farmers and ranchers in each, types of farming, geographical conditions, and local political subdivisions), the eighth listed is “the fair representation of socially disadvantaged producers.” (Handbook, p. 3-34). 7 USC Section 2003(e)(1) (2003) defines “socially disadvantaged” as those who “have been subjected to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities” (emphasis added). Established boundaries for LAAs can be changed at the request of the State Committee or County Committee according to procedures provided

in the Handbook. The Handbook also requires that County Committee members “should fairly and equitably represent the producers they are elected to serve, including . . . the cultural diversity within LAA [and] . . . *socially disadvantaged groups*” (Handbook, p. 3-1). Outreach efforts are *required* to ensure “the fair representation of agricultural producers in a given county or jurisdiction, including SDG farmers and ranchers” (Handbook, p. 3-19). The Handbook lists targeted outreach organizations such as Land Grant Colleges, Historically Black Colleges & Universities, Hispanic-Serving Institutions, and tribal colleges that FSA is to work with in this outreach (*four pages of the Handbook describe the outreach requirements*).

The nomination and voting process is described in the Handbook. Customer data for voting purposes (sending ballots) comes from USDA’s SCIMS database, which relies in part on observation of race and ethnicity by USDA employees. Additionally, not all LAA producers are eligible to vote—only those who currently participate in an FSA Program are eligible (Handbook, p. 4-1). (This leads to the possibility that those who are discriminated against by being denied participation on the basis of, say, race, will not be permitted to vote in the County Committee elections; thus, reinforcing the customer view of a continuing cycle of discrimination and unlawful denial of access to FSA Programs by County Committee members that are incentivized to keep SDGs out of the system).

Eligible voter lists are maintained by the County Offices. Local offices update the lists and the CEDs are responsible for certifying to the State County Committee Coordinator the accuracy of the lists (Handbook, p. 4-10). Eligibility requirements can be technical and strict; for example, a producer-customer will be deemed ineligible if “correct and complete address has not been provided” (Handbook, p. 4-11).

Eligibility to serve as a County Committee member is set forth on three pages of the Handbook (pp. 4-31-34), including the requirement of participation in FSA programs, absence of prior criminal convictions (listed) and absence of dishonorable discharge from the armed services. There is some *subjectivity* in the listed eligibility requirements. For example, “A person must have knowledge of farming practices in the jurisdiction they serve by virtue of being considered a producer” (Handbook, p. 4-32). This assumes greater significance in that the CED makes the initial determination of the nominee’s eligibility, and the

County Committee makes the “final eligibility determination” (subject to District Director “determination” for any decided to be ineligible). FSA Form 669-A, Nomination Form for County FSA Election; Handbook, p. 5-4.

The County Committees count the ballots at a “public” location where candidates can observe the process (Handbook, p. 5-36).

c. State and County Organization and Administrative Processes

FSA Handbook 16-AO (Rev. 3), “State and County Organization and Administration” (U.S.D.A. 2008), sets forth the “policies, procedures, principles, and standards” for FSA State and County organization and administration (Handbook 16, p. 1-1). It is based on requirements of the Soil Conservation and Domestic Allotment Act of 1938, the Consolidated Farm and Rural Development Act, and the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, as amended.

State Committees: The Handbook provides for State Committees (one per State), with three to five members appointed by the Secretary who are “representative of the types of agriculture and diversity of producers in the state” (Handbook 16, p. 2-21). The State Committees have four major responsibilities: (1) FSA and CCC commodity and conservation programs, (2) *County Committee operations*, (3) policy determinations, and (4) making information available to the public (Handbook 16, p 2-1). The State Committee serves as an advisor to the State Executive Director “as necessary,” and has general oversight over County Offices (Handbook 16, p. 2-2).

County Committees: Handbook 16 describes the County Committee organization and functions. Among other duties, it prescribes that the County Committee:

- a. Hires the County Executive Director (Handbook 16, p. 3-2);
- b. Has responsibility for administering commodity and conservation programs as directed by handbooks and other authorities. (Handbook 16, p. 3-3);

- c. Interacts with the Farm Loan Program loan-making officials to provide information “of any conditions in the area that may affect demand for FSA loans,” conduct outreach activities, meet with loan-making officials at least quarterly to keep the County Committee informed of loan program activity, consult with loan-making officials on “local agricultural practices, production conditions and loan applicants” (Handbook 16, p. 3-6); and
- d. Consults with FSA officials in loan servicing, including consulting about “other assets or repayment ability when evaluating requests for debt settlement,” and “local agricultural practices and production conditions.” (Handbook 16, p. 3-6).⁵³

Note that a separate Handbook, 1-FLP (Rev.1), “General Program Administration” (U.S.D.A. 2011), permits the SED to delegate loan approval and servicing authority to CEDs (Handbook 1-FLP, p. 2-10). This delegation requires farm loan training of CEDs. According to USDA, there have only been four CEDs that have received loan approval authority since 2004 and two more are in the process of completing the requirements.

The Handbook has a section regarding “COC Advisors”⁵⁴ (Handbook 16, Section 2). The express policy is that “Advisors are needed to be a voice for socially disadvantaged farmers and ranchers” (Handbook 16, p. 3-25). The requirement is that the “STC shall require COC’s to recommend an advisor to ensure a fair representation for socially disadvantaged groups.” No standards are provided for determining under what specific circumstances such advisors must be selected to “ensure a fair representation.” *Id.* County Committees are required to:

- a. Contact each group that represents producers who are underrepresented on the County Committee;

⁵³ Note that this provision remains in the Handbook even though the County Committee loan functions have been eliminated.

⁵⁴ In this section, the abbreviation COC refers to the County Committee, and the abbreviation STC refers to the State Committee.

- b. Solicit candidates for County Committee advisor from each underrepresented group;
- c. Recommend a County Committee advisor, as necessary, to ensure that the interests of socially disadvantaged farmers and ranchers are fairly represented; and
- d. Discuss the method of selecting nominees from which individuals will be selected and recommended to the State Committee.

(Handbook 16, p. 3-25).

County Committees are directed to submit names of nominees to the State Committee no later than February 1st of each year, and the State Committee makes the appointments (“as initiated by STC or COC”) (Handbook 16, p. 3-26). Duties of County Committee advisors are set forth:

- a. Attending County Committee meetings;
- b. Participating in all deliberations;
- c. Increasing awareness of and participation in FSA activities, including elections, by eligible voters to ensure that socially disadvantaged group problems and viewpoints are understood and considered in FSA actions;
- d. Helping to develop interest and incentives in socially disadvantaged group members for considering FSA work as a career;
- e. Actively seeking candidates from socially disadvantaged groups for nomination during the election process; and
- f. Performing special duties at the County Committee’s request.

(Handbook 16, p. 3-27). The Handbook does not expressly state that advisors do not vote (they do not), but does note that “Advisors do not have authority to sign documents.”

Additional authority of County Committees is set forth in this Handbook, including setting maximum county loss levels, establishing county average prices or yields, disaster area delineations, LAA delineations, County Committee election preparation, and determinations that apply to the entire county or multi-county County Committee jurisdiction. (Handbook 16, p. 3-45). Very generalized requirements for the conduct of meetings are set forth in Section 3 (Handbook 16, pp. 3-45-52).

With respect to locations of FSA field offices, the Handbook provides that “satellite locations are used for outreach or to service producers on a monthly basis or more often, as needed. This option may be used in counties where offices have already been closed and staff needs to be present during special outreach efforts or program signups” (Handbook 16, p. 5-7).

d. USDA Employee Views

Many of the employees the Assessment Team interviewed viewed the County Committees as important to the delivery of Farm Programs.⁵⁵ Among the sentiments expressed by interviewees was that the County Committees effectively represent the “voice of the farmers” and the “eyes and ears” of the local farming conditions. The majority of FSA Farm Program personnel the Assessment Team interviewed stated that the Committee members’ farming background, knowledge of the local area and farming practices, and familiarity with farmers in the community, were all valuable to the Farm Programs process. Some Farm Programs personnel disagreed and stated that the Committees had outgrown their usefulness, and that USDA/FSA could administer the programs effectively without the Committee members’ input.

Among those who viewed County Committees as important, there was still debate about whether the Committees should be involved in the hiring and supervision of County Executive Directors. Some of these employees were concerned about the lack of checks and balances in this relationship. If a “rogue” County Committee existed, *i.e.*, one that did not follow FSA policies and procedures, interviewees stated that the current reporting relationship made it difficult, if not impossible, for the County Executive Director to correct the situation for fear of termination.

⁵⁵ The vast majority of those interviewees were hired (and can be terminated) by the County Executive Director (who is hired by the County Committees), with occasional concurrence of the County Committees.

Despite this concern on the part of FSA personnel, only about one-third of County Committee members/advisors interviewed by the Assessment Team had actually been involved in hiring County Executive Directors. An even smaller percentage had been involved in the hiring of Program Technicians; nonetheless, there is a dramatic absence of SDG representation in the ranks of CEDs; slightly more than 4% of CEDs are SDGs.

Most employee interviewees stated that there were sufficient safeguards in place to ensure fairness in the application review process. Nevertheless, they provided examples of points in the process whereby County Committees could inject their subjective views. For example, some interviewees stated that in neighboring counties, but never their own county, it was sometimes difficult for some County Committee members to strictly follow the appropriate Handbook when they personally knew the farmer/producer whose application they were reviewing. In those instances, it was noted that the members tended to inject their own beliefs and biases about farmers and their farming practices into the process. When the farmer/producer whose application they were reviewing was a friend of a County Committee member, it was noted that the County Committees were more likely to approve the application despite the express terms of the appropriate Handbook.

e. County Committee Member/Advisor Views

Some of the County Committee members/advisors interviewed did not know that they were prohibited from participating in the making or approval process for farm operating, ownership, or emergency loans, but admitted that they had never been asked to participate in doing so.

Most County Committee members/advisors believed that they were provided sufficient information in a timely manner to help them review program applications. Nevertheless, the Team's interviews revealed that a majority of Committee members/advisors knew very little about the programs offered by FSA, whether SDGs were participating in Farm Programs, or how well SDGs understood Farm Programs. For example, on a scale of 1-5, with 5 being the highest, Committee members/advisors generally answered 3 when asked about these issues. When questioned about the presence of barriers in the programs covered by this

Assessment, most were unable to provide substantive answers because they lacked sufficient knowledge of the programs.

Approximately 10% of County Committee members/advisors the Assessment Team interviewed stated that they had been encouraged to make a decision that *was not fair to an applicant they believed to be an SDG*. In those instances, the applicant's protected characteristic was not identified as the reason. Instead, the interviewees cited examples in which strict application of the time parameters set forth in the corresponding Handbook were used to reject applications.

Most County Committee members the Assessment Team interviewed stated that the unelected advisors to the Committees were a valued part of the process. Despite the absence of an advisor's right to vote, the advisors interviewed by the Assessment Team shared this view. Many stated that formal votes were rarely taken, but that Committees often discussed the applications in roundtable format until they came to a unanimous conclusion. In the instances where formal votes were taken, interviewees noted that the advisors were left out of the voting process. The vast majority of interviewees stated that there was no reason why the advisors should not have an equal vote. Those who believed the opposite were typically White Committee members who reasoned that it would be unfair to give the advisors a vote when the advisors did not go through the election process as the elected County Committee members did.

County Committee members/advisors interviewed by the Assessment Team stated that they were valued members of the FSA Team. Indeed, over 90% of them stated that their efforts to ensure the fair and equitable delivery of services were acknowledged and appreciated by FSA personnel and the local farmers.

County Committee members, like other FSA employees, are required to undergo Civil Rights training. On a scale of 1-5, with 5 as the highest, they rated the effectiveness of the civil rights training they received as slightly above 4. Despite the training, about half of all Committee members/advisors interviewed by the Assessment Team were not aware if there were any processes in place to hold them accountable for engaging in discriminatory conduct.

The County Committee members/advisors interviewed by the Assessment Team generally expressed a desire to help farmers in their

communities, but most were not performing any outreach activities. A few stated that they kept FSA brochures or pamphlets in their vehicles to hand out in the event they ran into farmers, but most stated that they were not performing any outreach targeted to SDG customers and potential customers.

Many Farm Programs employees stated that it was difficult to get farmers to run for seats on the County Committees. The County Committee members/advisors interviewed by the Assessment Team echoed this sentiment. Most of the County Committee Members the Assessment Team interviewed stated that there was often no more than one other farmer on the ballot when they ran. Three-fourths of them stated that they were elected the first time they ran.

Many of the African-American County Committee Members the Assessment Team interviewed in the Southern States stated that several African-American farmers had conducted aggressive election campaigns, but were not elected because the much larger number of White farmers refuse to vote for African-American farmers. Some of the African-American advisors the Assessment Team interviewed stated that they had never run for a seat on the County Committee before. A few of them had run, but were not elected. After their failed attempts, some of them stated that their County Executive Directors contacted them and asked if they wanted to serve as an advisor.

Interviewees did not express any opinions regarding the districting or elections process.

f. Focus Group and CBO Views on County Committees

Many of the Focus Group participants were either not aware of the existence of County Committees, or did not know what their responsibilities were, or had no meaningful contact with them (“There is an FSA Committee?”; “First time I heard of it.”; “I don’t know much about what they’re doing. . . .”; “I never came across the County Committees”). Those who were aware had differing views regarding the Committees’ usefulness. Some participants said they did not have any opinion about County Committees. Two Focus Group participants had served on County Committees recently and supported them. One said race, gender and favoritism did not play any part in the decision-making during his time on the Committee, and the other said decisions go “strictly by the

regulations.” Some found the Committees to be either necessary, or stated that they fairly represent the voice of the farmers.

On the other hand, many participants stated that the Committees do not fairly represent the interests of SDGs. One Focus Group participant from a Southern State said Committee Members were the product of the “good ole boys” network and stated “It’s a good old boy kind of thing. We don’t need that kind of committee. I don’t see anything they’re doing but helping their bud[di]es and each other”; “It’s not what you know, it’s who you know. You know, there were buddies helping buddies is mostly what it is.” Another Southern State participant said that a Committee held up his appeal for five or six months, but he then got a favorable decision out of the Committee—within two days of complaining to his Congressman. Focus Group participants also expressed concern about confidentiality⁵⁶ and conflicts of interest inherent in the system, which allows larger farmers to review and make decisions about the interests of smaller farmers, whose land the larger farmers may want to acquire. Noting that Committee members are farmers, a participant from a Southern State said, “I hate to say it, but they want to put you out. They don’t want you to get a loan;” “they can make it hard on you . . . it’s a conflict of interest. You got big farmers out there wanting your ground.”

The CBOs the Assessment Team interviewed stated that their constituents had run for seats on the County Committees, but were not elected because White eligible voters far exceeded the number of eligible minority voters and refused to vote for SDGs. The vast majority of CBOs said that their constituents do not believe that County Committees represent the interests of SDGs and do not believe that advisors provide any meaningful influence or representation for SDGs.

g. Sub-Section Summary

According to the weight of information from employees, but more importantly Focus Groups and CBOs, the County Committee system fails to serve the diverse American population, is complicated, and is unique to FSA. The decision-making authority with respect to,

⁵⁶ One SDG Focus Group participant said he went to FSA to conduct research on land he was considering purchasing. He said his neighbor called him the next morning and said, “stay away from that land” because the neighbor had been trying to buy the land for several years. The Focus Group participant said that the only way the neighbor could have found out about the participant’s interest in the land was by a call from someone at FSA.

among others, hiring County Executive Directors, setting yields, delineating disaster areas, and approving/rejecting applications for Farm Programs benefits, makes these Committees powerful. Yet in most of the geographical areas the Assessment Team assessed, they were not popular positions that farmers/producers were seeking to fill. The employees and County Committee members/advisors interviewed by the Assessment Team generally stated that there was difficulty in getting farmers to run for seats on County Committees and, in most elections, there were no more than two to three candidates; yet SDGs cannot get elected by predominantly White eligible farmers, and these Committees determine farmer eligibility to vote.

Although County Committee loan approval authority was removed years ago, many of the County Committee members/advisors interviewed by the Assessment Team were not aware that they were specifically prohibited from approving farm loans.

County Committee involvement in the approval process for Farm Programs is acceptable to most USDA employees, but is harshly criticized by some. Those who found the County Committees helpful state that their knowledge base concerning farming practices and local conditions is useful in making determinations regarding applications for Farm Program benefits. Those who criticized the County Committees found their ignorance of Farm Programs, and their ability to inject bias and subjectivity into the application process, as unfair and problematic. Given the way the system is designed, both views are probably somewhat accurate, but changes should be made to address concerns.

The majority of interviewees stated that County Committees were important to administration of Farm Programs because they represented the “voice of the farmer” (or at least, a select group of farmers), but while the Handbook lists outreach as one of their duties, very few County Offices utilize County Committees in that regard. In addition, despite the duty of County Committees to approve Farm Program applications, the Assessment Team interviews revealed that many Committee Members lack sufficient program knowledge to assist in this process.

County Committee members the Assessment Team interviewed generally stated that the advisors played an important role in Farm Programs delivery. They expressed opinions, but did not vote on final determinations. The advisors interviewed by the Assessment Team

shared that sentiment and stated they believed their role was appreciated by the Committees. Nevertheless, advisors exist in low numbers on County Committees and the lack of a vote limits their ability to effectuate change.

In summary, the County Committee system currently places significant authority in the hands of a few farmers who rarely share the demographics of SDG customers and potential customers or the program knowledge of professional USDA or County employees. The County Committee process lends itself to subjectivity and bias. Thus, the Assessment Team recommends below that County Committees serve solely as Technical Advisors. The Assessment Team also recommends full retention of the County Executive Director positions and the County employees, reporting to the State Director.

10. “Examine web presence and utilization across rural America and access opportunities for all Americans to USDA services.”

a. Web Utilization

The State Offices appeared to have wide latitude in determining to what extent they devoted resources to increasing the functionality of their websites. Some States had web developers working to make their websites more user-friendly, while others did not express any concerns about the accessibility of their sites.

Interviewees in rural areas expressed concern about the slowness of internet speed accessibility in their areas. They stated that in many rural areas, they were still connecting to the internet via dial-up, thereby making it difficult for farmers/producers to view state websites.

FSA employees expressed concern that farmers/producers were not utilizing the website effectively. This was due to a variety of reasons, identified as: (1) lack of access to computers at home or on Native American reservations; (2) lack of time; and (3) lack of interest in the website. The views expressed by FSA employees were supported by the interviews of County Committee members/advisors. Only about 33% of those members/advisors interviewed, irrespective of race, gender, age, or any other characteristic, had viewed the FSA website.

FSA has attempted to provide farmers/producers with access to broader information. By providing “Level 2” access (providing more on-line services) to farmers/producers, FSA program enrollees can review their accounts and apply for program benefits electronically. In some of the Southern states the Assessment Team visited, FSA offices had held “Level 2” sign-up drives with the assistance of local universities. Interviewees stated that despite their efforts, few farmers/producers actually enrolled.

b. Sub-Section Summary

Employees the Assessment Team interviewed were familiar with the State website’s contents and some were improving their State websites. Some offices have attempted to offer training to customers so that they can apply for loans online, but these efforts have largely been unsuccessful due to lack of interest. On-site training, better access, improved speed and system functionality of the website would assist in getting more farmers/producers acclimated to the website.

K. Lessons Learned and Consistent Themes

The following constitutes a list of relatively consistent themes emerging from the USDA employee interviews, customers in Focus Groups, and CBOs.

1. County Committees: As explained above, County Committees have the ability to wield substantial influence within Farm Programs. *“Committee members make decisions affecting which programs are implemented county-wide, the establishment of allotment and yields, commodity price support loans and payments, conservation programs, incentive, indemnity, disaster payments for commodities and other farm disaster assistance.”* (FSA website) (emphasis added).⁵⁷ County Committees also may consult with Farm Loan Programs lending officials to provide technical information “of any conditions in the area that may affect demand for FSA loans” and on loan servicing, about “other assets or repayment ability when evaluating requests for debt settlement.”

Committee members determine who is eligible to run for election to the County Committee; the District Director may review only a determination that someone is ineligible. County Committees and State Committees

⁵⁷<http://www.fsa.usda.gov/FSA/webapp?area=about&subjectlanding&topic=sao>.

draw and redraw the Local Administrative Areas (“LAA”) (district lines); one Committee member is elected from each LAA.

The County Executive Director (“CED”) is hired by and reports to the County Committee. The CED hires county employees, with some oversight by the County Committees. County Committees have historically hired CEDs who do not reflect the diverse communities from which they are drawn; the CEDs, in turn, have broadly hired non-diverse County employees. Nationally, more than 95 percent of CEDs and County Committee employees are White.

Some FSA employees interviewed questioned the lines of accountability between the County Committee and the CED. Specifically, they suggested that to increase USDA accountability and organizational independence, the CED should be hired by and report to either the District Director or State Executive Director.

Many Focus Group participants did not realize that County Committees existed or were unaware of their significant responsibilities. However, a significant number of Focus Group participants, CBOs, and even some FSA employees interviewed, expressed concern about the subjectivity and, at least the potential for, personal bias and self-dealing in the entire County Committee system. CBOs and Focus Group participants knowledgeable about County Committees expressed the common perception that Committee members are typically White, large farmers who are looking out for their own self-interests and the interests of other large farmers. Some of the Focus Group participants and CBOs stated that County Committee members intentionally deny USDA support to SDGs as a means of ultimately taking SDG land. This view was expressed most often in the Southeastern States. To ameliorate this perception, recommendations have been made within USDA to assign program applicants identification numbers for use on application forms, rather than their names, to reduce the risk of discriminatory denials of SDG customer applications. (Given the limited number of farmers in any County Committee jurisdiction, however, County Committee members might still determine the identity of applicants from other information in the application). Some Focus Group participants continue to have the misperception that County Committees still play a vital part in the Farm Loan Programs application approval process.

With respect to the lack of diversity on the County Committees, one Committee member from a southeastern State said that he was aware of situations where African Americans ran strong campaigns for County Committee positions but were not elected. He ascribed this result to his belief that White farmers will not vote for African Americans. Employees interviewed in South Carolina expressed the same view. The Assessment Team was also told during the course of the Assessment, however, that it was difficult to convince SDG farmers to run for County Committee positions because many did not have the time or inclination to serve; others said SDGs would not run because it would be futile to do so since the White farmers would not vote for them.

The Assessment Team's interviews of County Committee members revealed that a majority of those Committee members did not have adequate knowledge or understanding of the programs for which they are responsible. Some did not know that they were prohibited from approving/disapproving Farm Loans, a function removed from County Committee authority years ago. None of these Committee members, however, indicated that they had been asked to approve such loans.

SDG "minority advisors," who are appointed by the County Committees to represent SDGs' interests when SDGs are under-represented on County Committees, have no voting rights on the Committee. Nevertheless, most County Committee members and advisors expressed the views that minority advisors play an important role in the County Committee system and that they do represent the interests of SDGs. Due to the absence of the right to vote, however, and their small numbers on each Committee, some Focus Group participants and CBOs stated that minority advisors are little more than token members.

2. Most employees generally view themselves as fair and treating everyone equally (but a significant minority of employees still see systemic discrimination/barriers to program access).

3. Substantial numbers of customers believe FSA discriminates against SDGs in the administration of its programs.

4. Some SDG customers express satisfaction with the level of service they received, while many others strongly believe they were mistreated. It also appears that the service afforded SDG customers varies from county to county and State to State.

5. There are many barriers to equal participation in FSA programs including, but not limited to: lack of budget for outreach programs; open hostility to SDG outreach; lack of staffing; lack of customer awareness of FSA; lack of specific knowledge of FSA programs; language; and, to a lesser extent, office locations.

6. FSA units operate in “silos.” There is poor or little communication among offices at FSA Headquarters and between Farm Loan Programs and Farm Programs staff in the field, and lack of cross-utilization of SDG “best practices”.

7. The dual employment system acts as a barrier to equal participation. Employees are not cross-trained in Farm Loan Programs and Farm Programs. Customers are often required to leave County Offices without receiving adequate information to begin the Farm Loans or Farm Programs applications process because there are no trained employees physically present.

8. Field outreach is generally performed only by a few employees in certain positions. Most field employees are not performing outreach activities and do not view it as a material element of their job. Employees are neither rewarded nor penalized for performing outreach, and the lack of a Handbook for Outreach signals it is not an Agency priority.

9. Little outreach is done within Farm Programs in contrast to outreach being performed by Farm Loan Programs.

10. Employees are seldom enthusiastic or optimistic about conducting outreach. There is a perception among some employees that targeting under-served SDG customers and potential customers constitutes “reverse discrimination” or is futile because SDGs are not interested in FSA programs.

11. National outreach efforts are not unrecognized by many employees in the field, particularly Farm Programs.

12. Employees are frustrated with Headquarters’ decision to announce programs to the public before providing a Handbook on how to administer the programs. Customers are frustrated by employees’ lack of knowledge regarding newer programs.

13. The National FSA website and the State websites contain information that is useful for the delivery of Farm Loan Programs and Farm Programs; but there are problems with consistency and content as well as lack of accessibility among customers due to either lack of technology or lack of knowledge about the websites.

L. Recommendations: FSA

Part of Farm Service Agency's mission is to equitably serve *all* farmers, ranchers, and agricultural partners. Despite this aim, the Agency's history appears to mirror the discriminatory past of the nation and particularly the historical practices of certain states. To many Americans, FSA employees and County Committee members have been the source of disparate treatment that has denied them the ability to flourish in the farming industry, even though it has been integral to the American economy. Due, in part, to these allegations, the U.S. Government has settled lawsuits for over \$3.01 billion to farmers and ranchers, some of whom lost their land or were deceased before the historic settlements. The recommendations below seek to, first, address the culture that allowed patterns and practices of bias and discrimination against socially disadvantaged groups of farmers and ranchers. Next, the recommendations outline steps the Agency can take to restore its image within the farming community, including outreach to and advocacy on behalf of socially disadvantaged farmers and ranchers. Lastly, the Assessment Team recommends specific actions to make the Agency a model for equitable program delivery and customer service.

Most of the Department-wide Recommendations in Section III, above—particularly those relating to DIA leadership, improving workforce diversity, enhancing incentives/penalties and accountability, creation of Offices of Emerging Customer Development, transitioning from the term “outreach” to “marketing,” accelerating cultural transformation initiatives, and reforming the civil rights complaint processes—pertain to and will address many of the barriers and other issues discussed in this Section. The following Recommendations assume the implementation of Department-wide Recommendations, and are intended to complement and supplement them with measures specific to FSA and the issues identified herein. (For consistency with the above discussion, some terminology, such as the old term “outreach,” will be used in the following recommendations to recognize the transition (in this instance, from outreach to marketing and emerging customer development.))

Recommendation FSA-1: Recognizing that County Committees have played a valuable role in providing FSA and USDA with important technical assistance crucial to their decision-making, but do not appear to have kept pace with the changing demographics and demands of a growing America, the Team proposes restructuring the County Committee system as follows:

1. Change the role of County Committee members from having decision-making authority for Farm Programs to serving as “technical advisors.” *See, e.g.,* NRCS Technical Advisors.⁵⁸ Also, change the County Committee member selection process so that all members are appointed by the SED.
2. Transfer the County Committees’ authority to hire and supervise County Executive Directors (“CED”) to either the State Executive Directors or District Directors (“SED/DD”), as appropriate.
 - a. As part of this process, CEDs who retire or otherwise leave their positions will be replaced by a selection process where a diverse pool of candidates, reflecting the diversity of the local population, is submitted to the SED/DD, and the most qualified candidate is selected.
 - b. If at the end of a 3-year period, commencing when this restructuring is implemented, or such other period determined appropriate by the Secretary, the demographic composition of CEDs does not adequately reflect the diversity of the local population they represent, the Secretary may require individual remaining holdover CEDs to resign, according to a schedule established by the Secretary.
 - c. Before the effective date(s) of the resignations, the SEDs/DDs shall use a selection process whereby the candidates will reflect the diversity of the local populations they seek to represent, which may include the resigning CED, and the most qualified candidate is selected.

⁵⁸ <http://www.nrcs.usda.gov/technical/>.

3. All County employees should retain their positions. During the transition period, remaining holdover CEDs may fill vacancies only from a diverse pool of candidates reflecting the diversity of the local population, with all hiring decisions subject to pre-approval by the SED/DD.
4. In the jurisdictions where minority advisors exist or are appropriate, they should be selected by the CED (during the holdover period all selections should be reviewed by the SED/DD).
5. In Counties where there are minority advisors, the advisors should be granted an equal vote on all County Committee decisions and full signing authority.
6. To clarify the newly recommended status, authority, and responsibilities of County Committees:
 - a. A designated FSA official(s) should be assigned by Headquarters to attend the meetings of CBOs and other SDG organizations to explain the newly revised CED selection and reporting processes, the County Committee nominations and appointments processes, and the duties and responsibilities of County Committee members.
 - b. The perennial News Releases from FSA regarding County Committee nominations and USDA appointments should be elevated to the Secretary/Department-wide level to achieve more coverage in the agricultural media.

The Secretary should include a short explanation of the process as often as prudent to elevate the changes in the agricultural media.

Recommendation FSA-2: Institute training/seminars for FSA employees explaining why programs designed to increase SDG participation are essential, *i.e.*, the Business Case for Diversity, Inclusion and Accessibility, since the future of America competing in a global economy demands fairness for and inclusion of all Americans.

Some employees expressed resentment toward the heightened efforts to more fairly serve SDG customers and potential customers and demonstrated a lack of understanding as to why certain efforts are needed to address the needs of growing but under-served SDG populations.

Recommendation FSA-3: Take prompt remedial action to reinforce the severity of consequences associated with engaging in discriminatory conduct, where appropriate, and broadly inform local and national employees of the remedial actions taken (within the limits of privacy laws).

Employees interviewed by the Assessment Team expressed that they were not receiving any feedback or information as to whether or how discrimination claims have been resolved, including whether if perpetrators were being punished and positive DIA actions were being embraced.

Recommendation FSA-4: Working with the Offices of Advocacy and Outreach (“OAO”) and Communications,⁵⁹ restore FSA’s image with the public, particularly SDGs. As outlined in the Department-wide recommendations, FSA should specifically engage in the following:

- 1) Work with OAO to initiate a campaign to SDGs regarding FSA programs.**
- 2) Myth/Rumor busting: FSA should develop a strategy for improved information flow to dispel key myths and rumors about FSA.**

The negative public image of FSA discourages SDG customers from applying for FSA Programs.

⁵⁹ See Department-wide recommendations regarding a new “Office of Diversity, Inclusion and Accessibility” and new State Field Offices of Emerging Customer Development.

Recommendation FSA-5: Engage in aggressive recruitment efforts to obtain the best job candidates, drawing broadly from across the counties, states and the nation, to achieve fair and qualified representation. This will result in hiring more well-qualified SDG employees and increasing the proportion of SDGs in the Agency workforce.

Several FSA offices are located in counties where *SDGs constitute the majority of the county population*, but the County Office staff have either no SDG employees, or very few. Even in many counties where SDGs represent, for example, 5 or 10% of the population, it is unacceptable to have either State or County Offices with no SDG employees (*i.e.*, Georgia, South Carolina, Mississippi, Florida, Michigan, *et al.*).

Recommendation FSA-6: Require all employment source selection boards to secure a diverse pool of candidates, unless an exception can be granted by the CDO of the Agency, where there is no under-utilization by race or gender for the job in question.

Recommendation FSA-7: Require Farm Programs staff to establish SDG funding goals/benchmarks and be measured on performance similar to evaluations of the Farm Loan Programs staff.

Farm Programs lags behind Farm Loan Programs in efforts to identify and assess the special needs of SDG customers and potential customers. With the expansion of Farm Programs in the past two decades, many more producers, including SDGs, are eligible for Farm Program benefits.

Recommendation FSA-8: Cross-train employees on Farm Loan Programs and Farm Programs to better serve all customers and potential customers.

Due to of the small number of full-time employees in some County Offices and the lack of Farm Loan Programs personnel on-site, Farm

Loan applicants are often given no guidance on how to complete the application packet.

Recommendation FSA-9: Cross-train field personnel regarding programs available through other USDA Agencies (RMA, RD, and NRCS) to better serve all USDA customers and potential customers.

Recommendation FSA-10: Headquarters should develop a “Handbook on Outreach” (“marketing”).

The priority and consistency of outreach varies from State to State, and sometimes from county to county within a state. To remove the excuse that employees do not know what to do, Headquarters should gather and compile sample materials from the best outreach programs in the State and County offices that have been successful in outreach. Those materials should be shared across FSA through a new Handbook. The intranet (or OTIS) could house the materials so they could be easily accessible. The goal should be to encourage states to choose among a variety of outreach activities that fit their geographic and cultural territories, *i.e.*, radio announcements may work in one area while they do not in another. In addition, the Handbook on Outreach (or the new proposed names of “Marketing” and “Emerging Customer Development”) should develop relevant metrics to measure performance and eliminate the focus on simply the number of events conducted or attended.

Recommendation FSA-11: Track and provide to State and County Office employees, on an annual basis, not only the statistics of the demographics of their counties and states, but the names and contact information of SDG customers and potential customers in their counties and states.

Employees question the accuracy of the NASS figures and believe there are far fewer SDG farmers in their areas than NASS suggests. Thus, they need assistance to identify the SDG farmers in their areas.

Recommendation FSA-12: Whenever FSA officials deny SDG loan or program applications, they should be required to thoroughly explain to the applicants the reasons for denial *and* what the applicant can do to improve chances of securing FSA approval in subsequent applications. This includes referring them to the appropriate resources (such as a CBO that can assist in the process).

Potential customers and CBOs expressed dissatisfaction with the appeals process. Many suggested that FSA offer guidance and resources on how an applicant can be successful. FSA should try to be more helpful, since, as the lender of last resort, a denial by FSA can mean the loss of the applicant's livelihood.

Recommendation FSA-13: Appoint Chief Diversity Officers at Agency and State Levels [see USDA-wide Recommendations in Section III] with responsibilities to enhance both SDG program access and employment representation consistent with the applicable representation in the population.

Recommendation FSA-14: Utilize an OFCCP-style model for workforce analysis [see USDA-wide Recommendations, Section III] to identify underutilized SDG members for which the Agency should be improving its recruitment, hiring and retention.

Recommendation FSA-15: Open additional County Offices in areas with high proportions of non-traditional crops to support Congress's and FSA's decision to cover non-traditional crops.

The Assessment Team learned that SDG producers often specialize in non-traditional crops due to the lower costs associated with start-up. Areas where non-traditional crops are grown tend to be located at long distances (*e.g.*, 50 miles or more) from County Offices.

Recommendation FSA-16: Have a fully cross-trained Farm Programs Technician or Farm Loan Officer or other cross-trained representative on staff in every County Office.

Recommendation FSA-17: In areas where there is a critical mass of SDGs for whom English is a second language, to the maximum extent practicable, seek to have at least one fully cross-trained employee who is fluent in the language of that SDG group. Also, working with local resources, arrange for (for example, by referrals) more training of customers and potential customers in “English for business transactions.”

Recommendation FSA-18: Create and make available forms that are translated into appropriate languages spoken by local FSA customers, not limited to Spanish, where there is a critical mass of any one individual SDG group in sufficient numbers to make the process cost efficient.

Employees occasionally appear to have interpreters and translators available to assist them with their Spanish-speaking customers, but more efforts need to be taken in assisting customers who speak other languages, particularly as relates to helping them to functionally conduct business in English.

Recommendation FSA-19: Require State Executive Directors (“SEDs”), District Directors, and County Office employees to be “in the field” a specified percentage of their work time.

Interviewees identified lack of awareness and visibility of FSA as a barrier to equal participation. Requiring employees to spend a minimum part of their time in the field will increase FSA’s visibility in the farming community, particularly for less established customers and potential customers.

Recommendation FSA-20: To complement online *AgLearn* Civil Rights training, institute periodic in-person, interactive training on Civil Rights and diversity issues.

Employees identify the *AgLearn* civil rights training as the primary basis of their cultural awareness, despite the fact that the civil rights training is regarded as inadequate and does not include a cultural awareness component.

Recommendation FSA-21: Simplify application forms and streamline the paperwork necessary to apply for Farm Loan Programs and Farm Programs, including eliminating requests for unnecessary and redundant information.

Employees and customers identified the complexity of the application process and the timing by which they receive funds as barriers to participation. Streamlining the process should result in quicker turnaround times. Additionally, USDA should develop a computer records system that retains reports for 5 years of previous applications, making it possible to simply add a current update to a past application.

Recommendation FSA-22: Require County Offices to submit a self-evaluation to the State Outreach Coordinator on an annual basis analyzing the effectiveness of their Outreach (“Emerging Customer Development”) efforts, and providing remedial plans to correct under-performances.

To increase participation among employees and create accountability for failure to effectively engage in outreach activities, County Offices should be required to self-evaluate their outreach activities.

Recommendation FSA-23: Require each state to have a full-time State Outreach Coordinator (“Office of Emerging Customer Development”), who has a demonstrated track record and commitment to outreach.

Currently, outreach is a collateral duty for most of the State Outreach Coordinators and does not receive sufficient time, attention and resources. (This will merge with the proposed “Office of Emerging Customer Development.”)

Recommendation FSA-24: Require states to re-establish State Outreach Councils composed of USDA Agency representatives and other concerned stakeholders in the state.

Recommendation FSA-25: Once outreach (“marketing” or “Emerging Customer Development”) is established as a core component of the field operations mission, create incentives for employees to conduct effective marketing and disincentives for failing to adequately perform.

The Team’s interviews revealed that only a few employees have been recognized for their positive outreach efforts. To increase employee participation, each month Headquarters should highlight an employee or office that has conducted “creative” and “effective” outreach through Agency newsletters, internal email communications, and other means of internal agency communication. In addition to recognition, employees or offices could receive a tangible award such as a plaque, a cash award, or a “day off.”

Recommendation FSA-26: Return authority and responsibility to County Offices for mailing post cards and other information to FSA customers and potential customers.

Focus Group participants and CBOs complained of not receiving mailings from their local FSA offices. To ensure that all customers are receiving mailings, the County Office should have responsibility for the mailings and maintaining current mail lists.

Recommendation FSA-27: Modify scope of SDG exception from Direct and Counter-Cyclical Program 10-acre rule to include not just the landowner, but also the Principal Operator.

Recommendation FSA-28: Increase the “term limits” for participation in Farm Loan Programs to improve producers’ chances to succeed. The eight-year term limit should be lengthened or eliminated altogether. Clear policy guidance should be given that, as the lender of last resort, FSA and the customers should be viewed as partners with a “mutual” interest in the customers’ long term success, not merely seeking loan repayment.

Recommendation FSA-29: Allow greater flexibility for borrowers to meet the 3-year experience requirement to be eligible for farm ownership loans (*i.e.*, allow college degree, “grew up on a farm,” and past work on a farm, *etc.* to be used to satisfy 3-year requirement) and re-visit the value of a 3-year versus a 2-year requirement. Determine whether there is a compelling “justifiable business necessity” for the rule, if not, modify the rule permanently to a lower justifiable number.

Recommendation FSA-30: Eliminate the 1-year experience requirement for eligibility for Farm Loans for beginning farmers and establish other basic criteria more likely to serve as reasonable indicators of likely success, such as college degree, practical training, and experience.

Recommendation FSA-31: Reduce the down payment requirement for guaranteed loans to beginning farmers.

The amount seems particularly arbitrary for a “last resort lender.”

Recommendation FSA-32: Modify the Noninsured Crop Disaster Assistance Program fee so that it varies depending on acreage.

Recommendation FSA-33: Issue a directive to every employee involved in the lending and/or outreach processes, clarifying what assistance they can and cannot provide to customers and potential customers in connection with completing their applications, to avoid unequal treatment that could be construed by any customer or potential customer as discriminatory.

Many employees expressed confusion regarding what they could and could not do to assist customers and potential customers in completing their applications. The confusion has led to customers receiving inconsistent levels of service, incorrect forms, and overall disparate customer service.

Recommendation FSA-34: Require employees who are unable to provide customers and potential customers with the level of service they require, beyond the scope of appropriate FSA Service, to refer customers to other Agencies, County Extension Service, or CBOs, that may be able to help.

Many employees and Focus Group participants stated that customers are often required to leave the County Offices without the information they need because the employees lack sufficient knowledge to help them. If an employee is unable to provide a customer with the needed assistance, FSA employees should be required to refer customers to and provide contact numbers for other sources of assistance (*e.g.*, another USDA agency, a CBO). This requires creating a database of the names, telephone numbers and specialties of USDA employees/agencies, which all FSA employees can access. This also requires cross-training all FSA employees about the services offered by sister agencies. Lastly, it requires positive training about a “customer service mentality” and a sensitivity to new farmers, ranchers, and others that may also be SDGs.

Recommendation FSA-35: Provide Farm Programs personnel with tools (including OMB approval, forms, computerized data collection methods, etc.) needed to accurately capture customer demographics, as is done by Farm Loan Programs.

Farm Programs personnel expressed an inability to generate reports from the SCIMS database that accurately track the race and ethnicity of Farm Programs customers. Applicants should be allowed to self-identify their race and ethnicity on applications and to the extent this information is captured by Farm Loan Programs personnel, it should be shared with the Farm Programs personnel.

Recommendation FSA-36: Identify, develop, and fund improved, updated technology tools (office systems, telecommunications, etc.) in the State and County Offices.

Computers, printers and other electronic equipment need to be updated to eliminate crashes and slowness which require customers to make multiple visits to the FSA office.

Recommendation FSA-37: Implement a national marketing campaign for Farm Programs, designed to increase FSA's visibility among producers similar to the marketing campaign developed by Farm Loans Programs.

Lack of awareness and visibility of FSA, particularly in SDG communities, were identified as barriers to equal participation. While Farm Loan Programs has instituted a marketing campaign, Farm Programs has not. Farm Programs should institute an aggressive marketing campaign highlighting successes by farmers, especially SDGs (local SDGs if possible), achieved as a result of participation in FSA Farm Programs.

Recommendation FSA-38: Headquarters should collaborate and communicate better with the State and County Offices when conducting any event in that state and county.

Employees in the State and County Offices often were unable to identify outreach efforts initiated by Headquarters.

Recommendation FSA-39: Offer training for farmers/producers regarding web-based programs and applications and access to equipment for CBOs, libraries, and 1890 colleges.

Recommendation FSA-40: Provide a dedicated computer terminal with internet access in each County Office dedicated, first, to those producers who have received Level 2 access and, second, to those who want to familiarize themselves with the website's contents and/or apply for program benefits.

Recommendation FSA-41: Reorganize the contents of the website by type of farm, making it more user-friendly. For example, provide an icon for information concerning crops, an icon for cattle, nursery owners, etc.

Recommendation FSA-42: Expand office hours in County Offices, especially during active seasons, so that they are more convenient for the schedules of farmers/ranchers.

Recommendation FSA-43: FSA employees should be trained to communicate in plain language. They should understand they are not communicating with co-workers and should not use acronyms; rather, they should speak at a level that can be understood by farmers/ranchers who know little about FSA or its programs.

Recommendation FSA-44: FSA should create “train the trainer” training programs for CBOs so that they can better train and explain FSA offerings to their constituents and assist in the application process.

Recommendation FSA-45: FSA should develop pilot programs for farmers/ranchers who are not “credit ready” and train CBOs or customers and potential customers on how to improve their credit.

Recommendation FSA-46: For applicants who are prescreened for programs, but do not actually submit an application, obtain and retain demographic information.

CBOs report that many SDGs are told they will not qualify for programs even before they actually submit an application, which appears to be prejudicial and discriminatory. There is no current practice of capturing this information to measure whether SDGs are being adversely impacted by the prescreening process.

Recommendation FSA-47: Use testers, wherever possible, to determine if similarly situated minority, female, and majority loan and program applications result in differential treatment of SDG farmers and ranchers.

Recommendation FSA-48: If an applicant was delinquent on loan(s), but ultimately paid off the loan(s) in full, establish a time period after which FSA will not consider those delinquencies in making credit decisions.

Recommendation FSA-49: Once appropriate and accurate record-keeping is maintained, annually analyze the relative application, acceptance/denial, payment, delinquency, and default rates of various groups of borrowers to determine whether any inappropriate discriminatory criteria are being used.

VI. RURAL DEVELOPMENT ASSESSMENT

A. Introduction⁶⁰

This Section of the Report provides the results of 18 months of investigation and analysis of fairness and equity in program delivery by Rural Development (“RD”). The Assessment Team relied on four primary sources of information. The first source was interviews of 698 RD employees at Headquarters, State and field levels. Second, the Assessment Team conducted 10 Focus Group sessions, in 10 States, with RD customers and potential customers who have applied for or were denied technical or financial assistance from USDA.⁶¹ Third, the Assessment Team conducted interviews of the leadership of 30 Community Based Organizations (“CBOs”) from around the country, representing a variety of interests in rural communities, with an emphasis on those focused on issues of importance to socially disadvantaged groups (“SDGs”). The Assessment Team also reviewed and analyzed statutes, regulations, policies, manuals, reports, statistical data, and other information and documents provided by USDA. In addition, the Assessment Team conducted research on a wide variety of other topics, including the history of the Agency, media, and other public reports of RD activities.

The Assessment Team’s investigation revealed positive aspects of the Agency’s work as well as deficiencies with program delivery, including potential barriers to equitable participation in programs. Identified barriers include, among others, the lack of knowledge and awareness regarding RD programs, limited outreach to underserved groups, and geographical inaccessibility presented by field-office locations. Additionally, the Assessment Team became aware of workforce employment issues related to race/ethnicity, performance management, promotions, and employee morale, all of which negatively impact

⁶⁰ The specific race/ethnicities references used by the Equal Employment Opportunity Commission are identified by the following categories: Hispanic/Latino; Black/African American; Asian; American Indian/Alaskan Native; and Native Hawaiian/Pacific Islander. For shorthand purposes, these categories will be referred to as: “Hispanic,” “African American,” “Asian,” “Native American,” and “Pacific Islander,” respectively.

⁶¹ CBO Interviews were conducted with 30 organizations located in the following 13 states: Arizona, California, Florida, Georgia, Louisiana, Michigan, Mississippi, New Mexico, North Carolina, North Dakota, Oklahoma, South Carolina, and Washington.

program delivery. The recommendations at the end of this Section of the Report will assist RD to continue the work to fulfill its mission of equitable delivery of its programs across rural America.

B. Mission

The mission of Rural Development (“RD”) is “to increase economic opportunity and improve the quality of life for *all* rural Americans;”⁶² RD has been described as the “lending arm” of USDA.

Some of the programs now administered by RD began during the Depression era, when President Roosevelt established the Resettlement Administration, which provided emergency loans to farmers for land and equipment. In 1946, Congress established the Farmers Home Administration (“FmHA”) to provide additional financing in rural areas. In 1994, RD was created as a new Agency to administer the non-farm financial programs of the former FmHA, under the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (the “Act”).⁶³

Today, RD operates with an approximately \$115 billion loan portfolio. The Agency’s vision is “a rural America that is a healthy, safe, and prosperous place in which to live and work.” To achieve its vision and its mission, the Agency provides billions of dollars in capital to support rural America in the areas of business, housing, community facilities, and utilities.⁶⁴ RD has the ability to assist both communities and individuals in rural America, building and financing components that will assist in successful rural growth.

⁶² www.rurdev.usda.gov.

⁶³ Under the reorganization, RD was created to administer the former FmHA's non-farm financial programs for rural housing, community facilities, water and waste disposal, and rural businesses. The Rural Electrification Administration, which became a part of USDA in 1939 to provide electricity in rural areas, was consolidated with RD under the Act in 1994.

⁶⁴ During FY 2009, RD obligated over \$31 billion across program areas, which represents a substantial increase since FY 2002, in which \$13 billion in funds were obligated. See <http://www.rurdev.usda.gov/Publications/RD2009ProgressReportReprint.pdf>. See also analysis of FY 2010 funding below.

C. Organization

1. Headquarters Organization

RD is led by an Under Secretary for Rural Development, who reports to the Secretary of USDA. There are two Deputy Under Secretaries responsible for oversight and overall management of RD's program areas and policies, along with three Agency Administrators who lead each of the Agency's three program areas: Rural Business and Cooperative Programs, Rural Housing and Community Facilities, and Rural Utilities. Additionally, there is a fourth Administrator for Operations and Management.

2. State Organization

Currently, RD operates under a two-tiered system which includes State and Area Offices and some Sub-Area Offices⁶⁵ (formerly, states operated under a three-tiered system, which included State, Area and County Offices). Each of the 47 RD State Offices is led by a State Director who is responsible for the budget and operations of the State. State Directors, who report to a Deputy Under Secretary at Headquarters, are supported by administrative staff (*e.g.* an Administrative Programs Director and a Human Resources Manager) as well as Program Directors, who are responsible for each program area, and state-level Loan Specialists, Technicians, and Office Assistants.

Area Offices, which cover multiple counties, are supervised by Area Directors. Area Office staff includes Area Specialists, Technicians, and Office Assistants. Area Specialists (Loan Specialists) are responsible for outreach, loan, and grant approval. Area Technicians provide administrative and technical support for the funding process. Office Assistants provide additional administrative support, including reception and telephone duties.

⁶ There were variances in State and Area Office positions in the 15 Assessment States, depending on the state's FTE (Full-Time Equivalent) level. While each State office will typically have the same type of staff, not all State and Area offices included the same positions, due in part to vacancies or budget constraints. For example, some offices utilized Student Trainees, while others did not.

D. Workforce Diversity: Summary

Section IX below presents in detail the results of the Team’s demographic analysis of the RD workforce, which is summarized here. Comparators were chosen based on the pool from which the positions are filled (by appointment and hiring). For example, RD employees are recruited and hired from the general workforce, so their demographics are compared with the U.S. Civilian Labor Force (“CLF”) (the CLF is the benchmark USDA uses in creating its annual workforce reports to the EEOC). *The following is a summary of those areas of “under-representation,” that is, where the percentage of members of the group among USDA employees is substantially less than their percentage in the comparator population:*

- **RD Nationwide Workforce – Under-Representation:**

SDGs	RD Workforce	CLF
Rural Housing – Total Minorities	26.8%	27.2%
Rural Housing – Hispanic/Latino	6.1%	10.7%
Rural Housing – Asian	1.6%	3.6%
Rural Utilities – White Females	23.0%	33.7%
Rural Business – White Females	16.7%	33.7%

- **RD State Office Employees – Under-Representation** (15 USDA-selected States):

SDGs	Under-representation: Position Shortfall Per State⁶⁶
Hispanics/Latinos	AZ (3), CA (3), FL (2), GA (1), LA (1), NC (2), OK (1), WA (1)
Blacks/African-Americans	GA (1), PA (2)
Asians	CA (3), WA (1)
American Indians/Alaskan Natives	NM (1)

There are no under-representations of Females or Native Hawaiians/Pacific Islanders in the RD State Offices in the 15 USDA-selected States in comparison with the relevant CLF; there are 8 States with under-representations of Hispanics/Latinos, ranging from 1 to 3 personnel in each, and several State under-representations of Blacks/African Americans, Asians, and American Indians/Alaskan Natives, ranging from 1 to 3 personnel in each. Thus, RD’s State Offices in these 15 States relatively reflect the CLFs, with Hispanics/Latinos having the greatest number of divergences but of relatively few personnel.

⁶⁶ When under-representation is described in terms of a stated number of “positions,” it means that RD would have to hire the number of individuals of the specified race/ethnicity or gender to bring the percentage representation in the position into line with percentage representation in the labor pool from which candidates are drawn.

- **RD Area Office Employees – Under-Representation** (90 USDA-selected counties):

SDGs	Under-representation: Position Shortfall Per County
Hispanics/Latinos	CA-Fresno (1), CA-Tulare (2), CA-Yolo (2); FL-Miami/Dade (6); WA-Okanogan (1), WA-Yakima (1)
Blacks/African-Americans	GA-Grady (1), GA-Macon (1); LA-Avoyelles (2), LA-Rapides (2), LA-Tangipahoa (1); NC-Robeson (3); OK-Comanche (1); SC-Colleton (1), SC-Marion (2), SC-Orangeburg (1)
Asians	CA-Yolo (2), MI-Washtenaw (1), WA-King (1)
American Indians/Alaskan Natives	AZ-Apache (1), MI-Chippewa (2), NM-Taos (1), NC-Robeson (1)

There are no under-representations of Females or Native Hawaiians/Pacific Islanders in the RD Area Offices among the 90 USDA-selected counties in comparison with the relevant CLF. There are 6 Area under-representations of Hispanics/Latinos, ranging from 1 to 6 personnel; 10 Area under-representations of Blacks/African Americans, ranging from 1 to 3 personnel; 3 Area under-representations of Asians, ranging from 1 to 2 personnel; and 4 Area under-representations of American Indians/Alaskan Natives, ranging from 1 to 2 personnel. Thus, RD’s Area Offices in these 15 States/90 counties relatively reflect the CLFs, but with significant exceptions, with Blacks/African Americans having the greatest number of divergences (in 10 Areas) but of relatively few personnel (usually one or two) in each case.

Thus, the most significant deficits of diverse representation in RD’s workforce are:⁶⁷

- White Females – Rural Business.
- White Females – Rural Utilities.

⁶⁷ A detailed analysis of all RD workforce data is included in Section IX below.

- Hispanics/Latinos – Rural Housing workforce.
- Hispanic/Latinos – RD State and Area Offices.
- Blacks/African Americans – Area Offices.
- Asians – RD State and Area Offices.
- American Indians/Alaskan Natives – Area Offices.

E. Key Programs

Rural Development consists of three major Program Areas: (1) Rural Housing and Community Facilities, (2) Rural Business, and (3) Rural Utilities. Each Program Area is discussed in detail below.

1. Rural Housing and Community Facilities

Rural Housing provides loans and grants in eligible rural areas for a variety of projects with the goal of eliminating substandard housing in rural America. Specifically, RD provides housing opportunities through grant and loan programs, including funding for purchase of single family homes, development of rental multi-family housing, and development of farm labor housing.

Similarly, the *Community Facilities* program provides grants and loans to public entities to improve the quality of life in rural America. Community Facilities funding helps rural communities build, purchase, or improve community facilities such as day care facilities, fire equipment, hospitals and airports.

- a. Significant Rural Housing and Community Facilities Programs Include the Following:
 - 1) Single Family Housing (“SFH”) – Available in rural areas with maximum population of 20,000 (Direct and Guaranteed loans, Housing Repair grants, Mutual Self Help loans).
 - 2) Multi-Family Housing (“MFH”) – Available in rural areas with maximum population of 20,000 (Direct and Guaranteed loans, Housing Preservation Grants).

- 3) Farm Labor Housing - Available in rural areas with maximum population of 20,000 (Direct loans and grants).
 - 4) Community Facilities (“CF”) - Available in unincorporated rural areas and incorporated rural areas with maximum population of 20,000 (Direct and Guaranteed loans and grants).
- b. Eligible Applicants for Rural Housing and Community Facilities Programs are:
- 1) Individuals (SFH, MFH, Farm Labor).
 - 2) Public entities (CF).
 - 3) Native American Individuals and Tribes (SFH, MFH, CF, Farm Labor).
 - 4) Non-profits (SFH, MFH, CF).
 - 5) Legally organized entities (MFH).
- c. Eligibility Criteria for Rural Housing and Community Facilities Programs:
- 1) Rural Housing Guaranteed Loan (SFH)⁶⁸

Rural Housing Guaranteed Loans are used for single family housing loan applicants who have an income of up to 115% of the median income for the area. In order to be eligible, families must be without adequate housing, but be able to afford mortgage payments (including taxes and insurance) and have reasonably strong credit histories.

⁶⁸ See 7 C.F.R. §§ 1980.301-500 (2009).

2) Rural Housing Direct Loan (SFH)⁶⁹

Rural Housing Direct Loans are used to help low-income⁷⁰ individuals/households, who cannot obtain credit elsewhere, purchase homes in rural areas. Funds can be used to acquire, build (including funds to purchase and prepare sites and to provide water and sewage facilities), repair, renovate, or relocate homes.

3) Rural Repair and Rehabilitation Loan and Grant (SFH)⁷¹

The Rural Repair program provides loans and grants to very low-income⁷² homeowners to repair, improve, or modernize their dwellings or to remove health and safety hazards. Loans are offered to very low income customers, who cannot obtain credit elsewhere, to rehabilitate their property. Grants are also funded directly by USDA to dwelling owners/occupants who are 62 years of age or older for repairs or improvements to remove health and safety hazards, or to complete repairs to make the dwelling accessible for household members with disabilities.

4) Mutual Self Help Loan (SFH)⁷³

Mutual Self Help Loans are used primarily to help low and very low income individuals and households construct their own homes in order to save on labor costs. The program is geared towards rural families that are willing to provide approximately 65% of the labor in the building process, under qualified supervision.

⁶⁹ See 7 C.F.R. §§ 3550.1-300 (2010).

⁷⁰ “*Low income*” is defined as between 50 and 80 percent of Area Median Income (“AMI”).

⁷¹ See 7 C.F.R. §§ 3550.1-800 (2010).

⁷² “*Very low income*” is defined as below 50 percent of the AMI.

⁷³ See 7 C.F.R. §§ 3550.1-300 (2010).

5) Rural Rental Housing Loan (MFH)⁷⁴

Rural Rental Housing Loans may be made to a variety of owners, including individuals, partnerships, and corporations, to operate housing for low- and moderate-income tenants. Rural Rental Housing Loans are direct, competitive mortgage loans made to provide affordable multifamily rental housing for very low-, low-, and moderate-income families; the elderly; and persons with disabilities.

6) Housing Preservation Grants (MFH)⁷⁵

Eligible sponsoring organizations (including state agencies, local government units, Native American tribes, and nonprofit organizations) can receive Housing Preservation Grants (“HPG”) for the repair or rehabilitation of low- and very low-income housing. The grants are competitive and are made available in areas wherever there is a concentration of need. Those assisted must own very low- or low-income housing, either as homeowners, landlords, or members of a cooperative. HPG funds received by the sponsors are combined with other programs or funds and used as loans, grants, or subsidies for recipient households based on a plan contained in the sponsor's application. Funds must be used within a two-year period.

7) Farm Labor Housing (MFH)⁷⁶

Farm Labor Housing Loans are made to farmers, Native American tribes, associations of farmers, non-profit organizations, public agencies, and associations of farm workers to develop or rehabilitate housing for domestic farm workers. Typically, loan applicants are unable to obtain credit elsewhere, but in some instances, farmers able to get credit elsewhere may obtain loans at a rate of interest based on the cost of federal borrowing.

Farm Labor Housing Grants are made to farmworker associations, nonprofit organizations, Native American tribes, and public agencies.

⁷⁴ See 7 C.F.R. §§ 3560.1-800 (2010).

⁷⁵ See 7 C.F.R. §§ 1944-651-700 (2009).

⁷⁶ See 7 C.F.R. §§ 3560.551-600 (2010).

Funds for housing may be used in urban areas, for farm labor that is in close proximity, which is an exception to the rules regarding rural service area eligibility.

8) Community Facilities Direct and Guaranteed Loans (CF)⁷⁷

Community Programs can make and guarantee loans to develop essential community facilities in rural areas and towns of up to 20,000 in population. Loans and guarantees are available to public entities such as municipalities, counties, and special-purpose districts, as well as to non-profit corporations and tribal governments.

Applicants must have the legal authority to borrow and repay loans, to pledge security for loans, and to construct, operate, and maintain the facilities. They must also be financially sound and able to organize and manage the facility effectively.

9) Community Facilities Grants (CF)⁷⁸

Community Programs provides grants to assist in the development of essential community facilities in rural areas and towns of up to 20,000 in population. Grants are available to public entities such as municipalities, counties, and special-purpose districts, as well as non-profit corporations and tribal governments. In addition, applicants must have the legal authority necessary for construction, operation, and maintenance of the proposed facility and also be unable to obtain needed funds from commercial sources at reasonable rates and terms.

2. Significant Business and Cooperatives Programs

Rural Business and Cooperatives Programs provide grants and loans to businesses, public entities, and producers to improve economic opportunity in rural areas. This funding creates jobs by assisting with the growth and creation of rural businesses and cooperatives. Rural Business also offers a Community Development program that operates special initiatives for programs that demonstrate community

⁷⁷ See 7 C.F.R. §§ 3570.51-100 (2010).

⁷⁸ See 7 C.F.R. §§ 3570.51-10 (2010).

development techniques and address unique and pressing economic development issues.

a. Major Rural Business and Cooperative Programs

- 1) Business & Industry Loan Guarantee (“B&I”) – Available in areas except cities with more than 50,000 population and adjacent urban areas.
- 2) Rural Business Enterprise Grant (“RBEG”) – Available in areas except cities with more than 50,000 population and adjacent urban areas.
- 3) Rural Business Opportunity Grant (“RBOG”) – Available in areas except cities with more than 50,000 population and adjacent urban areas.
- 4) Intermediary Relending Loan Program (“IRP”) – Available in rural areas and incorporated places with less than 25,000 population.
- 5) Rural Economic Development Loans and Grants (“REDLG”) – Available in rural areas with population of 2,500 or less.
- 6) Value Added Producer Grant (“VAPG”) – No population restriction.

b. Eligible Applicants for Rural Business and Cooperatives Programs

- 1) Businesses.
- 2) Cooperatives.
- 3) Public entities.
- 4) Private non-profits.
- 5) Native American Tribes.

- 6) Independent farmers and ranchers.
- 7) Institutions of Higher Education.

c. Eligibility Criteria for Rural Business and Cooperatives Programs

- 1) Business & Industry Loan Guarantee⁷⁹

Borrowers must apply through federal or state-chartered financial institutions (*i.e.* banks, credits unions) and can be individuals, cooperatives, legally-organized entities, Native American Tribes, or public bodies who, in doing business, will create jobs and stimulate rural economies. Unlike other RD programs, B&I loans are not for applicants with substandard credit; borrowers typically can obtain credit elsewhere.

- 2) Rural Enterprise Business Grant⁸⁰

The RBEG program provides grants to finance and develop small and emerging rural businesses, distance learning networks, and adult employment education activities. Grant recipients may also establish a revolving loan fund. Rural public bodies, non-profit organizations, and Native American Tribes are eligible to apply.

- 3) Rural Business Opportunity Grant⁸¹

The RBOG program is used to provide training and technical assistance for business development planning in rural areas. The maximum grant for a project within a State is \$50,000. Rural public bodies, non-profits, Native American Tribes, and rural cooperatives are eligible to apply.

⁷⁹ See 7 C.F.R. § 1980.490 (2009).

⁸⁰ See 7 C.F.R. § 1940.589 (2009).

⁸¹ See 7 C.F.R. § 1940.593 (2009).

4) Intermediary Relending Loan Program⁸²

Low-interest loans are provided by RD to local organizations (intermediaries) to establish revolving loan funds designed to increase economic activity and employment in rural areas. Revolving loan funds are used to finance business facilities and community development projects. Applicants for this program can be public bodies, non-profit organizations, Native American Tribes, and cooperatives.

5) Rural Economic Development Loans and Grants⁸³

Under the RED*Loan* program, USDA provides zero-interest loans to local utilities which the utilities, in turn, pass through to local businesses (ultimate recipients) for projects that will create and retain employment in rural areas. The ultimate recipients repay the lending utility directly. The utility is responsible for repayment to RD.

Under the RED*Grant* program, USDA provides grant funds to local utility organizations which use the funding to establish revolving loan funds. Loans are made from the revolving loan fund to projects that will create or retain rural jobs. When the revolving loan fund is terminated, the grant is repaid to RD.

To be eligible, an entity must: 1) have borrowed and repaid or pre-paid an insured, direct, or guaranteed loan received under the Rural Electrification Act; 2) be a not-for-profit utility that is eligible to receive assistance from the Rural Development Electric or Telecommunication Program; or 3) be a current Rural Development Electric or Telecommunication Programs Borrower.

6) Value Added Producer Grant⁸⁴

VAPGs are used to (a) assist independent agricultural producers to enter into activities that add value to their crops and (b) for farm-based renewable energy. Eligible applicants are independent

⁸² See 7 C.F.R. § 4274.301-400 (2010).

⁸³ See 7 C.F.R. §§ 4280.1-120 (2010).

⁸⁴ See 7 C.F.R. §§ 4284.901-1000 (2010).

producers, farmer and rancher cooperatives, agricultural producer groups, and majority-controlled producer-based business ventures. Grants are awarded on a competitive basis.

3. Rural Utilities Programs

Rural Utilities Service (“RUS”) helps rural communities build or extend utilities, including water, sewer and waste disposal, electricity, and telecommunications services through grant and loan programs. With the exception of the water and waste programs, rural utilities programs are administered at the Headquarters level.

a. Significant Rural Utilities Programs

- 1) Water and Waste Programs – Available in rural Areas with maximum population of 10,000 (Direct and Guaranteed loans and grants).
- 2) Electricity – Available in rural Areas as defined by U.S. Census (Direct and Guaranteed loans).
- 3) Telecommunications – Available in rural Areas as defined by U.S. Census (Direct and Guaranteed loans).
- 4) Broadband – Available in rural Areas with maximum population of 20,000 (Direct and Guaranteed loans).
- 5) Distance Learning and Telemedicine – Available in rural Areas with maximum population of 20,000 (Loans and Grants).

b. Eligible Applicants for Rural Utilities Programs

- 1) Public entities (*e.g.*, towns, municipalities).
- 2) Native American Tribes.
- 3) Non-profits.

- 4) Legally organized entities proposing to provide broadband service.
- 5) Institutions of Higher Education.

c. Eligibility for Rural Utilities Programs

1) Water and Waste Programs⁸⁵

Public bodies, non-profit organizations, and Native American Tribes may be eligible to receive assistance in the form of loans, grants, and loan guarantees for drinking water, sanitary sewer, solid waste and storm drainage facilities in rural areas and cities and towns of 10,000 population or less. RD also makes grants to nonprofit organizations to provide technical assistance and training so that these organizations can assist rural communities with their water, wastewater, and solid waste problems.

2) Electricity⁸⁶

Loans may be made to corporations, states, and agencies such as municipalities, utility districts, and cooperative, non-profit organizations to provide retail electric service to rural areas or supply the power needs of distribution borrowers in rural areas. The loans and loan guarantees finance the construction of electric distribution, transmission, and generation facilities, including system improvements and replacements required to furnish and improve electric service in rural areas, as well as demand side management, energy conservation programs, and on-grid and off-grid renewable energy systems. The guaranteed loan program has been expanded and is now available to finance generation, transmission, and distribution facilities in rural areas.

⁸⁵ See 7 C.F.R. §§ 1700.30 (2010).

⁸⁶ See 7 C.F.R. § 1700.28 (2010).

3) Telecommunications⁸⁷

The Telecommunications program provides loans to legally-organized entities to build and improve telecommunications infrastructure in rural areas. For the telecommunications program, “rural area” is defined as any area of the United States, its territories and insular possessions (including any areas within the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau) not included within the boundaries of any incorporated or unincorporated city, village, or borough having a population exceeding 5,000 inhabitants.

1. Broadband - The Broadband program provides loans and grants to fund the costs of constructing, improving, and acquiring facilities to provide broadband service to eligible rural communities.

2. Distance Learning and Telemedicine - The Distance Learning and Telemedicine program brings electronic educational resources to rural schools and improves health care delivery in rural America.

F. Customer Demographic for RD Programs

To determine the effectiveness of RD Programs in equitably serving SDGs, the Assessment Team assessed several RD Housing programs and compared dollars by customer demographics with corresponding rural populations nationwide for FY 2010 for both Direct Loans (loans made by USDA/RD directly to customers) and Guaranteed Loans (loans provided by commercial institutions with a USDA guarantee). The Assessment Team also analyzed RD Multi-Family Housing “beneficiaries” with the corresponding rural population. The results are presented in detail in Section IX below and are summarized as follows:

1. **SFH Direct Loans:** All SDG groups received percentages of loan proceeds substantially above their respective rural population percentages:

⁸⁷ See 7 C.F.R. § 1700.29 (2010) and 7 C.F.R. §§ 1735.1-101 (2010).

Race/Ethnicity/Gender	Percent of Loan Dollars	Percent of Rural Population
Female	54.27%	50.99%
Black/African American	14.18%	5.97%
Hispanic/Latino	13.43%	3.96%
American Indian/Alaskan Native	1.74%	1.63%
Asian	1.20%	0.52%
Native Hawaiian/Pacific Islander	1.56%	0.06%

2. **SFH Guaranteed Loans:** On a dollars lent basis for FY 2010 RD SFH Guaranteed Loans nationwide, Females and American Indians/Alaskan Natives lagged behind their rural population percentages (Females, by 20.5 percentage points; American Indians/Alaskan Natives, by 1.2 percentage points); for all other SDGs, their participation exceeded their respective rural populations:

Race/Ethnicity/Gender	Percent of Loan Dollars	Percent of Rural Population
Female	30.43%	50.99%
Black/African American	6.12%	5.97%
Hispanic/Latino	7.66%	3.96%
American Indian/Alaskan Native	0.40%	1.6%
Asian	0.84%	0.52%
Native Hawaiian/Pacific Islander	0.39%	0.06%

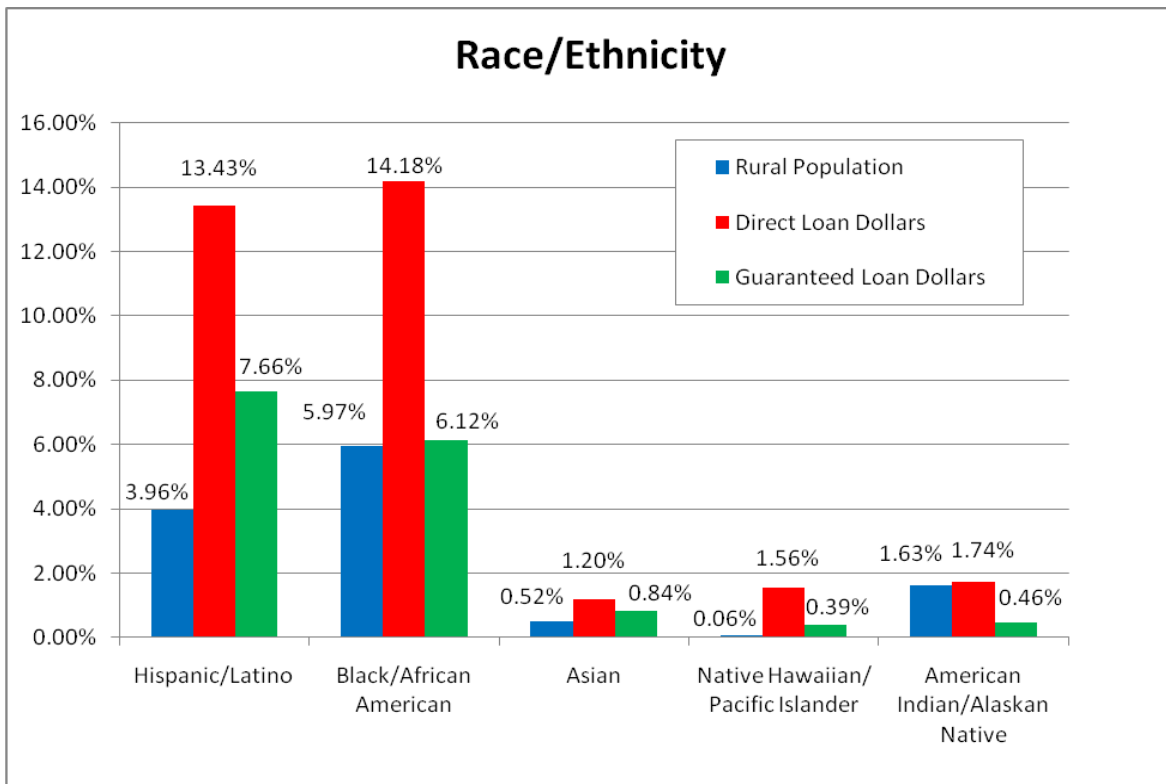
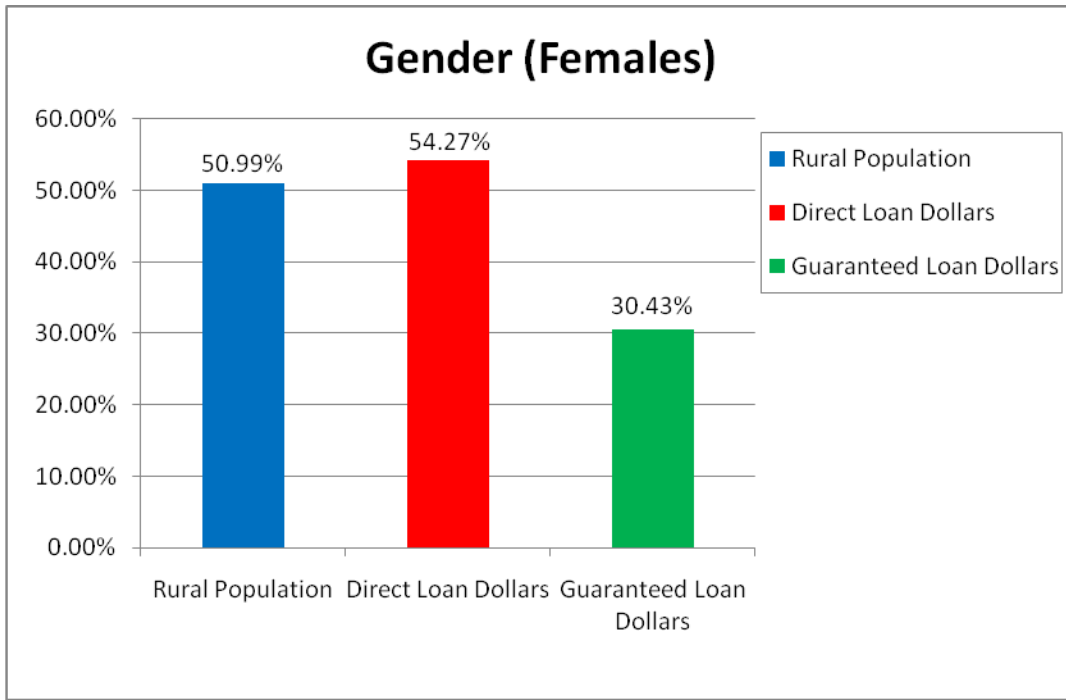
3. **Multi-Family Housing “Beneficiaries”:** Loans under the RD Multi-Family Housing Program are made to entities, not individuals, so the customers cannot be attributed demographics. RD does, however, require “heads of households” and tenants to complete a form showing their race/ethnicity and gender (tenants do not make a gender designation, but heads of households do), and they are referred to by RD as “beneficiaries.” RD tracks the race/ethnicity and gender of such beneficiaries. In FY 2010, all SDGs were “beneficiaries” in proportions greater than their respective rural population percentages. Female representation

among beneficiaries, in particular, is noteworthy (72.68% beneficiaries vs. 50.99% national population), and Hispanics/Latinos and Blacks/African Americans' beneficiary percentages were several times their respective rural population percentages.

4. **Rural Utilities and Rural Business:** The demographics for Rural Utilities are the demographics of their service areas, and therefore mirror exactly the SDG demographics in those areas. Rural Business customers are entities, not individuals, and RD does not collect complete demographic data for entities. The data the Assessment Team received from USDA does not lend itself to an analysis of the degree to which the entities that receive financial assistance from Rural Utilities and Rural Business reach beneficiaries including SDGs.

The graphs on the following page present the results of these RD customer base analyses.

Customer Demographics for RD Programs FY 2010



G. Customer Focus Group/CBO Input

The Assessment Team conducted Focus Group sessions in 10 states.⁸⁸ Focus Group participants were selected because they are or have been USDA customers or potential customers (“customers”) who have applied for or received technical or financial assistance within the past three years. The Focus Group discussions explored issues related to participant experience with USDA, focusing on equity of service to SDGs.

The Assessment Team also conducted 30 interviews with Community Based-Organizations (“CBO”) whose constituents are customers who have applied (or could potentially apply) for technical or financial assistance from USDA.⁸⁹ The interviews explored issues related to constituents’ experiences with the USDA application process and follow-up.

A summary of responses and themes that emerged from Focus Group sessions and CBO interviews related to questions in the following topical areas:

1. Initial Contacts with RD

The majority of Focus Group participants became aware of RD through third parties, rather than through RD direct outreach efforts. In conducting interviews with CBOs, and speaking with customers during the Focus Group sessions, the partnership between RD and community organizations emerged as vital to fulfilling the Agency’s mission. CBOs appear to be connected to communities which may be beyond RD’s reach due to geography, employee workload, and time constraints. A significant number of customers who participated in Focus Group sessions became aware of RD through word-of-mouth. Most often, family members had some contact with the Agency and recommended the programs. A few customers mentioned receiving information about RD through outreach events in their area. Most CBO representatives said

⁸⁸ Focus Group sessions were held during the months of January and February 2011 in Mississippi, Georgia, North Carolina, South Carolina, Oklahoma, North Dakota, California, Arizona, New Mexico, and Louisiana.

⁸⁹ CBO interviews were conducted with 30 organizations located in the following 13 states: Arizona, California, Florida, Georgia, Louisiana, Michigan, Mississippi, New Mexico, North Carolina, North Dakota, Oklahoma, South Carolina, and Washington.

that their constituents learned about RD through their connection to CBOs. A large number of participants mentioned realtors, mortgage brokers, and banks as the source of contact with RD. Most customers during the Focus Group sessions expressed gratitude for access to RD programs, but stated that RD is the “best kept secret.”

2. Effectiveness of RD Programs, Outreach and Communication

In response to questions regarding the effectiveness of RD programs, outreach and communication, as mentioned above, the majority of Focus Group participants stated they became aware of RD through third parties rather than directly through RD outreach. Similarly, most CBO interviewees stated that the majority of their constituents become aware of RD through the CBOs and not directly from RD. In fact, Focus Group participants and CBO interviewees provided very few examples of RD outreach programs. It is not clear whether Focus Group participants who were aware of RD outreach had participated in events aimed at socially disadvantaged groups (“SDG”).

While most participants stated that they were unaware of RD outreach efforts in their counties, there were some exceptions. For example, one participant in Mississippi recalled an outreach event at City Hall in which participants were given the opportunity to fill out applications. A participant in Phoenix stated, “I think the Phoenix office has been effective [at outreach] They’ve been out in our area.” Another Phoenix participant stated, “Rural Development was such a blessing in disguise, we just didn’t know they were there, that’s the only thing.”

Participants suggested RD should regularly post information about programs in newspapers, with community agencies, hospitals, and churches in order to reach a greater number of potential customers. Other participants stated that television advertisement and more information with local banks could increase program participation. RD employees stated that some of the aforementioned techniques are employed or have been used in the past; however, there is still a misperception that RD employees are “meat inspectors” or work for the FmHA, which no longer exists. It is clear that some offices are conducting outreach on some level. What is not clear is the effectiveness of those efforts, particularly because there is no tool utilized to measure

the effectiveness of outreach efforts. Employees in some states mentioned the use of *RD Contacts* to track outreach efforts.

CBOs offered differing opinions on the effectiveness of RD outreach efforts. One California CBO mentioned that RD runs ads on local ethnic radio programs and that it uses a local extension service to help publicize USDA programs. A Louisiana CBO stated that when an RD representative attends a community event sponsored by the CBO, RD employees express an interest in doing more outreach, but then they do not follow through because of staffing constraints. A Michigan CBO said that while RD may attend outreach events sponsored by community groups if invited, RD employees do not generally volunteer to do so. This CBO recommended that RD be more aggressive/proactive in outreach. A South Carolina CBO said when RD is willing to attend an event, RD does not participate in any meaningful way. Though there were differing opinions regarding outreach, CBOs did share success stories in working with RD and the impact of programs in rural communities. Additionally, CBOs agreed about the need for greater clarity regarding funding opportunities, and simplification of the application process and process delays. For example, CBOs would like to know about opportunities before it is too late to apply, and receive advance notice if funds are limited.

When questioned regarding communication, the majority of Focus Group participants stated that they were satisfied with the information they received about RD programs. However, some participants stated RD could do a better job publicizing the application process and availability of programs. Additionally, one participant in North Carolina commented on the lack of communication given to existing customers regarding an office relocation. Specifically, this participant commented that the town was notified that the office had relocated after the fact, which caused the town to miss deadlines to apply for funding. Overall, the participants who received funding from RD for housing, business and community programs were satisfied with the effectiveness of programs, but shared stories of miscommunications, and their belief that their own persistence was the reason for their success with the programs.

CBOs consistently said that their constituents who were elderly and/or with limited educations have problems understanding RD program information. A South Carolina CBO said that there is a communication issue between RD employees and its limited education constituents

because some RD employees speak “above” their constituents’ comprehension levels and often use acronyms. A New Mexico CBO said that parsing through the “maze of information” is not for the “faint of heart.” The same CBO said it is up to the applicant to figure out how new programs work, and RD needs to be clearer about specific funding opportunities. Similarly, a Louisiana CBO stated that potential participants are not given a full understanding of what programs are available to them and the information is not well-explained.

The following are examples of Focus Group participant responses regarding the effectiveness of RD programs, outreach, and communication.

- “I was just surprised when they charged me some money I didn’t know about. It was around \$4,000 on top of my mortgage Because I am not familiar with mortgage, I didn’t understand, so I was pretty surprised.” (Mississippi.)
- “I had some property I wanted to develop into housing for medium, not low income. I went by and talked to the RD man in Alexandria, I never could get an answer out of him. I never got to the process of filling out an application, because he—it got so bad, that when I came there, it seemed like he was dodging me I just ended up dropping the idea of doing it.” (Louisiana.)
- “The people as a far as personality wise, the ones I have dealt with, that [communication] wasn’t a problem, but it was script-type situation, meaning they went by a script.” (South Carolina.)
- “I was kind of, for lack of a better word, blind-sided by about what I thought was going to be \$600 out of pocket, which became more like \$9600 because of closing costs... we were not prepared.” (North Carolina.)

3. Application Process

In response to questions regarding the application process, Focus Group participant responses included 1) the application process was easy; 2) the application was intrusive; 3) the application was repetitive;

4) the process was not timely; and 5) the application was difficult to complete.

The responses demonstrate, to some extent, that education and support from RD employees are key to an individual customer or perspective customers' perception of the application process. CBOs, on behalf of their constituents, expressed displeasure with the application process. Most often, terms like "streamlined" and "automated" were cited as the antithesis of RD's current process. Moreover, CBOs described the application process as "daunting," "intimidating," "frustrating," "complicated," "demanding" and "cumbersome."

Customers echoed similar sentiments regarding the process. Filling out USDA-required financial forms was often referred to as a challenge, even to those with advanced education. CBO interviewees stated that it appears RD employees do not have time to adequately explain the application to applicants, the process is slow, the red tape dissuades potential applicants from participating, and potential applicants do not have a full understanding of what RD programs are available to them. Both employees and customers noted that the education levels of many applicants do not include college degrees, which exacerbates the problems of filling out the complex government-required forms. RD needs to improve the application process, while balancing the need for greater automation against the reality that many of its customers in rural America do not have access to technology.

The following are examples of Focus Group participant responses regarding the application process.

- "I just felt there was a huge void in the process, you apply in a black hole and wouldn't hear anything. It was hard to find a live body to talk to about trying to, you know, the reams of paperwork that are necessary." (Louisiana.)
- "It was like we had the plague, we couldn't attract a dollar of interest in a number of grants that we applied for, and just got discouraged with the process." (Louisiana.)
- "I'm an engineer, I've got a Master's from LSU in Engineering Management, and I'm a Harvard MBA, and I'm overwhelmed with the application process. What in the hell is the average

rank and file human being out there going to do trying to get a loan?” (Louisiana.)

A participant in Albuquerque, New Mexico felt the process was delayed because of her status as a Native American. She felt she had to produce more documentation than non-Native Americans.

While participants offered critiques of the application process, however, a large number of participants in all States felt that, despite the issues with the applications, they received assistance from RD employees. For example, a response from one participant is listed below:

- “He [RD Staff] was very helpful. I mean, he just sat there and did all the stuff with me, you know like one on one... and I was pleased, because I’m old and don’t understand all these government forms.” (North Dakota.)

4. Fairness/Discrimination

In response to questions about RD’s reputation for fairness and whether the participants believed they had been discriminated against, a large number of Focus Group participants in the USDA-selected States felt they were treated fairly and were hesitant to suggest discriminatory behavior. Similarly, most CBO interviewees stated that they felt RD is fair and non-discriminatory. However, there were a few Focus Group participants and CBO interviewees who believed that they or their constituents were treated unfairly (even if they did not perceive overt discrimination). In large part, varying responses by Focus Group participants (see examples of responses below) highlight the difference in perceptions across the States. Participants in Southern States expressed discontent over treatment at some offices, which they attributed to race. Additionally, some Native American participants felt their ethnic background is a negative factor in dealing with RD. For example, a participant in Oklahoma believes he was discriminated against due to his Native American heritage, because he met all of the criteria for a loan but was still denied. He stated he was told the denial was because of his credit; however, the credit report from his tribe ranked him with a higher credit score.

While most Focus Group participants did not offer any specific commentary regarding discriminatory behavior, it is important to

highlight the perceptions of those who believe they were mistreated by RD. Often, those individuals cited poor communications and employee attitudes as reasons for the belief. A South Carolina participant felt discriminated against because RD employees required the participant to return to the RD office several times to supplement the application. Additionally, individuals who were denied loans and grants felt they did not receive proper information based on certain personal characteristics. Greater communication and more sensitive customer service may break down barriers and perceptions of unfairness and discrimination.

A California CBO stated that there is a general consensus among African American and Southeast Asian customers that they are not treated fairly by RD. A Michigan CBO stated that his constituents are “luke warm” as to their feelings about fair treatment from RD. A South Carolina CBO said that RD’s reputation for fairness depends on the specific RD office.

The following are examples of Focus Group participant statements regarding fairness and discrimination:

- “The people they have in administration and operation, they are very negative. They need to rescreen them and make sure some type of way, they are there to help the poor, not discriminate against them.” (Louisiana.)
- “They did not agree with the Navajo Nation home site lease, but when I applied with another lender, it was approved, that’s why I felt discriminated against.” (New Mexico.)
- “They were fair because they want to help you.” (California.)
- “Rural Development was--the best thing on earth.” (Mississippi.)

5. Denial of Application and Appeals

In response to questions regarding denial of applications and the appeals process, some Focus Group participants stated they were made aware of their right to appeal, while a large number of participants suggested that they were not informed of an appeals process or given proper explanations regarding the denial. For those who participated in the appeals process, a few stated they were satisfied with the results,

while others stated the process was not timely. Employees stated that denied applicants were made aware of their right to appeal via letter. However, some Focus Group participants indicated that they felt a certain level of intimidation when dealing with RD as a Federal government agency. Additionally, when questioned about the appeals process, those who claimed a lack of awareness stated they believed once a denial decision had been made, there was no recourse, and consequently they did not pursue the matter. No CBO said that its constituents were not made aware of the appeals process; however, some CBOs expressed that RD should not only explain the basis for denial but also provide information on how to be successful with an application in the future. One South Carolina CBO thought the process was fair because the same constituent filed two appeals and won both times.

The following are examples of Focus Group participant responses regarding the denial of applications and the appeals process:

- “My experience has been that they are glad to decline you or refuse you ... And not to start no issues on different races, but especially very seldom you come in contact with a Black. The majority of them is White and they are very negative toward Blacks.” (Louisiana.)
- “They never told me anything about an appeals process.” (Louisiana.)

A participant in Fresno who was denied a loan stated that he understood the reasoning behind his denial. He stated he was not made aware of an appeals process, but “I understood why they did it, and until I could do something about it, there was no point in me appealing that.”

An Oklahoma Focus Group participant stated he was never given the information that was the basis for the denial of his application.

A participant in Georgia did not understand why he was denied and stated that he went to the RD office several times to inquire, but was never given a written explanation.

- “I thought they turned me down and that was it.” (New Mexico.)

- “Well, I did receive a denial letter. It had a lot of terms that I really can’t relate to, so I had to have somebody read it to me and just explain what it means. So it was kind of confusing. I had to read it over and over again to understand what it meant.” (New Mexico.)

6. RD Website

Focus Group participants were asked first whether they utilized RD websites (both state and national) to obtain program information and second, how they reacted to the RD website. Responses included 1) the website was easy to use; 2) the website was not user-friendly; 3) participants had never used the website; or 4) participants did not have access to a computer. A large number of Focus Group participants did not view the Internet as a viable source to secure program information within their communities. Responses regarding use of the Internet depended in large part upon the age of the participant. Most often, younger Focus Group participants stated that the Internet was a good source; however, they also observed that RD’s national and state websites were not easy to navigate. Also, for those participants who had utilized the Internet to obtain program information, Internet use was more likely once they were vested in the application process, and not as a means of making initial contact with RD.

Commentary on the website by CBO leaders was generally negative. One New Mexico CBO representative stated that “once you get to the USDA website, there is nothing that tells you where to go ... the local website is just *useless*.” A Louisiana CBO stated that the website is not a valuable source of information because most of the CBO’s constituents do not use the internet. In contrast, a North Dakota CBO said the National and State websites were easy to navigate.

The following are examples of Focus Group participant responses regarding the RD website:

- “[W]hen you say website and all that stuff, he must be wealthy, because, you know a lot of Natives don’t have computers to look all that stuff up.” (North Dakota.)
- “I don’t have a computer.” (New Mexico.)

- “When I tried to drill down, it just needs work. I go to the national page and I felt like I should be able to click on a button and go to the state page and then local office ... a directory.” (North Carolina.)
- “I found it [RD website] quite helpful, I mean as far as guidelines, what you need to get the process rolling.” (Louisiana.)
- “I don’t get on it regularly, but I think as a way of communication ... we are the older generation and I think we’re a little slow sometimes to catch on to that.” (South Carolina.)

7. Office Accessibility

Focus Group participants were asked to comment on the proximity of the local RD office, whether the office is convenient, and whether there are physical barriers to individuals with disabilities. A large number of participants stated that offices are not geographically accessible, but because they were eager to participate in programs, they were determined to drive the distance to access services. Despite this, some participants mentioned that others within their communities may not have the means to drive to the office. None of the Focus Group participants mentioned any physical issues with offices that would affect individuals with disabilities. Some CBO interviewees indicated that the inconvenient location of the RD offices makes it difficult for constituents to participate and difficult for the CBO to partner with RD in outreach programs.

The following are examples of comments made by Focus Group participants and CBO interviewees regarding office accessibility:

In the Opelousas, Louisiana Focus Group, one participant described the first impression of entering the Alexandria office as being “cold”. The participant noted that there typically is not a human being located at the front entrance to welcome visitors or deliver information.

A participant in Arizona commented that RD employees have visited the local area, but if the employees had not traveled to local areas, it would have been difficult for some people to access programs.

Participants in Oklahoma stated that the local office is 30-40 miles away and that they are often referred to the State Office when they call by telephone.

A participant in Georgia expressed frustration with office accessibility and employees. He stated that he arranged on several occasions to drive 40 miles to the office and the staff person he had been working with was not in the office at the time of the appointment.

Participants in Mississippi noted that a staff person visited the community, which was helpful and made the program accessible.

In North Carolina, one participant noted that the local office was an hour from his town and that his town did not have public transportation. “We have a number of residents who don’t have their own transportation or access to a friend or family that would let them use a car.”

A Native American participant in North Dakota stated, “for Native people like me, there’s a lot of people that wouldn’t be able to come, the office is quite a distance away.”

A South Carolina CBO said that a drive to a local office for its constituents could be as long as 50-60 miles, which places a burden on the elderly and also low-income workers who tend to lose pay for time spent at the office and travel to and from the office. The drive, according to a Michigan CBO, is inconvenient because it can take between 45 minutes to one hour. A North Dakota CBO said distance is not a problem because most communications are by telephone and a New Mexico CBO said that, given the size of the state, long drives are inevitable.

8. Participation Barriers

Focus Group participants and CBO leaders were asked if there were any reasons why a customer or potential customer would be reluctant to participate in RD programs. Responses included 1) that there are no barriers; 2) racism; 3) language; 4) education; 5) paperwork; 6) geography; and 7) lack of knowledge regarding RD programs. Several CBOs and a few Focus Group participants commented on the funding process (“NOFA”), particularly grants, which they viewed as being biased towards groups who have better resources to create better application

packages or have advanced knowledge of funding opportunities. Overwhelming, though, CBOs and Focus Group participants stated that lack of knowledge of RD programs is the greatest barrier. They cited examples of emerging industries (*e.g.* bio fuels) and programs that they become aware of “after the fact”, which widens the gap between those who are “in the loop” and those that do not have access to information about opportunities.

Many of the barriers identified by customers were echoed by employees. Like other topics, the perception among many minority participants in the Southern states revolved around lack of knowledge and race. Many Native Americans articulated sentiments regarding barriers that are unique to their culture, including language and land use.

Focus Group participants in the California session stated that there were limited barriers; one participant spoke Arabic and stated that USDA did not provide a translator for him. Another participant stated that USDA may be intimidating to some potential customers because the U.S. government can be intimidating.

A South Carolina CBO stated that operating hours are a barrier for those who work and would lose pay for taking time off work to visit the RD office during RD’s hours of operation.

CBOs in New Mexico and North Dakota said that the “red tape” may keep some people from applying for loans. The North Dakota CBO also said that some programs require the hiring of engineers or architects, which can be cost-prohibitive, given the uncertainty of receiving the funds and the relatively small financial benefit.

The following are examples of Focus Group participant responses regarding participation barriers:

- “There’s not very much educated Navajos on the Navajo land, and it’s pretty hard to understand the hard words they use when they come visit you.” (New Mexico.)
- “Their accounting practices are different than the generally accepted accounting practices in the business world. It makes it burdensome at times. For example, they don’t include architect costs. They don’t include franchise fees that

have tangible business equity. Whereas general accounting principles, those are included as expenses. But if they ignore that expense, then it's not allowing more people to participate in this program." (New Mexico.)

- "I guess if you are of color, you might say, that would be one barrier, and where you are from ... if you are from the deep south." (South Carolina.)
- "I didn't see any barriers ... it's available, if you want it, go after it." (North Dakota.)
- "If I was a person coming from another country, who did not speak fluent English, it might have been hard." (North Carolina.)
- "I think if a person could go directly to a bank and get a loan and be approved, it has to be a much shorter, quicker, easier route." (North Carolina.)
- "I think the only thing that hurts us in our area is we only have leases. We need a 99-year lease. People don't want to come here and invest, whether it's Native American or non-Native Americans, unless you have long-term lease and then it's easier to get loans." (Arizona.)
- "For a \$100,000 grant, I have to hire a third-party engineer, when I'm already an engineer. They charge about 5% of the project ... It will cost me as much to go hire the engineer as the grant. How absurd is that?" (Louisiana.)
- "The paperwork is a barrier." (Louisiana.)

9. Focus Group Participant and CBO Recommendations for Improvements

Focus Group participants and CBOs were asked to comment about improvements that would make it easier to participate in RD programs, as well as ways in which RD could improve its policy, procedures, programs and services. Most, if not all, Focus Group participants and CBOs stated that RD needs to advertise more, because

the public is still unaware of the programs available. Focus Group participants and CBOs cited the need for improvements to the application process, specifically the paperwork and what can be described as “red tape.” A large number of Focus Group participants and CBOs commented on the need for better communication about the application process so that socially disadvantaged groups can be better equipped to participate. Additionally, they cited the need for customer service training for personnel, who they believe did not know enough about programs to effectively communicate, and who sometimes appeared indifferent to customer concerns. The highest priority recommendation for the overwhelming majority of CBO interviewees was the need for increased partnership between RD and local CBOs, particularly with regard to outreach.

CBOs offered a variety of additional comments regarding improvements to RD. For example, a CBO in North Carolina stated that employees need to be trained on cultural differences. A CBO in South Carolina recommended that RD, as part of the home loan process, provide applicants with a flow chart explaining the general steps in the loan application and closing process, along with a timeline as to when the various events generally occur. The same South Carolina CBO believed that realtors do not understand the RD homeownership programs relating to direct and guaranteed loans, and recommended that they receive training from RD. A Michigan CBO said that a “receipt for service” should be given to everyone who asks for assistance when coming to an RD office and not just when a receipt is requested. A North Dakota CBO recommended that in determining median income for residents of a local community, RD should not count the farmers, who the interviewee believes have higher incomes, and who many times do not actually live within the community. The same CBO recommended putting entire grant documents on the RD web-site so that they could be filled out electronically. A Louisiana CBO recommended that RD increase the number of RD employees to assist with customer service.

The following are examples of Focus Group participant responses regarding recommendations for improvements:

- “Communicate realistic expectations to potential applicants so that they don’t waste their time” (Georgia.)

- “There has to be some type of liaison for individuals in these programs. There has to be somewhere we can go that they’re not actually USDA but yet they are there to help us” (Oklahoma.)
- “Attend Navajo Nation Business conferences” (Arizona.)
- “Put an applicant in contact with an older applicant to help them through the process, like mentoring, I think Small Business Administration did it for Score” (Arizona.)
- “I would say the main way it can be improved is ... to prepare the employees to deal with the public and their needs ... in other words, everyone in the office should know what’s going on with the programs that USDA provides to the public” (Louisiana.)
- “If I’ve got a number one credit history, I don’t have to go to USDA, I’d go to a bank But since I don’t, I have to go to USDA. What does USDA do, they have the door open real wide for me to walk up to it, but just about the time I get ready to go through, it’s somebody, somewhere, slams it right in my face” (Louisiana.)

H. Headquarters Interviews: Summary⁹⁰

During Phase One of the Assessment, the Assessment Team conducted 23 interviews of both career and politically-appointed employees. Specifically, the Assessment Team interviewed the following individuals:

1. Under Secretary for Rural Development, Dallas Tonsager.
2. Rural Development Deputy Under Secretary, Cheryl Cook.
3. Rural Development Deputy Under Secretary, Victor Vasquez.

⁹⁰ Titles listed are accurate as of the time of the interview.

4. Administrator for Housing and Community Facilities, Tammye Trevino.
5. Administrator for Rural Utilities, Jonathan Adelstein.
6. Administrator for Business and Cooperative Programs, Judy Canales.
7. Administrator for Rural Development Operations and Management, Sherie Henry.
8. Deputy Administrator, Business Programs, Pandor Hadjy.
9. Deputy Administrator, Community Programs, Chris Alsop.
10. Deputy Administrator, Multi-Family Housing, Tom Hannah.
11. Assistant Deputy Administrator, Multi-Family Housing, Larry Anderson.
12. Director, Business and Industry Division, Carolyn Parker.
13. Director, Single Family Housing Guaranteed Loan Division, Joaquin Tremols.
14. Director, Guaranteed Loan Division, Mike Stiney.
15. Director, Rural Business, Nannie Hill Midgett.
16. Director, Civil Rights, Thelma Floyd.
17. Director, Single Family Housing, Philip Stetson.
18. Deputy Director, Property Management Division, Janet Stouder.
19. Senior Risk Manager, Rural Utilities, Rodney Carter.
20. Program Compliance Manager, Carlton Lewis.

21. Special Assistant to Administrator, Rural Utilities, Gary Bojes.
22. Special Assistant to Chief NRCS, former RD Official, Ben Dixon.
23. Native American Coordinator, Ted Buelow.

The initial round of interviews of Headquarters employees primarily served to educate the Assessment Team about the Agency's culture and programs, in preparation for the field interviews. Following completion of field interviews, the Assessment Team conducted additional interviews of select Headquarters leadership, including Agency Administrators and Deputy Undersecretaries, to follow-up on themes expressed during the initial round of interviews, as well as to receive updated information regarding program delivery and Agency initiatives.

Interviewees were asked about their roles with the Agency, perceptions regarding issues with program delivery, and to provide any documentation which would assist the Assessment Team in its analysis.

A summary of common themes that emerged from Headquarters interviews is listed below:

1. Field-based employees need additional training regarding permissible/ impermissible conduct as it relates to customers and the workplace environment.
2. There is a need for greater management training (including civil rights statutory requirements), which should be conducted live and include effective team-building approaches.
3. Outreach must improve; the most common complaint is that all customers (particularly SDGs) are not aware of RD programs.
4. State Directors have a lot of discretion; there should be greater focus/attention paid to State Director authority, training, and information about Headquarters priorities.
5. There is a lack of key career leadership succession planning. While retention is not an issue, there is no formal plan regarding

impending retirements and replacement of staff while seeking to improve professional competence/performance.

6. RD does not effectively educate the public. For example, the Agency could do a better job of promoting program success stories/accomplishments that serve customer interests.
7. Compliance reviews are not effective, particularly if the State being evaluated takes the lead in conducting the review, which can be a conflict of interest.
8. Training on a topic as important as civil rights should not be conducted via webinar.
9. The RD Human Resources division should improve to allow managers to hire qualified talent in a timely manner.
10. Failure to implement policy at the local level is *the* problem. The Agency needs to figure out a way to ensure that programs are consistently being delivered, regardless of local politics, biases, or organization and consistent with Headquarters policy.
11. The Agency needs an effective awards system, which recognizes performance and emphasizes outreach and program delivery to underserved communities and people.
12. The same groups and lenders are participating in RD programs, year after year. There is a serious need to ensure that all groups in the communities are being served. RD must make its programs known and report new customers every year.
13. There are distinct issues with tribal lands, *e.g.*, the lack of capacity to qualify for loans and cultural issues related to debt versus grants. A specific review is needed of USDA versus Department of Interior relevant statutory and regulatory policy regarding tribal lands.
14. With the increased variety of RD programs, employees should be cross-trained to some extent; however, specialization by program area is needed to effectively deliver programs.

15. Regarding Rural Utilities and Rural Business, there is a lack of diversity on cooperative boards, and in the lenders and participant communities in some Rural Utilities and Rural Business Programs.
16. Foreclosure - A few interviewees mentioned increased foreclosure rates which are likely aligned with the housing crisis, but stated it may have a disproportionate impact on RD's low income borrowers.

I. Field Interviews: Summary

A number of distinct issues were raised by USDA employees interviewed across the 15 Assessment States selected by USDA. While the Assessment Team's primary objective is to provide an overall assessment of both Agency and Department-wide issues, it is important to highlight themes that emerged from the individual assessment States where the Assessment Teams spent the most time. A more detailed analysis of several specific Contract Tasks follows below.

The Assessment Team conducted 675 interviews of State and Area office RD employees in the 15 States selected by USDA. Employees were selected based on job duties, with particular emphasis on interviewing employees who could provide information regarding program delivery. Interviewees were informed that responses would be given on a "non-attribution" basis, meaning that information obtained during the interview, would not be attributed to any individual, without that employee's permission, to anyone other than Assessment Team members, or except as required by law.

Using a questionnaire specifically developed for RD, interviewees were asked a series of questions designed to assess each employee's perception of program delivery to SDGs. For example, interviewees were questioned regarding the work environment, USDA's organizational culture, practices and policies as they relate to outreach and service to SDGs, the employee's awareness of the EEO and civil rights complaint process, the employee's awareness of any discriminatory acts (*i.e.*, whether they have been discriminated against or know anyone who feels that he/she has been discriminated against), and the employee's views of and recommendations on how to improve program delivery and the working environment. Employees were also asked appropriate follow-up

questions to assist the Assessment Team's understanding of employee perceptions. When formulating questions, the Assessment Team chose a mix of questions that would elicit opinion and discussion from employees as well as questions that provided quantitative data. Some questions were "scaled," requiring that the interviewee to choose a number on a scale of 1 to 5, with 5 as the highest ranking on the scale. Some questions required a "yes" or "no" answer. For each question, the interviewee was given an opportunity to elaborate on his or her answer.

A summary of state-specific information obtained from RD employees is set forth below.

1. Arizona

The majority of employees indicated that Native Americans, Hispanics and women are the predominant SDGs in their service areas. There was apparent diversity among employees in terms of race, ethnicity, gender and disability of offices visited. There were no offices visited that appeared to be inaccessible to individuals with disabilities.

A large number of employees suggested there are unique issues in dealing with Native American Tribes, including cultural barriers regarding development of land and land "held in trust." Despite these issues, many interviewees felt that the State Office had done a good job addressing cultural barriers and land issues. For example, the RD Arizona State Office utilizes a unique mortgage instrument which grants tribes "rights of first refusal" upon loan default.

A fair number of employees indicated that the State's immigration policy has been divisive and will negatively impact Hispanic constituents, because there is already a sense of distrust of government entities. Two employees mentioned that some other RD employees did not view Hispanics positively and were reluctant to conduct outreach in impoverished areas.

Most employees felt that they were too busy processing loans to conduct outreach. A few employees stated that there should be a full time outreach position within the State. The majority of employees interviewed stated that they believe in the mission of RD and feel that RD did a good job of delivering programs in Arizona, particularly in underserved areas.

2. California

The majority of employees interviewed indicated that Hispanics, Asians, and women were the predominant SDGs in service areas. There was apparent diversity among employees interviewed, in terms of race, ethnicity and gender. There were a few offices visited that did not appear accessible to individuals with disabilities in terms of counter height, automatic doors, and ramps.

Most employees indicated that they did a good job of delivering programs to underserved customers and potential customers and/or SDGs, but that this success was not a result of “targeted outreach.” The majority of employees stated that they outreached to everyone, regardless of protected characteristics. Most employees indicated that the State Office needs more employees and that their workload was more than they could handle. A number of employees stated they would like to be cross-trained because of the variety of programs being offered by RD. A number of employees felt that customer service would improve if employees were at least qualified to answer basic questions about other program areas.

3. Florida

The majority of employees indicated that African-American, Hispanics, and women were the predominant SDGs in their service areas. A few interviewees stated that there were some Native American groups served. There was apparent diversity among employees interviewed in terms of race, ethnicity, and gender. It should be noted, however, that several minority employees expressed dissatisfaction with race relations and diversity within the State operations. Those employees commented that they believed that there were few offices in the State that truly reflected the population of the local service areas. Regarding accessibility, there was one office that appeared to be physically and geographically inaccessible. Specifically, the entrance and ramp to the building would be barriers to individuals with disabilities. Additionally, employees in this Area Office expressed concerns regarding safety because the office had been broken into. Further, the conference rooms in this office afforded no privacy for customers and employees dealing with sensitive information.

A large number of employees stated that office location is the biggest barrier to Program delivery, and that it is difficult to reach potential customers who are in locations far from the local RD offices. Additionally, many employees felt that they are stressed to capacity due to increased pressure to deliver programs. Regarding promotion, a number of female Technicians felt that they had been overlooked for promotions, which they believed was a systemic issue within the Agency. They believe RD more readily hires external candidates for positions instead of looking for candidates within the organization to promote.

4. Georgia

The majority of employees indicated that African Americans and women are the predominant SDGs in their service areas. Some employees stated that they have heard there may be a growing Hispanic population in parts of Georgia. One employee did not feel that there were any groups in Georgia or in the United States that should be classified as socially disadvantaged. There was apparent diversity among employees interviewed in terms of race, ethnicity, and gender. A number of employees stated that they participated in the Department's Student Trainee programs while attending Historically Black Colleges and Universities ("HBCUs"). No offices visited appeared to be inaccessible to individuals with disabilities.

A noticeable issue for the Assessment Team, after conducting interviews, was the inconsistency among counties regarding loan eligibility determinations. A number of employees stated that they were allowed to "relax" loan criteria to make loans. While the regulations may have room for flexibility, consistency in loan determinations could be an issue for the Agency.

Employees stated that there were no funds set aside for marketing, including radio, television or newspaper, and that most outreach was being conducted at the employee's initiative rather than as directed by local RD management.

Additionally, a number of employees stated that housing has become the emphasis for RD, but many of the rural areas need business and jobs to support the housing market.

5. Louisiana

The majority of employees indicated that African Americans, women, and, to a lesser extent, Native Americans are the predominant SDGs in their service areas. There was apparent diversity among employees in terms of race and gender in offices visited. There was one office visited that did not appear accessible to individuals with disabilities.

Most employees stated that the offices could use additional employees in order to effectively deliver programs. Female employees stated that there are promotion issues within the Agency. A few employees mentioned that the new State Director, who is African American, is a good example of positive leadership. Overwhelmingly, employees felt the geographic location of the offices served was the greatest barrier to program delivery, and they commented that the Agency has diverged somewhat from principles that made the Agency accessible to customers.

6. Michigan

The majority of employees stated that African Americans, Hispanics, and women are the predominant SDGs in their service areas. There was limited employee diversity among interviewees in terms of race and ethnicity, but present in terms of gender. One office visited appeared to be inaccessible to individuals with disabilities. Interviewees provided varied responses regarding outreach. Managers indicated that outreach was being conducted, even targeted to SDGs; however, a number of employees suggested that no targeted outreach was being conducted. Employees stated that the State Office may take credit for the outreach being conducted at the initiative of a few employees, but that there was no formal outreach geared towards SDGs that have been underutilized in the programs. A Program Director stated that since leadership appeared more focused on loan production rather than equal access to programs, targeted outreach is not emphasized.

While several employees mentioned the Agency's mantra of "do more with less," employees felt that one Area Office's automated loan process is a best practice which should be utilized throughout the state. Customers are allowed to send forms electronically, which has proven to be efficient for some customers. Many employees stated that the single family

housing guaranteed program is thriving in the State, but that there has been less focus on other programs in many offices.

Several employees from an Area Office have filed EEO complaints, based upon an office relocation initiated by the previous State Director. The complaints appear to be based upon age and retaliation. Several interviewees stated that there has been tension regarding office relocations, which they thought has had a detrimental impact on the counties served, particularly those with minority concentrations.

7. Mississippi

The majority of employees indicated that African Americans and women are the predominant SDGs in their service areas. A number of interviewees stated Mississippi is unique because almost the entire state is rural and many of the counties are considered "persistent poverty counties." There was apparent diversity among employees interviewed in terms of race and gender. There were two offices cited by employees as being inaccessible to individuals with disabilities (but those offices were not visited by the Assessment Team as they were located in counties that were not part of the Assessment).

A number of employees, including managers, commented on the lack of motivation and poor attitudes of employees as the primary barrier to program delivery. Many interviewees stated that they were frustrated with their jobs and felt that doing more outreach would not solve the problems of insufficient funding. They stated that when they conducted outreach in the past, there was insufficient funding to match the number of applications. A few employees mentioned that successful outreach often needed to occur after traditional work hours or on the weekends, because potential customers are working during normal outreach hours. A number of employees also mentioned that the State Office website is poor, but that a lot of potential customers may not have access to a computer so that improving the website may have limited benefit.

A number of managers discussed at great length their frustration with the performance management program. While a number of employees commented on tensions within the State with management, managers stated that they are dealing with the lackluster performance of employees, and stated that there are very few incentives for employees to be more productive and motivated. Interviewees stated that there needs

to be a revised policy regarding discipline of government employees. Most felt the “system” did not allow government employees to be disciplined and often gave “slaps on the wrist” for offenses that would warrant discipline, up to and including termination, in the private sector.

8. New Mexico

The majority of employees indicated that Hispanics, Native Americans, and women are the predominant SDGs in their service areas. There was apparent diversity among employees interviewed in terms of race, ethnicity, and gender. No offices visited appeared to be inaccessible to individuals with disabilities. It should be noted that New Mexico is the fifth largest state in the country in terms of geography, and many of its counties are impoverished. Several employees mentioned that despite its geographical size and distance between counties, it was their understanding that the State had fewer employees compared to smaller states.

A number of interviewees had comments regarding office environment. They stated that there is little accountability for employee performance or behavior. For example, there have been incidents in which management has tried to discipline employees for infractions, but the process was delayed and ultimately impacted program delivery to customers. A few employees who are less tenured and not “career” government employees stated that, to some degree, the government should employ private sector models to influence employee performance.

It was noted by several employees that the Las Vegas sub-Area Office services some of the poorest counties in the state, but that it had failed to make the expected loan amounts in the areas. It was also stated that overall, RD has done a poor job of utilizing its loan allocation in the State. A few employees did mention current efforts to increase productivity, including revisiting determinations of eligible areas, including *colonias*⁹¹ in the southern part of the State.

Employees cited substantial diversity within the state, but many observed that employees needed greater cultural competency training to deal with potential customers. Overall, the common themes that

⁹¹ The term “colonia” refers to border towns, which have a predominantly Hispanic population. Colonias may be found in Arizona, California, New Mexico, and Texas.

emerged from interviews were low employee morale and the need for greater productivity in the State, particularly in the most underserved, impoverished regions.

9. North Carolina

The majority of employees indicated that African Americans, Native Americans, and women are the predominant SDGs in their service areas. A few employees mentioned the presence of Hispanic migrant workers. There was apparent diversity among employees interviewed in terms of race and gender. No offices visited appeared to be inaccessible to individuals with disabilities.

A number of employees commented on issues of problematic offices in the State, where customers have complained of disparate treatment based on race. Additionally, several employees commented on issues regarding nepotism and conflicts of interest within the Agency. Specifically, at the time of interviews, employees commented on the perceived issues associated with two of the State's largest service areas being managed by relatives.

Employees cited geography and conflicts of interest as the greatest barriers to program delivery within the State. Female employees criticized the Agency's promotion process, which they believed negatively impacted women. Additionally, minority employees stated that RD funnels minorities into the Single Family Housing Program Area, which limits their opportunity for professional/career growth.

It should be noted that while employee diversity was raised as an issue in the past, a number of interviewees felt that the State has made great strides in this area as evidenced by the appointment of an African American State Director and the utilization of programs (*e.g.* Student Trainee) to increase the pipeline of diverse employees.

10. North Dakota

The majority of employees indicated that Native Americans and women are the predominant SDGs within the state. There was limited diversity among employees interviewed in terms of race, but diversity was present in gender. No offices visited appeared to be inaccessible to individuals with disabilities.

In terms of reaching the Native American population, employees provided examples of successful initiatives, including funding for tribal community development. It was noted that there needs to be greater relationship-building with various tribes, including breaking down the myths that many employees have about Native Americans.

Female employees stated that the mentality among men in the Agency has impeded the professional development and the promotion of women. At the time of interviews, it was noted that there were few senior management level employees in the state. There were several negative comments regarding personnel issues within the state. A number of employees suggested increased managerial training to combat pervasive personnel issues.

11. Oklahoma

The majority of employees stated that Native Americans, African Americans, and women are the predominant SDGs in their service areas. There was limited diversity among employees in terms of race and ethnicity, but diversity was present in terms of gender. No offices visited appeared to be inaccessible to individuals with disabilities.

The majority of employees stated that there was limited to no targeted outreach being conducted to the underserved and/or SDGs. It was noted that there were plans to remedy the lack of specific outreach by developing marketing materials and establishing better relationships with community partners.

Some employees stated that there has been no accountability for civil rights, and that civil rights is only a priority when there is litigation. One employee stated that RD should reinforce a message of non-discrimination and ensure categories like national origin and religion are emphasized because a number of employees make jokes about and stereotype people of different backgrounds and cultures. A female employee stated that nepotism and bias are prevalent throughout RD.

Several employees stated they look to states like Iowa and Nebraska for models of program delivery. They stated that those states have great websites and have automated the loan process, which helps employees' productivity and reduces customer complaints regarding timeliness.

12. Pennsylvania

Most employees indicated that there are very few SDGs within eligible service areas, with the exception of single women. A few employees mentioned the presence of growing Hispanic and Egyptian populations. A number of employees stated that the Amish have participated in the Department's programs. There was limited employee diversity in terms of race and ethnicity, but present in terms of gender. No offices visited appeared to be inaccessible to individuals with disabilities.

The majority of employees interviewed complained about work load and the pressure to obligate loans, which left no time to conduct additional outreach.

A number of female employees stated that women were promoted at disproportionately lower rates compared to men. Specifically, female employees stated that it is disheartening to work as a Technician, and be required to train a male Student Trainee, who will more rapidly advance within the Agency.

A few employees mentioned that they did not have access to interpretive services and that they allowed a family member or child to translate documents. Additionally, a few employees complained that there had been so much emphasis on SFH that other equally needed programs had suffered.

13. South Carolina

The majority of employees stated that African Americans and women are the predominant SDGs in service areas. There was apparent diversity among employees in terms of race and gender. There was one office visited which appeared to be physically inaccessible to individuals with disabilities, specifically bathrooms and building entrances.

Most employees stated that office distance is the greatest barrier to program delivery. It was stated that many employees try to mitigate the barrier by holding office days in areas where there is no longer an RD presence. Overall, most employees believe they do a good job delivering programs and that poor credit and lack of capacity to take on loans are the primary reasons many individuals do not qualify for programs.

Additionally, there were several employees who stated that there were issues regarding determination of eligible areas in the State. Several employees stated that the State should reevaluate eligible areas because potential customers often complain about being told they are ineligible, despite their close proximity to eligible areas.

A number of employees also stated that employees could use additional customer service training, stating that rude behavior can often be interpreted as being discriminatory.

Additionally, a number of female employees stated that there is an absence of females in management positions within the State, and they are often relegated to programs (*i.e.*, housing) with no promotional opportunities. At the time of the interviews, employees stated that there were two female managers in the State, the State Director and Administrative Officer. There were a number of complaints regarding the multi-family housing program; a few employees stated that tenant complaints have been ignored by RD employees.

14. Vermont

The majority of employees stated that there are very few minority groups within the State; however, there are a fair number of women who may be socially disadvantaged within eligible rural areas. Employees stated that there are minority communities in the Burlington area, which is ineligible for most RD programs because of its population. Offices visited had no racial diversity but were diverse in terms of gender. No offices visited appeared to be inaccessible to individuals with disabilities.

The employees interviewed were quite candid and appeared to be integrally connected to the communities they service. Despite the limited number of minorities, a few employees provided documents which demonstrated outreach efforts made to SDGs. Employees also provided examples of creative approaches to outreach, including use of free media and community-based partners.

Employees stated that RD can do a better job of internal communication, particularly Headquarters responsiveness to those who are in the field, delivering programs. Additionally, a number of employees mentioned the lack of succession planning which they contend is vital to the future of program delivery.

15. Washington

The majority of employees stated that Hispanics, Native Americans, and women are the predominant SDGs in their service areas. One Loan Specialist stated that she would not classify the Native Americans in the State as being disadvantaged because they were becoming wealthy through business, primarily the gaming industry. This Loan Specialist stated that a small number of tribes were poor. There was limited racial and ethnic diversity among employees in offices visited, but present in terms of gender. One office visited may be inaccessible to individuals with disabilities in terms of ramp entrance to the building.

A number of employees interviewed stated that new employees do not receive sufficient training, which negatively impacts program delivery. They cited inconsistency in process and delays as examples of issues that result from the lack of formal training. Regarding language barriers, a few employees stated that Washington could use more Spanish-speaking employees to better serve the customer base, particularly in the Yakima Valley region.

While some employees expressed dissatisfaction about training, a number of employees in the Olympia Area Office stated that their manager was an effective leader who raised the bar for successful program delivery. Employees stated that they were involved in a “Government to Government” program with tribes, they celebrated special emphasis months and they participated in an informal cross-training program, in which employees went on field trips to ensure that they were aware of opportunities and projects that were taking place in their service areas.

Conclusion: Field Interviews Summary

The Assessment Team determined that outreach, performance management, geography and lack of promotional opportunities for minorities and women were consistent themes addressed by employees across the States. Despite some examples of outreach efforts, many employees wondered why RD was still a mystery to the public. Employees also responded that very little to no outreach was being conducted towards groups who are underserved or who underutilize programs. Additionally, employees commented on the struggles to

conduct effective outreach without sufficient resources and without the ability to track the effectiveness of outreach efforts. Others questioned the need for outreach when they were overwhelmed with existing applications from potential customers, the majority of whom received information from community organizations, friends, family, realtors, or banks. A large number of employees stated that the Agency has gotten away from “its roots” in rural communities, which serves as the greatest barrier to program delivery. It should be noted that at the time of interviews, employees were in the midst of obligating funds from the American Recovery and Reinvestment Act (“ARRA”). Under ARRA, the Agency received an infusion of capital which undoubtedly increased the workload for many RD employees.

The Assessment Team encountered employees who were enthusiastic about their roles and the mission of RD, and others who were disconnected and apathetic. While many managers embraced their role as leaders, there were quite a few managers who were vocal about the inability to swiftly discipline “problem” employees. Area Directors expressed frustration with time taken by increased administrative tasks. The Assessment Team was told that formerly Area Offices had an Administrative Manager who supported the Area Director, allowing the Area Director to focus primarily on program delivery. Many female employees spoke of a “glass ceiling” and “good ole’ boy” network and the lack of opportunity to advance within the Agency. Minority employees expressed similar sentiments regarding promotional opportunities and overall diversity within the Agency. Specifically, a number of minority employees felt they were relegated to the Housing Programs (MFH and SFH), which they stated is perceived as the “less difficult” programs to deliver within the Agency. Many minority employees felt that diversity in the Agency had improved within the past year, particularly in senior positions. Additionally, a large number of employees interviewed stated that the Agency needed to improve internal communications and employee morale. For example, employees felt the Agency made decisions on a national scale without local input, and failed to communicate new programs in a timely manner, which resulted in employees being unable to reach those groups who are more difficult to service. A large number of employees commented on feeling “unappreciated” and noted the lack of recognition for going above and beyond their employment duties.

J. Additional Contract Task Analyses

This section of the Report contains the Assessment Team's analysis and evaluation of RD's delivery of program and financial services in accordance with several specific tasks set forth in the Contract. This section includes analysis of responses from employees interviewed in the 15 USDA-selected States, customer input received during Focus Group sessions, as well as interviews with CBOs.

- 1. "Assess current program delivery and strategies and their impact on constituencies in 6 counties in 15 states (consider whether USDA practices are discriminatory and whether all have equal access to USDA programs)."**

USDA employees were asked a series of questions regarding USDA policies and practices, awareness of discriminatory conduct, and issues which may or may not pose barriers to program delivery.

Most often, employees stated they were not aware of any discriminatory practices or policies, that customers were made aware of their right to appeal a negative decision, and that Civil Rights language is included on USDA letterhead. A few employees mentioned that there was a colleague in their office who may have negative views of SDGs. Usually, employees attributed poor service to a lack of customer service training; colleagues simply did not know how to interact with customers in a positive manner. When questioned further about whether the behavior was discriminatory, interviewees who identified problems believed that their co-workers may have biases towards or against certain groups, based on stereotypes. (Several employees appeared reluctant to cite any awareness or instances of discrimination, for fear of reprisal.)

Very few employees were aware of specific "acts of discrimination." More tenured employees who worked with FmHA recalled that they had heard of employees who were found to have committed discriminatory acts against colleagues or customers, however, no employees interviewed were able to provide details regarding the discriminatory acts or consequences of such behavior. A few employees believed that "bad actors" may have received training or were transferred to a different office or had become FSA employees after the reorganization.

Regarding barriers to program delivery, geography and staffing were listed as the greatest barriers. This should not come as a surprise to the Agency, given the large amount of recent years' office closures.

A large number of employees appeared to struggle with balancing workload with the need to reach more customers. Interviewees cited time constraints as the greatest impediment to outreach. Interviewees stated that RD leadership sends a message that loan-making is the priority, not who is being affected by the process. If employees believe that the Agency is driven by the numbers, employees are going to pursue customers who are easier to service.

When questioned about additional barriers to program delivery, language was cited by 27% of employees. Most often employees stated that applicants use relatives, including children, to interpret when necessary, or that employees contact the State Office for guidance. There were inconsistent responses among the 15 USDA-selected States regarding access to an interpreter service. In some States, employees stated that they have access to and are aware of the contact information for the interpreter service, while some employees mentioned that they seek "free" interpreter services through local institutions (*e.g.*, community colleges, universities, or high schools). None of the employees mentioned any Agency-funded or local programs offered to help customers and potential customers improve their proficiency in English.

In reference to budget concerns, a large number of employees responded that the lack of funds, timeliness of funding, and scarce grant funds were the primary issues affecting delivery of programs to customers. Specifically, most low-income customers do not have the capacity to take on loans, and there is often misunderstanding as to whether they were denied or placed on a waitlist.

The following are statistical summaries of employee responses to select questions regarding this Task:

- Approximately 95% of interviewees responded that they took steps to ensure that all customers are treated fairly.

- On a scale of 1-5, with 5 as the highest, employees, on average, rated “programs delivered regardless of protected characteristics” at 4.7.⁹²
- Approximately 3% of interviewees felt that someone in their office treated customers in an unfair manner.
- Approximately 46% of interviewees responded that they are aware of barriers for SDGs to equal access to programs.
- Sixty percent of employees stated that geography and staffing are the greatest barriers to program delivery. A large number of employees believed their offices are understaffed and that there is increased pressure to deliver programs.⁹³ Additionally, most stated that they did not have enough time or resources to travel to service areas that were not close to the office.
- Approximately 27% of employees stated that language is a barrier to program delivery.
- Forty-three percent of employees stated that budget is a barrier to program delivery.
- Eighty percent of employees responded that there are no financial or performance-based incentives for employees that would encourage them to perform in a non-discriminatory manner.

No Focus Group participants and no CBO identified any RD practices or policies as being overtly discriminatory. However, as discussed above, some Focus Group participants, particularly in southern states, expressed discontent regarding treatment by RD employees, which they regarded as discriminatory. When questioned further about experiences,

⁹² Employees were asked to rate program delivery regardless of the following 19 “protected characteristics”: race, ethnicity, color, national origin, gender, physical abilities, sexual orientation, age, marital status, parental status, family status, religion, political beliefs, protected genetic information, educational attainment, socio-economic status, native language, limited English proficiency, and income derived from public assistance.

⁹³ As mentioned above, at the time interviews were conducted, most states had an additional allocation of funds under the American Recovery and Reinvestment Act (“ARRA”). Specifically, in addition to regular funding, RD received over \$21 billion under ARRA.

many Focus Group participants cited poor customer service as a chief complaint. Additionally, Focus Group participants cited language, geography, lack of understanding regarding programs, and paperwork as barriers to program delivery. In addition, participants referred to the costs associated with traveling to a distant office, and financial barriers of hiring professionals (architects/engineers) in order to obtain funding. The following are examples of responses received from Focus Group participants regarding discrimination:

- The very negative attitudes of the administrative and operations staff (Louisiana);
- Poor assistance received from RD staff (South Carolina);
- Poor communications by RD staff (New Mexico);
- After submission of an application, being required to make additional trips to the RD office to supplement the application (South Carolina);
- That a Native American was denied a loan from RD, but was approved from another source (New Mexico);
- Native American heritage and historical discrimination (Oklahoma).

While there were responses from participants who believed that they had been discriminated against, the majority of participants provided favorable responses regarding their experience with RD staff. For example, responses included:

- “No it would be just the opposite. They have been extremely cautious not to discriminate” (Oklahoma).
- “I think that you’ve got a large organization trying to do the best they can with a minimal amount of people. . . .” (Oklahoma).

- “I was treated very well. No bad feedback on that” (Arizona).

A Georgia SDG participant said that he did not believe that he had been discriminated against, even though his application had been denied.

Two CBOs in North Dakota also said that they did not believe that their constituents felt they had been discriminated against, and these CBOs were complimentary of the service they received from RD employees.

In sum, while employee interviews did not reveal evidence of “specific acts” of discrimination, there appear to be numerous barriers, including geography, staffing, budget, program requirements, and language, that contribute to ineffective program delivery to SDG customers. In large part, as expressed by customers and employees, many office locations are not conducive to serving rural populations generally. This issue has a greater impact on those without access to transportation or those who cannot easily take time from employment to visit a distant office location. Additionally, many employees felt that lack of time and resources to visit distant areas further exacerbate the problem. Regarding language, the use of family members (including children) as interpreters was listed as a common practice in the absence of agency-provided interpreter services. While this practice seems harmless, it could result in miscommunications.

2. “Evaluate the effectiveness of local USDA leadership in assessing community and constituent needs and in adapting USDA programs, within applicable laws and regulations, to meet those needs.”

USDA employees were asked a series of questions about management and the effectiveness of management in assessing the needs of the community and potential customers.

The interviews revealed that there is a marked difference among offices. Many managers commented that their roles have become primarily administrative, reducing their ability to work actively with employees on program delivery. Some employees were able to cite examples of improvements to the office environment regarding outreach and service to SDGs, including special emphasis month observances and discussions with management on how to improve outreach to underserved groups.

A large number of employees were frustrated with the lack of guidance received from management and failure to provide resources that would allow creative outreach. Many employees provided examples of utilizing their own resources to fund outreach events.

The majority of employees were not aware of any reports that examined demographics of the customer base compared to the demographics in service areas. Some employees responded that they knew their service areas well enough, and that they did not have to “track” program participation. A significant number of other employees responded that they did not know which groups were not participating in programs.

Additionally, newer employees commented on the lack of formal training, which impedes their ability to effectively deliver programs. Many seasoned employees stated that they could use additional program delivery guidance.

The following are statistical summaries of employee responses to select questions regarding this issue:

- Approximately 51% of interviewees responded that their office took specific steps to improve the office environment and attitudes towards service to SDGs (and 49% said they do not).
- Approximately 66% of employees were not aware of any reports that examine the impact of the office’s programs on customers and potential customers that were denied USDA services in the past.
- Approximately 50% of employees were not aware of reports, studies, or analyses that examined the demographics of their office’s customer base compared with the demographics of the population in their area.
- On a 5 point scale, with 5 as best, RD employees rated their office’s environment and attitudes regarding outreach and service to SDGs and potential customers as 4.38.

As noted above, the effectiveness of local leadership varies significantly from office to office. Neither Focus Group participants nor CBOs have

sufficient information to determine whether it is local, State, or National leadership that assess community or constituent needs or adapt USDA programs to meet those needs. However, as discussed above and below, there are a number of areas of improvement which Focus Group participants and CBOs identified. Some key areas include:

- Increasing and improving the delivery of outreach to the SDG communities;
- Providing more complete, timely, and “understandable-to-the-layperson” information about RD programs, offers, and eligibility requirements;
- Not using acronyms and technical language that cannot be understood by less-educated or less-knowledgeable customers;
- Reviewing applications closely when they are first submitted and clearly explaining to the applicant any and all additional information needed so the customer needs to return to the office only once to complete the application;
- Having multi-lingual employees or translators available to assist customers who do not speak English and having materials translated into languages when there is a customer-base that justifies such translations;
- Simplifying applications and other forms;
- Treating all customers the same, regardless of race, ethnicity, size of farm or the like;
- Ensuring that employees are adequately trained to serve customers from diverse cultures different from their own;
- Fully explaining the reason(s) for denial of an application and ways applicants can improve their chances of being approved in the future;

- Ensuring that all denied applicants are fully informed of their rights to appeal denial decisions;
- Improving/simplifying the RD websites;
- Expanding office hours to enhance accessibility by customers; and
- Refusing to tolerate any RD staff member engaged in discrimination.

The Assessment Team found that the effectiveness of local USDA leadership in assessing community and constituent needs, and in adapting USDA programs to meet those needs, varied greatly from office to office. Those offices that lacked a manager actively engaged in program delivery, and where employees did not receive sufficient training and guidance, are less effective in reaching SDGs in a creative and productive manner.

3. “Assess and analyze the cultural climate, cultural competencies and perceptions, as well as equity of business processes and timelines employed by USDA and its effect on the broad diversity of its constituents.”

USDA employees were asked a series of questions regarding the 1) cultural climate of their offices; 2) how well employees dealt with diverse customers; and 3) the equity of business processes and timelines. The majority of employees responded that they treated all customers fairly, however, almost 47% of employees responded that there were issues with the business process, including timeliness and the complexity of the application.

Regarding equity of the business process, most often, employees stated that the application could be difficult for older customers and those with limited education. Additionally, there were several comments regarding the inability to timely process applications due to increased workloads. A number of employees in the MFH program area expressed frustration with workload and timely completion of MFH compliance reviews and Affirmative Fair Housing Marketing Plans. Employees in many states were behind on conducting MFH compliance reviews, and stated that most if not all complaints from tenants dealt with property management,

which in some cases could be resolved informally. An employee in South Carolina mentioned that some RD staff ignore tenant complaints. The Assessment Team was informed by some employees that MFH Compliance Reviews are regularly conducted, with every project being fully reviewed on a rolling basis every five years, and more frequently if there have been tenant complaints.

When questioned about cultural awareness and cultural sensitivity, some RD employees stated they had colleagues who made rude comments or stereotyped customers and potential customers. For example, when questioned about a customer coming into the office with paraphernalia clearly indicating their political beliefs, some employees responded that the customer may be treated differently based upon the political affiliation of the employee providing assistance. Additionally, employees commented on USDA's emphasis on race and gender regarding diversity issues, but less emphasis on disability, national origin, and religion. For example, a number of employees, when questioned about someone coming into the office who appeared to be Muslim based on religious garb, mentioned that this may be an issue in some offices, due to heightened tensions surrounding terrorism and ignorance of Islamic culture.

Another distinct issue raised during employee interviews was the role of Civil Rights at the state level. Most employees acknowledge that their states had a Civil Rights position, and the majority of employees responded that they knew the person in the role or how to contact the individual. At the time of interviews, in some states, the Civil Rights position (Manager or Coordinator) was a collateral duty. Some employees in that role felt inadequately trained on civil rights issues and often did not have enough time to dedicate to civil rights priorities.

Regarding existing training on diversity and civil rights, almost all employees cited *AgLearn*, the web-based training tool. Most employees stated that the training was "boring," but a large number of employees stated they understood the financial practicality of utilizing a web-based module. The majority of employees interviewed believed they were culturally competent to serve diverse customers. When questioned regarding improvements to cultural competence, employees stated they could now communicate better with colleagues as well as individuals who do not speak English.

The following are statistical summaries of employee responses to select questions regarding this issue:

- Over 83% of employees responded that they received cultural sensitivity training via *AgLearn*.
- On average, on a scale of 1-5, 5 as highest, employees rated the effectiveness of the *AgLearn* training as 3.5.
- Over 80% of employees stated they would prefer live cultural sensitivity, diversity, and civil rights training.

As noted above, some Focus Group participants and CBOs stated that there were issues with cultural and equitable delivery of programs.

A central cultural issue is the inability of RD employees to communicate effectively with customers who speak foreign or Native American languages, or who have less education. A South Carolina CBO also mentioned RD employees using technical language and acronyms as an issue for less educated constituents of the CBO as being an issue.

Additionally, some Native American tribes do not own, but lease, lands, and they perceive RD's inability to adapt programs to their unique circumstances as a significant issue. As noted above, some Focus group participants stated that there was an inequitable delivery of programs because of their race or ethnicity.

The Assessment Team has determined that there is a need for live enhanced cultural sensitivity, diversity, and civil rights training to assist those employees who lack cultural sensitivity and/or knowledge about how to interact appropriately with diverse customers and fellow-employees. Arguably, even if employees are not overtly discriminating against customers or potential customers, there is a perception of discrimination based on poor customer service and/or the lack of knowledge about people with different backgrounds, cultures and/or perspectives.

Also, an area as important as civil rights should be assigned to an employee as a full-time position, preferably a managerial role. To combat large numbers of MFH tenant complaints, RD should 1) seek to expand its existing Memorandum of Understanding with Housing and Urban

Development (“HUD”) to allow random testing of apartment complexes, and 2) ensure that employees are actually conducting MFH Compliance reviews as scheduled.

4. “Examine outreach efforts at the local level. Research the different outreach techniques employed by USDA staff and the priority that Constituency outreach has in local Service Centers.”

USDA employees were asked a series of questions regarding which SDGs exist in substantial numbers in the state and the extent to which outreach efforts were geared to these groups. Specifically, interviewees were asked to indicate whether African Americans, Asians, Hispanics or Latinos, Native Americans, Women, Individuals with Disabilities, or other groups that could be deemed disadvantaged exist in substantial numbers in their service areas. While most interviewees believed that there were SDGs that existed in substantial numbers in service areas, very few responded that there were outreach efforts specifically targeted to reach SDGs.

There appears to be inconsistent understanding of what it means to be socially disadvantaged. For example, one employee did not believe anyone in the United States is socially disadvantaged.

Others debated the inclusion of certain groups within the definition. For example, a number of interviewees balked at the inclusion of Native American groups within their service area as being socially disadvantaged, because of the perception that Native Americans are all becoming wealthy from the gaming industry.

When questioned regarding any issues that impede greater outreach overall and to underserved groups, employees cited time, workload, motivation, and lack of guidance from leadership as common barriers to improving outreach.

The following are statistical summaries of employee responses to select questions regarding this issue:

- Fifty percent of employees responded that outreach to SDGs is not a high priority.

- Over 69% of employees responded that the Agency does not offer any incentives to conduct creative and effective outreach.
- Over 81% of employees responded that they are not aware of anyone who has received a bonus, high performance rating or other incentive (or penalty such as low rating or discipline), for activities related to successful outreach to SDGs and potential customers.
- On average, on a scale of 1-5, 5 as the highest, employees, rated their office's creativity in conducting outreach to SDGs as 3.6.

Example outreach techniques offered by interviewees include:

- 1) Attend conferences.
- 2) Contact realtors and community banks.
- 3) Attend local church, school and municipal events.
- 4) Post flyers locally (stores, laundromats, municipal buildings).

As noted above, most Focus Group participants and CBOs were not aware of outreach efforts and said they learned of RD programs through word-of-mouth or from CBOs, respectively. Some participants said they were not aware of any outreach effort made by RD. For example, one participant in Raleigh, North Carolina, said he must take the initiative himself if he wants to learn about RD program offerings.

In contrast, other participants and CBOs identified a variety of ways RD has effectively conducted local outreach to SDGs. For example, RD conducted outreach by:

- Visiting the areas it serves. (Arizona)
- Conducting a seminar at City Hall. (Mississippi)
- Conducting funding fairs, and sending monthly flyers. (California)
- Sending e-mails. (North Carolina)
- Attending CBO community functions (One participant noted that RD always expresses at these functions its

intent to conduct more outreach, but ends up not doing so because of understaffing). (North Carolina)

- At the local office level, RD employees will go out of their way to promote programs and communicate with CBOs. (New Mexico)
- RD makes a concerted effort to inform individuals about programs by attending programs, participating in seminars, speaking with CBOs, and providing written documentation. (South Carolina)
- Attending monthly CBO meetings. (North Dakota)

Based on employee and customer input regarding outreach, the Assessment Team has concluded that, despite being vital to the Agency's mission, outreach is deficient in many service areas. Based on this input it appears that RD's focus has been placed on loan production which to some extent has diminished the priority of outreach to new and/or underserved groups. Several employees stated that there is not a need to conduct outreach without sufficient funding or time to process existing applications. There is no means of tracking outreach to determine the effectiveness of outreach efforts, other than the use of *RD Contacts*. Further, there is very little to non-existent targeted outreach geared towards SDG groups that are underutilized in RD programs. Despite high ratings given by employees related to the priority of outreach, most employees stated that they lack time to conduct outreach due to processing of existing applications. Moreover, the majority of Focus Group participants and CBOs stated that customers became aware of RD programs by third parties or their own initiative.

5. “Identify statutory and regulatory policies that may lead to discrimination and bar individuals from participating.”

USDA employees were asked a series of questions regarding the identification of any statutory or regulatory policies that may lead to discrimination and prevent individuals from participating in programs. The majority of employees were not aware of regulatory, national, state or local policies that may lead to discrimination. However, a few employees mentioned (a) the age restriction for the 504 grant program and its impact on disabled customers under the age of 62, and (b) the *recapture*

requirement, which requires borrowers to repay certain subsidy amounts when the title to the property transfers or the borrower is no longer living in the dwelling, unless the borrower ceases to occupy the property for a reason that is acceptable to RD.

While most employees stated they were not aware of any national, state or local policies which may bar or create barriers to program participation, some employees identified state “right to cure” provisions, which impact customers involved in foreclosure proceedings, and state immigration policies, which involve policing of illegal immigrants, as barriers which may bar individuals from participating.

The following are statistical summaries of interviewee responses to select questions regarding this issue:

- Approximately 75% of employees responded that they were not aware of any statutory or regulatory policies that may lead to discrimination or bar individuals from participating.
- Approximately 83% of employees responded that they were not aware of any national, state or local policies that may lead to discrimination and bar individuals from participating.

Neither Focus Group participants nor CBOs had knowledge about specific statutes or regulatory policies that may lead to discrimination or bar participation.

As noted above, while most employees stated they were not aware any national, state or local policies which may bar or create barriers to program participation, some employees identified state “right to cure” provisions, which impact customers involved in foreclosure proceedings, and state immigration policies, which involve policing of illegal immigrants, as barriers which may bar individuals from participating. Employees also cited the 504 grant requirements as impediments to disabled individuals under the age of 62, and the recapture requirement as program policies that negatively impact some customers.

6. “Examine national, state, and local policies that may lead to discrimination and bar individuals from participating.”

Interviewees were asked to comment on any national, state and local policies which may bar individuals from participating. Other than issues identified above, employees, CBOs, and Focus Group participants were not aware of any national, state and local policies which may lead to discrimination and bar individuals from equitably participating in programs.

7. “Examine program delivery information technology tools to ensure equity and access. Systems to be reviewed are: Protracts, AERT, SCIMS, GLS, DLOS, and Farm Business Plans.”

USDA employees were asked a series of questions regarding program technology tools and whether there are issues with the tools which may affect equal access to programs. Almost universally, employees responded that they were not aware of any issues with the software that would affect equal access. A few employees mentioned “glitches” with calculations of eligibility that may be an issue, which employees believed would affect applicants regardless of background. Typically, the problems employees cited regarding issues with the tools are attributed to functionality of the software programs, including system and processing delays.

The following are statistical summaries of employee responses to select questions regarding this issue:

- Approximately 84% of employees were not aware of any issues with program delivery software.
- Approximately 12% did not know whether the software had any adverse impact on equal access to programs.

The identified program delivery information technology tools are used internally by RD, and Focus Group participants and CBOs would not have any knowledge about these tools’ abilities to ensure equity or access.

Based on interviews conducted and information received, the Assessment Team has found no issues related to information technology tools which impacts equal access to programs.

8. “Examine outreach efforts at the national level. Research the different constituency outreach techniques dictated by USDA staff at the national level and the success of constituency outreach at the local level.”

USDA employees were asked a series of questions regarding national outreach efforts. Most often, employee responded that they were unaware of any national outreach efforts, with the exception of National Homeownership Month. When questioned regarding what the National Office could do to improve outreach, employees stated that RD should advertise on television, prepare enhanced handout and presentation materials for use at conferences and seminars, as well as give advance notice to employees of new funding opportunities, so that they are not “bombarded” with questions regarding funding of which they are not aware. Employees in a limited number of states mentioned the presence of “Outreach Specialists” who were assigned by the National Office. There were varying responses regarding the use of the Specialists. Some employees felt it was too early to determine the effectiveness of these “niche employees,” while others stated that they did not think they were effective because they were bringing in applications for ineligible applicants.

On average, on a scale of 1-5, 5 as the highest, employees rated the effectiveness of national outreach levels as a 3.

Focus Group participants and CBOs typically saw any outreach efforts as coming from USDA or RD, and did not tend to identify the effort as being local, State or National.

Based on interviews and responses by Focus Group participants, a national outreach campaign, including television advertisement, may have the potential of reaching larger audiences and having an immediate impact on program delivery. It is difficult to assess the effectiveness of current national efforts because the majority of employees were not aware of any national efforts, with the exception of National Homeownership Month. Moreover, the majority of Focus Group participants and CBOs affirmed the lack of awareness of RD within their

communities as evidenced by statements like, “RD is the best kept secret.”

9. “Examine committee structures and the policies which govern these committees, which are used by USDA to deliver programs (e.g., FSA County Committees, State Technical Committees, and local work groups).”

RD utilizes a committee structure to review Business & Industry (“B&I”) loan applications.

USDA employees were asked a series of questions regarding committee structures which impact program delivery. The majority of employees were not aware of any committees which impact program delivery in RD. State level employees often referenced the use of the B&I loan committee, which is made up of the State Director and Program Directors. In some states, it was mentioned that Area Specialists and Area Directors may serve on this committee. Employees who were aware of the B&I Loan Committee responded either that the committee is a good resource for making loan decisions for the B&I program, or they did not know enough about the committee to make a determination regarding its effectiveness.

The following summarizes employee responses to one question regarding the above Task:

- Over 71% of employees did not know whether there was anything about the structure of the Business and Industry Loan Committee which might lead to discrimination or affect equal delivery of programs.

Based on interviewee responses, Focus Group sessions and CBO interviews, the Assessment Team did not obtain sufficient information to determine whether the B&I Loan Committee’s policies and practices negatively impact program delivery.

10. “Examine web presence and utilization across rural America and access opportunities for all Americans to USDA services.”

USDA employees were asked to comment on web presence and utilization throughout rural America as well as RD’s national and state

websites. Most employees stated that customers did not obtain information regarding programs via the Internet. In fact, some employees literally laughed at the suggestion. The Assessment Team found that responses depended on program area, for example, employees who dealt with business and municipal entities had a greater percentage of customers who accessed program information via the Web. On the other hand, employees who worked in the Single Family Housing program area did not have many customers who frequented the Web for program information. Many employees stated that RD must recognize the limitations on reliance on the Web for delivering programs, since many rural customers and potential customers do not have access to Internet service.

The majority of employees stated that their state website was poor and needed improvement. There were more positive responses regarding the national website. It was difficult for employees to ascertain who within the state was responsible for website maintenance. Sometimes, the Public Information Coordinator was cited as the gatekeeper, but other employees could not identify anyone as responsible. When questioned if there were states with good websites, employees, without fail, mentioned Iowa, followed by Nebraska.

Employees were also asked about their familiarity with the Agency's involvement in the Broadband Initiative Program ("BIP"). Most often, employees on the state level were able to offer more information, however, many field based employees stated that they were not aware of the status of the BIP. An employee in Mississippi expressed frustration with the amount of funding awarded to Mississippi compared to other states. This employee stated that funding for Broadband was disproportionately being awarded to states with less socially disadvantaged populations.

The following represents statistical summaries of employee responses to the questions regarding web presence and utilization:

- On a scale of 1-5, 5 as the highest, most employees rated the state's website as a 3.
- On average, on a scale of 1-5, 5 as the highest, employees rated the extent of customer use of the web for accessing information regarding programs as a 3.

Focus Group participants and CBOs had a variety of views on the RD website.

A number of participants said they did not have computers and did not have access to the website. One who did not have a computer said he could go to the local library to access the website, but did not indicate that he had done so. Several participants were not aware that there was a website. Some had used the website, but found it difficult to use, or not user friendly. (“It just needs work. It needs some attention”; “it could be more user friendly”; “that website can be a great source if it was revamped”); (it is “detailed and complicated”); (“It takes awhile to get to the state level. It may be for some, a little harder than for others”). It was also noted that the website was difficult for the more “older generation” to use.

Other participants found the website to be easy to find, and easy to use.

CBOs were generally not complimentary about the utility of the website (“some constituents do not have computers;” “it is not a valuable source of information for most constituents because they do not use the internet;” “there is nothing on the website that tells you where to go, clearly there’s room for improvement”). Some, however, found it to be a useful resource.

Based on employee interviews and responses received during Focus Group sessions and CBO interviews, it appears that RD must understand the limitations on the use of the Internet as a vehicle for program information, as many customers in rural areas are without access. States with poor websites should immediately focus resources on the improvement of websites, to ensure that constituents who can access the Internet are able to easily obtain current information regarding programs. Additionally, RD should consider utilizing a private sector model for loan and grant applications, by making them available online. With regard to Broadband, RD should continue to engage minority vendors and collect data to ensure that socially disadvantaged communities are not being adversely impacted by funding decisions.

11. “Assess geographical locations and areas covered by offices, and accessibility of those facilities to persons of all physical abilities and of all ethnicities and races.”

As noted throughout this Section of the Report, as stated by customers, potential customers, CBOs and employees, geographic location is a significant barrier impacting program delivery. At one time, RD had local offices in most service areas, whereas following more recent reorganizations, the Agency has shifted from a three-tiered to two-tiered structure, which makes Area Offices now responsible for multiple counties. For example, in Louisiana, employees in an office covering over 20 parishes expressed concern regarding adequate coverage of service areas. Some employees stated that they hold “office days” in areas that are quite distant from the Area Office, but also stated that not having a “regular” presence in local areas further reduces RD visibility in rural communities. More recently and in the past, the Agency has attempted to tackle this issue by utilizing “circuit riders” (employees or contract personnel who travel throughout service areas) along with conducting regular outreach events in communities. Opinions regarding the viability of these methods vary. Some employees did not like having to travel and stated the Agency did not always have the resources to allow employee travel. For example, in some areas, employees stated they had to share a limited number of vehicles, unlike NRCS, which they stated was “the rich agency.” The Agency has also opened Sub-Area Offices and satellite offices in various states. Employees believed Sub-Area Offices and satellite offices have worked well, and stated that more should be opened in areas with the greatest need.

Regarding physical accessibility, the Assessment Team noted a number of office spaces that did not appear physically accessible. While the Assessment Team did not conduct a formal accessibility audit, based upon visible observation, issues with door entrances, ramps, bathroom stalls, and counter heights were apparent. When questioned regarding physical accessibility, most employees responded that the State conducted a compliance review, which included a section on physical accessibility. More than a few employees mentioned that their office space had been cited for inaccessibility, yet issues with property management or enforcement prevented the necessary modifications.

Based on the Team’s evaluation, geographical and physical accessibility are barriers that impact equitable program delivery. Potential customers

who are unaware of RD programs and lack resources to drive to Area Offices may be impeded from participating. Moreover, physical inaccessibility is an issue the Agency should work diligently to correct.

K. Lessons Learned and Consistent Themes

The following is a list of themes that consistently emerged during the Assessment, derived from interviews with RD employees in the 15 USDA-selected Assessment States, Focus Group sessions conducted in 10 Assessment States, and interviews with CBOs.

1. Knowledge and Awareness of Rural Development – There is a lack of information available and knowledge regarding RD in rural communities, which acts as a barrier to participation, particularly to SDGs.
2. Advertisement and Other Communications – There is a lack of advertising about RD programs using media best suited to reach RD customers and potential customers, generally, and even less targeted towards SDGs and underserved groups.
3. Outreach Models – Employees would like to have better models to conduct effective outreach and the tools and resources to support outreach efforts. Very few employees mentioned conducting targeted outreach aimed at increasing SDG participation.
4. Office Closures – After RD’s last reorganization, many offices have closed, which has reduced RD’s visibility in rural areas, and increased the distance to RD offices for many customers, which may disproportionately impact SDGs.
5. Current Office Locations – Current office locations are not conducive to serving target populations. A number of offices visited were in urban areas, and present geographic barriers to rural customers and potential customers, which may disproportionately impact SDGs.
6. Funding/Budget – While some programs received a substantial amount of funding via regular allocation and American Recovery and Reinvestment Act funds, other programs did not. For example, employees consistently mention the lack of funding for the 504 Grant Program and state that many lower income elderly customers do not

have the financial capacity to take on loans. Also, employees in the Multi-family Housing (“MFH”) Program suggested that they were being treated like “stepchildren” with all of the emphasis being on the Single Family Housing (“SFH”) Guaranteed Loan program.

7. Eligibility/Qualifications – Population restrictions, income guidelines, and credit requirements may need to be revisited in order to eliminate barriers to better serve the population that RD seeks to assist, particularly SDGs.
8. Staffing Issues That Affect Program Delivery
 - a. “Glass ceiling” in promotions for minorities and females.
 - b. Lack of employee diversity in a number of offices.
 - c. Inconsistencies in loan processing across the states.
 - d. Timeliness of loan processing.
 - e. Insufficient training of employees, particularly newer employees.
 - f. Lack of motivation/low employee morale.
 - g. Ineffective performance management.
 - h. Civil Rights position is only a collateral duty in some states.
 - i. Heavy workload.
9. MFH Tenant Complaints – RD needs to address MFH tenant complaints against property management. At the time of the interviews, some states were behind on conducting compliance reviews and ensuring that Affirmative Fair Housing Marketing Plans are properly updated, which may suggest leniency and lack of enforcement by RD.
10. Broadband Initiative – CBOs and employees have questioned the funding allocations for this Program, particularly the process for determining which states received the most funding, and the lack of minority vendor participation.
11. Emerging Industries in Rural America (e.g. bio-fuels, bio-energy) – CBOs have questioned the awareness and participation of minority groups in these emerging programs, which CBOs reported widens the gap for SDGs programs intended for these groups are not engaged.

12. Diversity of Cooperative Boards and Lending Institutions – Both CBOs and RD employees identified the lack of diversity on cooperative boards and lending institutions as an issue which disproportionately impacts SDGs and their access to these services.
13. Technology – Employees, Focus Group participants, and CBOs stated that RD needs to automate and streamline its application process, which will require increased updated hardware and software technology. (Care must be taken not to raise a new barrier for customers, particularly SDGs, who do not have access to technology or the training to use the technology.) CBO and University Grant programs to provide training and access to equipment.
14. Direct vs. Guaranteed Lending – CBOs and employees expressed concern over RD’s shift in emphasis from direct lending programs to guaranteed lending programs, and the impact this will have on lower income customers. For example, CBOs and RD employees mentioned that the B&I Loan Guarantee Program is an excellent source of funding, yet many small and minority-owned businesses cannot qualify.
15. Notice of Funding Availability (“NOFA”) Process – CBOs and Focus Group participants, which included representatives of local municipalities, expressed concern that some entities that are more sophisticated are “going to the till” and receiving funds at the expense of less sophisticated applicants. For example, they argued that some entities have grant writers on staff and are better able to respond in a timely manner with a complete and quality application, whereas other entities which do not have those same resources, but more of a need, are left out and go unfunded.

L. Recommendations: RD

Most of the Department-wide Recommendations in Section III, above—particularly those relating to DIA leadership, improving workforce diversity, enhancing incentives/penalties and accountability, creation of Offices of Emerging Customer Development, transitioning from the term “outreach” to “marketing,” accelerating cultural transformation initiatives, and reforming the civil rights complaint processes pertain to and will address many of the barriers and other issues discussed in this Section, and should be applied to the Agencies and in the case of RD,

implemented whenever appropriate and effective. The following Recommendations assume the acceptance and implementation of Department-wide Recommendations, and are intended to complement and supplement them with measures specific to RD and the issues identified herein. (For consistency with the above discussion, some terminology, such as the old term “outreach,” will be used in the following recommendations to recognize the transition (in this instance, from “outreach” to “marketing” and “emerging customer development.”))

The Assessment Team’s Recommendations below address areas that have been raised by employees, CBOs, customers and potential customers, as well as issues identified by the Assessment Team throughout the evaluation based upon USDA provided and other factual and statistical information. The Recommendations seek to address barriers to equal service and deficiencies in program delivery, and/or proactive improvements which can make RD a model for the equitable delivery of programs. Some of the Recommendations may require legislative or regulatory actions, in addition to long-term and short-term planning, but most should be implemented immediately.

Recommendation RD-1: RD should establish a comprehensive education and information program to target underserved populations, particularly in areas with high SDG concentrations. The communication and education program must be multi-faceted, using the most cost-efficient and existing organizations, such as CBOs, 1890 Institutions, Tribal Colleges and Universities, public schools, churches, employers, military installations, and other Federal, State, and Local Government Agencies to reach intended audiences. RD will provide information to these organizations and secure cooperation for them to disseminate broadly, to their employees, students, members and other constituents.

The lack of SDG awareness regarding RD programs is consistently identified as the greatest barrier to program delivery. As highlighted throughout the Report, all RD employees should understand the “business case” for diversity, which includes communication with diverse groups to help broadly notify them of RD program assistance.

Recommendation RD-2: In order to expand RD's presence and successful utilization of existing program dollars that are not reaching SDG communities, RD should seek organizations such as CBOs able to 1) identify RD programs appropriate for their constituents; 2) identify eligible participants; 3) educate potential applicants to build capacity; 4) assist with the application process; and 5) work with borrowers to increase the likelihood of success after funding is provided. RD should create *certified* outreach partnerships by training organizations with technical and substantive knowledge, as well as strong ties to SDGs particularly in states that do not fully obligate funds or are serving underserved populations.

Certify select partners to outreach and eventually obligate funds. Begin in under-served rural areas, conduct training and certification of partners who will be monitored by RD. Specifically, establish a goal of certifying SDG realtors, cooperatives, and CBOs.

Recommendation RD-3: Reinstitute a Direct Lending Business Program to assist small and SDG-owned businesses, which often require smaller loans to allow them to be successful in the early and most crucial stage of business development.

SDG borrowers are usually not seeking large amounts for their small and start up businesses, and often have limited access or relationships with lenders. Recently, SBA has been given authority to lend larger sums, which increases competition for RD Business Programs. RD should re-implement a Direct Business Lending program, including a micro-loan concept which SBA utilizes for its small and disadvantaged businesses. Since micro-loans are substantially less than amounts borrowed under the B&I Loan program, RD would impact more SDG businesses and have the ability to directly assist in the application process.

Recommendation RD-4: Create a Task Force to adjust population criteria across program areas in order to address problems that are created by inconsistent

population criteria, particularly in areas that are economically depressed.

Inconsistent population criteria are often cited as a barrier to economic development in rural areas. Uniform population requirements or waiver provisions would encourage economic development, particularly in economically depressed areas. For example, Rural Housing population limits are different from limits for Rural Business. It is difficult to encourage home ownership in areas without job opportunities.

Recommendation RD-5: RD should fund personal finance workshops in areas with high concentrations of SDGs, starting at the high school level to educate potential borrowers on basic principles that will enable them to participate in RD programs.

Poor credit and lack of knowledge about personal finance are often identified as barriers to participation by SDGs. To assist SDG customers that lack financial sophistication, to build capacity in the long term, one approach is to conduct home buying, personal finance and business finance workshops in high schools, community colleges, CBOs, and University areas with high populations of low income SDGs. This could be done in partnership with CBOs and the recommended Leadership Institute, as discussed below. At an early age, students can learn how to avoid common credit history pitfalls and how to become eligible borrowers in the future. The primary goal would be to have long term positive impact, but this Recommendation could also create more loan applications in the short term, because community members would learn more about RD programs.

Recommendation RD-6: Develop a Leadership Institute for emerging leaders on rural economics and agriculture.

In partnership with other USDA agencies and private sector companies, create an *Agricultural and Rural Development Leadership Institute* at HBCUs, Land Grant Universities, Hispanic Serving Minority Institutions and/or Tribal and Technical Colleges to develop future/emerging leaders on rural economics and agriculture. Private sector companies in agriculture could be viable sources for funding, resources, and talent to

lead the Leadership Institute. Similar to an academic clinic, successful enrollees could receive college credit and possible future employment within USDA. The Leadership Institute will assist with “teaching them to fish” which will enable potential customers to grow and become more self-sufficient and provide information regarding cooperative formation, supply chains, and business development. The Leadership Institute would serve as a resource center for farmers, businesses and individuals seeking to better their communities and develop emerging leaders in these rural industries.

Recommendation RD-7: Create Uniform Policy Guidance to ensure consistency of program delivery across the states.

Employees cited inconsistencies in program delivery, which can lead to liability and class actions, particularly if SDGs perceive unfair or disparate treatment as a result of unnecessarily inconsistent loan processing. Additionally, a large number of employees felt inadequately trained and unable to adequately answer customer questions. RD should analyze inconsistencies, resolve them logically and issue Uniform Policy Guidance as to which each employee should be trained and have access via Intranet. This is intended to prevent inconsistencies among states and within states regarding loan approval process (*e.g.*, credit inquiries, creditworthiness and requirements). Current guidance does not address issues that involve employee discretion.

Recommendation RD-8: Share office space with other agencies with offices in areas that are geographically distant from RD customers and potential customers.

Due to office closures in many rural communities, RD should establish offices at other USDA agencies that are still located in counties where there is no RD presence, or have RD employees conduct “office days” at other agency locations on a fixed, but periodic basis.

Recommendation RD-9: Ensure consistent use of “Office Days” in areas without an RD office presence.

Feedback from employees indicates that by conducting “office days”⁹⁴ in the counties where they no longer have an office, they are better able to serve the more distant counties. The office days work best when they are consistently held on a set day every week or every other week at the same location and at the same time, *e.g.*, every other Monday at the local public library, from 3 p.m.-5 p.m. Customers know that they can speak with an RD representative at a standard time, which is posted or available on the Internet.

Recommendation RD-10: Utilize flex-time policies; encourage the use of evening/weekend hours to ensure greater customer/potential customer access to programs.

Employees indicated that they get the greatest volume of customers and potential customers in evening or weekend hours when potential applicants are not at work. RD management should establish regular weekend and evening hours that are posted or available on the Internet (*e.g.*, the second Saturday of every month of Tuesday evenings).

Recommendation RD-11: Institute Customer Service/Cultural Awareness Training to improve employee responsiveness and interaction with all customers.

There is no mandatory customer service training and the Assessment Team received inconsistent responses from employees interviewed regarding whether they had participated in diversity/cultural sensitivity training. Most employees do not like *AgLearn*'s web-based module. RD should consider mandatory live customer service DIA training at least every 2 years. Training should include a cultural sensitivity component, which would provide information on aspects of diversity and cultural awareness that improve the employee's ability to better understand their role in the USDA mission.

⁹⁴ “Office days” are days in which employees visit the office space of other agencies or a previously determined location to service customers or potential customers in locations in which RD does not have a presence.

Recommendation RD-12: Enhance Memorandum of Understanding (“MOU”) with HUD to allow broader use of “testing” of Multi-Family Housing (“MFH”) complexes.

Work with HUD to conduct random testing of MFH complexes to ensure compliance with civil rights laws.⁹⁵ Also, negotiate with HUD to include SFH random testing in the MOU.

Recommendation RD-13: Increase marketing of MFH as a feeder to Single-Family Housing (“SFH”) program to enable renters an opportunity for home ownership. Additionally, target minority owners and developers for MFH projects.

For those that are capable, develop a program that will help tenants save (create a savings account), which can be used towards future home purchases. This program will also assist renters with becoming more educated about home ownership. For example, a non-profit or church may be a good source to develop MFH projects.

Recommendation RD-14: There is inadequate funding for the 504 Grant Program. Increase funding allocations in this program to assist lower income customers.

The goal of the Section 504 grant program is to assist very low income homeowners in rural areas who are over the age of 62 with home repairs that remove health or safety hazards. Since many potential applicants lack the capacity to repay the loans, it may make sense to consider shifting more of the loan funds to the grant portion of the program. Additional grant money is clearly needed since offices consistently exhaust the funds.

Recommendation RD-15: Expand eligibility requirements for the 504 Grant Program to enable disabled customers under the age of 62 access to grant funds.

⁹⁵ See Department-wide recommendations, Section III above.

Many disabled homeowners in rural areas seek Section 504 grant money only to discover that they do not qualify because they are not over the age of 62. RD should determine whether legally the Agency can consider expanding eligibility requirements to encompass disabled homeowners (below the age of 62), and if so, do so.

Recommendation RD-16: Create a “Reshaping Rural America Project Team” with other Federal, State and local agencies to develop joint plans for entire rural communities utilizing shared resources.

Rural Development and other Federal, state and local agencies should work together to develop joint plans for rural communities utilizing shared resources. RD should take the lead on developing a team consisting of leaders from Federal, state and local agencies to leverage funding. This team should develop strategies to bundle resources that will impact entire rural communities, particularly those that are underserved, “persistently” impoverished, and have high concentrations of SDGs. The team could solicit bids from organizations to stimulate additional use of USDA programs in a rural area rather than focus on one individual project within a rural community. For example, this team could pick a region or town to collaboratively rebuild and enhance using Rural Development, FSA, and NRCS funding along with various other Federal, state and local resources (*e.g.*, from the Small Business Administration) to fund projects that include business, agriculture and supporting infrastructure. Projects should include use of diverse suppliers, vendors, and contractors.

Recommendation RD-17: Create an SDG Advisory Board to advise the “Reshaping Rural America Projects Team” in developing ideas to reshape rural America with particular focus on issues involving SDG communities.

RD should take the lead on forming an SDG Advisory Board to assist the “Reshaping Rural America Projects Team” with implementation of plans within rural communities. This Board would provide expert advice to RD regarding diversity on cooperative boards, utilization of diverse lending institutions, and assist in ensuring that underserved groups are positively impacted by the initiatives.

Recommendation RD-18: Establish formal cross-training initiatives to ensure employees have knowledge about all program areas and to allow female and minority employees opportunities for advancement within the Agency.

To enhance the knowledge of programs of all employees and move towards a package model for program delivery, employees should be cross trained on all programs. Employees would still have an area of “specialization”, however, they would be well versed to communicate and provide information on all programs. Female and minority employees, who feel relegated to certain program areas, will have an opportunity to diversify their experience within the Agency.

Recommendation RD-19: Develop an employee model marketing (outreach) program for all offices to increase participation, knowledge, and awareness of RD programs by SDGs.

RD should redefine its outreach efforts and ensure that all employees understand RD outreach policy, which includes targeting groups that underutilize programs. Outreach should involve emerging customer/business development and mobilization, which includes greater use of the local business community (*e.g.*, banks and realtors). Employees should perceive outreach as a marketing and business development tool, rather than government handouts to SDGs. This could be aligned within the recommended structured award program listed below.

Recommendation RD-20: Implement a structured award program as an employee incentive to target SDGs.

Establish a structured award program based on objective factors such as the number of loans made in areas where there are large populations of SDGs or based on the number of applications received at a particular outreach event. If there are no funds for cash awards, employees can be rewarded with other incentives, such as time off.

Recommendation RD-21: Ensure office accessibility to all customers/ potential customers.

Some employees indicated that their office is inaccessible to disabled customers. Certain offices have repeatedly failed to meet the requirements for accessibility and have been cited. However, when citations are reported, property management does not respond.

Recommendation RD-22: Create full-time State Civil Rights Manager Position (“Chief Diversity Officer”).

In some states, Civil Rights Manager/Coordinator is a part-time position and the individual has little to no experience in the area and feels inadequately trained. There should be a full-time Civil Rights Manager position (in accordance with the Department-wide Recommendations, a “Chief Diversity Officer”) in each state. This person should receive training from an outside consultant regarding civil rights matters, including conducting investigations and conflict resolution.

Recommendation RD-23: Issue NOFAs earlier to ensure all customers have access to funding opportunities.

Many employees and CBOs stated that Notices of Funding Availability (“NOFA”) or information regarding new programs are not issued in a timely manner. RD should issue NOFAs earlier so that SDGs in particular, are informed about funding opportunities earlier to allow greater participation.

Recommendation RD-24: Evaluate the Prequalification Process to ensure that it is a timely and effective tool for customer planning and is used consistently throughout the states.

Many SDG customers complain that loans are not being processed. In some instances, they have not actually applied, but may not be aware they are still in the pre-qualification process. Also, some offices are not utilizing the pre-qualification processes consistently. RD should create and enforce deadlines to have a pre-qualification letter sent to

customers, including receipt for service. The pre-qualification should be submitted to customers within 30 days of receipt of pre-qualification application.

Recommendation RD-25: Address website accommodation issues for individuals with disabilities.

At the time of interviews, there was no known policy regarding accommodations for those with disabilities (*e.g.*, visually impaired) when accessing the national or state websites. RD has options regarding website accessibility, including ensuring that website fonts can be increased or designating an appropriate contact person if an individual needs additional assistance with accessing the websites.

Recommendation RD-26: Where there is a critical mass of SDGs for whom English is a second language, to the maximum extent practicable, seek to have at least one fully cross-trained employee who is fluent in the language of that SDG group or ensure that all employees and customers have access to interpreter services. Also, working with local resources, arrange for more training of customer and potential customers in “English for business transactions”.⁹⁶

Recommendation RD-27: Create and make available forms that are translated into appropriate languages spoken by local RD customers, not limited to Spanish, where there is a critical mass of any one individual SDG group in sufficient numbers to make the process cost efficient.

⁹⁶ See 28 CFR Section 42.405 (d)(1). “Where a significant number or proportion of the population eligible to be served or likely to be directly affected by a federally assisted program (*e.g.*, affected by relocation) needs service or information in a language other than English in order effectively to be informed of or to participate in the program, the recipient shall take reasonable steps, considering the scope of the program and the size and concentration of such population, to provide information in appropriate languages to such persons. This requirement applies with regard to written material of the type which is ordinarily distributed to the public. (2) Federal agencies shall also take reasonable steps to provide, in languages other than English, information regarding programs subject to Title VI.”

SDGs for whom English is a second language also need access to English training, focused on improving their ability to engage in business transactions to increase U.S business acumen in the same manner USDA provides language training for overseas employees.

There were inconsistent responses from employees regarding customers who do not speak English. Some employees stated they rely on family members to interpret documents. RD should ensure that all employees have access to interpretive services for non-speaking customers. Information should be posted in the office and available to all employees. Also consider offering customers training programs or referrals for English language courses.

Recommendation RD-28: Rural Utilities should 1) continue to hold educational workshops aimed at increasing minority participation in the Broadband Initiative Program (“BIP”); and 2) collect data to analyze impact of funding to SDGs.

CBOs and some employees commented on the lack of minority participation in the Broadband Initiative Program.

VII. NATURAL RESOURCES CONSERVATION SERVICE

A. Introduction⁹⁷

This section of the Report provides the results of 18 months of investigation and analysis of fairness and equity in program delivery by the Natural Resources Conservation Service (“NRCS”). The Assessment Team relied on four primary sources of information: (1) interviews of 569 NRCS employees at the Headquarters, State, and field levels; (2) 10 Focus Group sessions with NRCS customers, and potential customers who have applied for or were denied technical or financial assistance from USDA;⁹⁸ (3) interviews of the leadership of 30 Community Based Organizations (“CBOs”) from around the country representing a variety of farming and ranching interests, with an emphasis on those focused on issues of importance to socially disadvantaged groups (“SDGs”); and (4) review and analysis of statutes, regulations, policies, handbooks, reports, statistical data, and other information and documents provided by USDA. In addition, the Assessment Team conducted research on a wide variety of topics, including the history of the agency, media and other public reports of NRCS activities, and the major class-action discrimination lawsuits that have been filed on behalf of African American, Hispanic, Native American, and female farmers and ranchers.

While the Assessment Team’s investigation revealed positive aspects of the Agency’s performance in the area of delivery of services to SDGs, there are several systemic barriers which likely impact NRCS’s equal delivery of technical and financial assistance to SDGs. The Recommendations at the end of this Section of the Report will assist NRCS to continue the work mandated by Secretary Vilsack to eliminate barriers to SDG participation in NRCS programs and services.

⁹⁷ The specific race/ethnicities references used by the Equal Employment Opportunity Commission are identified by the following categories: Hispanic/Latino; Black/African American; Asian; American Indian/Alaskan Native; and Native Hawaiian/Pacific Islander. For shorthand purposes, these categories will be referred to as: “Hispanic,” “African American,” “Asian,” “Native American,” and “Pacific Islander,” respectively.

⁹⁸ CBO Interviews were conducted with 30 organizations located in the following 13 states: Arizona, California, Florida, Georgia, Louisiana, Michigan, Mississippi, New Mexico, North Carolina, North Dakota, Oklahoma, South Carolina, and Washington.

B. Mission

NRCS provides conservation planning and assistance to landowners with a goal of protecting soil, water, air, plants, and animals. NRCS accomplishes its conservation goals by providing both financial and technical assistance to landowners to implement conservation practices on their land. Conservation practices include a wide variety of environmental improvements that a landowner can undertake, such as implementing crop rotation to prevent soil erosion, building irrigation pipelines, improving drainage, restoring wetlands, and managing wildlife habitats.

Most NRCS programs provide both technical and financial assistance. Some programs provide technical assistance only, which means that NRCS does not provide any funds, but only assists the landowners with technical expertise.

Financial assistance usually takes the form of either a cost-share payment (*e.g.*, NRCS reimburses the customer for up to 90% of approved costs for implementing specific conservation techniques) or payments in return for granting NRCS an easement to preserve the land for conservation purposes.⁹⁹

Most of NRCS's budget is devoted to programs outlined in the Farm Bill.¹⁰⁰ Funds allocated in the Farm Bill are *mandatory*, meaning they must be spent to fund the particular programs identified in the legislation. Seventy-five percent of NRCS's \$3.66 billion FY 2010 budget was allocated to Farm Bill programs. Specific Farm Bill programs are described below.

The remaining 25% of NRCS's FY 2010 budget was allocated to discretionary spending. NRCS can choose where to spend discretionary spending, or choose not to spend it at all. Approximately 78% of NRCS' discretionary spending is applied to general Conservation Technical Assistance, which allows NRCS to provide technical advice and

⁹⁹ An easement is the right to use the property of another without possessing it. When an owner grants NRCS an easement on a portion of a landowner's property, use of that portion of property is restricted in order to protect wetlands, wildlife, grasslands, or for other conservation purposes.

¹⁰⁰ The most recent Farm Bill is the Food, Conservation, and Energy Act of 2008.

assistance to farmers and ranchers who are not program participants. Conservation Technical Assistance, however, also funds operations and administration (*i.e.*, overhead) that support the Farm Bill programs, as well as soil and water survey programs. The remaining discretionary funds are allocated to watershed rehabilitation and flood prevention.

C. Organization

NRCS has a decentralized structure. Most operational and administrative responsibility has been delegated to the state and field levels.

NRCS is led by the NRCS Chief at Headquarters in Washington, D.C. The Chief's staff includes all NRCS Headquarters employees, including Deputy Chiefs and Branch Chiefs.

The NRCS Chief oversees three Regional Conservationists who are in charge of the West (13 states),¹⁰¹ Central (15 states),¹⁰² and East (22 states) Regions.¹⁰³ The Regional Conservationists are responsible for providing overall direction for NRCS programs and activities, and for supervising State Conservationists in their Regions.

Each state has a State Conservationist, who acts as the chief executive in administering programs and operating field offices in that state. State Conservationists have authority regarding use of the budgets allocated to their state and the operations of area and field offices. State Offices are usually located in the State's capital, and State Office staff includes employees responsible for programs, operations, administration, budgets, technical support, public affairs, engineering, and resources.

The next level below the State Conservationist is the Area Conservationist. There are usually three or four Area Conservationists in

¹⁰¹ The West Region comprises Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

¹⁰² The Central Region comprises Arkansas, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and Wisconsin.

¹⁰³ The Eastern Region comprises Alabama, Connecticut, Delaware, Florida, Georgia, Kentucky, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, and West Virginia.

each state overseeing Area Offices. Area Conservationists are responsible for coordinating and managing the Field Offices in their Area.

The Field Offices exist, for the most part, on the county level, and they are managed by a District Conservationist. Many have no more than one to three employees; some share space with local Conservation District employees; and some are located directly on tribal land. The Field employees are Soil Conservationists and Soil Conservation Technicians. District Conservationists, Soil Conservationists, and Soil Conservation Technicians are the primary interface with NRCS customers—they are directly responsible for program delivery.

D. Workforce Diversity: Summary

Section IX below presents in detail the results of the Team’s demographic analysis of the NRCS workforce. Comparators were chosen based on the pool from which the positions are filled (by appointment, hiring, or election). For example, NRCS employees are recruited and hired from the general workforce, so their demographics are compared with the U.S. Civilian Labor Force (“CLF”) (the CLF is the benchmark USDA uses in creating its annual workforce reports to the EEOC). *The following is a summary of those areas of “under-representation,” that is, where the percent of employees in the group is substantially less than their comparator population:*

- **NRCS Nationwide Workforce – Under-Representation:**

Race/Ethnicity/Gender	NRSC Workforce	CLF
Females	35.4%	46.8%
Total Minorities	16.7%	27.2%
Hispanics/Latinos	4.5%	10.7%
Blacks/African Americans	7.7%	10.5%
Asians	1.4%	3.6%

Thus, the bulk of NRCS’s under-representation of SDGs nationwide is the Female gap (11.4 percentage points), Minority gap (10.5 percentage points), Hispanic/Latino gap (6.2 percentage points), followed by Blacks/African Americans (2.8 percentage points), and Asians (2.2 percentage points).

- **NRCS State Conservationist Office Employees – Under-Representation** (15 USDA-selected States):

Race/Ethnicity/Gender	Under-representation: Position Shortfall Per State¹⁰⁴
Females	AZ (2), OK (2), SC (14)
Blacks/African Americans	LA (1), SC (10)
Hispanics/Latinos	AZ (4), FL (1)

There were no under-representations of other SDGs based on comparisons with the State CLFs.

The most substantial under-representations in NRCS State Conservationist Offices in comparison with the respective State CLFs among the 15 USDA-designated States are Females in South Carolina (14), and Blacks/African Americans in South Carolina (10).

¹⁰⁴ When under-representation is described in terms of a stated number of “positions,” it means that NRCS would have to hire the number of individuals of the specified race/ethnicity or gender to bring the percentage representation in the position into line with percentage representation in the labor pool from which candidates are drawn.

- **NRCS Area Office Employees – Under-Representation** (15 USDA-selected States)

Race/Ethnicity/Gender	Under-representation: Area Offices with Position Shortfalls
Females	46 Areas have a shortfall of females ranging from an under-representation of one to 22 positions
Blacks/African Americans	25 Areas have a shortfall of Blacks/African Americans ranging from an under-representation of one to 14 positions
Hispanics/Latinos	23 Areas have a shortfall of Hispanics/Latinos ranging from an under-representation of one to 26 positions
American Indians/Alaskan Natives	3 Areas have a shortfall of American Indians/Alaskan Natives ranging from an under-representation of one to 3 positions
Asians	9 Areas have a shortfall of Asians ranging from an under-representation of one to 7 positions

There are no under-representations of Native Hawaiians/Pacific Islanders among the NRCS field offices in the 15 USDA-selected States in comparison with the relevant CLF. Females have the highest number of Area office under-representations at 46, with Blacks/African Americans second at 25, Hispanic/Latinos third at 23, followed by Asians at 9, and American Indians/Alaskan Natives at 3. Some of these under-representations, such as Females in Louisiana Area 3 (22), Hispanics/Latinos in California Area 1 (26), and Blacks/African Americans in Mississippi Area 1 (14), are substantial.

Thus, the most significant deficits of diverse representation in NRCS’s workforce are:

- Females—Nationwide workforce.
- Total Minorities—Nationwide workforce.

- Hispanics/Latinos—Nationwide workforce.
- Females—State Conservationist Office.
- Blacks/African Americans—State Conservationist Office.
- Hispanics/Latinos—State Conservationist Office.
- Females—Area Office workforce.
- Blacks/African Americans—Area Office workforce.
- Hispanics/Latinos—Area Office workforce.
- Asians—Area Office workforce.

E. Key Programs

The following is a description of NRCS’s key programs, all of which are Farm Bill programs. Together these programs account for more than two-thirds of the total NRCS budget.

1. Environmental Quality Incentives Program (“EQIP”)

EQIP is NRCS’s largest program, making up 44% (\$1.2 Billion) of NRCS’s FY 2010 Farm Bill program budget (down from 62% in 2008). EQIP provides assistance to landowners who face serious natural resource challenges that impact soil, water, and related natural resources, including grazing lands, wetlands, and wildlife habitat. EQIP provides financial assistance to help develop conservation plans and implement conservation practices. Owners of land in agricultural production or persons who are engaged in livestock or agricultural production on eligible land may participate in the EQIP program.

Program practices and activities are carried out according to an EQIP Plan of Operations developed by NRCS in conjunction with the landowner. NRCS identifies the appropriate conservation practice or measures needed to address identified natural resource concerns. The practices are subject to NRCS technical standards adapted for local conditions.

EQIP generally provides payments up to 75% of the estimated incurred costs and income foregone of certain conservation practices and conservation activity plans. Historically, underserved producers (SDGs, limited resource farmers/ranchers, beginning farmers/ranchers) may be eligible for payments up to 90% of the estimated incurred costs and income foregone.

The 2008 Farm Bill established a new payment limitation so that participants may not receive, directly or indirectly, payments that, in the aggregate, exceed \$300,000 for all program contracts entered during any six-year period. Project applications determined as having special environmental significance may, with approval of the NRCS Chief, have the payment limitation raised to a maximum of \$450,000.

2. Conservation Stewardship Program (“CSP”)

CSP is a relatively new program, replacing the Conservation Security Program. In 2008 it had no budget, but by FY 2009 it made up almost 10% of NRCS’s Farm Bill program budget (\$230 million). In FY 2010 that portion rose to 25% (\$447 million).

The Conservation Security Program, which CSP replaces, provided payments to maintain and enhance natural resources. It identified and rewarded farmers and ranchers who had already implemented conservation activities. The new CSP is more forward-looking, and is meant to encourage producers to undertake additional conservation activities and to improve, maintain, and manage existing activities.¹⁰⁵ CSP is available to all producers, regardless of operation size or crops produced, in all 50 States, the District of Columbia, and the Caribbean and Pacific Island territories. Eligible lands include cropland, grassland, prairie land, improved pastureland, rangeland, nonindustrial private forest land, and agricultural land under the jurisdiction of a Native American tribe. Applicants may include individuals, legal entities, joint operations, or Native American tribes.

CSP is not a cost-share program. CSP pays participants for conservation performance—the higher the performance, the higher the payment. It provides two possible types of payments. An *annual payment* is available for installing new conservation practices and maintaining existing practices. A *supplemental payment* is available to participants who also adopt a resource-conserving crop rotation. Contracts are for five years, and a customer cannot receive more than \$40,000 in one year or \$200,000 in any five-year period, though these limits do not apply to Native American tribes.

¹⁰⁵ The Assessment Team notes that while CSP is more forward-looking than the program it replaces, it still primarily is focused on customers who have already implemented conservation practices.

3. Wetlands Reserve Program (“WRP”)

WRP constitutes approximately 15% of the FY 2010 Farm Bill program budget. It is designed to protect, restore, and enhance wetlands on customers’ property. It is an easement program, which means that the landowner grants the government a permanent legal interest which prohibits the land from being developed or used for agriculture. NRCS provides technical and financial assistance to support wetland restoration efforts. There is now a 30-year easement option as well, and a cost-share option which will pay for 75% of restoration (limit \$50,000 per year). WRP is limited to private and tribal lands.

4. Farm and Ranch Lands Protection Program (“FRPP”)

FRPP, which constitutes approximately 5% of NRCS’s budget, provides matching funds to help purchase development rights to keep productive farm and rangeland in agricultural uses. Working through existing programs, USDA partners with state, tribal, or local governments and non-governmental organizations to acquire conservation easements or other interests in land. USDA provides up to 50% of the fair market easement value of the conservation easement.

To qualify for FRPP, farmland must: (1) be part of a pending offer from a state, tribal, or local farmland protection program; (2) be privately owned; (3) have a conservation plan for highly erodible land; (4) be large enough to sustain agricultural production; (5) be accessible to markets for the crops the land produces; (6) have adequate infrastructure and agricultural support services; and (7) have surrounding parcels of land that can support long-term agricultural production.

5. Wildlife Habitat Incentives Program (“WHIP”)

WHIP is a cost-share program to help landowners develop and improve wildlife habitat on agricultural land, private forest land, and tribal land. WHIP was allocated 1.5% of Farm Bill program funds in FY 2010, down from 3.5% in 2009. Cost-share agreements between NRCS and the participant are for a minimum of one year after completion of the last conservation practice, up to 10 years. Through reimbursement, NRCS will pay up to 75% of the cost to install conservation practices for permanent priority fish and wildlife habitats. An increased cost-share

percentage is allowed for socially disadvantaged customers and beginning and limited resource customers.

6. Grassland Reserve Program (“GRP”)

GRP is an easement program which was allocated 2% of Farm Bill program funds in FY 2010. Participants voluntarily limit future development and cropping uses of the land while retaining the right to conduct common grazing practices and operations related to the production of forage and seeding, subject to certain restrictions during nesting seasons of bird species that are in significant decline or are protected under Federal or state law. Participants can include landowners and operators who control the land, landowners who can provide clear title, and Native American tribes. Options include a 10, 15 or 20 year rental contract; permanent easement; or cost-share for restoration. A cooperating entity, such as a unit of state, local, tribal or non-government entity, can also participate with a landowner.

F. Customer Demographic for NRCS Programs

To determine the effectiveness of NRCS at equitably serving SDGs, the Assessment Team compared the financial assistance provided to SDGs with the SDG’s respective Principal Operator percentage of the total Principal Operator population¹⁰⁶.

The results are presented in detail in Section IX below. Subject to county and State variations, and some inconsistencies in the data provided by NRCS, the results are summarized as follows:

NRCS Programs: NRCS’s data show EQIP, WHIP, and CSP results in terms of dollars attributed to SDGs for FY 2010 exceeding the aggregate nationwide SDG race/ethnic group Principal Operator percentage. Incomplete data for WRP shows low participation by race/ethnic SDGs in terms of numbers of agreements (dollar data not provided).

¹⁰⁶ The Principal Operator population data are based on the 2007 Census of Agriculture (“*AgCensus*”), which is the most current census compiled by the National Agricultural Statistics Service.

G. Customer Focus Group/CBO Input

1. Focus Groups

The Assessment Team conducted Focus Groups in 10¹⁰⁷ of the 15 USDA–selected states. The Focus Groups included NRCS customers, as well as farmers and ranchers who had applied for but had been rejected for technical or financial assistance within the past three years. Focus Groups were predominantly composed of SDGs.

a. Introduction

Common Focus Group participant complaints were that (1) the programs are too complicated, (2) the eligibility requirements are difficult to understand, (3) the application process requires too much paperwork and is too complex, and (4) participants were not kept informed of timelines and important deadlines. Even some customers who participated in programs admitted that they never really understood the eligibility requirements for programs; instead, they relied on NRCS employees to assist them through the process. Focus Group participants often had difficulty with acronyms, technical language, and the many rules and requirements for participating in programs. Customers were frequently intimidated by the application process, particularly the fifteen-page appendix and the adjusted gross income (“AGI”) form.

b. Application Process

Focus Group participants often felt that NRCS employees did a poor job of communicating eligibility requirements to them. Rejected applicants commonly did not understand why they were found ineligible for programs or why their application was rejected. Many customers reported never hearing back from NRCS, believing that their application was lost, and others only learned of the decision on their application after contacting NRCS to determine the status of their application. Some applicants were only told, without explanation, that they could not participate in programs. The lack of communication and explanation led some SDG customers to believe that they had been discriminated against.

¹⁰⁷ Arizona, California, Georgia, Louisiana, Mississippi, New Mexico, North Carolina, North Dakota, Oklahoma, and South Carolina.

c. Participation Barriers

SDG customers also often felt that larger farmers and ranchers were receiving program funds that were not made available to SDG customers. Some felt that this was the product of NRCS staff favoring “traditional” customers, and others believed it was a product of the application ranking process.

d. Initial Contacts

Focus Group participants frequently complained about not being told of deadlines or the timing of when ranking would occur. They described situations where they became aware of programs or initiatives but did not have sufficient time to submit their application, and then would have to wait a full year to apply and receive funding. Many of these customers could not wait because they had immediate resource needs.

A frequent complaint was that customers could not afford the cost-share amount, or that the cost-share promised was insufficient to cover the actual costs of the conservation practice. Customers often felt that they ended up paying for a higher percentage out-of-pocket than they had originally expected.

Focus Group participants identified “word-of-mouth” as the primary method of becoming aware of NRCS programs, though several became aware through producer groups (such as the Cattlemen’s Association) or direct marketing.

e. Effectiveness of Communication

Many Focus Group participants complained that they did not receive information in a regular or timely manner, and recommended that NRCS send out a periodic newsletter. Participants also reported that, given the complicated nature of the programs, Field Offices should hold seminars after business hours to explain programs to customers who were not available during the day.

Although some customers were computer savvy, many Focus Group participants did not use the NRCS website during their application and contracting process, and a high percentage of SDG customers reported

that they did not have access to the internet. Customers recommended that any web-based outreach or program materials be replicated on paper and most preferred face-to-face encounters with NRCS employees.

2. Community Based Organizations (“CBOs”)

The Assessment Team conducted interviews with representatives from 30 CBOs based in 13 states. (CBO constituents reside in a wider group of states across the country). CBOs often echoed the same concerns that Focus Group customers reported. Common themes that emerged from interviews with CBOs are:

- Program eligibility requirements are too confusing.
- Technical requirements are too stringent.
- Incorrect or conflicting information is provided by NRCS employees.
- Information regarding program timelines, application processes, funding, and program benefits is not presented clearly or in a timely manner.
- NRCS employees use a lot of acronyms and do not speak in “plain English.”
- Constituents do not receive any, or adequate, assistance from NRCS in completing applications.
- NRCS does not adequately reach its constituents with program information.
- Outreach programs are insufficient.
- Decisions are not made timely.
- Decisions are not transparent and reasons for refusals are not provided, leading some CBO leaders to conclude that discrimination, favoritism, and/or a preference for dealing with larger operations was the motivation.

- Decisions are made to favor those included in the “good old boy” network.
- NRCS employees should emphasize personal interaction in outreach and spend more time in the field.
- Overdependence on the internet should be avoided because customers often do not have internet access and those who do have internet access find the website difficult to use.
- Some CBOs said NRCS staff at the offices where its constituents seek services do not speak the language predominant among SDGs the office serves.
- Driving distances to NRCS offices was mentioned by several CBOs as a hardship for their members/constituents.

For the most part, members of CBOs felt that NRCS “cared” about reaching customers. Subject to the CBO comments about discrimination noted above, CBOs, in general, did not feel that overt discrimination against SDGs is a problem at NRCS.

H. Headquarters Interviews: Summary

During Phase One of the Assessment, the NRCS Assessment Team interviewed 29 employees at NRCS Headquarters in Washington D.C. While the interviews took place primarily with employees in leadership positions, the Assessment Team interviewed lower-level NRCS employees as well. NRCS employees were, for the most part, forthcoming and informed during interviews. Opinions varied, however, as to the effectiveness of successful NRCS outreach efforts to SDGs and what can be done to improve such efforts.

The Assessment Team interviewed the following individuals:¹⁰⁸

1. Chief, Dave White;
2. Associate Chief, Ginger Murphy;

¹⁰⁸ Titles listed are accurate as of the time of the interview.

3. Special Assistant to the Chief on Intergovernmental Issues, Sam Thornton;
4. Director of Civil Rights, Joseph Hairston;
5. Deputy Chief, Soil Survey and Resources, Doug Lawrence;
6. Acting Deputy Chief for Programs, Ed Burton;
7. Deputy Chief, Management, Eloris Speight;
8. Deputy Chief, Management, Edith Morigeau (National Tribal Relations Coordinator);
9. Deputy Chief for Science and Technology, Tony Kramer;
10. Acting Deputy Chief for Strategic Planning and Accountability, Lesia Reed;
11. Acting Associate Deputy for Programs, Andree DuVarney;
12. Regional Conservationist (Central), Tom Christensen;
13. Regional Conservationist (East), Leonard Jordan;
14. Regional Conservationist (West), Diane Gelburd;
15. Branch Chief for Conservation Improvement Programs, Gus Jordan;
16. Branch Chief for CSP, Dwayne Howard;
17. Branch Chief for EQIP, Tim Beard;
18. Branch Chief for Easement Programs, Ross Lahren;
19. Branch Chief, Outreach, Larry Holmes;

20. Branch Chief for Affirmative Employment and Compliance, Samora Bennerman-Johnson;
21. Branch Chief for Community Assistance Programs and Activities, Ron Harris;
22. Acting Branch Director for Easements, George Cleek;
23. Acting Branch Director for Resource Conservation, Development and Outreach Programs, Anne Dubey;
24. Technical Service Provider Coordinator, Barbara Eggers;
25. Acting National Appeals and Equitable Relief Specialist, Conservation Technical Assistance Branch, Gary Roeder;
26. Acting Director of Conservation Planning and Technical Assistance, Dan Lawson;
27. National Disability/Veterans Emphasis Program Manager, Cliff Denshire;
28. Management Services, Dianne Guidry; and
29. National Resource Coordinator for Mississippi, Decunda Bozeman.

NRCS appears to have a good reputation within USDA with respect to Civil Rights, and there are relatively few formal complaints of discrimination. At the time of the interviews at Headquarters, there were 16 outstanding Title VI (program) complaints.

Headquarters employees did not believe that NRCS engages in overt discrimination against program participants. Nonetheless, many employees pointed to organizational and systemic barriers that might affect the equal delivery of programs.

Headquarters employees pointed to the lack of accountability for state-level employees, inadequate performance measures, and ineffective means of communicating leadership's commitment to outreach to the

field as impediments to equal access. Many interviewees also felt they lacked sufficient data and metrics to conduct outreach and to measure its success.

Some Headquarters employees felt that program design, particularly in CSP and easement programs, was biased against small farmers. Interviewees felt this problem was exacerbated by the ranking formula for awarding contracts, which rewards larger farms that have more resource concerns.

Additional input that the Assessment Team garnered from interviews at Headquarters is discussed in detail below.

I. Field Interviews: Summary

The Assessment Team visited 87 offices in USDA-selected counties in each of the 15 Assessment States. The team interviewed a total of 540 NRCS field employees. In each State, the team interviewed employees in the State Office and at least one Area Office, and also interviewed a Conservation District employee in most States. In the State Offices, the Assessment Team interviewed the State Conservationist, the Assistant State Conservationist for Programs, Outreach Coordinators and Tribal Liaisons (where the position existed), and the Public Relations Coordinator. In Area Offices, the Assessment Team interviewed the Area Conservationist. In Field Offices, the Assessment Team interviewed the District Conservationist and, usually, at least one lower-level employee: a Soil Conservationist or Soil Conservationist Technician. Consistent issues throughout the Assessment pertaining to NRCS-wide issues are discussed in the Common Themes and additional Contract Task analysis sections, below. The following are brief summaries of state-specific issues that were raised in the employee interviews. Interviewees were informed that responses would be given on a “non-attribution” basis, meaning that information obtained during the interview would not be attributed to any individual, without that employee’s permission, to anyone other than Assessment Team members, or except as required by law.

1. Arizona

The majority of private land in Arizona is tribal land, which is often held by the tribe with each member having an indivisible interest.

It is, thus, difficult for Native Americans to establish ownership and control for purposes of NRCS program eligibility. It is also difficult to obtain permission from individual tribal governments for their members to participate in programs. Employees in Arizona also mentioned as a technical barrier to participation in NRCS irrigation programs that a participant is required to irrigate their land in two out of the previous five years. Tribal customs dictate when and how the land is irrigated, and the customs sometimes do not fit with the irrigation schedule mandated by NRCS programs.

Finally, water rights are necessary for farming in Arizona. Such rights can be expensive and are often passed down through families, creating a barrier for small and limited resource farmers who do not have inherited water rights.

2. California

California contains a significant population of several different minority groups. A high-level State employee stated that funds set-aside for SDGs were too low because, given the high population of African Americans in the state, they were still “woefully underrepresented” in NRCS programs.

California is a State where Field Offices can be a great distance from the populations they serve. In Humboldt County, for example, Native American reservations were separated from Field Offices by long distances and often-impassible natural barriers (such as rivers with few crossing points).

3. Florida

Employees reported that retention of minority and female employees has been difficult in Florida. Some District Conservationists serve three or four counties. Outreach in Florida seemed to suffer more than other states from lack of personnel.

4. Georgia

Short program deadlines have made it difficult to conduct outreach and have created incentives to work with large farmers to allocate funds. In some cases, sign-up periods have been as short as

two-weeks. Also, Georgia gets many more applications than it can fund. This creates a disincentive to perform outreach because when they usher people through the process but do not have sufficient funds, applicants, whose applications are denied because of lack of funding, leave with a bitter taste. One field level employee said he received \$1.2 Million worth of eligible applications for \$400,000 of available funding. Some Georgia employees felt it was difficult getting SDGs to participate in CSP, which is receiving increasingly larger funding.

5. Louisiana

Many employees believed that the application process is too complex and one said “the programs themselves overwhelm.” There was some hostility to treating SDGs “differently” (more favorably) and a general lack of consistent policy for performing outreach.

6. Michigan

Michigan does not have a lot of minority farmers, though there are Native American populations in parts of Northern Michigan and the Upper Peninsula. Employees in Michigan, more than any other State that was visited, complained that travel times to offices were too long, sometimes over 100 miles. Northern Michigan and the Upper Peninsula appeared to have the greatest problems.

Employees also pointed out that, although NRCS offers more urban-friendly initiatives (organic and high-tunnel), there is not an NRCS office in Wayne County.

One employee stated that Immigration Control and Enforcement (“ICE”) creates image problems for the Federal Government and creates a dynamic such that farmers who hire migrant labor are less likely to participate in USDA/NRCS programs.

7. Mississippi

African American farmers often have less sophisticated irrigation practices that are not approved by NRCS, and sometimes they have a problem with the two-out-of-five-year irrigation requirement. Many District Conservationists, however, have been able to work around this. Also in Mississippi, illiteracy is still a barrier for many small and limited

resource farmers and ranchers (a disproportionate number of whom are minorities).

8. New Mexico

New Mexico has a number of tribal lands that are held in Bureau of Indian Affairs Land Trusts. The land held by tribal members is often in an indivisible interest. Employees reported that it is therefore difficult to establish individual ownership for NRCS program eligibility, and it is also difficult to obtain permission from the tribe to participate in programs. Land control and ownership is the basis for much of NRCS policy, so these land control issues create a large barrier to Native American participation.

9. North Carolina

Employees reported that further diversifying the NRCS workforce there is difficult; recruitment is practically non-existent because North Carolina has not hired many employees in the last four years. Many employees were hostile to targeting SDGs for outreach—a common refrain was that “we should treat everyone the same.”

10. North Dakota

North Dakota employees pointed out that CSP was too complex, and land ownership and control issues limit tribal participation.

11. Oklahoma

Oklahoma has a large Native American population scattered throughout the State, but most do not live on reservations. Outreach to this population appears to be difficult, and interviewees were inconsistent regarding their apparent commitment to outreach.

12. Pennsylvania

Pennsylvania has a very low minority farmer and rancher population in the counties USDA selected.

13. South Carolina

With respect to easement programs, many minorities cannot participate because it is very difficult to establish clear title: land has been passed down through families over generations (known as the “Heir Land” problem). In South Carolina, there are 216 easements and only two African American participants. Also, according to employees, more than other states, South Carolina has many more eligible minority applicants than funds, and this problem has been exacerbated as the EQIP budget is reduced in favor of CSP, which is less amenable to participation by SDG farmers.

14. Vermont

Vermont has very low minority populations in the counties USDA selected.

15. Washington State

Washington State’s most significant minority farming population is Native American. The State Conservationist is also Native American. She was clearly committed to outreach to Native Americans and there were active outreach efforts in the State. There was a consensus among Washington State employees, however, that many of the programs, particularly easement programs, were ill-suited to tribal lands.

J. Additional Contract Task Analyses

The Contract included a number of discrete areas to be covered in the Assessment. These are addressed below.

- 1. “Assess current program delivery and strategies and their impact on constituencies in 6 counties in 15 states (consider whether USDA practices are discriminatory and whether all customers have equal access to USDA programs).”**

a. Cost-Share Programs

Many NRCS programs are cost-share programs, including EQIP, NRCS’s largest program. EQIP is also the program for which most

SDG farmers and ranchers are eligible. For EQIP contracts, NRCS will pay up to 75% (90% for socially disadvantaged customers) of the approved cost of the conservation practice.

1) Customers are often confused by cost-share programs.

Employees reported that NRCS customers are confused about the nature of cost-share programs. They tend to believe that NRCS programs are grant programs, and many are surprised to learn that they have to contribute funding themselves in order to participate. For many SDG farmers and ranchers, the cost-share amount is prohibitive. For example, one customer who participated in a Focus Group in North Carolina said “You have to have a pocket full of money to get in this EQIP program because it’s very costly.” Another complained that “sometimes it’s hard for the individual to come up with the cost-share. So if there’s some other things, a grant or low-interest loan whereby they can assure they got something to help them get started . . . more people [would] feel comfortable about it, because I know some people worry about the cost share.” This sentiment was echoed by numerous SDG Focus Group participants, CBOs, and field-level employees.

2) Customers must front the entire cost subject to reimbursement.

Many employees, Focus Group participants, and CBOs reported that it can take a long time, many months to a year, to be reimbursed for the costs that customers incur and this imposes an undue hardship on SDGs. One Georgia Focus Group participant, for example, stated, “I think the government just takes their time of refunding us ... They have no rush in getting our money back to us when we do a cost share portion of the program.” NRCS has tried to alleviate this problem by allowing up to 30% of the cost to be provided up front in some cases, but this is a new initiative that has apparently rarely been used. The 30% “up-front” program takes the form of an FSA loan, which requires coordination between NRCS and FSA, adding additional complexity and paperwork for applicants. A New Mexico-based CBO stated that the 30% up-front payment is not large enough for its constituents who continue to suffer hardship until the final payment is

made. The same observation was made by a New Mexico Focus Group participant.

3) Approved costs are below actual costs.

Customers also complain to NRCS employees that the approved cost is much lower than the actual cost of the practice, and customers therefore pay more out-of-pocket than the cost-share agreement would suggest. One New Mexico Focus Group participant complained that “[NRCS’s] estimates are very low compared to the real market prices of the project . . . the EQIP program I was in; it should have been reimbursed 80%. And they did give me 80%, but it was based off the numbers they were using that were from a previous year’s model. . . . I ended up paying 70% thereabouts on my side, 30% on their part.” CBOs echoed similar complaints on behalf of their constituents.

4) Approved practices are often inappropriate for SDG, small and limited resource farmers and ranchers.

Technical practices that are approved by NRCS are often sophisticated practices that protect NRCS’s “investment” and provide the greatest conservation effectiveness. NRCS employees reported that some of these technical practices are inappropriate for smaller and limited resource farmers – a disproportionate percentage of whom are socially disadvantaged. Many of these customers cannot afford the technical practices approved by NRCS, or the technical practices that NRCS requires are inappropriate for smaller farms. One CBO, for example, cited the requirement that land be irrigated for three of the last five years as a barrier to participation for many African-American farmers and ranchers. An Oklahoma CBO used fence building as an example. The CBO stated that there are specific NRCS guidelines that must be followed, but the CBO’s constituents believe they can build better and cheaper fences than those prescribed by NRCS. A New Mexico-based CBO stated that estimates by NRCS of materials needed to complete a project are sometimes inaccurate, which leaves the producer with extra/unneeded materials which are difficult to return for reimbursement. Field level employees have very little flexibility to alter technical requirements to suit the needs of SDG farmers and ranchers.

b. Easement Programs

Easement programs make up almost a quarter of NRCS's budget for Farm Bill programs, but SDG farmers and ranchers apparently participate at a very low rate (see discussion below). NRCS employees reported that SDG participation in these programs tends to be low because the application rate is low, and the application rate is low because of the economics of small farms, complexity of land ownership, and distrust of the government.

1) Economics of Small Farms

Participants in easement programs such as WRP, FRPP, and GRP sell an easement, usually permanent, on their land to the Federal Government which takes the land out of production for conservation purposes. Participants in WRP, for instance, sell an easement on eligible wetlands that prohibits agricultural activity and allows the restoration of the wetlands. Often, the land can still be used for hunting or other non-agricultural purposes.

As a general matter, SDG/limited resource farmers cannot afford to take land out of agricultural production. NRCS employees believed that the pay incentives for easement programs rewards scale, and easements on small farms often do not make economic sense for SDGs.

2) Complex Land Ownership

Employees reported that the contracting process for easement programs is particularly complicated, and is often not completely understood by Field Office employees, much less their customers. Land must have clear title in order to grant an easement, and SDG customers, more so than other customers, tend to have complicated ownership arrangements and titles held in the names of individuals who are not the Farm Operator. Many of these customers are intimidated by the easement process because of complexities associated with land title. Focus Groups often stated this concern. For example, one New Mexico Focus Group participant reported, “[NRCS] said you have to put a rider in on a contract if you were to sell it . . . I never pursued it further, because it seemed too complicated.” A South Carolina Focus Group participant, in discussing land he was renting, said, “A majority of this property is in the estate. So it's making it almost

impossible for you to be able to participate because you got to get somebody that is dead, but I'm paying the rent to one of the family members.”

3) Distrust of Government

Employees reported that many SDG customers are resistant to easements because of historical distrust of government. Many potential customers view encumbering land with an easement as akin to government appropriation of land. For example, one Oklahoma Focus Group participant said: “There's a lack of trust. I'm not going to put our land up to that kind of scrutiny and to only end up losing it”.

Employees believed that Native American customers, in particular, are resistant to easement programs, though some NRCS employees spoke of strong resistance among African-American farmers and ranchers as well. NRCS has tried to address the problem of resistance to easements caused by historical distrust of government land-appropriation by allowing customers to sign up for 30-year leases instead of permanent easements, but employees reported that these efforts remain largely unsuccessful.

a) CSP

Field-level NRCS employees frequently stated that the Conservation Stewardship Program is inappropriate for SDGs, small farms, and limited resource farms, is extremely complicated, and suffers from particularly low SDG participation. This problem is exacerbated by the fact that CSP is receiving increased funding, possibly at the expense of more accessible programs (in 2008 CSP had no funding; in FY 2009 it made up 10% of the NRCS Farm Bill program budget; and in FY 2010 25% of the Farm Bill budget; while over the same period EQIP went from 62% in FY 2008, to 45% in FY 2009, and 43% in FY 2010).

CSP is designed to reward and incentivize farmers who have already implemented conservation practices on their land. Participants are often existing customers of NRCS, and SDG farms tend not to have implemented the practices that allow them to participate in CSP. Moreover, the field employees interviewed reported that the economics of CSP tends to make sense for farms and ranches of a large scale -- small farms receive very small payments for participation in CSP.

Employees believed that the application and eligibility requirements for CSP are very complicated, and many NRCS employees seemed to have difficulty completely comprehending the program themselves. The complexity of the eligibility requirements, combined with the nature of the program, pose barriers to participation for smaller farmers, who often are SDGs.

b) Ranking of Contract Applications

Program applications are scored and ranked according to a formula prescribed at the national level, with state and local adaptations to accommodate local resource needs. The formula is resource-based; it does not consider whether the applicants are socially disadvantaged or use any demographic criteria.

Employees reported that the ranking process has improved over time to be more equitable and to be less skewed towards large farms and ranches. Nonetheless, many NRCS employees stated that the rankings still reward landowners with multiple resource concerns to the detriment of smaller farmers and ranchers who may want to implement only one practice. The ranking formulas are complicated, and lack transparency. Focus Group participants in North Carolina, Oklahoma and South Carolina, in particular, found it difficult to understand why they did not rank more highly compared to other applicants. There are set-asides and funding pools for SDG farmers that help alleviate some of these problems, but, according to employees the Assessment Team interviewed, the set-asides may be too small and too vague to incentivize NRCS employees to target SDG farmers and ranchers.

Headquarters is largely responsible for developing the formula used to rank applicants (State and Field Offices can adapt formulas on the margins to address local resource needs). Many Headquarters employees stated that the ranking formulas are biased against smaller farms with limited resources in favor of farmers who can implement multiple practices.

In addition, Focus Group participants also complained that the ranking process was biased towards larger, non-SDG farmers. A California Focus Group participant said, “they were up front about at the very beginning ... that I wasn't large enough.” A similar sentiment was expressed by a

New Mexico Focus Group participant. A North Carolina Focus Group participant said that the ranking process was not sufficiently transparent. The failure to explain to participants why their application was rejected was a frequent source of customer suspicions of discriminatory treatment. A New Mexico Focus Group participant explained: “My impression is, well, they are going to fund the big farmers first. The smaller ones will be left with whatever is left after the big farmers are done. So it would be nice to have some information as to how they determine where the funds are going to be directed.”

2. “Evaluate the effectiveness of local USDA leadership in assessing community and constituent needs and in adapting USDA programs, within applicable laws and regulations, to meet those needs.”

NRCS employees reported having limited data and tools to assess community and constituent needs. NRCS employees complained they did not have basic data or metrics to assist them in performing successful outreach or to help them evaluate the success of outreach. *AgCensus* seemed to be the only tool to assess the demographics of potential customers, and many field-level employees felt it provided insufficient data to understand the customer base in their county. State and field-level employees also lacked a platform or protocol to analyze the data in context. It is difficult to assess the success of outreach efforts because there is no systemized tracking of interested customers, how customers became aware of NRCS, or what prompted customers to visit NRCS offices.

Employees did not adequately understand the demographics of their existing customers. For this purpose NRCS relies upon demographic data originally entered into the SCIMS system (usually by an FSA employee). This data is fed into Protracts/PRS systems (NRCS’s primary system for processing applications), and NRCS compiles the data to assess SDG participation in programs.

NRCS employees, based on their knowledge of their customers, felt that the demographic data contained in Protracts was inaccurate. They stated that USDA employees “are prohibited from asking customers their race,” so employees assess the race of applicants based on their personal observation. These assessments often are wrong, and inaccurate information is then fed through the system to Protracts. Without

accurate information as to who their current and potential customers are, NRCS employees have difficulty assessing where to target outreach efforts and assessing the success of those efforts.

3. “Assess and analyze cultural climate, cultural competencies, and perceptions of USDA employees, as well as equity of business processes and timelines employed by USDA and its effect on the broad diversity of its constituents.”

a. Cultural Climate

Interviews with employees at national, state, and local levels indicated that NRCS generally sees itself as having a cultural climate that encourages the equitable delivery of programs to customers and potential customers. The cultural climate, however, was highly variable among states and within states. Contributing to this variability are: (i) lack of clear guidance for conducting outreach, (ii) lack of a clear definition of outreach, (iii) inability to measure the success of outreach and effectiveness of individual employees and offices, (iv) lack of accountability, and (v) other demands on employee time.

Headquarters leadership and employees appeared to place a priority on delivering programs to SDGs, but experienced difficulties disseminating their message throughout the States and Field Offices and influencing the cultural climate throughout the organization. Employees attributed this to several factors:

- Headquarters exercises little actual control over State Conservationists. State Conservationists report to Regional Conservationists, who in turn report to the Chief. Regional Conservationists appeared to exercise little leverage over the State Conservationist because budgets are allocated directly to the states and State Conservationists often communicate directly with the Chief. NRCS leadership is viewed by some as not adequately emphasizing outreach and the equitable delivery of programs, because of other time and resource demands, especially as allocation of Farm Bill funds is the top priority of the organization. The lack of metrics for effective outreach and the inadequacy of incentives in performance

plans make it very difficult to hold State Conservationists accountable.

- The autonomy of State Conservationists leads to high variability among states with respect to cultural climate. State Conservationists who were committed to outreach and equitable delivery of programs were able to create a culture within their state that prioritized these goals. Where the State Conservationists are less committed, these goals have a lower priority.
- Within states, the culture of Field Offices often varied. Because field-level employees, especially District Conservationists, often lacked clear goals and guidelines with respect to outreach, the emphasis placed on outreach and the equal delivery of programs often depends on the initiative of the District Conservationist. The absence of metrics to evaluate the effectiveness of outreach, insufficient incentives, and ineffective performance plans that group outreach into the larger rubric of “Civil Rights,” all contribute to lack of accountability of field-level employees with respect to outreach and the equitable delivery of programs.

As discussed above and below, many Focus Group participants and CBOs stated that NRCS has a cultural climate that generally encourages the equitable delivery of programs to customers and potential customers. Several others disagree. For example, one North Carolina Focus Group participant said: “[T]hat would be good if they were more [culturally] aware and just had more knowledge.” Another from Oklahoma complained “I think they need to really do their job. Do their job and treat every individual like they want to be treated.”

A central cultural issue is the inability of NRCS employees to communicate effectively with constituents who speak foreign or Native American languages. For example, a Focus Group participant in North Carolina said: “[M]aybe having people who are bilingual—people with just more information in other languages—that could be a catapult to expanding,” and a North Dakota CBO said that there was a language barrier between its Native American constituents and NRCS.

A Native American North Dakota Focus Group participant said “her people” did not trust the government and were reluctant to participate in USDA programs. She also said “her people” were reluctant to drive the 60 miles to the closest office. To begin building trust and eliminate the travel issue, she suggested, “I think maybe you should have some representative come to the reservations or just spend one day or like you guys are doing here and eventually it will catch on, you know, and we really gossip [spread the word about NRCS] on the reservation too.” She said as an alternative, NRCS “should have a small office or something where they can give out this information.”

Certain Native American tribes do not own, but lease, lands, and they perceive NRCS’s inability to simplify programs to adapt to their unique circumstances as a significant barrier. A Native American Focus Group participant in Oklahoma reported: “Interpreting our [Native American] leases and our understanding tribal allotted lands and all that madness. That's a big problem.” She said this problem creates a barrier to participation because “you've got to have a legal document to take them that says you are in control of the land. So if you bring the full bloods in there, who you have to interpret, that's offensive.”

Some Focus Group participants also stated that there was an inequitable, discriminatory delivery of services because of their race or ethnicity, or because of the size of their operation. For example, a Focus Group participant in Louisiana said: “[O]ur feeling is that only the people that are close friends with the employees of this Agency are the ones that get the funds first. So, those that really need it don't ever get to see it.” And another in Oklahoma reported: “I asked for specific programs that relate to Native Americans and I was told right to my face they don't exist, I know they exist. . . . What's wrong with taking five Native American farmers, sitting down there, now, this is how you fill out line 1, line 2, line 3, line 4, line 5? It's still cheaper to do effective outreach than pay a program complaint.” And another participant, a farmer in Georgia, complained: “We are just small farmers and we just don't get the programs like the big farmers do.” A New Mexico CBO said its members were at a disadvantage because the large farmers were “already plugged into the programs.”

Some Focus Group participants expressed the belief that they were generally treated differently based on their race or ethnicity. A Louisiana Focus Group participant’s solution for this was that NRCS staff should

be sent to “some type of educational program where, you know, they are told that either you are going to be nondiscriminatory, or you are out of here.” Two South Carolina participants expressed the belief that they were discouraged from applying for programs because of their race, African American. A Michigan CBO said its constituents did not believe the reasons offered as to why their applications were denied, and attributed the real reason to race discrimination. A California CBO said it was the consensus of African American and Southeast Asian constituents that they were discriminated against by NRCS.

b. Training

Training requirements for NRCS employees are widely inconsistent among states and even among offices within states. The only universal mandatory training for NRCS employees is *AgLearn* web-based training. *AgLearn* contains a “catch-all” Civil Rights module that all employees must complete each year. While the Civil Rights module includes cultural sensitivity, it is generic and employees nearly universally reported that it is ineffectual.

Any other cultural sensitivity and civil rights training received by employees is *ad hoc*. Some employees reported attending classes at the National Employee Development Center, some reported participating in cultural exchanges with tribes, and others participated in Civil Rights committees and seminars. These *ad hoc* training opportunities are scheduled sporadically and appear to take place only at the initiative of employees, depending on the availability of training budgets. Many employees felt that cultural sensitivity and civil rights training was too generic to meet the needs of their particular constituencies or did not include the groups that employees needed or wanted to target. Some employees reported bluntly that they did not have the cultural competency to serve their potential customers, particularly Native American customers.

NRCS receives relatively few Title VI complaints, which could be a positive sign. The Assessment Team found, however, that many employees did not know the reporting requirements for processing such complaints, which may lead to under reporting or deterrence of customers who may feel they have a complaint but do not know the process. Employees do not receive regular training regarding the processing of customer complaints.

Some Headquarters employees complained that there was insufficient institutional knowledge and training regarding tribal cultures. Several interviewees maintained that there was active resistance among their colleagues to working with tribes, training that treated diverse tribes the same, and programs and technical requirements that were inappropriate to practices commonly employed by Native American customers and potential customers.

c. Application Timelines

Applications for most programs are ranked against each other at the field level (though some programs are ranked at the State or Area level; this varies per state). Enrollment is now “open,” meaning that applicants can apply for programs at any time during the year, as opposed to the past where there were limited enrollment periods. Nonetheless, ranking is conducted only at a specific time in the year and, for the most part, if an application is submitted after the ranking is performed, an applicant may have to wait an entire year to participate in the program regardless of when the application was filed. This delay can be very frustrating for customers. For example, one Native American customer complained “there [were a] few people that would have used the program, but poof, the deadline was there and gone, so I don’t really know anymore about it.”

According to NRCS employees, when new initiatives are announced, the time-frame for allocating funds can be very short. Field Offices, then, must identify eligible customers and solicit applications in a hurry. This effort can be complicated by the fact that NRCS often does not release the exact rules and regulations when announcing a program. This combination of factors sometimes leads to NRCS Field Office personnel looking only to existing customers to participate in new programs. One socially disadvantaged Focus Group participant in Georgia complained, “once I applied for something and it was too late, because of not knowing the date that I should apply for it.” Also, the rush to allocate Farm Bill program funds can create a bias towards larger farms. Finally, the pressure to allocate funds may prevent NRCS employees from taking the time to provide Technical Assistance to SDG customers interested in a different program.

d. Application Complexity

According to NRCS employees, Focus Groups, and CBOs, the application process can be a source of frustration. All program eligibility is evaluated using an IT system called SCIMS. In some field offices, NRCS employees can enter customer information in SCIMS, but usually it is done by FSA. Applications can be delayed when customer data are not entered into SCIMS properly and promptly. Note that applicants are not asked to self-identify race or gender, so demographic data is entered based on the observation of the USDA employee working on the application.

One frequent complaint expressed during Focus Groups was that the application process and the program eligibility requirements were too complex. This complaint was consistently echoed in interviews with CBOs. Many customers complained of the “alphabet soup” of NRCS programs, and many could not understand what was required of them to participate in programs. One socially disadvantaged participant in New Mexico said that, “I didn’t know a lot of the technical words that they were using and what needed to be done.” Another New Mexico customer, who went to a local Field Office to inquire about programs, was similarly confused: “It’s just hard to understand what is being offered or what you can sort of go for.” Another participant in Oklahoma complained, “It’s the complex paperwork that kills you there.”

NRCS/USDA advertising often does not specify eligibility requirements. Employees reported, and Focus Group participants often complained, that customers become frustrated when they think that a program will work for them only to discover that they are not eligible.

According to NRCS staff, many customers believe that cost-share programs are, in fact, grant programs, and many customers confuse NRCS functions with those of other USDA agencies. These kinds of misunderstandings seem to be a large source of customer frustration, and are compounded when NRCS employees do not take the time to communicate with customers or do not have the time to produce Conservation Plans for customers’ property to see which programs may be appropriate.

Employees reported, and Focus Group participants and constituents of CBOs often complained, that certain specific aspects of the application

process were exceedingly complex and intimidating to customers. For example, the application requires disclosure of Adjusted Gross Income (“AGI”), a form which can be intimidating to those not familiar with working with the government. The contracts themselves contain large appendices filled with legalese. Field employees are supposed to help customers through this process, but the complexity of the process and forms deters participation by SDG customers and potential customers.

Focus Group participants and CBOs often complained that there were long delays in processing applications, and employees reported that they did not always have the resources to promptly process applications. After an application for NRCS programs is initiated, NRCS employees usually visit the applicant’s property to develop a Conservation Plan in order to assess the applicant’s resource needs. In many offices, employees reported that applicants can wait a long time (many months to a year) for NRCS staff to develop a Conservation Plan with them due to a backlog of applications. Employees believed that this wait, combined with the complexity of the application process and the often short timelines to apply for programs, can dissuade potential SDG customers from pursuing an application to completion.

A common complaint expressed in Focus Groups and during CBO interviews was that NRCS communicates poorly with rejected applicants. Applicants often did not understand the eligibility requirements nor are they informed of the reasons they are found ineligible. Some applicants complain they never receive any communication at all, and that they suspect that their application was lost. The lack of communication with ineligible or rejected customers often leads to accusations of discrimination. For instance, one African American participant in Mississippi stated, “I can’t understand why is it that some other people can get the size of a lake, pond, or what have you, they need. I have an excuse given to me every time I apply for it.” Another participant in Oklahoma complained, “you walk in our office and they just say you don’t qualify. I don’t know if it is because I’m ugly or I’m mad or what, but you don’t get an application.”

Easement programs pose unique problems. Employees reported that many people do not understand the process of applying for and obtaining an easement, and the permanence of the restriction upon the land. Clear title is generally required, which can be difficult for many SDG farmers and ranchers, but is a particular problem on tribal land. One Native

American Focus Group participant in Oklahoma complained that “you’ve got to have a legal document to take them that says you are in control of the land. So if you bring the full bloods there, who you have to interpret, that’s offensive.”

Employees often stated that distrust of the government deters SDG customers from participating in easement programs. NRCS has responded to this distrust, in part, by allowing 30-year leases in lieu of easements, although this is a new initiative and it does not appear many have been implemented.

e. Recruitment and Retention of a Diverse NRCS Workforce

Minorities are under-represented in many NRCS State and Field Offices. According to NRCS employees, the greatest barriers to minority recruitment and retention are bureaucratic hurdles, overly restrictive job requirements, and lack of mentoring. Many employees responsible for recruitment complained that they did not have hiring authority, and although they would meet interested applicants at minority job fairs and other recruiting events, they were at a disadvantage to other employers because they could not hire on the spot, and they often were unable to follow up with the interested candidates.

In some states, employees reported that the retention of minority employees has been very difficult. Minority candidates are often placed in areas and offices with very low minority populations, where they become isolated and discouraged. There is little to no mentoring for minority and female new hires, and no systematic plan to retain minority employees.

Finally, some employees responsible for recruitment felt that job requirements were unnecessarily restrictive at the expense of minority and female applicants. For example, some employees believed that environmental science students are qualified to work for NRCS, and there appears to be a great deal of interest from SDG students of environmental science. However, most environmental science majors do not have the selection of classes required for soil conservationist jobs and other entry level jobs at NRCS.

4. “Examine outreach efforts at the local level. Research the different outreach techniques employed by USDA staff and the priority that constituency outreach has in local service centers.”

Almost universally, NRCS employees complained they did not have time to conduct effective outreach. The pressure to allocate Farm Bill program funds, the lack of funding for technical assistance, high quantity of paperwork, and lack of staff were all identified as barriers to providing outreach.

According to NRCS, prior to the passage of the last two Farm Bills, NRCS primarily provided technical assistance to farmers and ranchers. Field Office workers spent most of their time outside of the office, and often were able to simply stop by farms to see if they needed assistance. The customer-service and fieldwork orientation of the Agency still seems to permeate the culture of NRCS, and employees appeared eager to conduct more one-on-one, face-to-face outreach.

The advent of modern NRCS programs, however, has changed the nature of NRCS’s work. While programs provide a large amount of funding to increase conservation of private land and further NRCS’s goals, they also place heavy burdens on field-level staff. State leadership is eager to allocate all the program funds that the state receives and signing up customers is a high priority for field employees. The consequences of the increased focus on allocation of financial assistance are (a) less time to develop new relationships with non-traditional customers, (b) fewer resources available for traditional technical assistance, (c) incentives to work with larger customers where more funds can be allocated under a single contract, and (d) an increased amount of time in the office doing application, contracting, and contract-maintenance paperwork.

The complexity of NRCS programs exacerbates the problem of insufficient time to devote to traditional one-on-one outreach. The number of programs; the amount of application, eligibility, and contracting paperwork; the complexity of eligibility and technical requirements; the introduction of new programs and initiatives; and the frequent changes to program requirements, demand nearly all of the time of field employees, significantly reducing the available time for one-on-one outreach, providing technical assistance, and developing Conservation Plans.

Some employees expressed a troubling hostility towards outreach to SDGs. These employees felt that targeting minorities was a form of “reverse discrimination” and was unfair to non-minority farmers and ranchers. This problem, however, did not appear to be widespread.

Based on the varying responses given during the Focus Group sessions and CBO interviews, it appears that the effectiveness of outreach is office specific. Neither Focus Group participants nor CBOs have sufficient information to determine whether it is local, state, or national leadership who assesses community or constituent needs or who adapts USDA programs to meet those needs. However, as discussed above, there are a number of areas Focus Group participants and CBOs identified where there is room for improvement in outreach at local NRCS offices. Some key areas include:

- Advise customers and potential customers in “understandable-to-the-layperson” information about program offerings, eligibility requirements, and timely application deadlines;
- Mail regular newsletters;
- Increase provision of information through print, radio, internet, and/or television;
- Attend and provide current information about NRCS, for example, at seminars, forums, workshops, community meetings, farm shows, tribal meetings;
- Conduct outreach programs, such as those described immediately above, at times other than regular office hours so that these outreach efforts are available to a wider audience. One Louisiana CBO leader recommended that “you want to get loans out to the public, act like commercial lending institutions, don't act like a government lending institution. There are ways to get out to the people. You know what? You may have to be open on Saturdays; you may have to do some open houses, you know, in the evenings, after school or something when people are available. And you may have to advertise;” and

- Visit farms regularly to conduct one-on-one outreach.

5. “Identify statutory and regulatory policies that may lead to discrimination and bar individuals from participating.”

For the most part, interviewees on the national, state, and local levels pointed to few statutory or regulatory policies as posing barriers to participation by SDG individuals. However, several issues were raised during interviews.

As discussed above, the principal issues the Assessment Team discovered that impeded SDG participation are: complexity of applications, complexity of eligibility requirements, short application deadlines, and a ranking system that favors larger farms over the smaller farms that SDG individuals tend to own.

Several employees pointed out that the inability to collect demographic data from customers made it difficult to assess whether customers were socially disadvantaged. FSA employees, who are usually responsible for entering customer data into the SCIMS system, often base their entries for the race/ethnicity of applicants on their personal observations. This data is then fed into the NRCS Protracts system, which generates demographic reports. Many field level employees felt that these reports were inaccurate based on their knowledge of their customers, and that the reliance on employee-identified demographic data was a barrier to participation.

In states with small farms and ranches, particularly small horse farms, employees believed that the ten-acre minimum requirement for program participation also created a barrier. These employees believed that farms smaller than 10 acres can be commercial farms that should be able to participate in programs, and that this minimum excludes a large percentage of potential customers, particularly SDG customers.

6. “Examine national, state, and local policies that may lead to discrimination and bar individuals from participating.”

As discussed above, NRCS has historically provided technical services to its customers. Traditionally, District Conservationists would spend most of their time in the field providing technical assistance to local farmers and ranchers. The advent of modern NRCS programs has

reduced the emphasis on technical assistance. The current top priority of field-level employees, enforced by leadership and reflected in performance plans, is to allocate financial assistance to program participants.

Therefore, funding for technical assistance is dwindling and funds for financial assistance are increasing, explained by some employees as based on the view (attributed by Headquarters employees to OMB, which determines the ratio of financial and technical assistance funds within certain statutory parameters) that more money should be going to farmers and less to administration. Some interviewees felt that technical assistance is viewed as a “New Deal relic.” The lack of technical assistance funds, many employees reported, combined with the overwhelming pressure to allocate Farm Bill funds, not only takes away time and resources to conduct one-on-one outreach, but also creates an incentive to target larger farmers who provide greater economies of scale with respect to time and resources.

Many NRCS employees also expressed frustration with their inability to penetrate Native American customer bases, particularly those on reservations. Many of the barriers they identified were cultural—for example, it takes a long time to build trust with tribal governments and customers. The difficulty in earning trust is often compounded by high turnover of NRCS personnel in tribal field offices and service centers that serve reservations.

Although apparently improving, the process of determining eligibility for tribal customers can be a barrier for participation. According to NRCS employees, many Native Americans have never paid Federal taxes and find the AGI forms intimidating. Tribal land ownership can be complicated and NRCS/USDA systems are not always equipped to approve program eligibility for tribal-owned land. In many cases, NRCS must work with the Bureau of Indian Affairs (“BIA”) in order to finalize contracts related to Native American land, and often the BIA is slow to engage or the relationship between BIA and NRCS employees is strained. Furthermore, an evaluation of the impact of practices on cultural resources must take place before practices can be implemented on tribal land, and that process can cause long delays. Many field-level employees asserted that these barriers make it difficult to adapt programs to the specific needs of Native Americans and to perform outreach to tribal constituencies.

Headquarters employees, including leadership, believed that there is insufficient representation of minority employees in NRCS senior-level positions in Washington D.C. Recruitment, many felt, was not targeted effectively to minorities and was overly bureaucratic. For example, some employees lamented that when they did go to a minority job fair, they could not make offers on the spot, and instead would have to go through an overly-burdensome approval process. The NRCS Chief noted that the reorganization of Headquarters (which was announced while the Assessment Team was conducting interviews) would empower the Deputy Chief for Management to recruit more minority employees.

While some Focus Group participants and CBOs expressed displeasure with certain requirements and deadlines, none pointed to any specific national, state, or local policy as creating a barrier to equal participation.

7. “Examine program delivery information technology tools to ensure equity and access. Systems to be reviewed are: Protracts, AERT, SCIMS, and Farm Business Plans.”

A common complaint from NRCS field-level employees is that they are dependent on FSA to enter customer data, particularly demographic data, into the SCIMS system in order to determine eligibility for participation in USDA programs. They complain that FSA is often slow in processing applications, particularly in offices where the relationship between FSA and NRCS is strained.

Some employees felt that the SCIMS system was unnecessarily restrictive, more so than the eligibility requirements necessitate. Determining eligibility through SCIMS is a particular problem for tribal members. Interviewees pointed out that the unique ownership structure of reservation and tribal lands and the fact that the AGI form is inapplicable to many Native Americans, pose barriers to Native American customers being found eligible through the SCIMS system. Many other SDGs have trouble proving ownership interests for the purposes of eligibility, and working through those issues can also pose barriers.

As discussed above, demographic data entered into SCIMS is often unreliable because it is entered based on employee visual observation.

Employees did not believe that other systems used by NRCS (Protracts, Performance Results System,¹⁰⁹ AERT) posed any barrier to participation.

The systems reviewed are internal to USDA and NRCS. Thus, Focus Group participants and CBOs could not provide any information concerning this issue.

8. “Examine outreach efforts at the national level. Research the different constituency outreach techniques dictated by USDA staff at the national level and the success of constituency outreach at the local level.”

Interviews with Headquarters employees made clear that Headquarters does very little to empower states to perform effective outreach. The Outreach office does not provide data, best practices, effective materials, or perform direct outreach to NRCS customers and potential customers. In fact, it was somewhat unclear what functions National Outreach performs. Apparently a combination of the lack of resources to perform data collection and material preparation functions for the states, and possessing no real authority over state-level leadership, made national outreach’s task difficult. What direction the office does provide, it appears, either does not reach or was ignored by state-level leadership.

Nearly all of NRCS’s state-level leadership and field-level employees interviewed were unaware of any national outreach efforts initiated by Headquarters. According to them, outreach initiatives, materials, and business plans were developed entirely on the state and field levels, and data analysis and information gathering takes place entirely at the state level. Therefore there is a high variability among the states as to how outreach is performed, what media and materials are used, and what policies guide overall outreach initiatives. There is little to no communication regarding successful outreach efforts among the states, and little transfer of best practices.

Focus Group participants and CBOs typically regarded any outreach efforts as coming from USDA or NRCS, and did not tend to identify the effort as being local, state or national.

¹⁰⁹ The Performance Results System (“PRS”) uses direct entry and data extracted from other systems to consolidate performance results.

Many NRCS employees in leadership positions in Headquarters pointed out that the quality and effectiveness of outreach efforts was highly variable among the states. NRCS structure has the 50 State Conservationists reporting to the three Regional Conservationists, who in turn report to the Chief. In practice, they reported, the State Conservationists take most of their direction directly from the Chief, and other leadership at Headquarters exercises very little leverage over the states. State Conservationists authority for NRCS operations in their state, and many Headquarters employees described the states as “fiefs.” Therefore, they maintain, the effectiveness of outreach is directly proportional to the commitment of the State Conservationist.

This problem is exacerbated by the fact that there are few consistent policies governing outreach. For the most part, states develop their own materials, cultural training, means of dissemination, outreach plans and outreach policies. The upside of this localization is the ability to tailor outreach initiatives to the particular needs of state populations. The downside is that there is very little transfer of knowledge or best practices between the states, and no consistent standard of performance.

The problem of inconsistency between the states is exacerbated by the inability to measure the effectiveness of outreach. NRCS leadership expressed frustration with their inability to track outreach efforts or to collect information as to how customers came to participate in NRCS programs. Combined with the lack of consistent policies, the effectiveness of outreach efforts is largely unknown.

Many employees in Headquarters also felt that the performance plans that were in place were inadequate to incentivize State Conservationists to perform effective outreach. The performance plans contain a single category for Civil Rights, which encompasses Title VI and Title VII compliance, recruitment, and outreach. Many employees felt that this all-encompassing performance category was too general to effectively measure performance or to incentivize state-level leadership.

NRCS leadership’s inability to measure the effectiveness of outreach, the lack of consistent outreach policies between the states, the lack of incentives to perform outreach, and the organizational deferral of authority to state-level leadership leads to a general lack of accountability for state-level leadership with respect to program delivery to socially disadvantaged customers and potential customers. The lack

of accountability and relative independence of State Conservationists also makes it difficult for NRCS leadership to effectively convey its commitment to outreach and Civil Rights to local leaders or affect the culture of NRCS on a national level.

Senior NRCS leadership appears committed to maintaining local control in order to tailor outreach efforts to the individual needs of states, but recognizes that consistent policies and effective metrics and controls need to be put in place. As the Assessment Team was told, the planned Headquarters reorganization that will place Human Resources, Outreach, Recruitment, and Civil Rights functions under one Deputy Chief, combined with a pilot program that will reform performance plans, will address some of these problems.

Some employees in Headquarters expressed dissatisfaction with NRCS's relationships with CBOs on the national level. Many employees felt that NRCS maintained relationships with non-diverse "traditional" CBOs, such as FFA (formerly known as "Future Farmers of America"), and ignore CBOs that represent minority interests.

9. "Examine committee structures and policies which govern these committees, which are used by USDA to deliver programs (e.g., FSA County Committees, State Technical Committees, and local work groups)."

a. State Technical Committees

State Technical Committees, local working groups, and Conservation Districts all exercise some influence on NRCS with respect to setting resource priorities, technical requirements, ranking formulas, and special initiatives.

State Technical Committees serve in an advisory capacity to NRCS. Committees include members from a wide variety of natural resource and agricultural interests. Chaired by the NRCS State Conservationist in each state, these Committees are composed of representatives from Federal and state natural resource agencies, Native American tribes, agricultural and environmental organizations, and agricultural producers.

Focus Group participants, employees, and CBOs, for the most part, did not report that the State Technical Committees created a barrier to the equal delivery of programs to customers and potential customers. However, some Focus Group customers felt that the State Technical Committees were not sufficiently transparent with respect to the development of ranking criteria and resource priorities.

b. Local Working Groups

Local Working Groups coordinate NRCS programs with other Federal, state, tribal, and local conservation programs to provide an integrated solution to addressing natural resource concerns.¹¹⁰ Local Work Groups advise NRCS on the following:

- Conditions of the natural resources and the environment;
- The local application process, including ranking criteria and application periods;
- Identifying the educational and training needs of producers;
- Cost-share rates and payment levels and methods of payment;
- Eligible conservation practices;
- The need for new, innovative conservation practices;
- Public outreach and information efforts; and
- Program performance indicators.

Local Working Groups also act as representatives to serve on multi-state Technical Committees, as needed.

Membership of Local Working Groups includes:

- NRCS District Conservationist;

¹¹⁰ See, <http://www.mt.nrcs.usda.gov/news/factsheets/localworkgroup.html>, describing the duties and composition of a typical Local Working Group.

- Members of the Conservation District Board;
- Members of the FSA County Committee;
- FSA County Executive Director;
- Conservation District Manager;
- Cooperative Extension agent;
- State or local elected or appointed officials;
- Tribal representatives; and
- Other Federal and state government representatives.

Although Local Working Groups are limited to the above members, the public is allowed to participate in Local Working Group meetings.

Focus Group customers, employees, and CBOs interviewed did not report that the Local Working Groups created any barriers to the equal delivery of programs.

c. Conservation Districts

Conservation Districts are state-funded, county-level organizations that represent the interests of local farmers and ranchers. Historically, they have had a close relationship with NRCS and have input on setting priorities, though they do not have any formal power to influence the allocation of funds or the approval of contracts. NRCS's relationship with Conservation Districts is usually formalized by a Memorandum of Understanding on the county level. A Conservation District Board is usually made up of five members; typically three are elected and two are appointed by the state government. Conservation Districts are funded by the state. Conservation Districts participate on the State Technical Committees and Local Working Groups that help determine resource and technical priorities for NRCS. In many cases, Conservation District employees work out of NRCS Field Offices.

The National Association of Conservation Districts (“NACD”), which represents the Conservation Districts on the national level, provides input on the formation of ranking criteria, resource priorities, and technical requirements on a national level.

NRCS Headquarters employees expressed some frustration with the lack of diversity of the Conservation District members and a concern that, as a result, they do not adequately reflect the interests of socially disadvantaged farmers and ranchers.

10. “Assess geographical locations and areas covered by offices, and accessibility of those facilities to persons of all physical abilities and of all ethnicities and races.”

According to NRCS employees, NRCS has not consolidated offices as other agencies have, and often has a good local presence. In many case, small or one person offices are located on tribal land. Although, there are some Native American reservations and tribal customers that are several hour drives from local offices, as a general matter, NRCS offices are well situated to reach their customers and are not a great distance from SDGs. Some states have greater accessibility problems than others. Michigan, New Mexico, and North Carolina CBOs, and Focus Group participants from Arizona, California, and New Mexico, said that the long distance from the nearest NRCS office poses an accessibility problem.¹¹¹

11. “Examine web presence and utilization across rural America and access opportunities for all Americans to USDA services.”

NRCS has successfully placed program information, applications, eligibility requirements, technical information, soil survey information, and other relevant materials on individual NRCS state websites. A large proportion of NRCS customers, however, either lack adequate internet access or are not sufficiently internet savvy to obtain their information from the internet. NRCS’s customers are in rural areas where high-speed internet often is not even available, and many farmers and ranchers are older and not comfortable with computers. These barriers tend to affect socially disadvantaged customers most acutely. E-mail

¹¹¹ See Section IX, below, regarding an overall assessment of USDA office locations, physical accessibility, and recommendations to address these issues.

and web-based outreach to NRCS customers and potential customers, therefore, tends to be largely unsuccessful.

For example, in the customer Focus Group held in Mississippi with all African American customers and potential customers (the Assessment Team invited and recruited more broadly, but only African American customers attended), only three of nine participants said that they had access to the internet. Another Focus Group participant in New Mexico stated that, “we are kind of farmers. We don’t know about that stuff. We don’t know about all that technology stuff.” Moreover, even many Focus Group participants with access to the internet had never looked at NRCS’s website because they were more comfortable obtaining information in-person. An Oklahoma CBO said that the website was not used much by its members because they cannot get a good internet connection and the older members do not desire to use a computer. Many customers who did use the website found it helpful, but others did not. For example, a New Mexico CBO said that its constituents found the website difficult to use and a North Carolina CBO said its constituents found the website to be vague and hard for “farm people” to understand.

K. Lessons Learned and Consistent Themes

1. Outreach

- Lack of clear, common definition of “outreach,” which causes confusion regarding USDA requirements;
- Untimely communication to customers of new programs, new program requirements, new initiatives, and deadlines;
- Lack of formalized method for reaching customers, such as a newsletter;
- Ineffective and confusing explanations of programs and eligibility requirements in advertising materials;
- No USDA or Agency-wide model for conducting effective outreach;

- Generally insufficient resources for effective outreach to SDGs;
- Insufficient use of CBOs for outreach;
- Inadequate interaction between Headquarters and State/Local offices to determine content, methods, targets and priorities for outreach;
- No uniformity or effective accountability at State/Regional level for clear outreach goals;
- No clear policy; outreach efforts undertaken at the voluntary initiative of local employees;
- Lack of coordination and framework on State level for State-Wide outreach consistency;
- Demographic data for program participants' customer base generally unreliable and insufficient to conduct useful analysis;
- Hostility of some field personnel to "targeted outreach" as discriminatory;
- Inadequate incentives for employees to conduct effective, targeted outreach;
- Inconsistent message sent to field regarding prioritizing acreage/funding allocations versus outreach; and
- No method to evaluate effectiveness of individual outreach efforts.

2. Employment Practices, Policies & Training

- Staffing in Local Field Offices often does not reflect demographics or language needs of customers;

- Current *AgLearn* computer-based training method is ineffective in promoting non-discrimination and cultural sensitivity;
- Training is irregular and inconsistent; live training is preferred;
- Recruitment practices deter creative approach to hiring well-qualified, diverse candidates; and
- Employee performance evaluations do not hold employees accountable for ensuring participation by underserved populations.

3. Program Application Process & Accessibility

- Program applications are complex, inflexible, and cumbersome;
- Eligibility requirements are complex and not clearly explained or publicized;
- Customers are not kept informed of the status of submitted applications, and applications are not tracked;
- Rejected applicants are not adequately informed as to the reason they were rejected, and inadequate assistance is given to help rejected applicants participate in programs;
- The nature and requirements for CSP and easement programs make them less utilized by SDG farmers and ranchers;
- The ranking process for EQIP rewards larger farms with multiple resource concerns and often excludes SDG farmers;
- Use of multiple databases and dependence on FSA for SCIMS eligibility creates delays/lack of consistency/incorrect or suspect information;
- Complex forms and requirements often deter SDG applicants;

- Program application process often inconsistent with unique characteristics of tribal customers;
- Field staff lack timely policies, forms, software-training for new programs;
- Customers are often not informed of deadlines or given enough notice to apply for programs;
- Regulations, initiatives and programs are released close to ranking deadline and create tendency to use existing customers as opposed to new customers;
- Unreliable demographic information, based on employee perceptions, is collected at the local level; and
- Approved technical practices are too expensive, inflexible, and sophisticated for many SDGs.

4. Field Office Accessibility

- Some offices present accessibility barriers to individuals with disabilities; and
- Although many offices are geographically accessible, some offices are not accessible to SDG customers, particularly on reservations.

5. Processing Customer Civil Rights Complaints

- Employees and customers are not fully aware of either customer or employee complaint processes (Title VI and Title VII).

6. Web Presence

- Customer preference for face-to-face assistance creates demand for more “personal” alternatives; and

- Utilization of web to reach NRCS customers is often ineffective because many customers do not have internet or are not computer savvy, especially SDGs.

L. Recommendations

Most of the Department-wide Recommendations in Section III, above—particularly those relating to DIA leadership, improving workforce diversity, enhancing incentives/penalties and accountability, creation of Offices of Emerging Customer Development, transitioning from the term “outreach” to “marketing,” accelerating cultural transformation initiatives, and reforming the civil rights complaint processes—pertain to and will address many of the barriers and other issues discussed in this Section. The following Recommendations assume the implementation of Department-wide Recommendations, and are intended to complement and supplement them with measures specific to NRCS and the issues identified herein. (For consistency with the above discussion, some terminology, such as the old term “outreach,” will be used in the following recommendations to recognize the transition (in this instance, from “outreach” to “marketing” and “emerging customer development.”))

Recommendation NRCS-1: Appoint an NRCS Chief Diversity Officer (“CDO”), and CDOs for each State [consistent with Department-wide Recommendations].

NRCS should appoint a Chief Diversity Officer (“CDO”) for the Agency with matrix reporting to a Department-level CDO (described more fully in the Department-level recommendations, Section III) and the NRCS Chief. The Agency-level CDO would be a Headquarters employee with initial staff and budget drawn from NRCS’s Office of Civil Rights. An “Office for Emerging Customer Development” should be created in the Agency CDO office to replace Outreach positions, and would integrate DIA with customer service.

CDOs should also be named on the state level, with dual diversity and compliance functions, with matrix reporting to the Agency CDO and the State Conservationists. The creation of a state-level CDO will help disseminate the Secretary’s commitment to DIA to the field level.

CDOs would be responsible for overseeing the creation of Annual DIA business plans on the Agency, State, and local levels showing goals/objectives for inclusion of underserved populations, including SDG populations, and utilizing metrics, deadlines, and evaluations of performance. Year-end results would be reported to the secretary.

Recommendation NRCS-2: Utilize an OFCCP-style model for work-force analysis and remedial actions [consistent with Department-wide Recommendations].

NRCS should go beyond the EEOC-required MD-715-01 analytical requirements and use the more rigorous OFCCP-model required of Federal contractors. (See Department-level recommendations, Section III).

Recommendation NRCS-3: Implement cross-training of field service personnel to deliver inter-agency products and inform customers of available programs [consistent with Department-wide Recommendations].

USDA should leverage its entire workforce to market programs to SDG customers and potential customers. Many field service centers contain multiple agencies, and NRCS employees should be trained to identify RD and FSA programs applicable to customers and assist those customers in participating in programs. NRCS should also undertake to train RD and FSA employees in NRCS programs so that NRCS can reach a broader customer base. (See Department-level Recommendations, Section III).

Recommendation NRCS-4: Develop a written statement describing NRCS's "Business Case" for DIA.

NRCS should develop a written "business case" clarifying how effective DIA measures are essential to the accomplishment of the Agency's mission, vision and strategic objectives, in order to fully integrate DIA with customer service. (See Department-level Recommendations, Section III).

Recommendation NRCS-5: Create consistent outreach (“marketing”) policies and tools at national and state levels.

NRCS’s national leadership should create an overall outreach (“marketing”) policy that applies to all states. This policy would define outreach and create goals, budgets, and mechanisms for performing outreach, and would institutionalize NRCS’s commitment to outreach and provide a framework, guidance, oversight, performance measures, and accountability for the states.

Recommendation NRCS-6: Increase National Set-Aside for SDG farmers and ranchers for states where SDG concentrations justify increases.

The ranking formula is resource-neutral and does not directly consider the demographics of customers or their farm size. The 5% national funding set-asides for socially disadvantaged, limited resource and beginning farmers seems to be an effective mechanism for motivating employees to increase participation. In most states, the 5% set-aside appears to be easily satisfied, although some states have very low minority populations. Headquarters should analyze the socially disadvantaged customer base of the states and increase the 5% set-aside to higher set-asides in states where the SDG population is higher.

Recommendation NRCS-7: Design and fund a specific conservation program for SDG farmers and ranchers.

SDG farmers/ranchers face disproportionate barriers to participation in NRCS programs. Employees have an incentive to work with large land owners at the expense of smaller farms/ranches because the employees can allocate more funds and place higher acreage under conservation with the same amount of work; SDGs often do not rank as high as larger farmers because they are implementing only one or two conservation practices; and SDGs are most likely to be intimidated by the application and contracting process. NRCS should develop a specific program focused on SDGs.

Recommendation NRCS-8: Design and fund a specific program for Native American tribal land.

NRCS should design a specific program within the framework of EQIP to use on tribal lands. This program should be developed in conjunction with tribal governments, the BIA, and other stakeholders. The program's eligibility and application process should take into consideration the specific needs of tribal customers.

Recommendation NRCS-9: Fund applications for SDG farms continuously.

Although NRCS customers can apply any time during the year, ranking and funding takes place at specific times during the year, often annually, based on the timing of funding. Customers must often wait a year or longer in order to have their eligible applications funded. NRCS should budget a pool of funds that allow eligible SDGs who are implementing one or two, relatively inexpensive practices to be funded at any time of the year.

Recommendation NRCS-10: In light of the complexity and number of NRCS programs and related initiatives—which many employees admit they do not understand—consider reducing the number of NRCS programs, or otherwise addressing the complexity issue.

NRCS is responsible for administering six major programs (EQIP, WRP, WHIP, CSP, GRP, FRPP), as well as initiatives such as the Mississippi Basin Healthy Watersheds Initiative, Great Lakes Restoration Initiatives, Conservation Technical Assistance, Emergency Watershed Protection Program, Conservation Compliance, and Soil Survey and other resource inventory and assessment programs. WRP and GRP include both easement and cost-share programs, as well as 30-year lease options.

The number of programs and initiatives and the complicated nature of eligibility requirements confuse NRCS employees and customers alike, and are often misunderstood by under-trained employees. NRCS should initiate a review of all of its programs and consider consolidating programs when possible, and eliminate smaller and lesser used

programs, as well as limit the number of special initiatives that demand excessive time from employees; or develop alternative means of addressing legitimate employee and customer complaints.

Recommendation NRCS-11: CSP should not be funded at the expense of EQIP.

The CSP program is particularly ill-suited for SDGs, and therefore has few SDG participants. It rewards sophisticated practices, is very complicated, and does not financially reward small land-owners. EQIP, on the other hand, encompasses the greatest flexibility in technical practices and enjoys higher levels of eligibility and participation by SDG customers. EQIP, however, has seen its funding decrease at the expense of CSP over the last two years. In many states, the number of eligible EQIP applications far exceeds the amount of funding, while the same states have trouble allocating CSP funds. As the next Farm Bill is developed, USDA should seek to realign its budget so that EQIP is adequately funded.

Recommendation NRCS-12: Simplify application and program contracting processes.

Applications and program contracts have been identified as a barrier to SDG participation. They can be intimidating, confusing, and discouraging to SDG applicants. To simplify this process, NRCS should:

- Simplify technical requirements for eligibility;
- Prepare applications and instructions in the simplest format and language;
- Make the application process more flexible; and,
- Train all NRCS employees on SCIMS.

Recommendation NRCS-13: A consistent protocol should be created and implemented in every field office for tracking applications, informing applicants of the status

of their application in writing on a regular basis, providing customers with reasons as to why they are ineligible for programs or not funded, and providing guidance for future applications.

Focus Group customers and CBOs frequently reported frustration with the transparency of the application process, including inferring discriminatory intent from denials without explanations. NRCS should create a protocol that tracks applications, regularly informs customers as to the status of their applications in writing, describes in writing the reason that applications were ineligible or rejected, and provides guidance as to how applicants can improve their applications.

Recommendation NRCS-14: Review technical requirements to ensure that they are not unnecessarily onerous and stringent, preventing SDG farmers and ranchers from participating.

Many Focus Group participants and CBOs complained that onerous technical requirements prevented them from being eligible or participating in NRCS programs. NRCS should undertake a review of all approved technical practices and requirements, and revise them as necessary to ensure that they are essential to achieving conservation goals and are not unnecessarily restrictive so as to create barriers to participation by SDG farmers and ranchers.

Recommendation NRCS-15: Clearly inform applicants when they apply, in plain language, what programs are available to them, the eligibility requirements, the application process, how long the process takes, what information is required to be submitted, and the benefits of program participation.

One of the most common complaints from Focus Group customers and CBOs was the confusing nature of NRCS applications, eligibility requirements and timelines. NRCS should create a protocol or checklist that is distributed to NRCS field offices nationwide that instructs field employees to provide, in clear language, the information included in this recommendation.

Recommendation NRCS-16: Ensure that NRCS employees are trained in and knowledgeable about new programs and initiatives before advertising programs to the public.

Many Focus Group customers and employees complained that programs and initiatives were announced before the field offices could become knowledgeable about program requirements and benefits.

Recommendation NRCS-17: Allow sufficient lead-time for announcement of new initiatives, rules and regulations.

For many new initiatives and programs, as well as programs with annual changes to eligibility requirements, requirements are disseminated to the field and communicated to customers with very quick turn-around times to allocate funds to customers. NRCS should create a clear protocol that maximizes the time between the announcement of new programs or requirements and the ranking for those programs.

Recommendation NRCS-18: Outreach (“marketing”) practices should be greatly expanded, including, for example, periodic newsletters to constituents and after-hours seminars with farmers.

SDG customers frequently complained that they did not receive updates regarding NRCS programs and new initiatives, and most customers reported a preference for face-to-face interaction. NRCS should effectively use e-mail blasts, and target newspaper, radio, and TV advertising to reach SDGs.

Recommendation NRCS-19: Customers and potential customers should be informed of deadlines for annual rankings and should be given sufficient notice of program rules, regulations, and new initiatives.

SDG customers are frequently given insufficient notice of new initiatives or program requirements in time to meet a ranking deadline, and thus customers often have to wait over one year in order to apply for needed

programs. NRCS should include specific timelines and deadlines in all outreach material to customers.

Recommendation NRCS-20: Every state should have a full-time outreach coordinator (“Office of Emerging Customer Development”).

Currently, some states designate Outreach Coordinator as a collateral duty and in some states it is a full time position. Every state should have a full-time outreach coordinator who reports directly to National Outreach. Upon implementation of Department-wide recommendations, that position should be merged into the Office of Emerging Customer Development.

Recommendation NRCS-21: National outreach should assist in creating tools and data collection to assist states in outreach (“marketing”).

NRCS employees cannot perform effective outreach without knowing who their customers are, where to target their outreach efforts, and whether their outreach efforts have been successful. National Outreach should develop data collection methods and IT tools that states can implement to collect information and identify their customer base. This function should be assumed by the NRCS CDO once that position is established.

Recommendation NRCS-22: Outreach efforts and service to Socially Disadvantaged Groups should be a unique metric in performance plans.

Instead of a catch-all Civil Rights category in performance plans, effective outreach or “marketing” should be a separate component for all customer-service employees. Implementation of this Recommendation should be consistent with the Department-wide recommendations regarding accountability and performance management.

Recommendation NRCS-23: National and state outreach plans should encourage partnerships with CBOs.

Recommendation NRCS-24: NRCS should create traditional outreach materials for distribution to SDGs in parallel with web-based initiatives.

A large number of NRCS SDG customers and potential customers do not have access to the web or are not computer savvy. NRCS should ensure that all electronic outreach efforts, marketing, and materials related to programs, technical assistance, and eligibility are disseminated by traditional, paper-based means.

Recommendation NRCS-25: Consistent training goals should be set at the national level, and tailored training should take place at the local level.

AgLearn is the only universal, mandatory training requirement for NRCS. Headquarters should create training requirements as part of a National Training Policy that include seminars, face-to-face cultural exchanges targeted for their area's needs, and outreach training for states to implement, including training covering both the workplace and marketplace, and should include an educational module designed to counteract employee resistance to "targeting" under-served populations. (See Department-level Recommendations, Section III). This should be developed in concert with USDA's Cultural Transformation Initiative.

Recommendation NRCS-26: NRCS should actively recruit bi-lingual employees and assist customers (for example, by referrals) in learning business English.

NRCS should recruit bi-lingual employees to service locations where there are a large number of non-English speaking customers and potential customers. In addition, NRCS, jointly with other USDA agencies, should assist customers (for example, by referrals to appropriate resources) to learn "business English."

Recommendation NRCS-27: All employees should be trained now and periodically regarding the complaint process.

Most interviewed employees were ignorant of the process for preparing, filing, and processing discrimination complaints. NRCS should, as part of annual training, educate all employees as to the procedures for processing customer complaints.

VIII. RISK MANAGEMENT AGENCY ASSESSMENT

A. Introduction¹¹²

This section of the Report provides the results of 18 months of investigation and analysis of fairness and equity in program delivery by the Risk Management Agency (“RMA”). The RMA Team relied on five primary sources of information: (1) interviews of more than 155 RMA employees at Headquarters, Regional, Regional Compliance, and Project Management Division offices; (2) Focus Group sessions including customers and potential customers for products offered through RMA; (3) interviews with the leadership of 30 Community Based Organizations (“CBOs”) from around the country representing a variety of farming and ranching/broker interests, with an emphasis on those focused on issues of importance to socially disadvantaged groups (“SDGs”); (4) interviews with four Approved Insurance Providers (“AIPs”) and 20 sales agents/brokers, all of whom are associated with at least one of the four AIPs interviewed; and (5) review and analysis of statutes, regulations, policies, handbooks, reports, statistical data, and other information and documents provided by USDA. In addition, the Assessment Team conducted research on a wide variety of topics, including the history of the Agency, media, and other public reports of RMA activities.

The Team’s analysis uncovered substantial failures to meet the Agency’s mandate to provide fair and equitable access to RMA programs and services to SDGs. The barriers to fair and equitable access to RMA programs and services are the product of a variety of factors, including the failure to collect any demographic data from applicants and customers to measure the extent of services to SDGs; absence of clear direction and instructions from RMA Headquarters to RMA employees to make outreach to SDGs a priority so that SDGs are informed about the insurance available to them; absence of specific requirements that AIPs and their agents/brokers conduct outreach to SDGs; lack of any type of incentives to AIPs and their agents/brokers to encourage them to sell crop and livestock insurance products to SDGs; unsuitability of certain existing crop and livestock insurance products to meet the needs of

¹¹² The specific race/ethnicities references used by the Equal Employment Opportunity Commission are identified by the following categories: Hispanic/Latino; Black/African American; Asian; American Indian/Alaskan Native; and Native Hawaiian/Pacific Islander. For shorthand purposes, these categories will be referenced herein as: “Hispanic,” “African American,” “Asian,” “Native American,” and “Pacific Islander,” respectively.

SDGs; the absence of insurance products that meet the unique needs of SDGs; and lack of meaningful accountability for ensuring enforcement of civil rights. The recommendations at the end of this section of the Report will assist RMA to continue the work mandated by Secretary Vilsack to eliminate barriers to SDG participation in USDA programs and services of all SDGs.

B. Mission

Agricultural producers and ranchers (collectively “producers”) are subject to a wide array of natural, financial, and market risks. The role of RMA is to help producers manage those risks by making effective risk management solutions, such as crop insurance, available, as well as other tools that producers can use to manage their agricultural risks.¹¹³ RMA states that it promotes, supports, and regulates sound risk management solutions to preserve and strengthen the economic stability of America’s agricultural producers. Through the Federal Crop Insurance Corporation (“FCIC”), RMA makes crop insurance programs available to producers. Previously, RMA sold crop insurance policies directly to producers, but in 2000, RMA ceased selling crop insurance, pursuant to Section 515 of the Agricultural Risk Protection Act of 2000 (“ARPA”)¹¹⁴. Since that time, private-sector Approved Insurance Providers (“AIPs”) have been responsible for selling and administering RMA’s crop insurance programs, pursuant to a Standard Reinsurance Agreement (“SRA”) with RMA. FCIC provides reinsurance and subsidies to the AIPs for sales of eligible crop insurance. Currently, there are 17 AIPs¹¹⁵.

Although RMA no longer sells crop insurance directly to producers, it does manage crop insurance policies and underwriting terms. RMA also develops and approves premium insurance rates, administers premium and expense subsidies, and approves and supports risk management products. In addition, RMA sponsors education and outreach programs and seminars on the general topic of risk management.

¹¹³ Note that RMA employees interviewed describe “crop insurance” programs as encompassing programs that cover both crops and livestock, and will be so referred to herein.

¹¹⁴ There are several exceptions where RMA does continue providing direct insurance, such as crops for which an established insurance program is not available in the producer’s state/county.

¹¹⁵ The number of AIPs fluctuates from year to year.

C. Organization

RMA's current Administrator, William Murphy, was appointed in July 2009. Mr. Murphy also serves as Manager of the FCIC. There are Deputy Administrators for the three primary areas: a) Insurance Services; b) Product Management; and c) Risk Compliance.

1. Insurance Services

Insurance Services is responsible for local program administration, support, and delivery, which includes managing RMA's contracts with the AIPs that sell crop insurance policies to producers and also servicing those policies. Risk Management Services, Reinsurance Services, and Risk Management Education all fall under Insurance Services.

RMA has ten Regional Offices located throughout the country. Each Regional Office is managed by a Regional Office Director. RMA Regional Offices are considered "RMA's eyes in the field," because Regional Offices are responsible for keeping in close contact with local producers, grower groups, universities, and government agencies. Regional Offices provide information to producers (on local pilot programs and local growing conditions) and participating AIPs, including sales agents/brokers and loss adjustors. RMA Regional Offices are also tasked with assisting and overseeing its education and outreach partners within their geographic areas.

Regional Offices also provide assistance to individual producers who request insurance coverage for crops for which an established insurance program is not available in the particular state or county where the requesting producer resides. Regional Offices often enter into written agreements with such producers, which are essentially individual crop insurance policies that base premium rates on data from other counties.

RMA's Regional Offices are located in, and are responsible for, a number of states, as follows:

1. Davis, California (covering Arizona, California, Hawaii, Nevada, and Utah).

2. Billings, Montana (covering Montana, North Dakota, South Dakota, and Wyoming).
3. Jackson, Mississippi (covering Arkansas, Kentucky, Louisiana, Mississippi, and Tennessee).
4. Oklahoma City, Oklahoma (covering New Mexico, Oklahoma, and Texas).
5. Raleigh, North Carolina (covering Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia).
6. Spokane, Washington (covering Alaska, Idaho, Oregon, and Washington State).
7. Springfield, Illinois (covering Illinois, Indiana, Michigan, and Ohio).
8. St. Paul, Minnesota (covering Iowa, Minnesota, and Wisconsin).
9. Topeka, Kansas (covering Colorado, Kansas, Missouri, and Nebraska).
10. Valdosta, Georgia (covering Alabama, Florida, Georgia, Puerto Rico, and South Carolina).

2. Product Management

Product Management, headquartered in Kansas City, Missouri, is responsible for overseeing product development. Within Product Management, there are three separate divisions including: a) Product Analysis and Accounting, b) Product Administration and Standards, and c) Actuarial and Product Design.

The *Product Analysis and Accounting Division* is responsible for handling all financial reviews. Specifically, it conducts quality control checks based on producer information obtained from the AIPs.

The *Product Administration and Standards Division* consists of three separate divisions, including (1) a Policy Administration Branch, (2) Underwriting Standards Branch, and (3) Loss Adjustment Standards Branch. Together, these three branches maintain all crop insurance policies. They also write and develop all crop insurance Handbooks, underwriting procedures, and Loss Adjustment Manuals for all products. The Product Administration and Standards Division additionally reviews and acts on all proposed crop insurance program submissions pursuant to Section 508H of the Federal Crop Insurance Act (described above).

The *Actuarial and Product Design Division* is responsible for handling the development of noninsurance tools, which are risk management tools other than crop insurance. It consists of three branches: (1) Actuarial Branch, (2) Product Design Branch, and (3) Prices and Noninsurance Programs Branch. Together, these three branches are responsible for establishing insurance rates and prices.

3. Compliance

The goal of RMA's Compliance Office is to protect the integrity of the crop insurance program by preventing and detecting program fraud, waste, and/or abuse. The Compliance Office is responsible for monitoring compliance with program provisions by both producers and the AIPs that sell and service crop insurance policies. The Compliance Office assesses program vulnerability, investigates instances of alleged fraud and/or abuse, and annually reviews different AIPs for compliance with RMA policies and procedures ("National Program Operating Reviews").

The Deputy Administrator of RMA's Compliance Office is located at RMA Headquarters in Washington, D.C. In addition, Compliance has six field Compliance Offices located in different Regions of the country. Each Compliance Office is led by a Director. RMA's Compliance Offices are as follows:

1. Central Regional Compliance Office ("CRCO"), located in Kansas City, Missouri (covering Colorado, Kansas, Missouri, and Nebraska;
2. Western Regional Compliance Office ("WRCO"), located in Davis, California (covering Alaska, Arizona,

California, Hawaii, Idaho, Nevada, Oregon, Utah, and Washington State);

3. Southern Regional Compliance Office (“SRCO”), located in Dallas, Texas (covering Arkansas, Kentucky, Louisiana, Mississippi, New Mexico, Oklahoma, Tennessee, and Texas);
4. Northern Regional Compliance Office (“NRCO”), located in Eagan, Minnesota (covering Iowa, Minnesota, Montana, North Dakota, South Dakota, Wisconsin, and Wyoming);
5. Midwest Regional Compliance Office (“MRCO”), located in Indianapolis, Indiana (covering Illinois, Indiana, Michigan, and Ohio); and
6. Eastern Regional Compliance Office (“ERCO”), located in Raleigh, North Carolina (covering Alabama, Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia).

D. Workforce Diversity: Summary

Section IX below presents in detail the results of the Team’s demographic analysis of the RMA workforce. Comparators were chosen based on the pool from which the positions are filled (by appointment or hiring). For example, RMA employees are recruited and hired from the general workforce, so their demographics are compared with the U.S. Civilian Labor Force (“CLF”) (the CLF is the benchmark USDA uses in creating its annual workforce reports to the EEOC). *The following is a summary of those areas of “under-representation,” that is, where the percent of employees in the group is substantially less than their comparator population:*

- **RMA Nationwide Workforce – Under-Representation:**

Race/Ethnicity/Gender	Workforce	CLF
Total Minorities	23.0%	27.2%
Hispanic/Latino	3.0%	10.7%
Asian	2.4%	3.6%

- **RMA Regional Office Employees – Under-Representation** (15 USDA-selected States)

- Females – Under-representation of two to six positions in four Offices.
- Hispanics/Latinos – Under-representation of one to four positions in five Offices.

Thus, the most significant under-representations of minorities and Females in RMA’s workforce are:

- Hispanic/Latino—Nationwide and Regional Office workforces.
- Total Minorities—Nationwide workforce.
- Females—Regional Office workforce.

E. Key Programs

RMA has two key programs:

1. Crop Insurance Programs

The primary risk management tool that RMA makes available to producers is crop insurance programs covering both crops and livestock. Although RMA does not itself develop crop insurance programs, it supports/funds, facilitates, oversees, and approves the development of such programs by outside individuals and organizations.

There are two main methods by which crop insurance programs are developed. The first involves RMA contracting directly with an organization for the development of a crop insurance program that will cover a particular crop. Contracting opportunities for the development of a crop insurance program are published by RMA in the Federal Register. RMA provides funding for up-front costs for crop insurance programs that are developed in this manner. The second method by which crop

insurance programs are developed is through the approval of proposed crop insurance programs that are submitted pursuant to Section 508H of the Federal Crop Insurance Act. Under Section 508H, any outside individual or organization may submit a proposed crop insurance program to RMA. Those individuals/organizations whose proposed crop insurance programs are approved by the FCIC Board receive reimbursement for up-front costs.

RMA offers a variety of crop insurance programs. For example, some crop insurance programs combine yield and price coverage. Other crop insurance programs, like Adjusted Gross Revenue (“AGR” and “AGR-Lite”), insure revenue of an entire farm, rather than an individual crop by guaranteeing a percentage of average gross farm revenue.

For producers and ranchers to obtain crop insurance, they must fill out applications through licensed sales agents/brokers employed or contracted by one of the AIPs. Generally, sales agents/brokers assist producers with the crop insurance application process. As discussed above, FCIC provides reinsurance (subsidies) to the AIPs. To qualify for and maintain crop insurance, producer obligations generally include: a) reporting acreage accurately; b) meeting policy deadlines; c) paying premiums when due; and, d) reporting losses immediately after they occur. However, producer obligations may vary depending upon the type of crop insurance program/policy a producer is trying to obtain.

Crop insurance contracts represent a commitment between an insured producer and the producer’s insurance provider. Under the contract, the insured producer agrees to insure all eligible acreage of a crop planted in a particular county. The insurance provider agrees to indemnify the insured producer against losses that occur during the crop year. In most cases, the insurance covers loss of yield exceeding a deductible amount. Losses must result from unavoidable perils beyond the farmer’s control.

2. Risk Management Education and Outreach

In addition to crop insurance programs/policies, RMA also coordinates risk management education and outreach for producers. RMA itself does not conduct outreach and education programs for producers. Instead, RMA’s education and outreach efforts are facilitated through RMA-funded “partnerships,” with Community Based Organizations (“CBOs”), Land Grant Universities, university extension

services, and other organizations. Annually, RMA announces availability of funds for education and outreach partnership and cooperative agreements. Specifically, RMA publishes a request for applications (“RFA”) in the Federal Register each year, containing all details that applicants need to qualify for a partnership grant/application.

Partners/organizations that are awarded grants/agreements conduct risk management and crop insurance education, community outreach and assistance, and research and development activities. Events held by the selected partners/organizations (collectively “partners”) are open to all producers. According to the RMA employee interviews, RMA assists, supports, and oversees the partners with their outreach and education efforts.

The RMA Education program (“RME”) is intended to provide producers with training and information about agricultural risks and effective approaches to manage such risks. The goal of RMA’s outreach program is to ensure that all producers are provided program information and technical assistance necessary to equally access and participate in all RMA programs and services. In addition to the education and outreach partnerships, RMA also funds/sponsors research partnerships for the development of risk management tools and other crop insurance products that are targeted for use by producers.

F. Customer Demographic for RMA Programs

As neither RMA nor its AIPs collect or maintain race, ethnicity or gender data on applicants or insureds, the Assessment Team could not conduct a comparative analysis of the demographics of these customers/potential customers similar to that prepared for the other Agencies.

G. Customer Focus Group/CBO Input

The Assessment Team conducted Focus Group sessions in 10 states¹¹⁶ and conducted Community Based Organization (“CBO”) interviews covering 13 States. Focus Group participants were selected because they are or have been USDA customers or potential customers who have applied for or received technical or financial assistance within

¹¹⁶ The Focus Groups pertaining to RMA were combined with those covering FSA since participants in FSA programs often have RMA approved crop insurance.

the past three years. The CBOs were selected because their constituencies included SDGs who were customers or applicants for USDA programs or who were dissuaded from applying for USDA programs because they believed it would be futile to do so. The Focus Group discussions and CBO interviews explored issues related to participant experience with USDA.

Most of the Focus Group participants had no knowledge about RMA or AIPs. Those few Focus Group participants and several CBO interviewees with constituents who have had dealings and/or interactions with RMA provided the following information:

1. General Observations/Comments

- a. To qualify for certain FSA disaster programs, producers are required to have crop insurance. In many instances, producers would prefer not to purchase crop insurance but they believe they have no choice;
- b. RMA is not conducting any, or is conducting insufficient, outreach; and
- c. Some producers reported difficulties recovering money when a loss occurs; others said they were treated fairly.

2. Views Concerning AIPs

- a. A few SDGs reported that the AIPs are advertising and marketing some RMA programs;
- b. SDGs believe the AIPs are making very high profits through their involvement with RMA;
- c. A few SDGs and CBOs reported positive experiences with AIPs; and
- d. A few SDGs found sales agents/brokers to be accessible.

3. Barriers Identified

- a. Crop insurance is cost prohibitive;

- b. Insurance programs for specialty crops are insufficient;
- c. RMA's programs are viewed as being designed for large farmers;
- d. Small farmers with diversified crops are generally ineligible for crop insurance;
- e. According to a Michigan CBO, AGI-Lite, which is an insurance program that would attract small SDG farmers, is not available in Michigan;
- f. RMA's programs are confusing and complex;
- g. Native American producers and ranchers are not benefiting from RMA's programs;
- h. Land ownership issues specific to Native Americans prevent Native American producers from fulfilling the requirements necessary to obtain crop insurance; and
- i. Record keeping requirements for crop insurance programs result in a participation barrier for Native American producers.

H. Headquarters Interviews: Summary

In November and December 2009, the Assessment Team interviewed 28 RMA career employees and political appointees at RMA Headquarters in Washington, D.C. Interviewees shared extensive information regarding RMA's history, as well as information about RMA's current organizational structure and mission.

The Assessment Team interviewed the following individuals:¹¹⁷

1. RMA Administrator, William Murphy.
2. RMA Associate Administrator, Barbara Leach.

¹¹⁷ Titles and incumbents accurate in November – December 2009.

3. Chief Financial Officer for RMA, Margo Erny.
4. Chief Information Officer, Ken O'Brien.
5. USDA Chief Economist and Chairman of the Board of Directors for FCIC, Joseph Glauber.
6. Secretary to the Board of Directors for FCIC, Cindy Spoor.
7. Director of Strategic Data Acquisition and Analysis, Garland Westmoreland.
8. Executive Program Support Staff, Wesley Azama.
9. Senior Advisor to Secretary for Tribal Affairs, Janie Hipp.
10. Director of External Affairs, Pat Engel.
11. Director of Public Affairs, Shirley Pugh.
12. Program Assistant for Office of Public Affairs and External Affairs, and Disability Employment Program Manager, Pamela Steed.
13. EEO Program Manager, Rene Sanchez.
14. EEO Program Assistant, Janel Butler.
15. EEO Program Specialist and Director of Interns, Jacquea Howard-Brock.
16. Director Risk Management Education Division, Lydia Astorga.
17. Director of Civil Rights and Community Outreach, William Buchanan.
18. Civil Rights and Community Outreach Compliance Officer and Management Analyst, Iris Snowden.

19. National Outreach Program Manager, David Wiggins.
20. Western U.S. Outreach Specialist, Rudy Perez.
21. Eastern U.S. Outreach Specialist, Ron Brown.
22. Deputy Administrator for Product Management, Tim Witt.
23. Associate Deputy Administrator for Product Management, Roger Matthews.
24. Deputy Administrator for Compliance, Michael Hand.
25. Associate Deputy Administrator for Compliance, Michael Alston.
26. Acting Director of Reinsurance Services, David Miller.
27. Acting Deputy Administrator for Insurance Services and Associate Deputy Administrator for Insurance Services, Sue Rourk King, and
28. Assistant to Deputy Administrator for Insurance Services, Craig Witt.

During the initial interviews at RMA Headquarters, the Assessment Team generally found interviewees to be responsive, helpful, and positive towards our Assessment. There was a divide among interviewees at RMA Headquarters with respect to their identification of Civil Rights problems with RMA. Approximately half of the interviewees believed that Civil Rights problems are present and persist within RMA. The other half expressed a belief that little to no Civil Rights problems exist within RMA. Interviewees who said there were Civil Rights problems were primarily involved with RMA's Civil Rights, outreach, education, and EEO programs.

Many interviewees at RMA Headquarters stated that SDGs in underserved communities are not reaping the benefits of the programs offered by RMA. Most Headquarters interviewees stated that RMA needs to find ways to diversify and increase the types and number of crop insurance

programs available to SDGs. With respect to the AIPs, most Headquarters interviewees said that the AIPs do not currently have sufficient incentives and/or requirements to service small and limited resource producers (and a significant number of SDGs are such small and limited resource producers). Most stated that oversight of AIPs is lacking as well.

In August 2010, following field interviews, the Assessment Team returned to RMA Headquarters in Washington, D.C. and conducted ten follow up interviews, mostly with individuals previously interviewed. During the Team's follow-up interviews, interviewees were asked to respond to a number of the same questions that the Assessment Team had asked RMA's Field Office interviewees throughout RMA's Field Offices (which differed from those originally asked of the Headquarters personnel).

During the Team's follow up visit to RMA headquarters, the Assessment Team interviewed/re-interviewed the following individuals:

1. RMA Administrator, William Murphy.
2. RMA Associate Administrator, Barbara Leach.
3. Deputy Administrator for Compliance, Michael Hand.
4. Deputy Administrator for Insurance Services,¹¹⁸ Michael Alston.
5. Associate Deputy Administrator for Insurance Services, Sue Rourk King.
6. Acting Director of Reinsurance Services, David Miller.
7. Director Risk Management Services, Heyward Baker.
8. Director of Civil Rights and Community Outreach, William Buchanan.
9. National Outreach Program Manager, David Wiggins.

¹¹⁸ Note that Michael Alston's position changed from the Team's initial interview with him in November-December 2009.

10. Director Risk Management Education, Lana Cusick.

The responses received during the follow up RMA Headquarters interviews were useful in reinforcing many of the findings the Assessment Team developed from the interviews at RMA's Regional Offices, Regional Compliance Offices, and Product Management offices in Kansas City, Missouri.

Civil Rights and Community Outreach Office

During both the Team's initial and follow up visits to RMA Headquarters in Washington, D.C., the Assessment Team met with RMA's Civil Rights Director, William Buchanan and Iris Snowden, RMA's Civil Rights and Community Outreach ("CRCO") Compliance Officer. There were also several telephone discussions with Ms. Snowden throughout the Assessment.

The principal responsibilities of RMA's CRCO include: receiving and investigating customer complaints, and reviewing and monitoring the AIPs for compliance with applicable Civil Rights and non-discrimination requirements, including those contained in the SRAs. The Compliance Officer is the one employee who is primarily responsible for reviewing and monitoring the AIPs for Civil Rights compliance.

RMA conducts Civil Rights reviews of the AIPs, and each AIP is reviewed approximately once every five years for compliance with applicable non-discrimination and civil rights requirements. Based on the amount of time required for each review and the number of AIP employees/contractors that are interviewed during a Civil Rights review of an AIP, RMA completes Civil Rights reviews of approximately three AIPs per year.

During Civil Rights reviews of the AIPs, individuals are interviewed at the headquarters office of the AIP under review. RMA attempts to interview five percent of the sales agents/brokers working or contracting for each AIP under review. The number of sales agents/brokers interviewed during a Civil Rights review will, thus, vary greatly depending on the size of the AIP being reviewed, as well as the number of sales agents/brokers employed or contracted by the AIP. In the past, RMA has not met with any loss adjustors or policyholders as part of the Civil Rights reviews.

However, RMA plans to begin meeting with loss adjustors and policyholders during Civil Rights future reviews of AIPs.

During AIP Civil Rights reviews, RMA checks for AIP compliance with applicable non-discrimination and civil rights requirements, including those found in the SRA and mandated by law. Although RMA does not use a checklist of items when conducting these reviews, the review typically follows a standard procedure that involves first interviewing individuals at the applicable AIP's headquarters office. RMA inquires about customer discrimination complaints, and also checks to ensure that the AIP has provided at least some amount of training on civil rights related topics to its sales agents/brokers and loss adjustors. Next, RMA meets with sales agents/brokers who are employed or contracted by the AIP under review. Among other things, RMA checks to make sure that sales agents/brokers interviewed have RMA's "Justice for All" poster present in their office. When meeting with individuals from an AIP as part of a Civil Rights review, RMA makes inquiries in addition to those identified above, which are consistent with the goals and objectives laid out by RMA's Civil Rights Department for conducting Civil Rights compliance reviews of the AIPs.

The other primary responsibility of RMA's CRCO involves receiving and investigating all discrimination complaints made by RMA customers and potential customers. CRCO indicated that most complaints received by CRCO involve complaints about "program-related" issues, instead of issues related to discrimination. For instance, CRCO stated that producers often make complaints to RMA's CRCO about loss adjustment decisions of which they are dissatisfied. CRCO said that when the Office investigates these types of complaints, they typically find that the decision made was in accordance with the complaining producers' crop insurance policy. CRCO attributes many of these program-related complaints to the producers' lack of understanding of the terms of their crop insurance policies. Regardless, CRCO indicated that RMA's Office employees investigate all customer complaints that they receive.

CRCO did not indicate that any standard protocols are used when customer complaints are investigated by the Civil Rights Department. However, CRCO acknowledged that complaints made to and investigated by the Office are processed at a slow pace. CRCO attributes this to the volume of complaints received and the minimal number of employees available to investigate and process the complaints.

When complaints that involve the AIPs are received, CRCO will sometimes contact the AIP against whom a customer complaint has been made. When AIPs are contacted they typically are willing to work with CRCO to cure any problematic issues brought to their attention.

SRAs prohibit discrimination, so a finding of a civil rights violation theoretically subjects an AIP to a penalty, sanction, and/or a fine, which can range in severity depending on the nature of the AIP's violation. CRCO indicated that the Office does not have the authority to impose a penalty upon an AIP. Instead, if an issue arises that justifies penalizing an AIP, this would be handled by Reinsurance Services or Compliance. CRCO was not aware of any instances where any AIP, or its sales agents/brokers or loss adjustor(s), had been disciplined or penalized in any way because of discriminatory conduct toward any producer.

In terms of participation barriers, CRCO identified a number of barriers to participation in RMA's programs by SDGs. RMA does not currently have enough programs available to cover the types of crops typically grown by SDGs. For those programs RMA does have available, they do not sufficiently meet the needs and practical realities of SDGs. (It should be noted that for those crops not covered by RMA programs, producers may participate in FSA's Noninsured Assistance Program ("NAP")). Additionally, the lack of financial incentives for AIP sales agents/brokers to provide service to SDGs is a barrier. CRCO stated that there is very little diversity among the workforces of the AIPs.

I. Field Interviews: Summary

The Assessment Team conducted 145 interviews of RMA staff members at all ten Regional Offices, six Regional Compliance Offices, and RMA's Product Management Division in Kansas City, Missouri. All interviewees were asked to respond to a standardized set of questions.

1. Regional Offices

As discussed above, RMA has ten Regional Offices located throughout the country. The Assessment Team visited each Regional Office, and interviewed from 7 to 11 employees in each office. The Assessment Team met with individuals in the following positions at each Regional Office:

1. Regional Office Director.
2. Regional Office Deputy Director.
3. Senior Risk Management Specialist.
4. Risk Management Specialist.
5. Education Coordinator.
6. Outreach Coordinator.

Practically all of RMA's education and outreach efforts are conducted by RMA's Regional Offices through their work with the education and outreach partners. The Assessment Team concluded that Regional Office employees, when compared to all other RMA employee groups, had the most knowledge about the following SDG-related topics: outreach, participation barriers, and equal delivery of service. The Assessment Team found interviewees from RMA's Regional Offices to be generally open to the Assessment and pleased to provide their feedback, opinions, and views.

2. Compliance Offices

As discussed above, RMA has six Regional Compliance Offices located throughout the country. The Assessment Team visited each Regional Compliance Office, interviewing 7 to 11 employees in each Office. The Assessment Team interviewed individuals in the following positions at each Regional Compliance Office:

1. Regional Compliance Office Director.
2. Senior Compliance Investigator.
3. Compliance Investigator.

As compared with the employees in RMA's Regional Offices, the Assessment Team found employees in RMA's Compliance Offices to be less open to the Assessment. This resistance, perhaps, is due to the fact that RMA's Compliance Department has no involvement with or assigned responsibility for RMA's outreach efforts to SDGs. While conducting

interviews in all of RMA's Compliance Offices, the Assessment team was told by numerous employees in each office that Compliance does not conduct any outreach at all, and outreach has nothing whatsoever to do with the mission of Compliance. Little to no discussion of topics related to outreach, SDGs, and/or equal delivery of service occurs within or among RMA's Compliance Offices, and Compliance does not communicate about such topics with other RMA divisions. As such, the Assessment Team found that Compliance Office employees generally lack awareness about RMA's outreach efforts.

3. Product Management

The Assessment Team also interviewed employees in the RMA Product Management Office, located in Kansas City, Missouri. The Assessment Team interviewed nine employees in the RMA Product Management Division in the following positions:

1. Deputy Administrator, Product Management.
2. Associate Deputy Administrator, Product Management.
3. Specialty Crop Coordinator, Actuarial & Product Design.
4. Director, Actuarial & Product Design Division.
5. Chief of Prices and Noninsurance Programs.
6. Supervisory Accountant.
7. Director, Product Administration and Standards Division.
8. Senior Economist, Product Administration and Standards Division.
9. Senior Underwriter.

Product Management is primarily responsible for developing, improving, and enhancing RMA's crop insurance programs. The primary focus is on the technicalities of RMA programs, including issues related to insurance values and underwriting. The Assessment Team generally found the Product Management employees to be disconnected from RMA's outreach

efforts, which are mostly facilitated through RMA's Regional Offices. Product Management interviewees consistently stated that Product Management does not communicate with Regional Offices about outreach, the SDGs present within the various Regions, the needs of SDGs, or whether RMA is meeting those needs. Such topics are also not emphasized among employees in Product Management, and are rarely discussed. As a result of this disconnect, it seems that the existence and needs of SDGs throughout RMA's various Regions are given little to no consideration by employees in Product Management.

4. Approved Insurance Provider ("AIP") and Agent/Broker Interviews

The Assessment Team developed an Information Collection Package, including proposed questions and other technical requirements, for USDA to submit to the Office of Management and Budget ("OMB") to obtain approval under the Paperwork Reduction Act to interview AIPs and agents/brokers. Through the proposed questions, the Assessment Team sought to learn about, among others, the AIPs' non-discrimination policies, procedures and practices; recruitment of minority and women agents/brokers; requirements/goals to sell risk management products to SDGs; incentives offered to encourage agents/brokers to outreach and sell insurance products to SDGs; and actual level of sales to SDGs.

The Assessment Team interviewed corporate officials from four of the 17 AIPs and 20 agents/brokers who are associated with at least one of the four AIPs interviewed. Most of the 20 agents/brokers the Assessment Team interviewed work as independent contractors and are associated with two or more AIPs.

Collectively, the AIPs and agents/brokers interviewed have customers throughout the U.S., including all of the 15 Assessment States. One of the AIPs interviewed services customers in all 50 states and a second AIP services customers in approximately 37 states. The other two AIPs operate in more limited geographic regions. Based on the interviews it appears that the AIPs interviewed have a comprehensive understanding of RMA's technical services and programs. Their organizational structures vary. Some are multi-line providers, while others focus exclusively on crop insurance.

Some AIPs employ sales agents/brokers and others utilize independent contractor agents/brokers. Most of the agents/brokers who operate as independent contractors work out of small offices with less than ten other individuals (including office staff and other agents/brokers).

Below is a summary of the AIP and agents/brokers interviews.

a. Only minimum steps are taken to ensure SDGs are treated fairly.

One AIP reported that its parent company's core diversity philosophy and commitment to diversity necessarily requires that it hold agents/brokers accountable for treating SDGs fairly. However, most of the AIP officials interviewed said their organizations take minimal steps to ensure SDGs are treated fairly. Specifically, those AIPs typically rely on feedback from their agents/brokers to determine whether customers are treated fairly with respect to the development and implementation of insurance programs and the processing of claims. The AIPs also reported they take the following limited steps to ensure fairness: reiterating RMA's policies against discrimination during training classes, ensuring that agents/brokers understand RMA's complaint process, and requiring that agents/brokers post RMA's "Justice for All" poster in their offices.

Like the AIPs the Assessment Team interviewed, the sales agents/brokers that were interviewed identified only limited steps they take to ensure that SDGs are treated fairly. Most sales agents/brokers reported that they comply with RMA's policies against discrimination, which are reiterated during the training seminars provided by their respective AIPs. They also insist that treating all customers fairly, including SDGs, is part of the sales agent/broker culture and is critical to their ability to receive referrals for new business.

b. Barriers to equal access to programs for SDGs.

AIPs and agents/brokers identified the following barriers to equal access for SDGs:

1) Language

Most of the AIPs and some of the sales agents/brokers reported that language is a barrier to equal access to RMA's programs for SDGs who are not proficient in English. Some AIPs and agents/brokers overcome this barrier by using translators, including multi-lingual employees of the AIPs or affiliated agents/brokers offices, and family members and friends of the respective SDGs.

2) Size of Farm/Amount of Acreage

Several agents/brokers reported that barriers exist for SDGs, who tend to be small producers, because agents/brokers must devote more time, effort, and money to sell policies to and service SDGs than they do to sell policies to and service majority, more sophisticated, large producers; and they receive larger commissions when they sell policies to the larger producers. Those agents/brokers interviewed who say they invest the time and resources to reach out to SDGs often do so in the hope that the SDGs ultimately will become larger producers, which will make the earlier efforts to obtain this business worthwhile.

3) Type of crop

Many of the agents/brokers interviewed reported that the following barriers exist for specialty crop producers:

- a) The insurance policies available for specialty crops are generally more limited than those that are available for staple crops.
- b) RMA's income based policies (*e.g.*, AGR and AGR-Lite) are document-intensive and not available in regions that primarily produce specialty crops.
- c) It can take years to obtain insurance for specialty crops, but most staple crops are insurable immediately.¹¹⁹

¹¹⁹ Producers of crops that do not have crop insurance programs are eligible for the Noninsured Assistance Program ("NAP") offered by FSA.

- d) Developing specialty crop insurance programs is time-consuming and costly, and many agents/brokers are not comfortable selling these programs because they are more complicated and paper-intensive.
- e) Unlike staple crops, losses for some specialty crops are paid at the price of the crop prior to the loss-causing event as opposed to any higher post-loss price.

4) Economics

Some of the agents/brokers reported that some producers cannot afford crop insurance. Many producers have seen an increase in premiums and, as an apparent exacerbated result of the rising premiums, coverage has decreased in recent years.

c. Lack of formal process for identifying and/or adapting to meet the special needs of SDGs.

Only one of the AIPs interviewed has a formal method for identifying and/or adapting to meet the special needs of SDGs. This one AIP reported that it utilizes a Diversity Council to help identify the special needs of SDGs. The Diversity Council solicits feedback from agents/brokers.

Another AIP reported that it relies on informal feedback from agents/brokers to determine whether SDGs believe they are treated fairly with respect to the development and implementation of insurance programs and the handling of claims. The agents/brokers affiliated with this AIP reported that they occasionally report customer complaints about RMA programs to the AIP.

d. No AIP training in cultural sensitivity and cultural competence to better serve RMA's customer base.

Only one of the AIPs interviewed offers training in cultural sensitivity and cultural competence. This training, however, is not mandatory (because the agents/brokers are independent contractors) and is offered by the AIP's sales representatives who are responsible for

training and recruiting agents/brokers. The other three AIPs interviewed offer no such training, though they do reiterate the SRA's requirement that their agents/brokers, loss adjustors, and employees offer insurance programs to all customers.

e. Only sporadic outreach efforts or policies to reach SDGs.

One AIP reported that its marketing department makes deliberate efforts to reach out to SDGs. These efforts include establishing contacts with, and holding information meetings to benefit, SDGs. The other AIPs, however, do not make any concerted effort to reach out to SDGs. Rather, the AIPs say any such efforts are driven by RMA, although no example of an RMA-driven effort was provided, or are only sporadic in nature. For example, one AIP reported that it has a company representative on the National Crop Insurance Services Outreach Committee, which periodically meets with minority farming organizations to reach out to SDGs. One AIP reported that several of its women and minority agents/brokers are involved in women and minority farming organizations, and company representatives make occasional presentations at meetings hosted by these organizations. Another AIP has sponsored an annual conference for women producers for the last three years.

A number of agents/brokers reported that they employ various methods to reach out to SDGs, including advertising in trade publications that target SDG producers and working with local churches to distribute information about RMA's programs.

f. Offices are believed to be geographically and physically accessible.

Most AIPs and agents/brokers interviewed believe their offices are accessible to the limited number of customers who actually visit them. AIPs and agents/brokers reported that most customers or potential customers do not come to their offices; instead, the agents/brokers meet at the customer's home, or communicate by telephone or by mail.

- g. Unlike the RMA employees interviewed, AIPs and sales agents/brokers believe they receive significant oversight from RMA.**

As discussed above, RMA employees do not believe RMA exercises sufficient oversight over AIPs or agents/brokers. By contrast, all of the AIPs and virtually all of the agents/brokers interviewed believe RMA exercises sufficient oversight over them and holds them sufficiently accountable. Examples provided by the interviewees of the ways AIPs are held accountable include the requirement that each AIP submit an annual Plan of Operation to USDA, and RMA's periodic AIP compliance reviews. The AIPs also note that the SRA requires extensive oversight by RMA.

- h. Virtually no known civil rights issues raised by customers.**

Only one agent/broker interviewed reported knowledge of any Civil Rights issues raised by customers. According to the agent/broker, this issue involved the alleged denial of insurance because the minority producer allegedly purchased crops from a neighboring nursery following a hurricane and then sought to insure the purchased crops. The agent/broker alleged that the minority producer was mistreated and penalized, but the majority producer who sold him the crops was not penalized.

J. Additional Contract Task Analyses

The following sections present the RMA Team's analysis of additional, specific Contract tasks (presented verbatim from the Contract).

- 1. "Assess current program delivery and strategies and their impact on constituencies in 6 counties in 15 states (consider whether USDA practices are discriminatory and whether all have equal access to USDA programs)."**

- a. Proactive Steps Taken By RMA To Ensure Customers Are Treated Fairly**

RMA employees on the whole reported having minimal contact with customers because the AIPs are primarily responsible for

selling and administering RMA programs. It is the AIPs that have the majority of contact with RMA's customers and potential customers.

In general, the Assessment Team found that RMA employees appear to possess very little knowledge about the treatment and service that AIPs are providing to customers and potential customers. Although RMA does not take many proactive steps to identify discrimination against producers, the Assessment Team was able to identify several actions RMA takes to determine whether RMA's customers are being treated fairly.

1) Civil Rights Reviews of AIPs Conducted by RMA CRCO

RMA's CRCO, based in Washington, D.C., conducts Civil Rights Reviews of the AIPs. The purpose of such Reviews is to ensure that the AIPs are complying with applicable non-discrimination laws and civil rights requirements. Only one individual from CRCO, the Compliance Officer, is responsible for conducting these Reviews. Because there are 17 (current) AIPs, Civil Rights Compliance Reviews for each AIP can only be scheduled approximately every five years. During these reviews, the Officer typically interviews individuals at the headquarters office of the AIP. She also attempts to interview approximately 5% of the AIPs' agents/brokers. During these reviews, the Officer asks questions of interviewees for the purpose of determining if the AIP is in compliance with applicable Civil Rights requirements in the SRA. For example, during a Civil Rights Review, the Officer will check to ensure that the AIP has provided at least some amount of Civil Rights training to its agents/brokers and loss adjustors, because this is a Civil Rights requirement in the SRA. AIP interviewees cited the Civil Rights Reviews, which they described as stringent, as one of the ways RMA oversees the AIPs and the method by which RMA verifies that AIPs are complying with applicable contractual requirements, non-discrimination laws, and Civil Rights requirements.

2) Compliance Department's National Program Operation Reviews

In addition to the Civil Rights Reviews of the AIPs conducted by CRCO, RMA's Compliance Department also conducts National Program Operation Reviews ("NPOR") of the AIPs. Although

RMA's Compliance Department conducts these reviews annually, based on the number of Compliance staff and the amount of work required to complete an NPOR review, each AIP undergoes an NPOR review only approximately one time every three years.

Each Compliance Office takes part in conducting NPOR reviews. When conducting such reviews, Compliance employees follow an "NPOR Handbook," which is created and distributed by RMA's Compliance staff at Headquarters. The NPOR Handbook lists topics that Compliance employees are required to cover during an NPOR review. It also specifies that during an NPOR review, Compliance employees must interview certain employees at the AIP Headquarters Office, as well as a number of agents/brokers and loss adjustors who are employed and/or contracted by the particular AIP being reviewed. During NPOR reviews, Compliance employees additionally are required to interview a number of randomly selected policyholders of the AIP being reviewed.

The purpose of NPOR reviews is to make sure that the AIPs are in compliance with RMA programs, policies, and procedures. *Issues related to fairness, discrimination, and Civil Rights are not specifically examined during NPOR reviews.* However, when Compliance employees meet with policyholders as part of these reviews, the NPOR handbook specifies that they are to inquire about the service that such policyholders received from the AIPs. If a particular policyholder was treated unfairly or discriminated against by an AIP, and they were interviewed by a Compliance employee during an NPOR review, they might mention the treatment that they received during such interview. Compliance's NPOR reviews are another, albeit limited, way that RMA reviews whether producers are being treated fairly by the AIPs. However, no Compliance employee interviewed by the Assessment Team identified any Civil Rights related issue that was brought to their attention by a policyholder during any NPOR reviews.

Although the NPOR Handbook does not contain Civil Rights related inquiries that Compliance employees are required to make during NPOR reviews, some of the Compliance employees reported that they do make inquiries during NPOR reviews that relate to issues of fairness, discrimination, and compliance with applicable Civil Rights requirements. For instance, some Compliance employees told the Assessment Team that during NPOR reviews, they check to make sure that the agents/brokers who they interview have RMA's "Justice for All"

poster up in their Office, although this is not an item that they are required to review in accordance with the NPOR Handbook. Other Compliance employees said that they check on whether AIPs are providing Civil Rights related training to agents/brokers and loss adjustors. Other Compliance employees informed the Team that they ask additional questions of policyholders, which are not required as part of an NPOR review, that relate to fairness and the AIPs. Because these inquiries related to fairness, discrimination, and compliance with Civil Rights requirements are not required as part of the NPOR reviews, there is a lack of consistency across RMA's various Compliance Offices in terms of the extent to which such issues are examined and/or covered during NPOR reviews. Moreover, because such inquiries are not required as part of the NPOR reviews, there is no protocol for Compliance employees to follow if and when Civil Rights issues or problems are identified.

3) Regional Office Education and Outreach Efforts

The primary way that RMA Regional Offices review whether producers are treated fairly and have equal access to RMA programs is through their work and contact with the education and outreach partners within their respective Regions. Other than through their outreach and education partner efforts, however, it does not appear that the Regional Offices take other steps to *proactively* ensure that producers have equal access to RMA programs and are being treated fairly.

b. Accountability for Discriminatory Conduct

1) RMA Employees

With respect to processes/penalties in place to hold RMA employees accountable for discriminatory conduct, the Assessment Team was repeatedly informed during field and Headquarters interviews that RMA employees would be subject to discipline and/or termination if they discriminated against another employee or a producer. The Assessment Team was told that Regional and Compliance Office Directors possess the authority to impose discipline upon employees within their offices for discriminatory conduct. Nonetheless, the Assessment Team learned of only a handful of incidents over the last few years where RMA employees have actually been held accountable for discriminatory conduct, and,

based on all interviews conducted, it does not appear that incidents of discriminatory conduct are frequently reported. The Assessment Team does not have sufficient information to determine whether this is due to a failure to report or simply a low level of problems.

2) AIPs

With respect to the AIPs, the SRA contains non-discrimination requirements, as well as some minimal requirements for affirmative steps covering protection of customer Civil Rights. Non-compliance with any provision and/or requirement within the SRA can result in RMA taking corrective action against an AIP. Such corrective action could include fines, sanctions, or even termination of a particular AIPs' reinsurance agreement. Although the SRA does allow for RMA to take corrective action against an AIP for discriminatory conduct, the Assessment Team learned of no incidents where any AIP has been held accountable by RMA for discriminatory conduct against a producer.¹²⁰

RMA employees largely believe that the AIPs are not held sufficiently accountable for their conduct, including conduct in violation of the SRA. The Assessment Team was repeatedly told by RMA employees that "the SRA has no teeth." The vast majority of RMA employees also believe that there is insufficient oversight over the AIPs. Despite a lack of awareness on the part of RMA employees about the treatment and service provided to producers by the AIPs, RMA employees widely acknowledge that opportunity exists for the AIPs to discriminate against producers. Specifically, RMA employees stated that AIP agents/brokers have the ability to pick and choose who they provide service to, despite the SRA's requirement that they not discriminate. RMA employees also stated that loss adjustors have discretion when determining and assessing producers' losses, despite loss adjustment procedures that RMA requires them to follow.

AIP interviewees cited the Civil Rights Reviews, which they described as stringent, as one of the ways RMA holds AIPs accountable for discriminatory conduct. AIPs also pointed to the non-discrimination

¹²⁰ RMA's education and outreach partnership agreements similarly contain non-discrimination requirements. Thus, if an outreach or education partner acted discriminatorily, RMA could terminate such partner's agreement. Nonetheless, the Assessment Team learned of no incidents where RMA has held either an outreach or education partner accountable for such conduct.

provisions in their respective SRAs. AIPs also said they take the following limited proactive steps to ensure fairness/nondiscrimination: reiterating RMA's policies against discrimination during training classes; ensuring that agents/brokers understand RMA's complaint process; and requiring that agents/brokers post RMA's "Justice for All" poster in their offices. The AIPs and agents/brokers also cite the virtual absence of Civil Rights complaints by customers and potential customers as evidence that they take seriously their commitment to non-discrimination.

c. Participation Barriers for SDGs

Based on all interviews conducted, the Assessment Team identified the following barriers to equal access to RMA programs for SDGs.

1) AIPs Not Incentivized to Conduct Outreach

The SRA does not contain requirements that the AIPs, including agents/brokers, conduct any outreach to SDGs. Nor do RMA employees believe that the AIPs are conducting much of any outreach to SDGs. RMA employees attribute this to the lack of financial incentives that AIP agents/brokers have to provide service to socially disadvantaged producers. Specifically, agents/brokers receive commissions that are based on the size of the sales that they make. Thus, agents/brokers are paid significantly higher commissions for sales of crop insurance policies to larger farmers who have more land and more crops to insure. RMA employees commonly believe that this commission structure results in agents/brokers being without sufficient financial incentives to spend time and effort trying to make sales to SDGs, who are usually smaller producers. RMA employees stated that this is one of the largest barriers to participation in RMA's programs for SDGs.

One of the four AIPs interviewed said that it makes a deliberate effort to conduct outreach to SDGs. That AIP representative said his organization establishes contacts with, and holds informational meetings to benefit, SDGs. Otherwise the AIPs admitted that they make only sporadic efforts to reach out to SDGs when the efforts are driven by RMA; however, no AIP interviewed could identify any RMA-driven outreach. One AIP said that several of its minority and women agents/brokers are involved with minority and women farming organizations and sometimes make presentations at the organizations' meetings. Another AIP interviewed

said that it has sponsored a women producers' conference for each of the last three years.

Several agents/brokers reported that a participation barrier exists for SDGs, who tend to be small producers, because agents/brokers must devote more time, effort, and money to sell policies to and service SDGs than they do to sell policies to and service majority, sophisticated large producers; and they receive larger commissions when they sell policies to the larger producers.

Those agents/brokers interviewed who invest the time and resources to reach out to SDGs often do so in the hope that the SDGs ultimately will become larger producers, which will make the sales agents'/brokers' earlier efforts to obtain this business worthwhile.

Agents/brokers interviewed said they conduct outreach to SDGs by advertising in trade publications that target SDG producers and work with local churches to distribute information about RMA programs.

Focus Group participants in North Dakota and New Mexico reported seeing AIPs at a farm exposition, sending newsletters, advertising and the like, but none reported that there were any outreach activities directed at SDGs.

2) Lack of Crop Insurance Programs Covering Crops that SDGs Tend to Grow

RMA employees also widely stated that RMA does not have sufficient programs/policies available to cover the types of crops that SDG producers tend to grow, resulting in another barrier to equal participation in RMA programs. In general, RMA employees state that SDG producers tend to grow specialty crops, for which RMA does not have a lot of policies/programs available. Many RMA employees therefore conclude that RMA's programs/policies do not sufficiently meet the needs of SDG producers. Although many RMA employees recognize that RMA has significantly increased the number of policies available for different types of crops over the years, they nonetheless concluded that RMA lacks programs which sufficiently meet the needs of SDG producers.

AIPs and agents/brokers were in agreement with the observations made by the RMA employees. The AIPs and agents/brokers also said that it takes years to obtain insurance for specialty crops, but staple crops are available immediately. Agents/brokers also said developing specialty crop insurance programs is time-consuming and costly, and many agents are not comfortable selling these programs because they are more complicated and paper-intensive.

During Focus Group sessions and CBO interviews, the same issues identified by RMA interviewees as barriers to participation were identified by SDGs.

3) Record Keeping Requirements

Partially in an attempt to address the lack of programs available for specialty crops, RMA has in recent years allocated funding toward the development of revenue-based products. Such products seek to insure producers' overall revenue rather than a specific crop. Revenue-based insurance products are designed, in part, to provide insurance to those who produce crops for which there are no individual crop insurance policies available. Despite growth in development of revenue-based products, RMA employees stated that such products still have been unsuccessful in meeting the needs of SDG producers. To qualify for most of RMA's revenue-based products, producers are required to maintain extensive records. For example, RMA recently introduced two Adjusted Gross Revenue products ("AGR" and "AGR lite"). To qualify for coverage under AGR or AGR lite, producers must submit five years of tax records, among other records. RMA employees stated that many SDG producers do not possess the necessary record-keeping skills to meet the requirements for such products, and thus, these extensive, rigorous record-keeping requirements in connection with qualifying for many of RMA's programs serve as a significant barrier to SDG participation.

This also was an issue identified during Focus Group sessions and CBO interviews as a barrier to participation.

4) Complexity of RMA's Programs

RMA employees also stated that the complexity of RMA's programs creates a barrier to participation for SDG producers.

Several Focus Group participants discussed the complexity of the programs. Some expressed the view that to qualify for other USDA programs they had to have the insurance, whether or not they understood the policy they were buying.

5) Cultural Resistance Among SDGs

RMA employees stated that another barrier to participation results from a reluctance on the part of many SDG producers to become involved with government-related programs. This particular barrier appears to be most pronounced for Native American producers.

Several Focus Group participants admitted to a reluctance to purchase insurance products, and most of them expressed the view that they had no choice but to purchase the insurance if they wanted to participate in other USDA programs.

6) Barriers Specific to Native Americans: Land Ownership Issues and Differing Production Methods

The Assessment Team was repeatedly informed that many of RMA's programs and services do not meet the needs and practical realities of Native American producers due to the differing production methods that they utilize and land ownership issues specific to Native Americans. The general sentiment among RMA employees is that production methods and land ownership concepts specific to Native American populations do not mesh well with the rigid qualification requirements of RMA's crop insurance programs.

Native American land ownership and production issues were a recurrent theme raised in Focus Groups and CBO interviews for each of the four Agencies assessed, including RMA.

7) Language

The majority of RMA employees identified language as a significant barrier to participation in RMA's programs and services for many SDG producers. The Assessment Team was repeatedly told that RMA lacks translated materials and has few employees who speak

languages other than English. RMA employees also stated that the AIPs have very few employees, including agents/brokers, who speak languages other than English.

While there did not appear to be many Spanish speaking employees at RMA offices, the Assessment Team did meet a few, and they were appropriately located in those offices that serve larger populations of Hispanic customers. RMA employees also consistently informed us that they hire interpreters, when necessary to accommodate a particular producer.

Most of the AIPs and some of the agents/brokers reported that language is a barrier to equal access to RMA's programs for SDGs who are not proficient in English. Some AIPs and agents/brokers said they try to overcome this barrier by using translators, including multi-lingual employees of the AIPs or affiliated agent/broker offices, and family members and friends of the respective SDGs.

This also was a recurrent issue raised in Focus Groups and CBO interviews.

8) Difficulty Identifying SDG Producers and Their Specific Needs

Many RMA employees stated that identifying groups of SDG producers and determining their specific needs is difficult, resulting in another barrier to their participation in RMA's programs and services.

AIPs and agents/brokers agreed that identifying SDGs and adapting programs to match their needs is a barrier to participation. Only one of the AIPs interviewed has a formal method for identifying and/or adapting programs to meet the special needs of SDGs: a Diversity Council.

9) Lack of Funding to Visit SDGs

Employees in RMA's Regional Offices lack awareness about the existence and specific needs of SDGs within their respective Regions, despite their location in the field and contact with producers through education and outreach efforts. Some Regional Office employees attribute this lack of awareness to the geographic locations of RMA Regional Offices, which are few in number and responsible for covering

large territories. As a result, many Regional Office employees interviewed contend that it is difficult to reach SDAs who are located great distances from RMA's Regional Offices. Some feel that if more travel funds were allocated to Regional Office employees, they could better reach those SDGs who are within their Region, but located far away. To address this participation barrier, others believe that RMA should open small satellite offices as a way to cover more territory.

10) Cost

Some RMA employees also identified cost as a barrier to SDG participation in RMA programs. Specifically, some RMA employees stated that SDGs cannot afford the cost of crop insurance.

Some of the sales agents/brokers also reported that some SDG producers cannot afford crop insurance. According to these agents/brokers, producers have seen an increase in premiums and, as a result, coverage has decreased in recent years.

Focus Groups and CBOs consistently complained about the costs of the crop insurance products. Focus Groups and CBOs also frequently expressed that the AIPs design the insurance products, and they set the prices, so that the AIPs can make substantial profits. The SDGs generally felt resigned to this situation because the cost of the insurance products are set and the SDGs believe they are required to purchase crop insurance if they want to participate in other USDA programs.

2. "Evaluate the effectiveness of local USDA leadership in assessing community and constituent needs and in adapting USDA programs, within applicable laws and regulations, to meet those needs."

Generally speaking, RMA employees appear to lack awareness about SDG producers, including where they are located, what their specific needs are, and whether RMA is meeting their needs. The Assessment Team found this to be particularly true among employees in RMA Compliance Offices and in Product Management in Kansas City. The overwhelming majority of such employees also expressed a lack of awareness about RMA outreach and education efforts, which are primarily facilitated through the Regional Offices. Moreover, it does not

appear that employees in RMA Compliance Offices or in Product Management take any steps to identify the special needs of SDAs.

Based on their involvement with the outreach and education partners within their respective Regions, Regional Office employees appear to have the most knowledge within RMA about the various groups of SDG producers that exist within the different Regions. Aside from their involvement/work with education and outreach partners however, the majority of RMA Regional Offices do not take other steps to identify the special needs of SDAs within their respective Regions. Thus, the Regional Offices' involvement with the outreach and education partners appears to be the primary way that RMA attempts to identify the special needs of SDAs.

As a result of their involvement with education and outreach partners, Regional Office employees are also in the best position within RMA to identify and assess the special needs of SDAs within the respective Regions. However, the Regional Offices do not appear to communicate with other RMA divisions, nor are the other divisions making inquiries to Regional Offices about where groups of SDG producers exist, what their specific needs are, and whether RMA is currently meeting those needs. Consequently, the needs of SDG producers seem to be unaccounted for and largely overlooked by RMA's Product Management and Compliance Departments.

RMA does little to adapt to or accommodate the special needs of SDG producers. The primary way RMA attempts to adapt to meet the special needs of SDG producers is through Regional Office contact and involvement with education and outreach partners within the respective Regions, and through contact and involvement with other local organizations in the case of some Regional Offices. RMA also accommodates individual producers on a case-by-case basis, where necessary or requested. The majority of Regional Office employees stated that the education and outreach partners, by virtue of what they do, adapt to meet the special needs of SDGs.

As discussed above, the majority of contact with RMA customers and potential customers occurs through the AIPs. However, the RMA employees appear unaware as to whether or not the AIPs, including sales agents/brokers and loss adjustors, are doing anything to identify, adapt, or accommodate the special needs of SDG producers.

AIPs and agents/brokers generally stated that current RMA insurance products do not adequately meet the needs of SDGs and that additional such products should be developed.

Focus Group participants and CBOs declined to comment on RMA's internal operations. However, the information collected during the Focus Groups and CBO interviews clearly establishes that many SDG farmers/ranchers are unaware of RMA and the availability of crop insurance, and do not receive any or adequate outreach targeted to the SDG population. Some existing insurance products are unsuitable for or do not meet the unique needs of SDGs and other insurance products, which would meet the needs of SDG farmers/ranchers, are generally unavailable to them.

3. “Assess and analyze the cultural climate, cultural competencies, and perceptions, as well as equity of business processes and timelines employed by USDA and its effect on the broad diversity of its constituents.”

The AIPs are primarily responsible for selling and administering RMA's programs. It follows that the AIPs have the majority of contact with RMA customers and potential customers. Nonetheless, RMA does have some direct contact with customers and potential customers, most of which occurs through RMA's outreach and education efforts. Such efforts are primarily handled and facilitated through RMA's Regional Offices. The Assessment Team found that the attitudes regarding outreach and service to SDGs tends to be the most positive overall in the Regional Offices as opposed to other RMA divisions, where little to no emphasis is placed on outreach and equitable delivery of service to SDGs.

a. Cultural climate is reflected in employee attitudes towards outreach to SDGs.

In RMA Compliance Offices, for example, employees do no outreach to SDAs, nor are they involved with or kept informed about Regional Office outreach efforts. In fact, when asked about outreach, Compliance employees repeatedly stated that “outreach is not at all part of the job or mission of Compliance.” Thus, nothing is done within the RMA Compliance Offices to improve Compliance employee attitudes regarding outreach and equitable delivery of service to SDAs. With

respect to the attitudes and perceptions of Compliance employees regarding such topics, the Assessment Team found that approximately one-third of all Compliance employees interviewed feel that outreach is important and worthwhile, another one-third expressed ambivalence about outreach, and the last third expressed that outreach is a waste of time, money, and resources.

Similar to the Compliance Offices, employees in the RMA Product Management division in Kansas City do not participate in outreach efforts to SDGs, nor are they kept informed of Regional Office outreach efforts. While the majority of employees in Product Management seem to feel positive about the idea of outreach and equitable delivery of service to SDGs, little to no emphasis is placed on such topics and it does not appear that anything is done within Product Management to increase the outreach and service to SDGs. Nor does it seem that anything is done to increase the level of communication with the Regional Offices about such topics.

As discussed above, only one AIP has voluntary cultural sensitivity and cultural competence training. The other three AIPs offer no such training, voluntary or otherwise. Also as discussed above, AIPs and agents interviewed do not believe that existing products meet the unique needs of SDGs and believe new products should be developed specifically to meet those needs.

Almost all interviewed RMA employees stated that the AIPs do very little in the way of outreach to SDGs. Most attribute this lack of outreach to the lack of financial incentives that AIP sales agents/brokers have to provide service to SDGs, who tend to be smaller producers.

Based on the information collected from Focus Group participants and CBOs, SDGs have very little contact with RMA employees and would not be able to fairly rate their cultural sensitivity. Focus Group participants and CBOs would agree that outreach to SDGs is very limited.

b. Cultural sensitivity and competence training is not provided.

The Assessment Team found that most RMA employees generally seem to lack knowledge and guidance regarding issues related to cultural sensitivity and competence. All RMA employees are required

to complete *AgLearn* training on an annual basis, which includes a single training module program that addresses the topics of discrimination, diversity, and/or sensitivity in the workplace. Many RMA employees report that this training is ineffective, and for those who report that it is effective, it is questionable as to whether such individuals have ever received any other cultural training with which to compare *Ag Learn*. It seems that RMA employees generally lack knowledge and competence about the cultures of the different groups of SDG producers who exist within their Regions.

The vast majority of interviewed RMA employees were unaware as to whether the AIPs provide sensitivity and/or cultural training to sales agents/brokers and loss adjustors, notwithstanding that the SRA requires that AIPs provide SDG Civil Rights training. What is not specified in the SRA, however, is topics that must be covered during such training and the depth of such training. Although this requirement is present in the SRA, the vast majority of RMA employees stated that the AIPs lack knowledge and guidance on topics related to cultural sensitivity and competence. RMA employees also asserted that the AIPs lack diversity in their workforces.

c. Barriers resulting from application processes.

1) Lack of Knowledge of Crop Insurance Program

RMA employees reported that SDGs face barriers in learning about crop insurance programs and in reaching the application phase, given the lack of sales agents/brokers who solicit business from and/or sell crop insurance policies to SDGs. RMA employees stated that both the complexity of RMA's programs and the extensive record keeping requirements necessary to obtain certain crop insurance policies also serve as barriers to participation by SDGs. RMA employees did not identify the application process itself as a barrier, because once at that stage the agents/brokers assist the producer in completing the application.

2) Education and Outreach Partnership Application

Many RMA employees in the Regional Offices stated that smaller organizations with fewer resources are excluded from RMA's partnership program. RMA employees stated that grant writing skills are

necessary in order to submit a successful application for an outreach or education partnership. Because many small, local organizations do not possess grant writing skills or sufficient resources to hire a consultant to assist them, many Regional Office employees view the grant writing requirements inherent in RMA's partnership application as a barrier to participation in those organizations which are the most well connected with SDGs.

In addition, many RMA employees reported that the requirement that partnership applications be completed online and in English acts to exclude certain organizations that are best equipped to reach SDGs.

The Partnership Program application was not raised or discussed by participants during the Focus Groups or in AIP, agent/broker, or CBO interviews.

4. "Examine outreach efforts at the local level. Research the different outreach techniques employed by USDA staff and the priority that Constituency outreach has in local Service Centers."

With the exception of some education and outreach efforts from the national level, the vast majority of RMA's outreach and education efforts are handled and facilitated through RMA's Regional Offices. Specifically, each Regional Office has an Outreach and Education Coordinator, who is responsible for working with and assisting the outreach and education partners within their respective Regions. This primarily involves providing information about RMA to the partners, reviewing and approving informational materials relating to RMA's programs and services that the partners distribute to local producers, and overseeing the partners in general. The Outreach and Education Coordinators also occasionally attend and oversee partner outreach events.

The amount of time spent on outreach and education efforts varies greatly among the Regional Offices. Some Regional Offices dedicate significant time to education and outreach efforts and impress upon employees the importance of such efforts. Other Regional Offices dedicate minimal time to education and outreach efforts, and do not treat such efforts as an important priority.

There are no national requirements or guidelines for the Regional Offices to follow with respect to their outreach and education efforts, thus allowing for variance across RMA's Regional Offices in terms of the time and effort that each Office dedicates to outreach and education efforts. For example, RMA's national outreach department does not impose minimum time requirements that the Regional Office Outreach and Education Coordinators must spend working in their capacity as an Outreach or Education Coordinator. In all RMA Regional Offices, the individuals who serve as Outreach and/or Education Coordinators also hold other positions, which are their primary jobs. Their duties as Outreach and/or Education Coordinator are viewed as merely "collateral" duties. Whether a Regional Office treats education and outreach as a priority seems to be dependent upon whether the particular Office's Regional Director views outreach and education as a priority.

In those Regional Offices where outreach and education are viewed as a high priority, employees other than just the Coordinators are usually required and/or encouraged to attend events held by the outreach and education partners within their Region. In Regional Offices where outreach and education is treated as a low priority, usually due to the lack of emphasis placed on these efforts by the Regional Office Director, the Coordinators typically spend less time working with the outreach and/or education partners within their Region, and other employees within the Office have little to no involvement or knowledge regarding the outreach and education efforts taking place within their Office and Region.

In those Regional Offices where outreach and education are treated as an important priority, such Offices also spend significantly more time developing and maintaining relationships with local organizations in addition to those that have been awarded partnership agreements. Such Regional Offices often work with local CBOs, grower groups, university extensions, and other local organizations to try to reach producers within their Region and spread the word about RMA's programs and services. Through these relationships with local organizations, these Regional Offices appear to be more successful at identifying and recruiting different organizations to apply for RMA partnership grants than in those Regional Offices where outreach and education are viewed as a low priority and minimal time is dedicated to such efforts.

Even among those who do treat outreach and equal delivery of services to SDGs as a priority and have positive attitudes about such topics, many RMA employees question the success of RMA's outreach efforts. However, RMA employees also stated that measuring, determining, and quantifying the success of outreach and education efforts is difficult.

Interviews of AIPs and their agents/brokers establish that they do not believe there is any existing incentive to conduct SDG outreach, and SDG-outreach efforts are limited. Only one of the AIPs interviewed makes a deliberate attempt to reach out to SDGs. According to the AIPs interviewed, the other SDG-outreach they conduct is RMA-driven, although none of the AIPs could give an example of RMA-driven outreach. Some agents/brokers said they and others conduct outreach by advertising in trade magazines targeting SDGs, making presentations at minority farming organizations, and sponsoring conferences.

Focus Group participants and CBOs, while not being able to identify where the responsibility lies, stated that outreach to SDGs is non-existent in some locales and inadequate in others. Where SDGs do not know about available insurance products, and the non-SDGs do, it is not possible to have an equal or equitable delivery of services.

a. Lack of Incentives Available for Outreach Efforts

Regional Office employees are not provided any incentives to assist the partners within their Region to conduct creative and effective outreach to local producers. Nor are Regional Office employees provided incentives to develop and maintain relationships with other local organizations that have close ties to groups of SDG producers. With the exception of hearing about a handful of Regional Office employees who have received some type of award for their exceptional Outreach efforts over the years, the Assessment Team was not informed of any specific incentives provided to Regional Office employees for involvement in outreach education efforts for SDG producers, or for any other producers.

Interviewed RMA employees could not identify any incentives offered or provided to the AIPs and their agents/brokers for conducting creative and effective outreach to SDGs.¹²¹ Most RMA employees stated that AIPs

¹²¹ AIPs and agents/brokers said they do not receive any incentives for outreach to SDGs.

and their agents/brokers have little to no incentive to try to reach SDG producers due to the commission structure currently in place, which monetarily rewards agents/brokers with higher commissions for sales made on larger policies, usually to larger producers. Many RMA employees said this causes one of the greatest barriers to improving outreach to SDGs, because with the current commission structure in place for sales agents/brokers, the AIPs have no incentive to conduct outreach to SDGs.

b. Lack of Oversight and Accountability for Education and Outreach Partners

A significant number of Regional Office employees questioned whether some of the education and outreach partners even accomplish what they commit to in their partnership applications. Some Regional Office employees said there is a little or no oversight over RMA's education and outreach partners. This may be due, in part, to the lack of direction from National Outreach with respect to Regional Office oversight of the partners.

Some Regional Office employees also said that the education and outreach partners are not sufficiently held accountable by RMA when they do a poor job or fail to meet the objectives specified in their partnership application. RMA employees report that the only risk to a partner for doing a poor job or failing to fulfill the objectives in their partnership agreement is the possibility that the partner will not be granted another partnership agreement in the future. This seems to rarely occur, however, as Regional Office employees frequently reported that the same organizations are awarded partnership agreements year-after-year. As a result, similar outreach and education programs are conducted each year for producers. With many of the same organizations being repeatedly awarded partnership agreements, Regional Office employees frequently stated that other organizations, which may have closer ties to local producers, are precluded from being awarded partnership funds.

c. Other Barriers to Improving Outreach

It was a widely expressed sentiment among RMA employees that measuring, determining, and quantifying the success of RMA's outreach and education efforts is difficult. Also difficult is identifying

groups of SDGs and being able to assess their specific needs, which results in perhaps the greatest barrier to improving outreach to SDGs. Other barriers to improving outreach to SDGs include reluctance on the part of certain SDGs to participate in government-affiliated programs, as well as the lack of crop insurance programs available to meet the special needs and practical realities of SDGs.

d. Certain Outreach Efforts Viewed as Successful

Despite the lack of incentives, directives, requirements, and guidelines provided to the Regional Offices by RMA's National Outreach division, numerous Regional Office employees say they are dedicated to increasing and improving RMA's education and outreach efforts to SDGs. Regarding the effectiveness of those efforts, the feedback consistently received from Regional Office employees was that outreach conducted by local, smaller organizations that have close ties to local communities and producers tends to be the most successful. Regional Office employees generally also said that face-to-face outreach efforts are much more effective than mailing informational materials to producers about risk management and RMA.

In addition to the typical education and outreach partnership agreements, RMA also has "smaller session" partnership grants available for those organizations that may not be equipped to fulfill a full partnership agreement. RMA's Regional Office employees generally reported that these small session partnership agreements have been the most successful in reaching socially disadvantaged producers.

Based on the information collected from Focus Group participants and CBOs, it appears that SDGs have very little contact with RMA employees and would not be able to fairly rate their outreach efforts. However, as discussed above, Focus Group participants and CBOs expressed that outreach to SDGs is very limited to the extent that many SDGs are not even aware of crop insurance products.

The following is a summary of key points:

- The vast majority of RMA's outreach and education efforts are handled and facilitated through RMA's Regional Offices.

- Each Regional Office has an Outreach and Education Coordinator who is responsible for working with and assisting the outreach and education partners within their respective Regions.
- The individuals who serve as Outreach and Education Coordinator also hold other positions, which are their primary jobs.
- National requirements or guidelines are inadequate for the Regional Offices to follow with respect to their outreach and education efforts, resulting in a variance across Regional Offices in terms of the time and effort that each Office dedicates to outreach and education efforts.
- Whether a Regional Office treats education and outreach as a priority seems to be dependent upon whether the particular Office's Regional Director views outreach and education as an important priority.
- No incentives are provided to RMA employees or the AIPs (including sales agents/brokers) to conduct creative and effective outreach.
- There is a lack of adequate oversight over RMA's education and outreach partners.
- Education and outreach partners are not sufficiently held accountable by RMA when they do a poor job.
- Barriers to improving outreach to SDGs include difficulty in quantifying RMA's outreach efforts, difficulty in identifying needs of SDGs, reluctance on the part of SDGs to get involved in RMA's programs, and lack of crop insurance programs available to meet needs of SDGs.
- Face-to-face outreach efforts that are conducted by small organizations with close ties to local communities are regarded by RMA employees as being the most successful.

- “Small session” partnership agreements are regarded by RMA employees as the most successful in reaching SDGs.
- Focus Group Participants and CBOs said outreach was inadequate and expressed the view that many SDGs are not aware of RMA or crop insurance products.

5. “Identify statutory and regulatory policies that may lead to discrimination and bar individuals from participating.”

As discussed above, many RMA employees said there are not enough crop insurance products available that meet the needs of SDGs. Some RMA employees attribute this to the standards utilized by RMA for allocating funding for the development and improvement of crop insurance programs. While RMA does not itself develop crop insurance products, it does provide funding to other, outside entities to develop and improve crop insurance programs. Regulatory/statutory restrictions exist, however, which prevent RMA from allocating such funds toward the development or improvement of crop insurance programs that will not be “actuarially sound.” Because of that requirement, the Assessment Team was told RMA allocates the vast majority of its available funding toward the development and improvement of products which clearly meet the “actuarially sound” requirement -- those products, in turn, principally benefit the largest number of producers and/or have the largest impact. Many view such regulatory/statutory restrictions as being a barrier to equal access to RMA programs by SDGs (*e.g.*, specialty crops, with a smaller insured base tend to be, or are perceived to be “riskier” or “less actuarially sound”). Thus, even though actuarially sound products *could be* developed to meet the unique needs of SDGs, RMA’s focus is on the “safer” products.

As discussed above, Focus Group participants and CBO, AIP, and agent/broker interviewees cited existing insurance programs which do not benefit the typical SDG producer, and the lack of crop insurance products which would benefit SDGs, as barriers to participation. However, they did not identify any specific statutory or regulatory policies that may lead to discrimination or bar individuals from participating.

6. “Examine National, State, and local policies that may lead to discrimination and bar individuals from participating.”

No RMA employee, AIP, agent/broker, CBO, or Focus Group participant identified any national, state, or local policies that may lead to discrimination or bar individuals from participating.

7. “Examine program delivery information technology tools to ensure equity and access. Systems to be reviewed are: Protracts, AERT, SCIMS, GLS, DLOS, and Farm Business Plans.”

The above listed software programs are not generally applicable to RMA. Regardless, RMA employees and customer representatives did not identify any software programs as having any adverse impact on equal access to RMA’s programs by SDGs.

8. “Examine outreach efforts at the national level. Research the different constituency outreach techniques dictated by USDA staff at the national level and the success of constituency outreach at the local level.”

Almost all RMA employees reported that within RMA there are minimal outreach efforts at the national level. With the exception of the annual national outreach conference held in various Regions of the country, RMA employees, including Regional Office employees, are generally unaware of other outreach efforts which are facilitated through RMA’s national outreach division. However, most Regional Office employees report that outreach efforts on a national level are far less effective and successful than those conducted on a smaller scale by local organizations, who Regional Office employees believe are more apt to tailor their programs to meet the needs of local producers.

RMA’s National Outreach division is heavily involved with the outreach and education partnership grant application process. However, once organizations are awarded grants and outreach partnerships are established, the Regional Offices report that they receive little direction from RMA’s National Outreach division with respect to how to oversee and assist the partners or the amount of time and effort that they must or should dedicate to assisting the partners within their respective Regions.

Based on all interviews conducted, it appears that there is not only a disconnect between the Regional Offices and RMA's National Outreach division, but a disconnect also among the Regional Offices, Compliance Offices, and RMA's Product Management Division in Kansas City. Communication among the different branches within RMA appears to be minimal, especially in relation to outreach and issues pertaining to the needs of socially disadvantaged producers within the various Regions. Employees in RMA's Compliance and Product Management divisions are generally unaware of the outreach and education efforts facilitated through the Regional Offices. They are also unaware of the specific needs of SDG producers within the various Regions, and unaware as to whether RMA's Products and services are meeting those needs. Based on Regional Office employee involvement with the outreach and education partners within their respective Regions, it appears that Regional Office employees are in the best position within RMA to have an understanding of the needs of producers, including socially disadvantaged producers, within their respective Regions. However, the Regional Offices do not seem to be communicating those needs to the other divisions within RMA, nor are the other divisions inquiring about or soliciting such information. As such, the needs of SDG producers appear to be essentially unaccounted for and not considered by RMA's Product Management and Compliance divisions.

AIPs, agents/brokers, CBOs, and Focus Group participants typically saw any outreach efforts as coming from USDA or RMA, and did not tend to identify the effort as being local, state or National.

9. “Examine committee structures and the policies which govern these committees, which are used by USDA to deliver programs (e.g., FSA County Committees, State Technical Committees, and local work groups).”

This Contract Task is not applicable to RMA.

10. “Examine web presence and utilization across rural America and access opportunities for all Americans to USDA services.”

Based on the interviews, most RMA employees are unaware of the extent to which their website is being utilized by SDGs, or any other producers. Regional Office employees generally said that RMA's website

contains a great deal of useful information, but they are not certain whether SDG producers have access to the internet, and if so, the extent to which such producers are utilizing RMA's website to gain awareness about RMA programs and services.

Other than ensuring that RMA's web address is present on all RMA forms and documents, RMA employees do not engage in any other activities for the purpose of promoting use of RMA's website by SDGs.

K. Lessons Learned and Consistent Themes

The following themes arose repeatedly and consistently throughout the course of the Assessment:

1. AIPs

- Sales agents/brokers are providing limited service to SDGs.
- Sales agents/brokers have few to no financial incentives to make sales to SDGs.
- The AIPs appear to lack workforce diversity and are not required nor provided any incentives by RMA to conduct outreach to SDGs.
- The Civil Rights-related training currently provided to sales agents/brokers and loss adjustors by the AIPs is inadequate.
- There is insufficient oversight of the AIPs by RMA in the area of civil rights, diversity, and equal access by SDGs to RMA programs.
- RMA employees generally lack knowledge about the type of treatment and service that the AIPs are providing to RMA customers and potential customers.
- The AIPs are not sufficiently held accountable for their actions because:
 - According to RMA employees, RMA lacks resources to conduct sufficient oversight.

- RMA lacks sufficient information about AIP activities with respect to SDGs to evaluate the AIPs.
- According to RMA employees, there is lack of authority and/or political will to enforce the SRA Civil Rights requirements which are minimal.

2. RMA Compliance Department

- RMA Compliance employees have little to no involvement in or awareness of RMA Department outreach efforts, do not coordinate with RMA Regional Offices in this area, and receive inadequate direction from RMA's National Outreach Department.
- RMA's Compliance Department is not responsible for reviewing the AIPs for compliance with applicable Civil Rights and non-discrimination requirements.
- Individual Compliance employees, on an *ad hoc* basis, raise questions related to Civil Rights during NPOR reviews, but are unsure what is done with their reports on this issue.

3. RMA Product Management Department

- Employees in RMA's Product Management Department are disconnected from RMA's outreach efforts, which are facilitated through the Regional Offices.
- The needs of SDGs are given little to no consideration by RMA's Product Management Department.
- Employees report that RMA's Product Management Division employees lack direction from RMA's National Outreach Department.

4. RMA Regional Offices

- Almost all of RMA's education and outreach efforts are facilitated through the Regional Offices.

- Regional Office employees are not provided any incentives to assist RMA's education and/or outreach partners in conducting creative and effective outreach to SDGs.
- Regional Office employees lack direction and guidance from National Outreach with respect to their outreach duties and efforts.
- RMA employees stated that outreach efforts on a small, local level are the most effective and successful.
- According to the RMA employees, RMA's Regional Offices lack sufficient resources to evaluate AIP compliance with applicable Civil Rights and non-discrimination requirements.
- There is a lack of coordination and support from Compliance and Product Management Departments, with the Regional Offices.

5. RMA Outreach and Education Program and Partners

- RMA's education and outreach partners are not provided any additional incentives (over and above contract requirements) to conduct creative and effective outreach to SDGs.
- Grant writing requirements inherent in RMA's partnership application process are a barrier to organizations with limited grant-writing capabilities, often organizations with closer ties to and more knowledge of SDGs, from applying for and securing grants to participate in RMA's partnership program.
- There is insufficient oversight by RMA over the outreach and education partners.

6. Identified Participation Barriers

- Sales agents/brokers are reportedly providing limited service to SDGs.

- Sales agents/brokers have few to no financial incentives to make sales to SDGs.
- The AIPs are not conducting significant outreach to SDGs.
- RMA lacks crop insurance programs for small volume, specialty crops, which are often grown by SDGs.
- The complexity of RMA's programs results in a barrier to participation by some SDGs.
- Record-keeping requirements for some crop insurance programs serve as a barrier to participation for some SDGs.
- Language serves as a barrier for those who do not speak English because RMA lacks translated materials, as well as employees who speak languages other than English.
- RMA employees lack information to sufficiently identify SDGs and their specific needs.
- RMA does not provide adequate travel funds for RMA Regional Office employees to visit SDGs.
- Cultural resistance to involvement in government programs results in a barrier to participation for some groups of SDGs.
- Land ownership issues and differing production methods specific to Native American producers result in a barrier to their participation.

7. Other Consistent Themes

- AIPs are not required to, and do not, collect demographic information from applicants or customers.
- There is little or no communication among RMA's Divisions about outreach efforts and the needs of SDGs.

- The *AgLearn* training provided to RMA employees is not as useful or effective as live, cultural sensitivity training.
- The Civil Rights reviews of the AIPs conducted by RMA’s Civil Rights Department are ineffective in assuring implementation of USDA’s civil rights and equal access objectives.

L. Recommendations

Most of the Department-wide Recommendations in Section III, above—particularly those relating to DIA leadership, improving workforce diversity, enhancing incentives/penalties and accountability, creation of Offices of Emerging Customer Development, transitioning from the term “outreach” to “marketing,” accelerating cultural transformation initiatives, and reforming the civil rights complaint processes—pertain to and will address many of the barriers and other issues discussed in this Section, particularly as they are carried down to the Agency level. The following Recommendations assume the implementation of Department-wide Recommendations, and are intended to complement and supplement them with measures specific to NRCS and the issues identified herein. (For consistency with the above discussion, some terminology, such as the old term “outreach,” will be used in the following recommendations to recognize the transition (in this instance, from “outreach” to “marketing” and “emerging customer development.”))

1. Recommendations Relating to the Approved Insurance Providers

As discussed above, the AIPs are integral to carrying out the mission of RMA. To achieve the goal of ensuring that non-discrimination and full participation by SDG producers is a high priority, it is essential that the following Recommendations be implemented with respect to the AIPs.

Recommendation RMA-1: Require all AIPs to collect, maintain, and report (quarterly and annually) comprehensive demographic data, including at a minimum race/ethnicity, gender, and age, on all applicants, and all customers.

AIPs do not currently collect demographic data such as race/ethnicity and gender from applicants or customers. This prevents any analysis of whether the AIPs are equitably serving SDG populations. As with USDA's Agencies as recommended in this Report, AIPs should be required to collect similar data.

Recommendation RMA-2: Incorporate explicit, comprehensive, measurable outreach (“marketing”) requirements into regulations and SRAs, and rigorously enforce the requirements.

Currently, there is no requirement in SRAs that mandates that AIPs conduct any outreach to SDG producers. Additionally, based on all interviews conducted with RMA employees, the overwhelming consensus is that the AIPs are not conducting any outreach.

For example, each AIP could be required to conduct at least 100 hours of outreach annually in areas designated in their plan of operations with large numbers of SDG producers.

Recommendation RMA-3: Remove any disincentives and provide incentives to AIPs for their agents/brokers to sell crop insurance to SDG producers.

Insurance sales agents/brokers who are either employed or contracted by participating AIPs currently have little to no incentive to sell crop insurance policies to SDG producers. Based on the commission structure currently utilized by the AIPs, sales agents/brokers make significantly more income by selling larger policies, which are usually purchased by larger, non-SDG producers. Although some sales agents/brokers stated that they are incentivized to make any and all sales that they can, RMA employees indicated that sales agents/brokers put the most effort into those activities from which they will reap the most benefits – sales to large, non-SDG producers. Changing the incentive structure should change sales agent/brokers behavior and lead to more equitable delivery of service to SDGs.

Recommendation RMA-4: Substantially enhance AIP Civil Rights training requirements for agents/brokers and loss adjustors.

Currently, the AIPs are required to provide program and Civil Rights training to all of their sales agents/brokers and loss adjustors. RMA employees stated that the AIPs are currently covering Civil Rights topics for only about ten minutes during their training on program related topics. To ensure that the AIPs are providing adequate Civil Rights training to all of their sales agents/brokers and loss adjustors, who have constant and regular face-to-face contact with RMA's customers and potential customers, it is essential that the AIP Civil Rights training requirements be expanded. Specifically, the AIPs should be required to provide at least 4 hours of RMA-approved training on Civil Rights related topics to all sales agents/brokers and loss adjustors on an annual basis. Thus, to ensure that adequate Civil Rights training is being provided to those in contact with RMA's customers and potential customers, further Civil Rights training requirements should be added and elaborated on in either the SRA, or 7 CFR § 400.168(e), or both.

Recommendation RMA-5: Require AIPs to maintain a comprehensive Civil Rights complaint file system and report all complaints immediately to RMA's Civil Rights Department.

All AIPs should be required to maintain comprehensive Civil Rights complaint files in which they must retain all discrimination and Civil Rights related complaints made by producers. The AIPs should also be required to immediately report any producer discrimination complaints that they receive to RMA's Civil Rights Department. Specifically, a Civil Rights complaint file and reporting requirement should be added to the list of obligations of all AIPs, in 7 CFR § 400.168.

Recommendation RMA-6: Modify the SRAs to specifically require AIPs to use agents/brokers who speak the language of foreign speaking prospects, applicants, and policyholders, or alternatively provide language appropriate interpreters.

Language differences were described as a barrier to participation in RMA programs in interviews with RMA employees, CBOs, AIPs and their agents/brokers and during Focus Groups. AIP, to deliver crop insurance products and services in a fair and equitable manner, should be required to ensure that it can communicate with SDG producers.

2. Recommendations Relating to RMA's Compliance Division

To ensure there is no discrimination against producers by the AIPs, and to ensure that full participation by SDGs is viewed as a priority, the following recommendations should be implemented with respect to RMA's Compliance Division.

Recommendation RMA-7: Add Comprehensive Civil Rights requirements to the National Program Operations Reviews ("NPOR") that are conducted annually by the Compliance Division.

The Compliance Division should be required to make comprehensive specific Civil Rights related inquiries while conducting NPOR reviews in order to determine whether the AIP is complying with applicable Civil Rights requirements.

To ensure consistency across all Compliance Offices, a section entitled "Civil Rights Inquiries" should be added to the "NPOR Handbook" that Compliance Headquarters in D.C. creates and distributes to all Compliance Offices in the field for use during NPOR reviews. Since some Compliance Offices stray from the NPOR Handbook, each Office should also be required to strictly follow the NPOR Handbook, at least with respect to the added Civil Rights elements, to ensure consistency.

If any civil rights problems or issues are identified during an NPOR review, Compliance should additionally be required to immediately report their findings to RMA's Civil Rights Department.

Recommendation RMA-8: Add a Civil Rights position to RMA's Compliance Division.

RMA should employ an individual in its Compliance Division whose sole responsibility is monitoring the AIPs for compliance with anti-discrimination and Civil Rights requirements. With currently available resources, the AIPs are only subjected to one NPOR review approximately once every three years. Making this a full-time position will significantly enhance oversight of AIP Civil Rights Compliance.

3. Recommendations Relating to RMA's Outreach and Education Partnership Program

While the concept of RMA's outreach and education grant programs are certainly positive, there are recommended changes that should be made to the program for the purpose of increasing participation by small, socially disadvantaged, and underserved producers.

Recommendation RMA-9: RMA Outreach and Education grant recipients should be more regularly monitored by RMA Personnel to ensure effective outreach to SDGs and compliance with performance measures.

To establish consistency across Regional Offices, National Outreach should provide direction with respect to Regional Office oversight of the outreach partners. As an example, National Outreach should require that Outreach Coordinators in each Regional Office attend at least three events annually that are held by each of the outreach partners within their respective Regions. If RMA can consistently establish a greater presence at events held by the partners across the various Regions, RMA will better be able to monitor the partner's use of grant funds. Additional direction from National Outreach will also help to ensure that all of RMA's education and outreach partners across the Regions are monitored and treated in a consistent manner.

Recommendation RMA-10: RMA's partnership application evaluation process should be revised to give greater credit to those applicants who demonstrate most specifically how they will use partnership funds to benefit SDGs.

It is recommended that RMA increase the weight allocated to those organizations that specify in their applications how they will utilize partnership funds to reach and/or benefit SDG producers, what their performance measures will be, and how they view success in outreach.

Recommendation RMA-11: RMA’s partnership application evaluation process should place less emphasis on applicant grant writing abilities.

The current partnership grant application process places significant emphasis on the grant writing abilities of applicants. Many RMA employees stated that this creates a barrier to participation in RMA’s partnership program for those organizations without significant resources or access to professional grant writers. RMA employees frequently stated that the emphasis placed on grant writing abilities prevents organizations that are best able to reach SDG producers, that RMA is not currently reaching, from obtaining partnership grants.

Recommendation RMA-12: Provide additional incentives for Outreach and Education Partners to conduct creative and effective outreach to SDG.

Presently, the outreach and education grant partnership agreements contain no additional incentives for partners who conduct creative or effective outreach programs, and achieve superior results. It is recommended that incentives be put in place, which will encourage RMA outreach and education partners to conduct outreach that is both creative and effective, particularly in reaching groups of SDGs.

Recommendation RMA-13: Provide more funding for “small session” outreach grants.

Annually, RMA sets aside funding for a variety of outreach partnership opportunities, including “small session” outreach grants. Many RMA employees stated that the organizations that are typically awarded small session partnership grants tend to be the most well connected to SDGs. Thus, increasing the funding and number of available small session

outreach grants is another way RMA can achieve full participation by SDG producers.

4. Recommendations Relating to RMA's Regional Office

Recommendation RMA-14: Offer incentives or rewards to RMA employees who “go above and beyond” with respect to their outreach efforts.

RMA's National Outreach Division should provide incentives to all RMA employees for involvement in RMA outreach efforts to SDGs. Incentives should be provided to those employees who go “above and beyond” in assisting the outreach and education partners within their Region to conduct creative or effective outreach to SDGs. Incentives should also be offered and provided to RMA employees for any other exceptional work that they do related to spreading awareness about RMA's programs among or increasing participation by SDGs.

Recommendation RMA-15: Each Regional Office should have one individual in the position of Outreach (“Marketing”) Coordinator dedicated to performing duties related to this position.

Outreach Coordinators in each of the Regional Offices currently hold other positions that occupy almost all of their time. As a result, such individuals are not able to dedicate substantial time to their outreach duties. Each Regional Office's Outreach Coordinator should be required to dedicate full time facilitating their Office's outreach/marketing efforts.

5. Overall Recommendations for RMA

Recommendation RMA-16: National Outreach should provide more direction to RMA Regional Offices.

To establish firm expectations and consistency across RMA's Regional Offices with respect to outreach, RMA's National Outreach Division should provide specific direction on the following topics to enhance SDG participation:

- a. Minimum requirements for outreach efforts.

- b. The role and job responsibilities of an Outreach Coordinator.
- c. Strategies for working with and assisting outreach partners.
- d. Oversight responsibilities, mechanisms, and standards for activities of outreach partners.
- e. Oversight of Regional Office.
- f. Promoting use of RMA's website.
- g. Publicize RMA's discrimination complaint process.
- h. Outreach "best practices" across Regional Offices and among RMA's other divisions.

Recommendation RMA-17: The Compliance and Product Management Divisions should communicate more effectively with RMA Regional Offices, specifically about the needs of SDGs.

To ensure that all RMA Divisions are considering and taking into account the needs of SDGs, regular communication about such topics, including discussion about the Regional Offices' outreach efforts, should be required for employees in RMA's Compliance Offices and in Product Management.

Recommendation RMA-18: RMA should (a) ensure that program materials are available in languages spoken by substantial groups ("critical mass") of producers and (b) provide SDGs referrals, and support programs to, enhance English-language skills of producers.

RMA employees identified language as a barrier to participation for many SDGs who do not speak English as their first language.

Recommendation RMA-19: Increase development of programs for crops typically grown by SDGs.

RMA should expand the criteria for its 508H program to include funding for the development of crop insurance programs that are specifically designed to meet the needs of SDGs.

Recommendation RMA-20: Eliminate, adjust, or make exceptions to recordkeeping requirements applicable to AGR, AGR-Lite and other, similar revenue-based programs for SDGs, to the extent possible.

As described above, many RMA programs, including various revenue-based programs, require that producers submit extensive records in order to qualify. Many RMA employees stated that these recordkeeping requirements result in a barrier to participation for some SDGs who either do not possess such records, or do not possess the necessary skills to maintain such records.

Recommendation RMA-21: Reduce program complexity wherever possible.

Many RMA employees stated that the complexity of RMA's programs result in a barrier to participation by SDGs. As a way to increase participation by SDGs, RMA should seek to simplify RMA's programs consistent with achieving mission objectives.

Recommendation RMA-22: Utilize the Offices of other USDA agencies to promote and distribute informational materials about RMA's programs and services.

As described above, some employees stated that RMA Regional Offices are responsible for covering territories that are too large to reach certain groups of SDGs who are located great distances away from an RMA Office. RMA should coordinate and communicate with other USDA agencies to spread awareness about RMA's programs, particularly in places where RMA does not have an Office.

Recommendation RMA-23: Increase the travel budget for Regional Office employees to reduce barriers caused by RMA Regional Office locations.

Because of the large territories that RMA's Regional Offices are responsible for covering, Regional Office employees report that they are not able to easily reach SDGs who are located within their Region, but far from the Regional Office.

Recommendation RMA-24: Require AIPs to distribute annual surveys to SDGs to solicit information about their special needs and methods to address those needs, and general customer satisfaction.

Input received from RMA employees, CBOs and Focus Groups conveyed that currently crop insurance products do not meet the needs of AIPs. This survey will provide information SDG needs. The customer satisfaction survey can be a component used to evaluate the AIP's success in serving SDG producers.

Recommendation RMA-25: Using *AgCensus* figures for regions specific to each AIP, RMA should prepare annual SDG marketing targets for servicing SDGs, and include them in AIP performance requirements.

Consistent with the Department-wide Recommendations, RMA should analyze the SDG customer base in areas serviced by AIPs, prepare annual SDG marketing targets, and include them in AIP performance requirements.

Recommendation RMA-26: Require all AIPs to prepare annual reports to RMA, in a format to be prescribed by RMA, comprehensively analyzing and reporting on AIP SDG-marketing efforts, performance against goals, identification of under-performances, and remedial plans for achieving or exceeding goals in the next year.

Consistent with the Department-wide Recommendations, this reporting mechanism will provide RMA the information it needs to monitor, track, evaluate, and direct the activities of AIPs with respect to SDG servicing.

Recommendation RMA-27: Require all new applicants for AIP status to provide comprehensive information about the company and agent/broker demographics, as well as related information about the company's commitment to DIA and performance in this area.

Companies that demonstrate a strong commitment to serving the underserved, such as SDGs, should have a competitive edge in qualifying for the position of AIP over companies that do not.

IX. ADDITIONAL ASSESSMENTS AND ANALYSES

In addition to the evaluations and analyses included above, the Contract required the Assessment Team to undertake a number of specific tasks, each related to the overall Assessment. The following sections set forth those additional Contract tasks (verbatim from the Contract) and the results of the Assessment Team's assessments of each, with Recommendations where appropriate.

A. CONTRACT TASK: “Compile and examine internal and external reports that examine USDA program delivery’s impact on USDA customers and potential customers, including customers that have been denied USDA services in the past.”

1. Internal and External Reports

While comprehensive research and requests to USDA generated a relatively small number of internal and external reports that have been produced in recent years which examine the equity and fairness of USDA program delivery for customers, potential customers, and customers that have been denied services in the past, the Assessment Team reviewed certain key reports as context for this Assessment and has taken them into account in the analysis and development of Recommendations.

The following paragraphs summarize a sampling of the most recent, significant reports. Two of the reports were issued more than twelve years ago, but they serve as important historical benchmarks for this Assessment. They are the *USDA Civil Rights Action Team Report* and the *USDA Civil Rights Implementation Team Report*, discussed immediately below. They are followed by discussion of other internal and external reports as defined and directed by USDA.

a. February 1997 USDA Report, “Civil Rights at the United States Department of Agriculture: A Report by the Civil Rights Action Team” (“CRAT Report”)

In December 1996, then-Secretary Dan Glickman charged a Civil Rights Action Team (“CRAT Team”) of USDA leaders with “developing a set of recommendations to address institutional and underlying problems and ways to implement actions to ensure

accountability and follow-through at USDA.” CRAT Report, p. 3. The CRAT Team reviewed past reports and sponsored 12 “listening sessions” with USDA’s customers, particularly “socially disadvantaged and minority farmers,” and employees in 11 locations nationwide. *Id.* Over 2,000 customers and 900 employees attended the sessions and voiced concerns about program delivery and civil rights issues. CRAT Report, p. 93. Many socially disadvantaged farmers “told stories of years of bias, hostility, greed, ruthlessness, rudeness, and indifference not only by USDA employees, but also by the local county committees that provide access to USDA’s Farm Service Agency programs.” CRAT Report, p. 3. They “charged that USDA has participated in a conspiracy to acquire land belonging to them and transfer it to wealthy landowners,” and that “discrimination, sexual harassment, favorites, and reprisals are common at USDA.” CRAT Report, pp. 3-4.

Dominant themes heard at the listening sessions included managers not being held accountable for their actions; managers lacking skills to manage diversity; inadequate resources allocated to civil rights; socially disadvantaged customers believing USDA is a partner in taking their land; lack of diversity among County Committees and County Office employees; disparities in the treatment of minorities in FSA programs; inadequate complaint processes; inadequate outreach; cultural insensitivity; under-representation of minorities and women in the USDA workforce; and delays and/or non-responsiveness in civil rights complaint processing. *Customers’* major concerns focused on program delivery—abuse and discrimination in loan processing, delays in delivery of approved loans, and lack of timely information and help needed to participate in USDA programs. CRAT Report, p. 93. *Employees’* major concerns focused on unfair management practices, hostile work environments, and lack of protection from reprisals. CRAT Report, p. 94.

In February 1997, the CRAT Team issued the CRAT Report. The CRAT Report concluded: “Despite the fact that discrimination in program delivery and employment has been documented and discussed, it continues to exist to a large degree unabated.” CRAT Report, p. 2. The CRAT Report made 92 recommendations to address problems in four major areas—(1) lack of management commitment to civil rights, (2) program delivery and outreach, (3) workforce diversity and employment practices, and (4) organizational structure of civil rights.

Lack of Management Commitment to Civil Rights: During the listening sessions, farmers stated that USDA’s managers were not held accountable for their actions. CRAT Report, pp. 6-8. Employees stated that retaliation occurred against those who complained of discrimination in the workplace. CRAT Report, pp. 8-9. GAO had also found that agency heads were not held accountable for Affirmative Employment Plans (“AEP”) and previous employee focus groups reported “strong concerns that managers have not been held accountable for their actions when discrimination is found.” CRAT Report, pp. 9-10. Additionally, the CRAT Team found that the Assistant Secretary for Administration lacked authority and some managers lacked the skills to manage diversity. CRAT Report, pp. 11-12. Despite Secretary Glickman’s statement that improving civil rights was a priority at USDA, the CRAT Report concluded that senior managers at the Department had “not invested the time, effort, energy, and resources needed to produce any fundamental change.” CRAT Report, p. 12.

Key recommendations in the CRAT Report intended to address the lack of management commitment to civil rights included: a) delegation of full civil rights authority to the Assistant Secretary for Administration; b) establishment of measurable goals for treating customers and employees fairly and equitably; c) adoption of a policy on employee reprisals; d) removal of employees who do not perform adequately on civil rights or who abuse their authority; e) Agency leaders setting an example of accountability and commitment to diversity; f) inclusion of fairness and equity goals in USDA’s Strategic Plan; g) identification of core competencies and skills required to effectively manage people and serve customers; and h) investigation of alleged abuses of authority by the Office of Inspector General (“OIG”) and Forest Service. CRAT Report, pp. 58-63.

Program Delivery and Outreach: The CRAT Team reported that the numbers of minority farms had fallen from 14 percent of all farms in 1920 to 1 percent of all farms in 1992 (with an increase among Hispanic farmers). CRAT Report, p. 14. The total acreage of land farmed by minority farmers had also decreased (only women-owners had seen an increase in number of farms and acreage). *Id.* The listening sessions revealed that socially disadvantaged customers perceived USDA as a partner in taking their land. CRAT Report, p. 15. They also spoke about a lack of accountability within the FFAS and Rural Development mission areas, a lack of diversity among County Committees and County Office

employees, neglect of the research and education needs of minority and limited-resource farmers and ranchers, disparities in the treatment of minority customers in FSA, and ineffectiveness in the USDA complaint processes. CRAT Report, pp. 16-25. The CRAT Team found that program rules and cultural insensitivity led to reduced minority and limited-resource customer participation in programs and recommended enhanced outreach to improve their participation. CRAT Report, pp. 25-287. In addition, under-represented groups said USDA agencies favored non-minority contractors for general operating goods and services and that the funding priorities at the time were inadequate to address the needs of minority and limited-resource customers. CRAT Report, pp. 28-31.

To address weaknesses in program delivery and outreach, the CRAT Team proposed the following key recommendations: a) management of USDA programs in accordance with civil rights policy; b) taking action to remedy past discrimination; c) strengthening outreach efforts to under-represented customers; d) strengthening USDA's research and educational assistance to the socially disadvantaged; e) removing barriers to serving under-represented customers at Service Centers; f) addressing the specific needs of farmworkers; and g) increasing the involvement of Small and Disadvantaged Businesses in USDA Programs. CRAT Report, pp. 64-79.

Workforce Diversity and Employment Practices: In the listening sessions, minority farmers in particular stated that because the workforces in many county offices were not diverse, they were often forced to deal with employees who not only failed to understand their needs and concerns, but who “blatantly discriminate[d] against them.” CRAT Report, p. 32. In addition, minority employees at USDA spoke about being “unfairly denied promotions, permanent positions, developmental assignments, training, and awards, and they spoke of having their positions downgraded and eliminated.” CRAT Report, p. 37. Additionally, the CRAT Team determined that the volume of employee discrimination complaints and the lack of responsiveness on the part of the USDA's Civil Rights office were continuing problems. CRAT Report, p. 40.

In response to the issues raised with regard to workforce diversity and employment practices, the CRAT Report identified the following key recommendations: a) reviewing all USDA Senior Executive Service (“SES”)

designations; b) holding all managers accountable for developing diverse pools of applicants and a diverse workforce; c) requiring all USDA employees to participate in civil rights training; and d) offering mediation, arbitration, or similar alternative dispute resolution options to reduce the backlog of employee complaints. CRAT Report, pp. 80-85.

Organizational Structure of Civil Rights: CRAT identified “significant organizational and structural problems that impact USDA’s ability to ensure civil rights enforcement for its customers and employees.” CRAT Report, p. 46. These problems included a lack of strong civil rights leadership at USDA, a lack of administrative management coordination, a “persistent state of chaos” in civil rights at USDA because of numerous reorganizations since the 1980’s, frequent changes in civil rights directors, a failure to integrate civil rights into program delivery, a fragmentation of civil rights enforcement responsibilities, a lack of civil rights specialists for program-related civil rights issues, and insensitivity on the part of Office of General Counsel (“OGC”) attorneys with regard to civil rights as well as a lack of diversity among those attorneys. CRAT Report, pp. 46-56.

Recommendations from the CRAT Team intended to address the organizational structure of civil rights at USDA included: a) consolidating USDA’s civil rights functions into one office; b) changing the SES status of the Civil Rights Director; c) making the Office of General Counsel accountable for civil rights; d) establishing civil rights offices in each agency; e) adopting a new conflict management policy at USDA; f) eliminating Dispute Resolution Boards and Regional Service Centers; and g) consolidating offices under the Assistant Secretary of Administration. CRAT Report, pp. 86-92.

According to USDA, most of the CRAT Report recommendations were not fully implemented, some were implemented but have not been sustained, and some were effectively implemented and have been sustained. Additionally, USDA is currently evaluating the CRAT recommendations for further potential implementation. The Assessment Team has reviewed the report in detail and concluded that the recommendations were logically related to the problems identified, and served (at the time) as reasonable responses to the problems. Indeed, if all of the CRAT Report recommendations had been fully implemented, sustained, and ingrained in a new USDA culture, it is possible that many of today’s issues might have been already addressed. The recommendations in the

CRAT Report relevant to the scope of work of this Assessment are consistent with Recommendations in this Report (and some, such as those in the farmworker area, were not within the scope of work of this Assessment).

b. March 1998 USDA Report, “Civil Rights at the United States Department of Agriculture: One Year of Change” (“CRIT Report”)

This report is familiarly known as the “CRIT Report,” named for the “Civil Rights Implementation Team” that prepared it.

According to the CRIT Report, following issuance of the CRAT Report, USDA assembled more than 300 USDA employees to serve on 33 teams to commence the process of implementation of the 92 recommendations in the CRAT Report. The two key purposes of the CRIT Report were: (1) report on progress in implementing the CRAT Report recommendations, and (2) announce the end of the Civil Rights Implementation Team and “turning the work over to the normal organizational structure.” CRIT Report, p. 2.

The CRIT Report identified some progress made in implementing all 92 recommendations, stating that some of them were fully implemented and the balance in process, such as awaiting approval of draft Secretarial and Department Memoranda and Directives, incorporating draft legislative language into the 1998 Legislative Program, creating Agency-specific plans, coordinating processes among Agencies and Offices, and continuing on-going activities (such as review of all pending farm loan foreclosures). The aspiration of the CRIT Team was summarized as follows:

Over the past year, the CRIT has worked to put new policies, procedures, and systems in place to begin changing USDA’s culture for civil rights. It is now time for the normal organizational structure to take on the full implementation task and keep the cultural change going into the next century. USDA is poised to create a future for which every employee can be proud. It is up to each employee, each agency, and each mission area to keep the change going.

CRIT Report, p. 57.

Creation of the CRIT Report—to document and publicize the post-CRAT Report progress—was a critical part of the implementation process and serves as a model of *accountability reporting*. USDA has informed the Assessment Team that implementation was not effectively carried forward after the CRIT Report with respect to many if not most of the CRAT recommendations, and as a result, the full benefits of the CRAT effort were never realized.

Additional internal and external reports regarding program delivery are summarized below.

c. March 15, 1996 D.J. Miller Disparity Study Final Report

The D.J. Miller Disparity Study (“D.J. Miller Study” or “Study”) was published 15 years ago. USDA provided the Assessment Team a copy of Chapter II, Part I, Volume I of the Study (USDA stated that, to the best of its knowledge, that is the only section that exists). The focus of the Study is the Farm Service Agency (“FSA”). Chapter II relies on Census and other data created prior to 1996, and provides a number of observations regarding lower than projected minority/female participation in FSA programs.

According to the Study: “The qualitative research suggests the following reasons for lower minority and female participation in FSA programs. . . .” (Study, p. 2):

1. “Lack of Knowledge Regarding FSA Programs.” The Study states that anecdotal information suggests minorities receive “inadequate information provided by FSA regarding new programs.” The Study also states that minorities frequently know about new programs before the local FSA office personnel do. *Id.*, p. 21.
2. “Limited Outreach to Farmers.” According to anecdotal information, minority and women farmers believe it is the function of FSA “to assist farmers in identifying problems and improving their farm operations.” Farmers believe that FSA personnel are so busy that they do not have time to visit farms, and that the lack of outreach is a change from past practices. *Id.*

3. “Impact of Minority and Female Representation and Lack of Representation in County Offices.” The anecdotal information suggests the perception of minority and female farmers is “that a greater representation of their racial/ethnic groups in the FSA office would result in better service and information from FSA staff, increased minority participation in programs and increased participation in the [County Committee] election process.” *Id.*
4. “Lack of Consistency in Application, Program Administration Standards for Females and Minorities.” The perception cited in the Study is that FSA staff administration of programs “resulted in unexpected interference with farmers’ business planning because of farmer inability to adjust to regulation changes made in the midst of the growing season. Another negative impact noted was on financial planning, created by unexpected notices from FSA requiring farmers to pay back funds; farmers noted these requests are often unanticipated by the farmer and are frequently a result of FSA miscalculations.” *Id.*, p. 21-22.
5. “Limited Information Supplied by FSA Office Regarding Decisions Made.” According to the Study, farmers are not clear with respect to program eligibility, payment calculations, or reasons for decisions made. Some of this is attributable to limited information provided by FSA, and because FSA talks in “non-layman terms.” *Id.*, p. 22.
6. “Power of FSA Staff and Abuse of Power and Discretion.” The Study observes that FSA staff is perceived as “having extensive power and discretion,” which makes farmers “wary of angering staff,” apparently, for fear of retaliation. *Id.*
7. “Changes in Office Hours, Office Procedures/Programs.” The Study notes that changed hours of operation and scheduling procedures are inconvenient to farmers. Additionally, small farmers perceive that “because the size of the farm determines the yield, the programs appear geared mainly toward larger farmers.” *Id.*

The age of this Study, which pre-dates many changes at USDA and FSA, severely limits its usefulness in this contemporary Assessment. At the same time, it provides some helpful historical information, some of which is consistent with information learned during the Assessment Team’s

interviews of FSA field employees in 2010 (including County Employees) and similar comments from CBOs and Focus Groups.

d. June 2009 Office of Inspector General (Southwest Region) Audit Report, “Farm Service Agency, Socially Disadvantaged Borrower Foreclosures—Farm Program Loans” (“OIG 6/09 Report”)

The 2008 Farm Bill directed the USDA Office of Inspector General to “determine whether decisions of [USDA] to implement foreclosure proceedings with respect to farmer program loans made under subtitle A, B, or C of the Consolidated Farm and Rural Development Act [farm ownership, farm operating, and emergency loans] . . . to socially disadvantaged farmers or ranchers during the 5-year period preceding [June 18, 2008] were consistent and in conformity with the applicable laws (including regulations) governing loan foreclosures.” Public Law 110-246, Food, Conservation, and Energy Act of 2008, Title XIV, Subtitle A, Section 14002(b)(1), June 18, 2008.

In response, OIG conducted a review of “whether FSA followed its established process in servicing and foreclosing on loans to socially disadvantaged borrowers, and whether the agency’s process was consistent and in conformity with applicable laws and regulations.” OIG 6/09 Report, p. 2. The time period covered by the OIG 6/09 Report included FY 2003 through 2007. During that time, there were approximately 75,500 direct loan borrowers, of whom approximately 14,300 (18.9%) were socially disadvantaged. (Note that, subject to the unreliability of the race/ethnicity data used, this figure generally exceeds the national percent of socially disadvantaged producers (of all producers) during the applicable time period.) FSA foreclosed on 800 borrowers during this time period, of which 185 were socially disadvantaged (23.1%, somewhat higher than the relative number of socially disadvantaged borrowers). OIG selected a statistical sample of 146 borrowers, including socially disadvantaged and non-socially disadvantaged, who were foreclosed on during this period. OIG also looked at the treatment of a sample of borrowers whose loans were restructured during the same time period.

OIG concluded that: “Based on our review, we found that FSA’s foreclosure and restructure process was consistent and in conformity with applicable laws, regulations, policies, and procedures. We found

that the process itself was in conformity with applicable laws and regulations, and that FSA generally applied that process consistently to individual borrowers. Moreover, when we compared how FSA restructured and foreclosed loans to socially disadvantaged and non-socially disadvantaged borrowers, we found that the borrowers were processed consistently.” OIG 6/09 Report, p. 2.

The OIG 6/09 Report methodology did not include discussions with borrowers and essentially sought to determine whether appropriate, established procedures were followed. While limited in this respect, it is a methodology that could be periodically replicated throughout USDA’s various lending programs as one key “adverse impact” study. (See further discussion on this subject, above.)

e. November 2005 OIG (Southeast Region) Audit Report, “Minority Participation in Farm Service Agency Programs” (“OIG 11/05 Report”)

This older OIG report supplements a 1997 OIG report (“Minority Participation in Farm Service Agency’s Farm Loan Programs—Phase II 50801-3-Hq, September 1997”) that reported a number of issues affecting minority participation in FSA loan programs, including: “(1) FSA had an outstanding backlog of civil rights complaints, (2) applications from minority applicants took more days to process than applications from nonminority applicants, (3) delinquent minority borrowers received a lesser number of loan servicing actions than delinquent nonminority borrowers, and (4) FSA needed to improve its relationship with the minority farming community.” OIG 11/05 Report, p. i.

OIG compared the results of the November 2005 audit with conditions reported in 1997 and concluded: “FSA implemented corrective actions on all 13 recommendations from the 1997 report and initiated many substantive changes in its operation.” OIG 11/05 Report, p. i. The Report noted that the number of complaints had been reduced substantially, the days to process a minority loan application from receipt to loan closing was reduced from 92 to 65 days, and the number of delinquent minority borrowers was reduced from 1,371 to 115. OIG 11/05 Report, p. ii. The OIG 11/05 Report also noted that the number of minorities serving on County Committees increased by 82 percent, from 2.4 percent (of 8,148) in 1997 to 4.4 percent (of 7,872 members) in

2004. OIG 11/05 Report, p. ii. OIG identified three areas for improvement: (1) Office of Civil Rights (“OCR”) should conduct compliance reviews of FSA programs; (2) OCR should implement standard operating procedures for processing complaints; and (3) FSA’s national outreach programs should be better coordinated with local outreach efforts. OIG 11/05 Report, pp. iii-iv. FSA accepted most of the Report’s recommendations and committed to implementing them. FSA disagreed with the criticism of National Outreach (citing some positive activities not acknowledged in the Report). OIG 11/05 Report, Exhibit D.

f. September 2005 OIG (Northeast Region) Audit Report, “Followup on Prior Recommendations for Civil Rights Program and Employment Complaints” (“OIG 9/05 Report”)

The OIG 9/05 Report follows up on several previous OIG reports dating back to February 1997 covering USDA’s processing of program and EEO complaints. The Report concluded that USDA implemented 22 of 43 agreed-upon corrective actions, and that most of the remaining actions were not implemented because of failures in the audit liaison area. The Report concluded that the Office of Civil Rights should “designate an individual to carry out the responsibilities for audit follow-up, implement a system of controls to monitor corrective actions, and report the implementation of these actions to the Chief Financial Officer.” OIG 9/05 Report, pp. ii-iii. It is reported that the Office of Civil Rights accepted the OIG 9/05 Report’s recommendations. *Id.*

g. GAO Reports, “U. S. Department of Agriculture: Management of Civil Rights Efforts Continues to Be Deficient Despite Years of Attention,” GAO 08-755T (May 14, 2008) (“GAO 08-755T”), and “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 (October 22, 2008) (“GAO-09-62”)

These two reports focused on “USDA’s efforts to (1) resolve discrimination complaints, (2) report on minority participation in USDA programs, and (3) strategically plan its efforts,” (GAO-08-755T Introduction), and provide recommendations to address the deficiencies

found (included in GAO-09-62). Noting that the position of Assistant Secretary of Civil Rights (“ASCR”) was authorized by the Farm Security and Rural Investment Act of 2002 to provide USDA “an executive that could provide leadership for resolving” long-standing civil rights problems, the reports focused on the operations and performance of the ASCR office. GAO-08-755T Introduction.

The first report, GAO-08-755T, provided three key conclusions:

1. “ASCR’s continuing problems in resolving discrimination complaints persist—ASCR has not achieved its goal of preventing future backlogs of discrimination complaints.” GAO-08-755T, p. 4. The report noted that “the credibility of USDA’s efforts to correct long-standing problems in resolving discrimination complaints has been and continues to be undermined by faulty reporting of data on discrimination complaints and disparities we found when comparing various ASCR sources of data.” *Id. (Emphasis added.)*
2. “[T]he data that USDA reported to the Congress and the public on participation of minority farmers in USDA programs are unreliable, according to USDA, “because USDA’s data on racial identity and gender are, for the most part, based on visual observation of program applicants. Data gathered in this manner are considered unreliable because individual traits such as race and ethnicity may not be readily apparent to an observer, especially ethnicity.” GAO-08-755T, p. 5. The report notes that ASCR had begun the process of seeking Office of Management and Budget approval for gathering such data in 2004, but as of 2008 “did not follow through and has not obtained final approval.” *Id. (Emphasis added.)*
3. “ASCR’s strategic planning is limited and does not address key steps needed to achieve its mission.” GAO-08-755T, p. 5. GAO noted, for example, that, “while ASCR’s stakeholders are interested in assuring the diversity of USDA field office staff to facilitate their interaction with minority and underserved farmers, ASCR’s strategic planning does not address the diversity of USDA’s field staff.” *Id. (Emphasis added.)*

The GAO 08-755T companion report, GAO-09-62, offered a series of recommendations to address the concerns identified in GAO-08-755T, among them:

1. Congress should consider making the ASCR subject to a “statutory performance agreement.”
2. Congress should consider “establishing a USDA civil rights oversight board.”
3. USDA should “prepare and implement an improvement plan for resolving discrimination complaints that sets time frame goals and provides management controls for resolving complaints.” (Emphasis added.)
4. USDA should “develop and implement a plan to ensure the accuracy, completeness, and reliability of ASCR’s databases on customer and employee complaints, and that provides for independent validation of ASCR’s data quality.” (Emphasis added.)
5. USDA should “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.”
6. USDA “should work expeditiously to obtain Office of Management and Budget’s approval to collect the demographic data necessary for reliable reporting on race and ethnicity by USDA program.” (Emphasis added.)
7. USDA should “develop a results-oriented department-level strategic plan for civil rights at USDA that unifies USDA’s departmental approach with that of ASCR.” (Emphasis added.)
8. USDA should “further explore the potential for an ombudsman office to contribute to addressing the civil rights concerns of USDA customers and employees.”

GAO-09-62. Many of these recommendations relate directly to issues raised and addressed in this Assessment, and are consistent with Recommendations contained herein. (Note that establishment of the ombudsman position is required under the *Keepseagle* settlement agreement.)

h. “A Time to Change: A Report by the Assessment Conversations Team;” The Rural Coalition/Federation of Southern Cooperatives/Land Assistance Fund September 2010 Report (“Rural Coalition Report”)

One of the most recent “external” reports is the September 22, 2010 report authored by the Rural Coalition/Coalicion Rural and the Federation of Southern Cooperatives/Land Assistance Fund, entitled “A Time to Change: A Report by the Assessment Conversations Team (ACT Report).” The report is included here as an “external” report because it was not produced by USDA; however, USDA staff served as members of the “Assessment Conversations Team.”

According to the Rural Coalition Report, “content was collected” during 5 USDA/Community Based Organization Partners Meetings, the latest of which was conducted in August 2008. The Rural Coalition Report states that there had been over 80 “conversations and training sessions” since 2004 among the “Partners” (“USDA and the CBOs”), and that “As a result of the Partners meetings, there have been proposals for actions that have not been effectively communicated to nor implemented by USDA agencies, and therefore have not solved the fundamental problems of equitable access or contributed to improving the conditions of USDA’s relationship with many groups of small and disadvantaged farmers and ranchers, as well as the CBOs that represent them.” Rural Coalition Report, p. 6.

The Rural Coalition Report states that “USDA has used the report findings in its internal work but refrained from official public release. It has however agreed that the authors, whose work was entirely supported by their respective organizations, may release the report at this time.” Rural Coalition Report, p. 3. The report further notes that “In the almost one year since the writing was completed, many recommendations have been implemented.” Rural Coalition Report, p. 3.

The Rural Coalition Report covers 19 numbered “Issues” (such as “Equitable access to USDA programs and services,” and “Risk Management,” including many not expressly within the scope of work of this Assessment: Issues 2, 4-6, 8, 10, 12-15, 17, and 19). Each issue section includes discussions of “Problems raised in the Partners process,” “Agencies affected,” “Pending concerns raised in the partners

process,” “Recommended actions,” “Progress to date,” and “Defining change.”

Two specific examples of areas where this Assessment coincides with the Rural Coalition Report are the following: “USDA agencies should, where needed, be required to develop specific plans to diversify their workforces, using existing models of employment and program outreach.” Rural Coalition Report, p. 13. “The Secretary should institute policies and practices that hold supervisors, managers, state directors, and agency leaders directly accountable for the actions of their staffs.” *Id.* Another recommendation (“Implement Section 14006 (first passed as Section 10708 of 2002 Farm Bill)”, “Use in program planning evaluation and analysis, establish norms for service and identify gaps, and as part of performance reviews,” (Rural Coalition Report, p. 10) is one that this Assessment takes a significant step further. As noted above, the Assessment Team recommends that USDA collect and report not only the numbers of SDG participants in its programs, but also the dollar amounts associated with each, as well as other vital data such as application and acceptance rates, related comparative data (such as comparisons with the SDG Principal Operator populations) covering all Agencies and Programs, all of which will support implementation of the Section 14006 transparency initiative by informing Congress and the public of progress in improving specific measures of access to USDA programs.

This collaborative effort between USDA representatives and the CBOs represented as “partners” provides a great deal of information, perspectives, opinions, analysis, and recommendations (many of them reminding USDA to comply with statutory requirements, such as the 2008 Farm Bill) from the CBOs’ perspective. Much of the information contained in the Rural Coalition Report is consistent with what the Assessment Team has heard from USDA employees, customers (in Focus Groups), and CBOs the Assessment Team interviewed. USDA is continuing to review, assess, and implement recommendations from the Rural Coalition Report as USDA deems appropriate. Some of those recommendations are related or similar to the Recommendations contained herein.

i. “Racial Equity in Agriculture and Rural Development: Preventing the Decline of Black Farmers and Rural Land Ownership,” Lloyd Wright (revised November 20, 2010) (“Wright Report”)

The Wright Report outlines the author’s compilation of the history of discrimination against African American farmers and continuing discrimination, both of which, in the author’s view, limit African-Americans’ opportunities to increase their numbers and take advantage of USDA programs. The Wright Report relies substantially on anecdotal information provided by a number of African American farmers at one or more listening session(s) (the citation refers to a single listening session, but the text refers to “listening sessions”). It also relies on a document published by Angela Browning in 1982. The report identifies ten “needs” and seven “recommendations” “that if implemented will create an environment where black farming and rural landownership can once again thrive.” Wright Report, p. 35. Many of the recommendations focus on actions that should, according to Mr. Wright, be taken by a network of existing and to-be-created African-American organizations.

The Wright Report’s seven recommendations are as follows:

1. “Create a non-profit organization to address the communication, education, policy development, and resource needs of black farmers.”
 - a. “Create a national network of black farmer and landowner organizations.” The concept is to create a network of non-profit organizations for black farmers and landowners by: “(1) connecting with all known organizations, (2) identifying unknown organizations,” (3) encourage need-based creation of new organizations, and 4) supporting needs of CBOs. *Id.* at 39.
 - b. “Increase awareness about government policies, procedures, and programs.” Non-profits/CBOs would create guidelines for local farmers to explain government policies, procedures, programs, and any changes to them. A Black farmer policy research center would be created and “would collect and analyze the information to develop policy to hold USDA accountable for civil rights violations.” *Id.*

- c. “Encourage implementation of 2008 Farm Bill.” The non-profit network would coordinate with USDA and community organizations “to ensure that rules, regulations, and procedures developed to implement the Farm Bill are beneficial to black farmers and landowners.” *Id.*
- d. “Partner with universities to develop resources and tools for endangered black farmers.” The non-profit network would develop a “farm credit model program” to fit the needs of socially disadvantaged farmers, make certain that programs available to new and beginning farmers and ranchers are made available to them, and assist HBO [“Home-Based Organization”] groups in expediting solutions to “problems/conflicts with government agencies” relating to “farm credit, farm program subsidies, rural utilities, rural housing, conservation programs and others.” The network would also fill a leadership role to ensure socially disadvantaged farmer needs are met and represent them “in agriculture, rural development, policy development, and program implementation at the national, state, and local levels when appropriate.” *Id.*, p. 38.
- e. “Advocate for endangered black farmers to produce income from their land.” Develop ways to increase income on African-American-owned land by use of land, for example, for: “recreation, fishing, hunting, timber, rentals, and small-scale agriculture.” *Id.*, p. 39.
- f. “Advocate for black farmers to receive education and training.” Build a strategy for “catch-up” programs such as “land improvement and conservation programs, farmland protection easement programs, conservation easement programs, and recalculation of crop acreage bases.” *Id.*
- g. “Secure financial support for community organizations to provide computer training and assistance.” The non-profit network would encourage development of such programs to assist farmers and landowners with on-line applications. *Id.*, p. 40.

- h. “Secure financial support for community organizations to provide legal resources.” The non-profit would partner with local bar associations and law firms to provide legal support. *Id.*
 - i. “Secure financial support for community organization youth groups.” The non-profit network would encourage local community organizations to make available “agriculture, 4H, and Future Farmers of America to high schools” and work with local home-based organizations to provide positive farming experiences for socially disadvantaged youths. *Id.*
 - j. “Partner with other organizations to create a black farmer information center.” The non-profit would work with existing organizations to produce information about land retention. The information center would collect, maintain, analyze, and provide support to networks that are providing assistance to landowners. The center would also collect information about USDA’s implementation of farm policy. *Id.*
2. “Create and implement a comprehensive plan to show nationwide loss of black landownership and black farmers.” The author’s concept is to implement a plan to address the decline of African-American farmers including focusing “future efforts to the regions, states and counties where the problem exists.” In addition, the plan would: collect data on the location of African-American landowners and farmers by state and county; collect data on the reasons African-American farmers and landowners lost their farms/land; develop a list of factors leading to the decline in the number of African-American farmers; develop “tools, policies, programs, and services” to help African-American farmers stay on their land; develop a list of CBOs, universities, and research centers to serve as resources for African-American farmers/landowners; evaluate the need for new policies and programs, and rule changes; identify how African-American farmers/landowners can benefit from the 2008 Farm Bill; develop “case studies on why and how Black farmers and landowners are not receiving equal services;” and, assess the benefits, and support development, of small-scale agriculture. *Id.*, pp. 40-41.
3. “Create a black farmer policy, research, and analysis center.” Mr. Wright recommends creation of a research and analysis center in

partnership with existing policy centers and 1890 land-grant institutions. “The partnership will conduct research, collect and analyze data, and make policy recommendations concerning black farmer and landowner issues;” provide information about the needs and opportunities of socially disadvantaged farmers; track USDA rule development and provide comments on proposed rules; and collect and make farmer information available to CBOs and policy developers. *Id.*, p. 41.

4. “Conduct additional studies and reviews of issues that impact minority farmers and landowners.” Mr. Wright’s recommendation is to conduct additional research on: possible OIG discrimination against Black farmers/landowners; Track B *Pigford* settlement claimants and discrimination against farmers with large operations; the need for running water and sewage systems in rural socially disadvantaged farm communities; the lack of job opportunities for socially disadvantaged farmers; and environmental justice concerns. *Id.*, p. 42.
5. “Develop easement programs to stop loss of minority-owned lands, place moratorium on federal foreclosures.” This recommendation includes two distinct proposals. The first is to develop programs to “have development rights and conservation easements on minority-owned farmland that is subject to USDA FSA foreclosure transfer[ed] to a land trust in lieu of foreclosure. The farmers will be able to farm the land and sell or pass the land on to others, but would not be able to develop the land and would comply with the conservation easement. In payment for the development rights and easements, all USDA debt would be forgiven. In the future, USDA would provide technical, financial, educational and other assistance to farmers to allow them to remain on the farm and make a profit. Future landowners and farmers will be subject to easements.” The second proposal is to revise the Federal Farm and Ranch Land Protection Program (“FRPP”) to allow farmers/ranchers “to use the program to protect their lands and improve their farms.” Under this recommendation, USDA could use FRPP funds to protect African-American farmer and rancher lands and “pay up to ninety-five (95%) percent of the value of development rights or market value in areas with high loss of land owned by black farmers and ranchers.” NRCS, through outreach, would notify and educate African-American farmers/ranchers of the program and NRCS would provide technical

assistance to African-American farmers/ranchers to enroll in the program. “The program would be permitted to pay up to ninety-five (95%) percent of an agricultural easement, with the landowner or others contributing five percent.” *Id.*, pp. 42-43.

6. “Provide support to rural small towns and areas to enable them to develop assessments, proposals, plans, and applications to take advantage of stimulus and other assistance.” As the author states, “A combination of foundations, non-profit organizations, federal, state, and local governments should work together to provide planning assistance to the poorest small rural towns and settlements to enable them to conduct assessments, proposals, plans, and applications that will enable them to apply for and make use of stimulus and other assistance.” *Id.*, p. 43.
7. “Provide assistance to create urban gardens and food production on open space in deteriorating parts of small towns. Remove old, unsafe buildings in towns and convert the areas to open space and food production.” In small towns, the recommendation is to demolish buildings in poor/unsafe repair and/or which are used for illegal drug use, and convert the space created to urban gardens which will benefit the community increasing safety, controlling rodent population, reducing space for illegal activities, providing food production, and enhancing employment for youth and the unemployed. *Id.*

According to USDA, this is not a USDA report, but USDA is reviewing the report and its recommendations (listed above) in connection with the activities of the Office of Advocacy and Outreach, and considering implementation of its recommendations.

**j. USDA “2010 Performance and Accountability Report”
(November 15, 2010) (“2010 PAR”)**

While the 2010 Performance and Accountability Report (“2010 PAR”) is technically not a report that “examines USDA program delivery’s impact on USDA customers and potential customers,” the Assessment Team reviewed it to determine its current and potential relevance to USDA’s civil rights/equitable program delivery performance.

PARs are prepared annually as year-end progress reports. According to USDA, “The Department reviews its strategic goals, objectives, and performance measures it set for itself at the beginning of the fiscal year. USDA then compares these targets to the year’s performance . . . The Government Performance and Results Act of 1993 (“GPRA”) is the basis of Federal agency planning and reporting. GPRA and later laws and executive branch guidance drive the planning and reporting process in this fashion: the 5-Year Strategic Plan is used to craft the Annual Performance Plan, and progress on the Annual Performance Plan is reported in the PAR.” 2010 PAR, p. vi.

There are scant references in the FY 2010 PAR report to serving SDGs. One example is a Scorecard reference to “Percentage of beginning farmers, racial and ethnic minority farmers, and women farmers financed by USDA,” the “Result” (goal) of which is listed as “Exceeded.” 2010 PAR, p. 7. Aside from several other minor references, the effectiveness of program delivery to SDGs is not covered in the 243-page report. In accordance with the Recommendations contained herein, as equitable customer service becomes more prominent in USDA’s planning and execution processes, it should likewise be reflected in the Strategic Plan, annual Performance and Accountability Reports such as the FY 2010 PAR, and other high-level publications.

Internal/External Reports Recommendation

GR-1¹²² As strategic DIA goals and objectives are developed for ensuring equitable delivery of services to SDGs in accordance with other Recommendations in this Report, they should be incorporated prominently in Strategic Plans, Annual Performance Plans, Annual Performance and Accountability Reports, OIG Major Management Challenge reviews, and other high-level reports, as well as in pertinent Congressional testimony and briefings.

¹²² This Section of the Report includes “General Recommendations” (designated as “GR” and numbered consecutively).

k. “Outreach and Technical Assistance for Socially Disadvantaged Farmers and Ranchers: Barriers to Equitable USDA Program Participation,” Interim Report by the East Arkansas Enterprise Community Barrier Action Team (“EAEC BAT Report”) (March 2, 2011)

The most recent “external” report reviewed by the Assessment Team is the March 2, 2011 “Interim Report” authored by the East Arkansas Enterprise Community (“EEAC”) Barrier Action Team (“BAT”), entitled “Outreach and Technical Assistance for Socially Disadvantaged Farmers and Ranchers: Barriers to Equitable USDA Program Participation” (“EAEC BAT Report” or “Interim Report”).

According to the Interim Report, the EEAC BAT data regarding barriers “is based on information collected from structured listening sessions and in-depth, one-on-one structured interviews with former USDA employees who collectively had worked more than 335 years in the agency at the federal, state and county levels,” and from interviews with “Socially Disadvantaged Farmers.” EAEC BAT Report, p. 36.

The Interim Report states that EAEC is one of several CBOs that received a grant to provide outreach assistance to socially disadvantaged farmers and ranchers. EAEC BAT Report, p. 7. EAEC is using the grant to conduct outreach within four counties in the Delta Region in Arkansas “with the specific purpose of identifying the root causes of failure to achieve equitable participation with USDA agricultural programs.” EAEC BAT Report, pp. 7-8. EAEC and its “partnering organizations” have conducted listening sessions and interviewed farmers at outreach meetings regarding potential barriers. EAEC BAT Report, p. 10.

The Interim Report identifies 14 numbered barriers, describes the impact of each barrier, and provides recommendations to overcome each barrier. The 14 barriers include, among others: “systemic barriers in farm bills ... in the way staff interpreted rules and regulations as they served customers, [and] in the quality of service provided to customers by agency staff.” EAEC BAT Report, p. 11.

Three examples of EAEC BAT Report recommendations consistent with this Assessment are the following: 1) “Take adverse action against employees who violate the discrimination law;” 2) “expand [USDA’s]

outreach program and market them to [SDGs] based on the types of operations carried on in the area;" and 3) develop "systems of accountability that encourage employees at all levels to achieve high standard of performance and customer service." EAEC BAT Report, pp. 7, 17 and 26.

The Assessment Team understands that EAEC is still in the process of gathering data and that a "more comprehensive list" of barriers will be included in the final report. EAEC BAT Report, p. 3. EAEC "will continue with the listening sessions, interviews, etc." and "will continue to analyze the data received and draw conclusions based on the findings." EAEC BAT Report, p. 36. USDA should receive a copy of the EAEC BAT final report and consider it in connection with the Recommendations in this Report.

There may be many other such CBO/non-profit/grant studies either recently completed, underway, or in the RFP stage that have not come to the Assessment Team's, or USDA's, attention. USDA should ensure that it monitors and collects all such reports (through ongoing relationships with CBOs, for example) and includes them in considering process and other improvements to equitably serve SDGs.

Internal/External Report Recommendations

- GR-2** USDA should obtain the East Arkansas Enterprise Community Final Report, following up on the March 2, 2011 Interim Report, when it is available and assess the report and its recommendations (including coordinating with the EAEC) for possible inclusion in USDA's DIA Implementation Plan.
- GR-3** USDA should provide a common contact or liaison (perhaps the Office of the Assistant Secretary for Administration, or Assistant Secretary for Civil Rights) for overseeing and monitoring the production of all studies, such as those prepared by CBOs, of USDA's service, and potential service, to SDGs, and ensure the incorporation on an ongoing basis of worthwhile observations, experiences, and recommendations into USDA's processes and other improvements to equitably serving SDGs.
- GR-4** USDA should provide, on its website and elsewhere, a "Suggestion Box" for both employees and producers to offer

ideas and innovations, and develop a process for appropriate Department, Agency, or Office personnel to review, evaluate, and implement useful suggestions.

1. Customer Surveys and Related Reports

The Assessment Team reviewed tangential but related reports on a number of customer surveys conducted over the past 10 years by consultants for several of the Agencies under review. Customer service studies and appropriate follow-up are mandated by Executive Order 12862 (September 11, 1993) (requiring “Customer service equal to the best in business”), but the specific frequency, content, and usage of such surveys are not specified in the Executive Order.

NRCS supplied the most examples of customer service surveys over the past few years, each one typically of a discrete program. FSA and RD provided the results of several similar surveys. The Assessment Team reviewed each of the survey reports shown below.

NRCS generally receives relatively high rankings in the surveys discussed below, when compared with Federal Government benchmarks. What is significant for this Assessment is that these surveys do not consistently ask for demographics of the customers, and when they do, the results are not presented according to demographics. Thus, the Agency is not informed of whether lower, higher, or the same scores are logged by SDGs. Moreover, *there are no fairness/equity/DIA questions asked in the surveys*, and thus no opportunity for customers to comment on the fairness of their treatment. This represents a missed opportunity that can be resolved by expanding the survey to include DIA questions, and requiring the consultant to present a breakdown by race, ethnicity, gender, *etc.* (Notably, NRCS stated that it did not continue the surveys in 2010.)

FSA has conducted fewer customer service surveys during the same time period, but the methodology, approach, and presentation (as well as the consultants) are the same. Thus, FSA can also leverage its customer service surveys to include DIA, and require the vendor to present the results with demographic breakdowns.

Of course, conducting customer surveys is a wasted effort if the process does not result in active follow-up by the Agency in any areas of

deficiency, with accountability for action items, deadlines, and measurement of subsequent results. These areas are covered in the Recommendations, below.

1) NRCS

The following describes the NRCS customer service reports reviewed:

- a) “American Customer Satisfaction Index: Report on Natural Resources Conservation Service (NRCS),” April 2001.

“American Customer Satisfaction Index” (“ASCI”) is a survey product of ASCI LLP, a private company headquartered in Ann Arbor, Michigan that usually partners with the University of Michigan. According to its website, since 1994 ASCI has been a national indicator of customer evaluations of the quality of goods and services available to US residents, economic sectors, industries, and federal government. The methodology used with respect to Federal agencies is that Agencies choose the customer segment to survey; ASCI designs (with the Agency) and conducts the surveys, and for aggregate and comparison purposes, surveys are “weighted by the budget expended for the chosen customer segment to produce a federal government ACSI.” With respect to this Report:

- For 2001, NRCS chose “Conservation Technical Assistance” (“CTA”) as the program to survey
- The Agency can choose “desired outcomes to be measured” (such as customer “Loyalty,” and “Trust”); (note: Agencies could choose equal treatment, fairness, and equity measures, but as noted, neither NRCS nor FSA did so)
- For this survey, ASCI conducted telephone customer interviews of a random sample of 2,500 CTA customers
- NRCS received a relatively high rating (81, compared with 71 for private sector)
- Race/gender/age/income/education questions were asked, but there were no fairness/equity/non-discrimination

questions, and there was no reporting on differences among races, ethnicities, genders, or other classifications

- b) Additional similar NRCS/ASCI Reports reviewed include:
- May 2004 (Environmental Quality Incentives Program)
 - December 2004 (Wildlife Habitat Incentives Program)
 - August 2005 (Snow Survey and Water Supply Forecasting)
 - October 2005 (Conservation Security)
 - April 2007 (Wetlands Reserve Program)
 - April 2007 (Technical Service Providers)
 - April 2007 (Soil Survey Program)
 - April 2007 (Plant Materials Centers)
 - April 2007 (National Resources Inventory)
 - April 2007 (Conservation Technical Assistance)
 - April 2007 (Resource Conservation & Development Program)
 - October 2008 (NRCS: *Non-Successful Participants*)
 - October 2008 (NRCS: *Participants*)

2) FSA

FSA provided several examples of survey reports, described below:

- a) FSA/ACSI December 2009 Report (“Onsite Program Participants”)
- FSA received relatively high grades for the topics covered.
 - Like the NRCS customer surveys, the FSA surveys ask demographic information such as race/ethnicity, gender, age, and income, but the report provides no correlation of answers with demographics, and does not contain any fairness/equity questions.
- b) FSA/ForeSee April 2010 Usability Audit Review (“Navigation – Farm Loans”) (“FSA/ForeSee 4/10 Report”)

The FSA/ForeSee 4/10 Report summarizes supplemental surveys to the ASCI customer satisfaction reports; it evaluates the “usability” of the FSA website (using the results of a survey request pop-up that prompts

site visitors). The Farm Loan Programs website received a “Poor” rating in this report (on a scale of Excellent, Fair, Good, Poor). FSA/ForeSee 4/10 Report, p. 16. The FSA/ForeSee 4/10 Report notes that “the site fails to provide guidance or to set expectations consistently around what activities visitors should pursue in order to apply for a loan or to manage one. [V]isitors . . . are not offered information on what type of documentation is required to apply or what the process entails.” FSA/ForeSee 4/10 Report, p. 20.

The FSA/ForeSee 4/10 Report provides a variety of recommendations for improvements, *e.g.*, “Navigation elements and functionalities that facilitate each step of this process—such as calculators and tools that enable visitors to determine how much they need, eligibility checklists or questionnaires, or lists of required documentation—should be clearly available and explained on the primary page so as to assist return visitors as well as set expectations for first-time visitors.” ForeSee 4/10 Report, p. 22. Other criticisms of the website include showing links to information needed only by employees, not producers (ForeSee 4/10 Report, p. 31); inefficiencies (too many clicks required) (ForeSee 4/10 Report, pp. 33, 44); failure to provide access to local office information or forms (ForeSee 4/10 Report, p. 36); inconsistencies between links and eForms (ForeSee 4/10 Report, p. 38); confusion and lack of clarity (ForeSee 4/10 Report, pp. 40, 45); inadequate information (ForeSee Report, p. 60); and inconsistent presentation of interest rates (ForeSee 4/10 Report pp. 63-65) (provided for Direct and Emergency Farm Loans but not Beginning Farmers and Ranchers Loans).

There are no specific references in the FSA/ForeSee 4/10 Report to concerns of SDG farmers and ranchers, discrimination, or the like, but the report demonstrates the current problems with the “user-friendliness” of the website, and points out the additional difficulties likely to be experienced by smaller, less sophisticated users such as SDGs.

- c) FSA/ForeSee May 2010 Usability Audit Review (“Value Proposition and Navigation—Disaster Assistance”) (“FSA/ForeSee 5/10 Report”)

This report follows the same methodology and format as the April 2010 Report. It also reports a grade of “Poor,” and provides similar evaluations and criticisms of website usability (for example, “the

Supplemental Revenue Assistance Payments page fails to provide any links to related forms producers may use to apply” (FSA/ForeSee 5/10 Report, p. 37); “The way to calculate the payments [Livestock Indemnity] is quite complex” (FSA/ForeSee 5/10 Report, p. 43); “FSA.USDA.gov fails to provide sufficient guidance as it forces visitors to gather and process a great deal of information to determine whether or not they are eligible and then forces them to locate the forms they need.” (FSA/ForeSee 5/10 Report, p. 51.)

d) FSA/ForeSee April 2010 “Satisfaction Performance Report”
 (“FSA/ForeSee SPR”)

This is a study of 505 visitors to the USDA website that led to the subsequent Usability Reports, noted above. Some notable findings include:

- 48% of the site visitors are “producer/farmer/rancher” (FSA/ForeSee SPR, p. 23), others are government contractors, academics/researchers, conservationists/other nongovernmental organizations, and others.
- Location of Field Service Centers: Of the respondents, 57% drive up to 30 minutes to reach their closest Field Service Center; 26% drive between 30 minutes and an hour; 9% drive between one hour and two hours; and 8% drive more than two hours. FSA/ForeSee SPR, p. 27.
- 62% found the information they were looking for. 17% were “just browsing,” and 21% did not find what they were looking for. FSA/ForeSee SPR, p. 31.

Presentation of the results is less useful for purposes of assessing views of producers, because of the inclusion of 52% non-producers in the survey, and failure to describe the responses of producers only.

e) FSA/ForeSee December 2010 “Satisfaction Insight Review”
 (“FSA/ForeSee SIR”)

The Satisfaction Insight Review is part of the continuing study of visitors to the FSA website to “determine element performance, overall satisfaction . . . of site visitors” (FSA/ForeSee SIR, p. 3). The survey

asked for identification of race/ethnicity/gender data, but there were no correlations to these demographics presented in the report. FSA received a score of 70 out of 100, which was noted to be slightly lower than the Federal Government average of 74.

The Assessment Team reviewed a number of other similar reports located (at FSA's direction) on the ForeSee website portal.

In response to an Assessment Team request for comment, FSA provided a written response in which it stated that FSA "regularly reviews the reports with the ForeSee contractors to ensure the survey data is fully analyzed and evaluated, and to ensure any questions arising may be researched and resolved." FSA notes that: "For the most part, FSA agrees with the recommendations. FSA's public facing Websites are subject to USDA style and policy guidelines. These USDA guidelines are evolving at present. We have shared the recommendations with USDA, and will work with USDA to make any changes that USDA deems appropriate, within current funding levels." With respect to implementation, FSA notes that "Some of the recommendations, e.g., fix broken links, are addressed immediately. Others, such as those involving changes to the page layout, may require USDA approval for the public facing pages."

- f) FSA/ACSI/May 2007 Final Report, "Direct and Counter-Cyclical Payment Program Customer Satisfaction Survey" ("FSA/ACSI DCC Report")

This is an older ACSI report, covering the listed programs. The report noted the demographics of respondents as follows: 96% white, 14% female, 1% Black or African American, 1 % Hispanic, 0.2% American Indian or Alaskan Native. (FSA/ACSI DCC Report, p. 38), but did not provide results specific to these demographics. ACSI characterized the scores as "Typical" (in the 70s) relative to all Federal Government (FSA/ACSI DCC Report, p. 8). There were no questions about fairness, equity, discrimination, or the like.

- g) FSA/ASCI May 2007 Final Report, "Marketing Assistance Loan Program Customer Satisfaction Survey" ("FSA/ASCI MAL Report")

This is another, somewhat older report, covering a single program. A Notice (AO-1372) to all employees about the survey stated that increasing

customer satisfaction is an objective under the FSA Strategic Plan, and is required by Executive Order 12862.

Reported demographics of respondents included: 96% white, 8% female, 0.8% Black or African American, 1% other race, 1% refused. (FSA/ASCI MAL Report, p. 38.)

Again, FSA's program had "typical" scores (in the 70s) relative to all Federal government, (FSA/ASCI MAL Report, pp. 7-8.) Again, there was no breakdown of results by demographics, and there were on questions about fairness, equity, discrimination, or the like.

3) RD

Rural Development provided the Assessment Team a sample customer survey report:

- a) "USDA Rural Development CSC (St. Louis) Loan Servicing Satisfaction Survey, 2009 Analysis," April 22, 2009 ("RD 4/09 Report")

This relatively recent survey included a random sample of 6,000 RD loanholders throughout the country. "Overall satisfaction-High" scores were reported in the mid-70's, including the process for obtaining the loan at the local USDA office, and loan servicing. Higher scores were reported for other areas (for example, helpful payment options, mortgage payments posted correctly, monthly statements clarity). RD 4/09 Report, pp. 4-9. There is no indication that race or gender data were collected, and there were no questions included indicating areas such as equity and fair treatment, non-discrimination, *etc.* However, the process randomly selected 468 Spanish-speaking RD loan holders (7.8% of the total), and the Overall Satisfaction—High scores were somewhat higher (low to high 80's range) for the two questions reported. RD 4/09 Report, pp. 31-32.

- b) "2009 Rural Development Progress Report"

This "internal" Progress Report is not directed at assessing the equity and fairness in RD program delivery, but is a potential vehicle for doing so. It contains program specific-success stories and highlights, appealing photographs of customers, and general information about RD's

activities. The Report notes “Particular areas of focus include: Regional Collaboration, Regional Food Systems, Community Building, Alternative Energy, Broadband and Continuous Business Creation, Strategic Partners, and Capital Markets.” There are no specific references to service to socially disadvantaged or under-served populations. (Representatives from FSA, NRCS, and RMA informed the Assessment Team that they do not prepare similar “Annual Progress Reports.”)

4) Additional Discussion of Internal and External Reports/ Recommendations

As noted above, with respect to reports that have offered recommendations within the scope of work for this Assessment, the Assessment Team has taken them into account in formulating Recommendations, either by endorsing them, or by modifying the Assessment Team’s Recommendations.

With respect to the customer survey reports from NRCS, FSA, and RD that the Assessment Team reviewed, while they are helpful indications of the methodology that can be used, they fall short of adequately leveraging the capabilities of such surveys in the areas of service to SDGs and other under-served customers and potential customers. Specifically, the surveys did not consistently request race/ethnicity and gender (or other characteristics, such as age) of the respondents, did not provide results specific to those race/ethnicity and genders, and did not ask questions relating to DIA, equity, fairness, and non-discrimination.

5) Internal/External Report Recommendations

GR-5 Whenever conducting customer surveys pursuant to Executive Order 12628 (requiring customer surveys), USDA Agencies should: request demographics of respondents and include substantial equity/fairness/non-discrimination questions; compile, analyze, and publish the results; and take appropriate measures to address any issues uncovered in such surveys. The surveys and analyses should be designed to detect potential areas of disparate treatment, disparate impact, and discrimination, before these issues rise to the complaint level.

GR-6 FSA should take advantage of its web survey reports and diligently and promptly follow up and correct all deficiencies

identified therein. FSA should require the survey vendor to provide results by race/ethnicity, gender, age, and other characteristics provided by respondents, and should consider such results in revising its website and in communications with SDGs and CBOs regarding SDG website usage.

GR-7 RD's Annual Progress Reports should include substantial information about service to SDGs and under-served constituents (including data on customer demographics for Single Family Housing Loans, Multi-Family Housing Beneficiaries, Rural Business Beneficiaries, and Rural Utilities customer demographics), and all such reports should be posted or linked on the USDA/RD website and provided to key Headquarters, and all State, Offices.

GR-8 FSA, NRCS, and RMA should produce annual progress reports similar to RD's Annual Progress Reports, including substantial information about service to SDGs and under-served constituents, and all such reports should be posted or linked on the USDA/FSA, NRCS, and RMA websites and provided to key Headquarters and all State (and RMA Regional) Offices.

B. CONTRACT TASK: "Analyze USDA's current customer base and constituencies in comparison to the existing population."

The RFP requires an analysis of "USDA's current customer base and constituencies in comparison to the existing population." RFP, p. 3. At the Assessment Team's request, FSA, RD, and NRCS each provided information regarding customers for various programs by number of customers and dollars spent with/attribution to such customers, and race/ethnicity and gender data, where available. (Neither RMA nor the Approved Insurance Providers collect demographic information on applicants or insureds, so no such data was available for RMA.) The Assessment Team analyzed the information provided and compiled aggregate race/ethnicity and gender information for customers nationwide and by Agency and by State, where data was available, for the 15 States covered in this Assessment. The results are presented in a series of Exhibits (listed below) and discussed below.

CAVEAT REGARDING DATA RELIABILITY: *As noted earlier in this Report, there are significant concerns with the reliability of data provided*

by USDA. Race/ethnicity and gender data have been collected by FSA Farm Loans through a combination of loan application forms and “physical observation.” (This is the methodology that was strongly criticized in the GAO 2008 report.) Farm Programs does not have a rigorous methodology for collecting race/ethnicity and gender data, though sometimes it relies on data, where it exists, from Farm Loan customer information. RD relies on a combination of application information and physical observation, as does NRCS. RMA and the AIPs do not collect any such information. Additionally, most of the customer numbers and dollar data originally supplied by the Agencies in connection with this Assessment contained significant, obvious errors (for example, males plus females did not equal total customers), which the Assessment Team called to the attention of the Agencies. Moreover, while the Assessment Team was able to detect obvious errors in data provided, the fact that there were such errors suggests there were others that the Assessment Team could not verify by simple observation. These inaccuracies in fundamental data underscore why the Assessment Team recommends above that there be a serious, comprehensive data verification effort throughout USDA.

Subject to the **caveat**, the Assessment Team proceeded to analyze the information provided. That analysis is included in the following paragraphs.

1. FSA

Per the Assessment Team’s request, FSA provided separate customer information for Farm Loan Programs and Farm Programs.

a. Farm Loan Programs

The Assessment Team requested and received both (a) *numbers* of customers by race/ethnicity/gender, and (b) *dollars* lent to each customer group, for (a) FY 2010 and (b) existing portfolio at end of FY 2010, for Direct Loans (made by USDA directly to customers) and Guaranteed Loans (made by a commercial institution backed by a USDA guarantee). The Assessment Team compared those figures with the relative numbers of each group of socially disadvantaged Principal Operators (from the 2007 NASS AgCensus) divided by the total number of Principal Operators. (The Assessment Team determined, and FSA agreed, that “Principal Operators” are those requesting the loans, not “All Operators,” although there are generally only slight differences between

the two reported 2007 AgCensus measures in percentage terms.) The results are summarized as follows:

1) Direct Loans

a) Direct Loan Numbers Nationwide FY 2010: In FY 2010, USDA lent \$1,961,445,164 in Direct Loans to 18,404 borrowers nationwide. Exhibit 16 shows the *number* of Direct Loans made in FY 2010 by race/ethnicity and gender compared with the respective SDG Principal Operator populations. (See Exhibit 16, “FSA Loans—Customer Demographics by Numbers and Dollars: Direct Loans Made Nationally in FY 2010 and Portfolio”. See also Exhibit 17, which includes graphical representations of the data presented below for FSA programs.) The results are as follows:

- **Female:** Percent of customers—13.57%; percent of Principal Operators—10.79%
- **Hispanic/Latino:** Percent of customers—3.06%; percent of Principal Operators—2.52%
- **Black/African American:** Percent of customers—2.00%; percent of Principal Operators—1.39%
- **Asian:** Percent of customers—0.60%; percent of Principal Operators—0.51%
- **Native Hawaiian/Pacific Islander:** Percent of customers—0.32%; percent of Principal Operators—0.06%
- **American Indian/Alaskan Native:** Percent of customers—3.39%; percent of Principal Operators—1.57%

Thus, on a national basis for FY 2010, for all SDGs, the percentages of those receiving Direct Loans exceeded their respective percentage representation in the Principal Operator population. (Note that this is the information that USDA might have provided pursuant to the “Annual Requirement” of Section 14006 of the 2008 Farm Bill, “Transparency and Accountability for Socially Disadvantaged Farmers and Ranchers,” but did not.)

b) Direct Loan Dollars Nationwide FY 2010: Exhibit 16 shows the *dollar amount* of Direct Loans made in FY 2010 by race/ethnicity and gender compared with the respective SDG Principal Operator populations. The results are as follows:

- **Female:** Percent of loan dollars—7.52%; percent of Principal Operators—10.79%
- **Hispanic/Latino:** Percent of loan dollars—2.55%; percent of Principal Operators—2.52%
- **Black/African American:** Percent of loan dollars—1.33%; percent of Principal Operators—1.39%
- **Asian:** Percent of loan dollars—0.55%; percent of Principal Operators—0.51%
- **Native Hawaiian/Pacific Islander:** Percent of loan dollars—0.06%; percent of Principal Operators—0.06%
- **American Indian/Alaskan Native:** Percent of loan dollars—2.99%; percent of Principal Operators—1.57%

Thus, on a dollars lent basis for Direct Loans, Female participation lagged the national Female Principal Operator population by 3.27 percentage points, and Black/African American participation lagged the national Black/African American Principal Operator population by 0.06 percentage points. Other SDG participations were at or above their respective Principal Operator population percentages.

c) Direct Loan Numbers Nationwide/Direct Loan Portfolio: Exhibit 16 shows the total *number* of Direct Loans in the USDA Direct Loan Portfolio at the end of FY 2010 by race/ethnicity and gender compared with the respective SDG Principal Operator populations. At that time USDA's portfolio of Direct Loans totaled \$7,539,523,095, covering 70,914 borrowers nationwide. The results are as follows:

- **Female:** Percent of customers—12.72%; percent of Principal Operators—10.79%

- **Hispanic/Latino:** Percent of customers—4.32%; percent of Principal Operators—2.52%
- **Black/African American:** Percent of customers—3.29%; percent of Principal Operators—1.39%
- **Asian:** Percent of customers—0.56%; percent of Principal Operators—0.51%
- **Native Hawaiian/Pacific Islander:** Percent of customers—0.31%; percent of Principal Operators—0.06%
- **American Indian/Alaskan Native:** Percent of customers—3.45%; percent of Principal Operators—1.57%

Again, as with FY 2010 Direct Loans, for all groups of SDG farmers/ranchers, the percentages of those SDGs having loans in the Direct Loan Portfolio as of September 30, 2010 exceeded their respective percentage representation in the Principal Operator population.

d) Direct Loan Dollars Nationwide/Direct Loan Portfolio: Exhibit 16 shows the total *dollar amount* of Direct Loans in the FSA Direct Loan Portfolio at the end of FY 2010 by race/ethnicity and gender compared with the respective SDG Principal Operator populations. The results are as follows:

- **Female:** Percent of loan dollars—7.50%; percent of Principal Operators—10.79%
- **Hispanic/Latino:** Percent of loan dollars—3.97%; percent of Principal Operators—2.52%
- **Black/African American:** Percent of loan dollars—2.15%; percent of Principal Operators—1.39%
- **Asian:** Percent of loan dollars—0.54%; percent of Principal Operators—0.51%
- **Native Hawaiian/Pacific Islander:** Percent of loan dollars—0.10%; percent of Principal Operators—0.06%

- **American Indian/Alaskan Native:** Percent of loan dollars—3.57%; percent of Principal Operators—1.57%

Thus, for the Direct Loan Portfolio as of September 30, 2010, on a dollars lent/portfolio basis, Female participation lagged the Female Principal Operator population by 3.29 percentage points. All other SDG participations were at or above their respective Principal Operator population percentages.

*With the exception of Female Principal Operators, the numbers and dollar amounts of loans from the FSA **Direct Loan Program** in FY 2010, and its existing Portfolio, expressed in percentages, correspond reasonably well to (meet or exceed) the respective percentages of Principal Operator populations of SDGs.*

In addition to these comparisons, it is important to note that Federal statutory provisions require USDA to set annual “target participation rates” for operating and ownership loans to “ensure that members of socially disadvantaged groups will receive loans made or insured under subchapter I of this chapter and will have the opportunity to purchase or lease inventory farmland,” 7 U.S.C. 2003(a)(1), and “ensure that socially disadvantaged farmers and ranchers will receive loans made or insured under subchapter II of this chapter,” 7 U.S.C. 2003(c). The statute sets forth the methodology for setting such target rates. 7 U.S.C. 2003(a). Upon request, USDA provided its direct operating and ownership target participation rates for SDGs for Fiscal Years 2008-2010, for the 15 USDA-selected States, along with actual performance during those three years. See Exhibit 18.

As can be seen from Exhibit 18:

- In **FY 2008**, 10 of the 15 USDA-selected States met or exceeded their target participation rates for direct operating loans, and 6 of the 15 States met or exceeded their target participation rates for direct farm ownership loans.
- In **FY 2009**, 7 of the 15 States met or exceeded their target participation rates for direct operating loans, and 8 of the 15 States met or exceeded their target participation rates for direct farm ownership loans.

- In **FY 2010**, 6 of the 15 States met or exceeded their target participation rates for direct operating loans, and 6 of the 15 States met or exceeded their target participation rates for direct farm ownership loans.

In response to a request from the Assessment Team, FSA informed the Assessment Team that “Accomplishment of these goals is a top priority for the Agency and FLP management. As such, these goals are critical elements in the individual performance plans for FLP management at the National Office, all State Executive Directors, and the Farm Loan Chiefs in each State.”

The Assessment Team also requested of FSA:

“For those indications where the target rates have not been achieved, have there been any consequences to those with responsibilities for achieving the targets? If so, what were the consequences?”

FSA responded in writing:

“The Agency has focused on recognizing efforts made to achieve program performance goals, including SDA targeted lending goals. There are factors which are beyond FSA employee control such as local economic conditions, availability of farm land and similar issues that have a major impact on the employee’s performance relative to SDA lending. Achievement or lack of achievement of goals involving lending to targeted groups affected annual performance evaluations; achievement or lack of achievement would result in a higher or lower summary rating. Employees who meet or exceed their goals are likely to receive an ‘exceeds fully successful’ or ‘outstanding’ rating and be rewarded with performance awards and recognition, as opposed to those who do not meet the goals.”

These comments will be addressed in the Discussion Section, below.

2) Guaranteed Loans

a) Guaranteed Loan Numbers Nationwide FY 2010: In FY 2010, USDA guaranteed \$3,205,090,364 in loans to 8,346 borrowers nationwide. Exhibit 19, “FSA Loans—Customer Demographics by Numbers and Dollars: Guaranteed Loans Made Nationally in FY 2010 and Portfolio,” shows the *number* of Guaranteed Loans made in FY 2010 by race/ethnicity and gender compared with the respective SDG Principal Operator populations. The results are as follows:

- **Female:** Percent of customers—3.67%; percent of Principal Operators—10.79%
- **Hispanic/Latino:** Percent of customers—1.22%; percent of Principal Operators—2.52%
- **Black/African American:** Percent of customers—0.47%; percent of Principal Operators—1.39%
- **Asian:** Percent of customers—1.14%; percent of Principal Operators—0.51%
- **Native Hawaiian/Pacific Islander:** Percent of customers—0.07%; percent of Principal Operators—0.06%
- **American Indian/Alaskan Native:** Percent of customers—1.21%; percent of Principal Operators—1.57%

In all groups of SDG Principal Operators (except Asians and Native Hawaiians/Pacific Islanders), the percentages of those receiving Guaranteed Loans lagged their respective percentage representation in the Principal Operator population, some (Females, Hispanics/Latinos, Blacks/African Americans) by a fairly wide margin (e.g., Females, 7.12 percentage points; Hispanics/Latinos, 1.30 percentage points).

b) Guaranteed Loan Dollars Nationwide FY 2010: Exhibit 19 shows the *dollar amounts* of Guaranteed Loans made in FY 2010 by race/ethnicity and gender compared with the respective SDG Principal Operator populations. The results are as follows:

- **Female:** Percent of loan dollars—3.45%; percent of Principal Operators—10.79%
- **Hispanic/Latino:** Percent of loan dollars—1.48%; percent of Principal Operators—2.52%
- **Black/African American:** Percent of loan dollars—0.30%; percent of Principal Operators—1.39%
- **Asian:** Percent of loan dollars—1.26%; percent of Principal Operators—0.51%
- **Native Hawaiian/Pacific Islander:** Percent of loan dollars—0.07%; percent of Principal Operators—0.06%
- **American Indian/Alaskan Native:** Percent of loan dollars—0.95%; percent of Principal Operators—1.57%

Thus, on a dollars lent basis for FY 2010 Guaranteed Loans, Female participation lagged their Principal Operator population by 7.34 percentage points; Hispanic/Latino participation lagged their Principal Operator population by 1.04 percentage points; Black/African American participation lagged their Principal Operator population by 1.09 percentage points; and American Indian/Alaskan Native participation lagged their Principal Operator population by 0.62 percentage points.

c) Guaranteed Loan Numbers Nationwide/Guaranteed Loan Portfolio: Exhibit 19 shows the *total number* of loans in the Guaranteed Loan Portfolio at the end of FY 2010 by race/ethnicity and gender compared with the respective SDG Principal Operator populations. At that time USDA’s portfolio of Guaranteed Loans totaled \$10,353,289,492, covering 34,464 borrowers nationwide. The results are as follows:

- **Female:** Percent of customers—3.96%; percent of Principal Operators—10.79%
- **Hispanic/Latino:** Percent of customers—1.29%; percent of Principal Operators—2.52%

- **Black/African American:** Percent of customers—0.53%; percent of Principal Operators—1.39%
- **Asian:** Percent of customers—2.15%; percent of Principal Operators—0.51%
- **Native Hawaiian/Pacific Islander:** Percent of customers—0.06%; percent of Principal Operators—0.06%
- **American Indian/Alaskan Native:** Percent of customers—1.58%; percent of Principal Operators—1.57%

For the numbers of FSA Guaranteed Loans nationwide in the Portfolio as of September 30, 2010, Female participation lagged their Principal Operator population by 6.83 percentage points; Hispanic/Latino participation lagged their Principal Operator population by 1.23 percentage points; and Black African/American participation lagged their population by 0.86 percentage points. Other SDG participations were at or above their respective Principal Operator populations.

d) Guaranteed Loan Dollars Nationwide/Guaranteed Loan Portfolio: Exhibit 19 shows the *dollar amount* of loans in the Guaranteed Loan Portfolio at the end of FY 2010 by race/ethnicity and gender compared with the respective SDG Principal Operator populations. The results are as follows:

- **Female:** Percent of loan dollars—4.08%; percent of Principal Operators—10.79%
- **Hispanic/Latino:** Percent of loan dollars—1.16%; percent of Principal Operators—2.52%
- **Black/African American:** Percent of loan dollars—0.34%; percent of Principal Operators—1.39%
- **Asian:** Percent of loan dollars—3.19%; percent of Principal Operators—0.51%
- **Native Hawaiian/Pacific Islander:** Percent of loan dollars—0.04%; percent of Principal Operators—0.06%

- **American Indian/Alaskan Native:** Percent of loan dollars—1.58%; percent of Principal Operators—1.57%

Thus, on a dollars-lent basis for the nationwide FSA Guaranteed Loan Portfolio as of September 30, 2010, Female participation lagged the Female Principal Operator population by 6.71 percentage points; Hispanic/Latino participation lagged the Hispanic/Latino Principal Operator population by 1.36 percentage points; Black/African American participation lagged the Black/African American Principal Operator population by 1.05 percentage points; and Native Hawaiian/Pacific Islander participation lagged the Native Hawaiian Principal Operator population by 0.02 percentage points. Other SDG participations were at or above their respective Principal Operator populations.

With the exception of Asian and American Indian/Alaskan Native farmers/ranchers, participation by SDGs in the Guaranteed Loan Program in FY 2010, and its existing Portfolio, lagged behind, and with some groups substantially behind, the respective Principal Operator populations of their groups.

3) Follow-up Discussions with FSA Regarding Customer Analyses

The Assessment Team asked FSA why, in the Agency’s view, SDG participation was, in most cases, markedly less correlated with their respective Principal Operator representation in the Guaranteed Loan Program than in the Direct Loan Program. FSA responded in writing as follows:

“There are several reasons for the lower SDA participation in FSA guaranteed loan programs.

- **Financial conditions:** SDA farmers as a group are less well capitalized and are in weaker financial condition than non-SDA farmers. Guaranteed loan recipients must meet the financial standards set by a commercial lender for loans with FSA guarantees. Many SDA farmers find it difficult to meet those standards. In addition, guaranteed loans are made on commercial rates and terms. The higher interest rates and shorter loan terms on guaranteed loans make it more difficult to develop a business plan that projects that a loan can be repaid.

- External conditions: There are commercial farm lending issues that affect guaranteed lending to SDA farmers. Commercial banks make 70 percent of FSA guaranteed loans. However, in the southern and mid-Atlantic states, where the majority of African American farmers are located, there is minimal bank participation in the guaranteed loan program. Some Native American farmers also have difficulty obtaining credit from commercial lenders. As a rule, commercial lenders are very reluctant to make loans when enforcement of debt instruments is under the jurisdiction of tribal courts.
- Perception: Many SDA farmers are reluctant to attempt to obtain loans from commercial lenders. Leaders of African American and Native American farmer groups, in particular, have stated that they need FSA direct loans, they state that lenders are not interested in financing SDA farmers and that for that reason FSA guarantees do not meet their needs.”

FSA subsequently provided the Assessment Team an additional memorandum prepared by FSA’s Economic and Policy Analysis staff with supplemental analysis and discussion of the reasons for the differences. (Exhibit 20).

4) FSA Subsequent Comments on Methodology

As noted above, the RFP required the Assessment Team to “analyze USDA’s current customer base and constituencies in comparison to the existing population.” Using the AgCensus, there are two possible “existing populations” of “operators”: “All Operators,” and “Principal Operators.” The Assessment Team determined that Principal Operator (defined in the AgCensus as “the person who controlled the agricultural functions and activities on the operation”) would constitute the population of applicants for FSA loans, and decided to use that category. The Assessment Team also asked FSA its view of which category to use, and FSA responded that Principal Operators would be the appropriate choice. (The Assessment Team also cross-checked the resulting percentages of Operators versus Principal Operators for each SDG, and there were only minor variations, so in the end, it did not matter materially which category was selected.)

During the course of fact-checking the Assessment Team's data analysis, FSA (while agreeing with the accuracy of the data) raised an issue with using Principal Operators as a comparator. According to FSA, not every Principal Operator is a potential Farm Loan Program participant (such as those whose financial strength would prevent it), and the definition of "farm" for purposes of the AgCensus varies in such ways as to make comparisons questionable. The net effect, according to FSA, may be to understate the measure of the Agency's real service to SDGs. Additionally, FSA points to the analysis by its Economic and Policy Analysis Staff (attached as Exhibit 20) which shows in some instances greater penetration of SDG populations. That analysis includes SDGs with \$500 or more in interest expense during the year in question (*i.e.*, current debtors), and includes "primary, secondary, and tertiary" operators. Of course, there are criticisms of that approach as well, in that it uses a somewhat arbitrary qualifying figure (\$500), includes secondary and tertiary operators, and excludes those not currently in debt but possibly interested in seeking a loan.

Most importantly, the FSA alternate methodology for market penetration described in its paper analyzes and reports only on the *number of loans*, not the *dollar amounts of those loans*, and therefore provides virtually no information about real "market penetration"—particularly if, for example, a large percent of those loans to SDGs were for nominal or smaller amounts.

It is certainly possible that a different analysis that takes these, and other factors, into account *might* produce more accurate results regarding SDG customer penetration. Nonetheless, the RFP required the analysis included herein. Moreover, in complying with 7 U.S.C. Section 2003's requirement to prepare target participation rates, USDA uses population statistics ("the number of socially disadvantaged farmers and ranchers in a State in proportion to the total number of farmers and ranchers in that State"), not the methodology FSA proposes. Finally, Section 14006 of the 2008 Farm Bill requires reports using SDG customers as a percentage of the total participation of all farmers and ranchers, without modification for such factors as those FSA suggests above.

FSA's suggestions for alternate methodologies can be taken into account when preparing the Market Penetration Analyses discussed above.

5) Direct and Guaranteed Loans FY 2010 and Portfolios in the 15 States

There are variations among the 15 USDA-selected States with respect to the proportion of loans made/guaranteed to SDGs in comparison with their respective Principal Operator representation. (See Exhibit 21, “FSA Loans—Customer Demographics by Numbers and Dollars: Direct Loans Made FY 2010 by State”; Exhibit 22, “FSA Loans—Customer Demographics by Numbers and Dollars: Direct Loan Portfolio as of Sept. 30, 2010 by State;” Exhibit 23, “FSA Loans—Customer Demographics by Numbers and Dollars: Guaranteed Loans Made in FY 2010 by State;” and Exhibit 24, “FSA Loans—Customer Demographics by Numbers and Dollars: Guaranteed Loan Portfolio as of Sept. 30, 2010 by State.”) The most obvious trend is that States with higher concentrations of specific SDGs (*e.g.*, Hispanics/Latinos in New Mexico, Blacks/African Americans in Mississippi, and American Indians/Alaskan Natives in Oklahoma), tend to have higher participation rates for those groups than in other States. But there are notable exceptions: In Arizona, for example, American Indians/Alaskan Natives are 53.95% of the Principal Operators, but they received only 2.88% of the Direct Loan dollars lent in FY 2010. (By contrast, Whites are 45.03% of the Principal Operators in Arizona, but received 96.06% of the Direct Loan dollars lent in FY 2010.)

Moreover, there are a number of the 15 USDA-designated States for this Assessment in which *no Guaranteed Loans were made to certain SDGs in FY 2010*. Specifically, during FY 2010, there were 2,219 Guaranteed Loans made in the 15 USDA-selected States, for a total loan amount of \$880,923,755. *Eleven of the 15 States had no Guaranteed Loans to Blacks/African Americans in FY 2010: Arizona, California, Florida, Michigan, Mississippi (with a Black/African American Principal Operator population of 12.65%; Mississippi had no Guaranteed Loans to any SDGs in FY 2010), New Mexico, North Dakota, Oklahoma, Pennsylvania, Vermont, and Washington (South Carolina, with a Black/African American Principal Operator population of 8.15%, made 1 such loan)*. Twenty-three Guaranteed Loans (1.03% of the total number of loans in all 15 States) were made to Blacks/African Americans in the other four States. By contrast, FSA made *Direct Loans* to African Americans in each of the 15 States in FY 2010, exceeding their Principal Operator percentages in numbers of loans in all 15 States, and dollars lent in nine States. As another example, American Indians/Alaskan Natives are 53.95% of the

Principal Operators in Arizona, but received one Guaranteed Loan in Arizona in FY 2010 (0.84% of the total Arizona Guaranteed Loan dollars).

b. Farm Programs

USDA provided FY 2010 Farm Programs participant numbers and dollars in the aggregate, and by program, by race/ethnicity and gender. See Exhibit 25, “FSA Farm Programs Nationwide Aggregate Customer and Principal Operator Demographics by Numbers of Customers and Dollars FY 2010,” and Exhibit 26, “FSA Farm Programs—Aggregate State-by-State Customer and Principal Operator Demographics by Numbers of Customers and Dollars FY 2010.”

In FY 2010, Farm Programs had 1,459,650 customers, and spent \$11,797,119,179 with those customers. The race/ethnicity/gender breakdowns of these program expenditures provided by USDA, in comparison with the national Principal Operator populations, are as follows:

1) Farm Programs FY 2010 Nationwide Percentage of Customers

The following shows participation by percentages of SDG customers by race/ethnicity and gender compared with their respective SDG Principal Operator populations in FY 2010 for Farm Programs:

- **Female:** Percent of recipients—19.68%; percent of Principal Operators—10.79%
- **Hispanic/Latino:** Percent of recipients—0.07%; percent of Principal Operators—2.52%
- **Black/African American:** Percent of recipients—0.80%; percent of Principal Operators—1.39%
- **Asian:** Percent of recipients—0.06%; percent of Principal Operators—0.51%
- **Native Hawaiian/Pacific Islander:** Percent of recipients—0.07%; percent of Principal Operators—0.06%

- **American Indian/Alaskan Native:** Percent of recipients—0.45%; percent of Principal Operators—1.57%

In terms of numbers of customers, while Female and Native Hawaiian/Pacific Islander participation exceeded their respective Principal Operator population percentages (Females nearly double), the other SDGs lagged substantially behind their respective Principal Operator populations.

2) Farm Programs FY 2010 Nationwide Percentage of Dollars Received

The following shows participation by percentages of dollars received by customers, by race/ethnicity and gender compared with their respective SDG Principal Operator populations in FY 2010 for Farm Programs:

- **Female:** Percent of recipients—8.86%; percent of Principal Operators—10.79%
- **Hispanic/Latino:** Percent of recipients—0.08%; percent of Principal Operators—2.52%
- **Black/African American:** Percent of recipients—0.27%; percent of Principal Operators—1.39%
- **Asian:** Percent of recipients—0.07%; percent of Principal Operators—0.51%
- **Native Hawaiian/Pacific Islander:** Percent of recipients—0.06%; percent of Principal Operators—0.06%
- **American Indian/Alaskan Native:** Percent of recipients—0.36%; percent of Principal Operators—1.57%

Other than Native Hawaiians/Pacific Islanders, all SDGs' participation in FY 2010 Farm Programs in terms of dollars received lagged substantially behind their respective percentage representations in the Principal Operator population. For example, Hispanic/Latino Principal Operators' percentage is more than 31 times their dollar participation; and

Black/African American Principal Operators' percentage is more than 5 times their dollar participation.

3) Farm Programs FY 2010 Participation in the 15 States

The observations noted above with respect to nationwide percentages are reflected in the 15 USDA-selected States, particularly in the category of distribution of Farm Program dollars among SDGs. See Exhibit 26. With minor exceptions, each group lagged behind its Principal Operator population percentage in every State—at times, by wide margins. For example, in New Mexico, Hispanics/Latinos are 30.94% of the Principal Operators, but received 0.86% of Farm Program funds for that State. In Mississippi, Blacks/African Americans constitute 12.65% of the Principal Operators, but received 1.45% of Farm Program funds for that State. In Arizona, American Indians/Alaskan Natives constitute 53.95% of the Principal Operators, but received 6.86% of Farm Program funds for that State.

4) Farm Programs Nationwide FY 2010 Breakdown by Program

At the Assessment Team's request, FSA provided a further breakdown of FY 2010 nationwide Farm Programs expenditures by program. This is a prodigious volume of data. Sixty-five programs are listed, both by numbers of participants (sorted by race/ethnicity and gender), and dollars. To make it more accessible, the Assessment Team selected the top 10 Programs (in terms of dollars), accounting for 92% of the total dollars spent by Farm Programs in FY 2010. See Exhibit 27, "FSA Farm Programs Nationwide Aggregate Customer and Principal Operator Demographics by Numbers of Customers and Dollars FY 2010: Top 10 Programs." The distribution of dollars in those programs followed the results of the nationwide aggregates shown above, that is, generally, with some exceptions, the individual programs did not demonstrate significantly larger SDG participation as compared with their respective Principal Operator populations than as shown in the nationwide aggregate.

c. FSA Customer Demographics: Discussion

1) Farm Loan Programs SDG Customer Base Discussion

The RFP required the Assessment Team to “Analyze USDA’s current customer base and constituencies in comparison to the existing population.” RFP, p. 3. To obtain the “current customer base,” the Assessment Team asked each of the Agencies to provide data regarding its customers by program for FY 2010, and by race/gender and ethnicity. Subject to the **caveat** above regarding the reliability of the race/ethnicity and gender, and all other customer, data, FSA, RD, and NRCS supplied such data (neither RMA nor its AIPs collect race/ethnicity or gender data for its customers). The Assessment Team assembled that data and compared it with the Farm Principal Operator demographic information from the 2007 NASS AgCensus. The preceding discussion presents the results of that comparison.

USDA did not provide a standard against which to measure the results of this comparison, nor does the Contract require such an analysis. Nonetheless—again, subject to the limitations in and unreliability of the data—certain observations can be made, and some conclusions and recommendations can be provided, subject to revision as newer, better data becomes available through a more disciplined collection of race/ethnicity and gender data and validation/correction of USDA’s customer database.

2) Customer Base Recommendations

GR-9 For purposes of this Report and subject to future development of more appropriate data and metrics, with respect to FSA loans, FSA should use the socially disadvantaged Farm Principal Operator percentages (national and State) as *minimal targets for demonstration of equitable access and participation*. (This is consistent with the statutory requirement for FSA to establish certain loan targets by population.) Failure to meet such targets would not automatically demonstrate discrimination, but would raise the presumption that more can be done to eradicate barriers and increase SDG participation, and therefore additional attention to such gaps, and creation of remedial measures as described elsewhere herein, would be needed.

- GR-10** With respect to FSA loans, FSA should *establish priorities* according to the degree of departure from target participation rates. These priorities should be based on national (using aggregate national data) and State (based on State-specific) comparative data. Highest priorities and greatest resources should be applied to those (1) programs, (2) locations (national/State), and (3) SDGs (*e.g.*, Hispanic/Latino) showing the largest gaps compared with Principal Operator populations.
- GR-11** With respect to FSA loans, FSA should have periodic *disparity studies conducted by an independent organization* of any program showing significant departures from participation based on the targets—according to the analyses shown above, that would indicate studies of Guaranteed Loans. While FSA leadership has offered some reasons why it believes that, for example, Guaranteed Loan customer percentages show greater gaps from SDG population participation than Direct Loans, these reasons do not necessarily excuse or explain the departures, nor satisfy Congressional intent regarding the importance of equitable access to these programs by SDGs. The disparity studies should indicate the extent to which existing barriers are irremediable and unrelated to race/ethnicity and gender, or implicate race/ethnicity and gender and thus require remediation.
- GR-12** With respect to FSA loans, USDA should consider *interim remedial measures* to close gaps that, regardless of the reason, demonstrate significantly lower-than-expected SDG participation in loan-making. Guaranteed Loans made in FY 2010, for example, fall about \$300,000,000 short of expected loans to certain SDGs based on Principal Operator populations (as shown above). The Direct Loan program, on the other hand, appears, based on (possibly unreliable) data alone, to more effectively reach SDGs than the Guaranteed Loan program. (If USDA is correct, for Direct Loans creditworthiness is less of a factor, and more loan-making facilities (County Offices) are available closer to the farmers.) If up to \$300,000,000 can be shifted from another USDA program to Direct Loans to SDGs, it would allow the possibility of increasing SDG participation in overall loans through a mechanism—Direct Loans—of demonstrated success. This approach, or one approximating it,

should be interim only, while the Guaranteed Loan program disparity studies are conducted and, perhaps, result in revisions to the program. Several additional changes to the Guaranteed Loan program, such as (a) increasing the guarantee to 100%, (b) waiving guarantee fees for SDGs, (c) revising the guaranteed low document program to include loans up to \$100,000, (d) including lease/purchases within the guarantee program for SDGs, and (e) providing hands-on training for SDG loan applicants, might assist in closing the Guaranteed Loan gap as well. Additionally, USDA should audit the commercial Guaranteed Loan providers for equal treatment of all applicants and customers.

GR-13 With respect to FSA loans, using OIG, GAO, Economic Research Service, and private contractors, USDA should periodically audit both the Direct and Guaranteed programs for all indicators of potential differential treatment or impact, such as loan processing times, grants and denials, delinquency rates, modifications/restructurings granted, and foreclosures, and report results to the Office of the Secretary, the USDA CDO, and the FSA Administrator, for appropriate analysis and remedial actions, where indicated.

3) Farm Programs SDG Customer Base Discussion

Farm Program data show generally across-the-board lower SDG participation than their populations would suggest. Hispanic/Latino expected participation of 2.52% (based on Principal Operator population) as compared with actual participation of 0.08% (a difference of about \$288 million), and Black/African American expected participation of 1.39% (based on Principal Operator population) as compared with actual participation of 0.27% (a difference of about \$132 million), while seemingly small percentages, evidence larger imbalances when dealing with total payments in the twelve billion dollar range.

A Farm Programs official informed the Assessment Team that Farm Programs does not prepare reports (such as those provided above) comparing numbers and dollars spent with SDGs with their respective Principal Operator (or any other) populations. This is due in part to the lack, and unreliability, of the race/ethnicity and gender data collected.

Nonetheless, subject to the **caveat** above regarding the data, a significant differential in SDG participation in Farm Programs must be addressed.

This *may* be, as Farm Programs officials suspect, more a function of farm size, crops grown, or other factor, but no one knows now (in part because of the unreliability of the data) the extent to which Farm Programs are not equitably available to all potential customers. According to Farm Programs, the vast amount of Farm Programs payments (Direct and Counter-cyclical payments) are based on crop yields and crop acreage bases set in the mid-1980s. This was a time when, arguably, SDG yields and acres were diminished by USDA mistreatment of SDGs—and those SDGs continue to receive similarly diminished payments as a result. Since Farm Program payments are inextricably intertwined with the County Committee system (which continues to administer important aspects of Farm Programs), County employee demographic representation, customer/CBO attitudes toward them (including lack of trust), and failure to adequately collect race/ethnicity and gender data, the legitimacy of these Farm Program distributions will continue to be questioned.

All Farm Programs programs should be analyzed in the same fashion as Farm loans, as discussed above, for adverse impact and remedial measures. Congress should be aware of the SDG participation presented in this Report (again, subject to unreliability of the data discussed above), based on population representation, in these benefits in deciding upon the future of existing, and potential new, programs.

4) Customer Base Recommendations

GR-14 Based on this Report's analyses of FSA Farm Programs customer data, USDA should conduct a disparity study of all Farm Program programs to determine potential disparate impact or disparate treatment in administration of those programs, and make, or recommend to Congress as needed, appropriate adjustments to those programs to ensure that SDGs adequately, equitably, and fairly participate in these programs.

GR-15 In connection with consideration of alternatives or modifications to existing eligibility and other Farm Program participation requirements, FSA should consider updating the bases for (or recommending to Congress as needed) support payments for

SDGs, such as using current production figures, or using average yields and crop acreage bases of neighboring, non-SDG farms.

2. Rural Development

Per the Assessment Team's request, RD provided the Assessment Team customer information for its Housing lending programs, and some related data for Rural Utilities.

a. Single Family Housing Loans

RD provided both (a) *numbers* of customers by race/ethnicity/gender, and (b) *dollars* lent to each customer group, for FY 2010, for Direct Loans (made by USDA directly to customers) and Guaranteed Loans (made by a commercial institution backed by a USDA guarantee). The Assessment Team compared these figures with the percentages of each group (from the 2007 AgCensus, the latest available data) in the relevant rural populations. Subject to the same **caveat** above about reliability of the data, the results are summarized as follows:

1) Direct Loans: Single Family Housing

a) Single Family Housing ("SFH") Direct Loan Numbers Nationwide FY 2010: In FY 2010 RD lent \$2,072,294,630 in Direct Loans to 25,430 borrowers nationwide. Exhibit 28, "RD Single Family Housing Loans—Customer and Rural Population Demographics by Numbers and Dollars for FY 2010"), shows the *number* of SFH Direct Loans made in FY 2010 nationwide by race/ethnicity and gender compared with the respective SDG rural populations. (*See also* Exhibit 29, which includes graphical representations of the data presented below for RD programs.) The results are as follows:

- **Female:** Percent of customers—55.12%; percent of rural population—50.99%
- **Hispanic/Latino:** Percent of customers—9.88%; percent of rural population—3.96%
- **Black/African American:** Percent of customers—15.95%; percent of rural population—5.97%

- **Asian:** Percent of customers—0.70%; percent of rural population—0.52%
- **Native Hawaiian/Pacific Islander:** Percent of customers—1.05%; percent of rural population—0.06%
- **American Indian/Alaskan Native:** Percent of customers—1.93%; percent of rural population—1.63%.

Thus, on a nationwide basis for FY 2010, for all SDGs, the percentages of those receiving SFH Direct Loans exceeded their respective percentage representations in the rural population—some (Hispanics/Latinos, Blacks/African Americans) by substantial margins.

b) SFH Direct Loan Dollars Nationwide FY 2010: Exhibit 28 shows the *dollar amount* of SFH Direct Loans made in FY 2010 by race/ethnicity and gender compared with the respective SDG rural population. The results are as follows:

- **Female:** Percent of loan dollars—54.27%; percent of rural population—50.99%
- **Hispanic/Latino:** Percent of loan dollars—13.43%; percent of rural population—3.96%
- **Black/African American:** Percent of loan dollars—14.18%; percent of rural population—5.97%
- **Asian:** Percent of loan dollars—1.20%; percent of rural population—0.52%
- **Native Hawaiian/Pacific Islander:** Percent of loan dollars—1.56%; percent of rural population—0.06%
- **American Indian/Alaskan Native:** Percent of loan dollars—1.74%; percent of rural population—1.63%

Thus, again, on a nationwide basis for FY 2010, for all SDGs on a dollars lent basis, the percentage participation in SFH Direct Loans exceeded their

respective percentage representations in the rural population—some (Hispanics/Latinos, Blacks/African Americans) by substantial margins.

2) Guaranteed Loans: Single Family Housing

a) SFH Guaranteed Loan Numbers Nationwide FY 2010: In FY 2010 USDA guaranteed \$16,682,147,853 in loans to 132,349 borrowers nationwide Exhibit 28, “RD Single Family Housing Loans—Customer and Rural Population Demographics by Numbers and Dollars for FY 2010”), shows the *number* of SFH Guaranteed Loans made nationally in FY 2010 by race/ethnicity and gender compared with the respective SDG rural population. The results are as follows:

- **Female:** Percent of customers—31.74%; percent of rural population—50.99%
- **Hispanic/Latino:** Percent of customers—7.67%; percent of rural population—3.96%
- **Black/African American:** Percent of customers—5.68%; percent of rural population—5.97%
- **Asian:** Percent of customers—0.58%; percent of rural population—0.52%
- **Native Hawaiian/Pacific Islander:** Percent of customers—0.25%; percent of rural population—0.06%
- **American Indian/Alaskan Native:** Percent of customers—0.49%; percent of rural population—1.63%

For Females, Blacks/African Americans (by a slight amount), and American Indians/Alaskan Natives, the percentages of those receiving SFH Guaranteed Loans nationwide in FY 2010 lagged their respective percentage representation in the rural population—some (Females, American Indians/Alaskan Natives) by substantial margins.

b) SFH Guaranteed Loan Dollars Nationwide FY 2010: Exhibit 28 shows the *dollar amount* of SFH Guaranteed Loans made nationwide in FY 2010 by race/ethnicity and gender. The results are as follows:

- **Female:** Percent of loan dollars—30.43%; percent of rural population—50.99%
- **Hispanic/Latino:** Percent of loan dollars—7.66%; percent of rural population—3.96%
- **Black/African American:** Percent of loan dollars—6.12%; percent of rural population—5.97%
- **Asian:** Percent of loan dollars—0.84%; percent of rural population—0.52%
- **Native Hawaiian/Pacific Islander:** Percent of loan dollars—0.39%; percent of rural population—0.06%
- **American Indian/Alaskan Native:** Percent of loan dollars—0.46%; percent of rural population—1.63%

Thus, on a dollars lent basis for FY 2010 SFH Guaranteed Loans nationwide, Females and American Indians/Alaskan Natives lagged their rural population percentages (Females, by 20.56 percentage points; American Indians/Alaskan Natives, by 1.17 percentage points); for all other SDGs, their participation exceeded their respective rural populations.

c) SFH Direct Loans in the 15 States FY 2010

The chart at Exhibit 30, “RD Single Family Housing Loans—Customer and Rural Population Demographics by Numbers and Dollars: Direct Loans Made in FY 2010 by State,” shows the *number and dollar amounts* of SFH Direct Loans by State and demographics for FY 2010. When comparing the percentage of loan dollars to the percentage of each group in the rural population for each State, each of the following groups was under-represented in the indicated number of States:

- **Female:** 7 States
- **Hispanic/Latino:** 3 States
- **Black/African American:** 1 State

- **Asian:** 9 States
- **Native Hawaiian/Pacific Islander:** 4 States
- **American Indian/Alaskan Native:** 8 States

*As can be seen from the chart, some variances are relatively small; for example, in South Carolina, where Native Hawaiians/Pacific Islanders have a rural population 0.02%, and 0.00% actual lending. Other variances are larger; for example, in California, Females, with rural population 50.27% and 28.09% actual lending, and New Mexico, American Indians/Alaskan Natives, with rural population of 22.05%, and 8.27% actual lending. Note that, as discussed above, on a **national aggregate basis for SFH Direct Loans in FY 2010**, the percentage participation by each group on a dollars lent basis exceeded their respective percentage representations in the rural population for all SDGs.*

d) SFH Guaranteed Loans in the 15 States FY 2010

The chart at Exhibit 31, “RD Single Family Housing Loans—Customer Demographics and Rural Population by Numbers and Dollars: Guaranteed Loans Made in FY 2010 by State,” shows the number and dollar amounts of SFH Guaranteed Loans by State and demographics for FY 2010. The data generally follow a pattern similar to the national figures, with some exceptions. When comparing the percent of loan *dollars* to the percentage of each group in the rural population for each State, each of the following groups was under-represented in the indicated number of States:

- **Female:** 15 States
- **Hispanic/Latino:** 3 States
- **Black/African American:** 8 States
- **Asian:** 5 States
- **Native Hawaiian/Pacific Islander:** 1 State
- **American Indian/Alaskan Native:** 14 States

*Thus, with respect to SFH Guaranteed Loans, Females are under-represented in comparison with their rural population percentages in all 15 States, and American Indians/Alaskan Natives are under-represented in 14 of the 15 States. This is consistent with the nationwide aggregate figures for SFH Guaranteed Loans for FY 2010 shown above (with both Females and American Indians/Alaskan Natives shown as under-represented). As can be seen from the chart, some variances are relatively small; for example, in Louisiana, Blacks/African Americans, with rural population of 18.75%, and 18.31% of the loan dollars. Other variances are larger; for example, in Arizona, American Indians/Alaskan Natives, with rural population of 22.28%, and 0.94% of the loan dollars. Note that, as discussed above, on a **national aggregate basis for SFH Guaranteed Loans in FY 2010**, the percentage participation by each group on a dollars lent basis exceeded their respective percentage representations in the rural population for all SDGs, except for Females and American Indians/Alaskan Natives.*

b. Multi-Family Housing (“MFH”) “Beneficiaries”

1) MFH Demographics Nationwide FY 2010

Loans under the RD Multi-Family Housing (“MFH”) Program are made to entities, not individuals, so the customers cannot be attributed demographics. RD does, however, require “heads of households” and tenants to complete a form showing their race/ethnicity and gender (tenants do not make a gender designation, but heads of households do), and they are referred to by RD as “beneficiaries.” The chart at Exhibit 32, “RD Multi-Family Housing Beneficiary and Rural Population Demographics by Numbers for FY 2010,” shows the distribution of RD MFH FY 2010 loan beneficiaries nationwide, by demographics in comparison with national rural population figures (with respect to gender, national population figures are used).

As can be seen from the chart, all SDGs are “beneficiaries” in proportions greater than their respective rural population percentages. Female representation among beneficiaries, in particular, is noteworthy (72.68% beneficiaries vs. 50.99% national population), and Hispanics/Latinos and Blacks/African Americans’ beneficiary percentages are several times their respective rural population percentages.

2) Multi-Family Housing “Beneficiaries” Demographics in the 15 States FY 2010

The chart at Exhibit 33, “RD Multi-Family Housing Beneficiary and Rural Population Demographics by Numbers State-by-State FY 2010,” shows the distribution of RD MFH FY 2010 loan beneficiaries for each of the 15 USDA-selected States, by demographics in comparison with the respective State rural population figures (with the exception of gender, which uses the respective State population figures). The comparison chart highlights (in yellow) the under-representations, based on the corresponding rural populations. Highlights from the chart are:

- **Female:** No States with under-representations
- **Hispanic/Latino:** 1 State with under-representation (Mississippi, 0.55% beneficiaries vs. 1.03% rural population)
- **Black/African American:** No States with under-representations
- **Asian:** 6 States (some smaller gaps, *e.g.*, Mississippi, 0.23% beneficiaries vs. 0.27% rural population; some larger gaps, *e.g.*, California, 1.39% beneficiaries vs. 2.12% rural population)
- **Native Hawaiian/Pacific Islander:** No States with under-representations
- **American Indian/Alaskan Native:** 9 States with under-representations (some smaller gaps, *e.g.*, Georgia, 0.22% beneficiaries vs. 0.26% rural population; some larger gaps, *e.g.*, New Mexico, 14.75% beneficiaries vs. 22.05% rural population)

Thus, with respect to State-by-State MFH beneficiaries for FY 2010, Asians and American Indians/Alaskan Natives show the greatest number of State under-representations (6 and 9, respectively) compared with their respective rural populations. This State-by-State variation contrasts with the nationwide figures cited above, in which all SDGs are beneficiaries in percentages larger than their respective rural population figures.

3) Discussion of RD Housing Loans to or for the Benefit of SDGs

In terms of national aggregates for FY 2010, RD SFH Direct Loans made to SDGs exceeded those groups' rural population percentages, both in terms of numbers of loans and dollars lent. In terms of nationwide aggregates for FY 2010, RD SFH Guaranteed Loans made to SDGs exceeded those groups' rural population percentages in terms of numbers of loans—with the exceptions of Females, Blacks/African Americans, and American Indians/Native Alaskans—and in terms of loan dollars—with the exceptions of Females and American Indians/Native Alaskans.

The under-representations in comparison with respective rural populations on a nationwide basis are reflected generally in the USDA-selected States, where Females are under-represented in terms of numbers of loans in seven States, and loan dollars in all 15 States; and American Indians/Native Alaskans are under-represented in terms of numbers of loans in eight States, and loan dollars in 14 States. It is also noteworthy that Asians are under-represented in nine States in terms of numbers of loans, and five States in loan dollars, despite adequate representation on both measures in the national aggregates.

Subject to potential unreliability of the data, this analysis should assist RD in (1) recognizing the success of its Direct and Guaranteed Loan Programs in generally reaching SDG rural populations, and (2) identifying those SDGs that are under-represented either nationally or in certain States, particularly with respect to Guaranteed Loans, for further attention and goal-setting.

Similarly, RD's record keeping of demographics of "beneficiaries" of MFH loans shows the relative success in equitable service to SDGs. As noted, on a national aggregate level, Females, Hispanics/Latinos, and Blacks/African Americans are beneficiaries in percentages substantially greater than their respective rural population percentages, and Asians and American Indians/Alaskan Natives have moderate under-representations. In comparison with the pertinent rural populations, there are no under-representations in any States for Females and Native Hawaiians/Pacific Islanders, and one relatively small under-representation for Blacks/African Americans in California. There are larger numbers of under-representations of beneficiaries in certain States

for Hispanics/Latinos (9), Asians (12), and American Indians/Alaskan Natives (14), many of them with substantial gaps in representation. Subject to the aforementioned questions regarding reliability of the data, this information allows RD to identify those SDGs that are under-represented in MFH beneficiaries in certain States, for further attention, analysis, goal-setting, and improvements.

4) Customer Base Recommendations

GR-16 RD's substantial successes in equitably serving SDGs in both the SFH Direct/Guaranteed Loan Programs and the MFH Program (subject to the *caveat* regarding unreliability of USDA data) should be recognized and publicized by USDA (and RD, for example, in its Annual Progress Report).

GR-17 While there are differences between the FSA and RD loan programs (customers, collateral, eligibility requirements, *etc.*), FSA and RD should develop a periodic communications tool (for example, quarterly meetings) for sharing of best practices and recent experiences.

GR-18 RD should identify those few areas of under-performance (*e.g.*, by program (such as Guaranteed Loans), and by State) noted in the analyses in this Final Report for further review and follow-up action to improve performance (including, for example, as Elements in employees' Performance Plans).

c. Rural Utilities

Rural Utilities, a smaller unit within RD (344 employees) provided customer demographics for its various service areas, including nationwide, for electric and telecommunications. See Exhibit 34, "RD Rural Utilities Service Total Dollars and Beneficiaries for Electric and Telecommunications Programs Nationwide and by State FY 2010." Because most or all of the residents of the indicated State service areas are customers, the demographics of customers are the same as the demographics of the population—thus, there is no "comparator population" and nothing further to analyze. What this methodology does not reveal is, to what extent are significant SDG populations that could be served, not being served?

1) Customer Base Recommendation

GR-19 Rural Utilities, in concert with Economic Research Service, should conduct a study of its potential rural service areas to determine those areas of significant SDG populations that are not currently being served (if any), and address any substantial under-servicing appropriately.

d. Rural Business and Cooperative Programs

Rural Business and Cooperative Programs, another smaller unit within RD (84 employees), provided information regarding expenditures in FY 2010, but because of the nature of the customers—businesses, not individuals—there is no useful race/ethnicity and gender data recorded. Rural Business should consider compiling, as does RD Housing for Multi-Family Housing, data on beneficiaries of its programs, to determine the extent to which SDGs are at least indirectly benefitting from its programs. Additionally, Rural Business could strive to reach out to minority and women-owned businesses (“MWBE”) as part of their portfolio to assist them in growing and developing their businesses. This Recommendation is included in the RD Section of this Report, above.

1) Customer Base Recommendations

GR-20 Rural Business and Cooperative Programs should compile and publish information relating to the demographics of beneficiaries of its programs.

GR-21 Rural Business and Cooperative Programs should develop a comprehensive plan to reach out to minority and women-owned rural businesses (“MWBE”), including start-ups, to assist them in growing and developing their businesses. This effort should include compiling and reporting on the numbers and percentages of program dollars with MWBEs.

3. NRCS

a. Four Programs National Data FY 2010

NRCS provided FY 2010 national data for numbers of customers, and dollars, for four NRCS programs:

- Agricultural Management Assistance (“AMA”)
- Conservation Stewardship Program (“CSP”)
- Environmental Quality Incentives Program (“EQIP,” including breakouts for Limited Resource and Beginning Farmers)
- Wildlife Habitat Incentives Program (“WHIP”)

These four programs account for about 70% of NRCS’s Mandatory Budget Authority (Farm Bill Programs) dollars in FY 2010 (including the Conservation Security Program budget with the CSP). The Assessment Team created nationwide aggregate data for these programs from the information provided by NRCS, and compared the data with the respective Principal Operator populations for each SDG. Subject to the **caveats** above regarding reliability of the data, the results are shown in Exhibit 35, “NRCS Programs Nationwide—Customer Demographics by Number of Customers and Dollars for FY 2010.”

As can be seen from the chart (yellow highlighting), SDGs are under-represented with respect to their national Principal Operator populations in terms of *dollars* (with “factors” included, representing the amount of the under-representation; a “factor of 3” means the Principal Operator population is 3 times the dollar amount shown for that SDG) as follows:

- **Females:** All programs, by factors ranging from 3 to 15
- **Hispanics/Latinos:** AMA and CSP, by factors ranging from 5 to 19
- **Blacks/African Americans:** AMA, CSP, EQIP (slight under-representation), EQIP Beginning Farmers, and WHIP, by factors ranging from less than 2, up to 6
- **Asians:** CSP and WHIP, by factors ranging from 2 to 10
- **Native Hawaiians/Pacific Islanders:** No under-representations

- **American Indians/Alaskan Natives:** Under-represented in number of participants in all programs, but not in dollars in any program

All three listed EQIP program dollar distributions on a nationwide basis show a reasonably good correlation, with minor exceptions, with the Principal Operator populations of all SDGs except Females, in which the participation is often a small fraction of the Principal Operator percentage. CSP, and to a lesser extent WHIP, show substantially lower participations by most SDGs, although in the aggregate for all race/ethnic SDGs, the WHIP participation exceeds the combined nationwide Principal Operator percentage.

b. CSP, EQIP, WHIP in the States and Counties FY 2010

NRCS also provided FY 2010 breakdowns of data for the CSP, EQIP, and WHIP programs for the States and counties covered by this Assessment. The Assessment Team prepared similar charts comparing the numbers and dollars for SDGs with their respective Principal Operators percentages, and the results are shown in Exhibit 36, “NRCS CSP Program—Customer and Principal Operator Demographics by Number of Customers and Dollars for FY 2010 Participating Counties;” Exhibit 37, “NRCS EQIP Program—Customer and Principal Operator Demographics by Number of Customers and Dollars for FY 2010 Participating Counties;” and Exhibit 38, “NRCS WHIP Program—Customer and Principal Operator Demographics by Number of Customers and Dollars for FY 2010 Participating Counties.”

The results vary somewhat by State, program, and SDG, but each group shows substantial under-representations (see yellow highlighting) by SDGs in comparison with their Principal Operator percentages in all three programs in most of the counties and States. But note that at the county level the numbers of participants are often so small (single digits) as to complicate the comparative analysis. In other words, it is impossible to replicate SDG Principal Operator percentages with six SDGs in a county with one or two contracts. In this sense, the nationwide aggregate figures are more helpful in determining the overall relative success of NRCS’s efforts at involving SDGs in its programs. (Note also that, in some counties, there may be no Principal Operators representing certain SDGs.)

NRCS also supplied State-wide numbers of customers and dollars data regarding four NRCS programs in Mississippi and South Carolina for FY 2010. The programs included are Agricultural Water Enhancement (“AWEP”), CSP, EQIP, and WHIP. The Assessment Team converted this data into percentages and compared the results with the respective percentages of Principal Operators for each SDG. See Exhibit 39, “NRCS Programs—State-by-State Customer Demographics by Number of Customers and Dollars FY 2010;” Exhibit 40, “NRCS AWEP Program—Mississippi Customer Demographics by Number of Customers and Dollars FY 2010;” Exhibit 41, “NRCS CSP Program—Mississippi and South Carolina Customer Demographics by Number of Customers and Dollars FY 2010;” Exhibit 42, “NRCS EQIP Program—Mississippi and South Carolina Demographics by Number of Customers and Dollars FY 2010;” Exhibit 43, “NRCS WHIP Program—Mississippi and South Carolina Customer Demographics by Number of Customers and Dollars FY 2010.”

As can be seen in the Exhibits, when compared with corresponding Principal Operator percentages for SDGs, each program shows under-representations with respect to (a) numbers of customers and (b) program dollars, as follows:

Aggregate All Four NRCS Programs, Mississippi

- **Female:** Numbers and dollars (for example, 9.43% dollar participation vs. 14.61% Principal Operators)
- **Hispanic/Latino:** Numbers and dollars (for example, 0.56% dollar participation vs. 1.07% Principal Operators)
- **Black/African American:** Numbers and dollars (for example, 10.00% dollar participation vs. 12.65% Principal Operators)
- **American Indian/Native Alaskan:** Numbers (0.06% of number of customers vs. 0.42% Principal Operators)

Aggregate All Four NRCS Programs, South Carolina

- **Female:** Numbers and dollars (for example, 7.50% dollar participation vs. 15.79% Principal Operators)

- **Hispanic/Latino:** Numbers and dollars (for example, 0.04% dollar participation vs. 0.74% Principal Operators)
- **Asians:** Numbers and dollars (for example, 0.00% dollar participation vs. 0.18% Principal Operators)
- **Native Hawaiian/Pacific Islander:** Numbers and dollars (for example, 0.00% dollar participation vs. 0.03% Principal Operators)
- **American Indian/Native Alaskan:** Numbers and dollars (for example, 0.29% dollar participation vs. 0.49% Principal Operators)

AWEP, Mississippi and South Carolina

- **Mississippi:** All SDGs, numbers and dollars (for example, Blacks/African Americans, 0.0% dollar participation vs. 12.65% Principal Operators)
- **South Carolina:** No data provided

CSP, Mississippi and South Carolina

- **Mississippi:** All SDGs, numbers and dollars (for example, Blacks/African Americans, 1.42% dollar participation vs. 12.65% Principal Operators)
- **South Carolina:** All SDGs, numbers and dollars (for example, Hispanics/Latinos, 0.0% dollar participation vs. 0.74% Principal Operators; Blacks/African Americans, 2.49% dollar participation vs. 8.15% Principal Operators)

EQIP, Mississippi and South Carolina

- **Mississippi:** Females, dollars; Hispanics/Latinos, numbers and dollars; American Indians/Alaskan Natives, numbers
- **South Carolina:** Females, numbers and dollars (for example, 8.51% dollar participation vs. 15.79% Principal Operators); Hispanics/Latinos, numbers and dollars (for example, 0.06% dollar

participation vs. 0.74% Principal Operators); Asians, numbers and dollars; Native Hawaiians/Pacific Islanders, numbers and dollars; American Indian/Alaskan Native, dollars

WHIP, Mississippi and South Carolina

- **Mississippi:** All SDGs, numbers and dollars (for example, females, 7.50% dollar participation vs. 14.61% Principal Operators); Blacks/African Americans, 0.76% dollar participation vs. 12.65% Principal Operators)
- **South Carolina:** All SDGs, numbers and dollars (for example, Blacks/African Americans, 1.15% dollar participation vs. 8.15% Principal Operators)

c. Florida 2010 Civil Rights Compliance Review Report

NRCS conducted a Civil Rights Compliance Review of the State Office and selected NRCS field offices and Resource Conservation and Development Offices in Florida during the period February 22-26, 2010, and issued its report on March 23, 2010. Included in that report were several charts, the first comparing EQIP cost-share dollars for FY 2009 with SDG Principal Operator populations, the second comparing EQIP and WHIP dollars for FY 2009 with SDG Principal Operator populations. The charts are reproduced below (yellow shading indicating under-representation with respect to Principal Operator population):

FY 2009 Cost-Share Dollars Awarded for EQIP in Florida

	Male	Female	Hispanic	White	African American	Asian American	American Indian
Number of Contracts	289	52	5	318	10	2	6
Funds Awarded	\$12,407,378	\$1,665,011	\$399,487	\$12,528,000	\$106,259	\$16,877	\$1,021,767
Percentage of Principal Operators in State	78.6%	21.6%	6.3%	89.3%	2.5%	1.2%	0.7%
Percentage of Dollars Awarded	88.2%	11.8%	2.8%	89.0%	0.8%	0.1%	7.3%

FY 2009 Cost-Share Dollars Awarded for All Programs* in Florida

	Male	Female	Hispanic	White	African American	Asian American	American Indian
Number of Contracts	366	77	8	413	12	3	7
Funds Awarded	\$13,321,848	\$1,758,823	\$427,888	\$13,490,676	\$114,057	\$18,198	\$1,029,853
Percentage of Principal Operators in State	78.6%	21.6%	6.3%	89.3%	2.5%	1.2%	0.7%
Percentage of Dollars Awarded	88.3%	11.7%	2.8%	89.5%	0.8%	0.1%	6.8%

“*This chart consists of EQIP and WHIP numbers only.

*Please note that the data for gender is sometimes unknown and not reported and/or captured in Protracts.”

This data, limited to the State of Florida and the EQIP and WHIP programs, shows substantial under-representations in FY 2009 of all SDGs except American Indians. The report recommended that “Continued outreach efforts should be geared toward those groups with low participation in any of our conservation programs.” NRCS February 2010 Florida Compliance Review Report, p. 25.

d. NRCS Program Demographic Discussion

With respect to the nationwide aggregate data for the four programs discussed above, all three EQIP program dollar distributions show a reasonably good correlation, with minor exceptions, with the Principal Operator populations of all SDGs except Females; Female participation is often a small fraction of the Principal Operator percentage. CSP, and to a lesser extent WHIP, show substantially lower participations by most SDGs, although in the aggregate for all race/ethnic SDGs, the WHIP participation exceeds the combined nationwide Principal Operator percentage.

Of the data provided for the four programs for Mississippi and South Carolina, the EQIP program—by far the largest in terms of budgeted dollars—is servicing SDG Principal Operators more consistently than the three other programs, with notable exceptions for Females in South Carolina. Each of the other programs shows under-representations of various magnitudes for all SDG Principal Operators in both States, in comparison with their respective Principal Operator percentages.

As part of the data validation effort, NRCS reviewed the Assessment Team's spreadsheets (noted above) and provided supplemental information in a document containing five charts (Exhibit 44, "FY2010 Financial Assistance to Historically Underserved Groups"). The charts list numbers of (a) applications, (b) contracts, (c) contract approval rate, (d) dollars obligated, and (e) percent of total program dollars (or, in the case of CSP, acres), for Beginning Farmers and Ranchers, Limited Resource Farmers and Ranchers, Socially Disadvantaged Farmers and Ranchers, and Tribes. (NRCS clarified that, for this data (pursuant to statutory guidance), the category "Socially Disadvantaged Farmers and Ranchers" includes only racial/ethnic minorities, and not the separate category of Females.) This is not raw data but aggregations of data prepared by NRCS. Highlights of those charts for "Socially Disadvantaged Farmers and Ranchers" include:

- **EQIP:** 7% of total EQIP dollars to SDGs (not including the separate category of Females); contract approval rate 46%, compared with 37% for "traditional customers"
- **WHIP:** 9% of total WHIP dollars to SDGs (not including the separate category of Females); contract approval rate 53%, compared with 41% for "traditional customers"
- **CSP:** 7% of total CSP acres to SDGs (not including the separate category of Females); contract approval rate 57%, compared with 53% for "traditional customers"
- **AWEP:** 4% of total AWEP dollars to SDGs (not including the separate category of Females); contract approval rate 37%, compared with 37% for "traditional customers"
- **AMA:** 6% of total AMA dollars to SDGs (not including the separate category of Females); contract approval rate 42%, compared with 26% for "traditional customers"

Since SDG racial/ethnic groups (excluding Females as a separate category) constitute 6.05% of the nationwide Principal Operators according to NASS's 2007 AgCensus, NRCS's figures provided in the most recently-provided tables show EQIP, WHIP, and CSP results for FY 2010 exceeding the aggregate SDG race/ethnic group Principal Operator

percentage, with AMA slightly behind, and AWEP two percentage points behind.

These figures vary somewhat from the original data provided by NRCS and included in Exhibit 35, “NRCS Programs Nationwide—Customer Demographics by Number of Customers and Dollars for FY 2010,” discussed above (for example, the EQIP dollar percentage for race/ethnic SDGs is 8.17% in the original data provided, and 7% in the updated table; the WHIP dollar percentage for race/ethnic SDGs is 13.4% in the original data provided, and 9% in the updated table; and the AMA dollar percentage for race/ethnic SDGs is 7.06% in the original data provided, and 6% in the updated table). While these figures need to be reconciled, it appears from both sets of data that—excluding Females as a separate category—the EQIP, WHIP, and CSP (acreage) program participations in FY 2010 by SDGs exceeds their Principal Operator nationwide percentage of 6.05%. The AWEP program was not quite as successful in this regard.

NRCS’s recently provided tables provide data on race/ethnic SDG participation in the aggregate, that is, not broken out by race/ethnicity. Thus, the Assessment Team cannot compare the relative participation of each group with its Principal Operator population, as was done with the original data. It is important that NRCS consider not only aggregate SDG race/ethnicity participation, but also that of each race/ethnic SDG. For example, the nationwide FY 2010 WHIP percentage participation of Blacks/African Americans, according to the original data NRCS provided, is 0.50%, compared with the Principal Operator percentage of 1.39%; this under-representation result is more than compensated for (and masked) *in aggregate SDG reporting* because of the American Indian/Alaskan Native percentage participation of 6.01%, in comparison with the Principal Operator percentage of 1.57%. Additionally, NRCS comparisons should include Females as a separate category (as with the original set of data provided by NRCS).

NRCS did not provide the Assessment Team with complete data for its easement programs. For example, the Assessment Team received incomplete data for the Wetlands Reserve Program (“WRP”), NRCS’s largest easement program constituting about 14% of NRCS’s Mandatory Budget Authority (Farm Bill Programs) for FY 2010 (NRCS’s third largest Farm Bill Program, behind EQIP and CSP). The data provided shows a State-by-State (for all U.S. States) breakdown of acres, number of contracts, and dollars obligated in FY 2010 in the WRP program.

Demographic data is less detailed, only showing the number of landowners who participated in WRP categorized by race, ethnicity, and gender. There is no data showing dollar participation by race, ethnicity or gender.

The data provided is difficult to analyze because, as NRCS informed the Assessment Team, multiple landowners can be covered by one WRP contract, and while totals are given by number of agreements and dollars, demographic data is provided in number of participating landowners. For example, according to NRCS's data, 1,414 WRP agreements were entered into nationwide, while 2,084 white landowners are listed as having participated. Additionally, 64 landowners are listed as of "unknown race," and 464 are listed as of "unknown ethnicity."

Based on the incomplete data provided, it appears that racial/ethnic minorities are under-represented in the WRP program, in terms of numbers of participants (as no dollar breakouts were provided). Nationwide, only five Black/African American landowners participated in WRP in FY 2010. Forty-six states had no Black/African American participants in the WRP program. Only 11 Hispanic/Latino customers, 16 American Indian/Native Alaskan customers, and three Asian customers participated in WRP nationwide. Twenty-eight states had no race/ethnic minority participation in the WRP program, and a maximum of 45 race/ethnic minority landowners participated in WRP in FY 2010 nationwide, or 2% of the number of white participants. (It is possible that there is double-counting involved in including Hispanics/Latinos with other races, as some of them may also have designated a race.) In short, while the provided data on easement programs in FY 2010 is limited and incomplete, what was provided suggests very low participation by race/ethnic SDGs.

1) Customer Base Recommendation

GR-22 In connection with the Marketing Penetration Analyses recommended in the Department-wide Recommendations, NRCS should (a) reconcile the inconsistencies in the program customer/applicant data provided for this Assessment; (b) develop a standard template that shows not only aggregate participation by race/ethnicity but each as a separate category, and include a separate category for Females; and (c) organize the

Easement program data, and validate it, for inclusion in the analysis.

4. RMA

Neither RMA nor its Approved Insurance Providers (“AIPs”) collect race/ethnicity or gender data on insureds, and thus, no such data was available for analysis. Recommendations regarding RMA and its AIPs are included in the RMA Section, above.

The chart on the following page summarizes the results shown above by Agency and lists the highest priorities for immediate attention (again, subject to the **caveat** above regarding unreliability of the data).

**Customer Representation Analysis:
Highest Agency Diversity Enhancement Priorities
Based on Socially Disadvantaged Customer Demographics¹²³**

FSA	PROGRAM	DIVERSITY ENHANCEMENT PRIORITY
	<ul style="list-style-type: none"> • Direct Loans 	<ul style="list-style-type: none"> • Females, Blacks/African Americans
	<ul style="list-style-type: none"> • Guaranteed Loans 	<ul style="list-style-type: none"> • Females, Hispanics/Latinos, Blacks/African Americans, American Indians/Alaskan Natives
	<ul style="list-style-type: none"> • Farm Programs 	<ul style="list-style-type: none"> • All SDGs except Native Hawaiians/Pacific Islanders
RD		
	<ul style="list-style-type: none"> • SFH Direct Loans 	<ul style="list-style-type: none"> • None
	<ul style="list-style-type: none"> • SFH Guaranteed Loans 	<ul style="list-style-type: none"> • Females, American Indians/Alaskan Natives
	<ul style="list-style-type: none"> • MFH “Beneficiaries” 	<ul style="list-style-type: none"> • None
	<ul style="list-style-type: none"> • RUS, RB 	<ul style="list-style-type: none"> • N/A
NRCS		
	<ul style="list-style-type: none"> • EQIP 	<ul style="list-style-type: none"> • Females
	<ul style="list-style-type: none"> • WRP 	<ul style="list-style-type: none"> • All SDGs except Females
	<ul style="list-style-type: none"> • All Programs 	<ul style="list-style-type: none"> • State-by-State Variations
RMA		
	No Data	

¹²³ Subject to the Final Report *caveat* regarding unreliability of the data. References to States apply only to the 15 USDA-selected States for this Assessment.

C. CONTRACT TASK: “Identify statutory and regulatory policies that may lead to discrimination and bar individuals from participating.”

1. Statutes, Regulations and Handbooks Reviewed

As part of the Independent Assessment process, the Team conducted a review of a large volume of statutes, regulations, and handbooks pertinent to implementation of the many programs administered by the Department, with a view to identifying any provisions that might lead to discrimination and bar or deter individuals from participating in USDA programs. The following list includes but is not limited to all of the sources reviewed (many others are cited in other Sections of this Report):

a. Statutes

- 1) Food Conservation and Energy Act, Pub. L. No. 110-234 (2008) (“2008 Farm Bill”).
- 2) Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171 (as amended May 13, 2002) (“2002 Farm Bill”).
- 3) Consolidated Farm and Rural Development Act, as amended through Pub. L. No. 109-171 (2006).
- 4) Commodity Credit Corporation Charter Act, 15 U.S.C. 714 (as amended by Pub. L. No. 110-246 (2008)).
- 5) The Food Security Act of 1985, Pub. L. No. 99-198 (the “1985 Farm Bill”), (as amended by Pub. L. No. 104-127, the Federal Agriculture Improvement and Reform Act of 1996 (1996) (the “1996 Farm Bill”).
- 6) Agricultural Adjustment Act of 1938, Pub. L. No. 75-430, Title V (The Federal Crop Insurance Act) (Feb. 16, 1938) as amended by The Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, §12033 (2008).
- 7) The Federal Crop Insurance Act, 7 U.S.C. §§ 1501-31 (2008).

- 8) Grain Standards and Warehouse Improvement Act, 7 U.S.C. 241-256 (2000).
- 9) Agricultural Credit Act of 1987, Pub. L. No. 100-233 (as amended by Pub. L. No. 109-17 (2005)).
- 10) Section 32 and Related Laws, (as amended by Pub. L. No. 107-195 (2002)).
- 11) Department of Defense Appropriations Act of 2006, Pub. L. No. 109-148, Div. B, Title I, Ch. 1 §§ 101-106; Title II, Ch. 1; Title V § 5004 (2005).
- 12) Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, Pub. L. No. 109-234, Title II §§ 2102-03, 2105; Title III §§ 3001-15, 3031 (2006).
- 13) Confirmation of Authority of Secretary of Agriculture to Collect State Commodity Assessments, Pub. L. No. 108-470 (2004).
- 14) American Jobs Creation Act of 2004, Pub. L. No. 108-357; Title III § 11-17, 19; and Title VI (2004).
- 15) Military Construction Appropriations and Emergency Hurricane Supplemental Appropriations Act; Division B-Emergency Supplemental Appropriations for Hurricane Disasters Assistance Act, 2005, Pub. L. No. 108-324, Div. B, Ch. 1 (2004).
- 16) Grain Standards and Warehouse Improvement Act of 2000, Pub. L. No. 106-472, §§ 101-306 (2000).
- 17) Pub. L. No. 104-127, the Federal Agriculture Improvement and Reform Act of 1996 (1996).

b. Regulations

- 1) Federal Crop Insurance Corporation, 7 C.F.R. Parts 400-499 (2010).
- 2) Natural Resources Conservation Service, 7 C.F.R. Parts 600-699 (2010).
- 3) Farm Service Agency, 7 C.F.R. Parts 700-799 (2010).

- 4) Commodity Credit Corporation, 7 C.F.R. Parts 1400-1499 (2010).
- 5) Rural Utilities Service, 7 C.F.R. Parts 1700-1799 (2010).
- 6) Rural Housing Service, 7 C.F.R. Parts 1800-1822 (2010).
- 7) Rural Business-Cooperative Service, 7 C.F.R. Parts 1900-1930 (2009).
- 8) Rural Utilities Service, and Farm Service Agency, 7 C.F.R. Parts 1940-2045 (2009).
- 9) Rural Housing Service, 7 C.F.R. Parts 3550-3575 (2010).
- 10) Rural-Business Cooperative Service and Rural Utilities Service, 7 C.F.R. Parts 4274-4290 (2010).

c. Handbooks

- 1) FSA Handbook 1-CM (Rev. 3), Common Management and Operating Provisions (U.S.D.A. 2010).
- 2) FSA Handbook 2-CM (Rev. 6), Farm Reconstitutions (U.S.D.A. 2010).
- 3) FSA Handbook 8-CM (Rev. 1), Common Land Unit (U.S.D.A. 2004).
- 4) FSA Handbook 9-CM, Common Payment System (U.S.D.A. 2010).
- 5) FSA Handbook 2-CP (Rev. 15), Acreage Compliance Determinations (U.S.D.A. 2011).
- 6) FSA Handbook 4-CP (Rev. 6), FAV Payment Reductions (U.S.D.A. 2010).
- 7) FSA Handbook 6-CP (Rev. 3), Highly Erodible Land Conservation and Wetland Conservation District (U.S.D.A. 2007).
- 8) FSA Handbook 7-CP (Rev. 2), Finality Rule Equitable Relief (U.S.D.A. 2011).

- 9) FSA Handbook 1-PL (Rev. 1), Payment Limitations. (U.S.D.A. 2010)
- 10) FSA Handbook 4-PL, Payment Eligibility, Payment Limitation, and Average Adjusted Gross Income (U.S.D.A. 2011).
- 11) FSA Handbook 4-RM, FCIC Program Integrity (U.S.D.A. 2010).
- 12) FSA Handbook 1-CRP (Rev. 1), Conservation Reserve Program (U.S.D.A. 2007).
- 13) FSA Handbook 2-CRP (Rev. 5), Agricultural Resource Conservation Program (U.S.D.A. 2011).
- 14) FSA Handbook 3-CRP, Conservation Reserve Program Offer and Contract Processing (U.S.D.A. 2010).
- 15) FSA Handbook 1-ECP (Rev. 4), Emergency Conservation Program (U.S.D.A. 2010).
- 16) FSA Handbook 1-EFRP, Emergency Forest Restoration Program (U.S.D.A. 2010).
- 17) FSA Handbook 1-EQ (Rev. 1), Environmental Quality Programs (U.S.D.A. 2009).
- 18) FSA Handbook 2-EQ, Environmental Risk Management (U.S.D.A. 2009).
- 19) FSA Handbook 1-SIP (Rev. 2), Stewardship Incentive Program (U.S.D.A. 2000).
- 20) FSA Handbook 1-DCP (Rev. 3), Direct and Counter-Cyclical Program and Average Crop Revenue Election for 2009 and Subsequent Crop Years (U.S.D.A. 2010).
- 21) FSA Handbook 2-DCP (Rev. 1), Direct and Counter-Cyclical Automation (U.S.D.A. 2011).
- 22) FSA Handbook 1-CAP, Crop Disaster Program (U.S.D.A. 2011).
- 23) FSA Handbook 4-DAP (Rev. 2), Livestock Program (U.S.D.A. 2008).

- 24) FSA Handbook 5-DAP (Rev. 1), Crop Disaster Program (U.S.D.A. 2008).
- 25) FSA Handbook 1-LDAP, Livestock Disaster Assistance Programs (U.S.D.A. 2011).
- 26) FSA Handbook 1-NAP (Rev. 1), Noninsured Crop Disaster Assistance Program for 2011 and Subsequent Years (U.S.D.A. 2010).
- 27) FSA Handbook 1-SURE, Supplemental Revenue Assistance Payments Program (U.S.D.A. 2011).
- 28) FSA Handbook 1-TAP (Rev. 3), Tree Assistance Program for 2008 through 2011 Crop Years (U.S.D.A. 2010).
- 29) FSA Handbook 1-FLP (Rev. 1), General Program Administration (U.S.D.A. 2011).
- 30) FSA Handbook 2-FLP (Rev. 1), Guaranteed Loan Making and Servicing (U.S.D.A. 2011).
- 31) FSA Handbook 3-FLP (Rev. 2), Direct Loanmaking (U.S.D.A. 2010).
- 32) FSA Handbook 4-FLP, Regular Direct Loan Servicing (U.S.D.A. 2011).
- 33) FSA Handbook 5-FLP, Direct Loan Servicing-Special and Inventory Program Mgmt (U.S.D.A. 2011).
- 34) FSA Handbook 6-FLP, Special Programs (U.S.D.A. 2011).
- 35) FSA Handbook 1-CMA (Rev.1), CMA, DMA, and LSA Common Loan and LDP Procedures (U.S.D.A. 2010).
- 36) FSA Handbook 7-CN (Rev. 15), Cotton Loan and Deficiency Payments (U.S.D.A. 2010).
- 37) FSA Handbook 22-CN (Rev. 2), CCC Cotton Authorized Loan Servicing Agent Program (U.S.D.A. 2008).
- 38) FSA Handbook 1- FSFL, Farm Storage Loan Facility Program (U.S.D.A. 2010).

- 39) FSA Handbook 3-LD (Rev. 7), Dairy Indemnity Payment Program (U.S.D.A. 2010)
- 40) FSA Handbook 10-LD, Lamb Meat Adjustment Assistance Program (U.S.D.A. 2002).
- 41) FSA Handbook 11-LD (Rev. 2), Milk Income Loss Contract Program (U.S.D.A. 2002).
- 42) FSA Handbook 2-LP, Grains, Commodity Data Specific to Wheat, Feed and Oilseed Grains and Oilseeds (U.S.D.A. 2011).
- 43) FSA Handbook 2-LP, Honey (Rev. 11), Loans and Loan Deficiency Payments for Honey (U.S.D.A. 2011).
- 44) FSA Handbook 2-LP, Peanuts Rev. 8, Farm-Stored Peanut Loans and Purchases (U.S.D.A. 2010).
- 45) FSA Handbook 2-LP, Rice Rev. 9, Loans and Loan Deficiency Payments for Rice (U.S.D.A. 2010).
- 46) FSA Handbook 1-SP, Special Programs (U.S.D.A. 2010).
- 47) FSA Handbook 10-SU (Rev. 4), Sugar Loans (U.S.D.A. 2011).
- 48) FSA Handbook 12-SU, Sugar Storage Facility Loan Program (U.S.D.A. 2006).
- 49) FSA Handbook 16-TB, Tobacco Transition Payment Program (U.S.D.A. 2009).
- 50) FSA Handbook 17-TB, Tobacco Transition Payment Program (U.S.D.A. 2009).
- 51) RD Handbook HB-1-3550, DLOS Field Office Handbook (U.S.D.A. 2003).
- 52) RD Handbook HB-2-3550, DLOS Centralized Service Center (U.S.D.A. 2005).
- 53) RD Handbook HB-1-3560, MFH Loan Origination (U.S.D.A. 2005).

- 54) RD Handbook HB-2-3560, MFH Asset Management (U.S.D.A. 2005).
- 55) RD Handbook HB-3-3560, MFH Project Servicing (U.S.D.A. 2005).
- 56) RD Handbook HB-1-3565, Guaranteed Rural Rental Housing Program Origination and Servicing (U.S.D.A. 2005).
- 57) NRCS Handbook National Soil Survey Handbook (U.S.D.A. 2010).
- 58) NRCS Handbook Commodity Costs and Returns Estimation Handbook (U.S.D.A. 1998).
- 59) NRCS Handbook (Rev. 1) National Range and Pasture Handbook (U.S.D.A. 2003).
- 60) NRCS Handbook National Watershed Program Handbook (U.S.D.A. 2010).
- 61) NRCS Handbook Agriculture Waste Management Building Design Handbook (U.S.D.A. 1997).
- 62) NRCS Handbook (Ver. 2) State Food and Agriculture Council Handbook (U.S.D.A. 2009).
- 63) NRCS Handbook National Environmental Compliance Handbook (U.S.D.A. 2010).

2. There are no statutes, regulations, or handbook provisions that the Team reviewed that are discriminatory on their face or create direct barriers that bar customers or potential customers from participating in any applicable programs.

Our review of the Statutes, Regulations, and Handbooks disclosed no provisions that, on their face, discriminate against SDGs, or create direct barriers to participation in applicable programs. Indeed, the Statutes, Regulations, and Handbooks contain numerous provisions which are favorable to, and enhance participation by, SDGs. The 2008 Farm Bill, for example:

- a. Mandates that 5% of the \$7.35 billion allocated to the Commodity Credit Corporation (“CCC”) for the Environmental Quality Incentives Program for fiscal years 2008 through 2012 be used, to the maximum extent practicable, to assist socially disadvantaged farmers and ranchers. 16 U.S.C. §3841(g)(1)(B) (2009).
- b. Mandates that 5% of the acres made available for fiscal years 2008 through 2012 for the Conservation Stewardship Program be used, to the maximum extent practicable, to assist socially disadvantaged farmers and ranchers. (*Id.*).
- c. Authorizes \$25 million in funding for fiscal years 2009 through 2012 to facilitate the transfer of land subject to contracts from retired or retiring owners and operators to beginning farmers or ranchers and socially disadvantaged farmers and ranchers. *Id.* at §3841 (a)(1)(B) (2009).
- d. Requires CCC to reserve 10% of the \$15 million in mandatory funding and \$40 million in discretionary funding for Value Added Agricultural Grants for projects benefitting beginning or socially disadvantaged farmers and ranchers. Food Conservation and Energy Act, Pub. L. No. 110-234 (2008).
- e. Modifies Rural Cooperative Development Grants rules to reserve 20% of the \$50 million appropriated for each of the fiscal years 2008 through 2012 for organizations that serve the socially disadvantaged. 7 U.S.C. §1932 (e)(11)(B)(i)(I) (2009).
- f. Gives priority to qualified beginning farmers and SDGs for receipt of loans and loan guarantees for qualified conservation plans/projects. *See Id.* at §1924 (d)(1) (2009).
- g. Provides, for the first time, a preference for SDG farmers and ranchers to purchase FSA inventory land. *See Id.* at §1985(c) (2009).
- h. Extends the first right of refusal to reacquire homestead property to immediate family members of SDGs. *See Id.* at §2000(c)(4)(B) (2009).
- i. Provides \$5 million annually for the “purpose of educating agricultural producers about the full range of risk

management activities, including futures, options, agricultural trade options, crop insurance, cash forward contracting, debt reduction, production diversification, farm resources risk reduction, and other risk management strategies.” *Id.* at § 1524 (a)(3) (2009). The Secretary is required to “place special emphasis on risk management strategies, education, and outreach specifically targeted at . . . socially disadvantaged farmers or ranchers. . . .” *Id.* at (a)(4)(C) (2009).

- j. Reserves to SDGs 5% of the funds allocated to “carry out the environmental quality incentives program and the acres made available . . . to carry out the conservation stewardship programs.” 16 U.S.C. §3841(g) (2009).
- k. Allows the Secretary to waive the purchase of crop insurance for SDGs to receive Supplemental Revenue Assistance (“SURE”) payments at an equitable level, and waives the fee to receive disaster assistance payments for uninsurable commodities. *See* 7 U.S.C. §1531 (2009).

3. While not discriminatory on their face, the application of statutes, regulations, and handbook provisions which permit the exercise of discretion or inject subjectivity into the decision-making process could result in discrimination and create barriers to participation.

There are provisions in the statutes, regulations, and handbooks that *could* result in discrimination or serve as a barrier to participation because they permit important decisions to be made “in the discretion of” or on a “case-by-case” basis, or provide a list of factors to be considered in making a decision, but the list includes, “but is not limited to” the enumerated factors. Some provisions are more problematic than others because they do not provide criteria for officials to consider in making their determinations. The more subjectivity that is allowed into the decision-making process, the more the decision may be used in a discriminatory fashion. (*See also* the discussions in the FSA, RD, NRCS, and RMA sections of this Assessment Report, Sections V, VI, VII, and VIII, respectively).

a. Exercise of Discretion

Decisions made “in the discretion of” USDA officials or staff requires decision-makers to base their determinations, at least in part, on undefined subjective factors.

For example, numerous statutes, regulations and handbook provisions authorize/direct decision-makers to exercise “discretion” in making an eligibility determination, in waiving requirements, and the like with no guidance as to what should be considered in making the decision. For example, the 2002 Farm Bill provides: “SECRETARIAL DISCRETION.—Notwithstanding the preceding paragraphs, the Secretary may declare a person to be eligible. . . .” Pub. L. No. 107-171 § 1309 (F)(5) (2002).

A Code of Federal Regulations provision relating to Rural Utilities Service provides: “The Administrator has the sole discretion to determine whether such data submitted by the borrower is sufficient to determine whether the borrower qualifies under the consumer income test.” 7 C.F.R. §718.108(d) (2010). *See also, Id.* at § 1714.7 (b)(2)(ii) (“The Deputy Administrator has the discretionary authority to allow row allowances other than those specified in this section. . . .”); *Id.* §1794.24 (a) (Rural Utilities Service “has the discretion to modify or waive the requirements listed in §1794.52 for a proposed action in this category.”); FSA Handbook 2-CRP (Rev. 5), Agricultural Resource Conservation Program ¶554 (U.S.D.A. 2011) (“Land that is subject to an existing CRP-1 may be accepted into WRP, GRP, HFRP, or EWP Floodplain Easement at the discretion of NRCS. . . .”); RD Handbook HB-2-3550, DLOS Centralized Service Center ¶3.13A (U.S.D.A. 2005) (“In general, the plan will include three installment payments for work completed. However, at its discretion, [the Centralized Servicing Center (“CSC”)] may advance a portion of the funds for materials and supplies.”); FSA Handbook 6 FLP, Special Programs ¶8-20 (U.S.D.A. 2003) (“At the Agency’s discretion, a missed or partially missed amortized contract installment, delinquent real estate taxes . . . may be structured . . .”).

Other statutes, regulations and handbook provisions authorize decision-makers to exercise discretion, but they also provide guidelines, of varying specificity, on which to base the decision. For example, the Consolidated Farm and Rural Development Act (2006) gives the Secretary the discretion to “permit the private capital of a rural investment company” to be under the \$10 million dollar statutory minimum “based on a

showing of special circumstances and good cause.” Consolidated Farm and Rural Development Act, as amended through Pub. L. No. 109-171 §3841 (c)(2) (2006). A Code of Federal Regulation provision relating to RUS explicitly provides the factors to be considered when deciding if a borrower, who prepaid an electric loan at a discount, may apply for or receive an insured loan in less than 120 months from that time. That provisions states:

“No borrower that prepays an electric loan at a discount as provided under this subpart may apply for or receive direct or insured loans during the 120 months from the most recent closing date, except at the discretion of the Administrator. During the 120 month period the Administrator may consider providing an insured loan if, among other matters, it is necessary to assure repayment of, or protect the Government’s security for any outstanding loans or loan guarantees, or the borrower’s system has suffered severe physical plant related damage due to conditions beyond its control and the borrower is unable to obtain financing at reasonable terms to restore the system from non-RUS sources, including the Federal Emergency Management Agency, and from private sources.”

7 C.F.R. § 1786.167 (a) (2010). *See also*, FSA Handbook (Rev. 3) 1-DCP, Direct and Counter-Cyclical Program and Average Crop Revenue Election for 2009 and Subsequent Crop Years ¶335B (U.S.D.A. 2010) (County Committees “are given the discretion and authority to determine when an inaccurate representation or certification rises to the level of misrepresentation, scheme or device. A producer is ineligible to receive DCP payments... and shall have the producer’s interest in all contracts terminated if it is determined that such producer has done any of the following: adopted any scheme or device that tends to defeat the purpose of DCP...[;] made any fraudulent representation under DCP...[;] misrepresented any fact affecting a DCP program or person determination[;] violated or been determined ineligible under 7 CFR § 1400.5.”).

On the one hand, government cannot function effectively in many situations if decision-makers do not have some ability to exercise discretion. No matter how many statutes, regulations, handbooks, policies and procedures are written, they cannot possibly anticipate all circumstances and provide the parameters by which all decisions are to be made. The exercise of discretion gives the decision-maker the ability to consider relevant factors in making a determination. Typically, this can and should benefit customers because determinations can be made in their favor by considering factors that are unique to the customers' situations.

A potential issue arises, however, when the decision-maker intentionally or unintentionally allows an applicants' race, ethnicity, gender, or other protected characteristic to creep into the decision-making process. This can occur, for example, when a white male USDA employee discounts the significance of a relevant factor when he is making a decision for a white male customer, but considers that same factor, adds additional factors, and/or holds a minority customer to a higher standard than the white male customer. Even if this is done unintentionally, the effect is the same, that is, one group is treated more favorably than another. In discussions with minority customers during the Focus Group and CBO interviews, a theme emerged; many minority customers believed discretion was consistently exercised in favor of the white customers and to the detriment of similarly-situated minority customers. Whether or not the minority customers' beliefs accurately reflect what is actually happening, their perception is the reality for them and it perpetuates a mistrust of USDA. Conversely, when decision-makers have explicit guidelines to follow in exercising discretion, their decisions appear (and usually should be) more objective and USDA can specifically point to factors in the guidelines used in making the determination.

b. Case-By-Case Determinations

Other provisions in the regulations and handbooks allow decisions to be made on a "case-by-case" basis, while providing little or no direction as to factors to be considered. For example a Code of Federal Regulations provision states:

"NRCS may adjust payment rates, as needed, on a case-by-case basis, in response to unusual conditions or unforeseen circumstances in

delivering technical services such as highly complex technical situations, emergency conditions, serious threats to human health or the environment, or major resource limitations.”

7 C.F.R. § 652.5 (a)(2)(v) (2010). The above-cited section explains in detail when decisions can be made on a case-by-case basis, but does not give any guidance as to what factors to consider when making the decisions. *See also*, FSA Handbook 1 FLP (Rev. 1), General Program Administration ¶101(B)(3)(ii) (U.S.D.A. 2011) (“The need for a supervised bank account in this situation will be determined on a case-by-case basis.”); FSA Handbook 2 CRP (Rev. 5), Agriculture Resources Conservation Program ¶131 (U.S.D.A. 2011) (State Technical Committee shall “determine whether meritorious relief is applicable on a case-by-case basis. . . . The Administrator may allow a waiver to the \$1 million AGI limitation on a case-by-case basis for land that is determined to be environmentally sensitive land of special significance.”); FSA Handbook 1-LDAP ¶ 171 (U.S.D.A. 2010) (Equitable relief may be granted by [the State Committee] on a case-by-case basis to an eligible ... producer. . . .).

In contrast to the case-by-case regulations and handbook provisions cited above, other provisions allow for decisions to be made on a case-by-case basis, but specifically identify the criteria that must be considered. For example, a Code of Federal Regulations provision pertaining to the RUS explicitly sets out the factors to be considered in making the case-by-case determination:

“[A] sensitivity analysis may be required by RUS on a case-by-case basis taking into account such factors as the number and type of large power loads, projections of future borrowings and the associated interest, projected loads, projected revenues, and the probable future competitiveness of the borrower.”

7 C.F.R. § 1710.300(d)(5) (2010).

A specific case-by-case analysis is mandated in the FSA Special Programs Handbook and it requires the basis for the decision to be documented. The Handbook provides that the Deputy Administrator for Farm Loan Programs (“DAFLP”):

has the authority to make exceptions to the rules for the Emergency Loan for Seed Producers Program. Exceptions will only be made on a case-by-case basis where the proposed exception is in the best interest of FSA and the loan applicant.

[The State Executive Director] shall evaluate all requests for exceptions and forward to DAFLP with their analysis of the benefits or problems, and a recommendation for approval. **No exception will be granted without an analysis and documentation of why the exception is in the Government's best interest.**

FSA Handbook 6-FLP, Special Programs 6-23 (U.S.D.A. 2002) (emphasis added). *See also*, 7 C.F.R. §1735.13 (b)(2) (2010) (“Loans may be approved to finance such facilities if the Administrator determines, on a case-by case basis, that (i) the primary purpose of the loan is to provide service to rural areas and (ii) the financing of facilities for nonrural subscribers is necessary and incidental to furnishing or improving telephone service in rural areas.”); 7 C.F.R. § 1940.313 (2009) (“The environmental assessment process will be used, as defined in this subpart, to identify on a case-by-case basis those actions for which the preparation of an EIS is necessary.”); 7 C.F.R. § 3560.66 (a)(3) (2010) (“All rental units must be operated and managed in compliance with the requirements of the Agency and the other sources. To the extent these requirements overlap, the most stringent requirement must be met. The Agency may negotiate the resolution of overlapping requirements on a case-by-case basis; however, at a minimum, Agency requirements must be met.”); FSA Handbook 1-TAP (Rev. 3), Tree Assistance Program for 2008 through 2011 Crop Years ¶32 B (U.S.D.A. 2010) (“Equitable relief may be granted on a case-by-case basis, to an eligible producer who failed to meet 2008 RMPR when the determination has been made that the producer made a good faith effort to comply, and when 1 of the following situations occurred”); *see*, FSA Handbook 1-FSFL (Rev. 1), Farm Storage Loan Facility Program ¶28(C) (U.S.D.A. 2010)(County Committee “**must** document on a case-by-case basis, approval for using the longer FSFL term in both the FSFL folder and COC minutes.” (Emphasis in original)).

As with discretionary decisions, case-by-case decisions which are permitted, without explaining what to consider in making the decisions,

allow for a wide range of subjectivity. The decision-maker in these situations, by design or negligence, is also able to make case-by-case decisions tending to favor one group over others.

c. Decisions Including, “but not limited to,” Enumerated Criteria

Some provisions appear to be objective, because the decisions are based on a number of identified factors, but are, in fact, subjective, because those factors “include, but are not limited to,” the information which may be considered by the decision-makers. The “not limited to” language allows for the consideration of unidentified factors. *See, e.g.*, 7 C.F.R. § 1709.19 (2010) (“The grant programs under this part are subject to the provisions of other departmental regulations, including but not limited to the following departmental Regulations. . . .”); *Id.* at §1944.516 (“Uses of grant funds may include, but are not limited to. . . .”); *Id.* at §3570.62 (a)(1) (“Essential community facilities’ are those public improvements requisite to the beneficial and orderly development of a community operated on a nonprofit basis including, but not limited to:”); 1 EFRP, Emergency Forest Restoration Program ¶ 173 (“Prioritization factors that may be taken into account in setting priorities and approval amounts include, but are **not** limited to, the following. . . .”); 2-CP, Acreage Compliance Determinations ¶24C (Rev. 15) (“. . . for value loss crops, including, but not limited to. . . .”); 4 PL, Payment Eligibility, Payment Limitation, and Average Adjusted Gross Income ¶147E (“Reasonable records may include, but are not limited to, the following. . . .”).

Typically, lists of considerations seem intended to be exhaustive, but, in the exercise of caution, the “including, but not limited to” language is added to allow for the consideration of other factors that were either omitted from the particular list or are unique to the particular matter. Fewer problems arise when the decision-makers limit their consideration to the factors actually listed and apply them objectively, thus providing consistency to the process. Potential problems are compounded when additional factors are considered, particularly when they are *ad hoc*, subjective, and vary from customer to customer. As an example, disparate treatment is likely to occur when a decision-maker always considers only the listed factors when making a decision concerning someone of his/her own race/ethnicity, but adds additional factors that have the effect of disqualifying minority applicants.

4. Regulations excluding individuals from participating in programs because of conviction of a controlled substance crime might have an adverse impact on minority farmers and ranchers.

Several regulations prevent individuals who are convicted of controlled substance crimes from receiving, for specified periods of time, certain benefits, for example: payments or benefits under the Direct and Counter Cyclical Program; payments or benefits for losses covered under disaster programs; price support or payments made under the Commodity Credit Corporation Charter Act; and loans made or guaranteed under the Consolidated Farm and Rural Development Act and any of FSA's Farm Loan Programs. 7 C.F.R. § 718.6 (2010). See also *Id.* at §400.47(a) (providing that any person convicted under state or federal law of "planting, cultivating, growing, producing, harvesting or storing a controlled substance in any crop year will be ineligible for crop insurance during that crop year and the four succeeding crop years.").

These types of statutes may have an adverse impact on certain minorities. For example, between years 2000 and 2007 African-Americans were 4.3 times more likely than whites to be arrested for drug charges. Although African-Americans made up only approximately 13% of the population, they represented 43.7% of those incarcerated in state and federal prison systems in 2009.¹²⁴ Human Rights Watch, Decades of Disparity, Drug Arrests and Race in the United States at 7, Table 2 (Feb. 2009); U.S. Sentencing Commission, 2009 Sourcebook of Federal Sentencing Statistics, at Tables 33-36 and Table 38; U.S. Dept. of Justice, Bureau of Justice Statistics Bulletin, at 29, Table 16(b) (Dec. 2009). Thus, African-Americans are significantly more likely than whites to be convicted of drug offenses and, under the provisions cited above, are thereby barred from participating in USDA programs at a disproportionate rate.

Whether or not to ban individuals, who are convicted of controlled substance offenses, either related to or not related to a farming/ranching operation, is a policy matter that must be decided by USDA and/or Congress. It is simply our observation that minorities may be adversely and disparately impacted by such regulations. USDA may want to

¹²⁴ The arrest and incarceration rates should not be attributed to higher rates of drug offenses by African-Americans. Recent studies show that whites and African-Americans commit drug offenses at roughly comparable rates. Human Rights Watch, *supra*, at 1 (citation omitted).

consider limiting the ban to convictions that are directly related to the farm or ranch for which benefits are sought.

5. Statutory/Regulatory/Handbook Recommendations

The following recommendations lessen the subjectivity in the decision-making process, will create greater transparency, and establish a methodology to ensure that decisions are made consistently without regard to sex, race or ethnicity.

GR-23 Establish express criteria: To the extent practicable, those statutes, regulations and handbook provisions which allow for the exercise of discretion, or call for decisions to be made on a case-by-case basis, should be revised to provide express, reviewable itemizations of those factors USDA deems important to decision-making.

GR-24 Document decisions: Whether or not additional criteria are established for discretionary or case-by-case decisions, the analysis and reasons for such discretionary decisions should always be documented. Consideration of factors outside of those listed, which are “included, but not limited to,” should also be listed, explained, and documented to provide the reason(s) for considering additional factors. This documentation provides USDA with clear, contemporaneous information that can be evaluated whenever a decision is reviewed or questioned.

GR-25 Conduct periodic disparate impact analyses: With documentation in place, case-by-case and discretionary decisions, and deviations from identified considerations, can be analyzed periodically to ensure that like situations are treated alike, regardless of the customers’ race/ethnicity or gender.

D. CONTRACT TASK: “Examine program delivery information technology tools to ensure equity and access. Systems to be reviewed are: Protracts AERT, SCIMS, GLS, DLOS, and Farm Business Plans.”

USDA and its Agencies employ a variety of software to record, manipulate, retrieve, and analyze data, and assist in managing workforce

and programs. Descriptions of systems the Assessment Team reviewed in this Assessment are as follows:

1. **ProTracts** (“Program Contracts System”) is a web-based application used by NRCS to manage its conservation program applications, cost share contracts, and program funds for the Agricultural Management Assistance (“AMA”) program, the Environmental Quality Incentives Program (“EQIP”), the Conservation Stewardship Program (CSP), and the Wildlife Habitat Incentives Program (“WHIP”). ProTracts is also used to manage and track funds paid from the Foundation Financial Information System to state controlled sub-accounts.
2. **AERT** (“Application Evaluation and Ranking Tool”) is used by NRCS. It is integrated with ProTracts and is intended to produce systems that provide a consistent framework for ranking customer applications for programs across NRCS, including the EQIP, WHIP, and AMA programs. States and all field offices are required to use the AERT ranking system, and no customer application can be approved without being ranked.
3. **DLOS** (“Dedicated Loan Origination and Servicing”) is used primarily by RD, but is also used by FSA. DLOS is designed to expedite the loan-making process, standardize data and information collected, service and track loans, and facilitate communications between the Field Offices and the Centralized Service Center. DLOS is a web-based loan origination program which retains applicant information, makes complex calculations, and maintains centralized records of all activities associated with a loan application—from pre-qualification through closing. DLOS also has a main-frame based application which is used to service and monitor loans.
4. **GLS** (“Guaranteed Loan System”) is used by FSA, RD, and NRCS. It allows lending institutions to input data for farm ownership and operating loans for which the lending institutions seek loan guarantees from USDA. GLS provides loan intake and tracking, monitors whether loans are within the lending authority, tracks borrower loan interest assistance, tracks available funding, monitors

lender reporting compliance, tracks loans in collections and bankruptcy, and creates lender, status and other reports.¹²⁵

5. **SCIMS** (“Service Center Information Management System”) is a searchable USDA database that maintains core customer data and is used by FSA, RD, NRCS, and RMA. SCIMS maintains information about individual, business, and trust customers including but not limited to: name, address, and telephone number; business or trust type; gender (declared or employee observed); race/ethnicity (declared or employee observed); language preference; status as limited resource farmer; voting district; and insurance policy information.
6. **FBP** (“Farm Business Plan”) system is used primarily by FSA to perform farm planning and analysis, loan origination and loan servicing, and manage the Farm Loan Programs loan portfolio. FBP is intended to allow FSA to work with customers to plan their business operations; provide higher quality and more timely service; analyze credit with a consistent process; use an accrual analysis to analyze credit decisions and prepare plans; conduct audits to monitor/improve documentation and compliance; and provide financial data to State Offices for management of their loan portfolios.

During the Field interviews conducted as part of this Assessment, USDA officials and employees were asked if any of the above-described programs “**have any adverse impact on equal access to your programs by socially disadvantaged customers and potential customers?**” Of the 1,467 officials and staff who answered this question, a relatively small number, 92 (6.3%), responded “yes.”

The percentage answering yes, and the reasons offered therefore, varied from Agency to Agency. The following summarizes the results by Agency.

¹²⁵ **GUS** (Guaranteed Underwriting System) is an automated underwriting system created to support Single Family Guaranteed Loan Program loans. It is intended to assist lenders and provides recommendations and a comprehensive underwriting findings report, although it is not intended to be a basis for granting or denying loans. Information generated by GUS is inputted into GLS.

1. FSA

FSA, at 9.6%, had the highest percentage of interviewees among the four Agencies responding that the Agency's IT programs had an adverse impact¹²⁶ on equal access to socially disadvantaged customers and potential customers. A variety of reasons were given:

- a. The predominant reasons given centered on the web-based applications. The interviewees stated that some and/or all of the web-based programs:
 - 1) Such as on-line applications, are too difficult, complex, cumbersome, frustrating, slow, useless, and a "total disaster;"
 - 2) Are too difficult for the elderly and less educated to use;
 - 3) Are inaccessible to farmers and ranchers with no internet access, which the interviewees believed would more likely apply to SDGs.
- b. A number of FSA employees said that their computers and software were old, outdated, and slow.
- c. Employees stated that, because of computer software "glitches" and the overall slowness of the IT programs, they are frequently required to ask applicants to return to the office to re-do their paperwork because the programs generated errors, or the database "crashed." Employees said that an embarrassing situation occurs when they are required to inform a farmer/producer that the payment information initially provided was incorrect.
- d. The IT programs are modified and employees responsible for using the programs do not receive timely notification of the changes.
- e. Employees said that customer service issues related to the matters described above have a disproportionate impact on SDG customers and potential customers because they are not paid for time spent at

¹²⁶ Adverse impact involves practices which appear to be neutral, but have a discriminatory effect on a particular group. Adverse impact occurs when a program, practice, or policy has a disproportionately negative impact on a particular group. Adverse impact can be, and frequently is, unintentional.

FSA's offices and they can ill afford to lose pay to make multiple trips to FSA offices. Employees also believed these customer service issues create the perception among SDGs that they are being singled out and "picked on" by FSA.

- f. SCIMS was identified by multiple individuals as unreliable with respect to Farm Programs because race/ethnicity information entered into the system is based on each employee's observation of the applicant/customer (as opposed to customer/applicant self-identification), which is unreliable.
- g. Some programs do not allow for producing mailing lists.
- h. The Farm Business Plan was specifically identified as an IT program that is too complicated. Also, one employee stated that farmers were previously able to input livestock calculation information in 10 percent (fractional) increments, but the process has changed and now whole numbers must be used. The employee believed that SDGs, who typically have lower numbers of livestock, were disadvantaged because with rounding down to arrive at a whole number, their total numbers of livestock reported were ultimately reduced.

2. NRCS

A total of 7.8% of the NRCS officials and staff who answered this question believed that the information technology tools identified above had an adverse impact on SDG's equal access to programs. The consistent comment was that FSA inputs information into SCIMS for NRCS, and because FSA cannot ask the race/ethnicity of customers or potential customers, the FSA employees must guess at race/ethnicity, which leads to inaccurate information being entered into SCIMS. NRCS cannot verify SCIMS data or correct inaccuracies.

3. RD

Of the RD officials and staff interviewed, a relatively low 3.9% stated that the IT tools identified above had an adverse impact on SDG's equal access to programs. The reasons given were:

- a. There are customers and potential customers, more likely to be SDGs, without computer or internet access who are unable to input data into on-line forms.
- b. It is difficult for the elderly and less educated to understand the information provided by the DLOS system.
- c. It is time-consuming to input data into on-line forms.
- d. It is difficult to access demographic information, which is important for monitoring and reporting on SDGs.
- e. DLOS has a large number of applicants and there are only a limited number of employees who input data, which increases the likelihood of delay and that data will be entered incorrectly into DLOS.
- f. Software glitches that occur may have an adverse impact on SDGs because if the information was calculated correctly, they might have been eligible for loans or larger loans.
- g. Underwriting is done manually and/or through GUS. Using the two methods can lead to inconsistent results.
- h. Lenders “tweak” the information they input to GUS until they get a loan approval. This can result in some SDGs getting loans that they should not, which can lead to default, bankruptcy, *etc.*

4. RMA

Of the RMA officials and staff who answered this question, 2.8% believed that the IT tools identified above had an adverse impact on SDG’s equal access to programs.

- a. Some applicants, more often SDGs, do not have the training or resources to complete online applications. With respect to resources, even when SDGs have computers, an employee believed that SDG customers generally do not have access to the same information as other customers who have better technology.

- b. Software program requirements are very complex and applicants have difficulty completing applications.

5. Focus Groups/CBOs

The Assessment Team did not receive any specific comments about the software/IT Systems used by USDA from the Focus Group participants or the CBO representatives interviewed. (This is not surprising, as customers are unlikely to be familiar with the names, functions, or shortcomings and problems of specific government software.)

6. IT Tools Recommendations

Although less than 10% of those USDA employees interviewed believe the IT programs create the risk of adversely impacting equity and access by SDAs to USDA programs, the information provided suggests several recommendations.

- a. In line with similar Recommendations in this Report, USDA should simplify and streamline the user-friendliness of applications and other web-based forms that customers and applicants are required to complete, and test the forms for “user-friendliness,” anticipating a wide spectrum of technological competence, computer access, and tools.
- b. USDA should identify and sponsor computer training opportunities for SDGs.
- c. USDA should provide and publicize access to computers and the internet at local offices for those who do not otherwise have access to a computer and the internet.
- d. In line with similar Recommendations in this Report, USDA should provide customers and applicants proactive, comprehensive, and customer-friendly in-person assistance with completing web-based forms.

- e. USDA should provide as promptly and efficiently as resources will allow, up-to-date computer hardware and software for USDA field employees.¹²⁷
- f. USDA should minimize computer and software usage problems by testing new IT programs in the field offices and provide documentation and training to all affected USDA employees before the new programs become operational.
- g. USDA should reinforce/re-train lenders and USDA employees that USDA's position is "GUS is intended to complement and not replace the judgment of experienced underwriters. A GUS recommendation is NOT the basis for granting or denying credit and is not a replacement for a lending decision by the lender. The decision to grant or deny credit to a potential borrower remains with the approved lender." Guaranteed Underwriting System training module at 9.

¹²⁷ This is an issue that USDA has been aware of for some time now and is attempting to address. The USDA Fiscal Year 2012 Budget Summary ("2012 Budget Summary") explains:

The Farm Service Agency relies on one of the oldest information technology systems (hardware and software) within the Department of Agriculture... FSA must upgrade the aging technology infrastructure and equipment which is creating inefficiencies and threatening the delivery of fundamental services to producers. At present, producers looking to sign up for programs are often confronted by lines, long delays, and inefficiencies. County office personnel are often required to use two computers on different operating systems to sign a producer up for a single program. These two computers, one relying on the outdated legacy system and one relying on a modern web-based system, are unable to communicate with each other, forcing the county office personnel to enter data into multiple systems or manually transfer data maintained in one system to the other. This causes sign-up delays and significantly increases the likelihood of data entry errors that can lead to improper payments. [USDA is attempting to alleviate these issues through the] implementation of MIDAS (Modernize and Innovate the Delivery of Agricultural Systems), which is an ongoing initiative to streamline the existing complicated business processes which support mandated farm programs and provide a modern IT infrastructure to operate the programs.

2012 Budget Summary, pp. 27-28. This issue is not limited to FSA. USDA has also requested funding for RD and NRCS to be used "to replace outdated components of the IT infrastructure, many of which have exceeded their expected life cycles, in order to reduce system vulnerabilities to failure and improve the performance and effectiveness of the shared infrastructure." *Id.* at 28.

h. Review all data-related programmatic changes before they are implemented to determine if they will have an adverse impact on SDGs (*i.e.*, the rounding issue discussed above at FSA ¶h).

E. CONTRACT TASK: “Assess program office staff demographics for areas served vs. area census data, including demographics of committees used by USDA to implement programs, such as FSA county and state committees, local working groups, and State Technical Committees.”

This Contract Task requires a comparison of USDA Agency “office staff” and specific committees with “area census data.” Per the Assessment Team’s request, USDA has provided employee position (without specific names) listings and demographics (race/ethnicity and gender) for each of the State Offices and pertinent local/regional offices (areas, counties, Field Service Centers), and the same demographics of FSA State and County Committees and advisors/alternates, for each of the 15 States and 90 counties, as well as similar information for NRCS State Technical Committees, and certain nationwide demographics. (NRCS was not able to provide data for local working groups.) The Assessment Team compared this employee utilization data with latest relevant Census data available for each respective service territory (“area Census data”), and the results are included on spreadsheets in the Exhibits.

The following sections correlate Agency-specific workforce and committee (including some political appointees) data to national, local/regional (where indicated), and local populations, respectively, in most cases the Civilian Labor Force (“CLF”)—except where the actual “labor pool” for the positions analyzed suggests another more pertinent comparator (such as Principal Operators for FSA County Committee members, who must be FSA producers).

1. FSA State Executive Directors

There are currently 48 FSA State Executive Directors (“SEDs”). The demographics of these appointees, in comparison with the USDA-wide workforce, and the CLF, are as follows:

- **Males:** 37 (77.1%) (USDA-wide 55.1%, CLF 53.1%)
- **Females:** 11 (22.9%) (USDA-wide 44.9%, CLF 46.8%)
- **Whites:** 44 (91.7%) (USDA-wide 78.8%, CLF 72.7%)
- **Hispanics/Latinos:** 3 (6.25%) (USDA-wide 5.3%, CLF 10.7%)
- **Blacks/African Americans:** 1 (2.1%) (USDA-wide 9.9%, CLF 10.5%)
- **No Asians, American Indians/Alaskan Natives, or Native Hawaiians/Pacific Islanders**

(Source for USDA-wide, CLF figures: USDA Organizational Profile dated 12/13/2010). The FSA State Directors nationwide show under-representation compared with USDA-wide demographics and the CLF workforce percentages in all SDG categories except Hispanics/Latinos, which has an under-representation when compared to the CLF but not USDA-wide. Particularly noteworthy is the Female under-representation (about half USDA-wide and CLF percentages), and Black/African American under-representation (about one fifth USDA-wide and CLF percentages).

2. FSA State Committees

The chart at Exhibit 45, “FSA State Committee and Principal Operator Demographics,” shows the demographics of the 15 USDA-selected State FSA Committees compared with the respective Principal Operator percentages by State and demographics. The yellow-shaded areas indicate “literal under-representation,” that is, State Committee percentage representation that is less than the Principal Operator comparator percentage. Because the sizes of State Committees are relatively small (typically five members, sometimes fewer where there are vacant positions), the literal application of percentages results in fractions of a person being shown as under-represented (that is, less than a whole person). The red-shaded areas indicate where under-representation is by at least one whole person.

The following SDGs have at least one representative (correlating to at least 20% representation) on FSA State Committees in the indicated number of States:

- **Females:** 13 States
- **Hispanics/Latinos:** 4 States
- **Blacks/African Americans:** 8 States
- **Asians:** 0 States
- **Native Hawaiians/Pacific Islanders:** 1 State
- **American Indians/Native Alaskans:** 3 States

As can be seen from the chart, there is only one area, Native Americans/Alaskan Natives in Arizona, where there is under-representation by two persons. In the other yellow-shaded areas, there is technical under-representation, but in each instance, by less than one whole person. This is not surprising, as in most of the USDA-designated States where there are five FSA State Committee members, there is less than 20% minority or Female Principal Operator representation, which is the minimum needed to justify one member out of five on a proportional basis. There are only two States, Arizona and New Mexico, with less than 80% white Principal Operators. There are two States, Pennsylvania and Vermont, with all-white State Committees. There are two States, Mississippi and North Carolina, with all-male State Committees. In short, it is difficult to replicate SDG Principal Operator representation, because of their relative smallness in percentages, in a group as small as five members. Females are represented on these 5-Member Committees in most (13) of the 15 States, followed by Blacks/African Americans (8), and Hispanics/Latinos (4).

3. FSA County Committees

As discussed in greater detail above, FSA County Committees are, by law, composed of from 3 to 5 members, nominated and elected by eligible voters from their respective counties. The Assessment Team received the demographics of the 7,707 2010 County Committee members nationwide (constituting only voting members—Chairs, Vice

Chairs, and voting members, but excluding alternates and advisors), as well as those of the members in the 90 counties selected by USDA for this Assessment (due to several “shared offices,” there are actually 83 County Committees covering the 90 USDA-designated counties in the 15 USDA-designated States). The Assessment Team developed comparative demographics for (a) Nationwide County Committees (aggregate national figures), and (b) the 83 County Committees in the 15 States. Comparisons are to the respective Principal Operator percentages for the corresponding localities and demographics (County Committee membership eligibility requires them to be FSA customers). The chart at Exhibit 46, “FSA County Committee and Principal Operator Demographics Nationwide and by County,” shows the results.

Nationwide, County Committee members as described above are 96.64% White, yet appear to meet or exceed their respective Principal Operator national constituencies for all SDGs except Hispanics/Latinos (2.52% Principal Operators vs. 1.48% County Committee members), and Asians (0.51% Principal Operators vs. 0.27% County Committee members).

For the 90 counties (83 taking into account shared offices) covered in this Assessment, 15 show under-representations in comparison with their respective Principal Operator percentages (by at least one person, indicated by red highlighting), as follows:

- **Females:** 6 Counties
- **Hispanics/Latinos:** 2 Counties
- **Blacks/African Americans:** 2 Counties
- **Asians:** 1 County
- **American Indians/Alaskan Natives:** 3 Counties

As noted elsewhere herein, it is difficult to replicate SDG populations in committees limited to 3 to 5 members. Even with 5 members, it takes at least a 20% SDG population percentage to support a single member on the committee, and SDGs rarely make up 20% of the Principal Operator population in the counties assessed (with the exception of Females in some counties). Where there are as few as 3 County Committee members, that percentage requirement climbs to 33%, making it even

less likely that the SDG demographics will support a single member on the committee based on Principal Operator populations. *Note South Carolina, for example, which has 6 County Committees identified for this Assessment, with 3 members in each of the counties, and a single Black/African American on one of them, and none on the other five—despite Blacks/African Americans making up more than 27% of the Principal Operator population in two of those counties.*

4. FSA Employees Nationwide

USDA provided a spreadsheet entitled “USDA Organizational Profile” dated as of December 13, 2010, showing aggregate workforce totals for mission areas, agencies, and select offices, and comparisons with the national Civilian Labor Force (Census 2000). See Exhibit 47, “USDA Organizational Profile.” Among the reported FSA national workforce of 5,266 employees (not including County Employees or County Committee members), the spreadsheet shows the following *under-representations* with respect to the CLF:

- **Minority:** 17.7% actual vs. 27.2% CLF
- **Hispanic/Latino:** 3.9% actual vs. 10.7% CLF
- **Asian:** 1.4% actual vs. 3.6% CLF

Thus, the bulk of FSA’s under-representation of SDGs nationwide in the FSA workforce not including County Employees and County Committees is the Hispanic/Latino gap (6.8 percentage points), followed by Asians (2.2 percentage points).

5. FSA State Office Employees in the 15 States

The chart at Exhibit 48, “FSA State Office Employee and Civilian Labor Force Demographics by State,” shows the demographics of FSA State Office Employees compared with the pertinent State CLF. The yellow-shaded areas indicate “literal under-representation,” that is, State Office demographic percentage representation that is less than the CLF comparator percentage. Because the sizes of State Office staffs are relatively small (15-30, for example), the literal application of percentages results in fractions of a person being under-represented (that is, less than a whole person). The red-shaded areas indicate those areas where

under-representation is by at least one whole person. The following are the SDGs, States, and numbers of employees comprising the under-representations (in parentheses). In all of the red-shaded areas indicated on the chart, the under-representation is by one to three personnel:

- **Hispanics/Latinos:** California (2), Florida (3), Georgia (1), North Carolina (1), Oklahoma (1)
- **Blacks/African Americans:** California (1), Georgia (3), Louisiana (3), Michigan (2), Mississippi (1), Oklahoma (1), Pennsylvania (1), South Carolina (1)
- **Asians:** Washington (1)
- **American Indians/Alaskan Natives:** North Dakota (1)

There are no under-representations of Females or Native Hawaiians/Pacific Islanders in the 15 FSA State Offices in comparison with the pertinent State CLFs. There are several under-representations of the other SDGs, in most cases of one employee, and in several cases two and three employees. Thus, subject to those minor departures, FSA State Offices relatively reflect SDG representation in the respective State CLFs.

6. FSA County Employees Nationwide and in the 15 States

FSA's County Offices are staffed with employees hired by the County Executive Directors and County Office Committees. They are County, not Federal, employees, but they are responsible for delivery of FSA Farm Programs at the local level. As such, they are the "face" of FSA for most customers who go to County Offices for information and services. Their *nationwide demographics*, as shown in more detail below, do not reflect the diversity of the U.S., USDA, or FSA workforces.

The Chart at Exhibit 49, "FSA Nationwide: County Employee Demographics," was supplied by FSA in February 2011, with data effective January 15, 2011.

As can be seen from the chart, 10,112 of the total 10,618—or 95.23%—of FSA County employees are White. Additionally:

- 71.9% are **Female** (USDA-wide 44.9%, CLF 46.8%)
- 1.48% are **Hispanic/Latino** (77.5% from the Southwest Region) (USDA-wide 5.3%, CLF 10.7%)
- 1.98% are **Black/African American** (87.1% from the Southeast Region) (USDA-wide 9.9%, CLF 10.5%)
- 0.27% are **Asian** (USDA-wide 2.5%, CLF 3.6%)
- 0.06% are **Native Hawaiian/Pacific Islander** (USDA-wide 0.2%, CLF 0.2%)
- 0.89% are **American Indian/Alaskan Native** (50% from the Southwest Region) (USDA-wide 1.9%, CLF 0.6%)

Thus, for the County employee level, national aggregate representation of Hispanics/Latinos, Blacks/African Americans, Asians, Native Hawaiians/Pacific Islanders, and American Indians/Alaskan Natives, in all but one case falls substantially below their representation in both the USDA and Civilian Labor workforces.

The Assessment Team also received demographics for County Executive Directors from FSA (Exhibit 50). The chart reveals that, of the 1,890 CEDs nationwide:

- 95.34% are **White**
- 34.9% are **Female** (USDA-wide 44.9%, CLF 46.8%)
- 1.32% are **Hispanic/Latino** (USDA-wide 5.3%, CLF 10.7%)
- 2.12% are **Black/African American** (USDA-wide 9.9%, CLF 10.5%)
- 0.37% are **Asian** (USDA-wide 2.5%, CLF 3.6%)
- 0.00% are **Native Hawaiian/Pacific Islander** (USDA-wide 0.2%, CLF 0.2%)

- 0.85% are **American Indian/Alaskan Native** (USDA-wide 1.9%, CLF 0.6%)

See Exhibit 51, “FSA Nationwide County Program Delivery Demographics Comparison with USDA-Wide and Civilian Labor Forces.” Each of the minority representation figures for CEDs is within two tenths of a percentage point of the respective County Employee representation shown directly above. Thus, the demographics of the County Employees, who are hired by the COCs and CEDs, are nearly identical to the CED demographics. Note that the Female representation among CEDs is less than half their representation among all County Employees. See Exhibit 52, “FSA All County Employees Nationwide Demographics Compared to Civilian Labor Force and All USDA.”

The discussion directly above covers national demographics for County employees. The spreadsheets at Exhibit 53, “FSA County PayPlan Employee and Civilian Labor Force Demographics by County,” show *county-by-county* County employee representation for the 15 USDA-designated States compared with local civilian labor force figures. While there are some notable under-representations of at least one whole person (highlighted in red), for the most part the under-representations (highlighted in yellow) are each by less than a whole person. Again, this points out the problem in using demographic comparisons with such small office headcounts (most in the 3-6 range, all under 10); it would generally take at least 10%, and often 20% or more, SDG population percentage to support one whole person as a County employee based on the CLF comparison. In all but the rare occasion, SDG CLF populations are in the low double digits (Females) and single digits (disadvantaged race/ethnicity).

Notable exceptions are Blacks/African Americans in Mississippi and South Carolina:

- **Mississippi:** Based on the CLFs (with relatively high concentrations of Blacks/African Americans), there should be at least 10 Blacks/African Americans in the six County Offices, but there are only four.
- **South Carolina:** Based on the CLFs, there should be at least 14 Blacks/African Americans in the six County Offices, but there are only five.

The more useful comparison of FSA County employees is, as noted above, the national percentages compared with the U.S. CLF and USDA workforces. Those figures demonstrate substantial under-representation of SDGs in the FSA County employee workforce.

7. FSA “Other” Employees (DD/FLM/FLO/FLPT *etc.*)

The Assessment Team also compared the FSA Federal labor forces at levels between State and County Offices, including District Directors, Farm Loan Managers, Farm Loan Officers, Farm Loan Program Technicians, *etc.*, with the corresponding State Civilian Labor Forces for the 15 USDA-designated States. The result is shown in Exhibit 54, “FSA Other Employees (No County or State Office) and Civilian Labor Force Demographics by State.” The following lists the States with under-representations (highlighted in the chart in red, corresponding to under-representations of at least one whole person) when compared with the respective State CLF:

- **Females:** Louisiana, Mississippi, South Carolina (largest under-representation is Mississippi (-8))
- **Hispanics/Latinos:** Arizona, California, Georgia, Louisiana, North Carolina, Pennsylvania (largest under-representation is California (-7))
- **Blacks/African Americans:** California, Florida, Georgia, Louisiana, Michigan, Mississippi, North Carolina, Oklahoma, Pennsylvania, South Carolina (largest under-representation is Mississippi (-13))
- **Asians:** Georgia, Washington
- **American Indians/Alaskan Natives:** New Mexico

Many of the FSA under-representations noted are of one or two employees, but several (such as in Mississippi and California, as noted above and on the chart) are substantially larger.

*Subject to the **caveat** regarding unreliability of USDA data and recommendations herein for analyzing workforce diversity using measures*

other than the CLF—a process which could alter the outcome of “under-representations”—these figures indicate areas of recruiting/retention priority for FSA (all SDGs for County Committees, County Employees (except Females); also Hispanics/Latinos and Asians in the aggregate workforce; and Females, Hispanics/Latinos, and Blacks/African Americans between the State and County office levels in the indicated States), at least in the 15 USDA-selected States.

8. RD Employees Nationwide

As noted above, USDA provided a spreadsheet entitled “USDA Organizational Profile” dated as of December 13, 2010, showing aggregate workforce totals for mission areas, agencies, and select offices, and comparisons with the national Civilian Labor Force (Census 2000). See Exhibit 47. The spreadsheet shows employee representations for Rural Housing, Rural Utilities, and Rural Business. Among the reported national RD workforce of 5,645 (Rural Housing), 344 (Rural Utilities), and 84 (Rural Business) employees, the following are *under-representations* depicted on the chart with respect to the CLF:

a. Rural Housing

- **Minority:** 26.8% actual vs. 27.2% CLF
- **Hispanic/Latino:** 6.1% actual vs. 10.7% CLF
- **Asian:** 1.6% actual vs. 3.6% CLF

Thus, the bulk of Rural Housing’s under-representation of SDGs nationwide is the Hispanic/Latino gap (4.6 percentage points), followed by Asians (2.0 percentage points).

b. Rural Utilities

- **White Females:** 23.0% actual vs. 33.7% CLF

c. Rural Business

- **White Females:** 16.7% actual vs. 33.7% CLF

Thus, Rural Utilities and Rural Business show under-representations nationwide only in the White Female SDG.

9. RD State Offices

The demographics of RD's State Office personnel for each of the 15 USDA-selected States, provided by RD, are presented in the chart at Exhibit 55, "RD State Office Employee and Civilian Labor Force Demographics by State." The red-highlighted areas indicate those States and demographics where the under-representation, in comparison with the State Civilian Labor Force representation, is at least one whole person. As can be seen from the chart, there are under-representations with respect to the CLF for each of the following SDGs (the numbers of personnel corresponding to the specific under-representations are shown in parentheses):

- **Hispanics/Latinos:** Arizona (3), California (3), Florida (2), Georgia (1), Louisiana (1), North Carolina (2), Oklahoma (1), Washington (1)
- **Blacks/African Americans:** Georgia (1), Pennsylvania (2)
- **Asians:** California (3), Washington (1)
- **American Indians/Alaskan Natives:** New Mexico (1)

*There are no under-representations of Females or Native Hawaiians/Pacific Islanders in the RD State Offices in the 15 USDA-selected States in comparison with the relevant CLF; there are 8 States with under-representations of Hispanics/Latinos, ranging from 1 to 3 personnel in each, and several State under-representations of Blacks/African Americans, Asians, and American Indians/Alaskan Natives, ranging from 1 to 3 personnel in each. Thus, RD's State Offices in these 15 States relatively reflect the CLFs, with Hispanics/Latinos having the greatest number of divergences but of relatively few personnel. (Again, these results are qualified by the **caveat** regarding unreliability of USDA data and general observation and recommendation herein regarding the inadequacy of the CLF for specific USDA job categories and the true availability of the labor force for those categories.)*

10. RD Area Personnel

The demographics of RD's Area personnel for each of the 15 USDA-selected States and 90 counties, provided by RD, are presented in the chart at Exhibit 56, "RD Employee and Civilian Labor Force Demographics by County" (the term "County" is used because there is no Area-wide Census data, therefore aggregate County Census data must be used.) The red-highlighted areas indicate those Areas and demographics where the under-representation, in comparison with the local Civilian Labor Force representation, is at least one whole person. As can be seen from the chart, there are under-representations with respect to the CLF for each of the following SDGs in the States/Areas shown (the numbers of personnel corresponding to the specific under-representations are shown in parentheses):

- **Hispanics/Latinos:** California-Fresno (1), California-Tulare (2), California-Yolo (2); Florida-Miami/Dade (6); Washington-Okanogan (1), Washington-Yakima (1)
- **Blacks/African Americans:** Georgia-Grady (1), Georgia-Macon (1); Louisiana-Avoyelles (2), Louisiana-Rapides (2), Louisiana-Tangipahoa (1); North Carolina-Robeson (3); Oklahoma-Comanche (1); South Carolina-Colleton (1), South Carolina-Marion (2), South Carolina-Orangeburg (1)
- **Asians:** California-Yolo (2), Michigan-Washtenaw (1), Washington-King (1)
- **American Indians/Alaska Natives:** Arizona-Apache (1), Michigan-Chippewa (2), New Mexico-Taos (1), North Carolina-Robeson (1)

There are no under-representations of Females or Native Hawaiians/Pacific Islanders in the RD Area Offices among the 90 USDA-selected counties in comparison with the relevant CLF. There are 6 Area under-representations of Hispanics/Latinos, ranging from 1 to 6 personnel; 10 Area under-representations of Blacks/African Americans, ranging from 1 to 3 personnel; 3 Area under-representations of Asians, ranging from 1 to 2 personnel; and 4 Area under-representations of American Indians/Alaskan Natives, ranging from 1 to 2 personnel. Thus, RD's Area Offices in these 15 States/90 counties relatively reflect the CLFs, but with significant exceptions, with Blacks/African Americans having the greatest

*number of divergences (in 10 Areas) but of relatively few personnel (usually one or two) in each case. (Again, these results are qualified by the **caveat** above regarding unreliability of USDA data and the general observation and recommendation herein regarding the inadequacy of the CLF for specific USDA job categories and the true availability of the labor force for those categories.)*

Subject to the recommendations herein for analyzing workforce diversity using measures other than the CLF—a process which could alter the outcome of “under-representations”—these figures indicate areas of recruiting/retention priority for RD (particularly Females, Hispanics/Latinos, and Asians in the indicated Areas/offices), at least in the 15 USDA-selected States.

11. NRCS State Technical Committees

The chart at Exhibit 57, “NRCS State Technical Committee and Principal Operator Demographics FY 2010,” shows the demographic breakdown of NRCS’s State Technical Committees for the 15 USDA-Selected States, along with a comparison with the respective Principal Operator (whom they are serving) percentages. As can be seen from the red-shaded areas (depicting under-representation in comparison with the Principal Operator percentages of at least one whole person), the following are States where there are such under-representations, by socially disadvantaged group:

- **Females:** Arizona, Florida, Georgia, Louisiana, New Mexico, Oklahoma, and Washington (under-representations of from one to three Females in all States but Arizona, which shows an under-representation of 20 Females)
- **Hispanics/Latinos:** Arizona, California, Florida, Louisiana, New Mexico, and Oklahoma (under-representations of from one to three Hispanics/Latinos in all States but New Mexico, which shows an under-representation of 17 Hispanics/Latinos)
- **Blacks/African Americans:** Mississippi (under-representation of nine Blacks/African Americans in Mississippi, where there are no Black/African American members)
- **Asians:** California (under-representation of one Asian)

- **American Indians/Alaskan Natives:** Arizona (under-representation of four American Indians/Alaskan Natives; this SDG is substantially represented in several States such as Oklahoma, with 8.15% of the Principal Operators but 29.4% of the State Technical Committee Members)

Based on the Principal Operator comparison figures, NRCS's State Technical Committees relatively reflect the demographic percentages of Principal Operators of the States they cover in the SDG demographics, with the exceptions noted above, which are relatively minor under-representations—with the notable exceptions of Females in Arizona (under-representation of 20), Hispanics/Latinos in New Mexico (under-representation of 17), and Blacks/African Americans in Mississippi (no representation of Blacks/African Americans, and under-representation of nine).

12. NRCS State Conservationist Offices

NRCS provided the demographics of the employees in its State Conservationist Offices in the 15 USDA-designated States (see chart at Exhibit 58, "NRCS State Conservationist Office Employees and Civilian Labor Force Demographics by State"). As can be seen from the chart, SDGs had the following under-representations in comparison with the applicable State Civilian Labor Force (Census 2000) percentages (indicated in red):

- **Females:** Arizona, Oklahoma, South Carolina (under-representations from two (Arizona, Oklahoma) to 14 (South Carolina))
- **Hispanics/Latinos:** Arizona, Florida (under-representations of four (Arizona) and one (Florida))
- **Blacks/African Americans:** Louisiana, South Carolina (under-representations of one (Louisiana) and 10 (South Carolina))

There were no under-representations of other SDGs based on comparisons with the State Civilian Labor Forces.

The most substantial under-representations in NRCS State Conservationist Offices in comparison with the respective State CLFs among the 15 USDA-

designated States are Females in South Carolina (14), and Blacks/African Americans in South Carolina (10).

13. NRCS Employees Nationwide

As noted above, USDA provided a spreadsheet entitled “USDA Organizational Profile” dated as of December 13, 2010, showing aggregate workforce totals for mission areas, agencies, and select offices, and comparisons with the national Civilian Labor Force (Census 2000). See Exhibit 47. Among the reported NRCS national workforce of 12,611, the spreadsheet shows the following *under-representations* with respect to the CLF:

- **Female:** 35.4% actual vs. 46.8% CLF
- **Minority:** 16.7% actual vs. 27.2% CLF
- **Hispanic/Latino:** 4.5% actual vs. 10.7% CLF
- **Black/African American:** 7.7% actual vs. 10.5% CLF
- **Asian:** 1.4% actual vs. 3.6% CLF

Thus, the bulk of NRCS’s under-representation of SDGs nationwide is the Female gap (11.4 percentage points), Minority gap (10.5 percentage points), Hispanic/Latino gap (6.2 percentage points), followed by Blacks/African Americans (2.8 percentage points), and Asians (2.2 percentage points).

14. NRCS Field (Area) Office Employees

The demographic comparisons for NRCS’s field offices (typically but not uniformly divided into numbered “Areas”) for the 15 USDA-selected States are depicted in Exhibit 59, “NRCS Field Office Employees and Civilian Labor Force Demographics by Area/State.” NRCS provided its workforce demographics by office, as shown. (No data were provided for South Carolina, and because of inconsistencies between States with regard to Area correlations with specific counties, the Assessment Team compared the workforce demographics with the pertinent State Civilian Labor Forces.)

Under-representations with respect to CLF comparisons vary by gender and race/ethnicity, and amount of under-representation. The following is a summary of the number of field offices with such under-representations by SDG, and indications of low and high under-representations in terms of numbers of personnel (in parentheses):

- **Females:** 46 Areas (ranging from an under-representation of one (Washington West), to an under-representation of 22 (Louisiana Area 3))
- **Hispanics/Latinos:** 23 Areas (ranging from an under-representation of one (Pennsylvania Clarion TC), to an under-representation of 26 (California Area 1))
- **Blacks/African Americans:** 25 Areas (ranging from an under-representation of one (Michigan Area 1), to an under-representation of 14 (Mississippi Area 1))
- **Asians:** 9 Areas (ranging from an under-representation of one (Georgia Area 2), to an under-representation of 7 (California Area 1))
- **American Indians/Alaskan Natives:** 3 Areas (ranging from an under-representation of one (North Dakota Area 1), to an under-representation of 3 (New Mexico East Area))

*There are no under-representations of Native Hawaiians/Pacific Islanders among the NRCS field offices in the 15 USDA-selected States in comparison with the relevant CLF. Females have the highest number of field office under-representations at 46, with Blacks/African Americans second at 25, Hispanics/Latinos third at 23, followed by Asians at 9, and American Indians/Alaskan Natives at 3. Some of these under-representations, such as Females in Louisiana Area 3 (-22), Hispanics/Latinos in California Area 1 (-26), and Blacks/African Americans in Mississippi Area 1 (-14), are substantial. (Again, these results are qualified by the **caveat** above regarding the unreliability of USDA data and the general observation and recommendation herein regarding the inadequacy of using the CLF for specific USDA job categories and the true availability of the labor force for those categories.)*

Subject to the recommendations herein for analyzing workforce diversity using measures other than the CLF—a process which could alter the outcome of “under-representations”—these figures indicate areas of recruiting/retention priority for NRCS (Females, Hispanics/Latinos, Blacks/African Americans in the indicated offices), at least in the 15 USDA-selected States.

15. RMA Employees Nationwide

As noted above, USDA provided a spreadsheet entitled “USDA Organizational Profile” dated as of December 13, 2010, showing aggregate workforce totals for mission areas, agencies, and select offices, and comparisons with the national Civilian Labor Force (Census 2000). See Exhibit 47. Among the reported RMA national workforce of 530, the spreadsheet shows the following under-representations with respect to the CLF:

- **Minorities:** 23.0% actual vs. 27.2% CLF
- **Hispanics/Latinos:** 3.0% actual vs. 10.7% CLF
- **Asians:** 2.4% actual vs. 3.6% CLF

Thus, RMA’s under-representation of SDGs nationwide includes the Hispanic/Latino gap (7.7 percentage points), Minorities gap (4.2 percentage points), followed by Asians (1.2 percentage points).

16. RMA Regional Offices

RMA supplied the demographic breakdown of personnel for each of the offices, along with the identification of States covered by each Region. The Assessment Team obtained and aggregated the Civilian Labor Forces for each respective State and Region and compared each with the respective Regional Office demographics. The demographic comparisons for RMA’s 10 Regional Offices, and Washington, D.C. Headquarters, are depicted in Exhibit 60, “RMA Employee and Civilian Labor Force Demographics by Office.” As can be seen from the chart, when compared with the relevant CLF, there are under-representations of at least one person (indicated in red) as follows:

- **Females:** Georgia, Minnesota, Mississippi, and North Carolina (under-representations from two to six females)
- **Hispanics/Latinos:** California, Kansas, North Carolina, Oklahoma, and Washington State, and Washington, D.C. (under-representations from one to four Hispanics/Latinos)
- **Blacks/African Americans:** Illinois (under-representation of one Black/African American)
- **Asians:** North Carolina (under-representation of one Asian)

*Based on the CLF figures (which, as we note elsewhere herein, is not the optimal benchmark), RMA's Regional Offices generally reflect the civilian labor forces of the States they cover in the SDG demographics, with the exceptions noted above, which are, for the most part, relatively minor under-representations. (Again, these results are qualified by the **caveat** above regarding the unreliability of USDA data and the general observation and recommendation herein regarding the inadequacy of using the CLF for specific USDA job categories and the true availability of the labor force for those categories.)*

17. Workforce Demographic Recommendations

Methods for improving workforce diversity are included in the Department-wide Recommendations, above, and discussed further in the Department and Agency Demographic and MD-715 Compliance Sections, below.

18. Summary

Based on the demographic comparisons shown above, the chart on the following page shows the highest workforce and committee diversity priorities for each of the Agencies:

**USDA Agency Workforce/Committee Analysis:
Highest Agency Diversity Enhancement Priorities
Based on Current Program Office Staff and Committee Demographic
Comparisons¹²⁸**

FSA	POSITION	DIVERSITY ENHANCEMENT PRIORITIES
• FSA Employees Nationwide • State Executive Directors • State Committees • County Committees • State Office Employees • County Employees • County Executive Directors • FSA Local (Non-County) Employees		• Hispanics/Latinos, Asians
		• All SDGs except Hispanics/Latinos
		• All SDGs except Females
		• All SDGs
		• Hispanics/Latinos, Blacks/African Americans
		• All SDGs except Females
		• All SDGs
		• Hispanics/Latinos, Blacks/African Americans
RD		
• RD Employees Nationwide • State Executive Directors • State Office Employees • Area/County Personnel		• Hispanics/Latinos, Asians
		• None
		• Hispanics/Latinos, Asians
		• Hispanics/Latinos (6 Counties), Blacks/African Americans (10 Counties)
NRCS		
• NRCS Employees Nationwide • State Technical Committees • State Conservationist Offices • Field/Area Employees		• Females, Hispanics/Latinos, Blacks/African Americans, Asians
		• Females (Arizona), Hispanics/Latinos (NM), Blacks/African Americans (MS), American Indians/Alaskan Natives (AZ)
		• Females (SC), Hispanics/Latinos (AZ), Blacks/African Americans (SC)
		• Females (45 Areas), Hispanics/Latinos (23 Areas), Blacks/African Americans (25 Areas), Asians (9 Areas)
RMA		
• RMA Employees Nationwide • Regional Offices		• Hispanics/Latinos, Asians
		• Females, Hispanics/Latinos

¹²⁸ Subject to the Final Report *caveat* regarding unreliability of the data, and Recommendations for new type of workforce analysis. References to States, counties, and areas apply only to the 15 USDA-selected States for this Assessment.

F. CONTRACT TASK: “Examine committee structures and the policies which govern these committees, which are used by USDA to deliver programs (e.g., FSA County Committees, State Technical Committees, and local work groups).”

1. FSA

The FSA State and County Committee structures are discussed in Section V (FSA Section), above.

2. NRCS

NRCS provided its Manual, “USDA Conservation Program Delivery,” Title 440, Programs, Part 501, Sections 501.0 through 501.25 (“NRCS CPD Manual”), which details the NRCS State Technical Committee and Local Working Group (subcommittees of the State Technical Committee) policies, structures, responsibilities, membership requirements, and standard operating procedures. According to the NRCS CPD Manual, “USDA seeks input from State Technical Committees and local working groups on State and local conservation program delivery. Although State Technical Committees and local working groups are advisory in nature and have no implementation or enforcement authority, USDA gives strong consideration to their recommendations.” NRCS CPD Manual, p. 2.

a. Local Working Groups

Local Working Groups have the responsibilities set out in the NRCS CPD Manual (p. 4), such as:

- Ensure that a conservation needs assessment is developed using community stakeholder input;
- Utilize the conservation needs assessment to help identify program funding needs and conservation practices;
- Identify priority resource concerns and identify, as appropriate, high-priority areas needing assistance;

- Recommend USDA conservation program application and funding criteria, eligible practices (including limits on practice payments or units), and payment rates; and
- Forward recommendations to the NRCS designated conservationist or Farm Service Agency County Executive Director, as appropriate.

The NRCS CPD Manual sets forth requirements for membership, noting the “membership should be diverse and focus on agricultural interests and natural resource issues existing in the local community. Membership should include” agricultural producers, owners of nonindustrial private forest land; representatives of agricultural and environmental organizations; and representatives of government agencies carrying out agricultural and natural resource conservation programs and activities. NRCS CPD Manual, p. 4. The NRCS CPD Manual provides: “To ensure that recommendations of the local working group take into account the needs of diverse groups served by USDA, *membership must include, to the extent practicable, individuals with demonstrated ability to represent the conservation and related technical concerns of particular historically underserved groups and individuals including but not limited to women, persons with disabilities, socially disadvantaged and limited resource groups.*” *Id.* (emphasis added). With respect to who makes the membership decisions, the Manual provides: “The district conservationist (or designated conservationist) will assist the soil and water conservation district in making decisions concerning membership of the group.” *Id.*

The standard operating procedures set forth in the Manual include the following:

- Meetings are “normally” chaired by the appropriate soil and water conservation district.
- Meetings are to be held at least once each year.
- Meetings are open to the public, and public notification of upcoming meetings must be published. Members of the public are given the opportunity to speak at the meetings.
- Meeting agendas are prepared by the district conservationist and the chair.

- Summaries of the meetings are filed at local NRCS offices.
- Recommendations are submitted to the State Technical Committee chairperson, the district conservationist, or both (“as appropriate.”)
- Designated conservationists inform Local Working Groups as to “the decisions made in response to all local working group recommendations within 90 days.”

NRCS CPD Manual, pp. 5-6.

b. State Technical Committees

State Technical Committees have the responsibilities set forth in the NRCS CPD Manual, such as:

- Provide information, analysis, and recommendations to USDA on conservation priorities and criteria for natural resources conservation activities and programs, including application and funding criteria, recommended practices, and program payment percentages;
- Identify emerging natural resource concerns and program needs;
- Recommend conservation practice standards and specifications;
- Assist NRCS with public outreach and information efforts and identify educational and producers’ training needs; and
- Meeting agendas are prepared by the Chair.

NRCS CPD Manual, p. 7.

The NRCS CPD Manual sets forth requirements for membership (consisting of “agricultural producers, owners and operators of nonindustrial private forest land, and other professionals who represent a variety of interests and disciplines in the soil, water, wetlands, plant, and wildlife sciences.” *Id.* The requirements are identical to those regarding representation of “historically underserved groups” for the Local Working Groups, noted above. *Id.*

The standard operating procedures for State Technical Committees include the following:

- The State Conservationist is the Chair.
- Meetings “should” be held at least twice per year.
- Meetings are open to the public, and public notification of upcoming meetings must be published. Members of the public are given the opportunity to speak at the meetings.
- Summaries of the meetings are filed at the State NRCS office and posted to the NRCS State web site.
- The State Conservationist must inform the State Technical Committee as to the decisions made in response to all Committee recommendations within 90 days.

NRCS CPD Manual, pp. 9-10.

**c. Summary of NRCS State Technical Committee/
Working Group Policies**

The policies, procedures, and practices set forth in the NRCS CPD Manual are facially race/ethnicity and gender-neutral, with the proviso regarding the incorporation of “historically underserved groups” and SDGs in the membership. As with any such policies and procedures, the potential for creating barriers to full participation, and discriminating against protected classes, lies in the implementation of the policies and procedures at the State and local levels.

During the course of the interviews and Focus Groups (as supplemented by other information gathered during this Assessment), the Assessment Team did not hear substantial criticism of the operations or decisions of either State Technical Committees or Local Working Groups from a barrier/discrimination perspective, with one exception: several Focus Group participants stated that the State Technical Committees could show greater transparency with respect to development of their ranking criteria and resource priorities. Additionally, as noted in the Agency demographics analysis section above, among the 15 USDA-designated States, State Technical Committees vary as to their proportional

representation of SDGs, with some reasonably representative of the groups' State populations, and others falling far short in certain circumstances.

G. CONTRACT TASK: “Assess geographic locations and areas covered by offices, and accessibility of those facilities to persons of all physical abilities and of all ethnicities and races.”

This topic is addressed in each Agency Section, above. This Section will supplement the information in those Sections from a Department-wide perspective.

1. Field Service Center/County Office Coverage

Both the number and Agency representation at USDA field locations, most recently Field Service Centers, has varied over time, and recent consolidations and office closings have increased the customer/office ratio. Some USDA employees noted during their interviews that their time and resources, particularly for outreach, have been stretched thin by the declining number of office locations and greater geography needed to be covered. Many employees noted that these changes had a negative impact on customer service—more distant customers are less likely to travel to the Center—and on outreach also, because of the increased travel time involved.

The Assessment Team analyzed the Field Service Center/County Office coverage for each of the 15 USDA-selected States by comparing the current number of locations in each State with the (a) Rural Populations, and (2) Farmer/Rancher Principal Operator populations of those States. The results are presented in Exhibit 61 (two graphs: “Rural Population per Field Service Center/County Office in 15 USDA-Selected States,” and “Farmer/Rancher Population per Field Service Center/County Office in 15 USDA-Selected States,” using data provided by USDA’s Kansas City Administrative Office on November 29, 2010.) As can be seen from the Rural Population comparison, the population/office ratio varies substantially from lowest to highest—with North Dakota at 6,126 rural residents per office, and Arizona at 41,811 rural residents per office, a difference of a factor of about 7. Similarly, the Farmer/Rancher Population comparison shows population/office ratios varying from 90

producers per office in Oklahoma, to 3,948 producers per office in Arizona.

The Assessment Team also reviewed several documents provided by FSA in response to a request for analyses FSA had conducted regarding the locations of Field Service Centers. The first document, an October 2, 1998 PriceWaterhouseCoopers “Summary Report” entitled “USDA County-Based Agency Study,” did not specifically assess or provide recommendations regarding the geographic coverage of Field Service Centers or their accessibility, but focused more on workloads, business processes, and field organizations. The second consists of several memoranda describing a plan for closing/consolidating FSA field offices in the 1992-94 timeframe, including a planned closing or movement of 1,070 field offices and creation of a network of 2,531 USDA Service Centers.

a. Office Locations Recommendation

GR-26 With the rapidly changing U.S. demographic profile and particularly the rise in minority populations and the documented increases in SDG farmers and ranchers, USDA should have either Economic Research Service or an outside entity conduct an evaluation of the current locations of Field Service Centers/County Offices, as well as RD and NRCS offices, in comparison with the existing and emerging farm/ranch and rural populations. This evaluation should place special emphasis on locations of SDGs, who are less likely to have or use web-based resources to learn more about, and apply for, USDA programs, and who are more likely to need the personal attention they can receive from a Field Service Center or other USDA office. USDA should then prepare and execute a plan for addressing the geographical barriers identified in the evaluation to increase the accessibility of USDA offices to SDGs, as indicated in the study.

2. Accessibility of Facilities to Persons of All Physical Abilities

With respect to Field Service Center accessibility to persons of all physical abilities, the Architectural Barriers Act of 1968 (P.L. 90-480, 42 U.S.C. 4151-4157) requires accessibility of facilities and buildings if

(since 1968), they were designed, built, or altered with specified Federal funds, or leased for occupancy by Federal agencies. Additional guidelines are provided by the Uniform Federal Accessibility Standards (“UFAS”) and the Architectural Barriers Act Accessibility Standard. Additionally, Section 504 of the Rehabilitation act of 1973, as amended, 7 CFR Parts 15.51 and 15(e), and such Agency specific information as the FSA Handbook 18-AO, require that all offices be accessible to persons with disabilities. Finally, in 1998 Congress amended the Rehabilitation Act with Section 508 (29 U.S.C. Section 794d), which requires Federal departments and agencies to make their electronic and information technology accessible to people with disabilities.

The Field Assessment Team did not undertake a formal accessibility compliance audit of the facilities visited, but they did make repeated observations about lack of ramps, difficult entrance doors, unpaved parking areas, high counters, and restroom accessibility issues in many of those facilities in the 15 States and 90 counties covered in this Assessment.

Additionally, most of the Agency Civil Rights Compliance Reports the Assessment Team reviewed referenced numerous non-compliances, deficiencies, and negative findings with regard to accessibility laws and standards. (See, for example, the FY 2009 **FSA** Office of Civil Rights State Management Review of Pennsylvania (for the week of May 11, 2009), pages 25-6, which list 26 separate deficiencies for the State Office and Service Centers visited; **RD**’s “Operations and Management Civil Rights Staff, Program Compliance Branch—Title VI Rural Housing Service Community Facilities Program Management Control Review,” dated June 28, 2006 (citing 16 findings in 12 offices, such as “sidewalks that were too steep (and should have been designed as a ramp), ramps that were too steep, a step along the accessible route, or office furniture placed to narrow/block the accessible route” (p. 7); **NRCS** Civil Rights Compliance Review Report/Florida (Title VI and Title VII), for February 22-6, 2010, which made 31 findings covering the State and 6 Area/local offices, and concluded that the State is “in Non-Compliance with regards to accessibility” (p. 30); NRCS FY 2010 Civil Rights Compliance Review Summary, which concluded that “Most of the [10] states reviewed were found to be in non-compliance with accessibility requirements established by Section 504 of the Rehabilitation Act of 1973 and the Uniform Accessibility Standards,” (p. 9). Similar findings were made in other Agency Compliance Reports reviewed by the Assessment Team

(e.g., FSA SMR's for Vermont 2009, Arizona 2009, Louisiana 2008, and North Dakota 2007)). The Assessment Team also reviewed a number of reported references to violations of Section 508.

The Architectural Barriers Act was enacted more than 40 years ago, and the Rehabilitation Act was enacted nearly 40 years ago. Additionally, some of the Compliance Reports noted above observed that similar conditions existed in previous reviews. If USDA intends to make all of its facilities accessible to persons “of all physical abilities” as indicated in the RFP—as *the Department recognizes in the Compliance Reports, the legal provisions are not optional guidelines but rather, Federal statutory requirements*—there must be a comprehensive audit of every such facility and an enforceable plan for rapid improvements and elimination of deficiencies. This should be among the Department’s highest DIA priorities in the implementation of the recommendations from this Report.

a. Office Physical Accessibility Recommendation

GR-27 USDA should develop and execute a plan and schedule a Compliance Audit of all USDA facilities for accessibility in accordance with all applicable legal and USDA policy requirements. Prepare a list of non-compliances for all pertinent facilities and require remediation within 12 months of issuance of list. Conduct a closing Quality Assurance Audit to ensure full compliance.

H. CONTRACT TASK: “Examine web presence and utilization across rural America and access opportunities for all Americans to USDA services.”

This topic is addressed in each Agency Section, above. This Section will supplement the information in those Sections from a Department-wide perspective.

USDA has a relatively comprehensive website covering the Department and each of the four Agencies, including information on programs available, helpful documents such as laws, regulations, and Handbooks, and links to offices such as the Civil Rights Office. The Assessment Team analyzed several sources of information about the “usability” and use of the websites for accessing opportunities to USDA services: (1)

questions asked of USDA field employees; and (2) regular reports USDA has received from a vendor who analyzes on-line surveys completed by users.

1. Field Employee Input

The Assessment Team asked 2 quantitative questions of USDA field employees during the Phase II interviews regarding web presence and utilization, particularly by socially disadvantaged producers. The questions, and the responses, are as follows:

- a. “On a 5 point scale, 5 being highest, how would you rate your office’s website for internet accessibility to socially disadvantaged customers and potential customers?”

The average rating given by all who answered this question was 3.54, indicating an above-average rating by USDA employees of the website’s accessibility to SDG customers and potential customers. The individual Agency ratings were: FSA, 3.54; RD, 3.67; and NRCS, 3.15.

- b. “On a 5 point scale, 5 being highest, how would you rate the amount of usage of the web for accessing your programs by socially disadvantaged customers and potential customers?”

The average rating given by all who answered this question was 2.59, indicating a slightly below average rating as to the amount of usage of the web by SDG producers for accessing USDA programs. The individual Agency ratings were: FSA, 2.09; RD, 3.14; NRCS, 2.41.

The discussion of USDA’s vendor evaluations of website access and usability are included above, as well as the discussion of the topic in each Agency Report, above.

X. ADDITIONAL ANALYSIS CLEARLY IMPORTANT TO ASSESSMENT PROCESS, BUT NOT REQUIRED BY CONTRACT

A. USDA Discrimination Complaint Process

The Contract Scope of Work did not require the Assessment Team to evaluate the USDA discrimination (“civil rights”) complaint system for program (external) and EEO (workforce) complaints. However, the complaint system is integral to customer and employee views of civil rights at USDA, and thus, the Assessment Team conducted a broad-perspective overview assessment of the processes.

1. Program Civil Rights Complaint Policy/Process

USDA’s civil rights complaint administrative policy and processing guidelines and procedures for programs are contained in Departmental Manual DM 4330-001, “Procedures for Processing Discrimination Complaints and Conducting Civil Rights Compliance Reviews in USDA Conducted Programs and Activities” (10/18/01 as amended) (the “Departmental Manual”). This is a comprehensive manual covering all aspects of the complaint process, from definition of prohibited conduct through closures and Final Agency Decisions (“FAD”). The Assessment Team reviewed this document thoroughly, and met with representatives of the USDA Office of the Assistant Secretary for Civil Rights to discuss the process and recent progress in this area. The Assessment Team also reviewed the statutes, regulations, and Executive Orders supporting the Departmental Manual.

With respect to organization, clarity, and comprehensiveness, it is clear that the Departmental Manual is superior in breadth and depth to any the Assessment Team has seen in the private sector, owing in large part to the statutory and regulatory requirements. The Departmental Manual covers:

1. Purpose and Scope
2. Policy
3. Legal Authorities
4. Glossary of Terms
5. Intake Process

6. General Timeliness Requirements (180-day rule)
7. Jurisdiction
8. Information to be included in Case File (and to be excluded)
9. Communications/Notices to Complainant
10. Processing Incomplete Complaints
11. Notice of Reprisal, Retaliation, and Harassment Prohibition
12. Process for Pre-Investigation Closure
13. Comprehensive Investigation Process
 - a. Role of the Investigator
 - b. Time Limits for Investigation
 - c. Scope of the Investigation
 - d. Legal Issues (theories, disparate treatment, intent, prima facie case, disparate impact, retaliation/intimidation, analysis of evidence)
 - e. Collecting and Analyzing Evidence (including full discussion of types, sources, quality, quantity and usefulness of various types of evidence; sequence of investigation; authority to obtain information; need for onsite investigations; interviews; documentation; representation; data analysis)
14. Rules for Preparing the Report of Investigation
15. Closures and Final Agency Decisions
 - a. Making Case Determinations
 - b. Letters of Closure
 - c. Contents of Final Agency Decisions
16. Offers of Settlement
17. Monitoring Settlement Agreements (including roles of OGC, Agency, and DOJ, where appropriate)

The Departmental Manual includes various forms used in the administrative process, including:

1. Intake Form
2. Intake Checklist
3. Request for Agency Position Statement
4. Response to Inquiry
5. Investigative Review Sheet
6. Incomplete Complaint—30 Day Letter
7. Inadequate Response Closure Letter
8. Complete Complaint Acknowledgement Letter
9. Untimely Closure Letter
10. No Causal Connection Closure Letter
11. No Jurisdiction Closure Letter
12. No Response Closure Letter
13. No Standing Closure Letter
14. No Jurisdiction [Reprisal Against Other Than USDA] Closure Letter
15. No Jurisdiction [Issue] Closure Letter
16. No Jurisdiction [Program] Closure Letter
17. Agency Data Request
18. Investigative Plan
19. Complainant Consent/Release Form
20. Affidavit
21. Memorandum of Interview
22. Interview Summary
23. Notice to Agency of On-site Investigation
24. Report of Investigation Format
25. Report of Investigation Review Sheet
26. Adjudication Worksheet

In sum, the Departmental Manual comprehensively covers the procedures for initiating, investigating, deciding/adjudicating, and closing civil rights complaints.

The Assessment Team's concern with the USDA civil rights complaint process is not that it is insufficiently detailed, rigorous, or comprehensively designed to ascertain the validity of allegations of discrimination, harassment, retaliation, or other civil rights violations. To the contrary, the process is, for most civil rights complaints, too complex, too legalistic, and too mechanistic to achieve what most complainants want and deserve—swift justice. Delays undermine confidence in the process, enable complainants to assume the worst, and damage the integrity of fact-finding: memories fade, witnesses become unavailable, documents and other physical evidence disappear. Delays are antithetical to the purpose of an effective internal complaint process. USDA typically takes far too much time to complete this administrative process—an average of 338 days in FY 2009, and in some cases, years. For each Agency assessed herein, the average days to process a civil rights complaint in FY 2009 were as follows: FSA, 413 days; RD, 562 days; NRCS, 533 days; and RMA, 692 days.

Moreover, the overwhelming majority of allegations end with no findings of discrimination; in FY 2009, USDA closed 1,079 program complaints, with no findings of discrimination (and “No personnel actions were taken by USDA agencies following resolution of program complaints,” USDA May 10, 2010 Report, “Food, Conservation, and Energy Act of 2008, Section 14010 Report of Civil Rights Complaints, Resolutions, and Actions FY 2009,” pp. 1-3). (In FY 2010, there were several findings of discrimination.) This is the reason the Assessment Team heard complaints about the process; it “takes forever” and “is a sham.” Customers and employees have a clear sense, many from their own experiences and others through the grapevine, that the administrative process is designed (intentionally or not) to take a lot of time to arrive at what they believe is a pre-determined outcome: they lose. Thus, what appears to be a rigorous process to get at the truth is perceived as a hyper-technical and time-consuming effort with a 97-100% certainty that USDA “wins.”

The private sector, by contrast, has generally implemented a more informal handling of internal discrimination complaints. Many companies now understand the value of such a process, if properly designed and executed. An effective, efficient complaint process gives employees a sense of corporate fairness and objectivity about workplace equity concerns, and serves to deter them from escalating disputes to the EEOC, lawyers, and courts as long as they feel they are being treated

fairly. These companies have streamlined processes—relatively short guidelines, manuals, and training materials—that get to the heart of the matter quickly (routine investigations and reports can take as little as a week); they are aware of the law but do not process the complaints “over-legalistically;” and they often result in findings of discrimination, harassment, or retaliation, which are then promptly remediated.

USDA would benefit from, at the very least, a two-track system for investigations. Track A would cover most of the complaints received. It would follow the corporate model, be swift and “common sense,” and more often lead to findings against the Agency but with quick remediation. Track B, for more complex allegations (perhaps involving multiple respondents over a lengthier period of time, and a larger volume of documentation), could follow the current Departmental Manual. This determination could be made at intake. All Track A cases could be concluded in a matter of weeks rather than months and years.

With respect to the effectiveness of the USDA process over the past decade or so, it is well documented that civil rights complaints during the preceding decade were generally not processed at all, and GAO Reports severely criticize the Department for, among other areas, the unreliability of statistical reporting on civil rights complaints. The Assessment Team met with the Assistant Secretary for Civil Rights and several subordinates, and it appears that progress has been made in improving record-keeping, maintenance of statistical data, and general complaint processing, including some reduction in average time to process complaints. Obviously these efforts should continue.

The method of initiating a program civil rights complaint—sending a letter to USDA—is not the optimal method for complaint preparation, either from the Department’s or the complaining party’s perspective. A simple, self-directed form complaint, similar to the EEOC charge form, would present a clarified, simpler, consistent approach to filing complaints. The Assessment Team recently learned that USDA has adopted such a form, but it is not yet fully implemented. (For example, the OASCR website still directs program complainants to send a letter.) This new approach should be fully implemented immediately, with all appropriate notices (such as the website and at state and field offices) and announcements.

2. EEO Civil Rights Complaint Policy/Process

Departmental Manual DM 4300-001, “EEO Complaint Processing Procedures,” contains the policy and procedures for processing workplace complaints of discrimination, harassment, retaliation, and other violations of Title VII and general discrimination law. It is similarly organized and detailed (81 pages) as its program civil rights complaint counterpart, discussed above.

The Manual covers the following topics:

1. Purpose and Scope
2. Statement of Policy
3. Authorities
4. Glossary of Terms
5. General Provisions for Processing EEO Complaints
6. Informal EEO Complaint Process
7. Filing an Individual Complaint
8. Alternative Dispute Resolution
9. Investigations (all aspects)
10. Hearings
11. Final Agency Decisions
12. Resolutions
13. Remedial Actions
14. Attorneys Fees and Costs
15. Compliance with Settlements and Final Agency Decisions
16. Class Discrimination Complaints
17. Appeals to the EEOC
18. Right to File a Civil Action
19. Special Provisions

The Manual contains a similar lengthy listing of forms, from EEO Counselor’s Checklist to Final Decision.

The EEO complaint process does have several mechanisms for less formal resolution, including alternative dispute resolution (mediation, facilitation, early neutral evaluation, non-binding arbitration, settlement conferences, *etc.*), informal EEO counseling process, and settlement.

The Manual sets forth the appropriate tone and approach to workplace EEO complaints. Investigators are reminded of the requirement that all investigations be “conducted impartially.” DM 4300-001, p. 27. Further:

In dealing with any complaint, the basic goal of the agency official should be to resolve the complaint in a way that is fair to the complainant, acceptable to the agency, and perceived by the rest of the employees as an appropriate outcome. . . . [b]eing careful to treat a complainant in a polite, businesslike, and professional manner. . . DM 4300-001, pp. 34-5.

The formality, technicality, and comprehensiveness required of every EEO complaint presents the same concerns as the processing of program complaints. USDA’s record on timely processing of such complaints is not good. In FY 2009, USDA’s average time to process complaints was 851 days (more than 2 years; although USDA points out that removing several items beyond USDA’s control, such as complaints at EEOC for hearing, reduces the average time to 659 days). The four Agencies evaluated in this Assessment reported the following average processing days: FSA, 1,168 days; RD, 864 days; NRCS, 592 days; and RMA, 1,334 days. According to the Department’s Section 14010 (2008 Farm Bill) filing, there were 15 findings of discrimination among the 760 complaints processed in FY 2009 (2.1%), distributed among the four Agencies assessed herein as follows: FSA, 1; RD, 5; NRCS, 1; and RMA, 0. There were 26 findings of discrimination in FY 2010 (3.5%).

With respect to discipline against USDA employees found to have discriminated or harassed, in *FY 2009* the following actions were taken against the indicated number of employees:

- **Removal:** 2 employees
- **14 Day or More Suspension:** 11 employees
- **Reduction in Grade:** 1 employee

- **Letter of Reprimand:** 2 employees

With respect to discipline against USDA employees found to have discriminated or harassed, in *FY 2010* the following actions were taken against the indicated number of employees:

- **Removal:** 3 employees
- **14 Day or Less Suspension:** 5 employees
- **Alternative Discipline Agreement and Suspension 15 Days or More:** 1 employee
- **Alternative Discipline Agreement and Suspension 14 Days or Less:** 1 employee
- **Alternative Discipline Agreement and Letter of Reprimand:** 1 employee
- **Letter of Reprimand:** 2 employees

Again, for the average employee, this means that the process may take years to resolve, and there is a 97% chance the resolution will be against the employee. In only a handful of cases will disciplinary action be taken against violators.

3. Additional Related Policies in Departmental Regulations and Manuals

The Assessment Team also reviewed additional, related policies and procedures contained in Departmental Regulations and Manuals, including but not limited to:

1. DR 4120-001, "Annual Department Civil Rights Training" (9/18/98) (requiring that all USDA employees receive annual civil rights training)
2. DR 4230-002, "Special Emphasis Programs" (6/4/09)
3. DR 4300-002, "Federal Equal Opportunity Recruitment Plan" (10/18/84)
4. DR 4300-003, "Equal Opportunity Public Policy" (1/8/01)
5. DR 4300-004, "Civil Rights Impact Analysis," (5/30/03)
6. DR 4300-005, "Agency Civil Rights Programs" (1/14/98)
7. DR 4300-006, "Civil Rights Policy" (6/30/2000)

8. DR 4300-007, "Processing EEO Complaints of Discrimination" (3/3/99)
9. DR 4300-008, "Reasonable Accommodations" (3/9/00)
10. DR 4300-009, "EEO Complaints" (1/9/01)
11. DR 4300-010, "Civil Rights Accountability Policy and Procedures" (1/18/06)
12. DM 4300-002, "Reasonable Accommodation Procedures" (7/5/02)
13. DR 4330-003, "Nondiscrimination in Programs and Activities" (3/3/99)
14. DR 4330-002, "Activities Receiving USDA Financial Assistance" (3/3/99)
15. DR 4710-001, "Alternative Dispute Resolution" (7/20/01)

The Departmental Regulations and Manuals cited are in support of the Department's civil rights EEO and program goals. They are generally thorough and, indeed, are more comprehensive than most policies and practices in Corporate America. One area in which the program investigations process can be improved is establishing and ensuring compliance with a requirement that the complainant be provided a copy of the draft Report Of Investigation and documents in support thereof, and allowed adequate time for providing a rebuttal. This is covered in more detail in Section E (Office of Civil Rights), below.

4. Complaint Process Recommendation

GR-28 Revise both program and EEO complaint processing procedures (including all relevant manuals, handbooks, training materials, DMs, and DRs) by eliminating all unnecessary steps, including signoffs/approvals, streamlining the investigations and analytical steps, and otherwise permitting prompt conclusion of the process. Establish a two-track process, the first (Track I) for most complaints, the second (Track II) for complex complaints (for example, containing systemic allegations, multiple parties, and a significant volume of documents). Retain necessary components of the existing process for Track II complaints.

B. Expired Program Complaint Project

As part of the Secretary's directive with respect to civil rights, USDA established an office to examine "lapsed" civil rights program complaints, that is, those as to which the statute of limitations has expired. (The effort is currently led by an Advisor to the Secretary under the supervision of the Acting Director for Investigations.) This was intended in part to address the diminution of the USDA Civil Rights organization during the period 2000-2008, during which time thousands of civil rights program complaints were filed but were not adequately investigated or otherwise processed. The Secretary has decided to review those "expired" complaints to determine the extent to which they appear to have sufficient merit for further consideration. The effort started "in earnest" in June 2009.

The legal difficulty underlying this effort is the fact that the limitations period has expired on all of the complaints under consideration in this initiative, and statutory action will be required to allow any such complaints to move forward.

In the meantime—on the assumption that statutory relief will be forthcoming—the office has been conducting "desktop investigations" (no interviews or other live substantive contacts with complainants, witnesses, and the like). From an original inventory of around 17,000 "inadequately processed" complaints, the office has reviewed and determined that only about 3,800 were worthy of further consideration. The reasons for summary rejection included (a) not a USDA complaint (filed with the wrong Department, for example), (b) complaints filed after expiration of the 180-day period, and (c) insufficient documentation to review. The review and evaluation process is continuing.

C. Department and Agency Demographics

1. Workforce Department-Wide

Pursuant to regulations of the EEOC, USDA and its agencies are required on an annual basis to complete and file an "MD [Management Directive]-715-01" form, the content of which is specified in the Directive. Equal Employment Opportunity Management Directive 715 (October 1, 2003). These filings contain a substantial amount of information about Federal Department and Agency activities in the area of establishing and

maintaining effective affirmative programs of equal employment opportunity under Title VII and Section 501 of the Rehabilitation Act. They also include various tables of information about the workforce, including demographics, gender, and other characteristics. The Assessment Team obtained the latest version of these MD-715s from USDA, which were in the process of transmission to EEOC in late January and early February 2011. These tables contain workforce data as of September 30, 2010, the last day in the Fiscal Year. They include raw data and percentages, including comparisons with the prior Fiscal Year and the Civilian Labor Force enumerated in the 2000 Census.

A cautionary note: The figures presented in these reports may at times be different from other workforce figures cited in various sections, above. This is, in part, a reflection of the unreliability of USDA data noted elsewhere in this Report, but more importantly, a reflection of the varying effective dates for the data. With respect to the MD-715-01's, the effective date of the FY 2010 reports is September 30, 2010.

The following are key indicators of USDA's Department-wide workforce for FY 2010 (with comparisons to the national CLF shown in parentheses):

1. 107,369 employees (Permanent, Temporary, and Non-Appropriated)
2. 2.77% increase over FY 2009
3. Female/Minority Representations as follows:
 - 43.01% **Female** (compared with 46.80% CLF)
 - 5.69% **Hispanic/Latino** (compared with 10.70% CLF)
 - 10.72% **Black/African American** (compared with 10.50% CLF)
 - 2.82% **Asian** (compared with 3.60% CLF)
 - 0.15% **Native Hawaiian/Pacific Islander** (compared with 0.20% CLF)

- 2.07% **American Indian/Alaska Native** (compared with 0.60% CLF)
- 0.74% Two or More Races (compared with 1.60% CLF)

These figures show “under-representation” (incumbent workforce compared with a benchmark) on a Department-wide basis of *Females, Hispanics/Latinos, Asians, Native Hawaiians/Pacific Islanders, and Two or More Races*. Certain groups show more significant under-representations than others (*e.g.*, Hispanics/Latinos have a 5.01 percentage point gap, while Asians have a 0.78 percentage point gap).

This “under-representation” must be understood in the context of the benchmark. The Civilian Labor Force is one such benchmark, but as is discussed more fully elsewhere in this Report, there are other, more accurate benchmarks that should be considered in any comparison of existing workforce versus “available” labor pool. It is possible and indeed likely that, using a more appropriate benchmark geared to the pertinent job categories and geographies, the under-representations would change (higher or lower).

USDA’s Department-wide MD-715-01 also includes Table A2, which shows “Total Workforce by Component—Distribution by Race/Ethnicity and Sex; Year=FY 2010”. This chart displays similar workforce demographic data for USDA by Office and Agency. As can be seen, there are variations among the entities in terms of Female and Minority representation in each race/ethnicity and gender category. This is the type of information that should allow USDA to refine and tailor its recruitment and retention goals to reflect the specific areas where under-representation exists.

A more helpful indication of workforce diversity *and inclusion* is a breakdown by Occupational Categories, which is shown on Table A3-1. This chart uses EEOC-specified job categories as follows:

1. Officials and Managers

- Executive/Senior Level (Grades 15 and Above)
- Mid-Level (Grades 13-14)
- First Level (Grades 12 and Below)
- Other Officials and Managers

2. Professionals
3. Technicians
4. Sales Workers (irrelevant to USDA)
5. Administrative Support Workers
6. Craft Workers
7. Operatives
8. Laborers and Helpers
9. Service Workers

No comparisons with benchmarks are shown, but one indication of “inclusion” is the degree to which the percent representation of any group in the workforce is reflected throughout the workforce, particularly in the upper levels. Using this benchmark, USDA’s Department-wide representation of Hispanics/Latinos, for example, at 5.69%, is not well-reflected in the Officials and Managers Executive/Senior Level (at 4.10%), but is exceeded at the Officials and Managers First Level (at 6.94%). Similarly, representation of Blacks/African Americans, at 10.72% Department-wide, is exceeded in the Officials and Managers Executive/Senior Level (at 11.58%), slightly lower at the Officials and Managers Mid-Level, and not well-reflected in the First Level (at 6.84%). These breakdowns again, as at the Agency and Office level, allow USDA to focus on areas of needed improvement in setting goals and performance standards. For example, the fact that the feeder pool for senior management—First Level Officials and Managers—for Blacks/African Americans is at 6.84% (versus a workforce-wide 10.72% and Executive/Senior Level of 11.58%), should be a cause of concern for pipeline planning.

2. Political Appointees

Political appointees are by and large the senior leadership of a Federal Department. They are the “face of the Department,” the role models. They establish not only the goals and objectives, but the tone of the organization. As such, they should model the organization’s behavior and expectations. This is particularly true with diversity and inclusion in a workforce. If a Department states that it is committed to real diversity and inclusion, its audience, internal and external, will look first at the leadership to see if the organization “walks the talk.” Set forth below is an analysis of political appointee demographics, at the Department and State levels.

a. Headquarters Appointees (Office of the Secretary)

According to USDA records, there are 68 political appointees in the Office of the Secretary. These include the Secretary, Deputy Secretary, Under Secretaries, Assistant Secretaries, Deputy Under Secretaries, Deputy Assistant Secretaries, Chiefs of Staff, various Special Assistants and Advisors, Directors, and others. The demographics of these appointees are as follows:

- **Males:** 26 (38.2%) (USDA-wide 56.99%, CLF 53.20%)
- **Females:** 42 (61.8%) (USDA-wide 43.01%, CLF 46.80%)
- **Whites:** 53 (77.9%) (USDA-wide 72.7%, CLF 78.8%)
- **Hispanics/Latinos:** 3 (5.2%) (USDA-wide 5.69%, CLF 10.7%)
- **African Americans/Blacks:** 8 (11.8%) (USDA-wide 10.72%, CLF 10.5%)
- **Asians:** 2 (2.9%) (USDA-wide 2.82%, CLF 3.6%)
- **American Indians/Alaskan Natives:** 2 (2.9%) (USDA-wide 2.07%, CLF 0.6%)
- **Native Hawaiians/Pacific Islanders:** 0

The OSEC-level political appointees show higher representations of Females than USDA-wide and the CLF; lower representations of Hispanics/Latinos than USDA-wide or the CLF; higher representations of African Americans/Blacks than USDA-wide and the CLF; lower representations of Asians than the CLF; and higher representations of American Indians/Alaskan Natives than USDA-wide and the CLF. With the exception of males/females, they relatively closely mirror the USDA-wide workforce representations.

b. Office of the Secretary

Most but not all of the officials from the Secretary, Deputy Secretary, Assistant Secretary, Under Secretary, Deputy Under Secretary, and Agency Administrator/Chief levels are political

appointees, and are viewed as the leadership of USDA. USDA provided demographic data in February 2011, which is compiled in the following chart:

Number	Position	Demographics
1	Secretary	WM
1	Deputy Secretary	WF
7	Under Secretaries	4 WM, 2 WF, 1 AIM
10	Deputy Under Secretaries	6 WF, 3 WM, 1 HM
16	Administrators/Chiefs	7 WM, 5 WF, 2 HF, 1 HM, 1 A-AM
3	Assistant Secretaries	2 A-AM, 1 WM
1	Dir. Of Communications	WM
1	Inspector General	AF
1	General Counsel	HF

(Note that there are no Black/African American Females, no Asian males, no American Indian/Alaskan Native Females, and no Native Hawaiians/Pacific Islanders included among these positions.) These USDA leadership levels can be summarized in race/ethnicity and gender breakdowns, with corresponding percentages of the 41 total positions shown in parentheses (Civilian Labor Force comparison percentages shown in red):

REG ¹²⁹	WM	WF	H/LM	H/LF	A-AM	A-AF	A/IM	A/IF	AM	AF
REP ¹³⁰	17 (41%)	14 (34%)	2 (4.9%)	3 (7.3%)	3 (7.3%)	0 (0.0%)	1 (2.4%)	0 (0.0%)	0 (0.0%)	1 (2.4%)
CLF ¹³¹	39.0%	33.7%	6.2%	4.5%	4.8%	5.7%	0.3%	0.3%	1.9%	1.7%

Based on these figures, it would appear that USDA senior leadership is moderately diverse—exceeding the CLF percentages with White Females, Hispanic/Latino Females, Black/African American males, and American Indian/Alaskan Native males, and close to (if slightly under-representing)

¹²⁹ REG = Race, Ethnicity, Gender.

¹³⁰ REP = Current group percent representation.

¹³¹ CLF = Civilian Labor Force percent representation.

the CLF figures with Hispanic/Latino males, and Asian Females (the addition of one more person to each would cause actual representation to exceed the CLF). (Again, note there is no representation of Black/African Females, Asian Males, American Indian/Alaskan Native Females, or Native Hawaiians/Pacific Islanders.)

c. FSA: State Executive Directors

There are currently 48 FSA State Executive Directors (“SEDs”). The demographics of these appointees are as follows:

- **Males:** 37 (77.1%) (USDA-wide 56.99%, CLF 53.20%)
- **Females:** 11 (22.9%) (USDA-wide 43.01%, CLF 46.80%)
- **Whites:** 44 (91.7%)
- **Hispanics/Latinos:** 3 (6.25%) (USDA-wide 5.69%, CLF 10.7%)
- **African Americans/Blacks:** 1 (2.1%) (USDA-wide 10.72%, CLF 10.5%)
- No Asians, American Indians/Alaskan Natives, or Native Hawaiians/Other Pacific Islanders

The FSA State Directors have under-representation compared with USDA-wide and the CLF in all SDG categories except Hispanics/Latinos, which has under-representation compared to the CLF, but not USDA-wide.

d. RD: State Directors

There are currently 45 RD State Directors (“SDs”). The demographics of these appointees are as follows:

- **Males:** 30 (66.7%) (USDA-wide 55.1%, CLF 53.1%)
- **Females:** 15 (33.3%) (USDA-wide 44.9%, CLF 46.8%)
- **Whites:** 34 (75.6%) (USDA-wide 78.8%, CLF 72.7%)

- **Hispanics/Latinos:** 3 (6.7%) (USDA-wide 5.3%, CLF 10.7%)
- **African Americans/Blacks:** 5 (11.1%) (USDA-wide 9.9%, CLF 10.5%)
- **Asians:** 0
- **American Indians/Alaskan Natives:** 2 (4.4%) (USDA-wide 1.90%, CLF 0.6%)
- **Native Hawaiians/Pacific Islanders:** 1 (2.2%) (USDA-wide 0.15%, CLF 0.20%)

The RD State Directors show under-representation compared with USDA-wide and the CLF in the category of Females and Asians only; and under-representation of Hispanics/Latinos compared with the CLF. Otherwise the SDG representations exceed the USDA-wide and CLF comparators.

e. NRCS: State Conservationists

There are currently 50 State Conservationists. While not political appointees, they are included here as the highest NRCS state officials for ease of reference. NRCS recently (March 2011) provided their demographics, as follows:

- **Males:** 40 (80.0%) (USDA-wide 55.1%, CLF 53.1%)
- **Females:** 10 (20.0%) (USDA-wide 44.9%, CLF 46.8%)
- **Whites:** 29 (58.0%) (USDA-wide 78.8%, CLF 72.7%)
- **Hispanics/Latinos:** 7 (14.0%) (USDA-wide 5.3%, CLF 10.7%)
- **African Americans/Blacks:** 9 (18.0%) (USDA-wide 9.9%, CLF 10.5%)
- **Asians:** 3 (6.0%) (USDA-wide 2.5%, CLF 3.6%)
- **American Indians/Alaskan Natives:** 2 (4.0%) (USDA-wide 1.90%, CLF 0.6%)

- **Native Hawaiians/Pacific Islanders:** 0 (0.0%) (USDA-wide 0.20%, CLF 0.20%)

In comparison with the USDA-wide and CLF workforces, for SDGs, only Females and Native Hawaiians/Pacific Islanders are under-represented among NRCS's 50 State Conservationists. Otherwise the SDG representation exceeds the USDA-wide and CLF comparators.

Agency-wide demographics of FSA, RD, NRCS, and RMA are presented in the workforce MD-715 Compliance Section, immediately below.

D. Workforce Reports to EEOC: MD-715 Compliance

Although the Contract does not require a comprehensive assessment of workforce diversity and EEO compliance at USDA, in concert with our demographic assessments, the Assessment Team reviewed the four Agencies' EEO programs as set forth in their annual reports to the Equal Employment Opportunity Commission ("EEOC").

In October 2003, the EEOC issued its Management Directive 715 ("MD-715"), which establishes standards for ensuring that agencies develop and maintain consistent and model EEO programs. The Directive requires annual agency reporting according to a standard format, from which the EEOC compiles its Annual Report on the Federal Workforce. The Directive sets forth six essential elements of a model EEO program:

1. Demonstrated commitment from agency leadership;
2. Integration of EEO into the agency's strategic mission;
3. Management and program accountability;
4. Proactive prevention of unlawful discrimination;
5. Efficiency; and
6. Responsive and legal compliance.

MD-715, Section II.

FSA, RD, NRCS, and RMA each prepares annual MD-715 submissions ("Federal Agency Annual EEO Program Report," form MD-715-01)) based on end-of-fiscal-year data, and generally submit them to the EEOC in January. Pursuant to the Assessment Team's goal of using the latest

available information for this Assessment, the Team received the NRCS FY 2010 MD-715-01 shortly after it was issued, in late January 2011. The Assessment Team subsequently received FY 2010 MD-715-01 forms for USDA, FSA, RD, and RMA, as they were filed in late January and February 2011. The following is a brief discussion of the contents of the NRCS filing and the Assessment Team's observations thereon, followed by discussions of the other Agency MD-715-01's.

The reports are comprehensive. The FY 2010 NRCS Program Report covers more than 180 pages, including numerous charts. The basic contents are:

1. Preface
2. Agency Identifying Information
3. Executive Summary
4. Certification of Establishment of EEO Programs
5. Agency Self-Assessment Checklist—Essential Elements
6. EEO Plan to Eliminate Identified Barriers
7. Special Program Plan for the Recruitment, Hiring, and Advancement of Individuals with Targeted Disabilities
8. Workforce Data Tables

1. NRCS FY 2010 MD-715-01

NRCS used workforce data as of September 30, 2010, from the National Finance Center Reporting Center; EEO complaint processing data submitted and certified as accurate by NRCS in its FY 2010 Federal Equal Employment Opportunity Statistical Report of Discrimination Complaints (EEO 462 Report); and hearing and appeals data obtained from the *iComplaints* system.

a. Summary of Report

NRCS reports 12,573 permanent full-time, part-time, and temporary employees as of September 30, 2010. Highlights of the Report are:

- Between FY 2009 and 2010, women, Hispanic or Latino men and women, White women, Black men and women, Asian men and women, Native Hawaiian or Other Pacific Islander men and women, and Two or More Races men and women remained below their

overall availability compared to the national civilian labor force (“CLF”), as reported in the 2000 Census.

- Compared with FY 2009, at the GS 13 grade level, there was a 0.04% increase in White males, 0.07% increase in Black or African American men and women, and a 0.01% increase in Asian women; Hispanic or Latino men and women decreased by 0.01%, and White females 0.02%.
- At the GS 14 level there was a 0.05% decrease in Hispanic or Latino men and women, 0.96% in White men and women, 0.19% decrease in Black or African American men and women, and 0.03% decrease in Asian men and women.
- At the GS 15 level, White women increased 0.03%, and Black or African American men and women 0.02%. Hispanic or Latino men decreased 0.02%, and White men 0.05%.
- At the SES level, Black or African American men and women increased by 0.02%
- In FY 2010, 25 individuals filed 26 complaints alleging employment discrimination against NRCS. This was a 42% decrease from FY 2009.
- Twenty-one complaint investigations were completed, of which “only eight were timely.”
- Seventeen merit decisions (without decision by an EEOC Administrative Judge) were issued, and “zero percent of these decisions were issued timely.”
- NRCS paid out a total of \$1,433,980 as a result of final agency decisions, settlement agreements, and final agency actions, a decrease from FY 2009.

Report, pp. 8-9.

NRCS’s Report notes that the “databases contain anomalies that affect the data reporting” (although the “variance did not appear severe enough

to affect the calculations); and “Applicant pool dataset is not available, limiting conclusion on data tables.” Report, p. 9.

b. Compliance with Six Elements of Model Program

The Report describes the efforts undertaken by the Agency to demonstrate its compliance with the EEOC’s six elements of a model program. For example, under “Demonstrated commitment from agency leadership,” the Report describes the Chief’s January 14, 2010 issuance of the Anti-Harassment Policy, postings of policies in all personnel offices; Civil Rights Division training of supervisors, managers, and employees; inclusion of civil rights and EEO factors in annual performance appraisals; and confirmation of adequate resources to ensure success of the Civil Rights function. Report, pp. 10-11. The Report provides similar detail with respect to the other five elements of a model program. NRCS cited only one significant “deficiency” with respect to reporting on these elements, “NRCS does not collect applicant flow data.” [NRCS is implementing an applicant flow system that is based on voluntary supply of information and therefore “is not believed that data will be comprehensive, however, it will provide some assistance to develop a system of gathering recruitment yield data.” Report, p. 18. NRCS notes later in the Report that “The data on awards, separations, and promotion rates is inconclusive because of the small population or because groups appear to experience similar rates of participation.” Report, p. 24.

c. Summary of NRCS-Wide Demographics in Comparison with CLF

With respect to Agency representation in comparison with the Civilian Labor Force (“CLF”) (without regard to specific job titles, categories, or responsibilities), NRCS reports the following comparisons (as this chart appears in the MD-715):

Race/Gender	CLF %	NRCS 09 Total	NRCS 09 %	NRCS 10 Total	NRCS 10 %
White Male	39.0	6,601	55.7	6,883	54.7
White Female	33.7	3,296	27.8	3,589	28.5
Black Male	4.8	510	4.3	539	4.3
Black Female	5.7	376	3.1	429	3.4
Hispanic Male	6.2	364	3.0	369	2.9
Hispanic Female	4.5	192	1.6	207	1.6
Asian Male	1.9	91	.77	93	.74
Asian Female	1.7	73	.62	82	.65
NH/PI Male	.10	5	.04	5	.04
NH/PI Female	.10	8	.07	8	.06
AI/AN Male	0.3	195	1.65	202	1.61
AI/AN Female	0.3	97	0.82	103	.82
Two or more Races Male	0.80	14	.12	28	.22
Two or more Races Female	0.80	19	.16	33	0.26

This chart is essentially a summary of key figures contained in Workforce Tables attached to the back of the Report (discussed further, below). Figures highlighted in red indicate those race/ethnicity/gender representations for FY 2009 and 2010 falling below the CLF figures noted in the second column; the discrepancy between an existing population representation and a selected benchmark, such as the CLF, is generally referred to as “under-representation.” It is usually used as the starting point for further consideration of affirmative efforts that might be taken to “fill the gap” and ease or eliminate the under-representation. As noted in the chart, in comparison with the CLF, NRCS is under-represented in the female category as well as all race/ethnicity categories except American Indian/Alaskan Native. This under-representation is correlated with the entire NRCS workforce, not any specific office, sub-unit, state, region, district, county, or job category.

d. Agency Self-Assessment Checklist

NRCS's "Agency Self-Assessment Checklist Measuring Essential Elements" denotes compliance with all 122 "Compliance Indicator Measures" (such as "Are new employees provided a copy of the EEO policy statement during orientation?"), with 2 exceptions: "When a complainant requests a final agency decision, does the agency issue the decision within 60 days of the request?" "No. Final Agency Decisions are issued by ASCR and not NRCS;" and "Does the responsible management official directly involved in the dispute have settlement authority?" "No. Agency's practice that the RMO's immediate supervisor serves as the RMO." Report, pp. 26, 44, 39, 40.

e. EEO Plan to Attain Essential Elements of Model EEO Program

The "EEO Plan to Attain the Essential Elements of a Model EEO Program" lists each planned activity and a target date for completion. This is a key section of the Report. It demonstrates the extent to which the Agency has studied its programs, workforce data, and results, identified "deficiencies," and prepared corrective action plans. For example, one identified deficiency is, "The number of women, minorities, and persons with disabilities in all major job categories continues to be low in participation rate." Report, p. 45. (See also, "There is low participation and in some cases no participation of women, minorities, and persons with disabilities in agency leadership positions." Report, p. 46.) Planned activities include such items as "Develop a specific recruitment plan for increasing the number of women, minorities, and persons with disabilities in the NRCS workforce." [listed as "Completed." "NRCS developed a national recruitment plan and began implementing the plan in FY 2010. NRCS will conduct further analysis in FY 2011 to continue to identify barriers or potential barriers." Report, pp. 45, 53.] NRCS also reported that it opened an announcement for 100 entry level staff at the GS 7/9 level to participate in the new USDA Business Management Leaders Program, and "did intensive targeted recruiting" regarding Hispanic groups, HBCUs, veteran's groups, disability groups, and several other minority student and professional associations." Report, p. 61.

f. EEO Complaint Activity

NRCS reported on its EEO complaint activity pursuant to the No Fear Act requirements. Of the 26 complaints filed, the most common bases alleged were: 10, race; 12, reprisal; 11, age; and 7, sex. (Complaints can allege multiple bases for violations.) There was one finding of discrimination in FY 2010 (the same as in 2009 and 2008), and the basis was age/promotion-non-selection. Processing times averaged 297 days for investigations, and 229 days for final action. Report, p. 84. (Averages vary depending on whether a hearing was requested.)

The Report includes a separate report, “Disabled Veteran Affirmative Action Plan Report, FY 2010,” which sets forth the Agency’s performance with respect to disabled veteran recruiting (reporting 111 veterans hired in FY 2010, “which is equal to the average for USDA, and 50 disabled veterans, which is above the average for USDA). Report, pp. 93-94.

The Report also includes a number of civil rights/EEO policy statements issued by USDA and NRCS. Report, pp. 95-96. The balance of the Report contains Workforce Data Tables.

g. Workforce Demographic Tables

Several charts are particularly helpful in a workforce diversity assessment. The first is Table A-1, Total Workforce—Distribution by Race/Ethnicity and Sex. It shows the distribution of all NRCS employees (“Total Workforce”) for FY 2010 by race, ethnicity, and gender, and shows a comparison with the Census 2000 Civilian Labor Force (“CLF”). For example, Table A-1 shows female representation of 4,452 employees, or 35.4% of the NRCS workforce, in comparison with 46.8% representation in the CLF, which would equate to 5,884 female employees. This implies a significant under-representation of women, in comparison to the CLF. Similarly, Hispanic male representation is 369 or 2.93%, compared with 6.2% (which would equate to 780 Hispanic males) in the CLF; again, a significant under-representation, using the CLF. Black male representation of 539 or 4.29% is somewhat closer to the CLF of 4.80% (which would equate to 604 Black males). [There are slight differences noted between the Total Workforce, and Permanent Workforce, tables.] There are under-representations for all minority categories using the CLF as a guide, with the exception of American Indian/Alaska Native males

and females. Similar comparisons for the NRCS Total Workforce can be made for NRCS's "Organizational Components" (such as State Conservationist Offices, and Technology Support Centers) (Table A2). This Table includes a separate listing for "Office of the Chief," which has pronounced departures for minority representation from the CLF for Hispanics, but significantly higher representation for Black/African Americans (above the CLF percentages).

Total workforce representation percentages are an initial indication of how an Agency is performing against certain benchmarks (such as the CLF), but they do not tell where in the Agency hierarchy the employees are located. For example, a relatively high percentage of minorities in the total workforce, located in the bottom half of the compensation categories, does not represent effective "inclusion" of minorities in the workforce. An additional breakdown is needed to determine this factor.

Table A3-1 is a first step in analyzing representation throughout the NRCS organization. This is a breakdown using the EEOC's high-level occupational categories, including:

- Officials and Managers: Executive/Senior Level (Grades 15 and above)
- Officials and Managers: Mid-Level (Grades 13-14)
- Officials and Managers: First Level (Grades 12 and below)
- Other Officials and Managers
- Professionals
- Technicians
- Sales Workers
- Administrative Support Workers
- Craft Workers
- Operatives
- Laborers and Helpers
- Service Workers

Note that, although the Occupational Categories are shown on the NRCS chart, NRCS has no employees in the Sales Workers, Operatives, or Service Workers categories, and only one in the Support Workers category.

Here there are some noteworthy differences with the Total Workforce representation. For example, total Hispanic male representation (noted above) is 2.93%, but Hispanic males are 7.27% of the Executive/Senior Level Officials and Managers. Similarly, African American males are 4.29% of the total workforce, but 18.18% of the Executive/Senior Level Officials and Managers; and African American females are 3.41% of the total workforce, but 8.18% of the Executive/Senior Level Officials. All three of these percentages drop for the next category, Mid-Level, First Level, and Other Officials and Managers, but are still above or close to their total workforce percentages.

There is generally low minority representation in the Professionals and Technicians Occupational Categories, except for American Indian/Alaskan Native. For example, Black females are 5.7% of the CLF, but 1.98% of Professionals, and 0.25% of Technicians. Asian Females are 1.7% of the CLF, but 0.67% of Professionals, and 0.25% of Technicians.

The “Applicants and Hires” charts (Table A7) are blank (see note above regarding the non-collection of applicant flow rate demographics).

The “New Hires by Type of Appointment” chart (Table A8) shows new hire rates generally lower than the CLF representation for females and each minority category except Black/African American females, Native Hawaiian/Other Pacific Islander females, and American Indian/Alaska Native males and females.

The “Selections for Internal Competitive Promotions for Major Occupations” chart (Table A9) is blank, as are Tables A11, and A12.

The balance of the charts show “Employee Recognition and Awards” (Table A13) (showing female percentage participation generally higher than percent representation in Total Workforce, and both higher and lower participation rates for Hispanic/Latinos and minorities compared with percent representation in Total Workforce); “Separations by Type of Separation” (Table A14), showing Hispanic/Latino, Black/African American males and females, and Asian females, leaving at slightly higher rates than Total Workforce departures; and various categories distribution by disability, using self-identification codes (the numbers are relatively small and there is no CLF benchmark for comparison purposes).

h. Discussion of NRCS MD-715-01

The Report compiles and presents a prodigious volume of information about (a) NRCS EEO-related initiatives and activities, (b) compliance with MD-715 requirements, and (c) workforce demographics, including total and hierarchical workforce representation, comparisons with the CLF, and breakdown by areas such as hires, separations, and awards. NRCS appears to be attempting to tailor its recruitment, retention, advancement, and overall EEO efforts to the MD-715 requirements by identifying gaps (under-representations compared with the CLF) in performance for each race/ethnicity/gender, and disability listed. The most obvious issue with respect to this “gap analysis” is the benchmark used.

While the Civilian Labor Force is one benchmark that might be appropriately used in certain circumstances, its use for NRCS (and any agency with a skilled, high-tech, professional workforce including FSA, RD, and RMA) is subject to significant question on the ground that the aggregate civilian labor force includes the full range of job categories throughout America today, from couriers and mailroom clerks to PhD researchers and CEOs, including a significant portion of unskilled labor and other irrelevant job positions. NRCS is arguably measuring itself against an irrelevant standard, and likely penalizing its performance by doing so—since the availability of scientists, engineers, technicians, and other technical professions for any race/ethnicity or gender is lower than the CLF. Indeed, as we noted above, NRCS does not have any employees in three lower-skilled categories (Operatives, Service Workers, and Sales Workers); it has only 7 “Laborers and Helpers.” Ninety-four percent of NRCS’s workforce is composed of officials and managers, professionals, and technicians. This is the primary reason why most Federal contractors under OFCCP regulation use Census occupational categories—for a more realistic presentation of “availability” in specific job categories.

Another aspect of Federal contractor performance in this area is the use of *geography* to (a) more specifically identify “availability” of applicants in a particular region, and (b) place the responsibility for remediating under-representation at the local level, where the under-representation exists and where the accountability should lie. NRCS’s identification of under-representations based on the CLF effectively results in placing the responsibility for improvements on 1,182 Officials and Managers across

the country. Where everyone has the responsibility, no one truly has the responsibility. On the other hand, adopting the standard OFCCP approach of a regional, district, or office (called “establishments” in OFCCP terminology) division for performing utilization analyses allows for both a more accurate determination of where goals are needed, and of who has responsibility for achieving the goal. This aids accountability as well, as managers can be identified as having recruitment/hiring goals, and the goals can be placed in their performance objectives and measured annually, with appropriate rewards or penalties. This approach should assist in increasing female, minority, and other needed representation where it is most needed.

NRCS also needs to follow up on the key deficiency it has had since 2003, when the Management Directive was first issued, namely, failure to obtain, report on, and analyze applicant flow data. This is an important element in determining the extent to which NRCS is adequately recruiting. NRCS notes that it is implementing a process for doing so, and it is important that that effort be consummated and reported on in the next MD-715.

Additionally, NRCS needs to remedy the data deficiencies identified in the Report.

i. Workforce Diversity Recommendation

GR-29 In accordance with the Department-wide Recommendations above, USDA Agencies, starting with FSA, RD, NRCS, and RMA as pilots, should incorporate Corporate America’s practices under OFCCP regulations, including the use of best-available Census occupational data, geographical divisions where appropriate, and analytical tools (such as adverse impact and compensation analyses) to (a) more accurately depict the availability of the market for positions specific to the Agencies, and (b) rigorously study recruiting (including applicant flow), hiring, promotions, compensation, discipline, awards, terminations, and other aspects of the workplace that might reveal correctable disparities.

The Agencies have a strong EEO/civil rights analytical foundation in the methodology that has been used in support of MD-715 requirements, so the recruiting and outreach approaches, for example, are not wasted

efforts. But more sophisticated and accurate analyses of the workforce will yield better information and predictors of problem areas, and most importantly, greater accountability.

2. FSA FY 2010 MD-715-01

The FSA FY 2010 (October 1, 2009 to September 30, 2010) Annual EEO Program Status (MD-715-01) report utilized workforce data as of September 30, 2010.¹³²

a. Summary of FSA Report

FSA reported 5,171 employees¹³³ as of September 30, 2010. Highlights of the Report are included below:

- Males represent 43.06% of the workforce. Females represent 56.59% of the workforce, which is less than the female availability, 57.47% in the Civilian Labor Force (CLF) statistics, as reported in the 2000 Census.¹³⁴
- Female employee representation levels are less than CLF statistics in the General Administration, Management Analysis, Accounting and General Business Administration categories.¹³⁵
- Female representation levels are below CLF in the Agricultural Program Specialist and Loan Specialist occupations.
- Hispanic male 1.82% and female 2.15% representation is below CLF availability in many major mission critical occupations.¹³⁶

¹³² This is data from the National Finance Center.

¹³³ Total includes permanent full time, part time, temporary employees, in addition to employees paid from non-appropriated funds.

¹³⁴ CLF availability statistics, which combine major occupational categories.

¹³⁵ FSA reported that no glass ceiling exists for females overall. Females are at or above RFL availability in senior grades.

¹³⁶ FSA reported that no glass ceiling exists for Hispanic males, who are at or more than CLF availability in senior grades. FSA reported that a glass ceiling does exist for Hispanic females at Grade 15 and above.

- Black male representation 3.30% is less than CLF availability and had decreased over the years, and is less than CLF in major mission critical occupations such as General Business and Industry, Agricultural Program Specialist and Loan Specialist.
- Black female representation 7.38% is greater than CLF availability, but is less than RLF statistics in major mission critical occupations such as Agricultural Program Specialist, Loan Specialist and General Business and Industry.
- Asian male 0.56% and female 0.86% are less than CLF availability and are at less than RLF availability in major mission critical occupations.
- American Indian and Alaska Native male and female representation is greater than CLF availability and has increased over the years.
- Individuals with targeted disabilities represent 1.00% of the total workforce, which is less than CLF availability statistics.

b. Summary of FSA-Wide Demographics in Comparison with CLF

With respect to Agency representation in comparison with the CLF (without regard to specific job titles, categories, or responsibilities), FSA reports the following comparative figures:

RACE/GENDER	CLF %	FY 2009 TOTAL	2009 FSA %	FY 2010 TOTAL	2010 FSA%
White Male	39.0%	1941	36.84%	1909	36.61%
White Female	33.7%	2359	44.77%	2339	44.86%
Black Male	4.80%	177	3.36%	172	3.30%
Black Female	5.70%	387	7.34%	385	7.38%
Hispanic Male	6.20%	94	1.78%	95	1.82%
Hispanic Female	4.50%	111	2.11%	112	2.15%
Asian Male	1.90%	27	0.51%	29	0.56%
Asian Female	1.70%	46	0.87%	45	0.86%
NH/PI Male	0.10%	0	0%	0	0%
NH/PI Female	0.10%	0	0%	0	0%
AI/AN Male	0.30%	41	0.78%	40	0.77%
AI/AN Female	0.30%	45	0.85%	45	0.86%
Two or More Races Male	0.80%	0	0%	0	0%
Two or More Races Female	0.80%	0	0%	0	0%

Thus, for FY 2010, FSA’s workforce (exclusive of County Employees and County Committees) is under-represented in the socially disadvantaged categories of Black/African American Male, Hispanic/Latino Males and Females, and Asian Males and Females. (FSA’s MD-715-01 notes that “although Native Hawaiian/Pacific Islander Males and Females . . . are reflected having little or no representation in the workforce, this may or may not be true. They are shown as absent because a survey counting them has not been conducted.” MD-715-01, Chart A/B1, p. 2 of 2.)

c. Barriers/Deficiencies Identified and Planned Actions

FSA conducted the required model agency self-analysis and the barrier analysis based on triggering conditions defined by the EEOC.

FSA identified Agency deficiencies in the following areas, as well as strategies to remove the deficiencies:

1. Collateral duties and responsibilities for EEO staff.
2. Senior Management involvement in development and implementation of the MD-715-01 Report.
3. Sufficient resources to conduct barrier and workforce analyses. For example, FSA does not collect applicant flow data.
4. Failure to re-survey workforce to identify employees based upon new census categories.
5. Targeted recruitment efforts aimed at recruiting individuals within underrepresented groups.
6. Management cannot monitor awards by class group to ensure an equitable awards system.

d. Self Assessment Checklist

FSA's "Agency Self-Assessment Checklist Measuring Essential Elements" denotes compliance with "Compliance Indicators and Measures" (e.g., "EEO policy statements communicated to all employees"). For all unmet areas, the Agency must provide an explanation or attach EEOC Form 715-01 Part H to the Report.

FSA reported 61 areas where compliance indicators/measures were not met, for example, in areas such as participation of management in the ADR process, conducting trend analyses by protected categories, applying penalties for employees who have discriminated, posting, and establishing timetables to review the merit promotion process.

e. Workforce Demographic Tables

The first FY 2010 Report provided to the Assessment Team did not contain Workforce Demographic Tables. The Assessment Team subsequently received the tables, but not in adequate time for in-depth analysis in this Report.

f. Discussion

Like the NRCS MD-715-01, the FSA MD-715-01 compiled and presented a substantial volume of information about (a) its EEO-related initiatives and activities, (b) compliance with MD-715 requirements, and (c) workforce demographics, including total and hierarchical workforce representation, comparisons with the CLF, and breakdown by areas such as hires, separations, and awards. FSA appears to be attempting to tailor its recruitment, retention, advancement, and overall EEO efforts to the MD-715 requirements by identifying gaps (under-representations compared with the CLF) in performance for each race/ethnicity/gender, and disability listed. As with NRCS, the most obvious issue with respect to this “gap analysis” is the benchmark used. See the discussion above regarding voluntary adoption of the OFCCP workforce analysis methodology with respect to NRCS and other USDA Agencies.

g. FSA Workforce Diversity Recommendations

GR-30 Until it has completed its new workforce analyses noted directly above, FSA should aggressively seek to eliminate the under-representations identified in its MD-715-01 through all the methods identified in the MD-715-01.

GR-31 FSA should follow up on a key deficiency, namely, failure to obtain, report on, and analyze applicant flow data. This is an important element in determining the extent to which FSA is adequately recruiting. FSA should complete this effort for reporting in the next MD-715-01.

GR-32 FSA should immediately remedy any data deficiencies identified in its FY 2010 MD-715-01 Report.

3. RD FY 2010 MD 715-01

Rural Development’s Fiscal Year 2010 (October 1, 2009 to September 30, 2010) Annual EEO Program Status report utilized workforce data as of September 30, 2010¹³⁷ and EEO complaint processing data submitted and certified by RD in its FY 2010 Federal

¹³⁷ Data received from the National Finance Center’s PERHIS database.

Equal Employment Opportunity Statistical Report of Discrimination Complaints (EEO 462 Report).

a. Summary of RD Report

RD reported 6,103 employees¹³⁸ as of September 30, 2010. Highlights of the Report are included below:

- Females represent 65.38% of the workforce, which is greater than female availability, 46.80% in the national civilian labor force (CLF) statistics, as reported in the 2000 Census.¹³⁹ There was a slight decrease in female representation. During Fiscal Year 2009, females represented 65.84% of the workforce.
- Total minorities represent 27.35% of the workforce, which is aligned with total minority availability in CLF. There was an increase in total minority representation. During Fiscal Year 2009, total minorities represented 26.87% of the workforce.
- Individuals with disabilities represent 7.55% of the total workforce, while individuals with targeted¹⁴⁰ disabilities represent 0.82% of the total workforce.
- RD reported 662 new hires, of which 57.25% were female, and 31.72% minorities.
- RD reported 442 non-competitive promotions, of which 76% were female and 53.07% were minorities.
- RD reported 308 terminations, 60.71% females, and 24.35% minorities.
 - Involuntary – A total of 6, 66.67% female, and 16.66% minority.

¹³⁸ Total includes permanent full time, part time, temporary employees, in addition to employees paid from non-appropriated funds.

¹³⁹ CLF availability statistics, which combine major occupational categories.

¹⁴⁰ The Report defines “targeted “disabilities are defined as deafness, blindness, missing limbs, partial paralysis, total paralysis, convulsive disorder, mental retardation, mental illness, and distortion of limbs/spine.

- Voluntary – A total of 302, 60.60% female, and 24.50% minorities.
- Regarding comparisons to CLF, the following groups are reported by RD as being “underrepresented¹⁴¹” the following occupational categories:
 - Officials and Managers – Hispanic males (executive level), American Indian/Alaska Native males and females (executive level), White males, Asian/Pacific Islander males and females.¹⁴²
 - Professionals – Hispanic males and females, White males, Asian/Pacific Islander males and females.¹⁴³
 - Technical – Hispanic males and females, American Indian/Alaska Native males and females, White females, Asian/Pacific Islander males.
 - Clerical – Hispanic males, American Indian/Alaska Native males, White males, Asian/Pacific Islander males.
- RD reported no Hispanic, Asian, Native Hawaiian/Pacific Islander or American Indian/Alaska Natives in the Senior Executive Service.
- Males represent 63.46% of Executive/Senior Level (Grade 15 and above), Females 36.54%. In contrast, males represent 34.16% of total workforce statistics.
- On the Annual Federal Equal Employment Opportunity Statistical Report of Discrimination Complaints, RD reported 129 complaints on

¹⁴¹ The difference between benchmark data and utilization in the workforce are typically referred to as under representation, which can be used as a starting point for undertaking affirmative efforts to increase the workforce representation of the “under represented” group.

¹⁴² The Asian/Pacific Islander category was recently separated to Asian and Native Hawaiian/Pacific Islander categories by the EEOC. While some data in the report includes the revised categories, the Table on p. 10 utilizes the superseded EEOC category of Asian/Pacific Islander.

¹⁴³ *Id.*

hand at the beginning of the reporting period and 46 complaints filed. The Agency stated 69 complaints were closed at the end of the reporting period.

b. Compliance with Six Elements of Model Program

The Report describes the efforts undertaken by the Agency to demonstrate its compliance with *selected* EEOC six (6) elements of a model program. After conducting an internal self assessment, RD addressed the following Essential Elements:

- Essential Element (2) Integration of EEO into the Agency’s Strategic Mission; Measurement: Is the EEO Director under the direct supervision of the Agency head?¹⁴⁴

RD reported that the Civil Rights Director has access to the Under Secretary of Rural Development via the Administrator of Operations and Management, who reports to the Under Secretary.

- Essential Element (4) Efficiency; Measurement: Adequate data collection systems to track information required by MD-715.

RD reported that it has not implemented a data collection and analysis system to permit tracking of information required by MD 715, due to instructions received from Office of Personnel Management (OPM) to not collect applicant data.

c. Summary of RD Workforce in Comparison to CLF

The following chart highlights statistics reported by RD in comparison to CLF statistics taken from the 2000 Census, without regard to specific occupational categories, job titles or functions. Essentially, this chart summarized key demographic figures that were included in Workforce Tables attached to the MD 715 Report. Figures highlighted in red illustrate race/ethnicity/gender “under representations” of employees, compared to CLF figures noted in the second column.

¹⁴⁴ See 29 CFR § 1614.102 (b)(4).

As noted in the chart below, in comparison with the CLF, RD is underrepresented with males in all categories, with the exception of American Indian/Alaska Native males. While White males are underrepresented overall, they represent 78% of the total male workforce. Additionally, Hispanic and Asian females fall below CLF availability figures.

Race/Gender	CLF %	FY 2009 Total	2009 RD %	FY 2010 Total	2010 RD%
White Male	39%	1632	26.92%	1650	27.04%
White Female	33.7	2801	46.21%	2784	45.62%
Black Male	4.80%	256	4.22%	263	4.31%
Black Female	5.70%	802	13.23%	823	13.49%
Hispanic Male	6.20%	106	1.75%	115	1.88%
Hispanic Female	4.50%	240	3.96%	236	3.87%
Asian Male	1.90%	47	0.78%	51	0.84%
Asian Female	1.70%	65	1.07%	65	1.07%
NH/PI Male	0.10%	0	0.00%	1	0.02%
NH/PI Female	0.10%	7	0.12%	6	0.10%
AI/AN Male	0.30%	25	0.41%	25	0.41%
AI/AN Female	0.30%	65	1.07%	63	1.03%
Two or More Race Male	0.80%	5	0.08%	8	0.13%
Two or More Race Female	0.80%	10	0.16%	12	0.20%

d. Agency Self-Assessment Checklist

RD's "Agency Self-Assessment Checklist Measuring Essential Elements" denotes compliance with "Compliance Indicators and Measures" (e.g. "EEO policy statements communicated to all employees"). For all unmet areas, the Agency must provide an explanation or attach EEOC Form 715-01 Part H to the Report.

RD reported compliance with indicators, except in the following areas:

1. "Have procedures for reasonable accommodation for individuals with disabilities been made readily accessible/available to all employees by disseminating such procedures during orientation of

new employees and by making such procedure available on the Web?

2. Have managers and supervisors been trained on their responsibilities under procedures for reasonable accommodation?
3. Have timetables or schedules been established for the Agency to review Employee Development/Training for systemic barriers that may be impeding full participation in training opportunities by all groups?
4. Has the Agency implemented an adequate data collection and analysis system that permits tracking of the information required by MD-715 and these instructions?"

e. EEO Plan to Attain Essential Elements of Model EEO Program

The EEO Plan to Attain Essential Elements of Model EEO Programs contains a list of planned activities to be in compliance with EEOC directives and targeted completion dates. This is a key section of the report. This section demonstrates the extent to which the Agency has studied its programs, workforce data and results and identified "deficiencies" and prepared corrective action plans, including naming a responsible official.

For example, RD addressed issues of providing reasonable accommodation instructions to managers and employees, integration of EEO into Agency's strategic mission, communication to employees regarding penalties for discriminatory behavior, and efficiency of complaint system. Additionally, RD established corrective plans for the lack of adequate data collection and analysis systems as required by MD – 715.¹⁴⁵

The Reports compile and present a prodigious volume of information about (a) each Agency's EEO-related initiatives and activities, (b) compliance with MD-715 requirements, and (c) workforce demographics,

¹⁴⁵ Earlier in the report, the Agency states it did not track applicant data due to OPM instructions; however, the Planned Activities section of the Status Report states that the Agency will make plans to collect applicant flow data through its Human Resources application process.

including total and hierarchical workforce representation, comparisons with the CLF, and breakdown by areas such as hires, separations, and awards. RD appears to be attempting to tailor its recruitment, retention, advancement, and overall EEO efforts to the MD-715 requirements by identifying gaps (under-representations compared with the CLF) in performance for each race/ethnicity/gender, and disability listed. The most obvious issue with respect to this “gap analysis” is the benchmark used, as discussed above.

f. RD Workforce Diversity Recommendations

GR-33 Until it has completed its new workforce analyses noted directly above, RD should aggressively seek to eliminate the under-representations identified in its MD-715-01 through all the methods identified in the MD-715-01.

GR-34 RD should follow up on a key deficiency, namely, failure to obtain, report on, and analyze applicant flow data. This is an important element in determining the extent to which RD is adequately recruiting. RD should complete this effort in time for reporting in the next MD-715-01.

GR-35 RD should immediately remedy any data deficiencies identified in its FY 2010 MD-715-01 Report.

4. RMA FY 2010 MD-715-01

We reviewed the RMA FY 2010 (October 1, 2009 to September 30, 2010) Annual EEO Program Status report MD-715-01, which utilizes workforce data as of September 30, 2010.

a. Summary of RMA Workforce

RMA reported 524 employees¹⁴⁶ as of September 30, 2010. Highlights of its FY 2010 MD-715-01 Report are included below:

- Compared to CLF figures, Asian males and females, and Native Hawaiian/Pacific Islander males and females, are under-represented.¹⁴⁷

¹⁴⁶ The total includes permanent full time, part time, and temporary employees, in addition to employees paid from non-appropriated funds.

- The representation rate for Asian males increased by 25% and Asian females 14.3%.
- Compared to CLF figures, Hispanic males and females are under-represented. During FY 2010, there was a 12.5% increase in Hispanic male representation, but a 14.3% loss in Hispanic female representation.
- RMA employs approximately 1% employees with targeted disabilities, which is lower than the Federal goal.
- Females are under-represented¹⁴⁸ in GS 13-15 supervisory levels and in Senior Executive Service (SES). For example, Females represent 25% of GS 14 employees and 20% of SES positions, but 46.8% of the CLF.

b. Compliance with Six Elements of Model Program

After conducting an internal self assessment, RMA addressed each of the Six Elements of a Model Program:

1) Demonstrated Commitment from Agency Leadership

The RMA Administrator signed an updated EEO policy in May 2010, which is available on the website for employees, applicants, constituents and the general public.

RMA defined an area of improvement, which is to update EEO postings in all RMA establishments.

2) Integration of EEO into Agency's Strategic Mission

RMA reported that its 2010-2015 strategic plan includes a management initiative, including staffing and budget, to provide civil rights services to employees and customers.

¹⁴⁷ In previous reporting periods, the category of Native Hawaiian/Pacific Islander did not exist. RMA states that employees were given the opportunity to so self-identify with the new category in September 2010.

¹⁴⁸ The difference between benchmark "availability" data and lower utilization in the workforce is typically referred to as "under-representation", which can be used as a starting point for undertaking affirmative efforts to increase the workforce representation of the "under-represented" group.

Currently, the Civil Rights Director does not make a presentation to the Agency head or other senior official regarding results of the MD-715-01 report, which is one of EEOC's required elements.

3) Management and Program Accountability

RMA stated that it provides monthly reports to management regarding the status of complaints in their area of responsibility.

RMA plans to provide quarterly reports regarding selected components of the MD-715-01 Report during FY 2011.

4) Proactive Prevention

The Agency stated that its mediation program is offered for all informal complaints and supported by all levels of the Agency.

5) Efficiency

RMA reported that it is timely in completing EEO investigations and that its Civil Rights Office employs well-trained staff with experience in conducting analyses required by MD-715.

6) Responsiveness and Legal Compliance

RMA reported that due to its size, the majority of indicators and measures associated with this Element are not within its control and are handled by FSA staff.

c. Agency Self-Assessment Checklist

RMA's "Agency Self-Assessment Checklist Measuring Essential Elements" section denotes its degree of compliance with "Compliance Indicators and Measures" (e.g. "EEO policy statements are up to date"). For all areas of non-compliance, the Agency must provide an explanation or attach EEOC Form 715-01 Part H to the Report.

RMA reported *39 areas where compliance indicators/measures were not met*, for example, EEO Policy updates, postings, presentation of MD-715-01 results by EEO Director to Agency Head or other senior official, and

preparation of trend analyses of workforce profiles by protected categories.

d. EEO Plan to Attain Essential Elements of Model EEO Program

The “EEO Plan to Attain Essential Elements of Model EEO Programs” section contains a list of planned activities to achieve compliance with EEOC directives and targeted completion dates. This is a key section of the report. This section demonstrates the extent to which the Agency has studied its programs, workforce data and results, identified “deficiencies,” and prepared corrective action plans, including naming a responsible official.

For example, RMA addressed issues of completing all investigations within regulatory time limits, creation of a targeted diversity plan, collection of applicant flow data, providing reasonable accommodation instructions to managers and employees, integration of EEO into the Agency’s strategic mission, communication to employees regarding penalties for discriminatory behavior, and efficiency of the complaint system. Additionally, RMA established corrective plans for the lack of adequate data collection and analysis systems as required by MD-715.¹⁴⁹

e. Workforce Demographic Tables

The Report did not include Workforce Demographic Tables. RMA reported that it has not conducted trend analyses of the workforce by protected categories, including race, gender, national origin and disability.

f. Discussion

The RMA Reports compile and present a prodigious volume of information about (a) RMA’s EEO-related initiatives and activities, (b) compliance with MD-715 requirements, and (c) workforce demographics, including total and hierarchical workforce representation, and comparisons with the CLF. The most obvious issue with respect to this “gap analysis” is the benchmark used. As noted above with NRCS, FSA,

¹⁴⁹ Earlier in the report, RMA states that it did not track applicant data due to OPM instructions; however, the Planned Activities section of the Status Report states that RMA will make plans to collect applicant flow data through its Human Resources application process.

and RD, RMA should voluntarily adopt the OFCCP workforce analysis methodology.

g. RMA Workforce Diversity Recommendations

GR-36 Until it has completed its new workforce analyses noted directly above, RMA should aggressively seek to eliminate the under-representations identified in its MD-715-01 through all the methods identified in the MD-715-01.

GR-47 Until it has completed its new workforce analyses noted above, RMA should conduct the workforce trend analyses, and prepare the workforce demographic tables, omitted from its FY 2010 MD-715-01.

GR-38 RMA should follow up on a key deficiency, namely, failure to obtain, report on, and analyze applicant flow data. This is an important element in determining the extent to which RMA is adequately recruiting. RMA should complete this effort in time for reporting in the next MD-715-01.

GR-39 RMA should immediately remedy any data deficiencies identified in its FY 2010 MD-715-01 Report.

E. USDA Office of Civil Rights (Office of Assistant Secretary for Civil Rights)¹⁵⁰

The stated mission of the Office of the Assistant Secretary for Civil Rights (“OASCR”) is to provide leadership and direction necessary to ensure the fair and equitable treatment of all USDA customers and employees and the enforcement of civil rights. The Agency is led by an Assistant Secretary for Civil Rights (“ASCR”), who supervises the 1) Office of Compliance Policy and Training; 2) Data and Records Management; 3) Early Resolution and Conciliation Division; 4) Office of Adjudication; and 5) Office of Program Planning and Accountability. As a division of USDA, OASCR’s Department-wide mission is to ensure compliance with applicable laws, regulations, and policies related to employees and customers. Currently OASCR is within Departmental Management and reports directly to the Assistant Secretary for Administration.

¹⁵⁰ Although the Contract does not require an assessment of the USDA Office of Civil Rights, this section provides an overview of the Office and its recent activities.

OASCR's predecessor has been identified in the numerous class action discrimination cases USDA regarding program delivery, as well as GAO Reports and the CRAT Report. Recurring criticisms of the office have included the "back log" of program civil rights complaints, and the failure to investigate, or to investigate promptly and effectively, civil rights complaints. The issue of timeliness of complaint processing has also been identified by OIG. Over the past several decades, OIG has investigated civil rights management processes at USDA various times, often resulting in reports of serious deficiencies (some of them discussed above). In April 2010, OASCR worked with GAO to clarify progress made on the problems and recommendations contained in the 2008 GAO Report (discussed above), and, according to USDA (no formal report was issued by GAO), GAO was satisfied with the improvements and determined that no additional follow-up would be needed. Additionally, OASCR has worked on 47 open OIG "management challenges" (problems and recommendations from previous audits and reports), and most of those have now been closed. OIG's most recent report, the August 2010 "Major USDA Management Challenges," concluded that two "material weaknesses continue to persist in Civil Rights control structure and environment," and proposed two recommendations:

1. Develop a plan to process employment complaints timely and effectively; and
2. Ensure the integrity of complaint data in the system.

OIG August 2010 Report, p. 2.

In the 2010 USDA PAR Report (discussed above), USDA reported FY 2010 progress in these areas as follows:

1. Revised Standard Operating Procedures to incorporate monitoring and measures to intervene when timeframes are not being met;
2. Established timeframes for the intake process so it will not exceed the deadline for completion of the formal complaint process; and
3. Implemented controls to ensure timely processing of the Final Agency Decision ("FAD") report. The Director, Office of Adjudication is provided with a weekly FAD report for a second level of review and monitoring.

2010 PAR Report, p. 209.

The Assessment Team reviewed OASCR's log of program complaints filed in the period 2009-2011 (to date). The format of the log is helpful in tracking the status of complaints. At the same time, there are too many blank spaces under important topics, including "Issue" (such as "Denial of Benefits," "Rude Treatment," and "Failure to Advise of Programs"), and "Basis" (sex, race, age, *etc.*), for the log to be an effective tracking device. Additionally, the following information is provided by the log:

- 1,174 cases are listed as filed between 2009-2011 (to date)
- 532 of those cases have been "Accepted" for processing
- 566 have been closed either by Decision Letter or "Admin Closure" (*e.g.*, complaint withdrawn, or complainant's failure to pursue complaint)
- The balance were "untimely" or are in various stages of processing
- *4 resulted in findings of discrimination* (in 2009, against FNS)
- *2 resulted in partial findings of discrimination* (in 2009, against FNS)

Regarding OASCR's historic problems with timeliness of complaint processing, OASCR responded that the back log of cases arose principally as a result of numerous complaints that were filed around the time of the class action litigation, when there was a lack of personnel to process a large volume of complaints. Moreover, OASCR notes that emphasis has been placed on processing complaints filed under the Equal Credit Opportunity Act, which has a two-year statute of limitations.

OASCR observes, however, that there have been improvements in timeliness of processing. For example, OASCR noted that typically, complaint "intake" (initial receipt and processing of the complaint) should take approximately 30 days and the Agency has 24 days thereafter to respond with a position statement. At one point, the intake process took approximately 200 days. OASCR states that now, on average, intake takes approximately 20-30 days. The investigation stage may take up to 100 days to prepare the Investigative Plan and the Report

of Investigation (“ROI”). The Adjudication Division receives the file from the Investigations Division and ultimately makes the finding on the Agency’s behalf. In some cases, after the file has been forwarded to the Adjudication Division, there may be a need for a supplemental investigation, in which case the Investigations Division will need to provide more probative evidence.

OASCR noted that timeliness is being addressed by the hiring of additional staff to process complaints, effective triaging of complaints, conducting more efficient investigations, and customer education (which results in more timely processing because complaints are more specific and provide the necessary information (such as the Agency and program in question) to continue processing). OASCR states that it has hosted listening sessions throughout the country with community organizations and customers, and that it has trained employees on civil rights issues. OASCR is revising its website to permit customers and employees to file a program discrimination or equal employment opportunity complaint online, as well as receive information regarding class action litigation. OASCR stated that there are improved docket management techniques in place, and the *Lean Six Sigma* approach (a business management strategy, originally developed by Motorola, that seeks to improve the quality of process outputs) is being used to enhance processes, all with a goal to process complaints in a timely manner and close “vintage” cases. Also, OASCR stated that there is greater coordination between the Program Complaint (Intake and Investigations) and Adjudication divisions. OASCR stated that it has taken steps to better educate OASCR employees, including revised training, creation of model letters, and use of a program intake checklist, which delineates intake tasks in a more effective manner.

While there are a number of initiatives underway to increase the effectiveness of OASCR, a few obvious improvements would ensure greater efficiency. For example, OASCR noted that there are too many layers of review that slow complaint processing. While various levels of review can constitute an effective form of checks and balances, the Assessment Team discussed in detail above the unnecessary complexity of the complaint process; the Agency should reconsider the multiple layers of review to determine which ones are absolutely necessary, and eliminate those that are not. Another issue that emerged during discussions with OASCR was complainant access to the *Report of Investigation* (“ROI”), which would allow a form of rebuttal to Agency

assertions. The current process allows customer access to the ROI only through a Freedom of Information Act Request (“FOIA”). The ROI contains documents and comments from the Agency and is heavily relied upon in the Final Agency Decision. It should be noted that with equal employment opportunity complaints, employees are given access to the ROI, in order to review and provide rebuttal, where applicable. (This Recommendation is included above.) Further, it was stated that electronic copies of documents throughout the Agency should be encouraged because hard copy production is not as efficient or needed for internal use.

1. OASCR Recommendations

GR-40 OASCR should fill in items missing from its program complaint log in the categories “Issues” and “Bases,” and with all future cases ensure that the entire log is completed.

GR-41 OASCR, in consultation with OGC, should review and revise its process for administering program complaints to eliminate all unnecessary steps (including review levels), with a goal of completing the processing of and closing most complaints within 60 days. (See Section K, USDA Discrimination Complaint System, above.)

F. USDA Office of Advocacy and Outreach

The Office of Advocacy and Outreach (“OAO”) was established within USDA in 2009 as required in the 2008 Farm Bill.¹⁵¹ As described in the Secretary’s Memorandum 1064-001, OAO is delegated through the Assistant Secretary for Administration, authority for the performance and oversight of a number of advocacy and outreach functions within USDA as follows:

1. Oversight of the Beginning Farmers and Ranchers Advisory Committee;
2. Establishment and oversight of the Minority Farmer Advisory Committee;

¹⁵¹ See Section 14013 Food, Conservation, and Energy Act Section 2008 and Section 226B of the Department of Agriculture Reorganization Act of 1994.

3. Oversight and operations of the Office of Small Farms Coordination;
4. Administration of Section 2501 of the Food, Agriculture, and Trade Act of 1990;¹⁵²
5. Administration of Section 2281 of the Food, Agriculture and Conservation and Trade Act as related to low-income migrant and seasonal farm worker grant programs;
6. Collaboration with appropriate entities regarding integration of farm worker interests into Department programs;
7. Administration and coordination of a USDA outreach program in collaboration with USDA agencies;
8. Administration of grant programs under Section 14204 of the 2008 Farm Bill;
9. Administration of Section 2501A of the Food, Agriculture, Conservation, and Trade Act of 1990;
10. Strategic planning and performance measurement, monitoring of goals and objectives, and evaluation of Department programs and activities involving small farms or ranches and beginning or socially disadvantaged farmers or ranchers;
11. Administration of the USDA/1994 Land Grant Institutions (Tribal College) Programs;
12. Administration of the USDA/1890 Liaison Officer Program; and
13. Administration of the Hispanic Serving Institutions National Program.

Some of OAO's duties were previously carried out by other agencies within USDA. For example, the 1890 Liaison Officer Program was transferred from the Office of Outreach and Diversity under the Assistant Secretary for Civil Rights, and the Hispanic Serving Institutions Program was formerly administered by the Agricultural Research Service. It appears that the goal of transferring responsibilities to OAO is to have a centralized office that handles outreach and advocacy matters and

¹⁵² See 7 U.S.C. 2279. Responsibilities do not include authorities related to Census of Agriculture and economic studies in subsection (h) of that Section.

ensures uniform policies and procedures consistent with Department objectives.

Since its inception, OAO has primarily focused on initiatives in five program areas, including: 1) Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers, Competitive Grant Program (2501 program); 2) Community Engagement; 3) Small and Beginners Farmers and Ranchers Program; 4) Farm workers, Emergency and Work Stability; and 5) Institutions of Higher Education.

To date, OAO has been appropriated \$1.7 million, and is currently taking steps to fully staff the office in order to fulfill its policy and oversight functions. At present, the office has both full time and temporary employees engaged in the program areas listed above. From an outreach perspective, a large part of OAO's attention has been dedicated to restoring USDA's image within the community by building partnerships with CBOs. In terms of advocacy, OAO has taken steps to establish itself as a resource and conduit between customers and USDA Agencies. To accomplish its objectives, OAO envisions taking new approaches to solve historical issues related to program delivery. The office has sponsored conferences and is utilizing technology to reach broader audiences. OAO leadership believes that the office has made traction in areas that did not receive adequate attention in the past. OAO cites a number of accomplishments, for example:

1. Development of policy for "Receipt for Service" in all local offices, intended to ensure that all customers have a written record of appearance at a USDA office;
2. Development of race/ethnicity/gender self-identification form for applicants;
3. "Strike force efforts" in persistently impoverished counties;
4. 2501 Grant Program received over 60 applications for grants, with grant levels raised from \$100,000 to \$400,000. The program has \$19 million in funding, and grant applications totaling over \$70 million.
5. Webinars to educate farmers and assist with proposals, loan, and grant applications, and communicate with farmers in a linguistically appropriate manner.

6. Monthly outreach coordinator meetings with agencies with outreach functions;
7. Creation of a centralized CBO database;
8. Class Action litigation monitoring and communication. For example, OAO is responsible for administering the call centers in the *Love* and *Garcia* class actions.
9. Identification of a lead CBO in each State to coordinate with USDA Agencies and across government to leverage funding opportunities;
10. Certification of CBOs regarding USDA programs; and
11. Initiative to review diversity of USDA advisory boards.

OAO notes that this list of accomplishments is not exhaustive of OAO's ongoing efforts. It is clear that the office has many activities underway. OAO's objectives fit within the Secretary's goal of model customer service and work environment. OAO should play a prominent role in the new DIA organization proposed in this Report.

G. USDA "Protected Classes"

1. Background

In EEOC terminology, the phrase "protected classes" refers to those characteristics of employees that, by virtue of Federal law, cannot be used to discriminate or retaliate against, or harass, the affected employees. Title VII of the Civil Rights Act of 1964 originally established race, color, gender, national origin, and religion as such protected classes. Later statutes added age, disability, and other classes for such protection. Similarly, Title VI of the Civil Rights Act prohibits discrimination on the basis of race, color, and national origin with respect to any program or activity receiving Federal financial assistance. 42 U.S.C. Section 2000(d). The Equal Credit Opportunity Act (part of the Consumer Credit Protection Act) prohibits discrimination in the availability of credit on the basis of race, color, religion, national origin, sex, marital status, age, and because all or part of an applicant's income derives from a public assistance program. 15 U.S.C. Section 1601 *et seq.* The Rehabilitation Act of 1973 prohibits discrimination based on

handicap in any program or activity receiving Federal financial assistance. 29 U.S.C. Section 701 *et seq.*

The RFP identified the following protected characteristics with respect to which USDA seeks to provide “equal and fair access for all customers”:

1. Ethnicity
2. Race
3. Color
4. National Origin
5. Gender
6. Physical abilities
7. Sexual orientation
8. Religion
9. Age
10. Marital status
11. Parental status
12. Family status
13. Political beliefs
14. Protected genetic information
15. Educational attainment
16. Socio-economic status
17. Native language
18. Limited English proficiency
19. All or part of an individual’s income is derived from any public assistance program

RFP, p. 3. The Assessment Team designed the Assessment to consider these factors whenever possible. (For example, USDA’s applicant information collection processes do not include most of these listed characteristics—therefore, that data was not available for analysis—and the selected Agencies vary among themselves as to the nature and method of information collection. The most common characteristics collected were (1) race/ethnicity and (2) gender—and even these characteristics often not collected. Race/ethnicity and gender, therefore, are used as the bases for the customer demographic analyses provided herein.)

USDA has created some internal inconsistencies with respect to its identification of protected classes or characteristics in the program context. For example:

- USDA regulations at 7 C.F.R. Part 15.5 (Compliance) require the collection of “racial and ethnic data” for “members of minority groups.”

- USDA DR 4330-002 (“Nondiscrimination in Programs and Activities Receiving USDA Financial Assistance”) prohibits discrimination on the bases of race, color, national origin, gender, religion, age, and disability, and “where applicable,” political beliefs, marital or familial status, income, or because of the receipt of public assistance.
- USDA DR 4300-003 (“Equal Opportunity Public Notification Policy”) prohibits discrimination in USDA programs on the bases of race, color, national origin, sex, religion, age, disability, political beliefs, sexual orientation, or marital or family status (noting that “Not all prohibited bases apply to all programs.”)
- USDA DM 4330-001 (“Procedures for Processing Discrimination Complaints and Conducting Civil Rights Compliance Reviews in USDA Conducted Programs and Activities”), prohibits discrimination on the bases of race, color, national origin, sex, religion, age, disability, marital status, familial status, parental status, sexual orientation or because all or a part of an individual’s income is derived from any public assistance program.
- USDA’s “Nondiscrimination Statement” (linked, for example, at the OASCR website) states that it “prohibits discrimination in all of its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, political beliefs, genetic information, reprisal, or because all or part of an individual’s income is derived from any public assistance program. (Not all prohibited bases apply to all programs.)”
- NRCS Civil Rights Compliance Reviews for Title VI and Title VII evaluate “RSNOD” (“race, sex, national origin, and persons with disability”) data on employees. *See, e.g.*, NRCS Civil Rights Compliance Review Report for Florida, February 22-26, 2010, p. 5.
- RMA’s website states that its policy “prohibits discrimination in all its programs and activities based on race, color, sex, religion, national origin, age, disability, reprisal, sexual orientation, marital and parental status, political affiliation, receipt of public assistance or protected genetic information.”

2. Discussion

As a policy matter, USDA can and should make its programs available without regard to a wide variety of classes and characteristics unrelated to the merits of the assistance sought, certainly including those protected by Federal law. The Department should, however, be consistent in its expression of those classes and characteristics that are protected, and should be clear on those protections that create legal rights. Multiple inconsistent statements confuse the public, applicants, customers, and the Department's employees, complicate the complaint processes and potentially the outcomes, and do not serve the ultimate interests of the Department.

USDA should settle on a single statement of those protected characteristics and be consistent in all areas, throughout the Agencies and Department, in all postings, compliance reviews, website references, and elsewhere. If USDA decides that, due to applicable law or policy, it cannot be consistent and needs to customize characteristics to programs, those decisions will have to be made and clearly published as well. USDA then must decide what data it will collect with respect to each of those classes and characteristics to facilitate evaluation of and reporting on equity in program delivery without regard to those classes and characteristics.

3. USDA "Protected Classes" Recommendations

GR-42 Applying appropriate policy and legal considerations in consultation with ASA, OASCR, OGC, and the Justice Department (as necessary), USDA should determine and adopt a consistent position with respect to protected characteristics in both programs and employment and ensure that all publications of that position (in regulations, manuals, handbooks, forms, websites, and other places) are consistent with that intent.

GR-43 Applying appropriate policy and legal considerations in consultation with ASA, OASCR, and OGC, USDA should determine on which of those protected characteristics the Department will collect information from applicants and customers for monitoring, analytical, and reporting purposes; solicit any necessary approvals from the Office of Management and Budget for additional Information Collections; modify and

revise all necessary regulations, manuals, handbooks, forms, and other documents accordingly; and proceed to collect, analyze, report on, and leverage such information in continuing to provide equitable services to all constituents.

XI. CONCLUSION

This Report is the result of 18 months of investigation and analysis of Department-wide program delivery processes and practices at USDA, focused on four USDA-selected Agencies, to determine whether those processes and practices are fair and equitable to all Americans, or present barriers, particularly to socially disadvantaged group (“SDG”) program participation, and, if so, to make specific recommendations and assist in implementing efforts to eradicate those barriers.

This Assessment focused on what needs to be done and provides 234 specific Recommendations of actions to be implemented immediately. It must be noted that for this Assessment to fully achieve the goals sought by the Secretary, the Department *must* devote as much time, resources, and energy to implementing the Recommendations as it did to the Assessment. Otherwise, USDA will fail to make critically-needed programmatic changes, as it has after each of the previous similar studies, task forces, and action plans on discrimination and civil rights inadequacies.

The Recommendations are necessary to build upon the Secretary’s efforts and *create dramatic change* in the way USDA addresses bias, discrimination, and the lack of SDG and equal access to USDA programs. The Assessment Team concluded that each of the four Agencies and the overall Department need to improve equitable delivery of programs, which have disparately impacted SDGs, and need to eliminate other deficiencies, including under-representation of diverse employees in the USDA workforce. Decisive action to implement the Assessment Team’s Recommendations is clearly in the collective best interests of all farmers, ranchers (including SDGs), rural Americans, the entire Department, the nation, and all Americans. Our nation *must* broaden the pool of talented, hard working, well supported, and successful farmers, ranchers, diverse businesses and individuals—particularly as the U.S. population and workforce become increasingly more diverse and the world marketplace becomes more competitive—if the United States is to retain global leadership in farming, ranching, and agribusiness.

**United States Department of
Agriculture**

**Independent Assessment
of the Delivery of Technical and
Financial Assistance
Contract AG-3142-C-09-0049**

“Civil Rights Assessment”

FINAL REPORT

March 31, 2011

**APPENDIX:
COMPILATION OF ALL CIVIL RIGHTS
ASSESSMENT FINAL REPORT
RECOMMENDATIONS**

APPENDIX:

COMPILATION OF ALL CIVIL RIGHTS ASSESSMENT FINAL REPORT RECOMMENDATIONS

The following is a list of all of the Recommendations contained in the Final Report, *i.e.*, a total of 234 Recommendations. The Recommendations are set forth in the following order:

- (1) Department-wide (“DW”) Recommendations, total of 60;
- (2) Farm Service Agency (“FSA”) Recommendations, total of 49;
- (3) Rural Development (“RD”) Recommendations, total of 28;
- (4) Natural Resources Conservation Service (“NRCS”) Recommendations, total of 27;
- (5) Risk Management Agency (“RMA”) Recommendations, total of 27;
and
- (6) General Recommendations (“GR”) from the Additional Analyses, total of 43.

Each Recommendation is listed as part of its respective Section, *e.g.*, DW-1 through DW-60; FSA-1 – FSA-49; RD-1... *etc.* As noted above, there are six separate Sections and a total of 234 Recommendations.

APPENDIX: COMPILATION OF ALL CIVIL RIGHTS ASSESSMENT FINAL REPORT RECOMMENDATIONS

(1) Department-wide (“DW”) Recommendations

- DW-1** Building on the cultural transformation message developed and disseminated by the Cultural Transformation Initiative Task Force, the Secretary’s entire senior team, including Under Secretaries, Assistant Secretaries, and Administrators, **should each personally lead a DIA communications campaign**—for example, “Re-birth of [All] the People’s Department”—**targeting selected key stakeholders** (for example, employees, customers, beneficiaries, CBOs), and the general public.
- DW-2** Building on the USDA Cultural Transformation Initiative Statement of Purpose, the Secretary’s Office should prepare and issue the Secretary’s **“Diversity, Inclusion, and Accessibility Statement”** to all employees, to be posted in all facilities, on the website, blog, and other prominent locations, and to be included in personal mailings to employee homes, such as the annual mailing of W-2 statements.
- DW-3** The Secretary should re-issue, and emphasize to all senior leadership and managers/supervisors (along with the entire workforce) **rigorous enforcement of a comprehensive USDA “Zero Tolerance” Policy**, clearly prohibiting all forms of discrimination, harassment, and retaliation, along with related standards of conduct, and including mandatory discipline for violations regarding both employment and program delivery.
- DW-4** The Secretary’s Office should develop, in writing, a customized persuasive *statement*, *i.e.*, “the business case,” **clarifying how effective DIA measures facilitate better achievement of the USDA Department-wide mission, vision, and strategic objectives**. Under Secretaries should

lead the development of “business cases” specific to each of their Agencies.

DW-5 The USDA **Strategic Plan should include a section on DIA**, including measurable goals and objectives. Progress against the DIA components of the Strategic Plan should be reported at a minimum in USDA Annual Performance and Accountability Reports, and more often as appropriate.

DW-6 The Secretary’s Office should lead the development and implementation of a **sustained employee DIA education/communications plan**, educating all employees about the business imperative of DIA at USDA via their customized Agency business cases, including each employee’s individual responsibilities.

DW-7 The Secretary’s Office should lead in the development and implementation of a **sustained DIA public communications plan**, emphasizing the business imperative of DIA at USDA and how it serves the public interest.

DW-8 The Secretary’s Office should prepare a **video on the Secretary’s DIA commitment**, featuring the Secretary and participation by a diverse group of senior USDA officials, for wide distribution at National, state, and local levels, on the USDA website, during employee on-boarding, and for other internal and external uses, maximizing distribution into rural communities (Community-Based Organizations, 4-H Clubs, Farm Bureaus, National Farmers Union, National Grange, 1890’s, Land-Grant Institutions, County Committees, Job Fairs, *etc.*).

DW-9 The Secretary’s Office should develop and implement the next phase of a “New Era of Civil Rights and DIA” **OSEC Communications/Educational Campaign**, commencing no later than Fourth Quarter 2011. The Campaign should target

broadcast and narrow-cast media and be led by a diverse group including the Secretary, Under Secretaries, Administrators, and others focusing on outlets such as television, radio, print and web-based media, and other major outlets, such as *DiversityInc* (interview), regarding “turning the page” at USDA. Ensure that narrow-casting outlets include those relevant to African Americans, Hispanics/Latinos, Native Americans, Asians, Females, other groups, and the farming/ranching industry.

DW-10 To highlight implementation of these Recommendations, the Secretary should issue ***a Department-wide Memorandum (including distribution to all employees, key Congressional Committees, and concerned Caucuses) emphasizing the Secretary’s expectations with respect to the Report.*** The Secretary should also conduct DIA visits, no later than the First Quarter 2012, to the top 10 states with highest concentrations of under-served and socially disadvantaged populations, and involve key Congressional, state, and local participation from those Districts visited.

DW-11 Senior USDA leadership should assume an active role in the Federal Interagency Diversity Partnership, an organization dedicated to increasing diversity in the Federal workforce (in which USDA has had low-level participation, to date). Participation should be at the Assistant Secretary/Administrator level or above.

DW-12 **Create an external USDA Diversity, Inclusion, and Accessibility (“DIA”) Executive Advisory Board,** consisting of external stakeholders/experts to provide broad, independent advice on enhancing DIA efforts at USDA.

Board Members: Chaired by Secretary; Members drawn from notable CEOs and national constituent leaders from: national civil rights organizations such as Leadership Conference on Civil Rights; Community-Based Organizations; major agri-business companies; major

corporations; foundations and 1890's/Land Grants; and selected other Federal Departments/Agency senior officials with particular DIA experience; staffed by Jackson Lewis.

Objective: Obtain independent, objective advice and counsel from diverse, experienced professionals, including best practices from other organizations; achieve enhanced accountability for results; and create greater external and internal visibility of USDA DIA efforts.

DW-13 **Create an *internal* USDA Executive Diversity, Inclusion, and Accessibility Leadership Council** consisting of senior officials drawn from across USDA.

Council Members: Chaired by the Secretary or his designee; Members: all Under Secretaries, and select Agency Administrators (on rotating terms); Assistant Secretary for Administration; staff assistance from Assistant Secretary for Civil Rights and Jackson Lewis *ex officio*.

Objective: Internally elevate visibility and stature of DIA matters; “invest” and educate senior officials in USDA and Agency-specific DIA issues and solutions; provide senior-level oversight, advice, and counsel to the Secretary and Chief Diversity Officer; create consistency and strategic alignment in DIA practices across USDA; and enhance accountability for results.

DW-14 ***Supplementing the external Advisory Board, USDA should establish “strategic alliances” or informal “partnerships” with one or several nationally-recognized corporate diversity leaders, for regular exchange of information on policies and practices, particularly “best practices.”*** These public/private partnerships would specifically address issues of workforce and marketplace DIA; marketing to a diverse constituency; use of customer and workforce surveys; strategies for diverse and inclusive recruiting, retention, and advancement; most effective methods of monitoring,

reporting, and accountability; and other related topics. This relationship should include mutual workplace speaking engagements; co-authoring articles; joint sponsorships of DIA Conferences with multiple corporate and government sponsors, speakers, brainstorming workshops, and best practice sharing sessions; and other ongoing synergistic interactions.

DW-15 ***Establish by Secretarial Reorganization an Under Secretary for Diversity, Inclusion, and Accessibility; Civil Rights; and Departmental Management*** (see Exhibit 13, Proposed Organizational Chart). The combined and enhanced roles of the Assistant Secretary for Administration, which include human resources, budgeting, marketing, outreach, as well as civil rights enforcement and compliance, would be trifurcated under a new direct report to the Secretary, an Under Secretary position responsible for three functions: (1) Administration; (2) Civil Rights compliance and enforcement (under the OASCR); and (3) Diversity, Inclusion, and Accessibility led by the USDA “Chief Diversity Officer” (including the Office of Advocacy and Outreach, and an Office of Emerging Customer Development). Civil Rights and Administration would remain under an Assistant Secretary and DIA would report to a Chief Diversity Officer. The Secretary has already taken some preliminary actions in this direction, but more formal action is essential to send a strong positive message of priority to internal and external stakeholder groups.¹

DW-16 ***Appoint Chief Diversity Officers for every major Agency,*** reporting directly to the Agency Administrators/Chiefs, with matrix reporting to the USDA CDO and the Assistant Secretary for Civil Rights. Conduct monthly meetings with all Agency CDOs, chaired by the USDA CDO.

¹ According to the USDA Office of General Counsel, the Secretary can create the Under Secretary position and CDO positions under the authority granted to him by Section 4 of Reorganization Plan No. 2 of 1953; June 4, 1953, 18 F.R. 3219, 67 Stat. 633, as amended Oct. 15, 1982, Pub. L. 97-325, § 8(d), 96 Stat. 1606; Oct. 13, 1994, Pub. L. 103-354, title II, § 218(e)(1), 108 Stat. 3213.

- DW-17** ***Appoint Chief Diversity Officers in every State Office*** with dual diversity/compliance functions, with staffs and budgets, and direct reporting to State Directors and matrix reporting to the USDA CDO/ASA.
- DW-18** **Create within every major Agency CDO Office an “Office for Emerging Customer Development,”** to replace “outreach” positions.
- DW-19** Study optimal, most efficient means of staffing of both CDO and ASCR activities, both previously under-staffed in the field.
- DW-20** ***To improve and ensure enhanced accountability for diverse workforce representation, USDA and its Agencies should expand beyond the EEOC-required MD-715-01 analytical requirements and voluntarily utilize the more rigorous OFCCP-model Federal contractor self-evaluative requirements.*** This would include analyses of (a) current personnel utilizations against pertinent labor pools, and (b) potential adverse impacts of all key aspects of workplace DIA functions, including identifying under-representations and under-performances, and preparing and implementing specific remedial action plans, along with annual reports to senior management on progress against goals.² The effort

² Pursuant to 42 U.S.C. § 2000e-16; 5 U.S.C. s 901 et seq; Executive Order 11748; and Section 501 of the Rehabilitation Act of 1973, as amended by Pub. L. 99-506, 100 Stat. 1807, October 21, 1986, Equal Employment Opportunity Commission Management Directive 715 (MD-715) requires heads of all executive agencies to submit an annual report on their workforces that includes workforce demographic data, in an effort to ensure that all employment decisions are free from discrimination. Pursuant to Executive Order 11246 and implementing regulations, the Office of Federal Contract Compliance Programs (“OFCCP”) requires Federal contractors to annually conduct a workforce analysis, comparing incumbent personnel with “availability” in the relevant job categories and labor pools; if the analysis demonstrates that women and/or minorities are underrepresented, the contractor must implement affirmative action to increase the participation of minorities and women in the workplace. The regulations further require numerous analyses of applicant flow, hiring, promotions, terminations, and other aspects of workforce management, to detect any “adverse impacts,” and remediation of any such impacts disclosed. See Executive Order 11246; 41 CFR § 60; Section 503 of the Rehabilitation Act of

should commence with a planning process that designs geographically-based Annual Employment Action Plans for all Agencies and all Federal/State/Area/County offices, using appropriate job category populations.

- DW-21** ***USDA should hold all managers accountable for utilizing a diverse pool of applicants for all vacancies/promotions,*** with limited exceptions to be approved/denied by the USDA CDO. The CDO would direct follow-up actions to remedy the reasons for exceptions, where such exceptions are temporarily approved.
- DW-22** ***The scope of the USDA CDO responsibilities should include conducting, analyzing, and reporting on Annual Organizational Health surveys of all USDA employees.*** The Surveys must include comprehensive DIA questions (covering the workplace and “marketplace”), to broadly measure job satisfaction, morale, and effectiveness of USDA policies, programs, and performance. USDA should simultaneously establish a methodology for regular Department, Agency, and Office reviews, summaries, reports to the Secretary, feedback to the workforce, trend tracking, and responsive actions (such as setting supervisory performance objectives, as detailed above, and training).
- DW-23** ***USDA should enhance active recruitment from major corporations and other Federal Agencies for senior positions,*** including “Exchange” and “Lend an Executive” programs, and focus on diversity in such recruitment.
- DW-24** Following the model of President Obama’s May 2010 Memorandum mandating recruiting/hiring process changes (“Hiring Reform Action Plan,” see Exhibit 14), USDA should

1973; 38 U.S.C. § 4212. While OFCCP requirements apply only to Federal contractors, not to Federal departments and agencies, the Team recommends that USDA voluntarily adopt these well-established, effective methodologies and make them mandatory throughout the Department.

work with OPM as necessary to **re-assess and revise, as needed, all job descriptions in job categories of minority and female under-utilization**. The goal would be to ensure that job descriptions are not unduly restrictive in order to reduce instances of unfair disqualification of diverse applicants. This effort should begin at the senior and supervisory level.

- DW-25** In concert with the Secretary's Cultural Transformation training initiative and Recommendations in the Agency Assessment Sections, beginning with an RFP/RFI/RFQ process in FY 2011, **USDA should dramatically upgrade mandatory nation-wide DIA in-person training, covering both the workplace and the marketplace (customer service)**. The materials should include an educational module designed to counteract employee resistance to "targeting" under-served populations.
- DW-26** **USDA should establish a knowledge transfer/mentorship program** using, among others, senior/near-retirement USDA employees to transfer institutional knowledge and mentor rising high-potential minorities and women.
- DW-27** **USDA should implement a rigorous succession planning methodology** for incorporating minorities and women in higher positions at USDA.
- DW-28** **USDA should expand upon actions of the Cultural Transformation Initiative by designing and incorporating specific, meaningful, and measurable DIA objectives in all senior official and managers' performance plans, and using them to appropriately affect compensation, promotion potential, and other areas of employee performance and progression**. Standards will vary depending on job category (e.g., "bonus-eligible" positions), but new, specific DIA objectives will be impactful. (As noted above, with some exceptions, employees

generally do not regard the “Civil Rights/EEO” component of their performance evaluations as meaningful or having any positive or negative impact on their careers.)

DW-29 Building on the recent addition of a diversity category to the Secretary’s Honors Awards in 2010, ***regularly recognize and publicly reward outstanding performance in diverse workforce development and marketing practices*** and results at Departmental, Agency, and State levels.

DW-30 ***Organize and Implement an Intra-Agency Data Validation and Integrity Team*** to verify the validity of existing data, and dramatically improve the integrity of all data gathered in the future:

- a. Obtain the Race/Ethnicity/Gender OMB approval as soon as possible. Implement the requirements to collect such data from applicants and customers in the four USDA Agencies (FSA, RD, NRCS, and RMA), and other customer-service Agencies as appropriate. Provide necessary roll-out materials, training, and early monitoring of compliance to correct deficiencies. Regularly report to the Office of the Secretary on progress.
- b. Require AIPs and financial institutions with USDA-guaranteed loan programs to collect the same data from their applicants and customers, and design templates for recording and retrieving race/ethnicity and gender information about applicants and insureds.
- c. Establish a USDA management priority to improve data collection/retrieval throughout USDA.

DW-31 FSA, RD, NRCS, and RMA (and other customer-serving Agencies as appropriate) should ***develop a template (such as that used in this Assessment) for regularly collecting and reporting on customers served, by race/ethnicity and gender.*** The information should be reported to the Agency

heads on a monthly basis, and the Secretary on a quarterly basis. It should be used to develop marketing plans (discussed below) and measures for performance evaluations.

DW-32 ***USDA should commence reporting to Congress under Section 14006 of the 2008 Farm Bill in FY 2011 using best available data, and prepare annual reports to Congress as required thereafter.*** USDA should provide not only numbers and percentages of customers by race/ethnicity and gender, but also dollars awarded/paid/obligated and percentages for each SDG, along with comparisons to the percentages of SDGs in the relevant populations. USDA should include customers for all Agencies and all programs, not just farmers and ranchers (as required by Section 14006).

DW-33 USDA should prepare ***Annual Reports to Congress*** (Senate/House Agriculture and other interested Committees) from the Secretary (prepared by the Under Secretary for DIA) covering:

- Employment diversity goals and performance/improvements;
- Under-served, including socially disadvantaged, customer service goals and performance/improvements;
- Civil rights employment complaint metrics, performance, and “lessons learned”;
- Program civil rights complaint metrics, performance, and “lessons learned”; and
- New initiatives to better serve the under-served.

DW-34 ***USDA should require Annual DIA Business Plans from all major Agency Headquarters and State/County Offices,*** showing goals/objectives for inclusion of under-served, including socially disadvantaged, populations, with metrics,

deadlines, evaluations of performance against goals, and end-of-year results reports to the Secretary.

DW-35 ***The ASCR should 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 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.

DW-36 ***USDA should reconstruct the Program Complaint process, commencing with completing its implementation (already underway by ASCR) of a simple complaint form*** (rather than the current “letter” requirement), similar to the EEOC Charge Form, and simplifying all steps in the process, including eliminating unnecessary review levels, to enable more expedient investigations and decision-making. All Program Complaints should be filed at Headquarters, not at the State or local level (provide pre-paid envelopes addressed to USDA).

DW-37 ***USDA should install and widely publicize two toll-free Hotlines (one for employees; one for customers)***, integrated with the Complaint System, which would log in and create files for all complaints received, and follow normal processes for investigation and closure.

DW-38 ***USDA should annually outsource to a highly-rated private sector entity 10% of Program and EEO complaints*** for investigations on 60-day tracks and compare

the findings, timing, and hours invested per matter with USDA-conducted investigations. Take appropriate follow-up actions with respect to USDA practices.

- DW-39** Building on the EEO Accountability Program, recently established in OHRM through the Cultural Transformation Initiative, ***USDA should develop and produce a simplified policy manual for all employees, which includes permissible and effective methods to discipline employees*** who violate anti-discrimination, anti-harassment, and anti-retaliation laws and policies.
- DW-40** Following the IRS-announcement model (capitalizing on the deterrent effect of audits, prosecutions, and punishment), ***USDA should internally publicize documented, confirmed acts of USDA discrimination, harassment, and retaliation, and corresponding penalties consistent with applicable restrictions***, such as privacy laws, as a way of educating the workforce as to “real-world experiences,” recent developments, and reminding them of the importance of a shared commitment to DIA values and processes.
- DW-41** ***USDA should now and annually remind all Agencies of the fundamental requirements for Civil Rights Impact Statements (DR 4300-002) (“CRIS”)***—which have strong potential for integrating DIA in administrative policy and transformational change efforts—and OASCR and the Agencies should rigorously enforce those requirements, as appropriate, by requiring and providing additional information and concluding with denials, conditions, and monitoring of performance, as appropriate. OASCR should communicate as needed with the Department and Agencies as to lessons learned, evolving standards, and new initiatives regarding CRIS.
- DW-42** ***USDA should work with OPM and Congress as necessary to enable streamlined discipline for civil rights violators,***

including suspensions/terminations, to maximize availability of effective, message-sending disciplinary measures.

- DW-43** For a provisional, one-year-period (until confidence and trust is restored in USDA's operations), ***USDA should require immediate referral and review of all denied (and perhaps inordinately delayed) loan/program applications, and all foreclosures, of SDGs, at USDA CDO-Headquarters.***
- DW-44** ***USDA should re-establish a "Testing Program"*** (using accepted protocols of farmers and RD customers, such as HUD Testers) for customer service equity evaluations.
- DW-45** In concert with various moratoria on such foreclosures, ***USDA should create within the office of the Under Secretary for DIA responsibility for review of all proposed foreclosure actions impacting SDGs;*** USDA should take all reasonable steps to re-structure non-performing loans with, and avoid foreclosures against, SDGs whenever feasible.
- DW-46** Beginning in FY 2012, initiate "Rebirth of 'All The People's Department,'" or similarly-themed, messaging approach.
- DW-47** In addition to OSEC communications, the Office of Communications should establish and develop a high-volume "Model Department" Education/Communications Campaign designed to educate the public, customers, and potential customers about USDA vital programs and communicate a positive, proactive Departmental message and leverage the Secretary's "New Era of Civil Rights" (and now, DIA) mission.
- DW-48** Myth/rumor-busting: USDA should develop a strategy for improved information flow to anticipate and dispel key myths about and within USDA (examples of such *myths* include: FSA County Committees decide who get USDA loans; the

number of minority farmers is decreasing; “targeting” underserved populations is “reverse discrimination;” all minority farmers are small, *etc.*).

- DW-49** “Re-brand” and educate the public about USDA in *recruiting efforts* to SDGs and others by emphasizing not just agriculture but important USDA workforce skill sets such as asset management, finance and accounting, risk management, insurance, science and engineering, and economics.
- DW-50** USDA should apply for the designation “Best Federal Agencies” at *DiversityInc*—the result is a “free” analysis, comparisons with benchmarks, and suggestions for improvement, all which can be used as additional input for DIA enhancements at USDA. This effort should be led by the new USDA CDO.
- DW-51** USDA should adopt a semantic/philosophical change to eliminate negative and mis-impressions: for example, the term “outreach” should be expunged in favor of “marketing,” and “diversity” should be used in place of “civil rights” when the real intent is “diversity.”
- DW-52** Expanding upon current statutory requirements for assembling program customer data by race/ethnicity and gender (“Transparency and Accountability for Socially Disadvantaged Farmers and Ranchers”), ***USDA should develop a rigorous process for conducting annual utilization (“Market Penetration”) analyses of its customer base focusing on relevant SDG populations, including numbers, dollars, and types of assistance,*** and identifying under-utilizations to serve as the basis for Annual Marketing Plans (*see next Recommendation, below*).

- DW-53** Based on the results of the Market Penetration Analyses, **each Agency, State Office, and Region/Area/County Office as appropriate, should work collectively to prepare and implement Annual Marketing Plans**, including “outreach,” grants, and other goals, objectives, and corrective actions to remediate areas of under-service to SDGs (in a similar manner as the Team has proposed that USDA collect and analyze under-utilization data for USDA employment categories, with plans for corrective actions).
- DW-54** Based on each respective *Annual Marketing Plan*, **each Agency, State Office, and Region/Area/County Office as appropriate, should prepare Monthly and End-of-Year Performance Reports**, reflecting performance against goals and including actions to be taken in the next Annual Marketing Plan. Performance evaluations for leadership in each Agency should be positively (or negatively, as appropriate) and measurably affected by performance against goals.
- DW-55** USDA should establish and disseminate within each customer-serving Agency **annual customer satisfaction surveys**, including DIA questions. The USDA CIO and Agency leadership should analyze and publish the results, and work with the Department and all Agencies on needed improvements indicated from the surveys.
- DW-56** USDA should develop and implement, or facilitate/sponsor the implementation of, a *Mentor-Protégé Program* (similar to that in other Federal Departments, such as DOD) wherein “Mentors” provide **broad business advice and assistance to small/beginning/disadvantaged farmer/rancher/business owner “Protégés,”** to assist them in operating and growing their businesses.

- DW-57** The USDA CDO should ***study and develop a Model Marketing (formerly “outreach”) Program*** for each Agency, and provide the model to all State/local offices.
- DW-58** USDA should require ***NASS to send an Annual Report to all State and County Offices with their State/County statistics on socially disadvantaged farmers and ranchers*** (the “denominator” for market penetration analyses), requiring an acknowledgement of receipt.
- DW-59** Consistent with other Agency Section Recommendations herein and based in part upon the Market Penetration Analyses, ***USDA should create regular USDA Office Days*** (and/or “bookmobile” visits) in government-owned or other appropriate facilities *for all significant remote populations of under-served customers*, to be staffed on those days by existing employees.
- DW-60** ***USDA should establish a National Customer Hotline*** to assist all customers with applications processes and other requests for information and assistance. All hotline operators should be well-trained to answer questions or forward calls to knowledgeable Agency personnel.

APPENDIX: COMPILATION OF ALL CIVIL RIGHTS ASSESSMENT FINAL REPORT RECOMMENDATIONS

(2) Recommendations: Farm Service Agency

FSA-1 Recognizing that County Committees have played a valuable role in providing FSA and USDA with important technical assistance crucial to their decision-making, but do not appear to have kept pace with the changing demographics and demands of a growing America, the Team proposes restructuring the County Committee system as follows.

1. Change the role of County Committee members from having decision-making authority for Farm Programs to serving as “technical advisors.” See, e.g., NRCS Technical Advisors.³ Also, change the County Committee member selection process so that all members are appointed by the SED.
2. Transfer the County Committees’ authority to hire and supervise County Executive Directors (“CED”) to either the State Executive Directors or District Directors (“SED/DD”), as appropriate.
 - a. As part of this process, CEDs who retire or otherwise leave their positions will be replaced by a selection process where a diverse pool of candidates, reflecting the diversity of the local population, is submitted to the SED/DD, and the most qualified candidate is selected.
 - b. If at the end of a 3-year period, commencing when this restructuring is implemented, or such other period determined appropriate by the Secretary, the demographic composition of CEDs does not adequately reflect the diversity of the local population they represent, the Secretary may require individual remaining holdover CEDs to resign, according to a schedule established by the Secretary.
 - c. Before the effective date(s) of the resignations, the SEDs/DDs shall use a selection process whereby the candidates will reflect the diversity of the local populations they seek to

³ <http://www.nrcs.usda.gov/technical/>.

represent, which may include the resigning CED, and the most qualified candidate is selected.

3. All County employees should retain their positions. During the transition period, remaining holdover CEDs may fill vacancies only from a diverse pool of candidates reflecting the diversity of the local population, with all hiring decisions subject to pre-approval by the SED/DD.
4. In the jurisdictions where minority advisors exist or are appropriate, they should be selected by the CED (during the holdover period all selections should be reviewed by the SED/DD).
5. In Counties where there are minority advisors, the advisors should be granted an equal vote on all County Committee decisions and full signing authority.
6. To clarify the newly recommended status, authority, and responsibilities of County Committees:
 - a. A designated FSA official(s) should be assigned by Headquarters to attend the meetings of CBOs and other SDG organizations to explain the newly revised CED selection and reporting processes, the County Committee nominations and appointments processes, and the duties and responsibilities of County Committee members.
 - b. The perennial News Releases from FSA regarding County Committee nominations and USDA appointments should be elevated to the Secretary/Department-wide level to achieve more coverage in the agricultural media.

The Secretary should include a short explanation of the process as often as prudent to elevate the changes in the agricultural media.

FSA-2 Institute training/seminars for FSA employees explaining why programs designed to increase SDG participation are essential, *i.e.*, the Business Case for Diversity, Inclusion and Accessibility, since the future of America competing in a

global economy demands fairness for and inclusion of all Americans.

FSA-3 Take prompt remedial action to reinforce the severity of consequences associated with engaging in discriminatory conduct, where appropriate, and broadly inform local and national employees of the remedial actions taken (within the limits of privacy laws).

FSA-4 Working with the Offices of Advocacy and Outreach (“OAO”) and Communications,⁴ restore FSA’s image with the public, particularly SDGs. As outlined in the Department-wide recommendations, FSA should specifically engage in the following:

- 1) Work with OAO to initiate a campaign to SDGs regarding FSA programs.
- 2) Myth/Rumor busting: FSA should develop a strategy for improved information flow to dispel key myths and rumors about FSA.

FSA-5 Engage in aggressive recruitment efforts to obtain the best job candidates, drawing broadly from across the counties, states and the nation, to achieve fair and qualified representation. This will result in hiring more well-qualified SDG employees and increasing the proportion of SDGs in the Agency workforce.

FSA-6 Require all employment source selection boards to secure a diverse pool of candidates, unless an exception can be granted by the CDO of the Agency, where there is no under-utilization by race or gender for the job in question.

⁴ See Department-wide Recommendations regarding a new “Office of Diversity, Inclusion and Accessibility” and new State Field Offices of Emerging Customer Development.

- FSA-7** Require Farm Programs staff to establish SDG funding goals/benchmarks and be measured on performance similar to evaluations of the Farm Loan Programs staff.
- FSA-8** Cross-train employees on Farm Loan Programs and Farm Programs to better serve all customers and potential customers.
- FSA-9** Cross-train field personnel regarding programs available through other USDA Agencies (RMA, RD, and NRCS) to better serve all USDA customers and potential customers.
- FSA-10** Headquarters should develop a “Handbook on Outreach” (“marketing”).
- FSA-11** Track and provide to State and County Office employees, on an annual basis, not only the statistics of the demographics of their counties and states, but the names and contact information of SDG customers and potential customers in their counties and states.
- FSA-12** Whenever FSA officials deny SDG loan or program applications, they should be required to thoroughly explain to the applicants the reasons for denial *and* what the applicant can do to improve chances of securing FSA approval in subsequent applications. This includes referring them to the appropriate resources (such as a CBO that can assist in the process).
- FSA-13** Appoint Chief Diversity Officers at Agency and State Levels [see USDA-wide Recommendations in Section III] with responsibilities to enhance both SDG program access and employment representation consistent with the applicable representation in the population.

- FSA-14** Utilize an OFCCP-style model for workforce analysis [see USDA-wide Recommendations, Section III] to identify underutilized SDG members for which the Agency should be improving its recruitment, hiring and retention.
- FSA-15** Open additional County Offices in areas with high proportions of non-traditional crops to support Congress's and FSA's decision to cover non-traditional crops.
- FSA-16** Have a fully cross-trained Farm Programs Technician or Farm Loan Officer or other cross-trained representative on staff in every County Office.
- FSA-17** In areas where there is a critical mass of SDGs for whom English is a second language, to the maximum extent practicable, seek to have at least one fully cross-trained employee who is fluent in the language of that SDG group. Also, working with local resources, arrange for (for example, by referrals) more training of customers and potential customers in "English for business transactions."
- FSA-18** Create and make available forms that are translated into appropriate languages spoken by local FSA customers, not limited to Spanish, where there is a critical mass of any one individual SDG group in sufficient numbers to make the process cost efficient.
- FSA-19** Require State Executive Directors ("SEDs"), District Directors, and County Office employees to be "in the field" a specified percentage of their work time.

- FSA-20** To complement online *AgLearn* Civil Rights training, institute periodic in-person, interactive training on Civil Rights and diversity issues.
- FSA-21** Simplify application forms and streamline the paperwork necessary to apply for Farm Loan Programs and Farm Programs, including eliminating requests for unnecessary and redundant information.
- FSA-22** Require County Offices to submit a self-evaluation to the State Outreach Coordinator on an annual basis analyzing the effectiveness of their Outreach (“Emerging Customer Development”) efforts, and providing remedial plans to correct under-performances.
- FSA-23** Require each state to have a full-time State Outreach Coordinator (“Office of Emerging Customer Development”), who has a demonstrated track record and commitment to outreach.
- FSA-24** Require states to re-establish State Outreach Councils composed of USDA Agency representatives and other concerned stakeholders in the state.
- FSA-25** Once outreach (“marketing” or “Emerging Customer Development”) is established as a core component of the field operations mission, create incentives for employees to conduct effective marketing and disincentives for failing to adequately perform.
- FSA-26** Return authority and responsibility to County Offices for mailing post cards and other information to FSA customers and potential customers.

- FSA-27** Modify scope of SDG exception from Direct and Counter-Cyclical Program 10-acre rule to include not just the landowner, but also the Principal Operator.
- FSA-28** Increase the “term limits” for participation in Farm Loan Programs to improve producers’ chances to succeed. The eight-year term limit should be lengthened or eliminated altogether. Clear policy guidance should be given that, as the lender of last resort, FSA and the customers should be viewed as partners with a “mutual” interest in the customers’ long term success, not merely seeking loan repayment.
- FSA-29** Allow greater flexibility for borrowers to meet the 3-year experience requirement to be eligible for farm ownership loans (*i.e.*, allow college degree, “grew up on a farm,” and past work on a farm, *etc.* to be used to satisfy 3-year requirement) and re-visit the value of a 3-year versus a 2-year requirement. Determine whether there is a compelling “justifiable business necessity” for the rule, if not, modify the rule permanently to a lower justifiable number.
- FSA-30** Eliminate the 1-year experience requirement for eligibility for Farm Loans for beginning farmers and establish other basic criteria more likely to serve as reasonable indicators of likely success, such as college degree, practical training, and experience.
- FSA-31** Reduce the down payment requirement for guaranteed loans to beginning farmers.
- FSA-32** Modify the Noninsured Crop Disaster Assistance Program fee so that it varies depending on acreage.
- FSA-33** Issue a directive to every employee involved in the lending and/or outreach processes, clarifying what assistance they

can and cannot provide to customers and potential customers in connection with completing their applications, to avoid unequal treatment that could be construed by any customer or potential customer as discriminatory.

- FSA-34** Require employees who are unable to provide customers and potential customers with the level of service they require, beyond the scope of appropriate FSA Service, to refer customers to other Agencies, County Extension Service, or CBOs, that may be able to help.
- FSA-35** Provide Farm Programs personnel with tools (including OMB approval, forms, computerized data collection methods, *etc.*) needed to accurately capture customer demographics, as is done by Farm Loan Programs.
- FSA-36** Identify, develop, and fund improved, updated technology tools (office systems, telecommunications, *etc.*) in the State and County Offices.
- FSA-37** Implement a national marketing campaign for Farm Programs, designed to increase FSA's visibility among producers similar to the marketing campaign developed by Farm Loans Programs.
- FSA-38** Headquarters should collaborate and communicate better with the State and County Offices when conducting any event in that state and county.
- FSA-39** Offer training for farmers/producers regarding web-based programs and applications and access to equipment for CBOs, libraries, and 1890 colleges.

- FSA-40** Provide a dedicated computer terminal with internet access in each County Office dedicated, first, to those producers who have received Level 2 access and, second, to those who want to familiarize themselves with the website's contents and/or apply for program benefits.
- FSA-41** Reorganize the contents of the website by type of farm, making it more user-friendly. For example, provide an icon for information concerning crops, an icon for cattle, nursery owners, *etc.*
- FSA-42** Expand office hours in County Offices, especially during active seasons, so that they are more convenient for the schedules of farmers/ranchers.
- FSA-43** FSA employees should be trained to communicate in plain language. They should understand they are not communicating with co-workers and should not use acronyms; rather, they should speak at a level that can be understood by farmers/ranchers who know little about FSA or its programs.
- FSA-44** FSA should create "train the trainer" training programs for CBOs so that they can better train and explain FSA offerings to their constituents and assist in the application process.
- FSA-45** FSA should develop pilot programs for farmers/ranchers who are not "credit ready" and train CBOs or customers and potential customers on how to improve their credit.
- FSA-46** For applicants who are prescreened for programs, but do not actually submit an application, obtain and retain demographic information.

- FSA-47** Use testers, wherever possible, to determine if similarly situated minority, female, and majority loan and program applications result in differential treatment of SDG farmers and ranchers.
- FSA-48** If an applicant was delinquent on loan(s), but ultimately paid off the loan(s) in full, establish a time period after which FSA will not consider those delinquencies in making credit decisions.
- FSA-49** Once appropriate and accurate record-keeping is maintained, annually analyze the relative application, acceptance/denial, payment, delinquency, and default rates of various groups of borrowers to determine whether any inappropriate discriminatory criteria are being used.

APPENDIX: COMPILATION OF ALL CIVIL RIGHTS ASSESSMENT FINAL REPORT RECOMMENDATIONS

(3) Recommendations: Rural Development

- RD-1** RD should establish a comprehensive education and information program to target underserved populations, particularly in areas with high SDG concentrations. The communication and education program must be multi-faceted, using the most cost-efficient and existing organizations, such as CBOs, 1890 Institutions, Tribal Colleges and Universities, public schools, churches, employers, military installations, and other Federal, State, and Local Government Agencies to reach intended audiences. RD will provide information to these organizations and secure cooperation for them to disseminate broadly, to their employees, students, members and other constituents.
- RD-2** In order to expand RD's presence and successful utilization of existing program dollars that are not reaching SDG communities, RD should seek organizations such as CBOs able to 1) identify RD programs appropriate for their constituents; 2) identify eligible participants; 3) educate potential applicants to build capacity; 4) assist with the application process; and 5) work with borrowers to increase the likelihood of success after funding is provided. RD should create *certified* outreach partnerships by training organizations with technical and substantive knowledge, as well as strong ties to SDGs particularly in states that do not fully obligate funds or are serving underserved populations.
- RD-3** Reinstitute a Direct Lending Business Program to assist small and SDG-owned businesses, which often require smaller loans to allow them to be successful in the early and most crucial stage of business development.

- RD-4** Create a Task Force to adjust population criteria across program areas in order to address problems that are created by inconsistent population criteria, particularly in areas that are economically depressed.
- RD-5** RD should fund personal finance workshops in areas with high concentrations of SDGs, starting at the high school level to educate potential borrowers on basic principles that will enable them to participate in RD programs.
- RD-6** Develop a Leadership Institute for emerging leaders on rural economics and agriculture.
- RD-7** Create Uniform Policy Guidance to ensure consistency of program delivery across the states.
- RD-8** Share office space with other agencies with offices in areas that are geographically distant from RD customers and potential customers.
- RD-9** Ensure consistent use of “Office Days” in areas without an RD office presence.
- RD-10** Utilize flex-time policies; encourage the use of evening/weekend hours to ensure greater customer/potential customer access to programs.
- RD-11** Institute Customer Service/Cultural Awareness Training to improve employee responsiveness and interaction with all customers.

- RD-12** Enhance Memorandum of Understanding (“MOU”) with HUD to allow broader use of “testing” of Multi-Family Housing (“MFH”) complexes.
- RD-13** Increase marketing of MFH as a feeder to Single-Family Housing (“SFH”) program to enable renters an opportunity for home ownership. Additionally, target minority owners and developers for MFH projects.
- RD-14** There is inadequate funding for the 504 Grant Program. Increase funding allocations in this program to assist lower income customers.
- RD-15** Expand eligibility requirements for the 504 Grant Program to enable disabled customers under the age of 62 access to grant funds.
- RD-16** Create a “Reshaping Rural America Project Team” with other Federal, State and local agencies to develop joint plans for entire rural communities utilizing shared resources.
- RD-17** Create an SDG Advisory Board to advise the “Reshaping Rural America Projects Team” in developing ideas to reshape rural America with particular focus on issues involving SDG communities.
- RD-18** Establish formal cross-training initiatives to ensure employees have knowledge about all program areas and to allow female and minority employees opportunities for advancement within the Agency.
- RD-19** Develop an employee model marketing (outreach) program for all offices to increase participation, knowledge, and awareness of RD programs by SDGs.

- RD-20** Implement a structured award program as an employee incentive to target SDGs.
- RD-21** Ensure office accessibility to all customers/potential customers.
- RD-22** Create full-time Civil Rights Manager Position (“Chief Diversity Officer”)
- RD-23** Issue NOFAs earlier to ensure all customers have access to funding opportunities.
- RD-24** Evaluate the Prequalification Process to ensure that it is a timely and effective tool for customer planning and is used consistently throughout the states.
- RD-25** Address website accommodation issues for individuals with disabilities.
- RD-26** Where there is a critical mass of SDGs for whom English is a second language, to the maximum extent practicable, seek to have at least one fully cross-trained employee who is fluent in the language of that SDG group or ensure that all employees and customers have access to interpreter services. Also, working with local resources, arrange for more training of customer and potential customers in “English for business transactions”.⁵

⁵ See 28 CFR Section 42.405 (d)(1) Where a significant number or proportion of the population eligible to be served or likely to be directly affected by a federally assisted program (*e.g.*, affected by relocation) needs service or information in a language other than English in order effectively to be informed of or to participate in the program, the recipient shall take reasonable steps, considering the scope of the program and the size and concentration of such population, to provide information in appropriate languages to such persons. This requirement applies with regard to written material of the type which is ordinarily distributed to the public. (2) Federal agencies shall also take reasonable steps to provide, in languages other than English, information regarding programs subject to Title VI.

RD-27 Create and make available forms that are translated into appropriate languages spoken by local RD customers, not limited to Spanish, where there is a critical mass of any one individual SDG group in sufficient numbers to make the process cost efficient. SDGs for whom English is a second language also need access to English training, focused on improving their ability to engage in business transactions to increase U.S business acumen in the same manner USDA provides language training for overseas employees.

RD-28 Rural Utilities should 1) continue to hold educational workshops aimed at increasing minority participation in the Broadband Initiative Program (“BIP”); and 2) collect data to analyze impact of funding to SDGs.

APPENDIX: COMPILATION OF ALL CIVIL RIGHTS ASSESSMENT FINAL REPORT RECOMMENDATIONS

(4) Recommendations: Natural Resources Conservation Service

- NRCS-1** Appoint an NRCS Chief Diversity Officer (“CDO”), and CDOs for each State [consistent with Department-wide Recommendations].
- NRCS-2** Utilize an OFCCP-style model for workforce analysis and remedial action [consistent with Department-wide Recommendations].
- NRCS-3** Implement cross-training of field service personnel to deliver inter-agency products and inform customers of available programs.
- NRCS-4** Develop a written statement describing NRCS’s “Business Case” for DIA [consistent with Department-wide Recommendations].
- NRCS-5** Create consistent outreach (“marketing”) policies and tools at national and state levels.
- NRCS-6** Increase National Set-Aside for SDG farmers and ranchers for states where SDG concentrations justify increases.
- NRCS-7** Design and fund a specific conservation program for SDG farmers and ranchers.
- NRCS-8** Design and fund a specific conservation program for Native American tribal land.

- NRCS-9** Fund applications for SDG farms continuously.
- NRCS-10** In light of the complexity and number of NRCS programs and related initiatives—which many employees admit they do not understand—consider reducing the number of NRCS programs and initiatives, or otherwise addressing the complexity issue.
- NRCS-11** CSP should not be funded at the expense of EQIP.
- NRCS-12** Simplify application and program contracting processes.
- NRCS-13** A consistent protocol should be created and implemented in every field office for tracking applications, informing applicants of the status of their application in writing on a regular basis, providing customers with reasons as to why they are ineligible for programs or not funded, and providing guidance for future applications.
- NRCS-14** Review technical requirements to ensure that they are not unnecessarily onerous and stringent, preventing SDG farmers and ranchers from participating.
- NRCS-15** Clearly inform applicants when they apply, in plain language, what programs are available to them, the eligibility requirements, the application process, how long the process takes, what information is required to be submitted, and the benefits of program participation.
- NRCS-16** Ensure that NRCS employees are trained in and knowledgeable about new programs and initiatives before advertising programs to the public.

- NRCS-17** Allow sufficient lead-time for announcement of new initiatives, rules and regulations.
- NRCS-18** Outreach (“marketing”) practices should be greatly expanded, including, for example, periodic newsletters to constituents and after-hours seminars with farmers.
- NRCS-19** Customers and potential customers should be informed of deadlines for annual rankings and should be given sufficient notice of program rules, regulations, and new initiatives.
- NRCS-20** Every state should have a full-time outreach coordinator (“Office of Emerging Customer Development”).
- NRCS-21** National outreach (“marketing”) should assist in creating tools and data collection to assist states in outreach.
- NRCS-22** Outreach efforts and service to Socially Disadvantaged Groups should be a unique metric in performance plans.
- NRCS-23** National and state outreach plans should encourage partnerships with CBOs.
- NRCS-24** NRCS should create model outreach materials for distribution to SDGs in parallel with web-based initiatives.
- NRCS-25** Consistent training goals should be set at the national level, and tailored training should take place at the local level.

NRCS-26 NRCS should actively recruit bi-lingual employees and assist customers (for example, by referrals) in learning business English.

NRCS-27 All employees should be trained now and periodically regarding the program complaint process.

**APPENDIX: COMPILATION OF ALL CIVIL RIGHTS ASSESSMENT
FINAL REPORT RECOMMENDATIONS**

(5) Recommendations: Risk Management Agency

- RMA-1** Require all AIPs to collect, maintain, and report (quarterly and annually) comprehensive demographic data, including at a minimum race/ethnicity, gender, and age, on all applicants, and all customers.
- RMA-2** Incorporate explicit, comprehensive, measurable outreach (“marketing”) requirements into regulations and SRAs, and rigorously enforce the requirements.
- RMA-3** Remove any disincentives and provide incentives to AIPs for their agents/brokers to sell crop insurance to SDG producers.
- RMA-4** Substantially enhance AIP Civil Rights training requirements for agents/brokers and loss adjustors.
- RMA-5** Require AIPs to maintain a comprehensive Civil Rights complaint file system and report all complaints immediately to RMA’s Civil Rights Department.
- RMA-6** Modify the SRAs to specifically require AIPs to use agents/brokers who speak the language of foreign speaking prospects, applicants, and policyholders, or alternatively provide language appropriate interpreters.
- RMA-7** Add Comprehensive Civil Rights requirements to the National Program Operations Reviews (“NPOR”) that are conducted annually by the Compliance Division.

- RMA-8** Add a Civil Rights position to RMA’s Compliance Division.
- RMA-9** RMA Outreach and Education grant recipients should be more regularly monitored by RMA Personnel to ensure effective outreach to SDGs and compliance with performance measures.
- RMA-10** RMA’s partnership application evaluation process should be revised to give greater credit to those applicants who demonstrate most specifically how they will use partnership funds to benefit SDGs.
- RMA-11** RMA’s partnership application evaluation process should place less emphasis on applicant grant writing abilities and provide greater access by smaller applicants with demonstrated access to and success with SDGs.
- RMA-12** Provide additional incentives for Outreach and Education Partners to conduct creative and effective outreach to SDG.
- RMA-13** Provide more funding for “small session” outreach grants.
- RMA-14** Offer incentives or rewards to RMA employees who “go above and beyond” with respect to their outreach efforts.
- RMA-15** Each Regional Office should have one individual in the position of Outreach (“Marketing”) Coordinator dedicated to performing outreach/marketing to SDGs.
- RMA-16** National Outreach should provide comprehensive guidance and direction to RMA Regional Offices.

- RMA-17** The Compliance and Product Management Divisions should communicate more effectively with RMA Regional Offices, specifically about the needs of SDGs.
- RMA-18** RMA should (a) ensure that program materials are available in languages spoken by substantial groups (“critical mass”) of producers, and (b) provide SDGs referrals, and support programs to, enhance “business English-language” skills of producers.
- RMA-19** RMA should increase development of programs for crops typically grown by SDGs.
- RMA-20** Eliminate, adjust, or make exceptions to recordkeeping requirements applicable to AGR, AGR-Lite and other, similar revenue-based programs for SDGs, to the extent possible.
- RMA-21** Reduce program complexity wherever possible.
- RMA-22** Utilize the Offices of other USDA agencies to promote and distribute informational materials about RMA’s programs and services.
- RMA-23** Increase the travel budget for Regional Office employees to reduce barriers caused by RMA Regional Office locations.
- RMA-24** Require AIPs to distribute annual surveys to SDGs to solicit information about their special needs, methods to address those needs, and general customer satisfaction.
- RMA-25** Using *AgCensus* figures for regions specific to each AIP, RMA should prepare annual SDG marketing targets for servicing SDGs, and include them in AIP performance requirements.

RMA-26 Require all AIPs to prepare annual reports to RMA, in a format to be prescribed by RMA, comprehensively analyzing and reporting on AIP SDG-marketing efforts, performance against goals, identification of under-performances, and remedial plans for achieving or exceeding goals in the next year.

RMA-27 Require all new applicants for AIP status to provide comprehensive information about the company and agent/broker demographics, as well as related information about the company's commitment to DIA and performance in this area.

APPENDIX: COMPILATION OF ALL CIVIL RIGHTS ASSESSMENT FINAL REPORT RECOMMENDATIONS

(6) General Recommendations from Additional Analyses (a) Required by the Contract, and (b) Not Required by the Contract (but essential to the Assessment)

Internal/External Reports Recommendations

- GR-1** As strategic DIA goals and objectives are developed for ensuring equitable delivery of services to SDGs in accordance with other Recommendations in this Report, they should be incorporated prominently in Strategic Plans, Annual Performance Plans, Annual Performance and Accountability Reports, OIG Major Management Challenge reviews, and other high-level reports, as well as in pertinent Congressional testimony and briefings.
- GR-2** USDA should obtain the East Arkansas Enterprise Community Final Report, following up on the March 2, 2011 Interim Report, when it is available and assess the report and its recommendations (including coordinating with the EAEC) for possible inclusion in USDA's DIA Implementation Plan.
- GR-3** USDA should provide a common contact or liaison (perhaps the Office of the Assistant Secretary for Administration, or Assistant Secretary for Civil Rights) for overseeing and monitoring the production of all studies, such as those prepared by CBOs, of USDA's service, and potential service, to SDGs, and ensure the incorporation on an ongoing basis of worthwhile observations, experiences, and recommendations into USDA's processes and other improvements to equitably serving SDGs.
- GR-4** USDA should provide, on its website and elsewhere, a "Suggestion Box" for both employees and producers to offer

ideas and innovations, and develop a process for appropriate Department, Agency, or Office personnel to review, evaluate, and implement useful suggestions.

- GR-5** Whenever conducting customer surveys pursuant to Executive Order 12628 (requiring customer surveys), USDA Agencies should: request demographics of respondents and include substantial equity/fairness/non-discrimination questions; compile, analyze, and publish the results; and take appropriate measures to address any issues uncovered in such surveys. The surveys and analyses should be designed to detect potential areas of disparate treatment, disparate impact, and discrimination, before these issues rise to the complaint level.
- GR-6** FSA should take advantage of its web survey reports and diligently and promptly follow up and correct all deficiencies identified therein. FSA should require the survey vendor to provide results by race/ethnicity, gender, age, and other characteristics provided by respondents, and should consider such results in revising its website and in communications with SDGs and CBOs regarding SDG website usage.
- GR-7** RD's Annual Progress Reports should include substantial information about service to SDGs and under-served constituents (including data on customer demographics for Single Family Housing Loans, Multi-Family Housing Beneficiaries, Rural Business Beneficiaries, and Rural Utilities customer demographics), and all such reports should be posted or linked on the USDA/RD website and provided to key Headquarters, and all State, Offices.
- GR-8** FSA, NRCS, and RMA should produce annual progress reports similar to RD's Annual Progress Reports, including substantial information about service to SDGs and under-served constituents, and all such reports should be posted or linked on the USDA/FSA, NRCS, and RMA websites and

provided to key Headquarters and all State (and RMA Regional) Offices.

Customer Base Recommendations

- GR-9** For purposes of this Report and subject to future development of more appropriate data and metrics, with respect to FSA loans, FSA should use the socially disadvantaged Farm Principal Operator percentages (national and State) as *minimal targets for demonstration of equitable access and participation*. (This is consistent with the statutory requirement for FSA to establish certain loan targets by population.) Failure to meet such targets would not automatically demonstrate discrimination, but would raise the presumption that more can be done to eradicate barriers and increase SDG participation, and therefore additional attention to such gaps, and creation of remedial measures as described elsewhere herein, would be needed.
- GR-10** With respect to FSA loans, FSA should *establish priorities* according to the degree of departure from target participation rates. These priorities should be based on national (using aggregate national data) and State (based on State-specific comparative data). Highest priorities and greatest resources should be applied to those (1) programs, (2) locations (national/State), and (3) SDGs (*e.g.*, Hispanic/Latino) showing the largest gaps compared with Principal Operator populations.
- GR-11** With respect to FSA loans, FSA should have periodic *disparity studies conducted by an independent organization* of any program showing significant departures from participation based on the targets—according to the analyses shown above, that would indicate studies of Guaranteed Loans. While FSA leadership has offered some reasons why it believes that, for example, Guaranteed Loan customer percentages show greater gaps from SDG population participation than Direct Loans, these reasons do not necessarily excuse or explain the

departures, nor satisfy Congressional intent regarding the importance of equitable access to these programs by SDGs. The disparity studies should indicate the extent to which existing barriers are irremediable and unrelated to race/ethnicity and gender, or implicate race/ethnicity and gender and thus require remediation.

GR-12 With respect to FSA loans, USDA should consider *interim remedial measures* to close gaps that, regardless of the reason, demonstrate significantly lower-than-expected SDG participation in loan-making. Guaranteed Loans made in FY 2010, for example, fall about \$300,000,000 short of expected loans to certain SDGs based on Principal Operator populations (as shown above). The Direct Loan program, on the other hand, appears, based on (possibly unreliable) data alone, to more effectively reach SDGs than the Guaranteed Loan program. (If USDA is correct, for Direct Loans creditworthiness is less of a factor, and more loan-making facilities (County Offices) are available closer to the farmers.) If up to \$300,000,000 can be shifted from another USDA program to Direct Loans to SDGs, it would allow the possibility of increasing SDG participation in overall loans through a mechanism—Direct Loans—of demonstrated success. This approach, or one approximating it, should be interim only, while the Guaranteed Loan program disparity studies are conducted and, perhaps, result in revisions to the program. Several additional changes to the Guaranteed Loan program, such as (a) increasing the guarantee to 100%, (b) waiving guarantee fees for SDGs, (c) revising the guaranteed low document program to include loans up to \$100,000, (d) including lease/purchases within the guarantee program for SDGs, and (e) providing hands-on training for SDG loan applicants, might assist in closing the Guaranteed Loan gap as well. Additionally, USDA should audit the commercial Guaranteed Loan providers for equal treatment of all applicants and customers.

GR-13 With respect to FSA loans, using OIG, GAO, Economic Research Service, and private contractors, USDA should

periodically audit both the Direct and Guaranteed programs for all indicators of potential differential treatment or impact, such as loan processing times, grants and denials, delinquency rates, modifications/restructurings granted, and foreclosures, and report results to the Office of the Secretary, the USDA CDO, and the FSA Administrator, for appropriate analysis and remedial actions, where indicated.

- GR-14** Based on this Report's analyses of FSA Farm Programs customer data, USDA should conduct a disparity study of all Farm Program programs to determine potential disparate impact or disparate treatment in administration of those programs, and make, or recommend to Congress as needed, appropriate adjustments to those programs to ensure that SDGs adequately, equitably, and fairly participate in these programs.
- GR-15** In connection with consideration of alternatives or modifications to existing eligibility and other Farm Program participation requirements, FSA should consider updating the bases for (or recommending to Congress as needed) support payments for SDGs, such as using current production figures, or using average yields and crop acreage bases of neighboring, non-SDG farms.
- GR-16** RD's substantial successes in equitably serving SDGs in both the SFH Direct/Guaranteed Loan Programs and the MFH Program (subject to the **caveat** regarding unreliability of USDA data) should be recognized and publicized by USDA (and RD, for example, in its Annual Progress Report).
- GR-17** While there are differences between the FSA and RD loan programs (customers, collateral, eligibility requirements, *etc.*), FSA and RD should develop a periodic communications tool (for example, quarterly meetings) for sharing of best practices and recent experiences.

- GR-18** RD should identify those few areas of under-performance (*e.g.*, by program (such as Guaranteed Loans), and by State) noted in the analyses in this Final Report for further review and follow-up action to improve performance (including, for example, as Elements in employees' Performance Plans).
- GR-19** Rural Utilities, in concert with Economic Research Service, should conduct a study of its potential rural service areas to determine those areas of significant SDG populations that are not currently being served (if any), and address any substantial under-servicing appropriately.
- GR-20** Rural Business and Cooperative Programs should compile and publish information relating to the demographics of beneficiaries of its programs.
- GR-21** Rural Business and Cooperative Programs should develop a comprehensive plan to reach out to minority and women-owned rural businesses ("MWBE"), including start-ups, to assist them in growing and developing their businesses. This effort should include compiling and reporting on the numbers and percentages of program dollars with MWBEs.
- GR-22** In connection with the Marketing Penetration Analyses recommended in the Department-wide Recommendations, NRCS should (a) reconcile the inconsistencies in the program customer/applicant data provided for this Assessment; (b) develop a standard template that shows not only aggregate participation by race/ethnicity but each as a separate category, and include a separate category for Females; and (c) organize the Easement program data, and validate it, for inclusion in the analysis.

Statutory/Regulatory/Handbook Recommendations

- GR-23** Establish express criteria: To the extent practicable, those statutes, regulations and handbook provisions which allow for the exercise of discretion, or call for decisions to be made on a case-by-case basis, should be revised to provide express, reviewable itemizations of those factors USDA deems important to decision-making.
- GR-24** Document decisions: Whether or not additional criteria are established for discretionary or case-by-case decisions, the analysis and reasons for such discretionary decisions should always be documented. Consideration of factors outside of those listed, which are “included, but not limited to,” should also be listed, explained, and documented to provide the reason(s) for considering additional factors. This documentation provides USDA with clear, contemporaneous information that can be evaluated whenever a decision is reviewed or questioned.
- GR-25** Conduct periodic disparate impact analyses: With documentation in place, case-by-case and discretionary decisions, and deviations from identified considerations, can be analyzed periodically to ensure that like situations are treated alike, regardless of the customers’ race/ethnicity or gender.

Office Locations Recommendation

- GR-26** With the rapidly changing U.S. demographic profile and particularly the rise in minority populations and the documented increases in SDG farmers and ranchers, USDA should have either Economic Research Service or an outside entity conduct an evaluation of the current locations of Field Service Centers/County Offices, as well as RD and NRCS offices, in comparison with the existing and emerging farm/ranch and rural populations. This evaluation should place special emphasis on locations of SDGs, who are less

likely to have or use web-based resources to learn more about, and apply for, USDA programs, and who are more likely to need the personal attention they can receive from a Field Service Center or other USDA office. USDA should then prepare and execute a plan for addressing the geographical barriers identified in the evaluation to increase the accessibility of USDA offices to SDGs, as indicated in the study.

Office Physical Accessibility Recommendation

GR-27 USDA should develop and execute a plan and schedule a Compliance Audit of all USDA facilities for accessibility in accordance with all applicable legal and USDA policy requirements. Prepare a list of non-compliances for all pertinent facilities and require remediation within 12 months of issuance of list. Conduct a closing Quality Assurance Audit to ensure full compliance.

Complaint Process Recommendation

GR-28 Revise both program and EEO complaint processing procedures (including all relevant manuals, handbooks, training materials, DMs, and DRs) by eliminating all unnecessary steps, including signoffs/approvals, streamlining the investigations and analytical steps, and otherwise permitting prompt conclusion of the process. Establish a two-track process, the first (Track I) for most complaints, the second (Track II) for complex complaints (for example, containing systemic allegations, multiple parties, and a significant volume of documents). Retain necessary components of the existing process for Track II complaints.

Workforce Diversity Recommendations

GR-29 In accordance with the Department-wide Recommendations above, USDA Agencies, starting with FSA, RD, NRCS, and RMA as pilots, incorporate Corporate America's practices

under OFCCP regulations, including the use of best-available Census occupational data, geographical divisions where appropriate, and analytical tools (such as adverse impact and compensation analyses) to (a) more accurately depict the availability of the market for positions specific to the Agencies, and (b) rigorously study recruiting (including applicant flow), hiring, promotions, compensation, discipline, awards, terminations, and other aspects of the workplace that might reveal correctable disparities.

- GR-30** Until it has completed its new workforce analyses noted directly above, FSA should aggressively seek to eliminate the under-representations identified in its MD-715-01 through all the methods identified in the MD-715-01.
- GR-31** FSA should follow up on a key deficiency, namely, failure to obtain, report on, and analyze applicant flow data. This is an important element in determining the extent to which FSA is adequately recruiting. FSA should complete this effort for reporting in the next MD-715-01.
- GR-32** FSA should immediately remedy any data deficiencies identified in its FY 2010 MD-715-01 Report.
- GR-33** Until it has completed its new workforce analyses noted directly above, RD should aggressively seek to eliminate the under-representations identified in its MD-715-01 through all the methods identified in the MD-715-01.
- GR-34** RD should follow up on a key deficiency, namely, failure to obtain, report on, and analyze applicant flow data. This is an important element in determining the extent to which RD is adequately recruiting. RD should complete this effort in time for reporting in the next MD-715-01.

- GR-35** RD should immediately remedy any data deficiencies identified in its FY 2010 MD-715-01 Report.
- GR-36** Until it has completed its new workforce analyses noted directly above, RMA should aggressively seek to eliminate the under-representations identified in its MD-715-01 through all the methods identified in the MD-715-01.
- GR-37** Until it has completed its new workforce analyses noted above, RMA should conduct the workforce trend analyses, and prepare the workforce demographic tables, omitted from its FY 2010 MD-715-01.
- GR-38** RMA should follow up on a key deficiency, namely, failure to obtain, report on, and analyze applicant flow data. This is an important element in determining the extent to which RMA is adequately recruiting. RMA should complete this effort in time for reporting in the next MD-715-01.
- GR-39** RMA should immediately remedy any data deficiencies identified in its FY 2010 MD-715-01 Report.

OASCR Recommendations

- GR-40** OASCR should fill in items missing from its program complaint log in the categories “Issues” and “Bases,” and with all future cases ensure that the entire log is completed.
- GR-41** OASCR, in consultation with OGC, should review and revise its process for administering program complaints to eliminate all unnecessary steps (including review levels), with a goal of completing the processing of and closing most complaints within 60 days.

USDA “Protected Classes” Recommendations

- GR-42** Applying appropriate policy and legal considerations in consultation with ASA, OASCR, OGC, and the Justice Department (as necessary), USDA should determine and adopt a consistent position with respect to protected characteristics in both programs and employment and ensure that all publications of that position (in regulations, manuals, handbooks, forms, websites, and other places) are consistent with that intent.
- GR-43** Applying appropriate policy and legal considerations in consultation with ASA, OASCR, and OGC, USDA should determine on which of those protected characteristics the Department will collect information from applicants and customers for monitoring, analytical, and reporting purposes; solicit any necessary approvals from the Office of Management and Budget for additional Information Collections; modify and revise all necessary regulations, manuals, handbooks, forms, and other documents accordingly; and proceed to collect, analyze, report on, and leverage such information in continuing to provide equitable services to all constituents.