

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GUADALUPE L. GARCIA, et al., :
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 Plaintiffs, :
 :
 v. : Civil Action No. 00-2445 (JR)
 :
 ANN V. VENEMAN, Secretary, :
 United States Department of :
 Agriculture, :
 :
 Defendant. :

FILED

MAR 20 2002

REC'D UNDER WRITING CLERK
U.S. DISTRICT COURT

MEMORANDUM ORDER

Plaintiffs are Hispanic farmers who complain of discrimination in the administration of U.S. Department of Agriculture loan and disaster benefit programs.¹ The government moves to dismiss under Fed. R. Civ. P. 12(b)(1) and 12(b)(6), arguing that the Court lacks jurisdiction over several claims and that plaintiffs have failed to allege a cognizable claim under the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691 et seq., the Administrative Procedure Act, 5 U.S.C. §§ 701 et seq., or the Declaratory Judgment Act, 28 U.S.C. §§ 2201 et seq. For the reasons set forth below and in Love v. Veneman, Civ. No. 00-2502, mem. op. (D.D.C. Dec. 13, 2001), the motion will be denied in part and granted in part.

¹ The ten named plaintiffs also sue on behalf of others similarly situated, including 92 individuals named but not described in the second amended complaint. The plaintiffs' motion for class certification and the government's motion to strike class action allegations and to dismiss the putative class members are in abeyance pending further briefing by the parties.

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Background

This case is one of a number of class actions filed by minority and women farmers in the wake of several reports documenting discriminatory practices in local USDA offices and the dismantling of the Department's civil rights enforcement program in the early 1980s. In 1998, concerned that farmers had relied to their detriment upon USDA's (inoperative) internal mechanisms to investigate their discrimination complaints, Congress extended the statute of limitations until October 21, 2000, to allow farmers who had filed administrative complaints concerning USDA discrimination between 1981 and 1996 to bring suit in U.S. District Court. 7 U.S.C. § 2279 Note. USDA has settled a class action filed on behalf of African American farmers, Pigford v. Glickman, 185 F.R.D. 82 (D.D.C. 1999), aff'd, 206 F.3d 1212 (D.C. Cir. 2000). This action by Hispanic farmers, however, as well as suits by Native American farmers, Keepseagle v. Veneman, Civ. No. 99-3119, and female farmers, Love v. Veneman, Civ. No. 00-2502, continue in litigation.

The Garcia plaintiffs allege that from January 1, 1981, to the present, the Farmers Home Administration and its successor, the Farm Service Agency, discriminated against Hispanic farmers and ranchers in awarding disaster benefits and operating, farm ownership, and emergency loans. They also allege

that the USDA acted arbitrarily in failing to investigate and resolve their discrimination complaints.

Analysis

The government's motion to dismiss raises the same legal arguments advanced in its motion to dismiss in Love v. Veneman. For the reasons set forth in a memorandum issued in the Love case on Dec. 13, 2001, (1) the Garcia plaintiffs are entitled to bring ECOA claims for discrimination in lending transactions without administrative exhaustion; (2) at least some of the named plaintiffs' lending claims satisfy the statute of limitations²; and (3) plaintiffs' allegations of failure to

² Plaintiffs Guadalupe Garcia and Gloria Morales satisfied the special statute of limitations for USDA claims by bringing suit on "eligible [administrative] complaints" that they had filed prior to July 1, 1997, asserting discrimination in USDA lending and disaster benefit programs between 1981 and 1996. Agricultural, Rural Development, Food and Drug Administration, and Related Agencies Appropriation Act, 1999, Pub. L. 105-277, § 741, 112 Stat. 2681-30 (codified at 7 U.S.C. § 2279 Note). However, Mr. Garcia's "eligible complaint" only appears to have concerned his 1986 loan application. The plaintiffs' second amended complaint does not describe any discrimination complaint meeting the requirements of 7 U.S.C. § 2279 as having been filed concerning his 1988 and 1994 credit applications, so those claims are now time barred.

It is unclear from the face of the complaint whether Tony and Patricia Jimenez, Beatrice and Rodolfo Garza, and Edward and Normal Flores filed complaints within the USDA that specifically asserted discrimination as required by 7 U.S.C. § 2279 Note. Love v. Veneman, Civ. No. 00-2502, mem. op. at 10-12. It is also unclear whether Mr. Garcia, Mr. and Mrs. Jimenez, and Larry and Robert Chavarria meet ECOA's general two-year statute of limitations as to their claims based on 1998 credit transactions. 15 U.S.C. § 1691e(f). Since the special statute of limitations does not apply to USDA discrimination after 1996 or administrative complaints filed after July 1, 1997, the 1998

investigate civil rights complaints do not state claims under ECOA or the APA.

The only legal issue requiring further discussion arises from plaintiffs' claims for discriminatory administration of disaster benefit programs.³ A disaster benefit decision is not a "credit transaction" within the meaning of ECOA. 15 U.S.C. § 1691(a). A final agency action denying a disaster benefit is, however, reviewable under the Administrative Procedure Act, 5 U.S.C. §§ 702, 704. Plaintiff Gloria Morales asserts that she was denied disaster benefit payments for losses to her grape crop in 1993 and that she filed a discrimination complaint with the USDA prior to July 1, 1997, concerning that denial. Although the effectiveness of APA relief is questionable - the APA does not waive the government's sovereign immunity with regard to money damages, 5 U.S.C. § 702 -- Ms. Morales has satisfied the special statute of limitations approved by Congress and has standing to assert her claim before this court. 7 U.S.C. § 2279 Note.

claims are barred unless they concern transactions occurring within two years of the filing of this action on October 13, 2000. Because 12(b)(1) motions must be generously construed in the plaintiffs' favor, the motion to dismiss these plaintiffs will be denied at this time. Love v. Veneman, Civ. No. 00-2502, mem. op. at 12 & n.8. However, the government is free to renew its motion if these plaintiffs cannot demonstrate that they satisfy the statute of limitation requirements.

³ Such claims were dismissed in Love because the only named plaintiff who alleged the unlawful denial of disaster benefits was successful on her administrative appeal. Love v. Veneman, Civ. No. 00-2502, mem. op. at 13.

It is accordingly this 20th day of March 2002,

ORDERED that defendant's motion to dismiss [#5] is denied in part and granted in part. And it is

FURTHER ORDERED that plaintiffs' motion to for leave to file a second amended complaint [#16, #19] is granted. And it is

FURTHER ORDERED that defendant's motion to strike plaintiffs' motion to certify the class [#21] is denied. And it is

FURTHER ORDERED that plaintiffs' motion to strike defendant's notice of filing [#33, #34] is granted. And it is

FURTHER ORDERED that the Court's order of January 23, 2001 [#14] is modified as described in open court on February 21, 2002, to permit further briefing on the motions to certify a class [#18] and to strike class action allegations [#5].



JAMES ROBERTSON
United States District Judge

DECLARATION OF RICHARD A. GOMEZ

I, Richard A. Gomez, hereby state and declare the following:

1. I am over 18 years of age and a United States Citizen. I was born in Denver, Colorado on December 11, 1944. My mailing address is P. O. Box 461, Alamosa, Colorado 81101.
2. I am a retired employee from the Farmers Home Administration (FmHA) and, from 1996-2001, the Rural Development Administration of the U.S. Department of Agriculture (USDA), both of which have been part of the Farm Services Administration (FSA) since the mid-1990s. I worked for USDA from January 5, 1970 to June 16, 2001, over thirty years. I worked as a Construction Inspector, Assistant County Supervisor, Loan Specialist, Assistant District Director, and District Director, all within the state of Colorado.
3. From 1980 to 1991 I was an Assistant District Director of FmHA in Colorado. From 1991 to October 1995 I was also a District Director. I was an EEO counselor for the Western United States from 1979 to 1990. In addition, I served as the AFGE Union President #3499 for ten years. I initiated the formation of the union in Colorado in 1973.
4. I worked on Farm Program loans since I started with FmHA in 1970. I had a lot of training in Farmer Programs by FmHA personnel all through the years that I worked for FmHA. Although I had detailed familiarity with the FmHA farm programs, the Anglos in FmHA thought otherwise merely because I initially did not have a degree in agriculture. So, in 1986, I completed the educational requirements in agriculture, thereby ending that.
5. This Affidavit will cover my experiences with the FmHA farm programs during the period 1981 to October 1995.
6. From 1981 to 1984 I observed that Hispanic farmers were not being given loans because they allegedly didn't have sufficient experience, or because they had other non-farming jobs (i.e. school teacher, lawyer etc.). The FmHA loan officers asserted that their primary income didn't come from farming, so they always turned them down or refused to even give them an application. Such farmers as Wille Sanchez, Fred Cordova, Andrew Herresa, among others experienced such treatment. But, Anglo farmers such as Jim Snook, John Sanford, Ernest Hawkins, Lonnie Brownlow, Larry Mitchel and many others that had the same type of non-farm jobs and non-farm income but still succeeded in obtaining FmHA loans.
7. To appease the unsuccessful Hispanic farm applicants FmHA at times gave them small housing loans, but without a farm operating loan it was difficult to generate enough income to pay the housing loan back. The Hispanic farmers at least managed to keep a

roof over the heads of their families, so they didn't complain too loudly. Loud complaining would jeopardize even the housing loans.

8. From 1981 to 1984 in the San Luis Valley of Colorado and in Southern Colorado all County Farm Loan Committees were Anglo, so Hispanics had very little chance of getting loans. The FmHA loan personnel were also all Anglo. It was known in this area you had very little chance of getting a farm loan if you were Hispanic and my observations while working at FmHA confirmed it.

9. I was an Assistant District FmHA Director for Southern Colorado during this time and spent part of my time working on FmHA farm programs. I also was Acting District Director about a quarter of that time. I would see loans coming in for review and noticed that 95% of the loans went to Anglos, with the rest going to Hispanics and other minorities. This disturbed me, so I began questioning why Hispanics received so few farm loans. Then at the end of 1984 I was assigned a case (the Velarde case which I will discuss below) to review. What I discovered in that review caused me to become very critical of FmHA for giving so few loans to Hispanics. I decided to do what I could to remedy the situation, and in the process kept records of those efforts. This declaration is based on those records.

10. In 1985 Ruth Fountain was State FmHA Director and P. M. Lobb was Chief of FmHA Farmer Programs in Colorado.

11. On January 3, 1985, I was sent as Assistant District Director to review the farm loan application of Frank Velarde in Trinidad, Colorado. I went to the Velarde farm with Bill Chandler, County Supervisor. On the way to the farm I found out that the Mr. Lobb had instructed Mr. Chandler to inform the County Committee to, in no way, approve the loan. In reviewing the file I found that the County Committee had signed the loan action in blank. There was no name or determination as to whether to approve or reject the loan. The Committee was going to go along with whatever action the County Supervisor (CS) decided. When we arrived at the farm Mr. Velarde was not there. We left and Chandler thereafter sent a rejection letter. Mr. Velarde called me at the office to complain about the rejection. I told him since he wasn't there I assumed that he did not care about the loan. Mr. Velarde informed me that he had never been told about the meeting. So I got upset and called P.M. Lobb about the blank committee action and the decisions to reject the loan. Lobb told me "you have no experience regarding farm loans, we merely sent you to provide cover for the rejection because you are Hispanic." I informed Mr. Velarde about this and told him the rejection was made by the state FmHA office. Velarde filed an administrative complaint and I told his attorney what had happened. From there it went into the court system. I was never allowed to testify. I was considered a "hostile witness" for telling Velarde's attorney the truth. I was later harassed by the U.S. Attorney and the USDA regional general counsel about this but I firmly believed that Velarde had been denied a farm loan simply because he was Hispanic in circumstances in which an Anglo farmer would not have been denied. I was particularly upset that this caused Velarde to lose his farm to foreclosure.

12. The State office claimed that it had based its rejection of the loan on the fact that Mr. Velarde had a collection that had been turned into a judgement. But in prior years and even in 1985 Anglos had received loans even if they had a judgement. Collections were paid from loan proceeds. Two loans made in this type of circumstance were to Bob Rogers and Carl Richardson. The collection Mr. Velarde had accumulated was in the operation of his farm. As discussed later on, I was harassed about this case into the 1990's.

13. In 1985 I was also an EEO Counselor. I had complaints from FmHA employees in New Mexico that were reprimanded for sticking up for farm borrowers on their loan application. They were Mike McDow, Bill Glover, A.B. Barela, Virginia Rodriguez and Steve Villareal. They were harassed by the State FmHA Director, Jim Hudson.

14. In counseling New Mexican FmHA employee's I had to meet with Jim Hudson, on May 1, 1985. He told me he did not believe in EEO and that we were just foolishly spending tax payer's money. He tried to file a complaint with FmHA in Washington accusing me of abusing my power as a counselor. Walter Dant, The EEO director for FmHA, in Washington informed me of this.

15. Thereafter FmHA refused to give me any travel money so that I could speak firsthand to borrowers and employee's. I had to do all the EEO counseling work over the telephone, which is a much less effective way of doing it.

16. In 1986, because of the Velarde case and the unhappiness about my EEO counseling, I was stripped of my responsibility for handling farm program administrative appeals. I was too independent and they preferred to have such appeals handled by non-Hispanics who wouldn't cause trouble. I was later reinstated after I filed a discrimination complaint. In further retaliation against me for having stood up for Mr. Velarde I was denied reimbursement for college courses I had taken on Agriculture. After filing a discrimination complaint I was later reimbursed in 1987.

17. As yet another form of retaliation, persons at FmHA trumped up two cases of alleged reverse discrimination against me. In one case involving Mr. Guthrie I was accused of rejecting his application because he was white, and in the other a guy named Johnson said that I refused to authorize payment to him on a construction project because he was white. Both charges were found to be baseless by the FmHA EEO and Civil Rights office in Washington. But, fighting these charges was time consuming and stressful.

18. In 1986, Ruth Fountain was the Colorado State FmHA Director, and Steve Greenwalt was Chief of Farmer Programs.

19. During 1986 they continued to harass me for standing up for Hispanic farmers. On his way out P.M. Lobb, Chief of Farmer Program's called and told me I was "handicapped" because I did not have an Agriculture Degree. What he did not know was that I was working on obtaining such a degree and obtained it.

20. During 1986 FmHA closed its county office in San Luis, which served Castilla County, Colorado. This area had the highest concentration of Hispanic farmers in the state and the two FmHA employees in the office were Hispanic. This caused me, as President of AFGE, to appeal the decision to the EEOC, but the office closed anyway. I later appealed the decision but it was denied. Very few loans are made out of this area anymore thanks to the closing of the San Luis office which had made the most Hispanic loans in Colorado.
21. The FmHA state office in Colorado continued to deny me any money for EEO counseling.
22. Also during 1986 I discovered that only two Hispanic farmers in all of Colorado had obtained farm loans, Tony Martinez and Luis Archuleta. I also checked FmHA farm loan files in Trinidad and found that loans had been made to two Anglo farmers with collections, Glenn Springer and Myron Scott, thereby strengthening my position in the Velarde dispute.
23. In December I reported to the FmHA headquarters office, in Washington, D.C. about racial jokes aimed at Hispanic farmers being made at the state FmHA office. Anglo employees distributed computer printouts of derogatory jokes about Hispanic farmers. This offended me, so I complained. The guilty employees received only a slap on the wrist.
24. My notes show that in 1986 that of the 30 farm loans made in San Luis Valley only 2 went to Hispanics.
25. In 1987 Ruth Fountain remained as FmHA state director and Christ Greenwalt was the farm program chief. I was once again harassed by a U.S. attorney named Winchester and the USDA regional general counsel, as well as by State Director Fountain and various members of the farm program staff, because I refused to change my position on the Velarde situation, which was then in litigation. I was called to a day long meeting in Denver with them where they tried to get me to change my story and to state that FmHA had acted properly in denying the loan. I was accused of making the Velarde case a crusade for Hispanic farmers. I steadfastly refused to change my position because it was obvious to me that FmHA wasn't playing fair with Velarde only because he was Hispanic. The pressure was such that I demanded that they provide me with legal representation. They refused to do so, so I filed a complaint with the National Labor Relations Board in my capacity as a union president. The Board found fault with them and ordered that they stop harassing me. I was never harassed again about Velarde.
26. Sometime during 1987-1988 the county committee system was abolished in Colorado, leaving farm loan approval responsibility with each County Supervisor as regards loans up to a certain amount, with larger loans approved by the State FmHA office. All farm loans, as a result, now bypassed the district office, which meant that my ability to review loan processing pretty much ended. This reorganization was obviously an effort to keep me out of the loan processing area.

27. In 1998 FmHA held a training session regarding the appeals process for farm loans in Albuquerque, New Mexico. A mock appeal of a loan denial involving a Hispanic farmer was staged. During the presentation Jack Richardson and Don Miller went out into the hall, then reentered the room pretending to be Border Patrol and INS agents looking for wetbacks. They proceeded to haul away the white guy playing the role of the Hispanic farmer, and on that note the mock appeal ended. The room was full of loud laughter, except for me. I was so fed up and disgusted by this insulting treatment of Hispanics that I reported the incident to the USDA's EEO office. This produced a couple of slaps on the wrist, none of which prevented Richardson from being appointed as the appeals hearing officer for the western region.

28. Judy Jacklich became State FmHA Director in 1989, with Chris Greenwalt continuing as farm program chief. The only involvement I had with the farm loan program in 1989 concerned the case of Anastacio Lobato. Lobato was already an FmHA borrower, but then got divorced and had to pay a \$100,000 settlement. He owned a large farm with much prime land. He applied to FmHA for a loan to pay the settlement so that his land would not be encumbered, but the County Supervisor rejected the application. I approached the County Supervisor to discuss the matter, but only succeeded in persuading him to agree to lend him the money through a loan guarantee instead of giving him an outright loan which is much more attractive (on a \$100,000 loan, for example, there is a 1% or \$1,000 loan guarantee fee and a \$1,200 processing fee). Mr. Lobato couldn't afford to borrow on these terms, so he was compelled to sell off some premium mountain land at a discount in order to save the rest of his land. I learned that just prior to this the same County Supervisor approved a direct loan to Kenneth Hensley, an Anglo farmer, to help him pay his divorce settlement. The County Supervisor objected to my involvement on Lobato's behalf and complained about it to the state FmHA office. I told State Director Jacklich that I thought Lobato deserved to receive the same treatment as an Anglo farmer in similar circumstances. Jacklich instructed me not to file complaints with the USDA office of EEO and Civil Rights about such matters in the future, although I had not done so in Lobato's case.

29. In October 1990 the District Director, Cedric Totten, retired and I expected to be promoted to fill the position because I was his assistant director. I was told that I was unqualified to be District Director because I did not meet the educational requirements. Instead, FmHA assigned various FmHA officials from around the state to fill in temporarily as District Director. This continued into 1991. They did this to punish me because of my involvement in helping Hispanic farmers. But they did not realize I had the needed educational requirements to qualify to apply as soon as the vacancy was advertised, which I eventually did.

30. On January 3, 1991 the state FmHA director assigned Marvin Worth, the district director in Greeley, to supervise me as the assistant director because no director had yet been appointed in my district. He ordered me to stop signing off on letters—he had to sign off before any letter could be sent—and to stay away from farm loan programs. At the same time they removed me as EEO counselor, saying I had a conflict of interest because I was also the union President. That same month Mike Gates (then in the San

Luis District office handling farm loans and now a farm program specialist) and Bob Scholetter told me to my face that they didn't believe in EEO laws for anyone and that I should shove my EEO concerns. They told me they hoped I would be fired. Then in February State Director Jacklich told me that she understood that I was practicing law without a license, an utterly baseless accusation. On March 8, 1991, Jacklich visited my office to inform me that I was going to be fired. She accused me of being a traitor for not standing behind FmHA and particularly the farm loan program. I said go ahead and try to fire me. Then I called FmHA headquarters in Washington, D.C. to describe what was happening to me and they sent a fellow named Guthrie and another individual out to discuss the situation with me. They spent two days reviewing my files and discussing the problems I was having. When they left they said "you have nothing to worry about." I don't know what they told Jacklich, but things immediately changed. I was promptly appointed as acting district director and then district director in the San Luis District.

31. In 1992, while in my new job as District Director I became aware of a situation involving a Hispanic farmer named Martin Avardo of Pueblo, Colorado. He had previously obtained a FmHA farm loan and had fallen into default. FmHA threatened an immediate foreclosure. I discovered that Alvarado had not been given a chance to exercise his proper pre-foreclosure rights (the opportunity to explore the possibility of offsetting, canceling or reducing his loan exposure which is routinely done before proceeding to foreclosure). My actions immediately stopped the foreclosure proceeding. Then I uncovered a case involving Ismal Gurle, another Hispanic farmer facing foreclosure who also had not been offered a chance to explore alternatives to foreclosure, as routinely happens in foreclosure cases. The denial of the opportunity to consider supervisory action instead of bankruptcy caused me to stop the acceleration of the loan and the foreclosure. I should say that only once in my entire career in USDA did I see a Hispanic farmer given these pre-foreclosure options.

32. In 1992, Ruth Rodriguez became the state FmHA director, with Gary Wall taking charge of farm programs. The State FmHA office continued to operate without any County Committees, and decided that the State office would process and approve all farm loan programs. That left me with no opportunity to review loan applications or participate in the administration of such loans, probably no accident. Later in 1992 Rodriguez assigned another district to my jurisdiction, thereby considerably expanding my duties. Because my work load increased, most of my time was consumed with supervisory chores and personnel matters. I had little time for what they called "mischief" and what I called seeing to it that Hispanic farmers received fair treatment.

33. In 1993 I did get involved with a matter on behalf of the Sandoval brothers, two Hispanic farmers. They needed to borrow money from FmHA to finance their crop, but delays in FmHA processing forced them to seek money from a private bank in order to obtain the money needed for the upcoming crop year. The bank agreed to do so on condition that FmHA would agree to guarantee the loan. 9 or 10 months later the FmHA had still not processed the application. The bank complained to me about FmHA's delay, saying that the Sandovals weren't being treated fairly. I got involved and forced the

County Supervisor, who I had authority as district director, to fire, to expedite the process. This resulted in prompt approval.

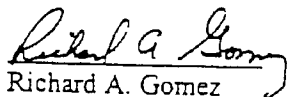
34. Similarly, in 1993 I intervened to assist Demetri Valdez who, like the Sandovals, experienced long delays in processing a loan application. As was true in the Sandoval situation, Anglos did not experience serious problems with delays as the Hispanic farmers did. So, once again I urged the County Supervisor to move the matter. He complained to the state director that I was pressuring him. I told the state director that the county supervisor processed Anglo application's much more quickly than he did those of Hispanics. Although the state FmHA clearly resented the fact that I had involved myself in this matter, they advised the county supervisor to do as requested by me.

35. In July 1993 Frank Velarde asked me to help him regain his farm because FmHA had failed to give him proper buy-back rights. This created a furor at the state FmHA office. Director Rodriguez accused me of being a traitor. As a consequence, Rodriguez assigned me yet another district to supervise. This meant that I now had 3 districts to supervise and virtually no contact with farm programs because the restructuring ensured that even as a district director, I would be cut out of the farm loan program.

36. In 1995 I once again was accused of being a traitor because I discovered that an Anglo farmer who had defaulted and whose land had been foreclosed on by FmHA had continued to sell gravel mined on the property for a year or more. He sold the gravel to the County of Huerfano. I considered the gravel to be U.S. government property which the farmer had no right to sell. I made an issue of it with the State Director. She solved the problem by selling the property back to the former owner, who then quickly resold the property and gained a \$200-\$300,000 profit. How he obtained the money necessary to buy back the property is unclear. This type of conduct could easily justify a criminal prosecution, but nobody wanted to hear anything about that. The situation really stunk. As a reward the state director assigned me yet another district to supervise, making it impossible for me to do much beyond bureaucratic work.

37. In 1995 FmHA reorganized. It became part of the newly created Farm Services Agency. I was never asked to be a district director in FSA; instead, I was appointed to be a community development manager in Alamosa, Colorado. At last USDA had managed to move me totally out of the farm program area, so my efforts to be sure that Hispanic farmers received fair treatment in the farm loan programs ended.

I have reviewed the forgoing Declaration, consisting of 37 numbered paragraphs, and declare, under penalty of perjury that it is true and correct and to the best of my personal knowledge.


Richard A. Gomez

04-05-02
Date

DECLARATION OF DALLAS R. SMITH

I, Dallas R. Smith, hereby state and declare the following:

1. I am over 18 years of age and a United States citizen. I was born on October 1, 1942 in Bolton, North Carolina where my family operated a farm on which the main crop was tobacco. I currently reside at 3011 Brock Drive, Upper Marlboro, Maryland 20772.
2. I am a retired federal employee and am currently self-employed as a consultant on agricultural and related matters. Prior to my retirement in January 1999, I held the Secretarial appointed position of Deputy Under Secretary, Farm and Foreign Agricultural Services, United States Department of Agriculture (USDA). During my 33 years at USDA I held career positions from the entry level of GS-5 to the top most Senior Executive Service position (ES-5). I also worked at the county and national level in organizations within USDA.
3. I began my career in 1965 as a Negro County Extension Agent in Cumberland County, North Carolina. The Agricultural Extension Service in North Carolina was segregated by race and I worked in the 1890 Land Grant College program. In 1966, I moved to Bladen County where I continued to work with Black and Indian farmers until I moved to Washington, DC in 1968 to study government. After completing my studies in 1969, I became a Cotton Marketing Specialist with the Agricultural Stabilization and Conservation Service (ASCS) of USDA. I remained at ASCS in various positions until I was appointed Deputy Under Secretary in August of 1993.
4. In the early 1970s, while working as a cotton marketing specialist at USDA, I took on addition collateral responsibility as an EEO counselor to help management and staff employees to resolve disputes relating to charges of discrimination in employment and promotions. During this period there were very few African American, Hispanic or Native Americans in professional positions in the agency. Minorities who were in professional positions were concentrated in entry-level support positions with no identifiable career path for advancement. As an EEO counselor and later Chairman of the ASCS EEO Advisory Committee, I was involved on a daily basis in observing the operation of the complaint process and the response of USDA management to such complaints.
5. In April 1976, I was notified that I had been selected to fill a Branch Chief's job in the Agency. However, I was not permitted to formally assume the position until December because heavy opposition to the appointment of an African American to a management position supervising non-minorities delayed matters. Until my appointment as a Branch Chief no minority or female had ever advanced above the grade level 13 in the history of the USDA, although several had completed agency-sponsored training at the Masters and PHD level. There was little departmental emphasis on EEO and Civil Rights issues within USDA during the 1970s, and the level of commitment varied from manager to

manager. The consequence was that the entrenched racism that has long plagued USDA continued largely unabated. As late as the early 1960s, water fountains, restrooms and cafeterias were segregated by race in the main USDA office complex in Washington, DC. Indeed, until the Clinton Administration there was little institutional USDA interest in or support for efforts of local EEO and Civil Rights counselors, and even then little lasting progress was achieved. Reports of new regulations and requirements relative to EEO and civil rights were treated (if they were discussed at all) as low priority, end of the meeting items, and often provoked levity and negative responses.

6. Although I was able to progress through the career ranks and end my career in the Senior Executive Service, my career advancements were not without challenges. For example, in addition to delay in selecting me for my first management position as a branch chief, I was denied training that would have enhanced my opportunity to enter the Senior Executive Service. My selection as Director of Tobacco and Peanuts Division at the SES entry level was highly influenced by the fact that tobacco and peanut programs were unique southern crops and very few middle managers had the interest or knowledge to manage the programs. At the time I was appointed to the position of Deputy Under Secretary, I remained the only African American Senior Executive among the 18,000 employees in the Agricultural Stabilization and Conservation Service.

7. In the early 1980s it became apparent to the career employees that EEO complaint processing and Civil Rights enforcement regarding discriminatory practices in the administration of loan, benefit and other USDA farm programs was not a high priority. To us in the agency, it appeared that new political appointees under President Reagan were determined to dismantle what little enforcement existed before they arrived. As I recall, there were a couple of Supreme Court (Bakke and Adarand) decisions that questioned the constitutionality of affirmative action programs, which caused USDA's middle managers to believe that affirmative action was illegal and constituted quotas. This attitude by middle managers carried over and severely undermined the outreach programs designed in the late 1970s to educate all farmers, including minority farmers, about the availability of the many USDA programs. It permeated both USDA headquarters and, unsurprisingly, it was particularly welcomed at the state and local levels. I can specifically recall being in a meeting where questions were raised about modifying procedures and regulations that had been drafted so Native American ranchers operating on communal lands could qualify for disaster payments and other programs administered by the agency. The general response was that they should go over to Bureau of Indian Affairs at the Department of Interior for their benefits. In one instance, the debate focused on the loss of horses in extreme weather conditions in the Dakotas. White rancher's losses of horses would be covered because their horses were deemed to have been kept as part of their ranching operation, but Indian horses were deemed to have been kept solely for horseback riding (recreation) and thus ineligible for loss recovery. I don't recall the final outcome of the debate since I only picked up bits and pieces in staff meeting.

8. In other instances, I recall discussions of whether, and how, to administer the outreach programs aimed at encouraging under represented farmers, e.g. minority farmers, to avail

themselves of the USDA programs—whose avowed purpose is to assist and encourage family farmers to continue farming. For example, there was opposition to printing materials in Spanish and English for distribution in some counties where the Hispanic agricultural community was large, as there was general opposition to directing information to black churches, minority news media and other community outlets. Some opposed such efforts on the grounds that sufficient information was already available in the county offices and any minority farmer who is sufficiently motivated will make do with those materials. To exemplify the prevailing attitude in many of the counties in which minority farmers constituted a sizable number I recall a visit I made to a county in Georgia where we were automating services among the agency. I found most of the USDA agencies co-located in a single new building that was leased from the county government by USDA to house various federal agencies. However, the Farmers Home Administration (FmHA) office was located in an old house about a one fourth of a mile away. When I asked the office manager (a white male) why he did not relocate, he said that the county leadership said they did not want the FmHA black housing clients going to the new building. It made me wonder just how welcome blacks were made to feel for all of the other USDA programs offered by the agencies that did move into the building. Thus, throughout the 1980s there was a strong message coming down from USDA headquarters to employees in the field that the national policy with regard to strict enforcement of EEO and Civil Rights laws and regulations was being reviewed and would be relaxed. Hence there was no cause for the local county committees, the key component in the delivery of farm programs, to concern themselves about alien ideas about equal access to the FmHA farm loan program. Given the deeply rooted racism within the USDA, the initial steps to address the situation, incomplete, tentative and largely unsuccessful though they were, were undermined by indifference and opposition at the senior levels of USDA during the 1980s.

9. Although I was not directly involved in FmHA farm loan and benefit programs prior to 1994, both as a farmer and as a career USDA official I was well aware of these programs and the fact that they had long been administered in a discriminatory fashion. It was an open secret, but very difficult to combat. I had operated at the county level in North Carolina and had experienced first hand the enormous power over how the federal agriculture programs were administered which the county committees enjoyed. The institutionalized decentralization of the federal program unavoidably meant that local discriminatory attitudes determined who got what as regards the massive amounts of federal tax dollars earmarked for these programs. This stark reality—which continues to this day—is so deeply etched upon USDA that both national and state USDA officials take it as a given. The undeniable consequences, which I have seen borne out in hundreds of different ways during my career in agriculture, is that the conduct of the county committee mirrors the attitudes and prejudices of the local power structure, which invariably is a white male world hostile to minorities.

10. In 1993, Mike Espy, a black Congressman from Mississippi, became the first black Secretary of Agriculture—a hugely important symbolic event. Espy made it clear to us that he intended to rid the Department of its institutional racism and hostility toward minority farmers, but first he had to establish a predicate for doing so. Congress, in the

1993 reorganization legislation, helped by directing the Secretary to conduct an audit to determine the nature and extent of discriminatory conduct in the administration of FSA farm programs. Espy delegated the responsibility to conduct such a study generally to FSA, and Rashid Nuri, the deputy administrator of FSA and Willie Cook, the director of EEO and Civil Rights for FSA—both of whom are black, played the lead roles in arranging for the study. Nuri, a former senior manager for Cargill in Nigeria, was a political appointee who was part of the Espy team. Espy hoped the resulting report would provide him with the performance data, which Congress wanted to see.

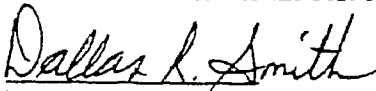
11. Willie Cook retained D.J. Miller & Associates, an Atlanta, Georgia based minority consulting firm, to conduct the audit and to prepare the report. Rashid reviewed and approved the contract with D.J. Miller and operated within his authority in doing so. The D.J. Miller audit exercise aroused considerable concern and apprehension throughout USDA because a thorough and honest audit would shine light into many dark corners, to the embarrassment of the Department.

12. In 1994, D.J. Miller, having survived several efforts to torpedo his project, proceeded to conduct an extensive field investigation at the county committee, district and state levels, and studied how headquarters handled both standard appeals and complaints about discriminatory treatment in the loan and disaster administration processes, among other aspects of USDA's wide array of farm programs. Most importantly, Miller was given access to the extensive data that USDA, via its record and data processing center in Kansas City, Missouri, thus permitting him to measure the impact of the discriminatory conduct. It soon became apparent that Miller could prove to be a major threat to the status quo and to the many key USDA officials interested in its perpetuation.

13. The initial D.J. Miller report and supporting documentation (in two volumes) was presented to FSA early in 1995, as I recall. I reviewed the report and found that it substantiated and documented what I had long observed as regards the systematic racism and discrimination, which infected FSA program administration. It is fair to say that the D.J. Miller report, thanks to the comprehensiveness of its fieldwork and its utilization of USDA data to demonstrate the impact on minorities of discriminatory program administration, had a profound impact upon USDA headquarters. Predictably, the instinctive institutional response was to simultaneously attempt to discredit the messenger and to muffle the message. I will spare the ugly details, but suffice it to say that both Willie Cook and Rashid Nuri, the two persons most directly responsible for hiring Miller did not survive the ensuing period of recrimination. Although the D.J. Miller Report was quietly and unceremoniously shelved, the fact of its existence made it impossible to ignore the undeniable fact that the administration of the FHA farm programs was and is pervaded by systemic racism and anti-minority bias. However much some in the USDA strained to discredit the report, the subsequent CRAT report (a pale copy of the Miller Report) cited the Miller Report and listed it in its bibliography, and the momentum generated by it inspired a succession of USDA IG reports detailing the progress (or lack thereof) in eradicating systemic discrimination at USDA.

14. I remained in USDA until January 1999 and am pleased that at least some progress has been made. Unfortunately the momentum that had been generated has not been institutionalized and my assessment is that a substantial amount of fundamental remedial work (which I would be happy to discuss on a later occasion) remains to be done. It appears that neither Congressional nor USDA initiated relief is likely, which means that only through judicial intervention can we have a fair, nondiscriminatory allocation of taxpayer funds intended to provide encouragement and security to all family farm families in America. The conduct of some USDA managers and employees in perpetuating this egregious situation simply can no longer be tolerated.

I have reviewed the forgoing Declaration, and declare, under penalty of perjury that it is true and correct and to the best of my personal knowledge.


Dallas R. Smith

4/5/02
Date

Part I, Volume I
**Producer Participation and
EEO Complaint Process
Study for
the Farm Service Agency
(FSA)**
of the U.S. Department of
Agriculture
Contract No.
53-3151-5-00001
Project No. EEO-95-06
submitted by
D.J. Miller & Associates, Inc.
March 4, 1996

The four volumes of this report are interdependent. To fully understand the purpose of this study, DJMA's methodology, approach, findings, and recommendations, the volumes should be read collectively.

PRODUCER

PARTICIPATION

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average payments (percent of the top percentile of the program benefits for disaster payments).²⁴

CCC LOANS

In 1993, White males received \$2.33 billion of the \$4.2 billion total CCC loans to individuals and corporations (55.5 percent) and White females received \$348.6 million (8.3 percent). Corporations received \$1.2 billion (28.7 percent)²⁵ of the total CCC loans. Again, the ethnicity of the corporations is not defined, but Census data indicates that agricultural corporations are likely to be predominantly owned by White males. The other ethnic groups received less than one-half percent of all CCC loans. The remaining loans were received by other entities. This conclusion is consistent with the census data reports that White farms receive 96 percent of all CCC loans.

In 1993, White males received \$2.3 billion of the \$2.7 billion loans made to individuals (86.3 percent) and White females received \$348.6 million (12.9 percent).²⁶ Thus, White farmers received approximately 97 percent or greater of the dollar value of CCC loans.²⁷ The remaining ethnicities received less than one percent of CCC loans that was distributed primarily among Blacks and Hispanics. These patterns were repeated in 1994.²⁸ Figure 3.4 summarizes the percentage of CCC loan payments received by the various groups of individuals by ethnicity/gender and corporations.

The percentage of White males receiving CCC loans in 1993 and 1994 (as opposed to the percentage of CCC loans received by White males) appear to be much higher than the percentage of other ethnic groups receiving CCC loans in the same period.²⁹ For example in 1994, 2.9 percent of White males received loans while only 0.2 percent of Black females and 0.06 percent of Hispanic males received loans.

²⁴It must be noted that the program benefits data for the years 1994 and 1995 is incomplete, and the results obtained for these years are limited in scope. Volume II, Table 3.6.A and Table 3.6.D.

²⁵Volume II, Table 3.3.B.

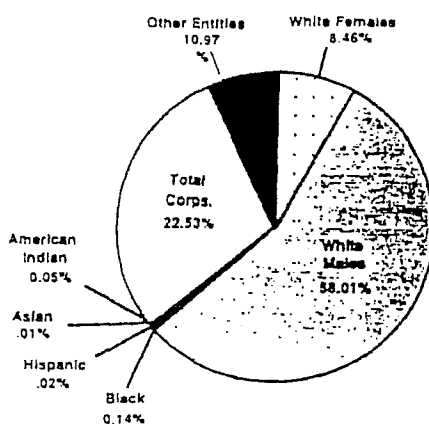
²⁶Volume II, Table 3.3.B.

²⁷Volume II, Table 3.3.B.

²⁸1994, White males received \$5.6 billion of the \$9.5 billion total CCC loans made (58 percent) and White females received \$814.2 million (8.5 percent). All other ethnic/gender groups received less than one percent of the total loan payments. For 1994, White males received \$5.6 billion of the \$6.5 billion CCC loans made (87.2 percent of total assigned for individuals) and White females received \$814.2 million (12.6 percentage of total loans received by individuals). All other ethnic/gender groups received less than one percent of the total loan payments.

²⁹Volume II, Table 3.2.B.

Figure 3.4
Distribution of CCC Loan Payments, 1990-95

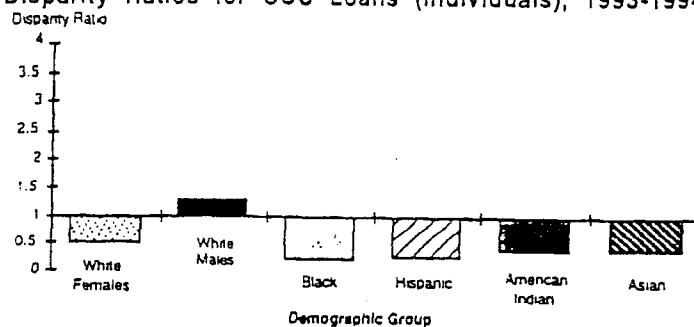


Source: FSA Volume II, Table 3.3.8

Disparity Ratios for CCC Loans

Figure 3.5 shows the disparity ratios of CCC loans received by individuals. A disparity ratio of less than one implies that a group is not receiving its proportional share of loans. Disparity ratios for CCC loans are greater than 1 only for White males and less than 1 for all other groups. This suggests that White males received disproportionately large proportion of the CCC loans compared to females and minorities.

Figure 3.5
Disparity Ratios for CCC Loans (Individuals), 1993-1994



Source: FSA: Volume II, Table 3.3.8 and Table 2.9.

Average CCC Loans

The average dollar CCC loans received by White males was larger than that received by minorities and females (except for American Indians) for the years

1993. This result is consistent with the results obtained in the earlier section.³⁰ In 1993 and 1994, White males received statistically significantly larger CCC loans than minority males.³¹ Males received larger CCC loans than females in 1993.

American Indians (males and females) received the largest average dollar CCC loans during 1993 and 1994. In 1993, the American Indian Tribes/Bureau of Indian Affairs received two large payments averaging approximately \$1 million. However, these payments were in turn disbursed among individual tribal members. Black females received the lowest average loan payments in both years.

Distribution of Largest CCC Loans

Minority groups, with the exception of American Indian groups, were not represented among recipients in the top percentile of CCC loans.³² Also, the group marked "Other" (containing entities other than individuals and corporations), received above average loans compared to other groups. In terms of the number of loans received, corporations received the greatest number (60 percent in 1993, 44.9 percent in 1994) of large dollar CCC loans.

In 1993, White males and females received all of the top percentile of CCC loans (with the exception of two that were received by American Indians).³³ No other minorities received any loans that were in the top percentile of the CCC loans distributed to producers.

FSA PAYMENTS

Again, the highest total dollar amounts of payments were received by White males (\$6.1 billion of \$9.8 billion [individuals and entities] or 62.5 percent of total) while White females received \$640.7 million (6.5 percent of total) payments. Corporations received \$2.6 billion (26 percent of total) in payments. The remaining ethnic/gender groups received less than one percent of the total dollar payments each.³⁴ Figure 3.6 summarizes the distribution of the payments made to the various entities.

³⁰Volume II, Table 3.3.B.

³¹Volume II, Table 3.3.B.

³²With the exception of one Asian male and one Asian female that received loans in 1993, none of the other minorities received any loans (that were in the highest one percent of the loans distributed).

³³Volume II, Table 3.6.E.

³⁴Volume II, Table 3.3.C.

Table 2.9
Summary Statistics on Producer Types by Ethnicity and Gender

Purpose: To describe the different producer types by ethnicity and gender.

Producer Type	White		Black		Hispanic		Asian American/ Pacific Islander		American Indian/ Alaskan Native		Total
	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	
Owner	900,953	1,122,372	31,518	33,081	3,885	6,722	486	1,212	6,410	5,103	2,111,742
Row Percent	42.66%	53.15%	1.49%	1.57%	0.18%	0.32%	0.02%	0.06%	0.3%	0.24%	100%
Column Percent	64.25%	28.07%	54.07%	31.16%	54.97%	21.03%	48.45%	18.78%	37.91%	27.49%	37.39
Operator	18,178	195,433	4,039	10,909	168	2,518	51	578	260	1,040	233,174
Row Percent	7.8%	83.81%	1.73%	4.68%	0.07%	1.08%	0.02%	0.25%	0.11%	0.45%	100%
Column Percent	1.3%	4.89%	6.93%	10.27%	2.38%	7.88%	5.08%	8.96%	1.54%	5.6%	4.13
Owner-Operator	299,081	1,807,936	18,836	44,979	2,104	18,032	356	3,975	4,695	6,409	2,206,403
Row Percent	13.56%	81.94%	0.85%	2.04%	0.1%	0.82%	0.02%	0.18%	0.21%	0.29%	100%
Column Percent	21.33%	45.22%	32.31%	42.36%	29.77%	56.42%	35.49%	61.61%	27.77%	34.53%	39.07
Other	40,707	118,798	556	2,403	267	786	41	136	3,942	3,090	170,726
Row Percent	23.84%	69.58%	0.33%	1.41%	0.16%	0.46%	0.02%	0.08%	2.31%	1.81%	100%
Column Percent	2.9%	2.97%	0.95%	2.26%	3.78%	2.46%	4.09%	2.11%	23.31%	16.65%	3.02
Owner-Owner*	86,238	92,913	1,239	1,448	304	423	31	94	882	780	184,352
Row Percent	46.78%	50.4%	0.67%	0.79%	0.16%	0.23%	0.02%	0.05%	0.48%	0.42%	100%
Column Percent	6.15%	2.32%	2.13%	1.36%	4.3%	1.32%	3.09%	1.46%	5.22%	4.2%	3.26
Operator-Operator*	1,567	68,764	182	1,806	6	437	3	29	31	203	73,028
Row Percent	2.15%	94.16%	0.25%	2.47%	0.01%	0.6%	0%	0.04%	0.04%	0.28%	100%
Column Percent	0.11%	1.72%	0.31%	1.7%	0.08%	1.37%	0.3%	0.45%	0.18%	1.09%	1.29
Owner-Oper.-Owner-Oper.*	55,546	592,256	1,922	11,553	334	3,040	35	428	688	1,938	667,740
Row Percent	8.32%	88.7%	0.29%	1.73%	0.05%	0.46%	0.01%	0.06%	0.1%	0.29%	100%
Column Percent	3.96%	14.81%	3.3%	10.88%	4.73%	9.51%	3.49%	6.63%	4.07%	10.44%	11.82
Total Column Percent	100	100	100	100	100	100	100	100	100	100	
Total Column	1,402,270	3,998,472	58,292	106,179	7,068	31,958	1,003	6,452	16,908	18,563	5,647,165

Source: FSA

* For definitions of these producer types, refer to text.

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Table 3.3.B
Summary Statistics on Loans 1993-1994

Purpose: To summarize the loans by ethnicity and gender for comparative purposes

YR	White		Black		Hispanic		Amer. Indian		Asian	
	Females	Males	Females	Males	Females	Males	Females	Males	Females	Males
93 No. Rec'd	11,690	76,705	320	827	18	75	21	68	6	18
Avg \$ Rec'd	29,826	30,406	7,811	11,986	26,548	22,775	45,121	30,803	27,598	17,727
Total \$ Rec'd	348,671,260	2,332,326,959	2,499,570	9,912,446	477,865	1,708,138	947,535	2,094,607	165,585	319,002
94 No. Rec'd	17,027	117,683	125	391	3	20	13	67	2	20
Avg \$ Rec'd	47,818	47,890	10,531	15,959	41,140	52,075	66,856	45,037	27,241	41,950
Total \$ Rec'd	814,202,716	5,635,814,530	1,316,363	6,239,799	123,420	1,041,493	869,130	3,017,471	54,482	839,004
Total No. Rec'd	28,717	194,388	445	1,218	21	95	34	135	8	38
(93-94) Avg \$ Rec'd	40,494	40,991	8,575	13,261	28,633	28,943	53,431	37,867	27,508	30,476
Total \$ Rec'd	1,162,873,976	7,968,141,489	3,815,933	16,152,245	601,285	2,749,631	1,816,665	5,112,078	220,067	1,158,006

Source: FSA

YR	Total		Indian Tribes/BIA	Others	Total All Entities
	Individuals	Corps.			
93 No. Rec'd	89,748	14,627	2	5,851	110,228
Avg \$ Rec'd	30,074	82,505	994,590	50,010	38,108
Total \$ Rec'd	2,699,123,047	1,206,804,426	1,989,179	292,605,607	4,200,522,259
94 No. Rec'd	135,351	18,814	1	17,117	171,283
Avg \$ Rec'd	47,754	100,350	104,783	69,077	55,662
Total \$ Rec'd	6,463,518,408	1,887,976,686	104,783	1,182,387,890	9,533,987,767
Total No. Rec'd	225,099	33,441	3	22,968	281,511
(93-94) Avg \$ Rec'd	40,705	92,545	697,987	64,220	48,789
Total \$ Rec'd	9,162,641,455	3,094,781,112	2,093,962	1,474,993,497	13,734,510,026

Source: FSA

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Table 3.6.B
 Summary Statistics of the Highest 1% Loans for 1993-1994, All Entities
 Purpose: To provide an overview of the distributions of recipients of the highest 1% Loans (for all entities)

YR	NAME	White		Black		Hispanic		American Indian		Asian		Indians/ BIA Tribes	Other	Total
		Females	Males	Females	Males	Females	Males	Females	Males	Females	Males			
93	No.	91	254	0	0	0	0	1	1	0	0	661	93	1,102
	Total Amt. *	33,381	94,112	0	0	0	0	335	374	0	0	307,743	118,331	556,242
	Mean Amt. *	367	371					335	374			466	1,272	505
	No. (%)	8.26%	23.05%	0.00%	0.00%	0.00%	0.00%	0.09%	0.09%	0.00%	0.00%	59.98%	8.44%	100.00%
	Total Amt. (%)	6.00%	16.92%	0.00%	0.00%	0.00%	0.00%	0.06%	0.07%	0.00%	0.00%	55.33%	21.27%	100.00%
94	No.	182	623	0	0	0	0	0	0	0	0	767	135	1,707
	Total Amt. *	84,199	292,509	0	0	0	0	0	0	0	0	402,052	430,031	1,208,791
	Mean Amt. *	463	470									524	3,185	708
	No. (%)	10.66%	36.50%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	44.93%	7.91%	100.00%
	Total Amt. (%)	6.97%	24.20%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	33.26%	35.58%	100.00%

Source: FSA

* In thousands of dollars

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Table 3.6.E
 Summary Statistics of the Highest 1% Loans for 1993-1994, Individuals Only

Purpose: To provide an overview of the distribution of recipients of the highest 1% Loans (for individuals only)

YR	NAME	White		Black		Hispanic		American Indian		Asian		Total Individuals
		Females	Males	Females	Males	Females	Males	Females	Males	Females	Males	
93	No	192	703	0	0	0	0	1	1	0	0	897
	Total Aml.*	57,067	200,796	0	0	0	0	335	374	0	0	258,572
	Mean Aml.*	297.22	285.63					335.25	374.23			288.26
	No (%)	21.40%	78.37%	0.00%	0.00%	0.00%	0.00%	0.11%	0.11%	0.00%	0.00%	100%
94	Total Aml.* (%)	22.07%	77.66%	0.00%	0.00%	0.00%	0.00%	0.13%	0.14%	0.00%	0.00%	100%
	No	270	1,082	0	0	0	0	0	1	0	0	1,353
	Total Aml.*	111,767	435,760	0	0	0	0	0	319	0	0	547,846
	Mean Aml.*	413.95	402.74						319.42			404.91
	No. (%)	19.96%	79.97%	0.00%	0.00%	0.00%	0.00%	0.00%	0.07%	0.00%	0.00%	100%
	Total Aml.* (%)	20.40%	79.54%	0.00%	0.00%	0.00%	0.00%	0.00%	0.06%	0.00%	0.00%	100%

Source: FSA

* In thousands of dollars

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DECLARATION OF PROFESSOR JERRY A. HAUSMAN

I. **Qualifications**

1. I am the John and Jennie S. MacDonald Professor of Economics at the Massachusetts Institute of Technology in Cambridge, Massachusetts. I graduated from Brown University in 1968. In 1973, I received a D.Phil. (Ph.D.) in economics from Oxford University where I was a Marshall Scholar. My academic and research specialties are econometrics (the application of statistical techniques to economic data) and applied microeconomics (the study of the behavior of consumers and firms). At MIT, I teach two graduate courses in econometrics each year and I also run a research seminar in econometrics.

2. I served as an associate editor for *Econometrica*, the leading economics journal. I have published over 120 research papers in leading journals such as *Econometrica*, the *American Economic Review*, and the *Rand Journal of Economics*. In 1985, I received the John Bates Clark Medal of the American Economic Association, awarded every other year for "the most significant contributions to economics" by an economist under forty years of age. In 1980, I was awarded the Frisch Medal of the Econometric Society. This award is given for the best applied paper in econometrics in *Econometrica* during the previous five year period.

3. I have served on a number of government advisory committees, e.g., for the Bureau of Labor Statistics and the Energy Information Administration. Many of these committees dealt with data collection and analysis. I have published a number of papers in the area of econometrics, including "Specification Tests in Econometrics," *Econometrica*, 1978.

which proposed an econometric test that is now widely used by economists. My curriculum vitae, which lists my publications, is attached as Exhibit 1.

4. I have been asked by plaintiffs to determine whether any evidence exists that Hispanic farmers have been discriminated against by the United States Department of Agriculture ("USDA") in the provision of farm credit and farm programs. I understand that the USDA has not yet produced any data in discovery. Thus, my analysis has been limited to publicly available data. Specifically, I have reviewed data produced by the USDA in response to a Freedom of Information Act ("FOIA") request as well as data obtained from the USDA Census of Agriculture.

5. Based on an econometric analysis of these data, I conclude that evidence exists that that Hispanic farmers were less likely to receive farm loans from the USDA than white farmers. While a full damages analysis awaits discovery from the USDA, my results are consistent with plaintiffs' allegations of discrimination.

I. Data

6. Counsel provided me with data produced by the USDA in response to a FOIA request. These data itemize the number of direct farm loan borrowers by state, race, and year (for the 1994-1999 period). In my analysis, I focus on the 1997 data because of the availability of Census of Agriculture data for 1997 that I use in conjunction with the FOIA data.

7. The Census of Agriculture is conducted every five years by the USDA (including in 1997). The USDA collects information on farmers throughout the United States and produces summary tables that are then made publicly available. The summary tables include information, by state and farmer racial group, on the number of farms, the land in farms, and the number of farms with sales greater than \$10,000.

8. Using the 1997 Census of Agriculture data, I calculated for each state the number of Hispanic farms, the number of white farms, the average size (in acres) of Hispanic farms, the average size of white farms, the percentage of Hispanic farms with sales greater than \$10,000, and the percentage of white farms with sales greater than \$10,000.

9. Then, combining the loan data obtained via the FOIA request and the Census of Agriculture data, I calculated for each state the following "loan ratios:" (1) the ratio of the number of Hispanic loans to the number of Hispanic farms and (2) the ratio of the number of white loans to the number of white farms. For example, if a given state had 100 Hispanic farms and 10 loans to Hispanic farmers, the Hispanic loan ratio for that state would be $10/100 = 0.10$ (or 10%). Thus, the loan ratios are measures of the incidence of loans among the farmers in the respective racial groups in the given state.

II. Econometric Analysis

10. I conducted an econometric analysis to answer the question of whether the Hispanic loan ratio tended to be lower than the white loan ratio, an outcome that would be consistent with discrimination against Hispanic farmers by the USDA in the provision of loans. In the course of this analysis, I have used the same econometric methods I have used numerous times in my own academic research and in government proceedings, e.g., before the Department of Energy, the USDA, the Department of Justice, and the Federal Trade Commission.

11. I employed a regression model where the left-hand-side variable was the loan ratio for a particular racial group (Hispanic or white) in a particular state. The right-hand-side variables in the model (i.e., variables that might be expected to affect the loan ratio) consisted of (1) state indicator variables ("state fixed effects") that control for economic conditions in a given state that would affect both white and Hispanic loan ratios in that state

(e.g., weather effects), (2) the logarithm of the average farm size for the racial group in that state, (3) the percentage of farms with revenue above \$10,000 for the racial group in that state, and (4) an indicator variable for the Hispanic racial group. I estimated the model using a generalized least squares ("GLS") procedure because of the existence of "heteroskedasticity," which occurs when the variance of the error term of the regression model ("statistical noise") differs across the observations in the data. In this situation, when estimating the regression coefficients GLS gives more weight to the observations with lower variance error terms (less "noisy" observations), which can lead to more precise statistical estimates. Estimates with higher precision are a desirable outcome from a statistical point of view.

12. The regression results are given in the following table.

Dependent Variable: Loan Ratio	
Hispanic Indicator Variable	-0.019 (0.003)
Logarithm of Average Farm Size	-0.025 (0.008)
Percentage of Farms w/ Revenue > \$10,000	-0.054 (0.043)
N = 100 R-Squared = 0.97 Note: 49 state fixed effects were also included in the specification, but are omitted from this table for the sake of brevity.	

13. The estimated coefficient on the Hispanic indicator variable is negative and (highly) statistically significantly different from zero, which implies that the Hispanic loan ratio is lower on average than the white loan ratio. The magnitude of this estimated coefficient (-0.019) indicates that the size of the difference between the white and Hispanic loan ratios is 1.9 percentage points on average. Thus, for example, in a state where the loan ratio for white farmers was equal to 4.9% (which happens to be the average loan ratio across the 50 states and

the two racial groups), the regression results indicate that the loan ratio for Hispanics in the state would be equal to 3.0% (1.9 percentage points lower). In addition to being statistically significant, this difference would appear to be economically significant in the sense that it implies a substantial differential in the likelihood of obtaining a loan for Hispanic farmers.

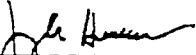
14. The estimated coefficient on the logarithm of farm size is negative and statistically significantly different from zero, indicating that the larger the average farm for a racial group in a state, the lower is the loan percentage for that racial group in the state. Similarly, the estimated coefficient on the percentage of farms with sales greater than \$10,000 indicates that the higher this percentage, the lower the loan percentage. However, this coefficient is not statistically different from zero.

III. Conclusion

15. The econometric analysis demonstrates that, controlling for other available variables, the loan ratio for Hispanic farmers is lower than the loan ratio for white farmers, which indicates that Hispanic farmers are less likely to receive loans than white farmers. This result is consistent with plaintiffs' allegations that Hispanic farmers have been discriminated against by the USDA in the provision of farm loans.

16. A more complete analysis of Hispanic farmers' relative likelihood of receiving farm loans should be possible once discovery from the USDA is undertaken. In addition, discovery from the USDA might allow an analysis of whether those Hispanic farmers who did receive loans in fact received smaller loans than otherwise similar white farmers.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 8, 2002.



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 Reviewer, Mathematical Reviews, 1978-1980
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 Associate Editor, Journal of Public Economics, 1982-1998
 Associate Editor, Journal of Applied Econometrics, 1985-1993
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 Director, MIT Telecommunications Economics Research Program, 1988-
 Board of Directors, Theseus Institute, France Telecom University, 1988-1995
 Member, Conference on Income and Wealth, National Bureau of Economic Research, 1992-
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 Advisory Editor, Economics Research Network and Social Science Research, 1998-
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