

# **EXHIBIT 15**

Civil Action No. 00-2445 (JR)

U.S. Department of Agriculture  
Washington, D.C. 20250

<b>DEPARTMENTAL REGULATION</b>		Number: 4330-3
SUBJECT:  Nondiscrimination in USDA-Conducted Programs and Activities	DATE:  March 3, 1999	
	OPI:  Office of Civil Rights	

## 1 PURPOSE

The purpose of this Departmental Regulation (DR) is to establish and convey policy and provide guidance and direction to Department of Agriculture (the Department or USDA) agencies and employees in order to ensure compliance with and enforcement of the Department's prohibitions against discrimination in its conducted programs and activities. This DR is limited to and specifically addresses:

- a Conducting civil rights compliance reviews of USDA-conducted programs and activities; and
- b Processing administrative complaints of discrimination filed with the Department in any program or activity conducted by USDA.

## 2 SPECIAL INSTRUCTIONS

DR 4330-1, Departmental Policy for Program Compliance Reviews, is no longer current.

## 3 SCOPE

This regulation applies and is limited to the processing of complaint and compliance review investigations pertaining to all programs and activities conducted in whole or in part by the USDA, its agencies and instrumentalities.

## 4 POLICY

It is USDA policy to ensure no person is subject to prohibited discrimination in USDA-conducted programs and activities based on race, color, national origin, gender, religion, age, disability, marital status, familial status, sexual orientation, or because all or part of an individual's income is derived from any public assistance source. The policy, in part, is enforced by

- a fairly and efficiently responding to discrimination complaints filed against USDA and

- b systematically evaluating whether and the extent to which USDA conducts its programs and activities in a manner consistent with applicable Federal and USDA civil rights requirements.

No person shall be subjected to reprisal or harassment because he or she filed a discrimination complaint; participated in or contributed to the identification, investigation, prosecution, or resolution of civil rights violations in or by any USDA-conducted program or activity; or otherwise aided or supported the enforcement of Federal or USDA civil rights laws, rules, regulations, or policies.

5 AUTHORITIES/REFERENCES

a Statutory

- (1) Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC 794.
- (2) 5 USC 301, Authority to Prescribe Departmental Regulations.
- (3) Equal Credit Opportunity Act of 1974, Title VII of the Consumer Protection Act of 1974 (as amended), Section 701 of the Equal Credit Opportunity Act of 1974, Pub. L. 93-49, tit. V, 88 Stat. 1500, 15 USC §§ 1691-1691f.
- (4) Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 USC 3601-3619.

b Regulatory and Executive Orders

- (1) 7 CFR Part 2, Subpart P.
- (2) 7 CFR Part 15, Nondiscrimination in USDA-conducted programs and activities.
- (3) 7 CFR Part 15e - Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the United States Department of Agriculture.
- (4) 12 CFR Part 202, Equal Credit Opportunity Regulation B.
- (5) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

- c Departmental Regulations/Policy
  - (1) USDA DR 4300-5, Agency Civil Rights Programs, dated January 14, 1998.
  - (2) USDA DR 4300-3, Equal Opportunity Public Notification Policy, dated February 25, 1998.
  - (3) USDA DR 4300-6, Civil Rights Policy for the U.S. Department of Agriculture, dated March 16, 1998.
  - (4) USDA DR 5600-2, Environmental Justice, dated December 15, 1997.
  - (5) Secretary's Memorandum 1010-4, Restructuring Departmental Administration, dated May 16, 1997.

## 6 DEFINITIONS

The following definitions apply to explain the meaning and purpose of this DR.

- a Agency Review (AR) - A compliance review investigation that extends to the entire USDA agency and its subcomponents and all the programs and activities conducted by that agency and its subcomponents.
- b Beneficiary - A person or group of persons with an entitlement to receive or enjoy the benefits, services, resources, and information, or to participate in the activities and programs conducted by USDA.
- c Complainant - Any person or group of persons who files with any USDA agency a complaint that alleges discrimination in a program or activity conducted by any USDA agency.
- d Complaint - A written allegation that discrimination is occurring or has occurred in a program or activity conducted by USDA.
- e Compliance Review - A systematically planned and regularly initiated investigation that assesses and evaluates the civil rights and equal opportunity policies, procedures, and practices of a USDA agency or its subcomponents to determine compliance with civil rights statutes, regulations, standards, and policies.
- f Conducted Programs and Activities - Solitary (one time) or continuing decisions, efforts, policies, procedures, and practices of a USDA agency, corporation, or committee or other instrumentality for the purpose of, that result in, or that

otherwise contribute to the availability or delivery of services, benefits, or resources for the use, enjoyment, or consumption by a member or members of the public.

- g Discrimination - Different treatment or denial of benefits, services, rights or privileges to a person or persons because of his/her/their race, color, religion, gender, age, national origin, marital status, familial status, sexual orientation, disability, or political beliefs by a USDA agency or instrumentality in conjunction with any USDA-conducted program or activity.
- h Final Agency Decision - A written statement signed by the Director, Office of Civil Rights (CR), in which the issues and allegations, related facts and evidence, findings and legal conclusions identified by the Office of Civil Rights in response to a complaint investigation of a USDA agency or instrumentality are set forth in writing for the purpose of notifying the complainant and the appropriate agency representative(s) whether and to what extent the agency has violated any civil rights requirements.
- i Legal Sufficiency Review (LSR) - A review of the findings and recommendations pertaining to a complaint or compliance review investigation for the sole purpose of ensuring:
  - (1) The accuracy of the document's legal citations;
  - (2) The appropriate translation of allegations to issues;
  - (3) The delineation of jurisdiction and authority of USDA;
  - (4) That all issues are resolved based on a preponderance of the evidence;
  - (5) That the facts and evidence establishing issue resolution are material, relevant, and reliable;
  - (6) That the findings of fact and conclusions of law reflect and are consistent with the appropriate legal theories and standards; and
  - (7) That recommended disposition in fact resolves and disposes of all issues and matters.
- j Program Review (PR) - A compliance review investigation that is limited to a particular program or activity of a USDA agency.

- k Voluntary Resolution/Settlements - A voluntary agreement which resolves a complaint or compliance review issue wherein USDA or one of its agencies agrees to effect corrective or remedial action before or after USDA's official determination.

7 ROLES AND RESPONSIBILITIES

- a Secretary of Agriculture sets the tone and direction, provides leadership, prescribes regulations, sets overall civil rights policy, and ensures civil rights compliance and enforcement throughout the Department. The Secretary further ensures the availability of resources adequate to support and carry out a broad range of civil rights compliance and enforcement activities throughout the Department. The Secretary accomplishes his or her responsibilities directly and through the broad delegation of authority for civil rights to the Assistant Secretary for Administration and other agencies, officers, and employees.
- b Assistant Secretary for Administration (ASA) - The civil rights officer for USDA who is responsible for the performance and oversight of all civil rights functions within USDA. The ASA will:
  - (1) Provide overall leadership, coordination and direction for the USDA civil rights compliance and enforcement program;
  - (2) Delegate to the Director, Office of Civil Rights, full and comprehensive responsibility for the day-to-day management and administration of the Department's civil rights compliance and enforcement activities;
  - (3) Ensure that agencies and their instrumentalities actively support and adhere to the civil rights policies, directives, findings, and decisions rendered by the Office of Civil Rights; and
  - (4) Systematically review, evaluate, and hold to a high accountability standard the civil rights performance of agency heads and administrators.
- c Director, Office of Civil Rights (CR) is responsible for planning, managing, directing, and coordinating the day-to-day management and administration of the full range of the Department's civil rights compliance and enforcement functions, responsibilities, and obligations, including:
  - (1) The investigation, adjudication, and resolution of complaints, to include the full authority and sole responsibility for determining whether discrimination has occurred in USDA-conducted programs and activities, and ordering appropriate relief;

- (2) Reviewing and evaluating agencies' accomplishment of their civil rights responsibilities through compliance reviews and other appropriate methods;
- (3) Issuing policies, directives, procedures, rules, and regulations as necessary to ensure that the Department fully achieves its civil rights compliance and enforcement obligations;
- (4) Recommending sanctions as appropriate and where necessary to secure agency compliance with applicable civil rights laws;
- (5) Ensuring through training, dissemination of information, technical assistance, and other appropriate methods that the Department's civil rights employee population, including contract employees and consultants, demonstrates and maintains the highest level of current technical competence, skills, knowledge, and abilities;
- (6) Providing leadership and proactively promoting civil rights at USDA, and providing guidance and oversight to USDA agencies and recipients;
- (7) Developing and implementing a comprehensive civil rights strategic plan that encompasses the full scope of the Department's civil rights obligations, supplemented by an annual operating plan for strategy accomplishment, and disseminating the plan throughout the Department; and
- (8) Serving as a clearinghouse for information dissemination and exchange with USDA agencies, the government, and nongovernment civil rights communities.

d Agency - Any bureau, agency, office, administration, instrumentality of or corporation within USDA to which the legal authority and responsibility have been delegated or assigned to manage, administer, or supervise any USDA program or activity, or any officer or employee of the Department to whom the Secretary has delegated the power and authority to carry out any of the functions or responsibilities of an agency under this regulation. An Agency will:

- (1) Establish, maintain and ensure an effective, proactive civil rights compliance and enforcement program in accordance with the policies, guidelines, and directives promulgated by CR;
- (2) Provide adequate and appropriately trained and qualified staff and other resources as necessary to ensure efficient and effective accomplishment of the Department's civil rights obligations;

- (3) Timely collect and make available all data and information as necessary and requested by CR to enable efficient and effective monitoring and evaluation of the Department's program of civil rights compliance and enforcement;
- (4) Cooperate with and provide assistance as necessary and requested by CR in the investigation of any complaints and compliance reviews, including ensuring access to information and the resolution of any issues of noncompliance; and
- (5) Timely and effectively implement corrective actions and remedies in response to a finding resulting from a compliance review or complaint investigation that one or more agency programs or activities are infected by prohibited discriminatory policies, practices, or procedures.

d Office of the General Counsel (OGC) - In-house counsel for the USDA. OGC will:

- (1) Provide legal expertise, advice, and support to the Office of Civil Rights to ensure the accomplishment of the Department's civil rights compliance and enforcement obligations;
- (2) Conduct legal sufficiency reviews for all draft final agency decisions resulting from complaint investigations, settlement agreements, compensatory damages awards, and attorney fees and costs awards prior to final implementation;
- (3) Upon request of CR, review settlement agreements, provide legal advice relating to the award of compensatory damages and attorney fees, and other legal issues involved in the complaint and compliance review investigation processes.

## 8 COMPLIANCE

- a Under procedures and systems established by CR, all USDA agencies will be responsible for ensuring that all programs and activities for which they are responsible are conducted, managed, and administered in a manner that conforms with the applicable civil rights requirements.
- b All agencies will regularly and systematically monitor and evaluate the management and administration of their programs, activities, policies, procedures, and practices to ensure compliance with all applicable civil rights requirements, including those civil rights requirements specified in program statutes and regulations.

- c As an integral element of its civil rights enforcement responsibility, CR routinely will maintain a regular, systematic program that includes:
  - (1) technical guidance and assistance for agencies, with the goal of resolving civil rights problems and issues in the administration of agency programs and activities, and
  - (2) monitoring and evaluations of whether, and the extent to which, agencies meet their civil rights obligations.
  
- d In conducting compliance review investigations of USDA-conducted programs and activities, CR will be guided by the legal standards, policies, and requirements that have been established in Federal statutes, regulations, Executive Orders, policies, and case law decisions related to discrimination based on race, color, national origin, gender, religion, age, disability, marital status, familial status, sexual orientation or because all or part of an individual's income is derived from any public assistance source, and made applicable to USDA-conducted programs and activities.

## 9 COMPLIANCE REVIEWS

- a Distribution of Responsibilities
  - (1) The CR, with the assistance of the USDA agencies, will be responsible for conducting compliance reviews of all USDA agencies. The CR will exercise its discretion about whether to conduct an agency review or a program review in response to complaints alleging unlawful discrimination in USDA-conducted programs.
  - (2) As determined by the Director, CR will decide whether to conduct a compliance review of a USDA-conducted program activity based on consideration of:
    - (a) data and information cited in one or more complaints or other reliable information sources;
    - (b) the receipt of a significant number of complaints that raise the same or similar issue(s) relating to a particular agency program or the receipt of one or more complaints that involve politically sensitive matters or have generated significant media interest;

- (c) the findings of research initiated and conducted by CR;
- (d) other legitimate factors and information.

b Voluntary Compliance and Conciliation

CR and USDA agencies are strongly encouraged to engage in voluntary compliance where appropriate, at any stage of the compliance review investigation process, and will provide technical assistance to facilitate a voluntary resolution of any noncompliance issues or issues for which there is a high probability of noncompliance.

c Timeframes

- (1) Unless otherwise stated, all days are calendar days.
- (2) CR will complete a compliance review within 180 days following the receipt of information subject to review from the agency.
- (3) CR will give as much notice as is practicable to the agency subject to review, but not less than 60 days prior to the date that the compliance review activities will commence. The notice will advise the agency of the date on which the compliance review will commence, the data and information necessary to an efficient and effective compliance review, and the date on which the data and information are to be received by CR.
- (4) The agency shall acknowledge the notice within 5 working days and ensure that the requested data and information are transmitted in the amount of time directed by the Director, CR.
- (5) CR will notify the agency in writing of the findings of the compliance review within 30 days following its completion. The report shall identify:
  - (a) each issue investigated during the review;
  - (b) the facts and evidence collected and analyzed in relation to each issue;
  - (c) the findings of fact and conclusions of laws as relates to each issue, including whether or not the agency is in compliance relative to the issue(s); and

- (d) any actions the agency must take to remedy any findings of noncompliance as relates to the issues.

d Findings of Noncompliance

- (1) When CR issues a report of a compliance review that cites noncompliance findings, the agency must notify CR of its plans and action to correct the violations within 30 days following the agency's receipt of the report.
- (2) If CR concludes, or the agency presents adequate documentation that a violation noted during the review was corrected prior to review completion, the compliance review report must state that a violation existed at the time of the review, but that it was voluntarily corrected by the agency. The report similarly must state that the agency voluntarily corrected the violation prior to conclusion of the review.
- (3) When issuing a compliance report, CR shall send a copy of the report to the agency head, the agency civil rights director, OGC, the appropriate Under or Assistant Secretary, the Assistant Secretary for Administration, and the Deputy Secretary. To the extent that the compliance review was initiated in response to a complaint(s), and to the extent appropriate and lawful, CR will notify the complainant(s) of the findings of the compliance review and of the actions taken or being taken to remedy the discrimination.

e Monitoring and Oversight

- (1) Following receipt of the agency's plan to correct a violation noted in a compliance report, CR will ensure that the plan is sufficient to result in the required corrective actions. The CR will monitor and evaluate an agency's efforts to remedy a violation to ensure compliance consistent with the applicable civil rights requirement(s).
- (2) When the agency completes its program of corrective actions, CR will notify the agency head, the agency civil rights director, OGC, the appropriate Under or Assistant Secretary, the Assistant Secretary for Administration, and the Deputy Secretary, following which the review will be closed.

f Enforcement of Compliance Requirement

- (1) Where an agency disagrees with a CR finding that the agency is in violation of one or more civil rights requirements, the agency must provide

CR with a written analysis in support of its position within 15 days after receiving the compliance report. The agency rebuttal must include and is to be limited to the following:

- (a) the specific issue for which the agency does not agree with CR's finding;
  - (b) a concise statement of the basis for the disagreement, limited to either or both (a) a procedural defect in CR's collection of facts and evidence or (b) a showing that CR's analysis of the facts and evidence was defective, including the application of the legal standards on which CR relied to reach its conclusion.
- (2) CR must respond to the agency rebuttal within 5 days after receipt. If CR agrees with and accepts the agency's position, CR will issue a revised compliance review report to the agency within 5 days after its notice of acceptance. If CR does not accept the agency's rebuttal, CR must notify the agency of the nonacceptance and the reasons, and re-advise the agency of the agency's obligation to submit a corrective action plan in accordance with the original timeframes.
  - (3) Should the agency fail or refuse to correct any violation cited in a compliance review report following CR's rejection of its rebuttal, CR will notify the Assistant Secretary for Administration (ASA), documenting the basis for its finding and requesting that the ASA issue a directive to comply.
  - (4) The request for the directive to comply will be referenced in all subsequent agency Accountability reports to the ASA and the Secretary until agency compliance has been achieved.

## 10 COMPLAINT PROCESSING

### a Complainant's Right To File

- (1) Any person who believes that he/she or any specific class of individuals has been subject to discrimination by any USDA agency may personally or through a representative file a complaint with the Office of Civil Rights, USDA.
- (2) If a complaint alleging discrimination is submitted or filed with any agency within USDA other than the Office of Civil Rights, the receiving agency

will refer the complaint to CR within 5 calendar days of the date the complaint was received.

b Acknowledgment of Complaint

- (1) CR will acknowledge to the complainant receipt of the complaint, in writing, within 5 calendar days of receipt. CR will notify the agency of its receipt of the complaint concurrent with its acknowledgment of the complaint.
- (2) The acknowledgment letter will, at a minimum, include: the date complaint was received, the case number assigned, a statement that the complaint is under review to determine CR jurisdiction, any other information that may be specifically required by the appropriate statute, notice that the complainant should consult an attorney regarding other legal rights they may have that are unaffected by the filing of the complaint, and a contact name and number.
- (3) Where CR determines that a complaint is incomplete, the acknowledgment letter also shall advise the complainant of the information needed to complete the complaint and that the information must be submitted within 15 days of the date of receipt of the acknowledgment letter.
- (4) If a complainant does not respond to the request for information necessary to complete his or her complaint, the Director of the Office of Civil Rights may make an additional request, extending the timeframe for submitting the information, or may administratively close the complaint.
- (5) If CR closes an incomplete complaint for lack of a response from the complainant, CR will notify the complainant and the agency of the closure in writing.

c Intake

- (1) CR will review each complaint to determine whether it is complete, timely filed, within USDA jurisdiction, subject to the authorities enforced by USDA, whether the complainant has standing, and to determine whether the complaint must be resolved based on an investigation or is appropriate for early resolution or pre-investigation settlement.
- (2) CR will make an appropriate referral of any complaints that are not within its jurisdiction or which are the subject of concurrent jurisdiction with

another Federal, state, or local agency. The complainant will be notified of the referral in writing.

d Timeliness

- (1) To be timely, complaints must be filed within 180 calendar days from the date the person knew or should have known of the alleged discrimination.
- (2) CR retains the authority to waive the timeliness requirement when it finds that good cause is shown.

e Investigation

- (1) All investigations will be impartial processes limited to the facts and evidence pertinent and relevant to a factual determination of whether the complainant was subjected to discrimination in violation of USDA civil rights regulations.
- (2) The facts, evidence, and findings of the investigation must result in a record that will withstand legal scrutiny.
- (3) When investigating complaints that allege discrimination in USDA-conducted programs and activities, CR will be guided by the legal standards, policies, and requirements that have been established in Federal statutes, regulations, Executive Orders, policies, and case law decisions related to discrimination based on race, color, national origin, gender, religion, age, disability, marital status, familial status, sexual orientation, or because all or part of an individual's income is derived from any public assistance source, and made applicable to federally assisted or conducted programs and activities.
- (4) CR will complete all complaint investigations within 180 days after determining USDA jurisdiction.

f Adjudication

- (1) Upon completion of the investigation, CR will review, evaluate, and analyze the facts and evidence and apply the appropriate standards and legal theories to ensure findings and conclusions consistent with the applicable statutory and regulatory requirements and case law.

- (2) The findings of the adjudication process will be set forth in a final agency decision that takes effect when signed by the Director of CR.
- (3) If CR concludes, or the agency presents adequate documentation that a violation that existed at the onset of the investigation was corrected prior to the conclusion of the investigation, the final agency decision must state that a violation existed at the onset of the investigation, but was voluntarily corrected by the agency.

g Final Agency Decision

- (1) The final agency decision may set forth a “no violation” finding, a “corrected violation finding,” a violation finding accompanied by a requirement for a specific remedial action (including damages), or an offer of settlement.
- (2) If the final agency decision includes a settlement offer, the Director, Office of Civil Rights, will notify the complainant and agency of the specifics of the offer in writing.
- (3) The agency must comply with the corrective action requirements, including the implementation of any settlement offer identified by CR within the timeframes designated in the final agency decision.
- (4) The complainant must accept or reject the settlement offer, or make a counteroffer within 15 days of receipt of the offer of settlement from the CR Director.
- (5) If the complainant rejects the offer of settlement and declines negotiation, the CR Director may continue efforts to effect a settlement or direct that the case be closed and the complainant notified of his/her right to pursue other legal remedies.

h Monitoring and Oversight

- (1) Following the issuance of a finding of discrimination, CR will monitor and evaluate the agency’s corrective action activities to ensure an outcome that reflects compliance with the corrective action ordered in the final agency decision or agreed to in a settlement.
- (2) When the agency completes its program of corrective actions and compliance has been achieved, CR will notify the agency head, the agency civil rights director, OGC, the appropriate Under or Assistant

Secretary, the Assistant Secretary for Administration, and the Deputy Secretary, following which the case will be closed.

- (3) Where an agency disagrees with a CR finding that the agency is in violation of one or more civil rights requirements, the agency must provide CR with a written analysis in support of its position within 15 days after receiving the final agency decision. The agency rebuttal must include, and is to be limited to, the following:
  - (a) the specific issue for which the agency does not agree with CR's finding;
  - (b) a concise statement of the basis for the disagreement, limited to either or both (a) a procedural defect in CR's collection of facts and evidence or (b) a showing that CR's analysis of the facts and evidence was defective, including the application of the legal standards on which CR relied to reach its conclusion.
- (4) CR must respond to the agency rebuttal within 5 days after receipt. If CR agrees with and accepts the agency's position, CR will issue a revised final agency decision to the agency within 5 days after its notice of acceptance. If CR does not accept the agency's rebuttal, CR must notify the agency of the nonacceptance and the reasons, and re-advise the agency of the agency's obligation as set forth in the final agency decision as originally presented to the complainant.
- (5) Should the agency fail or refuse to correct any violation cited in the final agency decision following CR's rejection of a its rebuttal, CR will notify the Assistant Secretary for Administration (ASA), documenting the basis for its finding and requesting that the ASA issue a directive to comply.
- (6) The request for the directive to comply will be referenced in all subsequent agency Accountability reports to the ASA and the Secretary until agency compliance has been achieved.

## 11 INSTRUCTIONAL MANUALS AND DIRECTIVES

CR will prepare and disseminate within CR and to agency civil rights offices, official manuals on complaint processing and compliance reviews in conducted programs, as well as issuing bulletins and other instructional documents as necessary to implement the provisions of this Departmental Regulation.

**USDA**

United States  
Department of  
Agriculture



**Nondiscrimination in USDA Conducted Programs and  
Activities**

Office of Civil Rights

DR 4330-3

FINAL:CR:ODIR:ABOYDSTEWART:adc:720-1679:11/24/98

REVISED:adc:1/26/99

Doc:Final433.wpd

# **EXHIBIT 16**

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USDA TX ST PSA PROG

TEL:9796805236

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TX NOTICE AO-693  
Notice AO-1174

Civil Action No. 00-2445 (JR)

**2 Discrimination Complaint Process (Continued)**

**D  
Filing a  
Complaint**

A customer may file a program discrimination complaint with the Director, OCR at the following address.

Director, Office of Civil Rights  
1400 Independence Avenue, SW.  
Room 326-W, STOP 9878  
Washington, DC 20250

A program discrimination complaint may also be filed with the office having some connection with the program or matter that is the subject of the complaint.

The complaint shall include the following:

- description of the decision and action believed to be discriminatory
- date and location of the incident believed to constitute discrimination
- names of the people involved in the incident
- name of the agency and/or program involved in the incident.

Note: A complaint may be filed verbally or in writing.

A verbal complaint may be filed with any FSA employee. If a complainant makes an allegation in person, or through a telephone conversation, and is unable or unwilling to put the allegation in writing, the employee to whom the allegation is made must put the particulars of the complaint in writing.

A written complaint may be filed with the Director, OCR:

- in the form of a letter
- by completing AD-1126 (Exhibit 1)

Notes: Refer to the Program Discrimination Complaint Brochure (Exhibit 2) on how to file a complaint.

AD-1126 (AD1126.WPD or AD1126.PDF) and the Program Discrimination Complaint Brochure (DISBROCH.PDF) are available on the BBS in the Forms Library.

- by telephone at 202-720-5964 (voice and TDD) during normal business hours from 8 a.m. to 5 p.m. e.s.t.
- by e-mail. This is currently not available, and is under development by OCR.

Continued on the next page

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# EXHIBIT 17

Civil Action No. 00-2445 (JR)

# TRANSCRIPT OF PROCEEDINGS

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

GUADALUPE L. GARCIA,

Appellants,

v.

MICHAEL JOHANNNS,

Appellee.

No. 04-5448, et al.

Pages 1 through 31

Washington, D.C.

Date: February 6, 2006

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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GUADALUPE L. GARCIA,  
Appellants,

v.

MICHAEL JOHANNNS,  
Appellee.

No. 04-5448, et al.

Monday, February 6, 2006  
Washington, D.C.

The above-entitled matter came on for oral  
argument pursuant to notice.

BEFORE:

CIRCUIT JUDGES SENTELLE AND HENDERSON AND  
SENIOR CIRCUIT JUDGE EDWARDS

APPEARANCES:

ON BEHALF OF THE APPELLANTS:

STEPHEN S. HILL, ESQ.

ON BEHALF OF THE APPELLEE:

CHARLES W. SCARBOROUGH, ESQ.

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C O N T E N T S

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Stephen S. Hill, Esq. On Behalf of the Appellants	3
Charles W. Scarborough, Esq. On Behalf of the Appellee	15

REBUTTAL ARGUMENT OF:

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DLB

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1 MR. SCARBOROUGH: There are agency regulations that  
2 allow for people to make discrimination complaints.

3 THE COURT: And get investigation.

4 MR. SCARBOROUGH: Well, Your Honor, yes, at some  
5 point.

6 THE COURT: And those are enforceable.

7 MR. SCARBOROUGH: But there are agency rules, of  
8 course, that say a lot of things. I mean, there are agency  
9 rules that say --

10 THE COURT: That's not my point. I don't care what  
11 else the agency rules say, I'm just asking --

12 MR. SCARBOROUGH: I understand.

13 THE COURT: That's not an answer.

14 MR. SCARBOROUGH: Well, I'm --

15 THE COURT: I mean, there are plenty of APA cases.  
16 The District Court is wrong.

17 MR. SCARBOROUGH: I don't believe the District Court  
18 is wrong. The adequate remedy --

19 THE COURT: The case law on that is clear, the  
20 District Court is wrong, it's an enforceable claim. If the  
21 agency has prescriptions, you are supposed to follow them and  
22 a party who is the beneficiary of those prescriptions can seek  
23 them [INDISCERNIBLE].

24 MR. SCARBOROUGH: Well, then let me try to respond  
25 to that, because there are no prescriptions that they have

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1 identified that require the agency to do a particular thing by  
2 a particular time that are judicially enforceable. It's the  
3 same --

4 THE COURT: How about that they are required to do  
5 something?

6 MR. SCARBOROUGH: Again, there is nothing that says  
7 that they are required to do something, but there are lots and  
8 lots --

9 THE COURT: There is no requirement to investigate?

10 MR. SCARBOROUGH: There is a process that is set out  
11 to --

12 THE COURT: Yes, an investigation process.

13 MR. SCARBOROUGH: I understand, Your Honor.

14 THE COURT: [Voices overlap] claim they are not  
15 doing it.

16 MR. SCARBOROUGH: That's a separate question from  
17 whether there is a judicially enforceable obligation in Court.  
18 And the District Court -- and that's sort of a threshold  
19 point. The District Court's ruling is adequacy of a remedy at  
20 law under Section 704 of the APA. Congress looked at this  
21 very problem, the alleged failure to investigate, over a long  
22 period of time, sort of a systemic breakdown in the  
23 investigatory process, and said, "Your remedy here is not  
24 something, you know, an independent cause of action there,  
25 it's I'm going to extend the ECOA limitations."

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1 THE COURT: That doesn't mean that an agency can't  
2 create something else that becomes a remedy for parties.

3 MR. SCARBOROUGH: But, Your Honor, the agency has  
4 done no such thing. Congress looked at the problem in 1998  
5 and said, "What we are going to give you for this problem is  
6 an extension of limitations."

7 THE COURT: That isn't what [VOICES OVERLAP] Court  
8 couldn't fashion an equitable remedy, would it? Now I  
9 understand the difficulty of both sides you're having here. I  
10 think you're correct; there is no specific obligation that  
11 forces to regulate and investigate. But that doesn't mean an  
12 agency can get by with discriminatory basis [INDISCERNIBLE].  
13 I'm not asking you to concede there was that discrimination.  
14 If there was, that would be judicially, wouldn't it?

15 MR. SCARBOROUGH: Well, I'm not even sure that this  
16 is a discriminatory failure to investigate. I mean, what  
17 they're saying is the systemic failure to investigate these  
18 complaints sort of independent of the underlying ECOA  
19 violation. And congress looked at the problem. That's all  
20 I'm trying to suggest. They looked at the problem and said,  
21 "What you get is an extension of your limitations."

22 THE COURT: But if they didn't investigate anybody,  
23 there would be no cause -- no claim for relief.

24 MR. SCARBOROUGH: That's right.

25 One additional point, Counsel made a point about the