

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

Marilyn Keepseagle :
P.O. Box 509 :
Fort Yates, ND 58538-0509 :

and :

Luther Crasco :
HC 63 Box 5040 :
Dodson, MT 59524 :

and :

Gene Cadotte :
P.O. Box 200 :
McLaughlin, SD 57642 :

Case Number:1:99CV03119

Judge Emmet G. Sullivan

and :

**EIGHTH AMENDED COMPLAINT
(CLASS ACTION)**

Porter Holder :
HC 71 Box 186-1 :
Soper, OK 74759 :

and :

Keith and Claryca Mandan :
P.O. 70 :
New Town, ND 58763, :

ON BEHALF OF THEMSELVES AND :
ALL OTHERS SIMILARLY SITUATED :

vs. :

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

Defendant.

EIGHTH AMENDED CLASS ACTION COMPLAINT

The representative plaintiffs identified in the caption (“Plaintiffs”), on behalf of themselves and all others similarly situated, some 838 of whom are listed in Appendix A, attached hereto, complain as follows:

SUMMARY OF ALLEGATIONS

Since at least 1981 Defendant has engaged in a pattern of discriminating against Native American farmers and ranchers (hereinafter, “farmers”) in the provision of direct loans and loan servicing because of their race. The USDA has committed this discrimination at various stages of the loan and loan servicing process. Native Americans have been denied equal opportunity to obtain loan applications and assistance in completing them, and the often inaccessible locations of USDA’s offices have imposed obstacles to obtaining credit on Native Americans not typically encountered by other farmers and ranchers. Those Native Americans who nevertheless applied for loans received significantly fewer loans than were provided to white farmers. Further, when loans were provided, they often included onerous terms that were not imposed on white farmers. Defendant also discriminatorily denied Native Americans access to loan servicing options that were made available to non-Native American loan recipients.

The discrimination practiced by the USDA was exacerbated by the USDA’s wholesale failure to accept, process, and redress complaints, made both orally and in writing, whether individually or through a representative. At the same time, USDA advised aggrieved farmers that they could challenge decisions believed to be discriminatory by lodging complaints with the agency’s civil rights office.

Together, the USDA's pattern and practice of denying Native Americans equal access to opportunities to obtain credit, while simultaneously depriving them of a meaningful way to challenge the discrimination they faced, have deprived Native American farmers of privileges afforded to non Native-American farmers, in violation of the Equal Credit Opportunity Act ("ECOA"), and has caused them substantial damage, including in many cases the loss of land held by their families for generations.

JURISDICTION

1. Jurisdiction is founded upon 15 U.S.C. § 1691, § 1691e(a), 28 U.S.C. § 1331, 28 U.S.C. § 1343, 28 U.S.C. § 2201, 42 U.S.C. § 2000d, and 7 U.S.C. § 2279.

VENUE

2. Venue lies in this judicial district because the Plaintiffs' claims arose in this judicial district, and pursuant to 28 U.S.C. § 1391(e).

PARTIES

3. Plaintiff and Class Representative Marilyn Keepseagle is a Native American rancher and resident of Fort Yates, North Dakota, located on the Standing Rock Reservation. She is a member of the Sioux Tribe.

4. Plaintiff and Class Representative, Luther (Luke) Crasco ("Crasco") is a Native American rancher who resides in Dodson, Montana. Crasco is a member of the Assiniboine/Gros Ventre Indian Tribes on the Fort Belknap Indian Reservation in Eastern Montana.

5. Plaintiff and proposed Class Representative, Gene Cadotte (“Cadotte”), is a Native American rancher who resides in McLaughlin, South Dakota. Cadotte is a member of the Sioux Tribe located on the Standing Rock Indian Reservation.

6. Plaintiff and Class Representative Porter Holder is a Native American rancher and a resident of Soper, Oklahoma. He is a member of the Choctaw Nation of Oklahoma.

7. Plaintiffs and Class Representatives Keith and Claryca Mandan are Native American Ranchers and residents of Mandaree, North Dakota, located on the Fort Berthold Reservation. They are members of the Hidatsa Tribe.

8. Defendant Ed Schafer is Secretary of the United States Department of Agriculture (“USDA”), and is the federal official responsible for the administration of the statutes, regulations and loan programs which are the focus of this action.

CLASS ALLEGATIONS

9. Plaintiffs bring this class action on behalf of themselves and the following class, which already has been certified by this Court:

All Native American farmers and ranchers who (1) farmed or ranched between January 1, 1981 and November 24, 1999; (2) applied to the USDA for participation in a farm program during that time period; and (3) filed a discrimination complaint with the USDA individually or through a representative during the time period.

10. This action may properly be maintained as a Class action pursuant to the requirements of Fed. R. Civ. P. 23.

11. The Class is so numerous that joinder of all its members is impracticable.

12. The claims of the Class include common questions of law and fact, including but not limited to:

(a) Whether Defendant discriminated against Plaintiffs and Class members in failing to process discrimination complaints;

(b) Whether Defendant discriminated against Plaintiffs and class members in granting credit and providing other program benefits;

(c) Whether Defendant relied upon excessively subjective criteria in determining whether to grant direct loans or loan servicing;

(d) Whether Defendant failed to provide access to direct loans and loan servicing for Native Americans equal to that provided to white males;

(e) Whether Defendant failed adequately to monitor its local decision makers to ensure that direct loan and loan servicing decisions were not made on a discriminatory basis;

(f) Whether Defendant failed to provide plaintiffs and Class members equal opportunity for and access to credit or other program benefits;

(g) Whether Defendant's actions violated Plaintiffs' and class members' rights under the Equal Credit Opportunity Act, 15 U.S.C. § 1691(a); and

(h) Whether Plaintiffs and Class members are entitled to (1) a declaration of their eligibility to receive damages or other monetary relief; (2) monetary relief that is equitable in

nature; (3) costs; (4) attorneys' fees; and (5) interest from the date they should have been paid to the actual date of payment.

13. Plaintiffs' claims are typical of the claims of the members of the class. Plaintiffs and the members of the class all were subject to Defendant's failure to properly investigate civil rights complaints, and all were denied equal access to credit or other direct loan program benefits as a result of Defendant's discriminatory conduct described herein.

14. Plaintiffs are adequate representatives of the class because their interests do not conflict with the interests of the members of the class they seek to represent. Moreover, Plaintiffs have retained counsel experienced in the prosecution of complex agricultural disputes against the USDA on behalf of farmers and ranchers, experienced in civil rights litigation, and experienced in class action litigation.

15. The USDA has acted on grounds common to the class, thereby making injunctive relief with respect to the class as a whole appropriate.

16. The common questions of law and fact identified above predominate over any questions affecting only individual members of the Class.

17. A class action is superior to other available methods for the fair and efficient adjudication of this litigation.

USDA'S FARM LOAN OPERATIONS AND ITS GENERAL PRACTICE OF DISCRIMINATION

The Organization Of The USDA's Farm Service Agency

18. USDA's Farm Service Agency ("FSA") provides farm loans and other farm credit benefits to U.S. farmers.
19. The FSA was created in 1994 as a result of a reorganization of USDA, primarily by the merger of the Agricultural Stabilization and Conservation Service ("ASCS") with the Farmers' Home Administration ("FmHA"), which previously had provided farm loans and other farm credit benefits.
20. FmHA was created to provide loans, loan servicing, and technical assistance for farmers. FmHA accomplished this goal either by making loans directly to farmers or guaranteeing loans made to farmers by private, commercial lenders. These loans included, but were not limited to, "farm ownership," "operating," and "continuing assistance" loans, as well as loans that "restructure" existing loans and "emergency" loans.
21. FmHA's key responsibilities were to work with small, minority and disadvantaged farmers – farmers who could not get credit elsewhere – to assist these farmers in developing their financial plans and loan applications.
22. Defendant Schafer is responsible for the administration of the FSA and, through his predecessors, the FmHA & ASCS.
23. FSA, like FmHA and ASCS before it, operates through a three-tiered review system consisting of county-level offices and committees, which are reviewed and monitored by state-

level offices and committees, which are in turn subject to federal level review in Washington, D.C., by the national office and the National Appeals Division (“NAD”).

24. County offices work in conjunction with local county committees. The county committees consist of producers from a county who have been elected by other producers in that county. The state committees consist of producers from each state who oversee the state and county offices. At the federal level, the national office oversees the state and county level offices while NAD renders final determinations of administrative appeals. Prior to the 1994 consolidation, FmHA had its own administrative appeal process.

25. USDA has long suffered from a lack of diversity in the FSA program delivery structure, and a severe under-representation of minority employees in FSA county offices.

The USDA’s Study Of Its Farm Loan Programs

26. Responding to frequent complaints that its farm credit programs were operating in a discriminatory manner, the USDA conducted a comprehensive study of its farm loan programs, through a Civil Rights Action Team (“CRAT”) which it convened. After an exhaustive examination of the issue, the USDA issued a report, known as the “CRAT Report.” This report concluded that minorities, including Native Americans, have had disproportionately lower access to USDA farm loan programs than comparably situated white farmers and ranchers.

27. In addition, in 1997 and 2000, the USDA office of the Inspector General studied the operation and effectiveness of the USDA civil rights office and issued reports on the subject, known as “OIG Report” & “OIG Report II,” respectively. As set forth below, these reports

found that the Civil Rights offices of the USDA were wholly ineffective and failed to permit farmers and ranchers to redress discrimination to which they may have been exposed.

The Process Of Applying For Loans And Loan Servicing

28. Traditionally, farmers have been advised of the availability of USDA loans and loan servicing by the USDA.

29. After being so advised, farmers interested in obtaining credit assistance have been provided a loan application and Farm and Home Plan (“FHP”), essentially a financial plan for the farm, and completed those materials with assistance from USDA officials. USDA regulations require that the agency offer all farmers, but especially Native American farmers and others who qualify as socially disadvantaged, extra help in the completion of loan applications, known as “technical assistance.”

30. Once the USDA issues a loan, the vagaries of farming and ranching may require that loan terms be renegotiated, relaxed or the loan forgiven. This process of managing the loan to ensure the continued success of the farmer and the eventual repayment of the loan is known as “loan servicing.” Farmers applying for loan servicing also completed a FHP along with a loan application.

31. Completion of the FHP loan application and loan serving application typically require the assistance and guidance of USDA officials to complete.

32. The provision of assistance and guidance in obtaining and completing the appropriate materials to obtain loans or loan servicing is critical because of the complexity of the programs and forms that must be completed.

33. The loan application and servicing process is uniform across the United States, and is completed pursuant to regulations found at 7 C.F.R. § 1901, *et seq.*; 7 C.F.R. Part 1951-S, *et seq.*

Native Americans Have Received Far Less Than Their Proportionate Share Of USDA Loans And Loan Servicing Dollars

34. Native Americans have long received fewer loan dollars from USDA than is appropriate given their share of the rural population, their share of the farming population, and their share of the population eligible to receive USDA loans.

35. Indeed, the disparity between the amount of direct loan funds Native Americans have received and the amount they were expected to receive is so great that the likelihood the disparity is due to chance is less than 5%.

36. Native Americans also have long received far fewer loan servicing dollars from USDA than are proportionate to their share of the rural population, their share of the farming population, and their share of those eligible to receive USDA loans.

37. As with the disparity in loan dollars, the disparity between the amount of funds Native Americans have received and the amount of funds they were expected to receive is so great that the likelihood the disparity is due to chance is less than 5%.

38. The CRAT report reached similar conclusions. The CRAT report found lower participation rates and lower approval rates for minorities in FSA programs:

Recent studies requested by Congress and FSA have found lower participation and lower loan approval rates for minorities in most FSA programs. Participation rates in 1994 in programs of the former Agricultural Stabilization and Conservation Service (ASCS), particularly commodity programs and disaster programs, were disproportionately low for all minorities.

The GAO found that between October 1, 1994 and March 31, 1996, 33 percent of minority applications but only 27 percent of non-minority applications in the Agricultural Conservation Program (ACP) were disapproved. During the same period, 16 percent of minority but only 10 percent of non minority loans in the direct loan program were disapproved.

CRAT Report at 21 (emphasis added).

39. Moreover, even where loans eventually were approved, as the CRAT Report found, minorities endured longer loan processing times, including in FSA's Northwest region where Native American farmers and ranchers have been particularly active:

In the Southeast, for example, in several States it took three times as long on average to process African-American loan applications as it did non minority applications. Similar disparities between non minority loan processing and American Indian loan processing appeared in records for a number of States included in FSA's Northwest region.

CRAT Report at 21 (emphasis added).

40. The pattern of Native Americans receiving fewer direct loan and loan servicing dollars than the amounts proportionate to their representation in the rural population is consistent across the country and throughout the class period. Nor is the pattern of disparities between loans and loan servicing awarded to Native Americans and white farmers and ranchers likely due to chance. Instead, these disparities in loans and loan servicing likely have been due to USDA's use of and reliance on policies and practices that have operated, and may have been intended to operate, adversely on Native Americans. These practices are described below.

USDA Relied And Continues To Rely On Overly Subjective Criteria In Approving Farm Loans And Loan Servicing

41. After farmers completed the loan application with its supporting documents, the application was subject to a two-step approval process. First, the application was presented to the County Committee for a determination of eligibility. If the County Committee determined that the farmer

was eligible, then the application was considered by the County Supervisor. The County Supervisor then approved or rejected the loan application.

42. The criteria that County Committee members and the county office were instructed to rely upon to assess loan applications are, and at all relevant times have been uniform across the United States.

43. Prior to 1997, the regulations in existence instructed County Committees to make loan eligibility decisions based on criteria such as: (a) the character of the applicant; (b) the industry of the applicant; (c) the commitment and ability of the applicant with regard to farming; and (d) the applicant's education or experience in farming. *See, e.g.*, 7 C.F.R. §§1910.4; 1910.6; 1910.7; 1941.12; 1943.12 (1989).

44. These criteria were susceptible to multiple interpretations by County Committee members.

45. The minimal written guidelines provided to County Committee members on how to interpret these loan criteria also were susceptible to multiple interpretations.

46. In 1997 the USDA revised the criteria to be used by County Committee members in evaluating applications for loans and debt servicing.

47. These new criteria, as well as the written guidelines accompanying them, also are susceptible to multiple interpretations.

48. If the farmer or rancher were found eligible for a loan, then USDA rules provided that the County Supervisor evaluated the application. This process also was highly subjective. The

County Supervisor decided whether to approve or reject the loan application based upon whether the applicant had adequate security and whether the FHP was “feasible,” that is, it demonstrated a positive cash flow. The latter process – also required in the loan servicing application process – was rife with variables susceptible to multiple interpretations by the County Supervisor.

49. The use of these and other, similarly subjective criteria to determine eligibility for loans and loan servicing has allowed discrimination against Native American Farmers to flourish, and has led to and ratified a pattern and practice of discrimination against Native Americans in the provision of direct loans and loan servicing.

50. In addition, the use of subjective criteria to determine eligibility for loans and loan servicing has had an adverse impact on the ability of Native American farmers to obtain direct loans and loan servicing that cannot be reconciled with USDA’s legitimate operational needs.

The USDA Has Systematically Disadvantaged Native American Farmers In The Loan Application Process

51. The USDA also has engaged in a pattern and practice of denying Native Americans equal access to direct loan applications that it provided to farmers and ranchers, and therefore to loans, thereby systematically disadvantaging Native American Farmers in the loan application process.

52. Native American farmers routinely were not advised of the availability of USDA loans and loan servicing options; were not provided loan applications upon request; and were not provided adequate technical assistance to enable them to complete the loan and loan servicing application process, while other farmers and ranchers were routinely provided these benefits and opportunities.

53. In addition, USDA officials regularly erected a variety of barriers which prevented Native Americans from receiving loans and loan servicing and/or delayed or reduced the value of any loans or loan servicing received. These obstacles were not imposed upon white farmers.

54. As the CRAT Report found, one example of such barriers was:

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

CRAT Report at 15 (emphasis added).

55. As the CRAT Report further described:

If the farmer's promised FSA loan finally does arrive, it may have been arbitrarily reduced, leaving the farmer without enough money to repay suppliers and any mortgage or equipment debts. In some cases, the FSA loan never arrives, again leaving the farmer without means to repay debts. Further operating and disaster loans may be denied because of the farmer's debt load, making it impossible for the farmer to earn any money from the farm. The farmer then will have to sell the land or be foreclosed upon to settle debts. As an alternative, the local FSA official might offer the farmer an opportunity to lease back the land with an option to buy it back later. The appraised value of the land is set very high, presumably to support the needed operating loans, but also making repurchase of the land beyond the limited-resource farmer's means. The land is lost finally and sold at auction, where it is bought by someone else at half the price being asked of the minority farmer. Often it is alleged that the person was a friend or relative of one of the FSA county officials.

CRAT Report at 16 (emphasis added).

56. This cycle, which was well-documented by the CRAT report, has operated regularly to deny Native Americans equal access to credit opportunities.

The USDA's Failure To Supervise The Loan Servicing Process

57. Notwithstanding that the USDA has been on notice that its loan and loan servicing processing has consistently disadvantaged Native American farmers, it has failed to redress the inequities its policies have caused or to correct the flawed policies themselves.

58. The CRAT report reached a consistent conclusion:

Currently, the Farm and Foreign Agricultural Services (FFAS) Mission Area, which manages the FSA program delivery system, provides ineffective oversight of the local delivery of farm credit services.

CRAT Report at 16.

59. As the CRAT Report's findings indicate, USDA's failure to redress the inequities in the delivery of loans and loan servicing has been due, at least in part, to the low priority that the USDA has placed on compliance with the civil rights laws. CRAT Report at 55.

60. This conduct has systematically disadvantaged Native American farmers, and has ratified and exacerbated a pattern and practice of discrimination against them in the provision of direct loans and loan servicing.

61. The USDA's failure to address inequities in its loan and loan servicing program also has had an adverse impact on Native American Farmers that cannot be justified by any business necessity.

The USDA's Failure to Conduct Adequate Outreach Programs Targeted At Native American Farmers

62. The USDA has failed to conduct sufficient outreach aimed at Native American farmers, despite being on notice for years that its failure to conduct such outreach had an adverse impact on Native American farmers.

63. For example, as the CRAT Report found, a lack of outreach to small and limited-resource farmers directly impaired the participation of minorities, including Native Americans, in USDA programs:

Lack of diversity in the FSA county office delivery system directly affects participation of minority and female producers in USDA programs. Underrepresentation of minorities on county committees and on county staffs means minority and female producers hear less about programs and have a more difficult time participating in USDA programs because they lack specific information on available services.

However, outreach efforts have failed on a much broader front than just the county committee system in FSA. USDA does not place a priority on serving the needs of small and limited-resource farmers and has not supported any coordinated effort to address this problem. The many mission areas and agencies within the Department have developed their own separate programs that may or may not be successful in responding to the real differences in scale and culture presented by minority and limited-resource customers.

Minority and limited-resource farmers and ranchers reported they are not receiving the technical assistance they require. They said they are not receiving basic information about programs for which they might be eligible. They are not being helped to complete complicated application forms. They are not being helped to understand and meet eligibility requirements for programs. They are not receiving information about how their applications are handled and, if they are denied participation, why they were denied and how they might succeed in the future. When they do receive loans or other program benefits, they are not being helped to use those benefits most effectively to improve their operations.

Some outreach efforts, like the consolidated Service Center approach to providing comprehensive services to USDA customers, have created new barriers. Their locations have not considered the needs of minority and limited-resource customers who may have difficulty in reaching more distant centers than customers with

greater resources. Their services have not provided for cultural and language differences that make USDA programs inaccessible or less relevant to minority customer needs. And their services have failed to recognize the different needs of small-scale enterprises, be they farms, businesses, communities, or families.

CRAT Report at 26-27.

64. In particular, as the CRAT Report concluded, the USDA has systematically failed to address the special need for outreach to Native Americans on Tribal lands:

A special case exists among American Indians on Tribal lands. USDA programs have not addressed their special status as sovereign nations and have not accommodated the special needs of their ownership of land in trust. The county delivery system ignores the political boundaries of Tribal governments. Lack of cooperation between the Department of the Interior, with responsibility for Indian Affairs, and the USDA, with its responsibilities for agricultural, rural, and food and nutrition programs, interferes with delivery of needed services to American Indians. Program rules specifying particular forms of land ownership for eligibility prevent American Indians from access to assistance they need to develop their agriculture and conserve their land.

CRAT Report at 28.

65. For example, although the CRAT Report recommended that USDA “establish full-time USDA service centers on Indian tribal lands” and that USDA should “*immediately*” “work with Indian tribes to set guidelines and locations of the USDA service centers,” the USDA has failed to undertake either recommendation. CRAT Report at 76 (emphasis in original).

66. On the contrary USDA offices often are located far from Native American farms and ranches, making it very difficult for Native Americans to gain access to USDA credit programs. On some occasions, USDA even specifically has required Native Americans to obtain credit assistance from FSA county offices further from their home than the nearest office.

67. Indeed, as the CRAT Report found, despite the recognized need for increased outreach to minorities, including Native Americans, cultural insensitivity or even bigotry within USDA actually inhibited minority participation in USDA loan programs. CRAT Report at 27.

68. The USDA's systematic and long standing failure to offer anything other than meager outreach to Native American farmers, which has long been known to the agency, has adversely affected their ability to participate in USDA direct loan and loan servicing programs.

The USDA's Failure To Investigate Civil Rights Complaints

69. The USDA advised farmers who believed their denial of credit was due to discrimination to file a complaint with the Secretary of Agriculture through the FmHA - Equal Opportunity ("EO") office, or with the Office of Civil Rights Enforcement and Adjudication ("OCREA"), or both.

70. At the same time, USDA systematically failed to record, investigate and redress complaints of civil rights violations made by members of the certified class in this action.

71. Indeed, in 1983, the USDA effectively dismantled its EO and OCREA offices, leaving it with no ability to record, investigate or redress discrimination complaints.

72. The predictable result was that civil rights complaints made by Native American farmers to the USDA have been unanswered. As the CRAT Report found:

USDA doesn't respond even when they do file complaints. In Tulsa, OK. an advocate representing black and American Indian farmers said, "we have filed 72 civil rights complaints. Not one complaint has even been answered."

CRAT Report at 24.

73. Moreover, as the OIG report found, the EO office lacked a system for tracking civil rights complaints, failed to resolve discrimination complaints, and had a massive backlog:

The program discrimination complaint process at FSA lacks integrity, direction, and accountability. The staff responsible for processing discrimination complaints receives little guidance from management, functions in the absence of any current position descriptions or internal procedures, and is beset with its own personnel EEO problems. The staff also processes discrimination complaints without a reliable tracking system to determine the status of the complaints and, apparently, without deadlines to resolve the complaints. The resulting climate of disorder has brought the complaint system within FSA to a near standstill. Little gets accomplished to resolve discrimination complaints or to make program managers aware of alleged problems within their programs.

OIG Report at 6 (emphasis added).

74. Moreover, as the OIG found, there was no system within the EO office for reconciliation or tracking of civil rights complaints, no management oversight of the complaint process, and no method even for determining the status of many cases. *See* OIG Report at 8-9.

75. Defendant's OCREA office was similarly in a shambles throughout most of the class period, with the result that its complaint files are riddled with inaccuracies and cannot function as an accurate or reliable method for tracking civil rights complaints.

76. Indeed, as the CRAT Report found, record-keeping of discrimination complaints at USDA was "non-existent."

77. Similarly, as OIG found CREA "does not have controls in place to monitor and track discrimination complaints." OIG Report at 9.

78. Indeed, the magnitude of the problem is greater than reflected in the OIG and CRAT studies. The process of resolving claims under the settlement reached in *Pigford, et al. v.*

Veneman (D.D.C.) (Friedman, J.) has shown that literally thousands of discrimination complaints filed at the local level were never entered into the FSA/OCREA system.

79. Nor have these problems with the civil rights complaint system improved much in recent years. Although the OIG and CRAT studies reported on conditions at the USDA prior to 1997, later USDA reports reveal that the problems at USDA's civil rights department persist. See September 29, 1997, USDA's Office of Inspector General issued Phase II of the OIG Report on Civil Rights Issues, entitled "Minority Participation In Farm Service Agency's Farm Loan Programs - Phase II."

80. For example, in a report issued on September 30, 1998 by the USDA's Office of Inspector General entitled "Report to the Secretary on Civil Rights Issues – Phase V" [hereinafter "OIG Report V"], the OIG found that the USDA "has not made significant progress in reducing the complaint backlog" and found "continuing disorder" within the civil rights department.

81. Indeed, even as recently as March 10, 2000, USDA's Office of the Inspector General released an audit report entitled "Office of Civil Rights Status of the Implementation of Recommendations Made in Prior Evaluations of Program Complaints - Phase VII" ("OIG Report VII"), which found that, as of that time, "no significant changes in how complaints are processed have been made" and that it could not "conclude that all complaints are processed with due care." OIG Report VII at i.

82. Even where civil rights complaints were received, investigated, and found meritorious, the USDA declined to provide the relief warranted, further undermining public confidence in the integrity of the civil rights complaint system.

83. As the CRAT report found:

Farmers who told the CRAT stories of discrimination and abuse by USDA agencies also described a complaints processing system which, if anything, often makes matters worse. They described a bureaucratic nightmare where, even after they receive a finding of discrimination, USDA refuses to pay damages. They charged USDA with forcing them into court to seek justice, rather than working with them to redress acknowledged grievances. They painfully described the toll these ongoing battles with USDA has taken on their families, and on their health.

CRAT Report at 22-23.

84. In effect, the USDA's complaint apparatus has failed to support or enforce the civil rights laws. As the CRAT report concluded: "the USDA does not have the structure in place to support an effective civil rights program." CRAT Report at 56.

85. Having failed to operate a civil rights complaint system that is responsive to evidence of discrimination, the USDA has exacerbated the discrimination practiced in its loan and loan servicing programs.

Waiver Of Statute Of Limitations

86. The Omnibus Consolidated Appropriations Act for Fiscal Year 1999, P.L. 105-277, Div. A, § 101(a) [§ 741], 112 Stat. 2681 (Codified at 7 U.S.C. § 2279), waives ECOA's two year statute of limitations for farmers who filed complaints of discrimination with the USDA before July 1, 1997 that allege discrimination at any time between January 1, 1981 and December 31, 1996.

Individual Allegations Of Representative Plaintiffs

Marilyn Keepseagle

87. Plaintiff and Class Representative, Marilyn Keepseagle (“Keepseagle”) lives and ranches with her husband, George, on the land on which George was born on the Standing Rock Sioux Reservation in Fort Yates, North Dakota. The land that the Keepseagles still own today (after the forced sale of the 380 acres) includes 160 acres originally owned by George’s father and two 160-acres parcels originally owned by George’s aunt.

88. The difficult economic circumstances that the Keepseagles faced throughout the 1980s and 1990s required them to seek loans and debt servicing assistance from FmHA. As a co-applicant with George on all of their loan applications, Marilyn Keepseagle’s dealings with USDA began in the early 1980s when she applied to borrow funds to purchase land. This is a relationship that, over the years, has caused the Keepseagles great stress, worry and financial harm.

89. Between 1981 and 1999, Keepseagle was the subject of willful and continuing discrimination by USDA, including: (1) the discriminatory denial of loans and loan servicing routinely provided to non-Native Americans; (2) the placement of restrictive conditions on loan proceeds that, upon information and belief, were not placed on loans to non-Native American farmers; and (3) the failure to provide adequate technical assistance throughout the loan process.

90. Keepseagle’s efforts to receive technical assistance in completing the loan materials were often futile. On most occasions nobody at the USDA would assist Marilyn in completing the

lengthy series of complicated forms. Instead, the FmHA County officials would simply give her and George the forms and tell them to bring them back when they had completed them.

91. In addition, Keepseagle was not provided information about various USDA credit programs available to her and George, such as the Socially Disadvantaged farmer (SDA) program, the guaranteed loan program, or the limited resource loan program. Upon information and belief, this information was provided to white farmers.

92. USDA also often manipulated the loan process to disadvantage Keepseagle. For example, even though the local FmHA officials were aware of the annual deadlines for grazing leases to be paid in Keepseagle's county, they often held her loan funds until after this deadline, so that the Keepseagles' leases could not be paid on time. This often led to the loss of grazing permits. Also, FmHA officials often returned her loan applications without explanation, or set the applications aside until she inquired, on many occasions, about the status of her loan processing.

93. Even more devastating to Keepseagle's farm operation, however, was FmHA's refusal to assist her in determining which loan servicing options would be best for the ranch. When Keepseagle applied for debt servicing programs, the FmHA officials generally did not take the time to fully discuss with her or her husband the various loan servicing options available, or which options would be preferable given the nature of the Keepseagles' ranching operation and long-term goals. On one occasion, Keepseagle's request for loan servicing was delayed over an extended period of time, thus exacerbating her already-critical financial condition. This neglect had the predictable result that Keepseagle was not even aware of loan servicing options routinely made available to white farmers.

94. Moreover, Keepseagle's inquiries regarding loans necessary to permit the effective management of the family ranch, such as loans for the purchase of new equipment in crop years where such an expenditure would be critical to success, were ignored. Instead, USDA officials set forth conditions which she needed to satisfy in order to receive a restructure or deferral of her outstanding debt. By refusing even to discuss loans that would permit necessary capital expenditures and improvements, USDA effectively prevented the Keepseagles from growing or even maintaining their ranching operation. White farmers, on the other hand, routinely received loans to finance capital expenditures necessary to grow their farming operations.

95. Similarly, the loans that Keepseagle did receive often were subject to restrictive conditions which severely hampered her and her husband's ability to manage the ranching operation. Throughout much of the 1980s and 1990s, any loans received by Keepseagle were placed in a supervised bank account, an account which required every check written to be countersigned by officials of the FmHA. The effect of this requirement was that Keepseagle and her husband were required to travel 18 miles back-and-forth between his ranch and the FmHA office every time he had to pay any operating expense. While Native American borrowers such as Keepseagle were subject to this condition for extended periods of time, white borrowers did not face such restrictions.

96. Since 1981, Keepseagle and her husband have complained orally to the USDA regarding the agency's discriminatory treatment against and other Native Americans on several occasions. Keepseagle and her husband made similar complaints to their Tribal government which were passed on to the USDA by members of the Tribal government.

Luke Crasco

97. Plaintiff and Class Representative, Luther (Luke) Crasco was born and raised on a ranch, where he honed his skills as a rancher under the tutelage of his father. Crasco entered the ranching business in 1974. At that time he owned 685 acres and leased 2,500 acres.

98. Between 1981 and 1990, Crasco applied to the USDA for loans. During that time he was the victim of willful and continuous discrimination by USDA because he was a Native American. In particular, USDA discriminated against him by: (1) unnecessarily delaying his loans; (2) refusing to provide him loans at limited resource loan rates; (3) providing loans in amounts insufficient to meet his ranching needs, (4) requiring the loan proceeds to be placed in a supervised bank account even though Crasco was an experienced rancher with a lending history with FmHA, and (5) failing to provide him with technical assistance throughout the loan process. None of these constraints and restrictions were placed on white farmers.

99. On some occasions, Crasco's loans were discriminatorily denied. For example, in November 1985, Crasco filed an application for an emergency loan and an operating loan. Crasco was eligible for these loans, but was wrongly denied by the FmHA County Supervisor. FmHA then reversed its position and approved the loan, but falsely told Crasco that they were out of money. Eventually, in May 1986, the loan was closed after Crasco got help from his Congressman. As with the other operating loans, this loan was inadequate because it did not provide for living expenses. USDA discriminated against Crasco by delaying the loan and providing an inadequate amount, and FmHA required a supervised bank account even though Crasco was an experienced rancher with a lending history with FmHA.

100. In 1989 and early 1990, Crasco complained to the FmHA county supervisor in the Malta Office about ongoing discrimination by FmHA. There was a meeting with FmHA officials and the Tribal Council about discrimination. FmHA then transferred the accounts of Native American ranchers on the Fort Belknap Reservation from Malta to Havre. The Malta Office is 39 miles from Crasco's home while the Havre office is 110 miles away. The service was no better in Havre than it had been in Malta. USDA discriminated against Crasco and other Native American ranchers by refusing to place an office in a location convenient to them. As a result, Native American farmers and ranchers, such as Crasco, have to take time away from their farms and ranches and drive long distances to simply have a check approved, deliver papers, or meet with the USDA staff.

101. Between 1990 and 1994, Crasco's attempts to receive loan servicing through FmHA were repeatedly delayed and denied. The FmHA officials dealing with Crasco's application, Daryl Munson and J.T. Karkow, discriminated against Crasco by (1) refusing to assist him in receiving and completing his loan servicing application, (2) wrongfully denying Crasco's requests for loan servicing, thus forcing Crasco to engage in repeated administrative appeals, (3) delaying the eventual receipt of these funds by refusing proper loan servicing procedures, and (4) failing to provide him with technical assistance throughout the loan servicing process.

102. Crasco was also subject to racially derogatory statements:

- FmHA County Supervisor, Melvin Nielson, would try to humiliate Crasco. In discussing the fact that Crasco was able to get glasses at a low cost through Indian Health Services, Nielson said to Crasco, "You Indians are always getting things for free."

- When Crasco informed Nielson of his need for a loan, Nielson said, “Why don’t you Indians just go back to Ft. Belknap and borrow money there. That’s where you belong.”
- In 1989 or 1990, while Crasco was working on a farm and home plan with FmHA, County Supervisor, Ernie Becker, stated, “You Indians are always getting free money and you don’t pay taxes.” When informed by Crasco that he did, in fact, pay taxes, Becker responded, “You Indians don’t pay enough taxes. That’s why I’ve only got a little office.”
- FmHA County Supervisor Vern Hellyer once told Crasco, “I have only been sent here for two reasons – to protect the government’s money and to sell you people out.”

103. Hellyer and Becker would also try to humiliate Crasco. They asked him to obtain estimates for the irrigation system. Once Crasco would do so, however, at the last minute they would present reasons for denying loan funds for this purpose. For example, they informed Crasco that there were no funds available, or that there was not enough water in the creek (which was not true). On one occasion, Becker stated, “I can’t loan you the funds for the sprinkler system because it’s too movable. It’s got to be a piece of real estate. You’ll just pick it up and go sell it.” Crasco told Becker that it was discriminatory to state that he did not trust Indians. Crasco asked FmHA to come out and see his place to see the need for the sprinkler, but they never came.

104. The treatment that Crasco, and other Native American operators, received from FmHA, was completely different from the assistance, loans and loan servicing that FmHA provided to non-Native American farmers and ranchers.

105. In addition to the complaint of discrimination which resulted in the transfer of Native American borrower files to the Havre (Montana) FmHA office, Crasco made oral complaints of discrimination to FmHA officials Becker and Munson. The Fort Belknap Tribal Council also filed written complaints of discrimination with USDA several times. Chairman William Main sent the complaints, one of which (dated July 12, 1993) specifically referenced discriminatory treatment faced by Crasco. This probably happened in 1992 or 1993. In addition, in the 1980s, Tribal Chairman Donovan Archambault filed discrimination complaints for the tribe with USDA.

Gene Cadotte

106. Plaintiff and Class Representative, Gene Cadotte (“Cadotte”), is a Native American rancher who resides in McLaughlin, South Dakota. Cadotte is a member of the Sioux Tribe located on the Standing Rock Indian Reservation. Cadotte was born into a ranching family and has continued a ranching operation throughout his adult life. Cadotte leased 6,000 acres of ranch land and, at the height of his operation (1996), acquired and maintained a herd of 300 cattle.

107. Between 1981 and 1994, Cadotte was the subject of willful and continuing discrimination by USDA including the agency’s (1) discriminatory denial of loans and loan servicing, (2) discriminatory delays in providing loan proceeds, and (3) failure to provide adequate technical assistance throughout the loan process.

108. Cadotte first started applying for FmHA loans in 1989. The FSA did not provide the same level of services and technical assistance to Cadotte as it did white farmers and ranchers between 1989 and 1999. Throughout the course of the 1990s, Cadotte did not receive the same competent and timely service received by white farmers and ranchers. Unlike their treatment of Native Americans, the county office staff were friendly and courteous to white farmers and ranchers.

These farmers did not have to wait very long to get their business taken care of. For Native Americans, however, it was even difficult to get timely appointments with FSA personnel. At times when Cadotte went to the county office, it appeared that the supervisors had forgotten Cadotte's appointment and would simply rush Cadotte through their meetings with him.

109. Of special concern was the fact that USDA left Cadotte and other Native American ranchers on their own to learn about the scope of the agency's federal farm programs (including socially disadvantaged, limited resource and guaranteed loans), program benefits, program rules, and how best to benefit from FmHA services. Like other Native Americans, Cadotte simply was not given any technical assistance.

110. In addition, between 1989 and 1999, Cadotte was also discriminatorily denied access to USDA farm operating and ownership loans and, when he did receive USDA loan funding, it was unnecessarily delayed and in amounts insufficient to satisfy his ranching needs. For example, in February 1989, Cadotte applied to the USDA office in Ft. Yates, North Dakota for a \$180,000 loan package to buy additional cows and refinance a \$32,000 debt Cadotte owed to USDA and an \$82,000 debt owed to the Indian Credit Corporation (ICC). The ICC, which had financed Cadotte's ranching operations throughout most of the 1980s, was going out of business and calling in its outstanding loans. In conjunction with the FSA loan financing, Cadotte applied to the BIA for a \$60,000 grant. Cadotte had prepared a detailed business plan, which demonstrated that Cadotte's operation, with the refinancing and additional cows, would cash flow. Also, Cadotte thought he had a good lending relationship with USDA with whom he began dealing in 1975. In fact, in 1987, USDA informed Cadotte that his ranch management had been excellent; and earlier, in 1974, the agency described him as a good, above average ranch operator.

111. Nonetheless, FmHA's Acting Reservation Office Director, William Hendricks, Jr., denied Cadotte's loan request claiming it would not cash flow. Cadotte believed that his farm and home plan could have been made to cash flow if the FmHA staff provided proper assistance in completing Cadotte's farm and home plan. Cadotte appealed the FmHA loan denial to National Appeals Staff in February 1989. On April 27, 1989, Cadotte received a letter from the National Appeals staff rejecting the appeal. As a result of not getting the loan, the ICC foreclosed on Cadotte and he lost all his cattle (about 170 head) and equipment.

112. Several times in the late 1990s Cadotte complained orally Ervin Knuth, the county supervisor of the FSA office in Ft. Yates, North Dakota, about the unfair and unequal treatment Cadotte was getting as a result of being Native American. During the same time period, Cadotte also wrote a letter to the Superintendent of the Standing Rock reservation, complaining that Native American ranchers do not seem to have the clout with FSA that white farmers and ranchers do and conveyed similar concerns to Standing Rock Sioux Tribal Chairman, Charles Murphy and the office of Senator Tom Daschle.

Porter Holder

113. Plaintiff and Class Representative Porter Holder was raised helping to run the family ranch operation with his father and brothers. He runs his own ranch today with over 100 head of livestock, including 65 mother cows.

114. By 1998, Holder had the know-how to develop a successful ranching operation and was ready to begin on his own.

115. In December of 1998, Holder went to the USDA's Farm Service Agency office in Hugo, Oklahoma, to apply for a loan to purchase 395 acres of property formerly owned by his father. USDA had foreclosed on this land and held it in inventory. Though Holder was on solid footing financially, he decided to approach the USDA for a loan because the relatively small size of his planned operation led commercial lenders to decline loan requests at reasonable rates and terms. Holder's goal was only to rely on USDA financing temporarily – Holder was looking for “a hand up, not a hand out.”

116. The USDA official in the Hugo office who gave Holder a loan application neither provided him with assistance in completing the forms, despite Holder's request, nor informed him about the various USDA farm loan programs which may have been available to him such as guaranteed loans and loans to socially disadvantaged, limited resource, and beginning farmers and ranchers.

117. On December 21, 1998, Holder completed the application for a \$135,000 loan, primarily for the purpose of purchasing the 395 acres of property, and submitted it to the USDA office in Hugo.

118. No action was taken on his loan application until July, 1999. Despite Holder's numerous inquiries during this time period, he was never given an explanation for this inaction.

119. Holder finally obtained an appointment with the USDA office in Hugo on July 30, 1999, with USDA farm loan official, Zach Williams, to discuss his farm loan application. At this meeting, Williams reviewed Holder's four-page application and stated, “Huh! You might as well withdraw this [application] because you ain't got nothing.” Holder responded that he had

approached USDA because he knew his resources were limited and the USDA was the place from which to obtain such loans.

120. Nonetheless, without asking to look at Holder's tax returns or review additional financial information, Williams drew a line across the front page of the application and told Holder to initial the line and he did so. By doing so, Williams could categorize the application as "withdrawn" application rather than "denied."

121. Holder immediately complained to Williams that the denial was based on Holder's race. Williams did not deny the allegation of discrimination and instead responded by inquiring whether Holder had sought a loan from his tribe.

122. Based on conversations Holder had with farmers and ranchers in his area, he was informed that many non-Native American farmers and ranchers in his area were able to participate in USDA's farm loan programs, including individuals with limited assets.

123. Though Holder has finally been able to establish his own farm and ranch operation through private financing at rates higher than would have been offered by USDA's limited resource and socially disadvantaged programs, he believes that USDA's discriminatory conduct prevented him from becoming an established rancher earlier.

Keith and Claryca Mandan

124. Plaintiffs and Class Representatives, Keith and Claryca Mandan, are Native American Ranchers and residents of Mandaree, North Dakota, located on the Fort Berthold Reservation. They are members of the Hidatsa Tribe. The Mandans own 388 acres of reservation lands on the Fort Berthold Indian reservation in west central North Dakota.

125. Between 1981 and 1999, the Mandans were the subject of willful and continuing discrimination by USDA including the agency's (1) discriminatory denial of loans and loan servicing, (2) placement of restrictive conditions on loan proceeds, and (3) failure to provide adequate technical assistance throughout the loan process.

126. The Mandans were subject to onerous loan restrictions to which white farmers were not subject. For example, in 1981, the Mandans received loans totaling \$212,980. Even though a significant portion of this amount was secured with real estate, all of the funds were placed in a supervised account, thus requiring a FmHA official to approve every expense. This condition on the loan was excessively restrictive as it required the Mandans to go 50 miles back-and-forth between their ranch and the FmHA office every time they needed to pay any operating expenses. In addition, because the FmHA reviewed every expense, they effectively controlled the management of Mandans ranching operation even though agency officials were never actually on-site to see what the operation needed nor knew the family's long-term business and personal goals. The Mandans believe that white farmers and ranchers in their community were not required to have their FmHA loan funds placed in supervised bank accounts for any extended period of time, if at all.

127. Between 1982 and 1992 the Mandans' repeated attempts to receive USDA loans and loan servicing were denied by USDA. For instance, in February of 1983, Claryca wrote to Senator Byron Dorgan's office describing USDA's discriminatory conduct vis-à-vis Native Americans. Immediately thereafter (within two days), FmHA officials accused the Mandans of an unauthorized disposition of proceeds from a cattle sale dating back to December of the previous year. Although this accusation was meritless – at no time did the agency press charges for

“conversion” – the FmHA County Supervisor used it as an excuse to deny the Mandans any additional loan funds for operating or living expenses as well as any servicing of their existing debt.

128. In response to this refusal by FmHA to assist the Mandans with their request for loans and loan servicing, Keith Mandan contacted USDA’s Chief of Reservation Programs for North Dakota Odell Ottmar, to complain of discrimination and to ask for statistics regarding delinquency rates of Native American borrowers on the Fort Berthold and Standing Rock reservations. On September 9, 1983, Mr. Ottmar responded with a letter showing the delinquency rate among Indian operators to be 64% in the Fort Berthold Office and 40% in the Fort Yates office. In this letter, Mr. Ottmar stated his belief that “the majority lack good management knowledge and skills which are essential to farming and ranching success.” This overtly discriminatory statement is an example of the prejudicial attitudes that FmHA officials administering loan and loan servicing programs held towards Indian operators.

129. Between 1981 and 1999, the Mandans have complained of USDA discrimination, both in writing and orally, and to, or before, a combination of officials from USDA, other U.S. government agencies, and their Tribal government. These complaints include:

- In 1983, Keith Mandan complained verbally and in writing to Odell Ottmar, FmHA’s Chief of Reservation Programs in North Dakota.
- The Mandans complained verbally to FmHA State Director, Ralph Leet, Odell Ottmar, and County Supervisor, Lorace Hakason, at a January 31, 1983 meeting.
- Claryca Mandan wrote a complaint and filed it with Congressman Byron Dorgan’s office on February 9, 1983.

- In 1983 or 1984, Claryca Mandan testified at a Fact Finding congressional hearing on the FmHA's failure to offer low-interest limited resource loans to Native Americans, conducted by Congressmen Byron Dorgan and Glenn English at Minot.
- Both Keith and Claryca Mandan filed written discrimination complaints against USDA on or about 1989-90 with the Federal Trade Commission through a personal representative.
- Claryca complained to the USDA's National Small Farm Commission on behalf of Native American farmers and ranchers, through written and oral testimony at a hearing in Washington, DC in 1997.
- Both Keith and Claryca Mandan lodged written complaints along with many Native American members of the Fort Berthold Land and Livestock Association in a written Position Paper against FmHA discrimination; this paper was circulated to FmHA, the Tribal Council, Congressional Office, and BIA.
- Claryca Mandan made an oral complaint of discrimination about FmHA officials Ottmar and Hakanson to Tribal Chairman, Edward Lone Fight, and FmHA State Director, Marshall Moore, in 1990. The Tribal Council of the Three Affiliated Tribes passed resolutions calling for the removal of these individuals as a result of these complaints (and similar oral and written complaints made by other Native American farmers and ranchers).
- The Mandans were part of an administrative class complaint of discrimination filed with the USDA's Office of Civil Rights by Three Affiliated Tribes Chairman, Tex Hall, on February 1, 1999 (See Three Affiliated Tribes Class Complaint Number 020199-3216).

130. The Mandans also lodged oral complaints (which were reduced to writing) to a USDA “fact-finding team” assembled September 6-11, 1995 under the direction of Mr. Montoya. The creation of this “fact-finding team” was a result of a class complaint of discrimination made to Francis Harjo, Director of USDA Native American Programs, by several Native American farmers and ranchers, in a phone call from officials in the Three Affiliated Tribes. Mr. Harjo referred the complaint to the USDA’s civil rights office. The “fact-finding team” interviewed many Native American farmers and ranchers and made numerous recommendations as a result of its civil rights investigation, which were never acted upon by the Agency.

COUNT I

(Declaratory Judgment)

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

132. An actual controversy exists between plaintiffs and Class members and defendant as to their rights with respect to defendant’s direct loan programs.

133. Plaintiffs and the Class pray that this Court declare and determine, pursuant to 28 U.S.C. § 2201 that the USDA has violated the rights of plaintiffs and Class members to equal credit, to equal participation in direct loan programs, and to full and timely enforcement of racial discrimination complaints.

COUNT II

(Violation of Equal Credit Opportunity Act)

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

135. Defendant's acts of denying plaintiffs and Class members equal access to direct loan and loan servicing programs were the result of racial discrimination in violation of the Equal Credit Opportunity Act, 15 U.S.C. § 1691(a) ("ECOA").

136. Plaintiffs and the Class seek monetary and equitable relief available under ECOA, including revenues and other economic and non-economic damages and equitable relief sufficient to redress and correct the flaws in the direct loan program alleged herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, request that this Court enter judgment against defendant as follows:

(a) An Order declaring, pursuant to 28 U.S.C. § 2201, that plaintiffs and the Class members were denied equal credit opportunities and other direct loan program benefits and the full and timely enforcement of their discrimination complaints.

(b) An Order declaring Defendant's actions to be a breach of plaintiffs' rights under the Equal Credit Opportunity Act and awarding eligible plaintiffs and Class members monetary and injunctive relief appropriate to the proof at trial;

(c) An Order granting plaintiffs and the Class members an award of attorneys' fees and costs pursuant to the Equal Credit Opportunity Act;

(d) An Order granting any and all other relief that the Court determines proper and fair.

Dated: February 8, 2008

Respectfully submitted,

By: /s/ Joseph M. Sellers

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