



U.S. OFFICE OF SPECIAL COUNSEL

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The Special Counsel

November 24, 1999

The President  
The White House  
Washington, D.C. 20500

Re: OSC File No. 97-1166

Dear Mr. President:

In accordance with 5 U.S.C. § 1213(e)(3), I am transmitting a report from the Honorable Jill Long Thompson, Under Secretary, Rural Development, U.S. Department of Agriculture, sent to me pursuant to 5 U.S.C. § 1213(c) and (d). The Honorable Daniel R. Glickman, Secretary of Agriculture, delegated authority to Ms. Thompson to respond pursuant to 5 U.S.C. § 1213(c). I am also transmitting a supplemental report from Secretary Glickman. The reports set forth the findings and conclusions of the Secretary's review of disclosures of information allegedly evidencing a violation of law, rule, or regulation and an abuse of authority by officials of the Department of Agriculture (Department), Farmers Home Administration (FmHA), now Rural and Economic Community Development, Albuquerque, New Mexico.

Pursuant to 5 U.S.C. § 1213(e)(1), this office provided copies of the reports to the whistleblower, who remains anonymous. The whistleblower declined to comment on the reports.

We have carefully examined the original disclosures and reviewed the agency's reports. Pursuant to 5 U.S.C. § 1213(e)(2), I have determined that the findings in the agency's reports contain all of the information required by statute. Notwithstanding this determination, I have provided comments in this correspondence regarding the deficiencies in the agency's investigation and conclusions.

The whistleblower alleged that between 1988 and 1992, Vivian Cordova, in his capacity as State Director, FmHA, improperly solicited sexual encounters from female borrowers whose FmHA loans came under his jurisdiction, in exchange for Mr. Cordova's agreement not to collect their delinquent accounts. The whistleblower also alleged that officials at FmHA failed to take appropriate action on his and other employees' complaints of misconduct.

Summary of Under Secretary's Report and Secretary's Supplemental Report

According to the report, there was no credible evidence that Mr. Cordova improperly solicited sexual encounters from female borrowers whose loans came under his jurisdiction. It should be noted that Mr. Cordova was not contacted concerning the allegations. The report stated that, with the exception of one retired individual, all officials named in OSC's transmittal were contacted.<sup>1</sup> Of those interviewed, only two responded that they were aware of Mr. Cordova's allegedly improper conduct with female borrowers. The report noted that "nearly all employees said they had heard rumors about improper behavior but had no facts or evidence to show the allegations were true." Of the two officials answering in the affirmative, one interpreted the report as hearsay and the other as fact.

With respect to the two borrowers named in the Whistleblower's complaint who allegedly received special treatment in exchange for sexual favors, the report identified no irregularities in the files or other evidence that either borrower received special arrangements or accommodations. In addition, the report noted that both employees who claimed to be aware of the possibility of improper conduct took appropriate action on the delinquencies, and reported the incidents to the Civil Rights Coordinator. Finally, the report stated that unnamed "employees with loan servicing responsibilities" asserted that they were not asked to do anything unusual or illegal for any borrower.

The investigation did not substantiate the Whistleblower's allegations that FmHA officials failed to take appropriate action on employee complaints of misconduct. According to the report, there was evidence that Mr. Cordova "ran his office through fear and intimidation." In such a climate, the report reasoned, employees could not openly discuss "rumors" and whether they could prove them. This apparently supports the report's conclusion that although most employees reported hearing about Mr. Cordova's allegedly improper conduct, none had enough evidence to warrant reporting the matter to higher officials. In the two cases where employees had received statements from borrowers alleging misconduct, the employees reported the matter to the Civil Rights Coordinator. According to the supplemental report, the Civil Rights Coordinator's statements that he reported the information to Mr. Anaya and another individual, Ms. Rita Navarette, were not corroborated and could not, therefore, be proved.

The report proposes that the State Director issue a policy letter to all state employees regarding Civil Rights policy on both Equal Employment Opportunity and Compliance, including how to report improper activity and assurance that there will be no retaliation for any reports made. According to the report, because "little evidence was found to support the allegations and Mr. Cordova is no longer an employee of the agency, no further corrective action is necessary."

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<sup>1</sup> The report also stated that Mr. Steven Anaya, former State Director, was not contacted, as he is no longer employed by the agency.

### Special Counsel's Comments on Report

The report is limited in its scope. The Office of Inspector General (OIG), to whom the case was referred by the Secretary, declined to conduct a criminal investigation and referred the matter to Jill Long Thompson, Under Secretary for Rural Development.<sup>2</sup> The office of the Under Secretary is authorized to conduct administrative investigations only.

The report addressed the allegations of violations of law, rule, or regulation, generally, and not specifically. Because of its limited investigative authority, the report did not address any allegations of criminal violations.

The report concluded, based on the limited evidence available, that there was "circumstantial" evidence that Mr. Cordova did improperly solicit sexual encounters from female borrowers whose FmHA loans came under his jurisdiction. Because of the limitations in investigating the matter, and the fact that the evidence is "circumstantial," the agency appears to consider itself unable to take any action other than continuing to issue its annual policy memoranda on appropriate behavior and reporting misconduct.

According to the supplemental report, none of the loan files reviewed, either in a state internal audit in FY99 or in connection with this investigation, showed any irregularities. The supplemental report did acknowledge that there were some lengthy delays as alleged by the whistleblower; there was no evidence, however, that the delays were attributable to preferential treatment. Neither the report nor the supplemental report states whether or not any of the files active during the time period of the alleged wrongdoings were included in the audits. The supplemental report does state that one of the files identified by the whistleblower was destroyed because the property was foreclosed, and FmHA destroys all loan files after foreclosure.

Notwithstanding the above, the reports indicate that the lengthy delays in payment, and forbearances to borrowers, were not unusual for the New Mexico program. The supplemental report states that this may indicate that the borrowers were lying, or that Mr. Cordova convinced the unsuspecting borrowers that he could influence the process, when, in reality, they could have obtained forbearances simply by asking for them.

The reports explain why certain individuals were not contacted. Many of the individuals named by the whistleblower, including subject officials, have retired or are otherwise no longer employed by the agency. The supplemental report also confirmed that the

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<sup>2</sup> The federal statute of limitations on non-capital offenses is five years from the date of occurrence. This may be why the OIG declined to investigate. Had agency officials, particularly Steven Anaya, then State Director, acted on the allegations when first raised by the WB, a more complete investigation may have resulted in criminal charges.

agency did interview the whistleblower. Of the two individuals to whom the whistleblower reported the allegations, one is no longer with the agency and one denied that the whistleblower had ever reported the allegations to her. The supplemental report acknowledges that there is no explanation for Mr. Anaya's failure to report the allegations brought to his attention.

It appears that there is some evidence that a federal official, acting in his official capacity, may have intimidated certain borrowers into engaging in sexual relations with him. In addition, there is evidence that another official failed to act on the allegations by reporting the matter to the Office of Inspector General at a time when the agency could have timely investigated and taken appropriate action. The agency has concluded that not only is the case "circumstantial," but that even if the allegations were proven, there is no one left to discipline. Because the statute of limitations has run, the official alleged to have committed the offenses is not criminally liable. Further, the official alleged to have failed to act on the allegations is no longer with the agency. It is the agency's position that, beyond continuing to issue information annually to employees regarding their duties and responsibilities in these situations, it can do nothing in this matter.

I have determined, pursuant to section 1213(e)(2), that the agency's reports contain the information required under section 1213(d).

As required by section 1213(e)(3), I have sent copies of the reports, together with my comments, to the Chairman of the Senate Committee on Agriculture, Nutrition, and Forestry, and the Chairman of the House Committee on Agriculture. We have also filed copies of the reports in our public file and closed the matter.

Respectfully,



Elaine Kaplan

Enclosures