

NLWJC - Kagan

DPC - Box 042 - Folder 001

**Race-Race Initiative Policy - Civil
Rights Enforcement [4]**

EK - This is a rough comparison of what OMB looks like it would fund vs. what the agencies told us they'd do w/ extra resources.
Tom

AGENCY	PROJECT	OMB POSITION	SUGGESTION
EEOC	<p>Technology-- a three year \$25 million project funded at \$10 million for the first year. Provides nationwide e-mail, eliminates redundant data entry, shared research among investigators and attorneys.</p> <p>ADR-- a \$4 million option to allow EEOC to mediate approx. 8,000 or 10% of its new charges in FY 1999.</p> <p>Additional staffing-- EEOC requested 203 FTE's.</p>	<p>OMB recommends \$270 million for FY '97, a \$30 million increase or 12.5% above FY 1998 enacted.</p> <p>OMB agrees with the goal of reaching a 6 month average processing time, and provides resources for each of the three project elements, except in the area of FTE's in which only 162 are recommended for funding.</p>	<p>OMB's position on technology, ADR, and FTE's basically satisfy all EEOC asks for in these areas, even when DPC went back to them. Recommend adding the minimal money for compliance and data collection programs described below.</p> <p>On data collection EEOC requests money for an "Interactive Diskette" data collection to replace paper forms for all EEOC employment survey data collection programs. This would benefit the employers and the business community. The estimated cost is \$200,000. EEOC would also like a one-time data collection for the ADA of 1990. The cost estimate is \$200,000.</p> <p>Compliance: *PSA's-- \$225,000 *"Stakeholder" meetings at 25 sites-- \$125,000 *Video productions for employers-- \$225,000</p>

<p>HHS OCR</p>	<p>HHS requested \$22.4 million to expand activities in compliance, technology and staff training. HHS wants to front-load their processing system.</p>	<p>While OMB is basically favorable in its draft analysis of the office, it recommends maintaining HHS OCR at its FY '98 level. The final OMB analysis does not include HHS in its calculation.</p>	<p>HHS asked for the following items, totaling \$5.2 million:</p> <p>Technology: Expand Internet-- Use for filing complaints, computerized correspondence, expedite investigative data requests. \$250,000</p> <p>Geo-Coded/Mapping Data base: \$350,000 (not recommended)</p> <p>Enhanced Data Collection: Analysis of differential treatment modalities (analyze medical treatment by race/ethnicity) \$500,000</p> <p>Study managed care for impact on racial and ethnic impacts. \$250,000.</p> <p>Mediation: pilot mediation programs in urban and rural areas, study decentralizing current system. \$250,000</p> <p>Compliance:</p> <p>New program in nursing home area modeled on test program ran for 2 years with DOJ. Informs minorities and disabled about rights so they can inform agency. \$2.6 million</p> <p>PSA program for consumer protection initiative at \$250,000.</p>
-----------------------	---	---	--

<p>DOL-- OFCCP</p>	<p>DOL requested \$72 million, a 15% increase above enacted FY 1998 level. Three part program of regulatory reform, affirmative action plan summaries, and tiered compliance review process</p>	<p>OMB recommends a \$68 million funding level or a 9% increase. It also calls for an increase of approximately 10% in compliance reviews. OMB argues that the personnel requests are inflated and that OFCCP does not suggest any new programs.</p>	<p>OFCCP requested an additional \$8.5 million and 101 FTE for its compliance (affirmative action) initiative. With existing resources, OFCCP reviews only 3% of its contractor universe. OFFCP also suggests that this money would cover the development of an ADR system for handling some enforcement cases and complaint investigations, the stronger enforcement of FMLA, and expanded use of technology for a Vietnam Vets project.</p> <p>Technology OFFCP asks to upgrade so as to allow contractors to submit data electronically. OFCCP would fully automate its management information system and provide field staff online access to all reports. Estimated cost: \$3.75 million</p> <p>Data gathering. No cost estimated by OFFCP. Proposes to re-engineer the report submitted by contractors to OFCCP -- streamlining the amount of paper and promoting easier use of the tiered review system.</p>

<p>ED OCR</p>	<p>ED OCR requested \$70 million, a \$10 million increase above enacted FY '98. The increase is for more personnel, increased travel, and increased support activities. OCR is considered a well-managed organization and has won 3 VP Hammer awards.</p>	<p>OMB tentatively recommends funding increases to \$65 million subject to overall decisions by the Department of Education.</p>	<p>ED OCR first priority is the personnel and travel requests embodied in its FY 99 budget request.</p> <p>In addition, ED OCR requests funding for:</p> <p>Compliance: Elementary and Secondary School Civil Rights Compliance Report. The last survey of school districts was accomplished in 1974. Data from the survey are used by a variety of sources-- Congress, other agencies including DOJ CRD, educational institutions and researchers. Currently OCR does a random sampling. Estimated cost: \$1.7 million.</p> <p>Data:</p> <p>OCR proposes the five agencies with civil rights enforcement responsibilities conduct a survey to determine the feasibility and desirability of linking their databases to facilitate civil rights enforcement. Cost would range from \$100,000 to \$600,000.</p>
----------------------	---	--	--

<p>DOL DCR</p>	<p>The DCR is responsible for enforcing the varied federal statutes and regulations that prohibit discrimination in all DOL programs, in DOL workplaces, and prohibit discrimination on the basis of disability by certain public entities.</p>	<p>OMB does not include this office in its cross-cut.</p>	<p>The total additional DOL-DCR requests is for approximately \$3 million.</p> <p>Compliance activities: The office requests an additional 21 FTE and \$1.89 million.</p> <p>Compliance Assistance: The office would conduct 20 technical assistance visits a year.</p> <p>Compliance Monitoring: the office proposes to “provide total compliance monitoring coverage in a 3 year cycle.” Currently, only 4 compliance reviews can be conducted. With additional resources, the staff would be able to conduct 18 reviews a year. Mediation: For an additional 11 FTE and \$990,000 the office proposes marketing ADR to states and assisting them in developing and designing ADR programs. In addition, four FTE would provide ADR for those processing their complaints with DCR. Technology: The office requests \$155,000 for technology improvements because the existing database needs major substantive revisions. They believe \$75,000 would be needed for licenses and data base conversions and \$80,000 for new computers to support additional staff resources.</p>
-----------------------	---	---	--

--	--	--	--

Note on DOJ CRD: The DOJ receives a \$4 million increase from OMB for its FY98 enacted level of \$65 million. We requested a summary of resources required by DOJ to expand its coordination function and were promised that we would receive it for the last week. I expect to get it today. Director Raines suggested in his review that he was less interested in a policy coordinating role for the DOJ-CRD but for a qualitative, technique sharing position such as how to make ADR work better.

**Reinventing the
Equal Employment Opportunity Commission**

Barriers to Enforcement

WOMEN
EMPLOYED
INSTITUTE

The Women Employed Institute is a national leader in efforts to expand employment opportunities for women and reduce female poverty through extensive research, analysis, advocacy, direct service and public education. Our priorities include increasing women's access to higher-paying jobs, strengthening enforcement of equal opportunity laws, improving welfare-to-work policies and programs, increasing training opportunities for low-income women, improving employer policies affecting women workers, and developing programs and services to enable women and girls to improve their economic status and advance in their careers. Founded in 1973, the Institute's affiliate, Women Employed, is a membership organization of women at all employment levels whose mission is to improve women's economic status.

This report was prepared by Nancy Kreiter, Research Director.

For additional copies of this report, send \$10 per copy (to cover postage and handling) to:

Women Employed Institute
22 West Monroe, Suite 1400
Chicago, Illinois 60603
312-782-3902, Fax 312-782-5249

©July 1997 Women Employed Institute

Introduction

For the past 24 years, Women Employed has worked to focus attention on the issue of employment discrimination and its impact on women's economic status. We have helped thousands of women deal with problems of sex discrimination in the workplace, providing them with information about their employment rights and support for pursuing them. We have developed extensive knowledge of the barriers to women's advancement and access to male-dominated fields, as well as the patterns of wage discrimination. Based on our direct experience with working women, we have developed and advocated for equal opportunity policies and programs to reflect their needs and protect their rights.

For over two decades, we have advocated for strong enforcement of federal equal opportunity laws and regulations. A major focus of our work has been the Equal Employment Opportunity Commission, which was created in 1964 to administer and enforce Title VII of the Civil Rights Act, prohibiting employment discrimination on the basis of race, sex, religion, and national origin.¹ Women Employed has consistently monitored the EEOC's case handling and policy development, generated proposals for improving enforcement, and analyzed policies and regulations to determine their impact on victims of discrimination. We compile statistical data to measure overall agency performance including timeliness of individual charge handling, rates of case closure and settlement, and litigation activity.² We maintain on-going contact with EEOC officials and employees in offices throughout the country, as well as individual charging parties and their attorneys.

A key component of our advocacy and monitoring work is the information we gather through our Job Problems Counseling Service. Since 1973, Women Employed has operated this unique service, which provides in-depth and comprehensive support, counseling, and attorney referrals to approximately 2000 callers per year. Our counselors, trained in employment law, assist callers in defining specific issues and identifying their legal rights. They work with complainants to provide advice about the options best suited to resolution of their specific problems. These options may include filing an internal complaint, negotiating with supervisors, filing charges with public law enforcement agencies, or seeking private legal counsel. We make specific referrals to enforcement agencies or to private counsel when appropriate. From time to time, the organization has directly represented complainants in administrative enforcement proceedings and been a party to class charges against major employers. The Counseling Service provides us

¹ See Appendix A: The EEOC: Its Mandate and Enforcement History

² See Appendix B: EEOC Enforcement Statistics, FY 1980-FY 1997

with extensive information about the extent of specific employment problems, as well as the responsiveness of enforcement agencies.

Over the past two decades, as we have counseled and represented individuals and participated in class charges, we have experienced the frustration of watching cases deteriorate in the backlog, investigations bungled, and class charges ignored. We have also experienced and documented the most productive enforcement period at the agency—a period that demonstrated the agency's potential effectiveness.

Chairman Gilbert Casellas, who took office in October 1994, faced enormous challenges. With inadequate resources, he addressed severe policy and operational problems. In fiscal year 1994, less than 13 percent of charges closed resulted in some type of settlement. In contrast, at the height of EEOC effectiveness, reached at the end of Chair Eleanor Holmes Norton's term in fiscal year 1980, 32 percent of charges closed resulted in settlement. Nearly half of charges closed in fiscal year 1994 received a no cause determination, compared with 28.5 percent of the cases closed in fiscal year 1980. It took the EEOC approximately 11 months to process an individual charge, compared to between 3 and 6.5 months in fiscal year 1980. The case backlog, which Norton's reforms had reduced to 20,000 cases, stood at nearly 100,000 cases at the time of Casellas' confirmation.

He inherited a litigation effort lacking any strategy to maximize impact or effectiveness. EEOC had committed a large portion of its scarce resources to litigation on behalf of individuals, and almost none to systemic cases that would have greater impact on discriminatory practices. In FY 1994, the EEOC filed 77 class action suits—just 21 percent of all cases filed. In contrast, in FY 1980, two-thirds of all cases filed—or 218 cases—were class actions. Moreover, the number of Equal Pay Act cases decreased from 79 in FY 1980 to none in FY 1994.

During the Reagan-Bush years, the emphasis on fair settlements, rapid resolution of charges, and strong enforcement that existed during the Carter administration were replaced by inaction, incompetence, and hostility toward victims' rights to reasonable remedies. Many complainants felt compelled to hire attorneys to ensure adequate representation and protection during the complaint process, despite Congress' intent that the EEOC aid victims of discrimination without requiring legal counsel.

In late 1994, with a new leadership team finally in place at the EEOC, Casellas began an ambitious campaign to revitalize the agency that has included a redesign of the charge processing system, revision or reversal of past policy directives, national and local enforcement plans, alternative dispute resolution, a significant decline in the backlog of cases, revamping of the performance appraisal system, unprecedented labor-management partnership agreements, public outreach, education and technical assistance activities, and transformation of EEOC's negative internal culture and reputation.

In 1995, WEI issued a report, *Reinventing the Equal Employment Opportunity Commission: Recommendations for Reform* which outlined a comprehensive series of recommendations for restructuring charge processing. The report called for a

flexible framework for serving charging parties in an efficient and timely manner and delineated the need for strategic litigation to maximize the impact and effectiveness of limited agency resources.³ While many of our specific recommendations were adopted and successfully implemented, others that were embraced in principle have not been integrated into the new Priority Charge Handling Procedures or system-wide practices.⁴ As a result, barriers to effective enforcement remain.

This follow-up report, *Reinventing the Equal Employment Opportunity Commission: Barriers to Enforcement*, identifies the critical factors that continue to limit the effectiveness of charge processing and those necessary to achieve a successful litigation strategy. These recommendations are based on our years of experience counseling victims of discrimination, filing charges, and evaluating the agency's practices and procedures. Our goal remains to "reinvent" an EEOC in which service, speed, settlement and strategic litigation are the standards by which its success can be measured.

The reforms that the EEOC embraced in 1995 were well-conceived. Now the job must be completed. We urge the EEOC to adopt and implement these proposals without delay.

³ See Appendix C: Recommendations for Charge Processing

⁴ See Appendix D: Highlights of EEOC's New Charge Processing Systems, April 1995

Recommendations for Charge Processing

The Full Investigation Policy adopted in 1983 prevented expeditious resolution and the exercise of discretion to determine the most appropriate investigative method.

Status:

- Policy rescinded; front-line investigators empowered to exercise individual judgment.
- “Triage” adopted to create a flexible approach that prioritizes charges based on the appropriate level of investigative effort needed, rather than one fixed charge processing procedure. Cases are categorized in order of priority:
 - a) high priority charges falling within the national or local enforcement plans and those in which it appears likely that discrimination occurred (potential “cause” cases).
 - b) charges that appear to have merit, but require additional evidence to determine if discrimination occurred (possible “cause” cases).
 - c) charges appropriate for immediate resolution (likely “no cause” cases based on assessment of substantive merits or lack of resources to develop evidence).

Barriers to Effective Enforcement:

- ✖ No system-wide definition of the triage categories.
- ✖ No training in concrete application of conceptual directions; that is, no hands-on translation of general principles (e.g. what are the standards that guide an investigator’s decision about the likelihood that discrimination occurred, or the need for additional evidence, etc?).

Solutions:

- The national office must develop standard criteria for determining classification of charges (extent of documentation, existence of witnesses, industry patterns, enforcement history of the respondent, etc.).
- All enforcement staff should be trained in critical decision-making using these criteria.

The Full Remedies Policy adopted in 1985 required "full relief" to be obtained in every case in which reasonable cause was found. This obstructed conciliation and settlement, even when both parties reached terms of agreement.

Status:

- Policy rescinded; settlement encouraged at all stages of charge processing⁵.
- Despite this change, settlement rate is at historically lowest level, while no-cause rate is at historically highest level.

Barriers to Effective Enforcement:

- ✖ Maximizing closure of cases is the principal goal of the Commission; finding no-cause has become the most expedient method of closure.
- ✖ Investigators have no training in negotiation skills that promote settlement.
- ✖ Alternative dispute resolution (ADR) programs are frequently accepted as a substitute for comprehensive settlement efforts throughout all stages of charge processing.

Solutions:

- The Commission must reframe its statement of values and communicate with the field so that investigators understand that charge processing should typically culminate in settlement.
- System-wide training should be developed and delivered by those with demonstrated expertise in the techniques of persuasion, negotiation and conferring to facilitate settlement.
- Face-to-face conference must be re-established as a primary tool to advance early settlement.
- Settlement between the parties must be encouraged throughout charge processing, upon receipt of charge, from time to time during investigation, and both before and after findings are issued.
- ADR must be viewed as a particular means to amicable resolution, not the only method for achieving EEOC's mandate to settle discrimination charges.
- Internal incentives, including performance appraisals, should promote settlement.

⁵ Motion won unanimous approval at Commission meeting, April 19, 1995.

Staff must act as customer service representatives to persons seeking the Commission's assistance.

Status:

- The Commission identified essential elements of charge receipt counseling:
 - a) The individual should be explicitly informed by charge receipt personnel that he or she has a right to file a charge.
 - b) Potential charging parties should not be discouraged from filing a charge.
 - c) Attorney referrals should be provided to aid those who wish to bring suit.

Barriers to Effective Enforcement:

- * Many field offices fail to provide definitive information to individuals regarding the scope of their employment rights, including the right to file a charge of discrimination.
- * Some field offices effectively discourage charge filing through such practices as emphasizing the perils of filing a charge, pressuring complainants to utilize state and/or local fair employment agencies, and devising procedures that preclude timely access to intake.
- * Attorney referral procedures remain largely undeveloped.

Solutions:

- The national office should act on its stated intention to work closely with appropriate offices to create and disseminate model notices; additionally, development of videos and other tools for providing necessary information should be implemented immediately.
- The Commission should issue its promised guidance on assisting complainants in their decision about whether to file a charge without discouraging them.
- The Commission must address the question of appropriate referrals of charging parties to advocacy and civil rights groups.

In order to revitalize enforcement activity, there must be increased support for field operations.

Status:

- In fiscal year 1994, the ratio of headquarters to field staff stood at 25 percent. While the overall number of headquarters positions declined by 9 percent by the end of fiscal year 1996, field positions also declined, so the 25 percent ratio of headquarters to field staff remained unchanged.

Barriers to Effective Enforcement:

- * Insufficient budget allocations by Congress.
- * The agency cannot utilize personnel transfers in large numbers to make

- adjustments because they are too costly within the budget constraints of the agency.
- * The Commission has not formally adopted a reorganization plan for the entire agency.

Solutions:

- The agency should examine comparable enforcement agencies to immediately devise a strategy to substantially and permanently reduce the ratio of headquarters to field staff. For example, the Department of Labor's Office of Federal Contract Compliance Programs maintains a headquarters/field staffing ratio that ranges between 10 percent and 14 percent.
- All staffing authorizations should be allotted to the field; positions in the national office should remain unfilled except through reassignment of other headquarters employees.
- The national office should reassign as many administrative support staff as funds permit from headquarters to enforcement functions in the field.
- In order to reduce the resource burden on field operations, the agency should identify work currently being performed in the field that could instead be reassigned and accomplished in headquarters.

New standards for evaluating field office and staff must be developed.

Status:

- The emphasis placed on classifying performance indicators (merit factor, on the merits, administrative closures), which proved counter-productive both for enforcement and evaluative purposes, was abandoned.
- The national office delegated significant decision-making authority to field managers.
- Fully acceptable results can be measured only in a small number of field offices; in many offices, no significant enforcement activity is occurring.

Barriers to Enforcement:

- * There is no system of standard criteria for assessing particular offices or staff with regard to the impact of enforcement activity on eradicating discrimination.

Solutions:

- Service, speed, settlement and strategic litigation should be the fundamental standards of success for appraising performance of *all* senior managers, regardless of function.
- The Commission should resist any temptation to revert to micromanagement of field operations; in fact, it should identify additional opportunities to empower field managers who have achieved measurable success.
- Field oversight must be directed and conducted by proven field managers whose hands-on knowledge and successful performance will ensure acceptance by their peers.

Recommendations for Litigation Strategy

The Enforcement Policy adopted in 1984 required litigation of every charge for which a "reasonable cause" finding was issued, thus preventing speedy resolution of cases and committing the agency's limited resources to individual cases with no far-reaching impact.

Status:

- Policy rescinded; a National Enforcement Plan was established that affords priority to cases that are particularly egregious, pertain to issues of legal precedent or the public interest, or have class and/or systemic implications.

Barriers to Effective Enforcement:

- * In the last full fiscal year preceding the Reagan/Bush administrations (1980), two-thirds of all cases filed by the EEOC were class actions; in Fiscal Year 1996, over 80 percent of litigation activity was concentrated on individual cases.
- * The vast majority of the agency's involvement in egregious cases is focused on obtaining intervenor status, rather than filing its own cases.

Solutions:

- Identify field offices that have fulfilled the agency's mandate to litigate class and/or systemic cases and create a "strike force" implementation team comprised of their field managers.⁶
- Examine and analyze how the Mitsubishi case was developed by the Chicago District Office to define a model(s) for selecting and investigating high impact litigation targets.
- Internal incentives, including performance appraisals, should encourage litigation of cases that are particularly egregious, pertain to issues of legal precedent or the public interest, or have class and/or systemic implications.

The Commission retained litigation decision authority for cases involving novel issues and class cases of significant size while delegating litigation decision authority over class and individual cases to the General Counsel; the General Counsel re-delegated litigation decision authority for individual cases to the Regional Attorneys.

⁶ The Department of Labor's Office of Federal Contract Compliance Programs has consistently used this approach to achieve impressive enforcement results.

Status:

- 80 percent of all court cases filed in Fiscal Year 1996 were individual cases.

Barriers to Enforcement:

- ✱ Delays caused by layers of review and the ability to avoid critical scrutiny by the national office discourage referrals of cases involving novel issues and/or significant class cases.
- ✱ There is no incentive to identify and develop high impact litigation vehicles rather than individual cases.

Solutions:

- Increase field litigation decision authority; initially, re-delegate litigation decision authority to those field offices that have successfully litigated high impact cases.
- Internal incentives, including performance appraisals, should reward litigation accomplishments that result in broad-based impact on discriminatory employment practices.

District Directors can refer Commissioner Charge proposals directly to individual Commissioners to obtain approval for investigation and development of systemic cases; neither the proposed Commissioner Charge nor the subsequent investigation requires approval or oversight by the Office of Program Operations (OPO).

Status:

- Commissioner Charges comprise only about one-tenth of one percent of the agency's pending charge inventory.

Barriers to Enforcement:

- ✱ Commissioner Charges generated in the field are still subject to OPO review and oversight.
- ✱ The Commission has not placed sufficient priority on the use of Commissioner Charges to attack systemic discrimination.

Solutions:

- Conform agency practice with the Chairman's 1995 directive that removed OPO involvement in Commissioner Charges.
- Determine how to reallocate resources to increase the development of systemic cases through Commissioner Charges.

Appendix A

The EEOC: Its Mandate and Enforcement History

Currently, the EEOC is the principal federal equal employment opportunity enforcement agency, responsible for Title VII of the Civil Rights Act, the Equal Pay Act, the Age Discrimination in Employment Act, and Title I of the Americans with Disabilities Act. The agency is also charged with coordinating executive branch implementation of all equal employment opportunity legislation, regulations, and policies.

Over its thirty-year history, the EEOC has undergone three major restructuring efforts. The first effort grew out of frustration with the EEOC's inability to attack class-wide or systemic discrimination and its lack of enforcement power. The original framers of Title VII had greatly underestimated the extent to which discrimination affected whole classes of employees, rather than isolated individuals. They had also misjudged the level of resistance they would encounter from recalcitrant employers. So in 1972 Congress amended Title VII to empower the EEOC to file lawsuits to attack class-wide discrimination.

Throughout the 1970's, demands on the EEOC increased, as women's and civil rights organizations took high-profile action against employment discrimination. Administratively, however, the agency was unable to cope with those demands. *Women Employed* was one of many critics of the agency during this period. Our criticism focused on four issues: the unwieldy structure of the agency, which diffused responsibility and accountability and produced serious internal friction; procedural shortcomings in handling individual cases, resulting in a backlog of 130,000 cases by 1976; poor resource allocation, with less than 35 percent of EEOC's budget allocated to actual investigations; and an inoperative systemic charge program. By 1976, we found dealing with EEOC so unproductive that we stopped filing charges and joined other civil rights organizations in a suit against the Chicago District office.

The second major restructuring began in 1977 with the appointment of Eleanor Holmes Norton as Chair of the EEOC. The major enforcement and management problems she inherited were the immense backlog, an average charge processing time of two years, and the lack of an effective program to address systemic or "pattern and practice" cases. To get the EEOC moving again, Norton upgraded the charge intake process and introduced the Rapid Charge Processing (RCP) system. This system was designed to overcome barriers to timely settlement of charges—an outcome desirable to both charging parties and respondents. RCP heavily emphasized the negotiation of quick, no-fault settlements, with the EEOC acting as a mediator or advisor. If a charge could not be resolved through RCP, the EEOC could send the charge to its extended processing unit for additional investigation and conciliation.

Recognizing that race and sex discrimination was, by definition, discrimination against a class of people and not only specific individuals, the EEOC under Norton designated a separate unit in each district office to develop and investigate systemic charges. To fill the gap in coverage between rapid processing of individual charges and the process for handling systemic charges, the EEOC instituted the Early Litigation Identification (ELI) program in 1979. ELI identified and expanded individual charges that had a potential impact for a class of persons or were generated by a systemic employment practice.

The new systems and programs implemented under Norton were generally well received by employers and complainants. Most women's and civil rights organizations praised RCP and ELI, but urged the EEOC to increase its efforts in the systemic units.

The agency's emphasis on speedy resolution of individual charges produced positive results. By 1980, the EEOC's settlement rate was over twice the rate for 1976 and the average time for processing a charge had dropped from 24 months in 1976 to between 3 and 6.5 months in 1980. In addition, the backlog of cases decreased from 130,000 in 1976 to 37,675 in 1980. Women Employed and other advocates were optimistic that improvements would be forthcoming in the systemic area, but with Carter's defeat in 1980, Norton left the agency.

The third major transformation of the agency began with Reagan's election in 1980 and continued through the Bush administration. Reagan appointees to the EEOC immediately halted Norton's reforms and began an unprecedented assault on the agency's policies and enforcement programs. During the Reagan-Bush years at EEOC, proven enforcement techniques were systematically undermined by policy changes, long-accepted litigation standards were altered, and remedial relief was sharply limited. The following is a list of the most significant—and most damaging—changes that were ordered:

- * In 1984, the EEOC adopted a policy *requiring* litigation of every charge for which a "reasonable cause" finding was issued. This change, which prevented speedy resolution of cases, also assured that the agency's limited resources would be disproportionately allocated to individual cases with no particular far-reaching impact.
- * At the same time, the Commission adopted a formal definition of reasonable cause which radically reduced the number of such findings and encouraged "no cause" findings; reasonable cause could only be determined when there was enough evidence *to win*, rather than enough evidence *to sue*. No other agency has ever adopted such a strict standard of proof.
- * In 1985, the EEOC began requiring "full relief" to be obtained in every case in which reasonable cause was found, effectively obstructing conciliation and settlement, even when both parties reached terms of agreement. This policy fundamentally shifted the agency from a conciliatory to an adversarial posture.
- * In 1987, the General Counsel issued a memorandum that precluded the use of

goals and timetables in conciliation agreements, thus eliminating one of the primary remedies in systemic cases.

- * In 1992, the Office of Program Operations (OPO) required field offices to seek special permission to negotiate for compensatory and/or punitive damages, remedies that were specifically provided for in the Civil Rights Act of 1991. As a result, less than 10 percent of charge conciliations have included negotiations for compensatory and/or punitive damages, and charging parties were being denied the full remedies to which they are entitled under the law. (In December 1994, Chairman Casellas issued a memorandum reversing the OPO position.)

These policy changes and other conditions within the EEOC resulted directly in the accumulation of another immense backlog of cases. By the end of Norton's tenure in FY 1980, the backlog had been reduced by 71 percent, and a targeted plan had been developed to eliminate it completely by the end of FY 1982. Under Reagan's Chairman, Clarence Thomas, the backlog began to build again. Although it fell slightly before the end of Thomas' tenure, under Bush appointee Evan Kemp, it rose steadily, reaching nearly 100,000 cases.

The EEOC's litigation effort suffered as well. Although there was a large increase in the number of cases filed in court, the agency's overall emphasis shifted to litigating individual complaints at the expense of class/systemic cases. Thomas abolished the ELI system that identified and tracked potential class cases in the district offices. Kemp went far beyond that to prevent many such cases from reaching the litigation stage.

During the Thomas-Kemp years at EEOC, resources also declined in real terms. Between 1980 and 1994, while the number of new charges skyrocketed and the backlog grew, the number of full-time employees decreased. In FY 1980, the EEOC received 59,328 new charges; in 1994, the agency received 91,189 new charges—a 65 percent increase. At the same time, the number of staff (full-time equivalents) dropped from 3,390 to 2,832. The agency's budget, in inflation-adjusted dollars, remained flat for the entire 15-year period. EEOC's FY 1980 budget was \$124.5 million, while the FY 1994 budget after adjusting for inflation was \$129.9 million. The inflation-adjusted budget request for FY 1998 is only \$126.3 million.

EEOC ENFORCEMENT STATISTICS

	FY'80	FY'81	FY'82	FY'83	FY'84	FY'85	FY'86	FY'87	FY'88	FY'89	FY'90	FY'91	FY'92	FY'93	FY'94
Total Closures	49,225	71,690	67,052	74,441	55,034	63,567	63,446	53,482	70,749	66,209	67,415	64,342	68,366	70,746	71,563
Settlement Rate	32.1%	28.9%	29.4%	26.2%	20.8%	14.4%	12.5%	12.5%	15.0%	13.9%	14.7%	14.4%	13.2%	13.0%	12.8%
No-Cause Rate	28.5%	29.4%	35.0%	41.1%	46.7%	56.2%	59.5%	55.3%	49.7%	54.2%	57.2%	59.6%	61.0%	55.9%	48.1%
Time Lapse (months)	3—6.5	5—8	5.4—9.4	4.3—7.2	5.9—6.8	6.4—6.9	8.3	9.3	10.9	9.8	9.5	8.5	9.7	9.8	10.9
Backlog	37,675	20,238	33,417	31,538	39,893	46,773	50,767	61,686	53,780	46,071	41,987	45,717	52,856	73,173	96,945

LITIGATION STATISTICS

	FY'80	FY'81	FY'82	FY'83	FY'84	FY'85	FY'86	FY'87	FY'88	FY'89	FY'90	FY'91	FY'92	FY'93	FY'94
Cases Recommended to General Counsel	393	469	401	338	276	708	701	557	764	904	998	849	665	829	784
Cases Approved by Commission	322	364	112	192	204	277	440	436	486	572	689	595	471	715	472
Cases Filed in Court¹	326	368	164	136	222	286	427	430	438	484	524	495	347	401	368
Title VII	200	229	101	82	130	172	289	320	299	312	351	352	242	263	242
Equal Pay Cases	79	50	35	21	9	10	12	12	6	4	8	6	2	2	0
Age Disc. Cases	47	89	28	33	66	96	109	69	106	134	140	102	84	114	73
Disability Cases														4	35
Concurrent	NA	NA	NA	NA	17	8	17	29	27	34	25	35	19	18	18
Class Action Suits²	218	166	69	75	112	155	148	105	127	129	106	89	47	61	77

¹ Excluding subpoena enforcement actions

² Class actions suits are included in overall number of cases filed

Sources: Women Employed Institute from EEOC District Office Reports; EEOC Legal Services; EEOC Office of Program Operations Annual Reports: Fiscal Years 1985, 1986; Women Employed Freedom of Information Requests

EEOC ENFORCEMENT STATISTICS

	FY'95	FY'96	FY'97*											
Total Closures	91,774	103,467	47,861											
Settlement Rate	9.7%	7.0%	6.7%											
No-Cause Rate	50.9%	61.1%	59.6%											
Time Lapse (months)	11.8	12.6	12.6											
Backlog	98,269	79,448	75,541											

LITIGATION STATISTICS

	FY'95	FY'96	FY'97*											
Cases Recommended to General Counsel	428	115	119											
Cases Approved by Commission	352	54	17											
Cases Filed in Court¹	315	161	126											
Title VII	185	105	73											
Equal Pay Cases	1	2	0											
Age Disc. Cases	38	12	21											
Disability Cases	76	36	26											
Concurrent	15	6	6											
Class Action Suits²	78	32	30											

* First half

¹ Excluding subpoena enforcement actions

² Class actions suits are included in overall number of cases filed

Appendix C

Recommendations for Charge Processing—1995

Goal: Create a flexible framework for servicing charging parties in an efficient and timely manner, not one fixed system. Service, speed, settlement and strategic litigation should become the standards for success.

Critical Success Factors¹

I. Intake

- A. Staff should be selected and trained to act as customer service representatives to persons seeking the Commission's assistance, whether by telephone, mail or personal visit. Intake personnel should provide comprehensive and definitive information to empower individuals to make informed decisions about pursuing their rights. Essential communication skills include:
 - 1) "consumer-friendly" behavior
 - 2) the ability to elicit and interpret the reported incident(s) in order to:
 - a) ascertain jurisdiction (illegal vs. unfair, timeliness, employer size, etc.)
 - b) make appropriate referrals;
 - c) discuss and explain EEOC's procedures and reasonable expectations for a charging party; and/or
 - d) draft a formal charge of discrimination.
- B. Charges and related intake documents should be crafted to include enough substantive facts to advance an expeditious investigation, without imposing an undue burden of detail on the charging party.
- C. All cases should be evaluated for evidence of class and/or systemic violations.
 - 1) Typically, class and/or systemic cases should be developed by field offices as a result of evaluating and/or expanding individual charges.

¹ All of these recommendations are achievable through directive, compliance manual, etc. No formal rulemaking is necessary.

- 2) The headquarters' current systemic program should be eliminated, with its resources redistributed to field units that are designed to investigate expanded charges.
- 3) A simple mechanism to trigger Commissioners' Charges should be available when District Directors determine the basis for such a charge (violations uncovered absent a formal complaint, evidence uncovered in the course of investigating a charge which is later withdrawn, settled, or dismissed, etc.) and forward a recommendation directly to the Commission.
- 4) Individual Commissioners should retain their prerogative to initiate a Commissioner's Charge.
 - a) A Commissioner's Charge should be filed directly with the appropriate field office where it will be investigated.
 - b) A Commissioner's Charge with national scope should trigger formation of a specialized ad hoc investigative force drawn from expert staff in representative field offices.

II. Investigation

A. Investigations should begin promptly and typically culminate in settlement.

- 1) Settlement between the parties should be encouraged throughout the investigation.
- 2) Investigators should develop the skills necessary to facilitate settlement.
 - a) Internal incentives (performance appraisals, awards, etc.) should encourage settlement.

B. Investigations should be designed to achieve expeditious resolution.

- 1) The Commission should allow for a broad array of investigative techniques to be considered in bringing a charge to its earliest resolution (triage, fact-finding, mediation, neutral evaluation, etc.).
- 2) Line investigators should have the discretion to decide the most appropriate investigative method and be held accountable for their choices.
- 3) The extent of supervisory oversight should be at the minimum level, commensurate with the demonstrated performance of individual investigators.

C. Investigators should maintain "consumer-friendly" contacts with the charging party on a regular basis.

D. Cases that are particularly egregious, pertain to issues of legal precedent or

the public interest, or have class and/or systemic implications should be subject to priority investigations in order to determine their merits.²

III. Resolution

- A. The Commission must adopt the pre-1984 standard for finding “reasonable cause” that requires a level of proof showing enough evidence for a reasonable person to believe that discrimination occurred.
- B. The Commission should establish a “no finding” resolution for cases in which it becomes apparent in the course of investigation that there is no certainty regarding the merits of the charge (can’t locate witnesses, insufficient evidence for determination, etc.). (This type of resolution already exists under the Age Discrimination in Employment Act.)
- C. The Commission must engage in strategic litigation that results in the greatest programmatic impact.
 - 1) Cases that are particularly egregious, pertain to issues of legal precedent or the public interest, or have class and/or systemic implications should be a priority.
 - 2) The Commission must recognize that it does not have the resources to litigate every charge for which a “reasonable cause” finding is issued; prosecutorial discretion should be exercised by the Regional Attorneys, who must be held accountable for their choices.
- D. The current emphasis on classifying performance indicators (merit factor, on the merits, administrative closures) should be abandoned. Service, speed, settlement and strategic litigation should become the standards for success.

IV. Backlog

- A. Abandon the practice of processing the oldest case first and utilize available resources to simultaneously eliminate the backlog and handle new charges.
- B. Each field office should devise its own action plan based on its particular level of backlogged cases.
- C. Immediately utilize headquarters’ staff to process the backlog. Eventually, divert headquarters’ staff to the field, thereby producing greater charge

²See Section I,C (1-4).

processing capacity. Flexible charge processing techniques will increase productivity, thus providing additional resources for eliminating the backlog.

D. Establishing a “no finding” resolution is imperative.³

³ See Section III, B.

Appendix D

Highlights of EEOC's New Charge Processing Systems April, 1995

*1. Policies Rescinded:

Full Investigation (1983) -prevented expeditious resolution and discretion to determine most appropriate investigative method.

Enforcement Policy (1984) -required litigation of every charge for which a "reasonable cause" finding was issued, thus preventing speedy resolution of cases and committing the agency's limited resources to individual cases with no particular far-reaching impact; in addition, reasonable cause could only be determined when there was enough evidence *to win*, rather than enough evidence *to sue*.

Full Remedies (1985) -required "full relief" to be obtained in every case in which reasonable cause was found thus obstructing conciliation and settlement, even when both parties reached terms of agreement.

*2. Triage adopted to create a more flexible approach that prioritizes charges based on the appropriate level of investigative effort needed, rather than one fixed charge processing procedure. Cases are categorized in order of priority:

- i) high priority charges falling within the national or local enforcement plans (to be developed by 6/30 and 8/1, respectively) and those in which it appears likely that discrimination occurred (potential "cause" cases).
- ii) charges that appear to have merit, but require additional evidence to determine if discrimination occurred (likely "cause" cases).
- iii) charges appropriate for immediate resolution (likely "no cause" cases based on substantive merits or lack of resources to develop evidence).

*3. "Consumer-friendly" behavior at intake and access to information during investigation.

* WEI recommendation adopted

- *4. Settlement encouraged at all stages.
- *5. Elimination of substantive “no-cause” letter of determination outlining particularized findings. Discussion of findings with charging party through pre-determination interviews.
- *6. Commission will determine classes of cases over which it retains litigation decision authority; remainder of cases will be delegated to General Counsel who may re-delegate litigation authority to Regional Attorneys (delegation of authority effective immediately, absent national enforcement plan).
- *7. New standards for evaluating field offices and staff will be developed.
- *8. Systemic cases developed in field based on individual or Commissioner charges.
- *9. Action plans for eliminating the backlog developed by both headquarters and field offices.

* WEI recommendation adopted

Race Initiative Policy - Div Rts Enf

U.S. Department of Labor

Employment Standards Administration
Office of Federal Contract
Compliance Programs
Washington, D.C. 20210



October 15, 1997

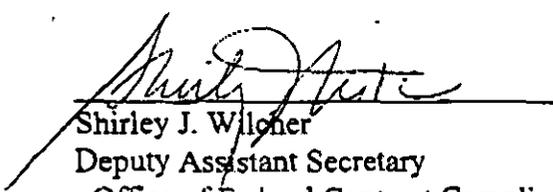
Ms. Elena Kagan
Deputy Assistant to the President
for Domestic Policy
Domestic Policy Council, Room 2
The White House
1600 Pennsylvania Avenue, N. W.
Washington, D. C. 20500

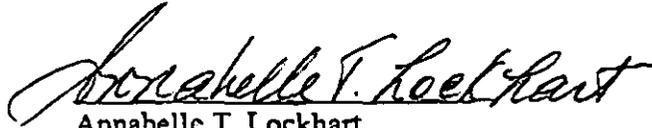
Dear Ms. Kagan:

At the Domestic Policy Council civil rights enforcement meeting, the Department of Labor was asked to provide information on its civil rights programs and how civil rights enforcement could be strengthened. As promised, we are providing you with the attached information regarding the Department of Labor's civil rights programs.

We look forward to working with you in the future.

Sincerely,


Shirley J. Wilcher
Deputy Assistant Secretary
Office of Federal Contract Compliance


Annabelle T. Lockhart
Director
Directorate of Civil Rights

Working for America's Workforce

**DEPARTMENT OF LABOR EMPLOYMENT STANDARDS ADMINISTRATION
OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS**

I. What are the OFCCP's Civil Rights Responsibilities?

- A. The Office of Federal Contract Compliance Programs' (OFCCP) administers and enforces three equal employment opportunity laws: Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended. These programs¹ prohibit discrimination by federal contractors and subcontractors and require them to take affirmative action to ensure that all individuals have an equal opportunity for employment, without regard to race, sex, ethnicity, national origin, religion, disability or status as a Vietnam era or special disabled veteran. The programs apply to contractors and subcontractors holding federal or federally assisted contracts over \$10,000. OFCCP shares responsibility for the implementation of Title I of the Americans with Disabilities Act of 1990 and the employment provisions of the Immigration Reform and Control Act of 1986.**

The mission of the OFCCP is to ensure equal employment opportunity for all workers. It requires Federal contractors not to discriminate and to take affirmative action to ensure an equal opportunity work place. The laws are designed to ensure that federal taxpayers' dollars do not perpetuate employment discrimination.

- B. Other related civil rights programs include: Department of Labor's Bureau of Apprenticeship and Training program that uses goals to help women and minorities obtain employment and access to craft positions. (29 USC 50; 29 CFR Part 30); Section 167 of the Job Training Partnership Act (JTPA) Amendment that requires states to submit a plan with goals for the training and placement of women in non-traditional employment positions (Pub. L. 102-235); Section 504 of the Rehabilitation Act of 1973, as amended; regulations which prescribe equal opportunity requirements for Senior Community Service Employment Programs funded under the Older Americans Community Service Employment Act; the work incentive program requirements funded under the Social Security Act; equal opportunity requirements for the Job Service System under the Wagner-Peyser Act, and the regulations implementing the requirements under Title VI of the Civil Rights Act of 1973, as amended, regarding non-discrimination in Department of Labor funded Federally assisted programs.**

¹ Executive Order 11246; Section 503 of the Rehabilitation Act of 1973, as amended; and the affirmative action provisions (Section 4212) of the Vietnam Era Veterans' Readjustment Assistance Act, as amended.

II. What is OFCCP's "Reach" (i.e., coverage)?

OFCCP laws cover approximately 22.5 million workers or nearly 22% of the total civilian workforce (92,500 non construction establishments and 100,000 construction establishments). Executive Order 11246 applies to all contractors and subcontractors holding any federal or federally assisted contracts worth more than \$10,000 annually. In addition, the Executive Order requires contractors and subcontractors with a federal contract of \$50,000 or more, and 50 or more employees, to develop a written affirmative action program. Similarly, Section 503 of the Rehabilitation Act of 1973, as amended and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended apply to establishments with federal contracts of \$10,000 or more annually. Every covered government contract contains an equal employment opportunity (EEO) clause that prohibits discrimination and requires affirmative action as a term of the contract. The Federal Government awarded more than \$179 billion tax-payer dollars in prime contracts in Fiscal Year 1995. OFCCP ensures that federal tax payer dollars will not be used to discriminate by requiring contractors to monitor their own employment practices to prevent and remedy discrimination. Since FY 1994, OFCCP has recovered more than \$130 million dollars in total financial settlements.

OFCCP programs provide a tool through which qualified individuals have a chance to compete for jobs that have been historically closed to minorities, women and individuals with disabilities. The programs expand opportunities to ensure maximum participation for a strong economy.

III. How Does OFCCP Administer and Enforce These Responsibilities?

A. Basic Investigative Procedures (Directed Investigations and Complaints)

- OFCCP conducts compliance reviews, investigates complaints of systemic discrimination, monitors contractor compliance with the self-audit affirmative action requirements, and works with employers to help them recruit and retain qualified workers. In carrying out its responsibilities, OFCCP also:
- Obtains and monitors Letters of Commitment and Conciliation Agreements from contractors who are in violation of the regulatory requirements.
- Forms linkage agreements with contractors and the Labor Department to help employers identify, recruit and retain qualified workers.
- Offers technical assistance to federal contractors to help them understand the regulatory requirements and review process.
- Recognizes contractors' successful efforts (best practices) to ensure EEO.
- Recommends enforcement actions to the Solicitor of Labor.
- OFCCP administers its programs consistent with the President's four

constraints of fairness enunciated in the 1995 guidance to all federal agencies. Those four principles are:

1. No quotas.
2. Use Race-Neutral Options whenever possible.
3. Programs should be flexible and minimally intrusive.
4. Programs should be transitional.

B. General Education and Outreach Efforts

OFCCP requires contractors, as a condition of having a federal contract, to engage in a self-analysis for the purpose of discovering any barriers to equal employment opportunity. To educate contractors about their contractual obligations, OFCCP provides technical assistance, works closely with the industry liaison groups, and has one-on-one consultations, especially with the smaller contractors. OFCCP has established an Ombudsperson, a customer service plan, and outreaches regularly with our customers - contractors, constituency groups and labor organizations - in order to foster the mission of the OFCCP.

C. Penalties

A contractor in violation of E.O. 11246 may have its contracts canceled, terminated, or suspended in whole or in part, and the contractor may be debarred, i.e., declared ineligible for future Government contracts. However, a contractor cannot be debarred without being afforded the opportunity for a full evidentiary hearing. Debarments may be for an indefinite term or for a fixed term. When an indefinite term debarment is imposed, the contractor may be reinstated as soon as it has demonstrated that the violations have been remedied. A fixed-term debarment establishes a trial period during which a contractor can demonstrate its commitment and ability to establish personnel practices that are in compliance with the Executive Order. Matters not resolved through conciliation may be referred to the Office of the Solicitor for enforcement.

D. OFCCP has taken steps to "mend-not-end affirmative action".

- ✓ *"No-quotas directive"*. The Office of Federal Contract Compliance Programs reaffirmed its EEO / "no-quotas" policy with staff through the issuance of a directive, and has incorporated that policy into senior staff meetings and monthly conference calls. The agency is also requiring senior officials to constantly monitor to make sure that the "no-quotas" policy is being followed.
- ✓ *Customer Service Plan*. OFCCP has implemented a Customer Service Plan, distributed to OFCCP staff and to its regulated community, that expresses the high expectations for the conduct of the agency.

- ✓ *Ombudsperson.* OFCCP has also created an ombudsperson liaison to address concerns from contractors and other stakeholders. That Ombudsperson number is 1-888-37-OFCCP.
- ✓ *Staff Training.* OFCCP has instituted new staff training programs, with an emphasis on accountability. When the agency learns that a compliance officer has misconstrued the law or OFCCP policy, the agency will provide remedial training. Such instances of unprofessional conduct are rare.
- ✓ *Focus on Substantive Violators.* OFCCP also has instituted a more focused operational plan that targets contractors with a history of violations, growth industries, and first-time reviews.

IV. Resource and Workload Levels - OFCCP FY 98

The Administration requested a total of \$68.7 million and 823 FTE for OFCCP, an increase of \$8.6 million and 101 FTE over FY 1997. The resources are requested to allow OFCCP to administer its directed enforcement program and to investigate and resolve complaints of discrimination on a timely basis. Although the request may appear to be a large increase over FY 97, when compared to increases since 95, the OFCCP appropriations request is in line with other DOL agencies.

	FY 1981	FY 1992	FY 1997	% Change
Total FTE Allocation	1,482	856	739	- 50.1%
Compliance Reviews	3,135	4,953	3,750	
Total Dollars Recovered	7,985,000	30,939,000	30,850,614	

V. OFCCP Program Priorities

Enforcement Activities

- OFCCP's primary priorities are to ensure non-discrimination and compliance with the affirmative action responsibilities at federal contractor establishments - - to foster EEO workplaces. To that end, OFCCP is implementing a Fair Enforcement Strategy to more effectively combat discrimination in federal contractor establishments by focusing on regulatory reform; activation of a tiered review process to focus on substantive violations, thereby reducing the paperwork; and enhanced technical assistance and training.
- Small businesses in particular will benefit from the Fair Enforcement Strategy Initiative. The new proposal allows smaller contractors (those with 150 or fewer employees) to submit an abbreviated affirmative action plan which should result in a substantial reduction in the paperwork required.
- OFCCP's corporate management reviews ("Glass Ceiling Reviews") strengthen families by breaking the glass ceiling and eradicating corporate wide discriminatory policies that impede access and employment opportunities for all qualified individuals (OFCCP conducts reviews and engages in linkage [partnership] efforts that result in jobs for real people);

Education

- OFCCP conducts Town Hall Meetings and Special Events (EVE Awards/ Best Practices Executive Order 11375 Luncheon and Round Table) to educate the nation about the persistent problem of discrimination and to provide guidance on the best corporate EEO practices and federal contractor responsibilities.
- Each year, the Department of Labor honors contractors that exemplify equal employment opportunity, done the right way. The Secretary's Opportunity 2000 award is the Department's top EEO honor. The issuance of the award highlights the best corporate practices and furthers the agency's efforts to maximize its effectiveness. OFCCP also recognizes public interest and community based organizations that have contributed to its mission with the Exemplary Public Interest Contribution Award (EPIC).

Outreach and Technical Assistance

- OFCCP conducts seminars, workshops and provides technical assistance guidance. The agency works in partnership and through alliances with all of our stakeholders to ensure that all our citizens, whatever their backgrounds, have an opportunity to participate in the workplace; and encouraging employers to highlight their proven methods to bring about true equal employment opportunity and promote racial harmony (EVE awards & Best Practices Summit).

VI. What are OFCCP accomplishments?

OFCCP has:

- Obtained more than \$130 million since 1994 for women, minorities, individuals with disabilities and veterans who were victims of discrimination by federal contractors and contractors.
- Enabled 129 of the Fortune 1,000 companies and other major corporations to break the “glass ceiling” for women and minorities.
- Enabled thousands of American workers to be employed in better paying positions in industries from which they had been historically excluded.
- Prevented discrimination and fostered equal employment opportunity through regulatory requirements that mandate self-audits of EEO compliance by federal contractors.
- Provided thousands of hours of technical assistance to contractors and other stakeholders.
- Initiated a major streamlining and reinvention effort titled the “Fair and Effective Enforcement Strategy” to reduce the paperwork burden on contractors, while focusing the compliance process on the greatest need (i.e. discrimination).
- Initiated a public education initiative that includes technical assistance via the Internet.
- *Streamlined the Process.* OFCCP completed the first phase of its regulatory reform effort on August 19, 1997. The agency is implementing its “Fair and Effective Enforcement Strategy” that will (i) eliminate unnecessary paperwork requirements associated with the written affirmative action plan; (ii) use an expedited review process that will greatly assist in the agency’s targeting of its limited resources on substantive violations first; and (iii) reduce its internal administrative procedures by at least 30%.
- *Used Alliances and Technical Assistance.* In addition, the agency is using creative new approaches, including the use of expanded alliances, to achieve greater compliance with the laws and region-specific initiatives ranging from the use of testers to guidance on sex-harassment and glass ceiling reviews to detect and remedy employment discrimination.

VII. How Can OFCCP Improve Its Effectiveness?

A. Complete Current Regulatory Activities

OFCCP:

60-1 final rule; 60-2 NPRM; VEVRAA final rule; § 503/Waivers final rule

OFCCP has a regulatory reform proposal to update its Executive Order 11246 affirmative action regulations. The first phase of the regulatory reform effort, part 60-1, was completed with the publication of the final regulations on August 19, 1997. The second part of the proposal, part 60-2, is being finalized by the OFCCP in conjunction with the Office of the Solicitor. The proposal implements an affirmative action plan summary, reduces the burdens, and should increase the effectiveness of OFCCP enforcement by better targeting of its resources. The agency also recently updated its Section 503 regulations to conform to the Americans with Disabilities Act. In addition, the agency's Separate Facility Waiver Final Rule, under Section 503 of the Rehabilitation Act of 1973, as amended, is in final draft form. The document establishes regulatory standards that the Deputy Assistant Secretary may use to determine whether requests by contractors for a waiver from the requirements of Section 503 will be granted.

B. Encourage and Highlight Best Practices.

OFCCP: Each September, the Department of Labor's Employment Standards Administration and OFCCP host an awards ceremony to recognize federal contractors that have made innovative and exemplary efforts to ensure equal employment opportunity. The highest award given is the Secretary's Opportunity 2000 award. In addition, the OFCCP works closely with the contractor community throughout the year to educate and highlight the best practices that the corporate leaders adopt. OFCCP is also beginning to use the media and electronic means to provide guidance and technical assistance on contractor responsibilities and employee rights.

OFCCP also suggests that the Administration implement Professor Christopher Edley's White House Report recommendations that the Secretary of Labor "explore means of collaborating with private sector leaders in more vigorous private sector-led efforts to promote best practices in providing equal employment opportunity. Other Cabinet officers and Administration officials should participate as appropriate." Page 39 of the Affirmative Action Review: Report to the President.

C. Expand the Memorandum of Understanding between the OFCCP and the Equal Employment Opportunity Commission.

One means to strengthen OFCCP enforcement is to work with EEOC to allow OFCCP to serve as the agent of the EEOC for purposes of obtaining full relief for victims of egregious discrimination. OFCCP could also process more cases with class-based discrimination and disability discrimination.

D. Issue a Presidential Directive to all federal agencies emphasizing the importance of the EEO clause contained in government contracts.

The OFCCP has been working in partnership with the Department of Justice, the EEOC, the Department of Transportation, the Department of Education and the General Services Administration separately to enhance compliance with the EEO clause. The agency is also working with the Civilian Agencies Advisory Council (CAAC) to educate contracting officers about the enforcement of the EEO clause. OFCCP recommends a Presidential Directive to underscore the importance of compliance with the EEO responsibilities.

E. Coordinate an inter-agency public education approach to affirmative action.

The OFCCP recommends working with the President's Initiative on Race and also with the White House Women's Bureau to educate the public about the continuing need for affirmative and its benefits and to defend against unwarranted attacks on federal affirmative action. Because of the DOL programs, women and minorities have moved up the corporate ladder to better paying jobs; working women have moved from welfare to non-traditional full-time employment; more individuals with disabilities are employed in permanent, self-supporting positions; and companies across the nation are reconsidering discriminatory compensation and promotion systems. Without the EO 11246 affirmative action and other government EEO programs, it will be more difficult to build the society we need in the 21st century. The programs open doors of opportunities, that were previously closed and works to ensure equal employment opportunity for all Americans. There needs to be a coordinated approach to public information.

Need for Additional Resources

- The OFCCP could do more with more. OFCCP's principal enforcement mechanisms are compliance reviews (including "glass ceiling reviews" and complaint investigations). However, because of significant budget cuts, resulting in a nearly 50% reduction in OFCCP personnel since the 1980's, the OFCCP is able to review

less than four percent of the universe of Federal contractors. OFCCP staffing has been at its lowest staffing level, while the workforce continues to grow each year.

**U.S. Department of Labor
Directorate of Civil Rights**

As a follow-up to the Domestic Policy Council meeting on civil rights enforcement, information was requested related to the size and scope of our respective agency's civil rights program, resource levels and program priorities. You also asked for an assessment of how civil rights enforcement could be strengthened. The following information is being provided in response to that request.

Directorate of Civil Rights (DCR) Mission

The Directorate of Civil Rights (DCR) is responsible for enforcing the varied Federal statutes and regulations, that (1) prohibit discrimination in DOL programs, (2) prohibit discrimination on the basis of disability, by certain public entities and in DOL conducted activities, and (3) prohibit discrimination within DOL workplaces.

DCR Jurisdiction

The Department of Labor (DOL) provides approximately 35 billion dollars in financial assistance to over 900 grant recipients annually. The Employment and Training Administration operates 99 percent of DOL's federally assisted programs. These include such programs as the Job Training Partnership Act (JTPA), which include 112 Job Corps Centers, the State Employment Security Agencies, Older Worker Program, Migrant and Seasonal Farmworker Program, Disabled Person Program, and Indian and Native American Program. Additionally, the Occupational Safety and Health Administration, Mine Safety and Health Administration, Women's Bureau, Veterans' Employment and Training Services, and the Bureau of Labor Statistics, also administer financial assistance programs. These DOL programs reach the entire civilian labor force which is estimated to be 136.2 million persons.

DCR also enforces Title II of the Americans with Disabilities Act which protects all persons from discrimination on the basis of disability by State and local governments, irrespective of receipt of federal financial assistance. DCR is also responsible for enforcing Section 504 of the Rehabilitation Act which prohibits discrimination on the basis of disability in DOL conducted programs, and Title VII of the Civil Rights Act and related statutes which provides civil rights protections for approximately 16,000 DOL employees.

DCR FY 1998 Budget Request

The FY 1998 budget for DCR is \$4,535,000 and 50 FTE. Thirty (30) of the 50 FTE are related to external compliance review and complaint activities.

DCR FY 1999 Budget Request

In response to the President's civil rights agenda to strengthen overall civil rights enforcement in Title VI and Title IX, and disability laws, the FY 1999 budget request includes a request for an increase of 5 FTE over the FY 1998 level of 50 and an increase of \$100,000 for travel, to increase DCR's compliance review, technical assistance and outreach efforts.

Complaint Workload

	FY 1981	FY 1992	FY 1997	Change
Complaint Workload	1,530	1,955	1,318	- 14%
External	1,350	1,789	1,172	- 13 %*
Internal	180	166	146	- 19%**

There has been an overall reduction of 14% since 1981 in complaint workload. However, or more significant is the reduction of complaint filings by 632 or 33% since 1992. The reduction in complaint workload is attributable to two factors. In the external program, the regulations implementing the JTPA, required a Methods of Administration (MOA) be entered into as a condition for receipt of Federal funds. (See explanation of MOA below). In the internal program, the percentage reduction of complaint filings was 19%. This is attributable to a reduction in the DOL workforce of 24%.

DCR Program Priorities

Voluntary Compliance Activities

DCR's primary focus in the external program is to promote voluntary compliance by grant recipients of the applicable nondiscrimination laws. Voluntary compliance is achieved in a variety of ways, through the use of a MOA instrument, education, outreach, technical assistance, and conciliation efforts. DCR's FY 1998 program priorities are as follows:

Use of MOA Agreement

First, the nondiscrimination provisions of the JTPA regulations require, as a condition of receipt of JTPA funds, the governor of each state to enter into a MOA agreement with DOL. The purpose of the MOA was to ensure that each state has in place a viable equal opportunity system to assure equal opportunity in the delivery of services of the JTPA program. This model has worked well in a block grant program to provide for maximum coverage for program participants, thereby reducing the need to file complaints at the federal level. As indicated above, the number of complaints filed during the last five years fell from 1789 to 1172.

In FY 1998, we will afford each state the opportunity to update their MOA. A desk review will be made of each MOA. Those MOAs, which meet the minimum levels of compliance, will be targeted for compliance reviews, in FY 1999.

Education

A second method for achieving voluntary compliance is through education. Each year a national EO conference is held in Washington which is attended by representatives from each state. The purpose of the conference is to provide continuing updates on legislation, recent developments in the law, and training in running an effective equal opportunity program within the state.

In FY 1998, four mini-conferences will be held in the east, west, south, and central regions of the country. This will allow more grant recipients to take advantage of training to learn more about their responsibilities under the law and to provide a deterrent effect.

Outreach

Third, opportunities for education also exist through outreach activities. DCR is called upon throughout the year to speak at a variety of forums. For example, in the first quarter of this fiscal year, presentations will be made to the NAACP and AARP. There is a great desire as demonstrated by the various speaking requests received, to learn more about the area of civil rights, and in particular about the Americans with Disabilities Act.

Technical Assistance

Fourth, in addition to the national conference, in response to requests received from the states, technical assistance visits are made. Currently, we receive more requests for technical assistance visits than we are able to accommodate in a given year. Notwithstanding, we make every effort to respond to these requests within available resources.

During FY 1998, in addition to these technical assistance visits, we will be working with Job Corps staff and contractors to address certain program accessibility issues in the Job Corps program.

Conciliation

Finally, in both the compliance review and complaint processing activities, grant recipients are encouraged to enter into conciliatory agreements where possible.

To enhance this ongoing effort, we will be encouraging each of the states to enhance conciliation efforts by the introduction of alternative dispute resolution in their complaint process so that in the subsequent years alternative dispute resolution will be universally available.

This ultimately should further reduce the number of complaint filings and at the same time result in a direct cost avoidance savings to the government.

Other Enforcement Priorities

In addition to the voluntary compliance activities described above, DCR is looking at several issues related to hiring practices, screening or channeling of participants, language accessibility, and accessibility issues related to the employment of people with disabilities. Each is an emerging civil rights issue directly related to the changing demographics of the civilian labor force in this country. Complaint activity is expected to increase in these areas in the coming years.

DOJ Needs

DOJ has responsibility for coordination of the various civil rights programs. Limited resources has diminished their ability to perform this function in the most effective manner. Additional resources are needed at DOJ to serve as a clearinghouse for Federal agencies for best practices in the future as we continue to move toward a more block grant approach to federal financial assistance.

For example, the Civil Rights Commission reported that DOL was the only agency with Title VI enforcement responsibilities that was using an MOA instrument. We have worked with DOJ this past year to use the MOA as a model for the Federal government to assure consistency in approach. Uniformity of approach will go a long way to improving coordination among the agencies in strengthening Title VI enforcement.

Another example is the use of testers. Both HUD and EEOC have used "testers" in their enforcement arena. It would be useful if DOJ could develop some guidelines that could be used by other Title VI agencies to use this method to identify discriminatory practices.

DOJ could also assist in avoiding duplication of effort among the Title VI agencies, but providing a forum for sharing issues and concerns, and working collaboratively on ways to address them.

Conclusion

While it is true that every individual has a right to pursue a claim of discrimination in the judicial system, most of the individuals who file a complaint with the Federal government, lack the requisite resources to file a civil action. It is, therefore, important that the Federal government continue to act as a protector of workers' civil rights if we are truly committed to ensuring that our citizens in fact enjoy the constitutional right to equal protection and due process. The Civil Rights Commission Report on Title VI activities provides a good overview of the current status of Federal government activity in this area.



SEP 15 1997

MEMORANDUM FOR ELENA KAGAN
DEPUTY ASSISTANT TO THE PRESIDENT
DOMESTIC POLICY COUNCIL

FROM: Isabelle Katz Pinzler *IKP*
Acting Assistant Attorney General
Civil Rights Division

RE: Work of the Civil Rights Division

OVERVIEW

The mission of the Civil Rights Division of the Department of Justice is to serve as the chief civil rights enforcement agency of the federal government. The Division has primary responsibility for federal civil rights litigation, and has certain coordination and public education responsibilities as required by law or executive order. The civil rights laws of the United States provide both criminal and civil protections (depending on the law) on the basis of a number of factors, including race, color, religion, sex, national origin, disability, age, familial status, citizenship status, marital status, and source of income, in employment, education, public accommodations, housing, lending, programs receiving federal financial assistance, and in other areas. Specifically, the Attorney General has delegated to the Division primary litigation authority for enforcement of the Civil Rights Act of 1964, the Fair Housing Act, the Equal Credit Opportunity Act, the Americans with Disabilities Act, and a number of criminal and civil statutes. The Division also enforces federal constitutional and statutory rights in institutions covered by the Civil Rights of Institutionalized Persons Act.

The Division has a number of general goals:

1. To reduce significantly police and other official criminal misconduct and to eliminate or reduce substantially reduce violent activity by private citizens (including organized hate groups) against others because of their race, religion, national origin or gender.
2. To prevent and eliminate systemic barriers to full participation of minorities in the electoral process.
3. To enforce the laws prohibiting discrimination in employment, housing opportunities and credit transactions, and educational opportunities.
4. To protect the constitutional and statutory rights of institutionalized persons.

5. To ensure that public services, programs and activities do not discriminate on the basis of disability and to ensure that public accommodations are available to persons with disability.
6. To enforce the law concerning immigration related unfair employment practices.

BUDGET INFORMATION AND SECTION DESCRIPTIONS/WORKLOAD

The Division has a 1997 budget of nearly \$62.5 million, and employs approximately 560 persons, including more than 250 attorneys, in 11 sections [1996 representative workload samples are approximate]--

Administrative--runs the Office of Redress Administration (processes claims under the Civil Liberties Act of 1988 for persons of Japanese ancestry interned during World War II) and processes Freedom of Information Act requests, as well as providing administrative support divisionwide

Appellate--handles all appeals of Division cases [~170 matters received, ~125 briefs filed]

Coordination and Review--coordinates enforcement of laws that prohibit discrimination by recipients of federal financial assistance [~1200 complaints received, ~100 agency requests for assistance]

Criminal--enforces criminal civil rights laws that prohibit police misconduct, hate crimes, church burnings, slavery, interference with right to reproductive health services [~10,000 complaints; ~80 new cases filed]

Disability Rights--enforces laws that prohibit discrimination on the basis of disability [~1000 investigations started, ~23 cases filed, ~100,000 requests for technical assistance received]

Education--enforces laws prohibiting discrimination in education [~320 ongoing investigations, ~210 cases pending]

Employment--enforces laws prohibiting discrimination by state and local government employers [~5,000 referrals from EEOC, ~11 new cases filed]

Housing and Civil Enforcement--enforces laws prohibiting discrimination in housing, lending, credit, and public accommodations [~200 investigations conducted, ~60 new cases filed]

Office of Special Counsel for Immigration Related Unfair Employment Practices--enforces laws prohibiting employment discrimination based on national origin and citizenship status [~400 complaints received, ~11 cases filed, ~7,000 calls to the toll free assistance hotline]

Special Litigation--enforces federal laws and constitutional rights of persons confined in certain state and local institutions, civil cases of interference with reproductive rights, civil cases of a pattern or practice of police misconduct. [~3000 complaints, ~26 new investigations opened, ~10 new cases filed]

Voting--enforces laws prohibiting discrimination in voting [~19,000 voting changes reviewed for discrimination, ~ 20 new cases filed]

The sections work closely with other associated federal agencies (e.g., Housing Section works with HUD, Employment Section works with the Equal Employment Opportunity Commission, Education Section works with the Department of Education, Coordination and Review works with all agencies that provide Federal financial assistance), to coordinate activities, provide training and receive referrals as set forth by applicable law.

For the past three years, funding for the Division has remained flat, resulting (due to mandatory increases and inflation) in a net decrease of resources for the Division. In order to maintain an optimal vigorous enforcement program for the Division, a budgetary increase of approximately 20% would be required.

Attached is a summary of the highlights of the Division's work under the Clinton Administration.

CIVIL RIGHTS DIVISION ACCOMPLISHMENTS SUMMARY

Since the Administration took office, the Division has made substantial accomplishments in each of the areas of civil rights enforcement. Major accomplishments include:

▶ **Criminal Prosecution:** The Division remains strongly committed to the vigorous prosecution of criminal violations of the civil rights laws.

◀ In Fiscal Year 1996, the Division received 11,721 complaints, reviewed 10,129 complaints and investigated 2,619. 70 new matters were taken to the Grand Jury, and the Division has had a prosecutorial success rate of 87%. Already in 1997, the Division has received 6,000 complaints alleging criminal interference with civil rights.

◀ The Division filed 42 cases involving racial violence charging 66 defendants, the highest number of cases and the second highest number of defendants ever charged in one year.

◀ The Criminal Section maintained an overall 89% success rate.

◀ The Criminal Section is an integral part of the National Church Arson Task Force (NCATF), which is led by the Assistant Attorney General for Civil Rights, together with the Treasury Assistant Secretary for Enforcement. This Task Force, established to investigate a rash of suspicious fires in houses of worship, also includes representatives from the FBI, the Bureau of Alcohol, Tobacco and Firearms, the United States Attorneys, the Community Relations Service, the Criminal Division, and the U.S. Marshals in the Task Force has deployed over 200 ATF and FBI investigators around the country to investigate these fires. The Task Force is also coordinating closely with state and local law enforcement officials in our prosecution efforts, and in our attempts to prevent fires before they happen.

◀ As of July 2, 1997, the NCATF is investigating approximately 449 fires that have occurred at houses of worship since January, 1995.

◀ Progress toward resolving these cases is being made. Many of the incidents investigated have been solved, mainly by a combination of federal and local arrests and prosecutions. Since 1996, arrests of 214 suspects have been made in connection with over 158 fires at churches and other houses of worship.

◀ The Division has placed a special emphasis on hate crimes where serious injury or death results. For example:

◀ In Riverside County, California, Division attorneys are presenting to a federal grand jury allegations of excessive use of force by deputy sheriffs during the televised apprehension of two undocumented aliens

◀ Department Attorneys and the USAO in St. Petersburg, Florida are reviewing

evidence regarding the October 24, 1996, shooting of an African American teenager by a Florida police officer, resulting in several nights of civil disturbance. A state grand jury failed to return charges against the officer.

◄ On February 10, 1997, a jury in Brooklyn, N.Y. convicted both defendants on criminal civil rights charges for the stabbing death of Yankel Rosenbaum during a civil disturbance in the Crown Heights Section of Brooklyn.

◄ In Richland, Mississippi, four members of a neo-Nazi skinhead organization, pled guilty to conspiracy and interfering with the housing rights of an interracial couple by throwing a Molotov cocktail at their trailer home.

◄ Three defendants, one of whom is a racist skinhead and a member of the white supremacist group "South Bay Nazi Youth," were convicted of a civil rights conspiracy after they drove through the streets of Lubbock, Texas, hunting African-American men, luring them to the conspirators' car and shooting the men at close range with a short-barreled shotgun. One victim died, one was seriously wounded in the face and another had a finger blown off.

◄ In Livingston, Texas, six defendants pled guilty to civil rights charges for beating randomly selected African-American men with a rifle and a rodeo belt buckle, and punching them repeatedly as they tried to escape. The defendants had been angered at seeing other black men at a night club in the presence of white women. The adult defendants were given prison sentences ranging from 20 to 43 months.

◄ Five skinheads were sentenced to terms of imprisonment ranging from 16 to 49 months for conspiracy after beating an African-American man while he and his wife, who is white, were in a public park in Iowa.

◄ Two defendants were sentenced to 81 months in prison after being convicted of conspiracy and housing interference in connection with a drive-by shooting into the homes of two African-American women in Alma, Georgia.

◄ In Livermore Falls, Maine, two defendants were sentenced to 70 and 88 months following their guilty pleas to civil rights charges after threatening four Latino victims, chasing them by car away from the store, and firing shots at the victims' fleeing car, wounding one victim in the arm.

► **Police Misconduct Initiative:** The Division has developed a comprehensive initiative to address police misconduct.

◄ In 1995, at the Attorney General's direction, the Civil Rights Division launched an initiative on police misconduct. The initiative's goal is to establish and

implement a comprehensive approach to combat and prevent law enforcement misconduct, through deterrence, effective training, and prevention. To achieve this goal, we have undertaken efforts to improve coordination between our criminal and civil enforcement efforts, and between the different modes of civil enforcement.

◀ In February, 1997, we filed suit against the City of Pittsburgh and its police department, and contemporaneously filed a consent decree. The decree provided for the training and supervision of police officers.

◀ The Division has filed two suits using the provision of the 1994 Crime Control and Prevention Act. One involves the conduct of law enforcement officers in Iberia Parish, Louisiana. The other involves juvenile justice facilities in Kentucky. We successfully entered a consent decree in the Kentucky suit.

◀ The Division is also working to prevent police misconduct by encouraging law enforcement agencies to develop and implement management practices that optimize integrity within the force.

▶ **Voting Rights:** One of the Division's most important missions is to ensure that all Americans enjoy a full and effective right to vote, free from unlawful discrimination.

◀ The Division is fully and vigorously enforcing the National Voter Registration Act (NVRA) -- the so-called "Motor Voter" law. The Division's litigation has successfully defended Congress's constitutional authority to enact the NVRA and has brought states that originally resisted the law -- California, Illinois, Michigan, Mississippi, Pennsylvania, South Carolina, and Virginia -- into compliance. The Division is monitoring other states for full compliance, and has recently challenged New York's NVRA procedures.

◀ The Division has reviewed more than 12,500 submissions under Section 5 of the Voting Rights Act and objected approximately 150 times on the grounds that proposed changes have violated the Act. In 1996, the Attorney General reviewed approximately 4,600 submissions involving 18,000 separate voting changes. In that year, the Division filed 18 new cases.

◀ The Division is committed to its efforts to achieve equal voting opportunities for all Americans, including minorities who live in states that have a history of voting discrimination. We have defended racially fair redistricting plans against claims that they are unconstitutional "racial gerrymanders," and we will continue to do so consistent with the Supreme Court's legal standards.

◀ On March 14, 1997, a federal court in Georgia approved remedial redistricting plans for the Georgia house and senate that we negotiated that preserve minority

voting rights under the Supreme Court's standards.

◀ On April 24, 1997, a federal court in Louisiana upheld the constitutionality of a majority-black parish council district drawn to remedy a violation of the VRA.

◀ The Division's vigorous enforcement of the minority language provisions of the Voting Rights Act and Section 5 of the Act resulted in new and expanded protections of Native Americans' right to be provided election information and assistance in their own languages in counties in New Mexico and protections of Chinese Americans' right to be provided Chinese language election materials and assistance in Alameda County, California, and New York City. We have established a Minority Language Task Force to enhance our enforcement of these important protections.

◀ Pursuant to our authority under the Voting Rights Act, the Division has monitored numerous elections around the country in order to ensure that minority citizens are able to cast their ballots, have those ballots counted and are able to receive assistance -- including effective assistance in Native American languages, Chinese, and Spanish -- from the person of their choice while casting their ballots.

▶ **Housing and Public Accommodations Discrimination:** The Division has made attacking housing and lending discrimination a high priority.

◀ Over the past five years, the Department has filed 38 pattern and practice testing cases with evidence generated by the fair housing testing program. All of these cases involve rental situations and often involve agents misrepresenting the availability of rental units based on race or national origin.

◀ The Division conducted 207 housing discrimination investigations in 1996 alone, and resolved 92 cases by either consent decrees or trials.

◀ The Division has filed twelve lending discrimination suits, all of which have settled by Consent Decree. These suits have been widely publicized within the banking industry and have had a positive impact on industry practices. Among them, in August 1994, the Justice Department settled a lawsuit against Chevy Chase Bank for allegedly refusing to issue loans in predominantly African American neighborhoods because of the racial identity of those neighborhoods. The results of this case have been quite positive, with the bank making significantly more loans in African American neighborhoods -- by the end of 1994 they recorded a 536 percent increase in the District of Columbia and a 266 percent increase in Prince George's County, Maryland.

◀ The Division resolved a major lending discrimination suit against the Northern Trust bank in Chicago, Ill., resulting in monetary relief of \$700,000 for victims of the discrimination.

- ◀ In September, 1996 the Division reached a settlement with the Long Beach Mortgage Company, which agreed to pay \$3 million to African-American, Hispanic, female and elderly borrowers alleged by the Division to be victims of the company's unlawful pricing practices. The Division charged that the price of home mortgage loans at Long Beach were unlawfully influenced by the race, national origin, sex and age of the borrowers. The company also agreed to spend another \$1 million educating consumers on how to shop for the most advantageous loans.

- ◀ The Division is committed to ending discrimination in insurance practices. We have settled with four of the largest insurance companies in the nation, which together write almost 50% of the nation's homeowners insurance policies.
 - ◀ In March, 1997, we settled our lawsuit against Nationwide Insurance Companies. We had compiled evidence that of intentional discrimination in industry practices. The settlement, the most comprehensive in such a case, required the expending of over \$13 million in funding in ten cities for community investment.

 - ◀ We recently settled a major case charging that American Family Insurance Company, the largest provider of homeowners' insurance in Wisconsin, violated the Fair Housing Act, where the company had failed to offer homeowners' insurance in the predominantly African American community in Milwaukee to the same extent and on the same terms that it offered such insurance in the majority white areas of the city and its surrounding suburbs. The consent decree provides for injunctive relief, \$5 million in monetary damages to individual victims of discrimination, and over \$9 million in low-interest loans for the formerly excluded communities.

- ◀ Large awards were also obtained in fair housing cases. For example, in a case alleging race discrimination at a large apartment complex in south Florida, a consent decree awarding \$1.2 million was approved by the court. In a race case resulting from the Program's fair housing testing program in the Detroit area, a settlement totaling \$425,000 was approved by the court. In the 1996 fiscal year, over \$15 million in monetary relief was obtained.

- ◀ The Division recently obtained a record \$475,000.00 settlement from its Fair Housing Testing Program against a Detroit area apartment complex that refused to rent to African-Americans and families with children.

- ◀ The Division resolved a major public accommodations suit against the Denny's restaurant chain. In addition to substantial monetary relief for individual victims of discrimination, the settlement included significant provisions to prevent future discrimination. The Department is presently looking for ways to strengthen and broaden

its ability to combat discrimination in public accommodations.

► **Employment Discrimination:** The Civil Rights Division is responsible for enforcing Title VII of the Civil Rights Act of 1964 against state and local governments.

◄ During the Clinton Administration, the Division has filed nearly sixty new lawsuits charging both individual discrimination and patterns and practices of employment discrimination. Since 1996, the Division has filed 19 new cases and has settled 22 new or pending cases.

◄ The Division continues to bring suits challenging both cognitive and physical strength and agility tests used by public agencies that have a disparate impact on minorities and women but that do not predict success on the job, including successful lawsuits in New Nassau County and Louisiana State Police examinations.

◄ Presently, the Department is in discovery in suits against tests used by the New York City Board of Education for custodial workers and the South Eastern Pennsylvania Transportation Agency.

◄ The Division has also obtained orders providing injunctive and make-whole relief for over 2,000 victims of discrimination. This is a new record.

◄ The Division is also currently administering the distribution of over \$10 million in damages to victims of employment discrimination.

◄ The Division has obtained \$7.2 million in back pay and benefits to an estimated 1,000 female victims of a gender-restricted hiring and assignment policy of the Arkansas Department of Corrections.

◄ The Division has been deeply involved in the President's review of affirmative action and in the preparation of a proposal to reform affirmative action in government procurement. Several federal statutes have now been challenged. The Department is committed to the vigorous and effective defense of federal affirmative action programs.

► **Citizenship and National Origin Discrimination:** In April 1994, the Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) merged with the Civil Rights Division. OSC's mission is to eliminate workplace discrimination based on a worker's citizenship status, national origin, or the employment eligibility verification process.

◄ The Division has investigated 1,691 discrimination charges and initiated 125 independent investigations. During this period, the Division filed 44 complaints and negotiated 158 formal settlements of charges and 26 settlements of independent investigations.

◀ In October 1996, the Division negotiated a settlement agreement with Wal-Mart Stores, Inc. of a complaint which alleged that one of its locations had engaged in a pattern or practice of requiring aliens to produce burdensome and unfair documentation.

◀ In May, 1997, the Division filed a complaint against Schmitz Corporation d/b/a/ Little Oak German Restaurant for its refusal to hire a U.S. citizen of Filipino descent because he could not produce an INS-issued document. The restaurant believed the complaining party to be an alien because of his "foreign" appearance.

◀ The Division has stepped up its efforts to deter employment discrimination by assessing civil penalties in each meritorious case.

◀ The Division obtained an important ruling in U.S. v. Guardsmark, which held that all work-authorized individuals are protected under the "document abuse" provisions of the Immigration Act of 1990 (IA'90). In settling this case, the Division successfully negotiated the largest civil penalty ever assessed under the antidiscriminatory workplace provisions of the statute.

◀ As part of its public outreach program, the Division obtained an automated employer hotline (1-800-255-8155, TDD 1-800-362-2735) aimed at combating employer confusion under the Immigration and Nationality Act (INA). The hotline, along with its innovative automatic "fax-back" feature, has been extremely successful and provided up-to-date information to over 7564 callers between July, 1994 and December, 1995.

▶ **Educational Opportunities:** The Division continues to be committed to eliminating the vestiges of segregation in elementary and secondary education as well as in state institutions of higher education.

◀ In the past year, the Division intervened in two private suits, Sinajini v. San Juan County Sch. Dist. and Meyers v. San Juan County Sch. Dist., to challenge allegations that American Indian students in Utah were being denied equal educational opportunities because of their race and limited-English speaking proficiency.

◀ The Division continued its challenges to the formerly separate higher education systems in Mississippi and Alabama. In Alabama, we obtained relief which included for the first time the establishment of endowments for the state's historically Black schools.

◀ The Division continues to further the progress of school desegregation in cases involving over 500 school districts located in the formerly de jure states.

◀ In response to recent court and legislative actions threatening the voluntary use of race by school districts with K-12 grades, the Department is working with the Department of

Education to establish policies and guidelines regarding permissible programs to permit the educational value of preparing students to live in a pluralistic society and is prepared to support narrowly tailored desegregative measures to further that goal.

◀ In anticipation of future litigation involving challenges to affirmative action programs in colleges and universities spawned by the 5th Circuit's ruling in Hopwood, the Department has established a post-Hopwood working group which has been involved in litigation in Texas, and is presently considering involvement in higher education cases.

▶ **Coordination and Cooperation with other Federal Agencies:** The Division coordinates the enforcement by Federal agencies of various statutes that prohibit illegal discriminations in programs that receive Federal financial assistance.

◀ The Division, in conjunction with the Environment and Natural Resources Division, is discussing and consulting with the EPA on its proposed policy for enforcement of environmental justice and the impact of environmental actions on minority and low income communities as they apply to environmental permitting programs. We are coordinating with the EPA as it develops its policy. The Division is presently examining two private environmental impact cases to determine if the participation of the Department is warranted.

◀ As part of the Administration's efforts to reinvigorate the effective, consistent, and timely enforcement of grant-related civil rights statutes, as required by Executive Order 12250, the Division held individual meetings with over 26 Federal grant-giving agencies. The purposes of these meetings were to identify questions and problems, determine training needs, and share worthwhile practices and procedures utilized by various agencies. As an outgrowth of the meetings, the Division has conducted training sessions for 14 Federal agencies and the State of Tennessee, which has a State law equivalent of Title VI. In addition, an agency advisory group was established to identify current issues and build a consensus for proposed solutions. The group, which is made up of 12 Federal agencies, will meet with the Division every month. This year, the Division completed a comprehensive Title VI legal manual and an investigations procedures manual which includes a "how-to" program compliance section with case studies and investigatory pointers.

◀ The Division developed a strategy for publicizing its responsibilities as a result of entering into a memorandum of understanding (MOU) with the Office of Justice Programs (OJP). The MOU gave the Division responsibility for investigating complaints of services discrimination on the basis of race, color, sex, national origin, and religion filed against law enforcement agencies receiving assistance from the Justice Department. Pursuant to this strategy, the Division developed and had approved for distribution a complaint form and a brochure advising individuals of their rights under grant-related civil rights laws. These materials will be distributed at a grass roots level by various civil rights

organizations. In addition, the Division developed a "Question and Answer" brochure advising law enforcement agencies of their responsibilities under grant-related civil rights laws. Distribution is expected to begin soon. Finally, the Division met with numerous law enforcement interest groups advising them of its mission and seeking their advice as to how best to publicize it.

◀ The Division took several steps to increase public awareness of its mission and activities. After an over 10 year hiatus, the Division revived the Civil Rights Forum. This quarterly publication advises Federal agencies, interest groups, and interested individuals about policy developments concerning enforcement of grant-related and other civil rights laws, recent court decisions, and other items of interest. In addition, the Division continued to staff an educational center at various conventions and meetings, answering questions and providing educational material about its activities.

◀ As part of its outreach, the Division distributed the 60-second radio public service announcements it had produced, both in English and Spanish, that described the programs and activities covered by Title VI and explained how and where to file complaints of discrimination.

▶ **Redress for Japanese-American Internees:**

◀ The Division issues monetary redress to American citizens and permanent aliens of Japanese ancestry who were forcibly evacuated, relocated, and interned by the United States Government during World War II. As of the end of FY 1995, the Division authorized redress payments totalling over \$1.5 billion in nearly 80,000 cases. Current funding levels provide for payment to 82,250 individuals.

▶ **Increased Fine and Debt Collection:**

◀ The Civil Rights Division collected or had funds disbursed to aggrieved parties for judgments awarding restitution, penalties and fines totaling \$25,132,408 in fiscal year 1995. This banner year represents a 50% increase over FY 1994 awards of \$12.5 million, and a 407% increase over the previous five year average.

▶ **Appellate:**

◀ In fiscal year 1996, the Department filed 124 briefs and other substantive papers involving civil rights matters in the courts of appeals and the Supreme Court. This year, the Division has already filed 72 briefs of substance regarding such matters as hate crimes, the Fair Housing Act, National Voter Registration Act, and environmental justice. In 1996, the Division had an 81% success rate in the Courts of Appeals on merits cases.

◀ The Division filed briefs as amicus in challenging California voters approved Proposition

209, which amended the state constitution to prohibit state affirmative action based on race or gender. In our briefs, we argued that Proposition 209 is unconstitutional because it places unique and extraordinary burdens on the ability on minorities and women to obtain such legislation through the ordinary political process. The Ninth Circuit Court of Appeals rejected this argument, and the case is expected to be appealed to the Supreme Court.



UNITED STATES
COMMISSION ON
CIVIL RIGHTS

624 Ninth Street, N.W.
Washington, D.C. 20425

Race Int Policy - Civil Rts Ent

September 8, 1997

Via: Facsimile & Messenger

MEMORANDUM FOR ELENA KAGAN

Domestic Policy Council, White House

FROM:

STEPHANIE Y. MOORE
General Counsel, USCCR

Stephanie Y. Moore

SUBJECT:

Agency Profile

Below is a profile of the U.S. Commission on Civil Rights consistent with your request. Should further detail or additional information be needed please do not hesitate to contact me at (202)376-8368 or FAX (202) 376-7558.

Mission Statement

The U.S. Commission on Civil Rights is an independent, bipartisan agency first established by Congress in 1957 and reestablished in 1983. The Commission is directed to

- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, age, disability, or national origin, or by reason of fraudulent purposes;
- Study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice;
- Appraise Federal laws and policies with respect to discrimination or denial of protection of the laws because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice;
- Serve as a national clearinghouse for information in respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin;
- Submit reports, findings, and recommendations to the President and Congress; and
- Issue public service announcements to discourage discrimination or denial of equal protection of the laws.

To accomplish its mission, the Commission is authorized to conduct public factfinding hearings and to issue subpoenas for the attendance of witnesses and the production of documents or other matter. The Commission, including its advisory committees, and any person under its supervision or control, is expressly prohibited from (1) inquiring into or investigating any membership practices or internal operations of any fraternal organization, any college or

university fraternity or sorority, any private club, or any religious organization and (2) studying and collecting, making appraisals of, or serving as a clearinghouse of any information about laws and policies of any governmental entity in the United States with respect to abortion.

Organizational Structure

The Commission consists of eight Commissioners, four of whom are appointed by the President, two by the President pro tempore of the Senate, and two by the Speaker of the House of Representatives, each for six year terms. Not more than four of the members shall at any one time be members of the same political party. Presently, the Commission membership consists of three Independents, two Republicans, and three Democrats. Of that group, four are Democratic appointees of the President or Congress, and four are Republican appointees of the President or Congress.

The Administrative head of the agency is the Staff Director, who is appointed by the President with the concurrence of a majority of the Commission. Ruby G. Moy assumed the position of Staff Director on June 30, 1997 after a six month vacancy in the position. Other offices of the Commission include: the Office of General Counsel, the Office of Civil Rights Evaluation, the Public Affairs Unit, the Congressional Affairs Unit, the Personnel Division, Budget and Finance Division, Administrative Services and Clearinghouse Division, and the Regional Programs Unit, consisting of six regional offices (Eastern Regional Office, Southern Regional Office, Midwestern Regional Office, Central Regional Office, Rocky Mountain Regional Office, and the Western Regional Office). In addition, the Commission has established State advisory committees (SACs) in each of the fifty States and in the District of Columbia.

Personnel

In addition to the eight member Commission and their assistants, the Commission consists of under one-hundred full-time employees. The bulk of the Commission's employees are stationed at its headquarters office in Washington, D.C. The remaining employees are stationed in the regional offices.

Complaints

CD The Commission's Office of Civil Rights Evaluation (OCRE) provides a complaints referral service. Civil rights complaints are received by the OCRE via correspondence, Congressional referrals, walk-ins and the Commission's toll-free complaint line. Complaints are referred to the appropriate agency on behalf of the complainant. Reports enumerating the basis (race, gender, etc.) and subject (employment, housing, etc.) of each complaint are compiled monthly.

Programs

The Office of Civil Rights Evaluation (with a staff of 7-10 employees) also conducts studies of Federal enforcement of civil rights laws. By statute, the Commission is required to produce annually a report, with findings and recommendations, evaluating the quality of Federal civil

rights enforcement. The Office of General Counsel (with a staff of 10-15 employees) conducts public factfinding hearings to study and collect information within its jurisdiction and produce reports of its findings and recommendations. Some of the Commission most recent projects include the OCRE's evaluation of over a dozen federal agencies and their enforcement of Title VI. The OCRE has most recently concluded a study of the Department of Education's enforcement relating to disability, limited English proficiency, gender equity in math and science, and ability grouping of minority students. The Office of General Counsel (OGC) has been engaged in a multi-year project entitled *Racial and Ethnic Tensions in American Communities: Inequality, Discrimination, and Poverty*. As part of this project, the OGC has conducted factfinding hearings in Washington, D.C.; New York, New York; Los Angeles, California; Chicago, Illinois; Miami, Florida; and Greenville, Mississippi. Finally, the Commission and its SACs have been involved via community forums and/or meetings with government officials in investigating the rash of church burnings in the South; the outbreak of violence and strained police-community relations in St. Petersburg, Florida; and, the allegations of racial discrimination by the Department of Agriculture against minority employees of the department and against black farmers.

Adequacy of Agency Resources

The Commission on Civil Rights experienced a severe budget cut in the early 1980's resulting in the reduction in its workforce from over three-hundred employees to its current levels of under one-hundred. Similar cuts were imposed on agencies, departments and divisions with civil rights enforcement responsibility throughout the Federal government. A study by this Commission, a copy of which is attached, entitled *Funding Federal Civil Rights Enforcement* found a gross disparity between agency resources and agency substantive responsibility, and urged action to ensure adequate resources to provide full and effective enforcement of the Nation's anti-discrimination laws. The content of this study emphasizes the need for financial commitment to civil rights enforcement. The existence of the study is but one example of the continuing need for an independent agency with the authority, and adequate resources, to assess the quality of civil rights laws and policies.

In the past few years, the Commission has not obtained increased funding from Congress, and this past year, operated without reauthorization. The Commission anticipates that, for the third consecutive year, it will be funded at \$8.74 million for FY 1998.



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, D.C. 20507

Race Int Policy - Civil Rts Ent.

OFFICE OF LEGAL COUNSEL

FAX TRANSMITTAL COVER SHEET

DATE: September 5, 1997

PLEASE DELIVER TO:

NAME: Eleana Kagan

AGENCY/OFFICE DEPT.: The White House/Office of Policy Development

FAX NUMBER: 456-2878

TELEPHONE NUMBER: 456-5584

THIS MESSAGE IS BEING SENT BY:

NAME: BENITA LUCY FOR ELLEN VARGYAS

TELEPHONE NUMBER: 202/663-4637

THIS MESSAGE HAS 4 PAGES PLUS THIS COVER SHEET.

THIS FAX NUMBER IS 202/663-4639.

REMARKS:

Attached is an overview of the Agency, including its Mission, Statutory Authority and Enforcement Activities. If I can be of further assistance, please do not hesitate to call me.

Ellen

IF YOU HAVE ANY PROBLEMS RECEIVING THIS TELECOPY MESSAGE,
PLEASE CALL THE FOLLOWING NUMBER IMMEDIATELY, 202/663-4637.
THANK YOU.



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AN OVERVIEW

Mission

The mission of the EEOC, as set forth in its strategic plan, is to promote equal opportunity in employment through administrative and judicial enforcement of the federal civil rights laws and through education and technical assistance.

Statutory Authority

The U.S. Equal Employment Opportunity Commission (EEOC) was established by Title VII of the Civil Rights Act of 1964 and began operating on July 2, 1965. The EEOC enforces the principal federal statutes prohibiting employment discrimination, including:

- Title VII of the Civil Rights Act of 1964, as amended, which prohibits employment discrimination on the basis of race, color, religion, sex, or national origin;
- the Age Discrimination in Employment Act of 1967, as amended (ADEA), which prohibits employment discrimination against individuals 40 years of age and older;
- the Equal Pay Act of 1963 (EPA), which prohibits discrimination on the basis of gender in compensation for substantially similar work under similar conditions;
- the Title I of the Americans with Disabilities Act of 1990 (ADA) which prohibits employment discrimination on the basis of disability in both the public and private sector, excluding the federal government; and
- Section 501 of the Rehabilitation Act of 1973, as amended, which prohibits employment discrimination against federal employees with disabilities.

EEOC Enforcement Activities

Overview

The EEOC carries out its work at headquarters and in fifty field offices throughout the United States. Individuals who believe they have been discriminated against in employment begin our processes by filing administrative charges. Individual Commissioners may also initiate charges that the law has been violated. The Commission must investigate all charges to determine whether there is reasonable cause to believe that discrimination has occurred. If the EEOC finds "cause," it must then seek to conciliate the charge to reach a voluntary resolution between the charging party and the respondent. If conciliation is not successful, the EEOC may bring suit in federal court. Whenever the EEOC concludes its processing of a case, or earlier upon the request of a charging party, it issues a "notice of right to sue" which enables the charging party to bring an individual action in court. In addition, the

Commission issues regulatory and other forms of guidance interpreting the laws it enforces, is responsible for the federal sector employment discrimination program, provides funding and support to state and local fair employment practices agencies (FEPAs), and conducts broad-based outreach and technical assistance programs.

Administrative Enforcement

EEOC has reinvented its administrative enforcement program to effectively manage the between 80,000 and 85,000 charges that are filed annually. Under the Commission's charge processing system:

- Charges are prioritized into one of three categories for purposes of investigation and resource allocation. "Category A" charges are priority charges to which offices devote principal investigative and settlement efforts. "Category B" charges are those where there appears to be some merit but more investigation is needed before a decision is made on handling. "Category C" charges include non-jurisdictional, self-defeating, or unsupported charges which are immediately closed.
- Settlements are encouraged at all stages of the process.
- The EEOC has launched a mediation-based alternative dispute resolution (ADR) program. The mediation program is guided by principles of informed and voluntary participation at all stages, confidential deliberation by all parties, and neutral mediators.

As a direct result of these initiatives:

- By the end of fiscal year 1996, EEOC's pending inventory was 79,448 charges, a decline of 30% per cent from an all-time high of 111,345 in 1995.
- In fiscal year 1996, the Agency obtained \$145.2 million in monetary benefits for charging parties (excluding litigation awards) through settlement and conciliation.
- As of the third quarter of 1997, the Commission was continuing to resolve charges at a faster pace than they were being filed, further reducing the inventory. At the same time, EEOC obtained monetary benefits for charging parties totaling \$119,854,930. Commissioner's charges accounted for \$11,601,937 of this total.
- The EEOC has made substantial progress in the implementation of its mediation program. From the inception of the program in fiscal year 1996 through the end of the third quarter, fiscal year 1997, EEOC resolved over 550 charges through mediation and obtained benefits of approximately \$7 million for charging parties. Over 1,300 additional cases are awaiting mediation.

money for charging parties is an extreme measurement?

Litigation

In February 1996, the Commission approved its National Enforcement Plan (NEP) which sets out a three-pronged framework for the Commission's enforcement program: prevention of discrimination through education and outreach; the voluntary resolution of disputes where possible; and where voluntary resolution fails, strong and fair enforcement. The NEP also identifies priority areas for litigation, delegates certain litigation decisions to the General Counsel, and directs the EEOC field offices to develop Local Enforcement Plans (LEPs) which tailor the mandates of the NEP to the particular needs and issues of their communities.

The EEOC's litigation program has achieved significant results in the past few years. In fiscal year 1996, EEOC obtained nearly \$50 million in monetary benefits for discrimination victims. For fiscal year 1997, preliminary third quarter reports put the figure at over \$100 million. Among these achievements are:

- an age bias settlement with Lockheed Martin (formerly Martin Marietta) for \$13 million in back pay and 450 jobs for older workers who were dismissed;
- a settlement of approximately \$1.3 million in a sexual harassment case against a management recruitment firm in Minneapolis -- the Commission's largest sexual harassment award to date, also notable for the company's agreement to issue individual letters of apology to the women involved, and to not rehire the harasser; and
- under the ADA, a \$150,000 jury award against Wal-Mart on the related claims of illegal pre-employment inquiry and failure to hire, and a \$5.5 million jury verdict for an employee who was discharged from his job because he has epilepsy. Although that verdict will be reduced based on the statutory cap on damages, the jury's verdict represents the largest ADA award in the Commission's history and sends a powerful message to those who would discriminate on the basis of disability.

State and Local Program

The EEOC contracts with approximately 90 FEPAs to process more than 48,000 discrimination charges annually. These charges raise claims under state and local laws prohibiting employment discrimination as well as the federal laws enforced by EEOC.

Federal Sector Program

The EEOC is responsible for enforcing the anti-discrimination laws in the federal sector. EEOC conducts thousands of hearings every year for federal employees who have filed discrimination complaints. In addition, when a Federal agency issues a final decision on a complaint of discrimination, the complainant can appeal that decision to the EEOC. In fiscal year 1996, EEOC received 10,677 requests for administrative hearings and resolved 8,760 appeals.

The Commission also ensures that the Federal departments and agencies maintain programs of equal employment opportunity required under Title VII and the Rehabilitation Act. Moreover, under

Executive Order 12067, the Commission provides leadership and coordination to all Federal departments' and agencies' programs enforcing statutes, executive orders, regulations, and policies which require equal employment opportunity or which have equal employment opportunity implications.

Outreach Activities

Throughout fiscal years 1995 and 1996, the Commission held a special series of meetings devoted to presentations by invited experts and stakeholders on specific bases of employment discrimination. During this same time frame, EEOC Commissioners conducted over 100 media interviews concerning the reinvention efforts of the EEOC, and addressed numerous stakeholder organizations across the country. This past summer and fall, Commissioners held a series of special fact finding missions in the Pacific Northwest, in the Midwest, and in the St. Louis area that included hearings and round table discussions on the glass ceiling, anti-immigrant, disability, race and other types of workplace discrimination.

In fiscal years 1995 and 1996, EEOC held 92 Technical Assistance Program Seminars (TAPS), educating over 11,861 individuals in the private sector and state and local governments about EEOC enforced laws. Agency staff made over 1,300 public presentations, reaching over 65,000 people during fiscal year 1996, and responded to thousands of requests for technical assistance. The EEOC responded to more than 500,000 requests from the public for publications, with ADA-related information — often in alternative formats — making up more than half of the responses.

Budget and Staffing

- EEOC's fiscal year 1997 budget appropriation was \$239,738,000, including \$27.5 million for payments to the FEPAs. For fiscal year 1998, the Commission's budget request was \$246,000,000, including \$26,500,000 for the FEPAs.
- ✓ Due to limited budgets, EEOC's FTE complement has fallen from a high of 3,390 in 1980 to 2,680 today. This decline in resources has come at the same time that the agency's enforcement obligations have substantially expanded due to new statutory responsibilities. Charges under the ADA, enacted in 1990, now account for nearly one quarter of EEOC's caseload. In addition, charge filings have increased following the enactment of the Civil rights Act of 1991. The increase has been particularly dramatic with regard to sexual harassment charges. Overall, charge filings have jumped from 62,135 in fiscal year 1990 to a projected 80,000 in fiscal year 1997.
- ✓ [Approximately 90% of the agency's budget is allocated to fixed costs such as salaries, benefits, and rent. This is due to the highly personnel intensive nature of EEOC's work in investigating, resolving and litigating charges. However, it also means that only 10% of the agency's budget is available for such critically important functions as litigation support, technology, and staff training.

Office of Communications and Legislative Affairs
September 1997



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

*Raw Inv Policy -
Civ Rts Enf*

Date: September 5, 1997

To: Elena Kagan

From: Assistant Administrator
Equal Employment Opportunity
and Civil Rights Compliance

Deputy General Counsel

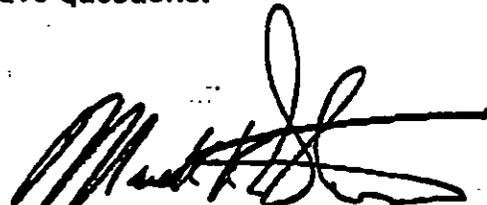
Subject: SBA Title VI Compliance Program

Attached is the Agency's information on our Title VI Compliance Program issues and efforts, as requested during your August 22, 1997 meeting.

Our response is presented in a question and answer format.

It was a pleasure meeting you and we look forward to working with you. Please contact us if you need additional information or have questions.


Erline M. Patrick


Mark Stephens

1. What kind of Programs does SBA have that are covered by Title VI?

Current Department of Justice Issue

Historically, the Department of Justice (DOJ) has permitted SBA to interpret the guaranty on SBA loans as financial assistance covered by Title VI. However, Title VI coordinating officials at the DOJ recently made a preliminary determination that exempts most SBA recipients from Title VI jurisdiction because Title VI explicitly excludes "guaranties" when it defines federal financial assistance. Except for the programs discussed below, all of SBA's financial assistance is rendered through guaranty programs.

SBA OEEO&CRC is awaiting a formal, written opinion from DOJ regarding the applicability of Title VI to the majority of its lending programs.

SBA provides very little direct financial assistance to businesses except through its administration of the Disaster Relief Act. Under that Act, SBA provides economic injury and physical disaster loans to enable companies to recover or survive following a presidential declared disaster. SBA also provides direct disaster relief loans to homeowners affected by a declared disaster.

Small Business Investment Companies (SBICs)

SBICs are formed when private individuals pool their personal resources to become venture capital lenders. All SBICs are licensed by SBA to make equity investments or loans (often convertible into equity at the SBIC's option upon maturity) to capitalize small companies. Some SBICs, referred to as "debtor" SBICs, increase their investment capacity by directly borrowing SBA funds. Debtor SBICs fall under Title VI coverage. Some SBICs, known as 301(d) or Specialized SBICs, are formed for the purpose of assisting businesses owned by socially and economically disadvantaged individuals. Almost all Specialized SBICs combine private capital with direct SBA funds.

*SBA funded
Private
Russell*

Small Business Development Center (SBDC) Program

SBDCs receive some funding directly from SBA. They foster economic development by encouraging entrepreneurialism. SBDCs offer counseling to their business clients concerning accounting, marketing, drafting business plans, accessing capital financing, etc. Services and training from all SBDCs are available on an EO basis.

Many SBDC programs are affiliated with college and university Schools of Business Administration and are covered for nondiscrimination purposes by the schools' EO commitments and monitored by the U.S. Department of Education. DOJ will determine if SBDCs are covered under SBA's Title VI Compliance Program.

Women's Demonstration Program

The Women's Demonstration Program provides women with long-term training and counseling in all aspects of owning or managing a business. There are 54 women's business centers located in 28 states and the District of Columbia. Each center tailors its services to the needs of the local business community.

2. What type of complaints does OCRRC receive under Title VI and how are they handled? Describe how SBA enforces Title VI and SBA Nondiscrimination Regulations. How many complaints are received and what kind of investigations are conducted? Is there a backlog of complaints?

Typically, OCRRC receives from 30 to 40 external complaints or discrimination inquiries annually. There is no backlog of pending cases. Complaint transfers and referrals to other agencies are handled expeditiously as they are received. OCRRC preliminary inquiries are conducted within 30 to 45 days and investigations are conducted and completed within 180 days of being assigned. In accordance with the time frames outlined in SBA SOP 90-30.2, OCRRC responds to complaints filed against these entities in the following manner:

SBA Loan Recipients

- SBA Rules and Regulations prohibit SBA assisted companies from discriminating in their employment and service practices, even if they do not fall within Title VI's jurisdiction. Once received, complaints against recipients are most often transferred to another federal, state or local agency with jurisdiction. When no other agency has jurisdiction to process the complaint, and it is filed against a company with current SBA assistance, the complaint is investigated in accordance with the procedures laid out in SOP 90-30.2. A preliminary inquiry is conducted to evaluate the merit of the allegation(s) and the respondent's response. Relevant documents are requested and reviewed. If the preliminary inquiry indicates the need for a field investigation (i.e., there are unresolved issues regarding the allegations which suggest the possibility that discrimination may have occurred), OCRRC conducts an investigation of the allegations. If a finding of discrimination is made after due process, the SBA Administrator is authorized to withdraw the SBA assistance extended to the firm.

Transfer of Complaints

Complaints are transferred, when possible, for two reasons. First, other agencies often specialize in processing these cases and can do so more cost-effectively than SBA. Secondly, SBA cannot remedy the complainant in the same manner as other authorities. If a recipient is found after due process to have discriminated, SBA can impose its only sanction against the business - withdrawing whatever SBA financial or guaranty assistance remains. This sanction does not provide any measure of direct relief or remedy to the individual who was found to be the victim of discrimination. Short of negotiating this relief as a condition of

voluntarily coming into compliance with SBA's requirements, SBA cannot enforce a "make whole" remedy for the complainant. Once SBA assistance is withdrawn (or repaid), SBA loses its jurisdiction to require nondiscrimination. There have been cases in the past where companies either voluntarily repaid the SBA assistance or, under the threat of having it removed, paid or refinanced their SBA obligation for the purpose of denying SBA the authority to process (or continue processing) discrimination complaints against them.

When complaints are transferred, SBA informs the other agency that SBA has provided assistance to the business concern and if circumstances warrant, may be able to assist in addressing a situation where the respondent is noncooperative or found to have discriminated. SBA will consider using its leverage (sanction) to ensure the respondent responds in accordance with the requirements imposed by the agency handling the inquiry or investigation.

SBA Funded Lending Partners

- OCRC accepts complaints from applicants for commercial loans who allege discrimination against SBA funded lending partners (microlenders or debtor SBICs). Complaints are processed in accordance with SOP 90-30.2. A preliminary inquiry is conducted to evaluate the merit of the allegation(s) and the respondent's response. Relevant documents are requested and reviewed. If the preliminary inquiry determines the need for a field investigation (i.e. there are unresolved issues regarding the allegations which suggest the possibility that discrimination may have occurred), OCRC conducts a full field investigation. If the lender is found after due process to have discriminated and is not willing or able to come into voluntary compliance with SBA nondiscrimination requirements, SBA has the authority to terminate its assistance to the lender.

Non-Recipients and Banks

- OCRC periodically receives complaints from individuals employed by companies with no SBA assistance. Also, SBA often asks OCRC to respond to inquiries from members of the public who write or call SBA with inquiries regarding discrimination by entities completely unrelated to small businesses, i.e. alleged discrimination in a commercial lease terminations, alleged discrimination by a bank in the denial of a (non-SBA) commercial loan, etc. In these cases, the complaint (or complainant) is referred, when possible, to an authority that is empowered to accept and investigate the complaint. OCRC staff often provide technical assistance and counseling to the aggrieved regarding the disputed issues in addition to providing appropriate contact information.

Large Businesses and Government Contractors

- SBA periodically receives complaints from small companies whose owners allege they have been discriminated against by other companies or government agencies. These inquirers are assisted and provided technical assistance regarding their options or recourse under the law. These inquiries sometimes concern

alleged discrimination by a government contractor in the manner it treated a subcontractor or concern the contractor's alleged failure to meet its minority or female utilization goals. These inquirers are generally referred to the appropriate offices of the contracting authority or to the OFCCP in the Department of Labor. OCRC does provide assistance, if possible, in identifying the appropriate authority to handle the inquiry or complaint. OCRC also occasionally receives complaints alleging a company was discriminated against because of its small size. Callers are informed that size is not an EO basis and may be referred to the SBA Office of Advocacy for further advice. Complainants sometimes contact OCRC field offices as a result of being listed as "Civil Rights Compliance" under the SBA heading.

3. Are there policy proposals pending or OCRC initiatives that require money to implement?

OCRC has drafted a proposed "EO Guide for Small Employers." It is intended to be a concise and useful guide for smaller businesses covering what they need to know to comply with a variety of civil rights requirements. Ultimately, this pamphlet should be distributed to all SBA recipients of financial assistance with at least fifteen employees in order to assure they have the information and tools necessary to meet SBA nondiscrimination requirements.

OCRC also would like to see copies of the Guide available to small businesses who are not SBA recipients. The EO Guide may also be distributed to other federal agencies for the purpose of distributing it to recipients of federal assistance from their agencies. A Department of Agriculture official has already expressed an interest. In order to make the Guide widely available, the cost of printing thousands of copies must be funded (or recovered) in some way. If the Guide becomes an SBA publication, a minimal fee could be charged to offset production and mailing costs.

In general, money is needed for technical assistance programs, proactive compliance activities and other publications for small businesses to extend OCRC's outreach to its customers. The best opportunity to impact the compliance posture of the national small business community is through technical assistance literature and educational programs.

4. How does OCRC assist SBA recipients in implementing SBA Nondiscrimination Regulations?

At the time of loan closing, all SBA loan recipients receive the "Notice to New SBA Borrowers" (SBA Form 793) and the SBA Equal Opportunity Poster (SBA Form 722 or Spanish edition 722a). These documents are distributed by SBA lending partners along with other loan closing documents. The 793 Form informs recipients of their coverage by OCRC, explains "six minimum actions" required for compliance, and informs them that they are subject to review by OCRC. They are asked to display

the Form 722 prominently in their businesses so employees, applicants for employment and the public (or customers) are informed of their equal opportunity employment and service policies. An address is provided on the Poster to identify where to write if a question arises about a recipient's compliance posture.

In addition, OCRC has developed an Equal Opportunity (EO) Guide for Small Employers. It is a handbook of information designed to be useful to employers who want to comply with civil rights requirements. The EO Guide provides model policy statements, information resources and general information and advice about compliance. OCRC anticipates placing this narrative on the OEEO&CRC Web Page (when it becomes operational) to disseminate information to the widest possible audience of employers in the most cost-effective manner. OCRC also has presented employer educational seminars in cooperation with the U.S. Equal Employment Opportunity Commission and with SBA-funded Small Business Development Centers.

Racaluit Policy - Civil Rts
EnforcementDirector
Office for Civil Rights
Washington, D.C. 20201MEMORANDUM

SEP 9 1997

TO : Elena Kagan
Deputy Assistant to the
President for Domestic Policy
White House

FROM : Dennis Hayashi 
Director
Office for Civil Rights

SUBJECT : Office for Civil Rights, Department of Health and
Human Services: Civil Rights Compliance and
Enforcement Program

INTRODUCTION

At the August 22, 1997 meeting of Federal civil rights agencies, you requested information concerning the programmatic priorities and management initiatives of each agency. Specifically, you asked that each Civil Rights Office describe its universe of priority activities, how we are improving our services and how we are pushing forward our civil rights agenda. This memorandum delineates the major programmatic and management initiatives of the Office for Civil Rights (OCR) in the Department of Health and Human Services (HHS) and attempts to provide insight into how OCR is accomplishing its civil rights agenda.

The OCR ensures that people have equal access to, and the opportunity to participate in and receive services from, all HHS programs without facing unlawful discrimination. Approximately 230,000 group and institutional providers, including state agencies, are subject to the non-discrimination requirements that OCR enforces. Through the prevention and elimination of unlawful discrimination--thereby protecting the integrity of federally funded or conducted programs--OCR helps HHS carry out its overall mission of improving the health and well-being of all people affected by its many programs.

The civil rights statutes enforced by OCR include Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, Titles VI and XVI of the Public Health Service Act, and provisions of the Omnibus Budget Reconciliation Act of 1981 relating to non-discrimination in block grant programs. In addition, OCR is responsible for coordinating government-wide enforcement of the Age Discrimination Act and

Department-wide implementation of Section 504 prohibiting discrimination on the basis of disability in programs and activities conducted by the Department.

ORGANIZATIONAL STRUCTURE

The OCR is part of the Office of the Secretary (OS). The office of OCR Director includes a Deputy Director who assists the Director in oversight responsibilities for two headquarters and ten Regional offices. The Director serves as the principal advisor to the Secretary on civil rights matters, sets OCR's long-range priorities and enforcement strategies, establishes quality review and case processing integrity standards and manages the activities that implement those standards. As Special Assistant to the Secretary for Civil Rights, the responsibilities of OCR Director include a broad range of civil rights issues and concerns that go beyond OCR's jurisdiction.

The two headquarters offices provide operational and administrative support to the ten regional offices. The regional offices, within goals set by the Director, develop and deliver a comprehensive regional civil rights enforcement and compliance program through complaint investigations, compliance reviews, technical assistance, outreach and other self-initiated investigations and activities.

PROGRAMMATIC INITIATIVES

The OCR recognizes that compliance initiatives, particularly targeted projects such as compliance reviews or outreach and education activities undertaken in partnership with HHS Operating Divisions (OPDIVs), State and local governments or providers, maximize the effectiveness of OCR's civil rights-compliance program. These activities provide significant contributions to the achievement of the Department's goal of increased stability and economic independence for American families. Below are examples of some of OCR's major compliance initiatives:

1. Implementation of Adoption Non-discrimination Requirements - Enforcement

During FYs 1995 and 1996, all of OCR offices worked with the Administration on Children and Families (ACF) and States to ensure compliance with the Multiethnic Placement Act of 1994 (MEPA) and the Interethnic Adoption Provisions of the Small Business Job Protection Act (SBJPA) of 1996. Those statutes prohibit delaying or denying the placement of a child for adoption and foster care on the basis of race, color or national origin of the adoptive or foster parent or the child involved.

With the passage of these laws, OCR and ACF, in partnership have issued guidance to the States and provided technical assistance to ensure compliance with the 1994 law and recently released new guidance. Because the Interethnic Adoption Provisions repealed certain portions of MEPA, OCR, ACF and the Office of the General Counsel, Civil Rights Division (OGC/CRD) envision an ongoing partnership and another cycle of technical assistance and training to the States.

2. Improved Health for All Americans - Healthy People 2000

The OCR intends to investigate and conduct compliance reviews as follow-up on a FY 1996 Civil Rights Compliance Report through which OCR surveyed all Hill-Burton short-term acute care hospitals nationwide and a random sample of 380 non-Hill-Burton hospitals subject to Title VI (race and national origin) compliance requirements. The portion of the 1996 compliance report that focused on hospitals subject to Title VI was the first time since 1981 that any such hospitals were required to file compliance reports.

These reviews will focus on racial and ethnic minority individuals' access to hospital inpatient and emergency room services. Ensuring non-discrimination in the availability of such services and facilities' outreach to racial and language minority communities will support several Public Health Service (PHS) Healthy People 2000 risk reduction initiatives focused on improving minority populations' health status.

3. Tester Project

The OCR has worked closely with the Department of Justice (DOJ) since FY 1995 on an innovative "tester" project focusing on racial discrimination and health status discrimination (i.e., HIV/AIDS) in the health care industry, the first such project ever conducted by OCR. This initiative supports Departmental objectives in both health care access and services to persons with HIV/AIDS. The OCR will utilize the findings made through this project to develop model reviews and to engage in partnerships with provider organizations to address discrimination issues uncovered through this joint project with DOJ.

4. Managed Care and Home Health Care Services -- Quality of Care

As the expansion of managed care continues to change the shape of the health care delivery system, important issues concerning the effect of managed care on access to services for minorities and individuals with disabilities have begun to arise. These issues

include possible differential provision of services, advertising of services, steering to providers, availability of resources, and discrimination in privileges related to participation in managed care systems.

The OCR is initiating a series of compliance reviews concentrating on ensuring that racial and language minorities are treated in a non-discriminatory manner as both Medicare and Medicaid expand the use of managed care.

5. HIV/AIDS

The OCR continues to investigate allegations of discrimination against persons with HIV or AIDS. During the past several years, a significant proportion of allegations have concentrated on nursing home access issues. The OCR has found that many homes have policies that have effectively denied access to persons with HIV or AIDS. For example, investigations of more than 30 nursing homes in North Carolina resulted in changes in admissions and service policies expanding the availability of nursing home care for persons with HIV or AIDS. During the past year, OCR has determined that access to home health care for persons with HIV or AIDS may be supplanting nursing home admission as an area in which it is imperative that civil rights protections be ensured.

The Department and the Medicaid program in particular have considerable interest in non-discrimination in nursing home admissions, home health services and access to other non-acute care services. As persons with HIV/AIDS live longer due to protease inhibitors, AZT, DDI and other drug therapies, it is important to reduce Medicaid costs associated with providing quality care to such patients. Each hospitalization that can be avoided, in some cases through placement in skilled or other levels of nursing home care, can save several thousand dollars. Non-discriminatory access to other non-acute care outpatient services may also save significant costs by reducing the number of high cost inpatient admissions for persons with HIV/AIDS.

6. Temporary Assistance To Needy Families - Welfare Reform

The OCR is currently chairing a work group of Federal civil rights agencies tasked with providing guidelines to the States on non-discrimination in the implementation of the Temporary Assistance to Needy Families (TANF) provisions of Welfare Reform. As States and local governments continue implementation of the Temporary Assistance to Needy Families (TANF) welfare reform program, OCR will work in partnership with ACF and others to ensure that programs are implemented in a non-discriminatory manner. Advocacy organizations have expressed concerns that racial and language minorities may be subjected to disparate treatment in assignment to work, training and education programs. As the restructuring of welfare agencies proceeds, it is

essential that either the civil rights compliance components and/or the methods developed over the past three decades for ensuring that civil rights issues were addressed in program delivery are retained as integral aspects of State and local program implementation and oversight.

7. Access to Services for Limited English Proficient People

The OCR has developed internal staff guidance concerning limited English proficiency (LEP). The proposed guidance addresses the responsibilities of HHS recipients of Federal assistance to persons with LEP under Title VI of the Civil Rights Act of 1964. This guidance is intended to ensure consistent application of Title VI standards in assessing the compliance of HHS recipients with respect to the provision of health and social services to LEP persons.

The OCR will continue to work with health care and social services providers, State and local agencies and HHS partners, to ensure that persons are not discriminated against on the basis of national origin and/or English language proficiency.

MANAGEMENT INITIATIVES

1. Civil Rights Strategic Plan

The central premise of the HHS Civil Rights Strategic Plan provides that civil rights protection must be an integral part of Departmental deliberations on issues as disparate as changes in the delivery of health care, changes in health insurance arrangements, implementation of welfare reform, long-term care, adoption and child welfare, immigration, jobs, preventive health initiatives, and location and integration of services.

Under the Civil Rights Strategic Plan, the Department--with OCR leadership--has been working more collaboratively with its customers to provide feedback on actions taken to address key civil rights issues related to race, national origin, color and disability. Consistent with the Strategic Plan and program-specific objectives set out in OCR's Government Performance and Results Act (GPRA) annual performance plan, OCR will continue to expand its use of partnerships with State agencies to ensure non-discrimination.

The OCR anticipates an increased need for outreach through education and partnerships. Particularly in light of welfare and health insurance reform and implementation of the Temporary Assistance to Needy Families program (TANF) and its welfare to work components. Additional factors effecting this need are: the Department's initiatives in performance partnerships for health

programs, continuing growth in managed care plans and the relationship between access and the Secretary's quality of care initiative, and ongoing support of Medicaid waivers to encourage State and local laboratories for program change.

The OCR's expanding partnerships will result in increased coverage of HHS's universe of recipients, and in a growing number of State, local, and program provider solutions that provide quality resolution of civil rights problems. In addition, the OCR will work in partnership with HHS OPDIVs to educate grantees and staff so they will incorporate civil rights concerns as an integral part of their programmatic activities.

2. Streamlining Efforts Under the Strategic Plan

The OCR is continuing to build on streamlining initiatives begun as pilot projects in 1995 through 1997 and will continue to build on other initiatives and projects undertaken to implement the strategic plan during 1997 and 1998. During fiscal years 1996 and 1997, performance and customer-based activities in OCR regional and headquarters offices focused on streamlining and reengineering compliance processes; employing case triage techniques to concentrate on high priority or precedent-setting issues; using alternate dispute resolution techniques to resolve allegations of discrimination; forming partnerships with other Federal agencies and HHS OPDIVs, State and local governments and/or beneficiary groups; realigning and using team and other modern management practices; and investing in staff development in compliance methods and in communications and human resources management skills.

3. Case Resolution Manual Implementation under the Strategic Plan (Assessment Phase)

FY 1997 is the first full year in which OCR utilized its new flexible Case Resolution Manual (CRM) and continued team pilot projects. During FY 1997, OCR is assessing the implementation of the new manual and team pilot projects as part of its continuous commitment to evaluating reinvention initiatives to determine whether they may serve as models for OCR-wide realignment and further change in compliance processes. The expansion of streamlining and modern management initiatives is enabling OCR to carry out its program and serve its customers in a more efficient and effective manner by changing the way it conducts its activities and redeploying staff to high priority programmatic issues.

4. Performance Measurement and Requirements of the Government Performance and Results ACT (GPRA)

In January 1995, OCR issued a strategic plan that established goals of: 1) leading in the creation and evolution of a

Department-wide civil rights program, 2) increasing non-discriminatory access to and participation in HHS programs, and 3) redeveloping OCR's infrastructure and investing in its staff. The five performance objectives in OCR's FY 1999 GPRA performance plan flow directly from our strategic plan's goals and objectives of reducing discrimination in high incidence and high priority areas, using partnerships to assist OCR in carrying out its mission, and enhancing OCR's operational efficiency.

As noted by many civil rights agencies government-wide, civil rights law enforcement does not have a "discrimination rate" that is comparable to a crime rate, as in the area of criminal law, for example. There are no direct measures of discrimination against which OCR can assess the success of its compliance activities. Therefore, OCR will pilot test measures that it has developed, consistent with the goals set out in the strategic plan.

The OCR's first four GPRA performance objectives deal with high priority issues identified by OCR--adoption and foster care, managed care, services for limited-English proficient persons, and welfare reform. The fifth performance objective deals with increasing operational efficiency by focusing resources on high priority areas.

These measures were developed with substantial dialogue with staff from the Office of the Assistant Secretary for Management and Budget (AS) and OCR management team. The GPRA-related performance plan will aim at developing and defining performance baselines and targets that can be applied to each of OCR's major activities.

In preparing OCR to begin thinking in terms of GPRA requirements, OCR has worked hard in familiarizing management and staff through discussions on GPRA, teleconference training/discussions and distribution of GPRA training materials, such as video presentations and written materials to all employees.

SUMMATION

The OCR's legal authority to ensure non-discrimination cuts across all of the programs and services funded by the Department of Health and Human Services. From hospitals, nursing homes, home health services, welfare to work, Head Start and senior centers, the public expects to receive high quality services without regard to race, color, national origin, disability, age, sex and religion.

The OCR recognizes these responsibilities and that it has exciting challenges ahead. As the nation is in the midst of substantial reforms in health care and welfare, we foresee expanded responsibilities and demands to ensure non-discriminatory access to services.

In an environment of downsizing and budget constraints, OCR is working hard to streamline the organization and reinvigorate its work force by eliminating unnecessary processes that stifle creativity and flexibility at all levels of the organization. Through the use of working partnerships that focus on cooperation and team building, including an effective labor-management relationship, OCR believes it will be able to accomplish its mission and, in doing so, meet the future challenges of the Department.

If additional information is needed, please contact Omar Guerrero, Deputy Director, OCR, at 619-0403.

MEMORANDUM

UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, D.C. 20202-_____

Race Init Policy - Civil Rights Enforcement

SEP - 5 1997

TO : Elena Kagen
Domestic Policy Council
The White House

FROM : Norma V. Cantú *Norma V. Cantu*
Assistant Secretary
for Civil Rights

SUBJECT: Recommendations for Improved Government-Wide Civil Rights Enforcement

The Office for Civil Rights, U.S. Department of Education is pleased to offer the following recommendations to improve Federal civil rights enforcement as one means of contributing to meeting the goals of the President's Initiative on Race. The mission of the U.S. Department of Education, Office for Civil Rights (OCR), established by this Administration, is to ensure equal access to education and to promote educational excellence throughout the nation through vigorous enforcement of civil rights. OCR's impact as a law enforcement agency is enhanced by the commitment of the Department as articulated through its mission, to ensure equal access to education and to promote educational excellence throughout the nation

Despite the progress of the past decades, and despite Federal, state and local efforts to eradicate barriers to equal educational opportunity, real and flagrant examples of intentional discrimination persist. In dramatically more cases, adequate education about the requirements of the civil rights laws and assistance in resolving problems have not reached those who may have the greatest need. In addition to improved civil rights enforcement, there remains a need to inform and educate parents, educators, and all stakeholders of the terrible consequences for students and the country alike when equal access to educational opportunity is denied.

I. Background

- OCR enforces civil rights laws that prohibit discrimination on the basis of race, color, national, origin, sex, disability, and age among recipients of Federal funds. Coverage of these civil rights laws extends to almost 15,000 school districts, more than 3,600 colleges and universities, about 10,000 proprietary schools, and thousands of libraries, museums, vocational rehabilitation agencies, and correctional facilities which provide educational programs.
- OCR is a team based organization at management and staff levels. It is organized into four enforcement divisions, each containing three of OCR's 12 regional offices, and a small headquarters component. The majority of OCR employees [primarily attorneys and investigators] are assigned to the



enforcement divisions and are responsible for resolving complaints and conducting proactive compliance reviews. Unlike complaints, agency initiated compliance reviews target resources on compliance problems that appear particularly acute or national in scope. For example, a few years ago, OCR targeted the assignment of students to classes, and specifically minorities and special education, as one of issues which directly and profoundly impacts equal access to high quality, high standards education. [Note that this issue was also a major theme at the recent NAACP national convention.] After conducting several compliance reviews of school districts in the state, OCR discussed the repetitive problems identified during these reviews with the Mississippi Department of Education (MDE). As an outgrowth of these discussions involving OCR, MDE, and the U.S. Department of Education's Office of Special Education, a State Action Plan (Plan) was developed which will potentially benefit all students in the state. Processes leading up to the Plan served to increase the awareness of state and local school administrators as to their civil rights responsibilities in this area, but community awareness was also enhanced by OCR's parent and community focus groups and media coverage devoted to the case. As part of the implementation of the Plan, OCR is also seeking the active participation of interested stakeholders in monitoring the state's compliance with the Plan. OCR's range of enforcement strategies coupled with specially targeted outreach and technical assistance grow out of a recognition that given the vast numbers of institutions in the educational community, one dimensional enforcement efforts alone are insufficient to stop illegal discrimination. The objective of OCR's targeted technical assistance initiatives is to employ a range of approaches designed to empower students, parents, community groups, and educators with the knowledge and skills to prevent illegal discrimination by pinpointing problems and working together to resolve civil rights issues.

- OCR has reached the limit of efficiencies and improvements to be gained from organizational and procedural reforms, and may well be losing ground as staff losses in critical areas has taken its toll. Many of our field offices are showing significant increases in the average caseload per attorney and average case load per investigator. The gap between the work of OCR and the resources available to carry out our vital mission has increased. Each decade since the enactment of the Title VI of the Civil Rights Act of 1964 has brought additional responsibilities to OCR.

The importance of maintaining a civil rights enforcement presence is evident now more than ever as budget pressures at the Federal, state, and local level make it perhaps more difficult for schools, colleges and universities to confront the problems of equal educational opportunity. Increasingly, OCR has needed to allocate a substantial amount of its budget to fund critical operating expenses

at the expense of maintaining appropriate staffing levels and other critical activities essential to a viable civil rights program. While OCR loses staff -- its most vital resource -- its workload continues to grow. See Tables in the Attachment. These budgetary constraints are no secret to civil rights groups who complain that the lack of sufficient resources devoted to civil rights enforcement belies our commitment to the vigorous enforcement of civil rights laws.

II. Recommendations for Improved Government-Wide Civil Rights Enforcement

A. White House Initiatives

- Presidential directive to Agency Heads to evaluate nondiscrimination assurances provided by Federal contractors to ensure that they are identifying civil rights problems and implementing plans for resolution of those problems.
- Presidential directive to Agency Heads to evaluate the possible civil rights implications in their grants, contracts, and programs. Encourage Agency Heads to seek out information on civil rights that would enable informed decisions about programmatic policies and procedures.
- Presidential directive to Agency Heads to address under representation of minority groups in employment through training and education.
- Presidential directive to establish an evaluation mechanism to measure the effectiveness of White House directives in this area.

B. Enforcement

- Coordination among Federal civil rights agencies has historically been a challenge due to differences in size, structure, procedures, priorities, and legislative mandates. Civil Rights is not the same from agency to agency. Moreover, our effectiveness is sometimes undermined by public perceptions when we don't seem to be in alignment on major crosscutting policy issues.
- Design, with input from civil rights agencies, a commonly understood and consistently implemented process for arriving at the final Administration position on sensitive, cross-cutting issues such as affirmative action. This process would be inclusive as to Secretarial and

Page 4 - Recommendations for Improved Government-Wide Civil Rights Enforcement

civil rights agency input in a manner that achieves articulated civil rights policy outcomes in a manner consistent with the comprehensive objectives of the Administration.

- With critical Cabinet-level support by all Federal Secretaries and senior leadership in other agencies, civil rights agencies with common interests will continue to explore the possibility of collaboration under conditions that make sense for the strategic objectives of each agency. Activities that may create positive experiences of collaboration to improve civil rights enforcement involve the following:
- Promote the sharing of best practices in general and case targeting criteria and procedures among Federal civil rights agencies to maximize overall efficiency.
- Promote support from top agency leadership to initiate specially targeted joint enforcement activities to maximize impact and limited resources.
- Share unique expertise among agencies contributing to more efficient and effective enforcement.

C. Outreach and Technical Assistance

- Create a guide to Federal civil rights agencies and make it available to the public. Establish a "800" number to take calls from people who believe they have experienced discrimination in housing, education, employment, housing, voting, etc... Phone menus will forward a caller to the appropriate agency number staffed by people who can answer questions and provide information.
- Create a National Clearing House(s) for two audiences - civil rights agencies and the public - to bring together in a single place common core data related to civil rights, the most current thinking in the area, and best practices of civil rights enforcement agencies that have yielded significant results and impact, research findings, published materials, news about related trends, etc. Make available online databases linked to related sites.
- Create a Federal presence in communities in crisis or facing major challenges through joint enforcement activities such as town meetings, in an effort to forge partnerships among government, communities, business and other stakeholders.

D. Budget

- Increase funding to address racial disparities in educational achievement, a key weapon. For example, the dismantling of initiatives to achieve diversity in educational programs requires a shift in approaches while the debate goes on in the courts. Fund programs designed to provide minority students access to college. Target research and programs to reach the critical mass of people outside the mainstream uniquely plagued by the results of low educational achievement and experience with the criminal justice system.
- Acknowledge the civil rights challenges that remain by improving the level of funding to civil rights agencies to catch up or keep pace with resource demands of our missions. Firmly oppose any budget proposal which reduces the level of funding overall for civil rights agencies. Alternatively, if the budget debate on the Hill is not won on this issue, direct agencies to use discretionary funds to offset budget losses in civil rights agencies, and identify and make available sources of funding in the White House budget to offset losses to civil rights agency budgets.
- Coordinate approaches to fund research concerning racial issues with the same level of commitment as if these issues caused a "public health" threat.
- Provide staff in civil rights agencies the tools to enforce civil rights through a heavy investment in upgrading the technology infrastructure of each agency and in outside expert support in order to maintain the core capacity of each civil rights agency to identify, investigate and remedy complex cases of discrimination.

ATTACHMENTS

U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
(FY 1990 - FY 1997)

FY	Presidential Request	Congressional Appropriation	FTE		Complaints		Compliance Reviews	
			Enlist	Unenst	Filed	Resolved	Initiated	Completed
1990	\$45,178,000	\$44,572,000	820	815	3,384	3,130	32	30
1991	\$49,900,000	\$48,404,000	820	797	3,809	3,497	41	22
1992	\$56,000,000	\$53,625,000	855	848	4,432	4,180	77	50
1993	\$61,400,000	\$56,402,000	858	854	5,090	4,484	101	82
1994	\$56,570,000	\$56,570,000	851	821	5,302	5,751	144	90
1995	\$61,457,000	\$58,236,000	833	788	4,981	5,559	96	178
1996	\$62,784,000	\$55,277,000	763	745	4,828	4,886	146	173
1997	\$60,000,000	\$54,900,000	724	-	-	-	-	-

*FY 1990 and FY 1995 Appropriation after sequestration, FY 1997 Appropriation after rescission.

Page 7 - Recommendations for Improved Government-Wide Civil Rights Enforcement

Department of Education - Office for Civil Rights - D/657 - DRAFT			
Goal: To ensure equal access to education for all students.			
Objective	Indicators	Sources and Next Update	Strategies
Impact on Students - To maximize the impact of available resources on civil rights in education.			
<p>1. Balanced enforcement that proactively targets resources for maximum impact, i.e., provide tangible assistance to the greatest number of students possible.</p>	<p>1.1 The estimated number of students with access to high quality education increases.</p> <p>1.2 The estimated number of students positively affected by OCR's casework increases.</p> <p>1.3 The number of recipients that change policies, procedures, or practices to comply with Federal law increases.</p>	<p>1.1 Biennial Civil Rights Report, even numbered years, FY 2000</p> <p>1.2 Annual OCR Case Evaluation Report, FY 1999</p> <p>1.3 Annually from OCR's Case Information System, FY 1999</p>	<ul style="list-style-type: none"> Forty percent of OCR's resources will be dedicated to strategically planned proactive measures. OCR will involve a broad range of stakeholders in its targeting efforts. OCR will develop Issue Area Teams in its top priority substantive areas that will facilitate the exchange of useful information nationwide, with a focus on effective models for OCR.
Empowerment of Students and Parents - To empower others to learn to solve their own problems of securing equal access to quality education.			
<p>2. OCR will become a partner to a broad range of stakeholders, providing civil rights-related information, technical expertise and assistance, to enable them to help ensure equal educational opportunities for all.</p>	<p>2.1 The number of stakeholder partnerships that lead to civil rights compliance increases.</p>	<p>2.1 Annual OCR Case Evaluation Report, FY 1999</p>	<ul style="list-style-type: none"> OCR will involve a broad range of stakeholders in its targeting efforts. OCR will develop case resolution agreements that provide for the active participation of parents and other stakeholders.
Investment in People - To recruit and train the highest caliber staff, and develop the training and tools they need to become most effective.			
<p>3. Develop a comprehensive approach to training for all of OCR's staff, to ensure maximum effectiveness and efficiency.</p> <p><i>(Likely drop)</i></p>	<p>3.1 The percent of staff participating in training and development annually remains at 90 percent or higher.</p>	<p>3.1 Staff survey, 1998; Annual reports from the Department's Training and Development Center Data, 1st quarter FY 1999</p>	<ul style="list-style-type: none"> OCR will identify critical training needs. OCR will ensure appropriate training resources are available to all OCR staff to meet identified training objectives.