

12. CIVIL RIGHTS ENFORCEMENT FUNDING

Federal civil rights enforcement agencies are responsible for strengthening Federal guarantees of equal opportunity and enforcing our laws against discrimination. To eliminate discrimination requires both a proactive effort to promote equal opportunity and effective mechanisms for enforcement. Adequate funding is essential to meaningful enforcement of legal protections afforded all Americans. The 1999 Budget provides the resources necessary to support vigorous enforcement of those Federal civil rights laws.

Since the Civil Rights Act of 1964 was signed 34 years ago, numerous Federal laws have been put in place that prohibit discrimination in the areas of housing, employment, educational opportunities, public accommodations, voting, and programs receiving Federal financial assistance. Nevertheless, discrimination remains a real and widespread problem. For example, recent cases provide evidence of the breadth of the employment discrimination problem. These cases revealed companies that race-coded their job applications and segregated minorities into low profile and low paying jobs. Other companies terminated workers because of age or disability, without offering reasonable accommodations. Patterns of gender discrimination or of sexual harassment are similarly egregious examples of the need for vigorous enforcement of employment discrimination laws.

Housing discrimination also remains pervasive and real. Recent testing in the Washington, D.C. area housing markets showed that blacks and Hispanics faced substantial discrimination when they tried to buy or rent a home. The studies showed that blacks and Hispanics were discriminated against 36 percent of the time they tried to buy a home, and 42 percent of the time they tried to rent a home. These results are disturbing and unacceptable 30 years after the passage of the Fair Housing Act of 1968. Housing discrimination not only affects a family's economic well-being, but it is frequently the cause of other forms of disadvantage, such as limited job opportunities and increased segregation in schools.

The problems of discrimination are not limited to issues of employment or housing. The proportion of complaints based on disability continues to exceed 50 percent of all educational discrimination complaints received by the Department of Education. Furthermore, over 5,000 investigations annually reflect that the problem of fighting discrimination in our schools remains an important national issue.

As real and pervasive as illegal discrimination appears to be, changing demographic patterns and an American population that is growing increasingly diverse will require even more vigilance in preventing discrimination and enforcing civil rights laws against

discrimination. A renewed commitment to strong and effective enforcement will help ensure that economic opportunities and progress reach all segments of a diverse American population. For Federal civil rights enforcement agencies, in addition to increased resources, this renewed commitment includes:

- Greater emphasis on prevention and non-litigation remedies to achieve the objectives of Federal civil rights laws;
- Use of additional tools to increase compliance, including the expansion of Alternative Dispute Resolution (ADR) programs;
- Increased use of technology for better management of agency resources and tracking of case-loads;
- Improved statistical methods for measurement and analysis;
- Encouraging the role of the States through increased partnerships in addressing the problems of discrimination; and
- Enhanced coordination by the Department of Justice in addressing Federal civil rights enforcement efforts.

The 1999 Budget proposes \$602 million for civil rights enforcement agencies, \$86 million or 17 percent greater than the 1998 enacted level of \$516 million, as shown in Table 12-1. Programs and issues in the principal civil rights enforcement agencies, and the U.S. Commission on Civil Rights, are discussed below.

Enforcing Civil Rights Laws in Employment

The exclusion of people from employment opportunities remains a significant problem facing the workforce today. Approximately 80,000 complaints of employment discrimination are filed annually with the Equal Employment Opportunity Commission (EEOC). Increased statutory responsibilities, including the Americans with Disabilities Act of 1990 and the Civil Rights Act of 1991, have increased the number of complaints that are brought each year. Currently, over 20 percent of all complaints brought before the EEOC are based on disability, while Title VII complaints, based on race, color, religion, gender and national origin, total 60 percent of all complaints filed. An additional 60,000 discrimination complaints are also filed with State Fair Employment Practices Agencies. Moreover, increased awareness of and attention to employment-based discrimination significantly affects the filing of charges with the EEOC.

The EEOC is charged with promoting equal opportunity through administrative and judicial enforcement of Federal civil rights laws and through education and technical assistance. Established by Title VII of the Civil Rights Act of 1964, the EEOC enforces the prin-

Table 12-1. CIVIL RIGHTS ENFORCEMENT FUNDING
(Budget authority, in millions of dollars)¹

	1997 Actual	Estimate	
		1998	1999
Equal Employment Opportunity Commission	240	242	279
Department of Housing and Urban Development, Fair Housing Activities	30	30	52
Department of Justice, Civil Rights Division	62	65	72
Department of Labor, Office of Federal Contract Compliance Programs	59	62	68
Department of Education, Office for Civil Rights	55	62	68
Department of Health and Human Services, Office of Civil Rights ²	20	20	21
Department of Agriculture, Civil Rights Programs	10	15	19
U.S. Commission on Civil Rights	9	9	11
Department of Transportation, Office of Civil Rights	6	6	7
Department of Labor, Civil Rights Center	5	5	5
Total	496	516	602

¹ Numbers may not add due to rounding.

² Includes Medicare Trust Fund transfers.

cipal Federal statutes prohibiting employment discrimination, including: Title VII of the Civil Rights Act of 1964 as amended; the Age Discrimination in Employment Act (ADEA) of 1967 as amended; the Equal Pay Act (EPA) of 1963; Title I of the Americans with Disabilities Act of 1990 (ADA); and Section 501 of the Rehabilitation Act of 1973, as amended. Taken as a whole, these laws protect workers from discrimination based on race, color, religion, gender, national origin, age, and disability.

In recent years, Congress provided EEOC with only marginal increases that have been insufficient to support upgrades to technology and investment in alternative methods of enforcing the law. At the same time, increased enforcement responsibilities have resulted in a 47 percent rise in private sector complaints received by the agency during the first half of the decade, from 62,000 in 1990 to 91,000 in 1994. Consequently, the backlog of private sector complaints at the EEOC rose from 73,124 charges at the end of 1993 (the highest level of the previous 10 years), to an all-time high of 111,000 in 1995.

Over the past three years, the EEOC has addressed Congressional concerns about the pending backlog and the lack of alternative dispute resolution methods by making a fundamental shift in its approach to its business. Among the most significant changes are: the development of national and local priority issues; the implementation of a targeted and prioritized charge processing system for private sector cases; and encouraging the use of settlement at all stages of processing, including the use of mediation. Two years after implementing the priority charge handling procedures, EEOC has reduced its charge inventory 40 percent—from 111,000 pending charges at the end of the third quarter of 1995 (just prior to implementation) to 64,000 pending charges at the end of 1997. However, under EEOC's new charge prioritization system, it is now faced with a more complex caseload that is approximately 70 percent category "B" charges (those with potential merit requiring extensive investigation). Without additional resources to continue procedural reforms, implement greater use of mediation, and invest in technology, the

Commission is unlikely to make further progress toward its goal of reducing the average time it takes to resolve private sector complaints from over 9.4 months to 6 months by the end of 2000.

Finally, the budget proposes \$13 million for an enhanced mediation program that would double the number of complaints eligible for EEOC's alternative dispute resolution program in 1999. Voluntary mediation is an effective method of complaint resolution that can be used in enforcement efforts. EEOC currently uses some of its trained investigators to mediate, but this diverts scarce investigative resources from cases that do not lend themselves to mediation. While volunteers have also been used since the program's inception in 1996, EEOC will need to use more experienced and credible mediators in the future. Through the use of contract mediators, EEOC would encourage employer participation by addressing employers' concerns about perceived bias of EEOC staff.

Discrimination by Federal contractors is the subject of a separate enforcement effort conducted by the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP). OFCCP is responsible for ensuring nondiscrimination in employment based on race, sex, religion, color, national origin, disability or veteran status by more than 200,000 Federal contractors and subcontractors with a total workforce of approximately 22 million people. It assures that Federal contractors and subcontractors take affirmative action in hiring and the advancement of minorities and women under the authority of Executive Orders 11246 and 11375. It also enforces the affirmative action and nondiscrimination provisions of the Rehabilitation Act of 1973 and, as an agent of the Equal Employment Opportunity Commission, the Americans With Disabilities Act of 1990. It ensures that contractors comply with the provisions of the Vietnam Era Veterans Readjustment Assistance Act of 1974 providing affirmative action by Federal contractors to employ, and advance in employment, special disabled and Vietnam era veterans.

The 1999 Budget includes funds to continue OFCCP's Fair Enforcement Initiative which began in 1998. The Fair Enforcement Initiative includes a streamlined

tiered compliance review process which reduces contractor burden while enabling the agency to target the most serious violations. The tiered review process also will enable OFCCP to reach more of the contractor universe, resulting in a 10 percent increase in 1999 in the number of compliance reviews conducted. In addition, through the completion of various regulatory changes, OFCCP will reduce contractor burden by at least 30 percent. OFCCP will modernize its computer systems in order to streamline internal procedures permitting the agency, for example, to accept electronically submitted reports from contractors. The Fair Enforcement Initiative, which includes technical compliance assistance, will increase the effectiveness and efficiency of the agency while addressing the persistent problem of systemic discrimination in the workplace.

The Department of Labor (DOL) also operates numerous employment and training programs that seek to enhance the skills and abilities of the nation's workforce. To ensure that these programs are administered in a non-discriminatory manner, the Civil Rights Center (CRC) at the Department of Labor is responsible for enforcing the Federal statutes and regulations that prohibit discrimination in all DOL financial assistance programs and prohibit discrimination on the basis of disability by certain public entities and in activities conducted by DOL. CRC employs a proactive approach towards reducing discrimination, by promoting voluntary compliance with existing non-discrimination laws through education and technical assistance to mitigate the number of complaint filings. To further reduce complaint workload, CRC plans to expand the number of technical assistance visits made to the States to ensure voluntary compliance. The CRC also intends to encourage the States to promote the use of alternative dispute resolution in complaint processing programs at the state level. Methods of Administration (MOA) agreements which are signed by the States as a condition of receiving employment and training funds have also been an effective tool in assisting States in addressing discrimination by ensuring that uniform systems are in place to enforce applicable nondiscrimination laws.

Combating Housing Discrimination and Promoting Fair Housing Activities

Despite 30 years of laws and regulations prohibiting housing discrimination, fair housing audits continue to show high indices of discrimination, and mortgage lenders reject minority applicants at higher rates than white applicants. Builders continue to construct housing inaccessible to disabled persons in violation of the Fair Housing Act.

The Department of Housing and Urban Development (HUD), along with the Civil Rights Division at the Department of Justice, has overall responsibility for the promotion of fair housing and enforcement of the Fair Housing Act of 1968, as amended, which prohibits discrimination on the basis of race, color, gender, religion, national origin, disability or familial status in the sale

or rental, provision of brokerage services, or financing of housing. The Office of Fair Housing and Equal Opportunity (FHEO) administers two grant programs: the Fair Housing Assistance Program (FHAP), which provides financial assistance to supplement enforcement activities of States and localities which have passed laws substantially equivalent to Federal fair housing laws; and the Fair Housing Initiatives Program (FHIP), which is a competitive grant program that provides funding to private fair housing groups to carry out activities that assist in enforcement and furthering compliance with the Fair Housing Act. These fair housing activities are designed to ensure citizens the freedom and dignity of choosing where to live.

At the State and local government level, agencies with laws equivalent to the Federal Fair Housing Act are estimated to increase from 78 in 1997 to 85 in 1999. 1999 funding for the FHAP program is proposed at \$23 million, an \$8 million increase over the 1998 level, to support additional State and local fair housing organizations that will meet the needs of currently underserved populations and will be used for joint investigations and enforcement activities.

The 1999 Budget also proposes \$10 million for a targeted, audit-based enforcement initiative that would raise the Nation's and communities' awareness of the extent of discrimination through focused and publicly released audit results and subsequent enforcement actions. Paired testing, in which otherwise identical white and minority testers approach realtors or landlords, is a particularly effective method of detecting housing discrimination. This initiative provides for non-profit housing organizations to undertake audit-based fair housing enforcement in 20 areas nationwide to develop local indices of discrimination, to identify and pursue violations of fair housing laws, and to promote new community fair housing enforcement initiatives. The Administration believes that this systematic and focused strategy, replicated across the country, could substantially aid in detecting and reducing levels of housing discrimination. The 1999 budget also includes a \$4 million increase in flexible funding for fair housing initiatives, to strengthen Secretary Cuomo's "One America" initiative, including his pledge to double the number of enforcement actions taken by HUD on discrimination complaints. In total, the 1999 Budget proposes \$52 million for fair housing activities to enable HUD to meet its goals of reducing discrimination and ensuring equal opportunity in housing.

Enforcing Civil Rights in Education and Health Programs

Although much progress fighting discrimination in our schools has been made in the past three decades, the reality of discrimination—sometimes flagrant—remains. Investigations of over 5,000 cases annually by the Department of Education's Office for Civil Rights reveal that discriminatory tracking and assessment practices continue, to the detriment of hundreds of thousands of minority, limited English proficient, dis-

abled, and female students. Additionally, instances of racial and sexual harassment continue as pervasive problems that must be addressed.

The Office for Civil Rights (OCR) at the Department of Education is charged with ensuring equal access to education and promoting educational excellence throughout the Nation through vigorous enforcement of civil rights laws and regulations. These laws are: Title VI of the Civil Rights Act of 1964 (prohibiting race, color and national origin discrimination); Title IX of the Education Amendments of 1972 (prohibiting sex discrimination); Section 504 of the Rehabilitation Act of 1972 (prohibiting disability discrimination); Age Discrimination Act of 1975; and Title II of the Americans with Disabilities Act of 1990 (prohibiting disability discrimination in State and local government services). Also, OCR enforces civil rights provisions in Title V, Part A, of the Elementary and Secondary Education Act (the Magnet Schools Assistance program), and provides technical assistance to Federal award recipients and beneficiaries, the public and other organizations in an attempt to obtain voluntary compliance with civil rights laws.

OCR focuses on a range of issues: discrimination against minorities in special education and remedial courses; discrimination against minorities in math and science and other advanced placement courses; disability discrimination; access to programs for limited English proficient (LEP) students; racial and sexual harassment; discrimination in the use of tests and assessments; discrimination in higher education admissions and the appropriate use of affirmative action; gender equity in athletics; and higher education and elementary and secondary school desegregation. On average, OCR receives and resolves over 5,000 discrimination complaints annually with over 50 percent relating to claims of disability discrimination. In addition, OCR devotes over 40 percent of its resources to proactive compliance reviews of technical assistance efforts. OCR selects its compliance reviews based on field assessments (from its 12 enforcement offices) of the greatest problems of unaddressed discrimination. Currently, the greatest percentage of compliance reviews are in the area of race discrimination.

With its increased funding levels in 1998, OCR will hire additional attorneys, reducing its current attorney/case ratio in order to improve the effectiveness and efficiency of its complaint resolutions and its compliance reviews and to expand its technical assistance efforts. OCR's 1999 budget, an increase of \$6.5 million over 1998, will enable it to maintain its increased staffing level, as well as to fund technology improvements and complete the Elementary and Secondary Education School Survey. It will also allow OCR to pursue its goal of building collaborative relationships with parents, students, and educators—focusing on preventing discrimination rather than just remedying it—and building partnerships with States to address statewide compliance with civil rights laws and regulations. A key element of its enforcement strategy involves educat-

ing the public about its rights and responsibilities and creating linkages among recipients, beneficiaries, and community groups for the purpose of achieving the shared goal of civil rights compliance. For example, OCR has invested significant time and effort to include parental involvement in monitoring agreements reached with recipients. These approaches require a significant investment in time and resources to provide the necessary technical assistance.

Federal health care and social services programs are the responsibility of the Department of Health and Human Services' Office of Civil Rights (OCR). The OCR enforces compliance with Civil Rights statutes to ensure that people have equal access to and do not face discrimination in HHS programs, particularly in the areas of managed care, quality of health care, interethnic adoption, services to limited English proficient persons, and welfare reform. OCR investigates complaints, undertakes pre- and post-grant reviews, and provides outreach and technical assistance. The Civil Rights statutes OCR enforces include Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Title II of the Americans with Disabilities Act of 1990, Title VI and XVI of the Public Health Service Act, parts of the Omnibus Reconciliation Act of 1981 related to non-discrimination within block grant programs, the Multi-ethnic Placement Act of 1994, and the Small Business Protection Act of 1996 (interethnic adoption provisions).

Over the past few years, HHS' OCR has focused more of its resources on non-complaint activities and increased use of alternative methods to resolve complaints faster. With additional funding in 1999, OCR will undertake an increased number of compliance reviews in priority program areas to ensure that discrimination is not occurring within HHS-funded programs and provide more technical assistance and outreach.

Government-wide Civil Rights Enforcement and Other Monitoring

The Department of Justice, Civil Rights Division, serves as the chief civil rights enforcement agency of the Federal government. It has primary responsibility for Federal civil rights litigation and is charged with coordinating Federal civil rights policy. The Division enforces a number of laws providing civil and criminal protections from discrimination on the basis of race, color, religion, gender, national origin, disability, age, familial status, citizenship status, marital status, and source of income, in such areas as employment, voting, education, public accommodations, housing, lending, and programs receiving Federal assistance.

The Attorney General has delegated to the Civil Rights Division primary litigation authority for enforcement of the Civil Rights Act of 1964, the Voting Rights Act of 1965, the Fair Housing Act, the Equal Credit Opportunity Act, the Americans with Disabilities Act, the Freedom of Access to Clinic Entrances Act, and a number of criminal and civil statutes, including laws prohibiting police misconduct. The Division also en-

forces Federal constitutional and statutory rights in institutions covered by the Civil Rights of Institutionalized Persons Act. The Division has instituted a successful mediation program in its Disability Rights Section (one area where the Division handles initial complaints, rather than referrals from other government agencies).

The increased funding proposed in the 1999 Budget will allow the Civil Rights Division to significantly expand investigations and prosecutions of hate crimes and police brutality and misconduct, including pattern and practice cases, as well as violations of the Americans with Disabilities Act. The Budget includes a \$1 million increase to enhance the Division's coordination of Federal civil rights enforcement, and \$1.5 million for improvements in information technology, trial preparation, and courtroom presentations.

Finally, the U.S. Commission on Civil Rights has a broad ranging mandate to monitor and report on the status of civil rights' protections in the United States. As an independent, bipartisan agency of the Federal Government, the Commission strives to keep the President, the Congress, and the public informed about civil rights issues that deserve concentrated attention, and to appraise Federal laws and policies with respect to discrimination or denial of protection of the laws because of race, color, religion, gender, age, disability, or national origin, or in the administration of justice. In doing so, it continually reminds all Americans why vigorous civil rights enforcement is in our national interest.

To meet these responsibilities, the agency evaluates Federal civil rights enforcement programs; investigates

and studies allegations of discrimination; maintains a network of regional offices and State Advisory Committees that give the Commission a local presence in communities across the country; and educates the public about civil rights. The additional resources being requested for 1999 will allow the Commission on Civil Rights to address more fully today's critical, and still evolving, civil rights problems, including police brutality, hate crimes, and disability rights issues. At the same time, the Commission has taken important steps toward improving the efficiency and effectiveness of its operations. These improvements will help to ensure that the 1999 resources are more effective in advancing civil rights in the United States.

Finally, civil rights programs at the U.S. Department of Agriculture (USDA) are responsible for ensuring that all USDA customers and employees are treated fairly and equitably, with dignity and respect. The 1999 Budget increases funding for USDA centrally funded civil rights programs from \$15 million to \$19 million. Funding above 1998 has been added to human resources management, outreach to under-represented customers, increased involvement of small and disadvantaged businesses in USDA programs, conflict resolution activities, and in the processing and adjudication of complaints brought by customers and employees. USDA will continue to reduce the backlog of civil rights complaints with a goal of reducing the average time it takes to resolve complaints, from the current estimate of over one year, to within 180 days.

