

Federal Civil Rights Commitments: An Assessment of Enforcement Resources and Performance

November 1983

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U.S. COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 and directed to:

Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, age, handicap, or national origin, or by reason of fraudulent practices;

Study and collect information concerning legal developments constituting discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice;

Appraise Federal laws and policies with respect to discrimination or the denial of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice;

Serve as a national clearinghouse for information in respect to discrimination or denials of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin;

Submit reports, findings, and recommendations to the President and the Congress.

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INTRODUCTION

This report reviews, in the context of their budget and staff resources, selected activities of 6 Federal agencies with significant responsibility for enforcing civil rights laws. It is part of a continuing effort of the U.S. Commission on Civil Rights to increase understanding of the nature of Federal civil rights enforcement and the necessity of providing more adequate resources for it. 1/

Federal agencies enforce civil rights guarantees in the Constitution, laws enacted by Congress, and Executive orders. The genesis of these guarantees is the promise of equality for all persons growing out of the Civil War. 2/ Current civil rights protections were adopted because people were denied basic rights on

1/ The Commission's concern about enforcement resources is longstanding. See, for example, U.S., Commission on Civil Rights: Federal Civil Rights Enforcement Effort (1971), p. 344 (hereafter cited as 1971 Enforcement Report); The Federal Civil Rights Enforcement Effort--1974, vol. II, To Provide for Fair Housing (1974), p. 355 (hereafter cited as 1974 Fair Housing Report); vol. III, To Ensure Equal Educational Opportunity (1975), p. 386; vol. IV, To Provide Fiscal Assistance (1975), pp. 20-22 (hereafter cited as To Provide Fiscal Assistance); vol. V, To Eliminate Employment Discrimination (1975), pp. 631, 639, 643 and vol. VI, To Extend Federal Financial Assistance (1975), pp. 23, 291, 488, 538, 668, 759, 775, 785 (hereafter cited as To Extend Federal Financial Assistance). For more recent and detailed analyses see U.S., Commission on Civil Rights: Civil Rights: A National, Not a Special Interest (1981), pp. 36-47 (hereafter cited as FY 82 Budget Statement) and The Federal Civil Rights Enforcement Budget: Fiscal Year 1983 (1982) (hereafter cited as FY 83 Budget Report).

2/ For a history of developments leading up to the adoption of the 13th, 14th and 15th amendments to the Constitution after the Civil War and subsequent legislation to reinforce and extend their protections, see FY 82 Budget Statement.

account of their race, color, national origin, sex, religion, handicap, or age. These laws commit the Federal Government to combating discrimination in employment, education, housing, health care, use of public buildings and transportation, access to credit and services, participation in the democratic process, and other areas of everyday life. 3/ A major responsibility of most agencies discussed in this report is to ensure that none of their funds support unlawful discrimination.

The Commission believes Federal civil rights enforcement is distinct from social programs whose benefits may be increased or decreased at the discretion of any administration or session of Congress. Providing special benefits is not the responsibility of civil rights agencies. Their duty is to enforce laws intended to demolish the lingering barriers to full participation faced by minorities, women, and older and handicapped persons. These barriers are the legacy of legally mandated or tolerated segregation and discrimination, and, experience has shown, can be dismantled only with the leadership and assistance of the Federal Government.

In short, civil rights laws create a unique and basic obligation in the Federal Government to protect and enhance legal rights. In the Commission's view, this special responsibility includes an obligation to provide adequate budget and staff

3/ Key civil rights laws and related requirements are discussed in the succeeding chapters.

resources to enforce these laws. 5/

The adequacy of resources for civil rights enforcement must be assessed in light of the activities they would support, not merely their dollar value. Enforcing nondiscrimination effectively is a large task involving a variety of activities. Agencies must investigate and decide upon discrimination complaints. They also must collect and analyze statistical and other information about compliance with civil rights laws and regulations and conduct investigations where that information suggests widespread patterns of discrimination may be denying many persons' rights. These compliance reviews and other such investigations of patterns of discrimination are a crucial enforcement tool. They identify and correct more civil rights violations than investigations of individual complaints, provide relief for victims of discrimination who may be unaware of their rights or reluctant to seek them, and demonstrate a commitment to

5/ See FY 82 Budget Statement, p. 117 and Clarence M. Pendleton, Jr., Chairman, U.S. Commission on Civil Rights, letter to Michael J. Horowitz, Counsel to the Director, Office of Management and Budget (hereafter OMB) Aug. 10, 1982, enclosed staff memorandum, p. 2.

enforcement action that encourages voluntary compliance. 6/

Most complaint investigations and compliance reviews result in settlements with agreements to correct violations. Followup or monitoring reviews by the Federal agencies to ensure such agreements actually are carried out, therefore, also are important. 7/ When agreements cannot be reached or later are disregarded, agencies must initiate enforcement proceedings. 8/

Effective civil rights enforcement also involves technical assistance so that those who must comply understand their obligations and those who are protected know their rights. 9/

6/ U.S., Commission on Civil Rights: Making Civil Rights Sense Out of Revenue Sharing Dollars (1975), pp. 59-61; Enforcing Title IX (1980), p. 24; To Provide Fiscal Assistance, p. 66; To Extend Federal Financial Assistance, p. 188; FY 82 Budget Statement, pp. 34, 40-41; and FY 83 Budget Report, pp. 3-4. Agency studies indicate that compliance reviews are especially important in protecting the rights of very poor and non-English speaking individuals. U.S., Department of Education, Office for Civil Rights, "Salaries and Expenses," undated (prepared for February 1981 appropriations hearings), p. 326; Clarence Thomas, Assistant Secretary for Civil Rights, U.S. Department of Education, interview, Feb. 22, 1982. The compliance reviews considered to be a more effective enforcement tool included onsite investigations. Those involving only analyses of reported data, sometimes called "desk audits," are less effective. 1971 Enforcement Report, p. 219.

7/ To Provide Fiscal Assistance, p. 41; To Extend Federal Financial Assistance, p. 367.

8/ Enforcement may involve litigation to obtain court-ordered remedies or administrative proceedings to terminate Federal funds.

9/ For the importance of such outreach and related technical assistance efforts, see To Provide Fiscal Assistance, pp. 67-69; Enforcing Title IX, pp. 32, 41; Louis Nunez, Staff Director, U.S. Commission on Civil Rights, letters to Cynthia G. Brown, Assistant Secretary for Civil Rights, U.S. Department of Education, Dec. 10, 1980 and Frederick T. Gioffi, Acting Assistant Secretary for Civil Rights, U.S. Department of Education, Feb. 26, 1981.

Technical assistance can provide expert advice on identifying and resolving civil rights problems voluntarily. It also can enhance enforcement activity by State and local civil rights agencies, helping them to share more fully in the Federal enforcement effort. Technical assistance of this kind is particularly important where the law requires State and local agency involvement. 10/

Finally, Federal enforcement activities must be coordinated to ensure that agencies with similar responsibilities all carry them out properly and without wasteful or unduly burdensome duplication. Under Executive and Congressional mandates, some agencies have this additional important responsibility. 11/

By their nature, these enforcement tasks require substantial staff resources. It takes individualized expert attention to investigate specific problems, develop remedies for them, and monitor compliance with settlement agreements. Consequently, personnel costs are the largest expense in enforcement agencies' budgets, and changes in staffing levels have major impact on agencies' abilities to carry out their responsibilities. These

10/ For discussion of such requirements, see chapters 3, 4, and 6.

11/ These include the Departments of Health and Human Services, Housing and Urban Development, and Justice and the Equal Employment Opportunity Commission. Their specific responsibilities are discussed in subsequent chapters dealing with these agencies. On the need for strong coordination, see U.S., Commission on Civil Rights: The Federal Civil Rights Enforcement Effort--1974, vol. V, To Eliminate Employment Discrimination, pp. 576-77, 618 and The Federal Civil Rights Enforcement Effort--1977, To Eliminate Employment Discrimination: A Sequel, pp. 331-35; Louis Nunez, Staff Director, U.S. Commission on Civil Rights, letter to William M. Nichols, General Counsel, OMB, Sept. 12, 1980; FY 83 Budget Report, pp. 38, 61.

agencies also need funds for other purposes, such as information systems that permit them to monitor their own performance as well as analyze compliance information, staff travel to investigate complaints and conduct compliance reviews, and administrative overhead expenses such as rent, heat, and telephone service.

The Commission's analyses of resources for Federal civil rights enforcement consider whether the particular agencies discussed have been provided adequate resources to carry out effective enforcement programs. In 1981 and 1982, the Commission evaluated proposed budgets for civil rights components in the Departments of Education, Health and Human Services, and Justice, the Equal Employment Opportunity Commission, and the Office of Federal Contract Compliance Programs in the Department of Labor. While all Federal agencies have some equal opportunity responsibilities, these 5 agencies were selected for review because they have major responsibility for establishing Federal civil rights policy, coordinating enforcement activity throughout the Federal Government, and/or operating large programs that affect the well-being of those protected by Federal civil rights requirements.

These earlier reports attempted to identify trends across the agencies and within individual agencies over time. They also tried to put in clearer focus the impact of resource decisions on the capacity of the agencies to carry out their enforcement responsibilities.

Recognizing the need for economies, these reviews have addressed the possibility that proposed funding and staff

cutbacks could be offset by strong leadership, better management, increased emphasis on the most cost-effective investigations, and better coordination. 12/ The Commission concluded in 1981 that such improvements, even if vigorously pursued, could not compensate for the proposed reductions and warned that progress in the Federal civil rights enforcement effort was jeopardized. 13/

Last year the Commission noted that budget cuts and inflation had seriously eroded total enforcement resources. 14/ That analysis also considered what the agencies reviewed had accomplished with their reduced resources as well as what they expected to accomplish with proposed resources for FY 83.

The effects of continuing budget constraints included reduced activities to combat widespread patterns of discrimination, inadequate support for State and local civil rights enforcement activities, diminished technical assistance, and unmet coordination needs. 15/ The agencies' FY 83 plans indicated these problems would persist and, in some cases, worsen. 16/ On this basis, the Commission concluded they would need additional funds to carry out their enforcement

12/ FY 82 Budget Statement, p. 46.

13/ Ibid., p. 47.

14/ FY 83 Budget Report, pp. 5-6.

15/ Ibid., pp. 17-20, 27-28, 36, 38-39, 46, 58-59, 62.

16/ Ibid., pp. 64-66.

responsibilities adequately. It also noted that adequate resources would not ensure effective enforcement unless those resources were used to carry out effective policies. 17/

This report updates the two earlier reports and expands on them by adding a chapter on enforcement activities of the Department of Housing and Urban Development. 18/ It evaluates major components of each agency's program according to the agency's own objectives and other available measures of enforcement needs. The report identifies issues that should be tracked in the continuing budget process; discusses changing policies, demands, and procedures that may affect the way resources are used; and considers agency efforts to economize and improve management of civil rights enforcement. Focused principally on resources, it does not address all factors affecting performance. 19/ Nor does it generally include qualitative considerations requiring case-by-case analyses.

17/ The Commission expressed particular concern about proposals that would have reduced the effectiveness of the contract compliance programs. Ibid., pp. 40-41.

18/ Fair housing enforcement issues, including resource deficiencies, have been a longstanding Commission concern. See, for example, U.S. Commission on Civil Rights: Report of the United States Commission on Civil Rights (1959), pp. 534, 537; Commission on Civil Rights Report: Housing (1961), pp. 144-46; 1974 Fair Housing Report; and The Federal Fair Housing Enforcement Effort (1979).

19/ A more comprehensive evaluation could include, for example, agency organization and management, including field investigations of regional and local offices, and a systematic analysis of enforcement standards and their application.

The report, however, does discuss major policies pursued by the Justice Department's Civil Rights Division. These are a vital concern because they indicate the direction of the administration's civil rights enforcement commitments and influence other agencies' enforcement efforts. The discussion here can only summarize an extensive dialogue between the Commission and the Division on cases involving complex legal and factual distinctions. Numerous documents spelling out these distinctions and the major policy differences underlying them are cited in the notes.

Like the Commission's FY 83 budget report, this analysis discusses the agencies' actual spending power in light of inflation. There is no standard measure for the effects of inflation on Federal civil rights enforcement budgets, and many technical problems would be involved in developing one. Congressional Budget Office Gross National Product deflators, developed for analyses of the national economy, provide a general yardstick for considering the impact of inflation. These formulas offer a rough approximation when applied to Federal civil rights enforcement budgets, however, because some major items in these budgets, notably staff salaries, recently have risen more slowly than private sector expenses, while others may have risen more rapidly. The formulas nevertheless have been used in this report because meaningful budget trends cannot be determined without consideration of the declining value of the dollars allocated.

This review only touches on overall spending for civil rights enforcement. Such spending is a tiny fraction of the overall Federal budget. According to the latest published estimates, the administration expects \$632.2 million to be spent for Federal civil rights enforcement in FY 84 if its budget proposals are adopted. 20/ Deficiencies in budget data make it difficult to compare this figure to previous expenditures or determine whether it would compensate for the steady toll taken by inflation. 21/ The unreliability of the data needed to make these assessments suggests continuing deficiencies in information the administration uses to analyze civil rights enforcement

20/ U.S., Executive Office of the President, OMB, Major Themes and Additional Budget Details, Fiscal Year 1984, undated, p. 127. This total figure would include government-wide expenditures for the types of enforcement activity conducted by the 6 agencies discussed in this report and also government-wide expenditures for equal opportunity in Federal employment, this Commission's budget, and civil rights activities by the Postal Service and legislative branch.

21/ The Commission made such comparisons last year, using published OMB figures. It noted such figures had not always been reliable, but were the only total civil rights budget figures available. FY 83 Budget Report, p. 3 n. 10. OMB objected to the conclusions, saying its published figures were inaccurate. Michael J. Horowitz, Counsel to the Director, OMB, letter to Clarence Pendleton, Chairman, U.S. Commission on Civil Rights, June 25, 1982. Commission staff, therefore, asked OMB for clarification of its data in order to determine which, if any, figures could be used in this report. John Hope III, Acting Staff Director, U.S. Commission on Civil Rights, letter to Michael J. Horowitz, Counsel to the Director, OMB, July 28, 1982 and enclosed staff analysis. OMB's response did not resolve the problems. Michael J. Horowitz, Counsel to the Director, OMB, letter to Clarence Pendleton, Chairman, U.S. Commission on Civil Rights, July 29, 1983. This exchange of correspondence is reproduced in an appendix to this report.

spending. 22/ The Commission believes, however, that the detailed information on these 6 agency budgets provides a solid basis for considering the adequacy of support for effective civil rights enforcement.

While there are many ways to evaluate the Federal civil rights enforcement effort, analyzing budget proposals and appropriations is essential. Budgets involve far more than mere allocations of funds. Presidents use their budgets to establish program and policy priorities. Individual agency budgets in turn establish their priorities and also report progress and previous enforcement activity, indicate problem areas, and project needs for future enforcement activity. The Commission's series of budget analyses have focused on executive budget proposals because they identify the administration's civil rights enforcement goals and indicate the extent to which the administration is willing to commit resources to meet them. Thus, a review of the President's proposed budget is also a review of the administration's performance and plans.

22/ For earlier concerns about OMB civil rights spending data and analyses, see Arthur S. Flemming, Chairman, U.S. Commission on Civil Rights, letter to James T. McIntyre, Director, OMB, Mar. 25, 1980 and enclosed staff analysis; Deborah P. Snow, Acting Assistant Staff Director for Federal Civil Rights Evaluation, U.S. Commission on Civil Rights, letter to Nathaniel Scurry, Assistant to the Director for Civil Rights, OMB, Dec. 17, 1980 and enclosed staff analysis; Louis Nunez, Staff Director, U.S. Commission on Civil Rights, letter to Nathaniel Scurry, Assistant to the Director for Civil Rights, OMB, Mar. 17, 1981.

While the Congressional budget process begins with the President's proposals, the budget ultimately adopted by Congress reflects its own priorities. Congressional review of the proposed budget provides an opportunity to monitor and evaluate individual agency and overall administration performance in enforcing civil rights laws. The oversight process, as well as specific appropriations decisions, may significantly affect agency enforcement activity.

Developing Federal agency budgets has become a continuous process. As this report is published, agencies in the Executive branch are negotiating with the Office of Management and Budget on their FY 85 requests (to be sent to Congress in January 1984). Meanwhile, work is continuing on appropriations for the agencies'

activities for FY 84 (which began October 1, 1983). 23/

Since this report reviews the agencies' accomplishments in meeting certain objectives in FY 82 and FY 83 and considers the adequacy of their budget and performance projections for FY 84, it is relevant to both the decisions to be made about the FY 85 budget and oversight of agency performance throughout FY 84. Like any estimate of future needs, it is based on a number of somewhat unpredictable factors. Its conclusions, therefore, must

23/ As of Oct. 30, 1983, action was still pending on FY 84 appropriations for all the agencies discussed in this report except the Department of Housing and Urban Development. On Oct. 1, 1983, the President signed a continuing resolution (Pub. L. 98-107) to provide funding for these agencies through Nov. 10, 1983. [19 Weekly Comp. Pres. Doc. 1407 (Oct. 10, 1983).] As a result, the Health and Human Services Department's Office for Civil Rights (HHS/OCR) was funded at \$418,000 and the Equal Employment Opportunity Commission (EEOC) at \$3.9 million below their FY 84 request levels. (Cited in the respective chapters on these agencies). (Nancy Anderson, Staff, Subcommittee on Labor, Health and Human Services, Education, and Related Agencies of the Senate Committee on Appropriations, telephone interview, Oct. 24, 1983.) The Education Department's Office for Civil Rights (ED/OCR), the Office of Federal Contract Compliance Programs (OFCCP), and the Civil Rights Division were funded at their FY 84 request levels. (Ibid.; James Sullivan, Legislative Counsel, Civil Rights Division, Department of Justice, telephone interview, Oct. 28, 1983.)

On Oct. 20, 1983, the House and Senate agreed to a conference report for an appropriations bill (H.R. 3913, 98th Cong., 1st Sess.) funding ED/OCR, HHS/OCR, and OFCCP for the remainder of FY 84 [H.R. Rept. No. 422, 98th Cong., 1st Sess., 129 Cong. Rec. H8368-76 (daily ed. Oct. 19, 1983); H8433-67 and S14306-10 (daily ed. Oct. 20, 1983)]. At this writing, it was awaiting the President's signature. OFCCP and HHS/OCR would be funded at the continuing resolution's appropriations levels, while ED/OCR would receive a \$4.5 million increase. [For FY 84 appropriations see 129 Cong. Rec. H8438 (OFCCP), H8454 (HHS/OCR), and H8459 (ED/OCR) (daily ed. Oct. 20, 1983).] Congress had not completed action on FY 84 appropriations for the Civil Rights Division and EEOC by Oct. 30, 1983.

be somewhat tentative. They are not empty speculations, however, but projections based on trends the Commission has monitored closely for some time.

The information contained in this report was drawn from OMB and agency budget documents for FY 84 and earlier years; agency program plans, management reports, evaluations, policy statements and proposals, and Congressional testimony; legal briefs and decisions; and written and oral responses to Commission staff inquiries. In accordance with Commission policy, each of the 6 enforcement agencies discussed here was offered an opportunity to comment on the factual accuracy of an earlier draft of the relevant chapter of this report. All did so. 24/ This published version incorporates the most recent data they provided and many other comments and explanations they suggested should be considered. Some issues of continuing disagreement and gaps and inconsistencies in data that precluded adopting some of the agencies' suggested revisions are noted in particular chapters.

The Commission appreciates the cooperation of the 6 agencies in preparation of the report. Interpretations of facts and conclusions reflect the views of the Commission, not the agencies.

24/ Each agency's comments are cited in the relevant chapter and reproduced in an appendix to this report.

DEPARTMENT OF EDUCATION: OFFICE FOR CIVIL RIGHTS

Enforcement Responsibilities

The Department of Education's Office for Civil Rights (OCR) is responsible for enforcing the prohibitions against discrimination based on race, sex, handicap, and age in Title VI of the Civil Rights Act of 1964, 1/ Title IX of the Education Amendments of 1972, 2/ Section 504 of the Rehabilitation Act of 1973, 3/ and the Age Discrimination Act of 1975. 4/ It must ensure nondiscrimination in all State education agencies and vocational rehabilitation systems, 16,000 school systems, 3,200 colleges and universities, 10,000 proprietary institutions (for-profit schools for career preparation), and other types of institutions, such as libraries and museums, that receive departmental funds. 5/

1/ 42 U.S.C. §§2000d-2000d-6 (1976 & Supp. V 1981). Title VI prohibits discrimination because of race, color, or national origin in any program receiving Federal financial assistance.

2/ 20 U.S.C. §§1681-1686 (1976). Title IX prohibits sex discrimination in federally-assisted education programs.

3/ 29 U.S.C. §794 (Supp. V 1981). Section 504 prohibits discrimination on the basis of handicap in all federally-assisted and federally-conducted programs.

4/ 42 U.S.C. §§6101-6107 (1976 & Supp. V 1981). The Age Discrimination Act bars discrimination because of age in programs and activities receiving Federal financial assistance.

5/ U.S., Department of Education, Office for Civil Rights (hereafter OCR), "Final Annual Operating Plan for Fiscal Year 1983," 48 Fed. Reg. 1789, 1791 (1983) (hereafter cited as FY 83 Operating Plan).

The laws OCR enforces seek to guarantee equal opportunity for approximately 12 million minority group students, 26 million women students, and 4 million handicapped students. 6/ They also prohibit employment discrimination against teachers and other school employees. 7/

Failure to enforce these laws effectively has subjected OCR to court orders for many years. 8/ The Federal district court recently found OCR was not complying with its requirements and

6/ OCR does not collect data on individuals protected under the Age Discrimination Act. Frederick Tate, Special Assistant to the Assistant Secretary, OCR, telephone interview, Aug. 23, 1983.

7/ See 34 C.F.R. §§100.3(c), 104.11, 106.51 (1982) (the Department's Title VI, Title IX, and Section 504 regulations prohibiting discriminatory employment practices). See also North Haven Board of Education v. Bell, 456 U.S. 512 (1982).

8/ See Adams v. Richardson, 356 F. Supp. 92, 94 (D.D.C. 1973), modified and aff'd., 480 F.2d 1159 (D.C. Cir. 1973), supplemental order sub. nom. Adams v. Weinberger, 391 F. Supp. 269 (D.D.C. 1975), second supplemental order sub. nom. Adams v. Califano, 430 F. Supp. 118 (D.D.C. 1977) (hereafter cited as Dec. 1977 Adams/WEAL Order). The early orders addressed delays in OCR's enforcement of Title VI. The 1977 order also covered Title IX and section 504 enforcement. In addition to addressing cases already delayed, it required OCR to process all new complaints and conduct compliance reviews within certain time frames. It also required certain surveys to identify probable compliance problems and reports on OCR's operations and plans.

substantially reaffirmed them. 9/ OCR recently has intensified efforts to comply with the order and made significant progress in areas where it can exercise some discretion, notably compliance reviews. Staff shortages, however, apparently contributed to OCR's Adams problems and limited its discretionary activities. 10/ OCR's resources nevertheless

9/ Adams v. Bell, No. 3095-70, and Women's Equity Action League v. Bell, No. 74-1720 (D.D.C. Mar. 11, 1983) (hereafter cited as 1983 Adams/WEAL Order). The court found that its 1977 order had "been violated in many important respects" and that its requirements remained important because "if the government is 'left to its own devices, the manpower that normally would be devoted to this type of thing, ... might be shunted off into other directions, will fade away and the substance of compliance will eventually go out the window.'" Slip op. at 2.

In addition to reaffirming, with some modifications, the 1977 time frames, the new order specifies Education Department plans for several major surveys including, in FY 84, an elementary and secondary school survey OCR regularly has conducted and a vocational education survey it conducted only once in 1979. The order states in part, "ED also intends to conduct a survey of vocational schools based on the updated universe of recipients included in the Fall 1979 Vocational Education Civil Rights Survey at least once every four years beginning in fall 1983." Id. at 16. Contrary to Commission views, OCR does not believe this constitutes a requirement for the survey in FY 84. Harry M. Singleton, Assistant Secretary for Civil Rights, Department of Education, letter to Linda Chavez, Staff Director, U.S. Commission on Civil Rights, Sept. 23, 1983 (hereafter cited as Singleton September Letter), enclosed "Specific Comments on the Civil Rights Commission's Chapter on OCR," p. 1 (hereafter cited as OCR Comments). The new order also adds reporting requirements. 1983 Adams/WEAL Order at 17-20.

The Education Department has appealed this order, asking that all the requirements governing OCR's operations be eliminated. Brief for Appellants at 27-30, 78, Adams v. Bell, No. 83-1590, and Women's Equity Action League v. Bell, No. 83-1516 (D.C. Cir., brief filed Sept. 19, 1983) (hereafter cited as 1983 Adams/WEAL Appellants' Brief).

10/ U.S., Commission on Civil Rights, The Federal Civil Rights Enforcement Budget, Fiscal Year 1983 (1982), pp. 15-21 (hereafter cited as FY 83 Budget Report).

would be reduced under the proposed FY 84 budget. 11/ OCR's ability to carry out statutory and judicially imposed requirements thus would be jeopardized.

Budget Totals

As table 1 shows, funding for OCR has dropped sharply since the beginning of FY 80. 12/ There is no exact measure of OCR's additional losses in spending power due to inflation. A general yardstick for considering the impact of inflation is

11/ In addition to inadequate staff, OCR may lack funds for surveys required by the new Adams order. The proposed FY 84 budget was developed before the order was issued and makes no specific reference to surveys. While OCR might well have planned to survey elementary and secondary schools, it is doubtful the agency expected it would have to survey vocational education programs in FY 84. OCR estimates that this survey, if conducted in FY 84, would cost about \$800,000. OCR Comments, p. 1. New Adams reporting requirements also may entail expenditures not envisioned in the proposed FY 84 budget.

12/ OCR suggests the appropriate figure to use as a baseline for its declining funds would be what the Office of Management and Budget allocated to it when it was reorganized in the new Education Department (67 percent of the FY 80 resources authorized for civil rights enforcement in the Department of Health, Education, and Welfare). Singleton September Letter. The Commission has used 80 percent of the FY 80 authorization because this is consistent with OCR's estimate of the percentage of Health, Education, and Welfare enforcement resources used for education activities. Fred T. Gioffi, "Report to the Court and Plaintiffs on OCR's Efforts to Comply with the Consent Order dated December 29, 1977, in Adams v. Califano, Civ. No. 70-3095 (D.D.C.)," Declaration in Support of Defendants' Opposition to Plaintiffs' Motion for Order to Show Cause, Exhibit I (May 27, 1981) at 14 (hereafter cited as Gioffi Affidavit). The original FY 80 appropriation itself represented a cut of \$3 million below the preceding year. OCR, "Salaries and Expenses, 11 Year History of OCR Appropriations," undated, Tab A (hereafter cited as History of OCR Appropriations).

Table 1

OCR Budget Totals: FY 1980-84

(in thousands of dollars)

<u>Fiscal Year</u>	<u>Appropriation a/</u> (annualized)
1980 (HEW)	\$53,953 <u>b/</u>
1980 (Education)	45,847
1981	46,915
1982	45,038
1983	44,868
1984 (Request)	42,058

*
*

a/ Figures represent what OCR could have spent during a whole fiscal year under each spending ceiling.

b/ OCR's estimate of its 1980 appropriation in the Department of Health, Education, and Welfare that was allocated for education enforcement activities.

SOURCES: U.S., Department of Education, Office for Civil Rights: "Salaries and Expenses, 11 Year History of OCR Appropriations," undated (for above FY 80 HEW and Education appropriations); "Salaries and Expenses," undated (prepared for March 1982 appropriations hearings) (for FY 81 appropriation); Harry M. Singleton, Assistant Secretary for Civil Rights, Department of Education, letter to John Hope III, Acting Staff Director, U.S. Commission on Civil Rights, Mar. 18, 1983, Enclosure A (for FY 82 and FY 83 appropriations); U.S., Department of Education, "Education Activities, Salaries and Expenses," undated (submitted to Subcommittees on Labor, Health and Human Services, and Education of the House and Senate Committees on Appropriations, March 1983), p. 269 (for FY 84 request).

provided by Congressional Budget Office Gross National Product deflators. Although these are not geared specifically to rising costs in the Federal sector, they may offer a rough approximation of trends in enforcement resources, including OCR's. 13/ Adjusting for inflation with the Congressional Budget Office formula, OCR would appear to have lost nearly 33 percent of its actual spending power during the last 3 years. 14/

A \$2.8 million cut in OCR's budget is proposed for FY 84. 15/ Applying the appropriate deflator, this would leave the agency about 57 percent of the spending power it had to comply with the Adams order and increase discretionary

13/ For a fuller discussion of the use and limits of these measures, see chapter 1.

14/ This estimate is derived by dividing OCR's appropriation by a factor that accounts for annual inflation rates since FY 80. Deflators for each fiscal year through FY 84 were provided by Steven Zeller, economist, Fiscal Analysis Division, Congressional Budget Office, telephone interview, June 20, 1983. OCR notes that, if the base used were the annualized FY 80 appropriation for its activities in the Education Department, the loss would be approximately 20 percent (\$9 million). OCR Comments, p.1. The Commission used OCR's annualized estimate of FY 80 expenses for education enforcement in the Department of Health, Education, and Welfare because this more accurately represents the agency's resources for two-thirds of the fiscal year. For this estimate, see History of OCR Appropriations.

15/ U.S., Department of Education, "Education Activities, Salaries and Expenses," undated (submitted to Subcommittees on Labor, Health and Human Services, and Education of the House and Senate Committees on Appropriations, March 1983), p. 269 (hereafter cited as OCR FY 84 Budget).

activities in 1979. 16/ OCR could wind up with even less than this because, as the budget now is structured, funds appropriated for OCR could be transferred to other activities. 17/

16/ OCR's budget requests to comply with the 1977 order were not fully reflected in its appropriation until 1979. Cynthia G. Brown, Statement to the Court of November 2, 1979, Adams v. Harris, Civ. Action No. 3095-70 (D.D.C. Nov. 2, 1979). Exhibit I at 3 (hereafter cited as Brown Affidavit). In addition to Adams compliance, OCR's 1979 budget also provided nearly \$9 million for its then new technical assistance program. U.S., Department of Education, OCR, "OCR Technical Assistance Funding History," undated (hereafter cited as Technical Assistance Funding History), Tab B. The comparison between FY 79 and projected FY 84 spending power is based on OCR's estimate that 80 percent of its resources in the Department of Health, Education, and Welfare were used for education enforcement activities. The estimated loss, however, may be too low. In FY 79, OCR planned to spend 85 percent of its resources on education issues. Shirley M. Hufstedler, Secretary of Education, letter to James T. McIntyre, Jr., Director, Office of Management and Budget, Dec. 18, 1979 (hereafter cited as Hufstedler Letter), enclosed "Detailed Discussion of OCR Activities."

17/ A change in the structure of the Education Department budget would consolidate OCR's FY 84 appropriation with appropriations for program administration and the Office of the Inspector General. This has been described as a technical change that would maintain OCR's "budgetary independence." Charles L. Heatherly, Deputy Under Secretary for Management, Department of Education, statement, Departments of Labor, Health and Human Services, Education and Related Agencies Appropriations for 1984, before the Subcommittee on the Departments of Labor, Health and Human Services, Education, and Related Agencies of the House Committee on Appropriations, 98th Cong., 1st sess., p. 1186 (1983) (hereafter cited as FY 84 Appropriations Hearings). Funds proposed for OCR, however, could be used for the two other programs in the same account. The Department has not ruled out this possibility, but has said it would seek Congressional consent to any transfer of funds from one account to another. Commission staff notes on testimony of Charles L. Heatherly before the Subcommittee on Labor, Health and Human Services, and Education of the Senate Committee on Appropriations (maintained in Commission files).

Staffing

Historically, OCR enforcement has been unduly slow, partly because of staff shortages. 18/ The 1977 Adams order, therefore, required OCR not only to complete certain activities within specific time frames, but also to request the additional positions compliance would require. 19/ OCR did not receive all the positions it requested to meet the court-ordered deadlines and increase reviews to remedy institution-wide patterns and practices of discrimination. 20/ It, moreover, soon began losing staff it had obtained, 21/ a trend that has continued, as table 2 shows.

18/ U.S. Commission on Civil Rights: The Federal Civil Rights Enforcement Effort--1974, vol. III, To Ensure Equal Educational Opportunity (1975), pp. 12-15 (hereafter cited as To Ensure Equal Educational Opportunity) and Enforcing Title IX (1980), pp. 25-26, 39. For a discussion of specific links between delays in OCR enforcement activities and staff shortages, see FY 83 Budget Report, p. 17, n. 42.

19/ Dec. 1977 Adams/WEAL Order.

20/ Brown Affidavit at 3-4. The order required OCR to conduct "an appropriate number" of compliance reviews to ensure adequate civil rights enforcement. Dec. 1977 Adams/WEAL Order at 15. OCR apparently interpreted this to mean a substantially enhanced compliance review program. As evidence of its compliance with the order, it cited 272 reviews initiated in 1978 and 560 reviews initiated in 1979. Brown Affidavit at 25-26. See pp. 30-31 of this report for numbers of reviews initiated in more recent years.

21/ Id. at 4; Cioffi Affidavit at 13-14.

Table 2

OCR Full Time, Permanent Staff Positions: FY 1980-84

<u>Fiscal Year</u>	<u>Authorized a/</u>	<u>Actual b/</u>
1980 (HEW)	1,514 <u>c/</u>	1,314
1980 (Education)	1,181	1,048 <u>d/</u>
1981	1,098	1,055
1982	1,026	1,025
1983	945	913 <u>e/</u>
1984 (Request)	945	---

a/ Number of full time, permanent staff permitted under Congressional budget measures.

b/ Number of full time, permanent staff actually employed by OCR. Except as noted, figures are for the first day of the fiscal year.

c/ Based on OCR's estimate of resources used for education enforcement activities in the Department of Health, Education, and Welfare.

d/ As of May 1980, when the Education Department officially began operations.

e/ As of July 30, 1983.

SOURCES: Kassie Billingsley, Chief, Planning and Budgeting Branch, OCR, interview, Mar. 4, 1982 and telephone interview, Aug. 18, 1983 (for FY 80-FY 81 authorized and actual figures and FY 83 actual figure); Harry M. Singleton, Assistant Secretary for Civil Rights, Department of Education, letter to John Hope III, Acting Staff Director, U.S. Commission on Civil Rights, Mar. 18, 1983, Enclosure A (for FY 82 authorized and actual figures, FY 83 authorized figure, and FY 84 request).

In 1981, the Adams plaintiffs again sought relief for excessive delays. 22/ By the time of the court hearing, OCR had about two-thirds of the positions it once thought necessary to carry out its obligations 23/ and lacked funds to keep them all filled. 24/ As noted, the court found substantial violations of its 1977 order and reaffirmed its essential requirements, suggesting they were necessary to preserve enforcement "manpower." 25/ OCR, however, has lost an additional 81 positions in FY 83 and would receive no increase under the proposed FY 84 budget.

22/ Adams v. Bell, No. 3095-70, Plaintiffs' Motion for Order to Show Cause (D.D.C. Apr. 22, 1981); Women's Equity Action League v. Bell, No. 74-1720, Plaintiffs' Women's Equity Action League Motion for Order to Show Cause (D.D.C. June 24, 1981).

23/ This percentage is based on OCR's original request for additional positions, its estimate of the percentage of resources used for enforcement in education before the division of the Department of Health, Education and Welfare, and its estimate of the minimum percentage of those resources needed to carry out its education enforcement obligations. See Brown Affidavit at 4; Cioffi Affidavit at 13; Hufstedler Letter.

24/ Kassie Billingsley, Chief, Planning and Budgeting Branch, OCR, interview, Mar. 4, 1982 (hereafter cited as Billingsley Interview). It is unclear whether OCR's original estimate was accurate or whether it still would have needed the same number of positions for Adams compliance. By FY 82, for example, OCR was receiving substantially fewer complaints than when the order was issued. U.S., Department of Education, OCR, "Second Annual Report," March 1983, p. 17 (hereafter cited as OCR Annual Report).

25/ 1983 Adams/WEAL Order at 2.

Staff shortages alone do not account for OCR's failures to meet the deadlines set in the Adams order. 26/ Agency policies and management also are important factors. 27/ There have

26/ OCR has maintained that declining staff levels have not been a factor in its Adams compliance problems or otherwise weakened its enforcement program. Commission staff notes on testimony of Clarence Thomas, Assistant Secretary for Civil Rights, in hearing an order to show cause in Adams v. Bell, No. 3095-70, and Women's Equity Action League v. Bell, No. 74-1720, Mar. 12, 1982 (maintained in Commission files) (hereafter cited as Thomas Testimony); Joan M. Standlee, Deputy Assistant Secretary for Civil Rights, Department of Education, interview, Dec. 21, 1982 (hereafter cited as Standlee 1982 Interview). Some of the problems OCR has identified, however, could be minimized with more staff resources. FY 83 Budget Report, p. 17, n. 42. For resource-related compliance problems, such as deadlines missed due to "heavy workload," see also analyses developed by OCR contractor in OCR, "Adams Time Frames Study, Phase II: Case-by-Case Analysis," May 26, 1982.

27/ OCR, for example, has chosen to prolong negotiations past the Adams deadline when it believed a settlement eventually could be reached. Thomas Testimony. It, moreover, suspended processing of all cases in a number of categories because they involved issues which were under review by headquarters. Enforcing Title IX, pp. 19, 22-24; Michael A. Middleton, Deputy Assistant Secretary for Civil Rights, memoranda to Clarence Thomas, Assistant Secretary for Civil Rights, and Regional Directors, Dec. 3, 1981 (hereafter cited as Middleton Memoranda). It also suspended processing of all employment cases when several appellate courts ruled it lacked jurisdiction. Enforcing Title IX, pp. 20-22; OCR Comments, p. 2. For recommendations against this procedure, see Enforcing Title IX, p. 39; William Bradford Reynolds III, Assistant Attorney General, Civil Rights Division, Department of Justice, letter to Clarence Thomas, Assistant Secretary for Civil Rights, Apr. 9, 1982.

been some changes in these areas. 28/ Even further improvements, however, probably would not produce a vigorous, well-balanced, timely program of enforcement activities so long as current staff constraints persist. 29/

Complaint Processing

Complaint investigations are a less effective enforcement tool than compliance reviews. 30/ Resolving complaints,

28/ For example, OCR has instructed regional offices to process cases in most "hold" categories established for issues under internal review. Middleton Memoranda. It also developed a manual and provided staff guidance to expedite processing of Title IX employment cases that had been put on hold pending a Supreme Court ruling on its jurisdiction. Harry M. Singleton, Assistant Secretary for Civil Rights, statement before the Subcommittee on Postsecondary Education of the House Committee on Education and Labor and Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary, May 18, 1983, p. 3 (hereafter cited as Singleton Enforcement Testimony).

29/ OCR estimates that nearly 98 percent of its current staff resources are used for activities required by the Adams order. Singleton Enforcement Testimony, p. 6. Under the proposed FY 84 budget, this would mean approximately 20 staff would be available for supplementary analyses of compliance information, such as needs assessments, technical assistance, and other important activities not specifically required by the order, including monitoring of voluntary remedial plans and State agency activities.

30/ U.S., Commission on Civil Rights: The Federal Civil Rights Enforcement Effort--1974, vol. IV, To Provide Fiscal Assistance (1975), p. 66 (hereafter cited as To Provide Fiscal Assistance); Making Civil Rights Sense Out of Revenue Sharing Dollars (1975), pp. 59-61; Enforcing Title IX, p. 24; Civil Rights: A National, Not a Special Interest (1981), pp. 40-41 (hereafter cited as FY 82 Budget Statement); "Staff Comments on Annual Operating Plan for Fiscal Year 1982 Proposed by the Office for Civil Rights, Department of Education," Nov. 16, 1981, pp. 1-2 (hereafter cited as FY 82 Operating Plan Comments); and FY 83 Budget Report, pp. 3-4, 65. For OCR's concurrence with this assessment see, for example, Singleton September Letter.

however, has been OCR's top priority, due at least in part to Adams requirements. 31/ In the past, OCR repeatedly underestimated the amount of time complaints would require and, as a result, did not have enough staff to meet its compliance review goals. 32/ This situation changed in FY 82, principally because OCR received substantially fewer complaints than expected. 33/ Increased use of an expedited complaint resolution process also may have freed some staff time for

31/ The 1977 Adams order required OCR to resolve all complaints within specific time frames. It also established time frames for compliance reviews, but did not specify how many OCR had to conduct. Dec. 1977 Adams/WEAL Order at 13-16. OCR, therefore, has tended to emphasize complaints processing. 1983 Adams/WEAL Appellants' Brief at 70-71.

32/ Brown Affidavit at 2, 26-28; Enforcing Title IX, p. 25; Louis Nunez, Staff Director, U.S. Commission on Civil Rights, letter and enclosed staff comments on Office for Civil Rights Proposed Fiscal Year 1981 Annual Operating Plan, to Cynthia G. Brown, Assistant Secretary for Civil Rights, Department of Education, Sept. 29, 1980 (hereafter cited as FY 81 Operating Plan Comments); FY 82 Operating Plan Comments, p. 2.

33/ Maureen Browne, Chief, Reports and Analysis Branch, OCR, interview, May 10, 1983 (hereafter cited as Browne Interview). Assuming it would receive 2,786 complaints in FY 82, OCR planned to initiate approximately 80 compliance reviews. OCR, "Implementation Plan for Executive Order 12250," undated (submitted to the Department of Justice pursuant to a request for plans by February 1982), pp. 4-5 (hereafter cited as OCR Implementation Plan). OCR actually received 1,840 complaints and began 208 reviews. OCR Annual Report, pp. 17, 23.

compliance reviews. 34/

OCR expects complaints to remain at about the FY 82 level in FY 83 and FY 84. 35/ This projection is quite uncertain because OCR does not know why complaints have fallen off. 36/ Even if it is accurate, relative staff allocations to complaints and other activities, such as compliance reviews, may shift. Recent initiatives limiting management information

34/ Under the early complaint resolution process, OCR attempts to mediate settlements between parties to a complaint. If a settlement is reached, OCR does not conduct a full-scale investigation and, thus, saves staff resources. An unsuccessful mediation effort, on the other hand, adds to the staff time complaint resolution requires. Project on Equal Education Rights, NOW Legal Defense and Education Fund, and SRI International, "The Settlement Solution: Assessing Mediation as a Tool in the Enforcement of Civil Rights," prepared for OCR, October 1980, p. 60. Early complaint resolution was instituted in all regional offices in early FY 82. Michelle Craig, staff, Reports and Analysis Branch, OCR, telephone interview, July 6, 1983. OCR does not have data on staff time devoted to mediation. Ibid. FY 83 data on the number of cases where early complaint resolution was attempted and the number where it produced settlements suggest the process has saved relatively little staff time. It nevertheless may be a useful option in certain types of cases. OCR reports plans to analyze existing FY 82 and FY 83 data to determine the effectiveness of the process. OCR Comments, p. 2.

35/ Browne Interview.

36/ Ibid.

make reliable projections in this area very difficult. 37/

Compliance and Other Reviews

OCR has found that its compliance reviews produce twice as many remedies and benefit six times as many victims of discrimination as its complaint investigations. 38/ Reviews are especially vital to enforcing the rights of low-income and of non-English speaking individuals, who tend not to file complaints. 39/ Lack of resources in this area, therefore, has

37/ OCR, for example, ceased collecting information it formerly used to estimate how much investigator time its expected complaints caseload would require. Ibid. Such information might suggest that more or less staff time would be absorbed by complaints in FY 83 and FY 84 if receipts remain at the FY 82 level. OCR plans to implement a new system which it believes again will permit such estimates in the future. OCR Comments, p. 2. OCR also no longer estimates the staff resources it will use for each type of enforcement activity. FY 83 Operating Plan. For the need for such estimates to assess OCR plans and resources for carrying them out, see John Hope III, Acting Staff Director, U.S. Commission on Civil Rights, letter to Harry M. Singleton, Assistant Secretary for Civil Rights, Nov. 17, 1982, pp. 2-3 (hereafter cited as OCR Issues Letter).

38/ Roma J. Stewart, Director, OCR, Department of Health, Education, and Welfare, response to Commission staff request for information, Feb. 8, 1980, cited in Enforcing Title IX, p. 24. See also OCR Annual Report, p. 22.

39/ For OCR views to this effect, see OCR, "Salaries and Expenses," undated (prepared for February 1981 appropriations hearings), p. 326; Cynthia G. Brown, former Assistant Secretary for Civil Rights, interview, Mar. 10, 1981; Clarence Thomas, Assistant Secretary for Civil Rights, interview, Feb. 22, 1982. The Adams order requires reviews to protect groups underrepresented by complaints. See Dec. 1977 Adams/WEAL Order at 16; 1983 Adams/WEAL Order at 10-11.

been a major Commission concern. 40/

From FY 80 through FY 82, declining resources led OCR to plan fewer compliance reviews each year. 41/ Whereas OCR planned to begin 256 reviews in FY 80, 42/ it planned to allocate enough staff for approximately 83 new reviews in FY 81. 43/ For FY 82, it ultimately projected 78 new reviews. 44/ These plans would have provided for new reviews of fewer than 3 percent of the school systems and postsecondary institutions OCR had good reason to believe should be investigated for serious violations of major civil rights

40/ To Ensure Equal Educational Opportunity, pp. 61-62; Enforcing Title IX, pp. 25-26, 40; FY 82 Operating Plan Comments, pp. 7-8; FY 82 Budget Statement, p. 46; FY 83 Budget Report, pp. 16-18; OCR Issues Letter, pp. 2-3.

41/ FY 83 Budget Report, pp. 16-18.

42/ U.S., Department of Health, Education, and Welfare, "FY 1980 Annual Operating Plan--Education--Compliance Review Issues," unpublished, undated revision (sent to Commission staff on Feb. 28, 1980). For delays in carrying out these plans and Commission views that additional staff might be required, see Enforcing Title IX, pp. 25-26, 39-40.

43/ In FY 81, OCR stopped publishing estimates of the numbers of reviews it would begin. In response to Commission staff comments, however, it published averages of the amount of time reviews addressing each type of compliance problem would take. OCR, "Annual Operating Plan for Fiscal Year 1981," 46 Fed. Reg. 5034, 5038 (1981) (hereafter cited as FY 81 Operating Plan). From these, staff estimated the number of reviews OCR could be expected to initiate.

44/ OCR Implementation Plan, p. 4. OCR plans published in March 1982 indicated it could be expected to begin somewhat fewer new reviews. OCR, "Annual Operating Plan for Fiscal Year 1982," 47 Fed. Reg. 9900, 9903 (1982); FY 81 Operating Plan, p. 5037; FY 83 Budget Report, p. 17.

requirements. 45/ As noted, the agency substantially exceeded its FY 82 projection, actually initiating 208 reviews and completing 240. 46/ Even with this enhanced review effort, however, it still was able to cover only about 8 percent of recipients apparently in severe noncompliance. 47/

Complaint receipts have continued to decline. 48/ It is unclear whether OCR's compliance reviews can be expected to increase accordingly. 49/ In FY 83 OCR probably maintained, if not exceeded, the FY 82 level. 50/ Despite declining

45/ OCR, "Data Elements for FY 1983 Compliance Reviews and Remedial Plan Monitoring," June 30, 1981 (hereafter cited as Compliance Review Data Elements). This analysis, developed for FY 83 budget proposals, was based on OCR survey data. It classified 2,526 recipients as "in severe noncompliance" and, on this basis, estimated the percentage of need OCR's compliance reviews would meet at projected budget levels.

46/ OCR Annual Report, p. 23. OCR also exceeded its FY 81 projection, actually beginning 138 new compliance reviews that year. OCR Comments, p. 2; OCR Annual Report, p. 22.

47/ This percentage is based on OCR estimates of statistically probable violations in Compliance Review Data Elements. OCR staff could not provide an update of this crucial needs assessment.

48/ Second Quarter FY 83 Management Report, p. 4.

49/ As of March 1983, OCR expected to begin slightly fewer new reviews (200) than it began in FY 82, but indicated more could be started if its complaint workload declined. FY 84 Appropriations Hearings, p. 1221 (information submitted for the record). In September 1983, OCR reported it planned more reviews for FY 83 and FY 84 than were planned for FY 80 (256). It, however, did not indicate the number of reviews planned. OCR Comments, p. 2.

50/ As of the end of the third quarter of FY 83, OCR had begun onsite investigations in 204 reviews. Singleton September 1983 Letter. This is almost as many as OCR began during the whole of FY 82. OCR Annual Report, p. 23.

complaint receipts, however, OCR expects "no great change" in the level of its compliance review effort in FY 84, 51/ presumably because staff resources also have been declining steadily while other demands on them are scheduled to increase. Specifically OCR proposes to use staff for technical assistance activities formerly carried out by contract personnel. 52/ If these activities remain at all comparable in scope and kind, it is difficult to see how they will not limit staff resources now available for compliance reviews. 53/

Other factors also may hinder progress in OCR's compliance review effort. For example, funds originally expected to support staff now may have to be used for unbudgeted surveys and changes in information systems required by the new Adams order. In addition, OCR may be required to increase other activities it minimized to save resources during the last

51/ FY 84 Appropriations Hearings, p. 1221 (information submitted for the record).

52/ OCR FY 84 Budget, p. 276.

53/ OCR has said compliance reviews will not be affected. FY 84 Appropriations Hearings, p. 1219 (testimony of Harry M. Singleton).

several years. 54/

Resources for followup reviews to ensure that compliance plans actually are carried out apparently will remain inadequate. 55/ Court orders require OCR to monitor implementation of higher education desegregation plans and plans to ensure equal educational opportunity for language minority children. 56/ In FY 82, OCR expected these commitments would leave the equivalent of only 5 full time investigators to monitor all other remedial action plans

54/ OCR formerly was required to review the Title VI compliance status of all prospective recipients of Emergency School Aid Act (ESAA) grants. 20 U.S.C. §3200 (Supp. V 1981) (repealed effective Oct. 1, 1982). These pregrant reviews often obtained prompt corrective action and focused OCR attention on problems it otherwise might have neglected. To Ensure Equal Educational Opportunity, pp. 96-97, 360; Cynthia G. Brown, former Assistant Secretary for Civil Rights, Department of Education, statement before the Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary, Sept. 9, 1982, pp. 6-7. Required pregrant reviews under ESAA were eliminated by the inclusion of the program in the education block grant. Education Consolidation and Improvement Act of 1981, 95 Stat. 463, 480 (1981). OCR since has conducted considerably fewer pregrant reviews because it lacked resources to conduct such reviews where not specifically required. OCR Annual Report, p. 30; Kristine M. Marcy, Director, Planning and Compliance Operations Service, OCR, interview, Mar. 5, 1982 (hereafter cited as Marcy interview). A bill to reauthorize ESAA as a separate program, which could require OCR to resume substantial pregrant activity, is under consideration in Congress. H.R. 2207, 98th Cong., 1st Sess. (1983); S. 1256, 98th Cong., 1st Sess. (1983). For the importance of this measure, see John Hope III, Acting Staff Director, U.S. Commission on Civil Rights, letter to Daniel Patrick Moynihan, U.S. Senate, June 22, 1983.

55/ For the need for increased OCR followup, see To Ensure Equal Educational Opportunity, pp. 83-84; FY 81 Operating Plan Comments, p. 1; FY 82 Operating Plan Comments, pp. 5-6; FY 83 Budget Report, p. 21.

56/ OCR FY 84 Budget, p. 275.

resulting from previous OCR investigations and 50 State agency plans for assuring civil rights compliance in vocational education. 57/ With so little staff time available, OCR did not systematically follow up on remedial plans in FY 82 or project such activity for FY 83. 58/ The proposed FY 84 budget alludes to remedial plan monitoring, but suggests resources not required to comply with court orders will be used for

57/ . FY 82 Operating Plan, p. 9902. Guidelines issued pursuant to the 1977 Adams order require a number of specific State agency activities to ensure Title VI, Title IX, and Section 504 compliance in vocational education programs receiving Federal funds. 34 C.F.R. Part 100 Appendix B, §II(B) (1982). OCR reports it is reviewing State agency activities regarding compliance with all three statutes but enforcing the guidelines only as regards Title VI because it believes Title IX and Section 504 regulations must be amended to authorize the State agency requirements in these areas. OCR Comments, p. 3. OCR has held this view since the guidelines were published in 1979. 44 Fed. Reg. 17163 (1979). It reports proposals to make the requisite regulatory changes but no expected publication date. OCR Comments, p. 3.

For the importance of holding State agencies accountable for ensuring civil rights compliance by the programs to which they distribute Federal funds, see U.S., Commission on Civil Rights: The Federal Civil Rights Enforcement Effort--1974, vol. VI, To Extend Federal Financial Assistance, p. 809; To Ensure Equal Educational Opportunity, pp. 111, 384; and "Comments on Department of Health, Education, and Welfare Proposed Guidelines on Nondiscrimination in Vocational Education Programs," Feb. 7, 1979. For concerns about the small FY 82 resource allocation to monitoring State agency compliance and the possibility that resources might not be available for remedial plan monitoring, see FY 82 Operating Plan Comments, p. 6.

58/ Marcy Interview; FY 83 Operating Plan, p. 1792. The FY 83 Operating Plan refers to monitoring of court-ordered remedial plans, but not to plans OCR negotiated as a result of its own investigations.

technical assistance instead. 59/

Technical Assistance

Technical assistance to encourage voluntary civil rights compliance is a key component of OCR's enforcement program. 60/ Through regional technical assistance units and special projects carried out under contract, it has provided expert advice on resolving compliance problems and meeting requirements without undue costs. 61/ Despite the importance of this effort and its consistency with the

59/ OCR FY 84 Budget, pp. 275-76. The basic description of OCR operations in the budget justification cites court-ordered monitoring and states, "In addition, the Office for Civil Rights monitors the plans of those whose efforts towards compliance with laws and court orders will be implemented over an extended period of time." Ibid., p. 275. The justification, however, also states that, under the proposed FY 84 budget, "OCR will have the resources to meet the basic requirements of the various court orders relating to the Office's operations and to undertake a sizable technical assistance program." Ibid., p. 276. There is no reference to monitoring not required by court orders. OCR's proposed FY 84 Operating Plan refers to such monitoring, but offers no indication it will not be more systematic than in the past. OCR, "Annual Operating Plan for Fiscal Year 1984," 48 Fed. Reg. 34095-96 (1983).

60/ OCR Implementation Plan, p. 7; FY 83 Operating Plan, p. 1792. OCR technical assistance efforts, focused mainly on Section 504, have included printed materials, workshops, onsite consultations and training sessions, and other communications designed to equip education institutions to comply with their civil rights obligations and inform protected groups of their rights. OCR Implementation Plan, p. 7. For the general importance of outreach to organizations that must comply with, and groups that are protected by, civil rights laws, see To Provide Fiscal Assistance, pp. 67-69; Enforcing Title IX, p. 41.

61/ For achievements in these areas, see, for example, OCR, Regional Technical Assistance Staff, "FY 82 Annual Report," (hereafter cited as Regional Technical Assistance Report).

administration's general enforcement philosophy, 62/ budget constraints consistently have narrowed OCR's technical assistance plans. 63/

In FY 81 OCR had approximately 21 professional staff in its regional technical assistance units. 64/ Contract funds supported a much larger effort, but only about two-thirds of what OCR originally planned. 65/ While regional technical

62/ In civil rights and other areas, the administration has stressed increased reliance on State and local enforcement, a more conciliatory Federal approach, and "good faith" voluntary efforts to comply with the laws. U.S., Executive Office of the President, Office of Management and Budget, Special Analysis J: Civil Rights Activities, February 1982, pp. 5, 12-13. Technical assistance designed to enhance State and local civil rights capabilities and encourage institutions to resolve problems before they trigger an investigation is consistent with this orientation.

63/ For previous concerns about dwindling OCR technical assistance funds, see FY 83 Budget Report, pp. 18-21.

64/ Harry M. Singleton, Assistant Secretary for Civil Rights, letter to Kathryn Baer, civil rights analyst, U.S. Commission on Civil Rights, May 16, 1983, Enclosure B (hereafter cited as Singleton May 1983 Letter). The regional units were established to provide Section 504 technical assistance. In FY 82 they began extending their activities to Title VI and Title IX compliance issues. Ibid. The amount of training staff have received in such issues is unclear. OCR Comments, pp. 3-4.

65/ OCR originally budgeted \$8.1 million for technical assistance in FY 81. Maurice Clifford, Director, Program Review and Assistance Service, OCR, interview, Mar. 5, 1982 (hereafter cited as Clifford Interview). This would have been the lowest expenditure since OCR began its technical assistance program. Technical Assistance Funding History. OCR figures on funds actually committed range between \$4.8 million and just under \$5.2 million. Clifford Interview; Harry M. Singleton, Assistant Secretary for Civil Rights, letter to Kathryn Baer, civil rights analyst, U.S. Commission on Civil Rights, Mar. 31, 1983 (hereafter cited as Singleton March 1983 Letter).

assistance staff increased somewhat in FY 82, 66/ funds for new technical assistance contracts shrank drastically. OCR ultimately had only 6.5 percent of the funds it originally expected, nearly 90 percent less than it actually committed the preceding year. 67/ Two-thirds of the technical assistance projects planned for FY 82 were cancelled. 68/ Others, including an initiative to improve State agency participation in resolving civil rights compliance problems, were scaled back substantially. 69/

For FY 83 OCR requested just under \$1.4 million for technical assistance and again announced plans to focus on increasing State and local agency involvement. 70/ As of mid-August, 1983, however, OCR had not taken official steps

66/ As of the end of FY 82, OCR had 31 professional staff assigned to its regional technical assistance units. Singleton, May 1983 Letter. During most of FY 82, however, 7 of the 10 regional units functioned with only 1 or 2 professionals. Regional Technical Assistance Report, p. 2.

67/ Original OCR plans were based on about \$8 million for FY 82 technical assistance contracts. Clifford Interview. OCR actually committed \$568,047. Singleton March 1983 Letter.

68/ Clifford Interview.

69/ Ibid. For further information on FY 82 cutbacks in OCR's technical assistance program, see FY 83 Budget Report, pp. 19-20.

70/ OCR, "Salaries and Expenses," undated (prepared for March 1982 appropriations hearings), p. 309; FY 83 Operating Plan, pp. 1791, 1793.

toward awarding new technical assistance contracts. 71/ Nor had regional technical assistance staff been increased to offset the loss of contract personnel. The units, in fact, had lost staff since the beginning of the year. 72/

OCR's proposed FY 84 budget reflects plans to rely mainly on staff for technical assistance and promises a "sizable" program. 73/ Since OCR, at best, will be able to maintain its present staffing level, how it could carry out these plans without curtailing other activities is unclear. 74/

71/ Before awarding contracts, OCR, like other Federal agencies, must request proposals from prospective contractors. No such request has been issued. The only technical assistance contract funds spent have been \$15,000 shifted from OCR's account to a departmental contract for materials distribution. Thomas Esterly, Director, Program Review and Assistance Service, OCR, telephone interview, July 14, 1983 and telephone interview, Aug. 19, 1983 (hereafter cited as Esterly August interview). OCR reports 1 technical assistance initiative, using staff resources, in FY 83. This involved agreements to carry out cooperative activities concluded with 4 State agencies and under discussion with several others. OCR Comments, p. 4. Such agreements provide for exchanges of information. Singleton March 1983 Letter. OCR officials did not fully explain why the agreements were regarded as essentially technical assistance efforts. Standlee 1983 Interview.

72/ As of July 23, 1983, the regional units had 4 fewer professional staff than they had at the beginning of FY 83. OCR Comments, p. 4.

73/ OCR FY 84 Budget, p. 276.

74/ OCR has said it will use staff freed up by its decreasing complaint work load. FY 84 Appropriations Hearings, p. 1219 (testimony of Harry M. Singleton). Since approximately the same number of complaints are expected in FY 84 as in FY 83, it is unclear how OCR could have staff for a "sizable" technical assistance program and, at the same time, maintain progress in its compliance review effort.

Staff availability is not the only question these proposals raise. OCR, for example, has relatively few materials to supplement staff training or structure a formal technical assistance program. 75/ Lacking staff expertise to develop them, OCR has said it will use contractors. 76/ The proposed FY 84 budget, however, specifies no funds for technical assistance contracts. 77/ In technical assistance, therefore, as well as in other areas, OCR's ability to sustain, let alone increase, progress in its enforcement program without more than proposed FY 84 resources is doubtful.

75/ Standlee 1983 Interview. OCR has wanted to develop regional technical assistance resource collections but lacked the necessary funds. Thomas Esterly, telephone interview, Apr. 24, 1983.

76/ Standlee 1983 Interview; Singleton March 1983 Letter. OCR also plans to develop five technical assistance training packages in-house. Esterly August interview. According to the current schedule, however, none of these would be ready for use before the last quarter of FY 84. OCR Comments, p. 4.

77/ OCR said it expects to have approximately \$600,000 for such contracts under the proposed FY 84 budget. FY 84 Appropriations Hearings, p. 1219 (testimony of Harry M. Singleton). This, however, would be inconsistent with the budget justification because it would be a substantial increase over actual spending in FY 83, whereas OCR's \$2.8 million decrease in overall funding has been justified largely by savings to be realized in the technical assistance area. FY 84 Appropriations Hearings, pp. 1184, 1188 (testimony of Charles L. Heatherly).

DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE FOR CIVIL RIGHTS

Enforcement Responsibilities

The Department of Health and Human Services' Office for Civil Rights (OCR) is responsible for enforcing the prohibitions against race, sex, handicap, and age discrimination in Title VI of the Civil Rights Act of 1964, 1/ Title IX of the Education Amendments of 1972, 2/ section 504 of the Rehabilitation Act of 1973, 3/ and the Age Discrimination Act of 1975. 4/ It must ensure compliance with these laws by approximately 230,000 recipients of departmental funds, including hospitals, extended care facilities, various types of community health centers and clinics, health-related training programs, public assistance agencies, adoption agencies, foster

1/ 42 U.S.C. §§2000d-2000d-6 (1976 & Supp. V 1981). Title VI prohibits discrimination on the basis of race, color, or national origin in any program receiving Federal financial assistance.

2/ 20 U.S.C. §§1681-1686 (1976). Title IX prohibits sex discrimination in federally-assisted education programs.

3/ 29 U.S.C. §794 (Supp. V 1981). Section 504 prohibits discrimination on the basis of handicap in all federally-assisted and federally-conducted programs.

4/ 42 U.S.C. §§6101-6107 (1976 & Supp. V 1981). The Age Discrimination Act prohibits discrimination because of age in programs receiving Federal financial aid.

care homes, day care and senior citizens centers, and nutrition programs. 5/ OCR also is responsible for enforcing civil rights requirements contained in a number of statutes authorizing specific assistance programs 6/ and in most of the health and human services block grants. 7/ It assists Health and Human Services offices that administer funds to incorporate civil right concerns in their program reviews. 8/

5/ U.S., Department of Health and Human Services, "Justification of Appropriation Estimates for Committee on Appropriations, Fiscal Year 1984, Departmental Management, Office for Civil Rights," undated, p. 109 (hereafter cited as OCR FY 84 Budget).

6/ These specific provisions are found in the Public Telecommunications Financing Act of 1978, 47 U.S.C. §398 (Supp. V 1981), which prohibits employment discrimination in public broadcasting; the Public Health Service Act of 1970, 42 U.S.C. §292-d (1976), which prohibits sex discrimination in admissions to health training programs funded under the act; and Title VI of the Public Health Service Act, 42 U.S.C. §291c(e) (1976), which prohibits discrimination in health care services by facilities assisted under the Hill-Burton Act.

7/ In addition to the major civil rights laws cited above, there are specific provisions prohibiting discrimination because of race, color, national origin, sex, handicap, age, or religion in the block grants for preventive health services, alcohol and drug abuse and mental health, primary care, and maternal and child health services. 42 U.S.C. §§300w-7, 300x-7, 300y-9 and 42 U.S.C. §708 (Supp. V 1981). Discrimination on all these bases except religion also is prohibited in block grants for community services and low-income home energy assistance. 42 U.S.C. §8625 and 42 U.S.C. §9906 (Supp. V 1981).

8/ U.S., Department of Health and Human Services, Office of the Secretary, "Office for Civil Rights: Statement of Organization, Functions, and Delegation of Authority," 47 Fed. Reg. 20032-20034 (1982).

In addition, it is responsible for coordinating enforcement of the Age Discrimination Act by all Federal assistance agencies. 9/

The Commission previously has found that OCR lacked sufficient staff to meet these vast responsibilities. 10/ Since FY 80 OCR's staff resources have declined steadily, seriously undermining efforts to address long-neglected discriminatory patterns and practices. 11/ During the last

9/ U.S., Department of Health and Human Services, Office for Civil Rights (hereafter OCR), "Annual Implementation Plan" undated (submitted to the Department of Justice pursuant to a request for plans by February 1982), p. 2 (hereafter cited as OCR Implementation Plan). This responsibility originally was assigned by statute to the Secretary of Health, Education, and Welfare. 42 U.S.C. §6103(a) (1976 & Supp. V 1981).

10/ U.S., Commission on Civil Rights: The Federal Civil Rights Enforcement Effort--1974, vol. VI, To Extend Federal Financial Assistance (1975), pp. 129-30 (hereafter cited as To Extend Federal Financial Assistance) and The Federal Civil Rights Enforcement Budget: Fiscal Year 1983 (1982), p. 23 (hereafter cited as FY 83 Budget Report).

11/ On reviewing an earlier draft of this chapter, OCR disagreed that lack of staff has undermined its enforcement capability, maintaining that it has new, more efficient methods for eliminating discrimination. Betty Lou Dotson, Director, OCR, letter to Linda Chavez, Staff Director, U.S. Commission on Civil Rights, Oct. 7, 1983, p. 1 (hereafter cited as Dotson October Letter). It cited various examples, including expedited complaint resolution procedures and more narrowly focused reviews. Ibid.; Marcella Haynes, Chief, Special Projects Branch, OCR, telephone interview, Oct. 21, 1983 (hereafter cited as Haynes October Interview). As discussed later in this chapter, there are unresolved questions about the effectiveness of these initiatives. For examples of other OCR initiatives warranting further evaluation, see Betty Lou Dotson, Director, OCR, statement and information submitted for the record, Departments of Labor, Health and Human Services, Education, and Related Agencies Appropriations for 1984, before the Subcommittee on Labor, Health and Human Services, Education, and Related Agencies of the House Committee on Appropriations, 98th Cong., 1st Sess. (1983), pp. 1218, 1227-28, 1230, 1236 (hereafter cited as Dotson Testimony).

year, these efforts have been further limited by agency enforcement policies. Resource constraints and policy problems also have combined to hinder OCR responses to demands and opportunities regarding State agency civil rights activities and coordination. These deficiencies generally would persist under the proposed FY 84 budget and OCR's operating plans, leaving the burden of combating many serious Federal civil rights violations to private individuals.

Budget Totals

For FY 81 over \$21.9 million was requested for OCR to launch a strong enforcement effort in health and human services programs, 12/ a 10.4 percent increase over FY 80 funding for this purpose. As table 3 shows, OCR received only \$19.7 million (10 percent less than it had in FY 80). Despite increases during the last 2 years, OCR still has not reached

12/ Roma Stewart, Director, OCR, statements in Civil Rights Issues in Health Care Delivery, a consultation sponsored by the U.S. Commission on Civil Rights, Washington, D.C., Apr. 15-16, 1980, p. 39 (hereafter cited as Stewart Statements). This request was scaled back to \$20.1 million after the current administration took office. Dotson October Letter, p. 2.

Table 3

OCR Budget Totals: FY 1980-84

(in thousands of dollars)

<u>Fiscal Year</u>	<u>Appropriation</u> <u>a/</u> (annualized)
1980 <u>b/</u>	\$22,004
1981	19,770
1982	19,716
1983	21,513
1984 (request)	21,713

a/ Figures represent what OCR could have spent during a whole fiscal year under each spending ceiling. Except for FY 82, they include \$2,350,000 transferred from the Social Security trust fund. In FY 82, \$2,256,000 was transferred from this fund.

b/ After the division of the Department of Health, Education and Welfare.

SOURCE: Betty Lou Dotson, Director, Office for Civil Rights, Department of Health and Human Services, letter to Linda Chavez, Staff Director, U.S. Commission on Civil Rights, Oct. 7, 1983, p. 3.

the level it originally thought it needed to initiate an effective program. 13/

No formula has been developed to determine whether these increases have compensated for the long-range effects of inflation. Congressional Budget Office Gross National Product deflators, which are used in budget analyses, do not measure rising costs in the Federal sector precisely. 14/ They, nevertheless, may provide an approximation of trends in enforcement resources. With adjustments using the appropriate Congressional Budget Office formula, OCR would appear to have had about 20 percent less actual spending power in FY 83 than in FY 80. 15/

13/ The FY 81 request might not be a reliable measure of OCR's current needs. The agency is receiving fewer complaints than in FY 81 and has adopted expedited procedures for resolving some of them. OCR FY 84 Budget, p. 113; Dotson Testimony, p. 1221. OCR thus probably needs fewer staff for complaints processing. On the other hand, inflation since FY 81 might mean that more funds would be required for adequate staffing. OCR, moreover, was not certain the FY 81 request would support all the positions it needed to carry out its responsibilities. Stewart Statements, p. 49. OCR currently maintains that appropriations requests since FY 81 have accounted for inflation, salary increases, and changes in workload. Dotson October Letter, p. 2.

14/ For discussion of the use and limits of these formulas, see chapter 1.

15/ This estimate is derived by dividing OCR's appropriation by a factor that accounts for annual inflation rates since FY 80. Deflators for each fiscal year through FY 84 were provided by Steven Zeller, economist, Fiscal Analysis Division, Congressional Budget Office, telephone interview, June 30, 1983 (hereafter cited as Zeller Interview).

The proposed FY 84 budget would provide \$200,000 more for OCR than it had in FY 83. 16/ This slight increase still would not meet the FY 81 estimated need and might not even keep OCR's spending power at the current level. 17/ Adjusting for cumulative inflation rates with the appropriate Congressional Budget Office formula, OCR would have about 23 percent less spending power than in FY 80.

Staffing

As table 4 shows, OCR had 590 authorized staff positions in FY 80 when it faced the challenge of correcting longstanding deficiencies in health and human services civil rights enforcement. 18/ Although it needed at least 100 additional

16/ OCR FY 84 Budget.

17/ The proposed FY 84 budget would represent a 1 percent increase over OCR's FY 83 appropriation. The Congressional Budget Office has projected a 4.7 percent inflation rate for FY 84. Zeller Interview. Although Federal sector costs may rise at different rates from costs in the economy overall, this discrepancy at least raises the possibility of a further loss in OCR spending power. OCR believes the limited increase in funding will support more civil rights activities than it carried out in FY 83 because it can achieve further efficiencies. Dotson October Letter, p. 3.

18/ Before the division of the Department of Health, Education, and Welfare in 1980, OCR focused most of its attention on education. Efforts to identify and correct discriminatory practices in health care and social service systems consequently were limited. Roma Stewart, Director, OCR, "Health Care and Civil Rights" (hereafter cited as Stewart Paper) in Civil Rights Issues in Health Care Delivery, p. 318; Stewart Statements, pp. 39-45. For examples of resulting deficiencies and OCR plans to improve enforcement see Sylvia Drew Ivie, Executive Director, National Health Law Program, "Ending Discrimination in Health Care: A Dream Deferred" in Civil Rights Issues in Health Care Delivery, pp. 312-16; Stewart Paper, pp. 318-26.

Table 4

OCR Full-Time, Permanent Staff Positions: FY 1980-84

<u>Fiscal Year</u>	<u>Authorized a/</u>	<u>Actual b/</u>
1980	590	527
1981	590	496
1982	524	477
1983	524	449 <u>c/</u>
1984 (Request)	509	

a/ Number of full-time, permanent staff permitted under Congressional budget measures.

b/ Number of full time, permanent staff actually employed by OCR. Except as noted, figures are as of the end of the fiscal year.

c/ As of Sept. 30, 1983.

SOURCES: Betty Lou Dotson, Director, Office for Civil Rights, Department on Health and Human Services, letter to Linda Chavez, Staff Director, U.S. Commission on Civil Rights, Oct. 7, 1983, p. 4 (for FY 80 - FY 84 authorized positions and FY 80 - FY 82 actual positions); Marcella Haynes, Chief, Special Projects Branch, Office for Civil Rights, Department of Health and Human Services, telephone interview, Oct. 21, 1983 (for FY 83 actual positions).

positions, 19/ it received none and, in fact, since has lost 66 positions. Moreover, OCR consistently has operated well below its authorized staffing strength. 20/ In FY 83 for example, it was more than 14 percent below its authorized level, 35 percent below the level it believed effective enforcement would require. 21/ Under the proposed FY 84 budget OCR would lose another 15 positions. 22/ Whether it would be able to operate at its authorized level is unclear. 23/

The proposed target of the staff reduction raises particular concerns. The legal services function, which conducts administrative proceedings to terminate funds and assists in preparing cases for litigation, would bear the

19/ Stewart Statements, pp. 44-45; Stewart Paper, p. 319; Arthur S. Flemming, Chairman, U.S. Commission on Civil Rights, letter to Birch Bayh, member, Subcommittee on Labor, Health and Human Services, Education, and Related Agencies of the Senate Committee on Appropriations, Sept. 16, 1980.

20/ Dotson October Letter, p. 3.

21/ OCR no longer maintains, as in FY 80, that 690 positions would be required for effective enforcement. According to the Director, the agency has undertaken a more effective compliance approach since 1981 and could sustain it with 509 positions. Dotson Testimony, pp. 1217-18. This approach is characterized in part by "more emphasis on compliance reviews." Ibid., p. 1217. With 690 positions, however, OCR planned more than twice the number of full-scale reviews it initiated in FY 83. Stewart Paper, p. 322.

22/ Dotson October Letter, p. 4.

23/ OCR could not specify the number of full-time permanent positions its proposed FY 84 budget would support. It reported it expected to use 469 "compensable workyears" and, in so doing, might have more than 469 full-time, permanent staff on board at any particular point in time. Dotson October Letter, p. 4; Haynes Oct. 21 Interview.

entire burden. 24/ This cutback in legal staff suggests OCR plans to develop fewer cases that would meet standards necessary for enforcement action, although it formerly believed it should take more such action to relieve the burden on private litigants. 25/

Complaints Processing

Before 1980 OCR had to concentrate on complaint investigations, thus limiting more effective compliance

24/ OCR FY 84 Budget, p. 118. The legal services function also plays a role in developing regulations and supplementary interpretations of civil rights requirements and provides OCR with legal guidance. Ibid. The proposed budget would reduce this function from 55 to 40 positions. Ibid., p. 110.

25/ Stewart Statements p. 49. For the need for more fund termination proceedings, as well as litigation, see remarks of Philip R. Lee, Director, Health Policy Program, University of California, San Francisco and Arthur S. Flemming, Chairman, U.S. Commission on Civil Rights in Civil Rights Issues in Health Care Delivery, pp. 12, 49-50. OCR has stated it now has less need for legal services because complaints have stabilized and because it is placing more emphasis on resolving them through mediation and on voluntary compliance efforts. OCR FY 84 Budget, p. 118. It also notes it has acquired more expertise in resolving compliance issues in health care and social services. Ibid. OCR maintains it will take enforcement action whenever such action is necessary. Dotson Testimony p. 1232; Dotson October Letter, p. 4. It, however, plans to conduct fewer investigations according to legal standards that must be followed in preparation for such action. Dotson Testimony, p. 1232.

reviews. 26/ Hopes of reversing this trend were frustrated 27/ apparently by declining staff resources and rising complaint receipts. In FY 80 and again in FY 81, OCR limited compliance reviews and, nevertheless, had increasing difficulty keeping up with incoming complaints. 28/ In FY 82 a sharp drop in

26/ Stewart Paper, pp. 321-22. Before the creation of a separate Health and Human Services Department, OCR's emphasis on individual complaints resulted from a court order issued in Adams v. Califano. Ibid., p. 322. The order, issued in 1977, required OCR to eliminate its education complaints backlog and process all new education complaints within specific time frames. Though it also established time frames for compliance reviews of educational institutions, it did not require OCR to conduct a set number or establish any requirements for enforcement in health and human services programs. Adams v. Califano, No. 3095-70, and Women's Equity Action League v. Califano, No. 74-1720 (D.D.C. Dec. 29, 1977) (final order approving and incorporating settlement agreed to by the parties) at 4-5, 13-14, 15-18.

27/ For OCR's views that its reorganization in Health and Human Services would permit a shift in emphasis from complaints to compliance reviews see Stewart Paper, pp. 321-22. For continuing limitations in OCR's compliance review effort, see discussion below.

28/ OCR reported 1,776 complaints received and 1,581 complaint cases closed in FY 80. U.S., Department of Health and Human Services, "Justifications of Appropriation Estimates for Committee on Appropriations, Fiscal Year 1982, Departmental Management, Office for Civil Rights," amended March 1981, p. 86; Dotson October Letter, p. 5. In FY 81, OCR received 1,704 and closed 1,538 complaints. OCR FY 84 Budget; U.S., Department of Health and Human Services, OCR, "Analysis of Closed Compliance Review and Complaint Investigation Cases," undated, p. 2 (hereafter cited as Analysis of Closed Cases). The General Accounting Office cited this trend toward resolving fewer complaints than were received as an indication OCR's complaints workload limited compliance reviews. Franklin A. Curtis, Associate Director, General Accounting Office, letter to Betty Lou Dotson, Director, OCR, Nov. 27, 1981, pp. 6-7.

complaint receipts alleviated these problems. 29/ OCR was able to reduce its inventory of open complaints and focus on older cases more difficult to resolve. 30/ As complaint receipts declined further in FY 83, OCR maintained its improved closure rate. 31/ Adoption of an expedited complaint resolution procedure also may have contributed to progress in this area. 32/

OCR expects to receive slightly more complaints in FY 84 than in FY 83 and believes it can process them and continue reducing its inventory without assigning additional

29/ In FY 82 OCR expected to receive approximately 300 more complaints but in fact received 470 fewer complaints than in FY 81. OCR Implementation Plan, p. 11; OCR FY 84 Budget, p. 113.

30/ U.S., Department of Health and Human Services, "FY 1983 Implementation Plan Update," Attachment D, undated (hereafter cited as Implementation Plan Update); Analysis of Closed Cases, p. 2.

31/ OCR reports that as of September 9, 1983 it had received 1,023 and closed 1,057 complaints. Dotson October Letter, p. 5.

32/ OCR has adopted "early complaint resolution" procedures. Dotson Testimony, p. 1221. These procedures involve attempts to mediate settlements between parties to a complaint as an alternative to conducting a full-scale investigation. According to a study conducted for OCR, successful mediation saves staff resources, while unsuccessful mediation efforts add to the staff time complaint resolution requires. Project on Equal Education Rights, NOW Legal Defense and Education Fund, and SRI International, "The Settlement Solution: Assessing Mediation as a Tool in the Enforcement of Civil Rights," prepared under contract for OCR, October 1980, p. 60. As of early September, OCR had closed 110 complaints through mediation procedures in FY 83. Nathan Dick, Deputy Director, Office of Program Operations, OCR, telephone interview, Sept. 6, 1983. OCR does not have data needed to assess staff time saved through these procedures. Ibid.

staff. 33/ As discussed below, it nevertheless expects to begin fewer compliance reviews involving thorough, legally actionable investigations of widespread discriminatory patterns and practices than in former years when it had to commit more staff to complaints.

Compliance and Other Reviews

When OCR became responsible for civil rights enforcement solely in health and human services, it was aware of many serious, even life threatening compliance problems, including numerous policies denying minority and handicapped persons hospital in-patient treatment, emergency care, and access to nursing homes. 34/ Recognizing that compliance reviews are needed to address such problems effectively, OCR planned to

33/ OCR FY 84 Budget, p. 113. OCR based its FY 84 complaint projection on the expectation it would receive 1,250 new complaints in FY 83. It later revised its FY 83 projection down to 1,105 complaint receipts. Ibid.; Willem H. van den Toorn, Director, Planning, Evaluation, and Budget Division, OCR, memorandum to Pamela Proctor, civil rights analyst, U.S. Commission on Civil Rights, Aug. 30, 1983. This may mean the FY 84 projection in the budget justification is too high.

34/ Stewart Paper, pp. 322-25. OCR believed that segregation in health care facilities and employment discrimination also were widespread. Ibid.

begin 257 such reviews in FY 80. 35/ It, however, fell far short of this goal and, without additional staff, abandoned it in FY 81. 36/ Declining complaint receipts and, perhaps, increased efficiency enabled OCR to make more progress in this area in FY 82. It began nearly 18 percent more compliance reviews than in FY 81, well over 5 times the number it projected. 37/ Even this expanded effort, however, covered fewer than 0.08 percent of health and human services facilities obliged to comply with Federal civil rights laws. 38/

35/ Ibid., p. 322. For Commission conclusions that compliance reviews are among the most effective enforcement tools see, for example, U.S., Commission on Civil Rights: Federal Civil Rights Enforcement Effort (1971), p. 215 (hereafter cited as 1971 Enforcement Report); The Federal Civil Rights Enforcement Effort--1974, vol. IV, To Provide Fiscal Assistance, p. 66 and vol. VI, To Extend Federal Financial Assistance, p. 188; Making Civil Rights Sense Out of Revenue Sharing Dollars (1975), pp. 59-61; Enforcing Title IX (1980), pp. 24, 39; Civil Rights: A National, Not a Special Interest (1981), p. 34 (hereafter cited as FY 82 Budget Statement); and FY 83 Budget Report, pp. 3-4, 65.

36/ OCR initiated 129 compliance reviews in FY 80. Willem H. van der Toorn, Director, Planning, Evaluation, and Budget Division, OCR, memorandum to Pamela Proctor, civil rights analyst, U.S. Commission on Civil Rights, Sept. 20, 1983. OCR aimed for only 60 new compliance reviews in FY 81 but exceeded this goal, actually beginning 149 reviews. Implementation Plan Update.

37/ OCR initiated 181 compliance reviews in FY 82. Implementation Plan Update. Based on a projected rise in complaint receipts and loss of staff positions, OCR expected to begin 33 new reviews. U.S., Department of Health and Human Services, "Justifications of Appropriation Estimates for Committee on Appropriations, Fiscal Year 1983, Departmental Management, Office for Civil Rights." undated, p. 123.

38/ This percentage is based on OCR's current estimate of recipients subject to the laws it enforces. OCR FY 84 Budget, p. 109.

Although complaints declined again in FY 83 and expedited resolution procedures were adopted, OCR began fewer compliance reviews than in any year since FY 81. 39/ One factor in this decline may have been a decision to concentrate on closing reviews initiated in previous years. 40/ Another apparent factor, however, was OCR's decision to conserve scarce resources by initiating a new type of review, called the "project review." 41/

In project reviews, like compliance reviews, OCR initiates investigations of recipients with apparent compliance problems

39/ In FY 83, OCR initiated 130 compliance reviews, 13 percent fewer than it began in FY 81 and 28 percent fewer than it began in FY 82. Haynes October Interview; Implementation Plan Update.

40/ In commenting on an earlier draft of this chapter, OCR said it was starting fewer new reviews because of efforts to close old reviews first and that closure rates had improved. It cited data indicating 65 percent more closures in FY 83 than in FY 82. Dotson October Letter, pp. 5-6. Figures for other years suggest FY 82 closures were unusually low, however. Haynes October Interview. OCR also suggested closures were a better performance measure than new reviews initiated. Dotson October Letter, p. 5. The Commission agrees closure rates are important because, to the extent they reflect corrective action agreements, they represent possible resolutions of civil rights problems. New reviews also are an important measure, however, since they ultimately affect the number of corrective actions OCR can obtain.

41/ OCR FY 84 Budget, p. 117; Nathan Dick, Deputy Director, Office of Program Operations, OCR, memorandum to Regional Directors, Jan. 10, 1983, attachment, pp. 1, 6 (hereafter cited as Project Review Directive). OCR considers project reviews a type of compliance review. Dotson Testimony, pp. 1232-33; Dotson October Letter, p. 6. It is more useful to collect and analyze data on these two efforts, separately, however, because, as discussed below, their potential for identifying and correcting serious civil rights violations differs significantly.

and, where it identifies violations, offers technical assistance and attempts to negotiate voluntary corrective action. 42/ Project reviews, however, are more limited than compliance reviews in several important respects. First, as developed to date, they are targeted on the basis of a survey covering only a few areas where substantive civil rights problems apparently exist. 43/ Even with more sources used for targeting, project reviews are designed to have a narrower scope and focus on less complex problems than compliance reviews. 44/ They, moreover, generally do not involve onsite

42/ Project Review Directive.

43/ Reviews will be targeted initially on the basis of a hospital survey conducted in 1981. Project Review Directive, p. 2. Most of its questions concerned compliance with section 504 procedural requirements. Based on Commission staff review, the only substantive section 504 violations likely to be revealed are those regarding provisions for communicating with patients who have sensory impairments. The only Title VI violations that apparently could be targeted relate to discriminatory denials of emergency and in-patient services and failures to provide for adequate communications with language minority patients. See "1981 Short-Term, General, and Other Special Hospital Civil Rights Survey, OS/OCR Form 503;" Project Review Directive, pp. 2, 7-8. For pervasive problems that could not be targeted see Stewart Paper, pp. 322-26. Compliance reviews would be less limited by the survey than project reviews because many sources are used to target them. OCR Implementation Plan, p. 4. In FY 84 OCR plans to use reports on community service filed under Hill-Burton requirements as another source for targeting project reviews and notes that these involve substantive access issues. Project Review Directive; Dotson October Letter, p. 6.

44/ Dotson Testimony, p. 1233.

investigations that would uncover more extensive patterns of discrimination. 45/ They also do not result in formal findings of noncompliance 46/ and, thus, provide no basis for enforcement. 47/ In short, with project reviews OCR can

45/ Ibid., p. 1234; Project Review Directive, p. 6. Of the 430 project reviews OCR initiated in FY 83, only 30 percent involved onsite investigations. Haynes October Interview. For the greater effectiveness of reviews involving onsite investigations as well as "desk audits" of reported data see 1971 Enforcement Report, p. 219. See also U.S., Executive Office of the President, Office of Management and Budget, Budget of the United States Government, Fiscal Year 1984, Special Analyses, undated, pp. J-13, J-14.

46/ Dotson Testimony, p. 1233. OCR objected to this conclusion because, if a project review fails to obtain voluntary compliance, the recipient then will be subject to a conventional compliance review involving formal fact-finding procedures. Dotson October Letter, pp. 6-7. In such a case, however, the compliance review, not the project review triggering it, would be the source of enforceable findings.

47/ Dotson October Letter, p. 7.

cover more recipients but correct fewer serious civil rights violations than with compliance reviews. 48/

With plans to increase project reviews, OCR expects to begin only 97 compliance reviews in FY 84. 49/ This would represent a cutback of nearly 50 percent in its compliance

48/ OCR has justified project reviews as a means to broaden coverage, expedite resolutions, and promote voluntary compliance. OCR FY 84 Budget, p. 117; Dotson Testimony, pp. 1233-34. Information available to date, however, raises questions about effectiveness warranting further research. For example, while OCR will reach more recipients with such reviews, it will deal with a relatively narrow range of substantive compliance problems. Ibid. The voluntary corrective actions it achieves, therefore, may not substantially increase equal opportunity. Project reviews, moreover, are being conducted at the expense of compliance reviews, and compliance reviews have a deterrent effect that promotes voluntary compliance. FY 82 Budget Statement, pp. 34, 41; FY 83 Budget Report, pp. 4, 65. It is questionable, therefore, whether project reviews will increase voluntary compliance with major civil rights requirements. OCR believes the high percentage of FY 83 project reviews resulting in corrective action indicates the effectiveness of this initiative. Dotson October Letter, pp. 7-8. In characterizing the results of these reviews, however, it cited only one type of action correcting a substantive civil rights violation. Haynes October Interview. The sheer number of project reviews producing change, therefore, does not seem an adequate measure of effectiveness. OCR also believes any type of review may have a deterrent effect and reports that project reviews have stimulated requests for assistance in achieving voluntary compliance from institutions other than those targeted. Ibid., p. 7.

49/ OCR FY 84 Budget, p. 116. To achieve this shift in emphasis, OCR proposed in FY 84 to transfer 44 of the 169 positions assigned to compliance reviews and monitoring to voluntary compliance and outreach, the function responsible for efforts to obtain corrective action in project reviews. Ibid., pp. 115, 117. According to this proposal, staffing for the compliance review function thus would be cut 26 percent. It is unclear why the proposal was made for FY 84 since the transfer was completed in FY 83. Haynes October Interview.

review effort. 50/ OCR's ability to address serious discrimination problems thus would be further limited by what appears a doubtful trade off between increased and effective activity. 51/

State Agency Compliance and Enforcement

The health and human services block grants established in 1981 enlarged and complicated OCR's enforcement responsibilities. As discussed at the beginning of this chapter, most of the block grants contain specific nondiscrimination provisions that restate major Federal civil rights protections, broaden some protections, 52/ and

50/ This percentage is based on OCR's level of achievement in FY 82, before it began diverting staff to project reviews.

51/ OCR commented that an earlier draft of this chapter failed to consider the breadth of coverage afforded by project reviews and their usefulness in identifying problems that can be addressed only by full-scale compliance reviews. Dotson October Letter, p. 7. The Commission believes project reviews could be a useful supplement to an adequate compliance review effort since they would expand OCR's presence and provide a mechanism for resolving problems that may not require intensive investigation or complex remedies, as well as for identifying problems that do. The decision to shift substantial resources from compliance reviews to project reviews rather than seek additional resources for both is, in the Commission's view, a questionable policy decision.

52/ The specific nondiscrimination requirements broaden civil rights protections in that there are no general statutes prohibiting discrimination based on sex or religion in federally-assisted programs.

establish a specific State role in the enforcement process. 53/ OCR thus must establish procedures for enforcing the new provisions and involving the States. 54/ Under all the block grants, moreover, as in other health and human services funding programs, OCR must enforce States' responsibilities for ensuring civil rights compliance in the programs to which they distribute funds and, where necessary, enforce such compliance directly. 55/ This task is vitally important because large, relatively unrestricted Federal assistance programs historically have been particularly subject to civil rights abuses. 56/

53/ The nondiscrimination provisions require the Health and Human Services Department to notify State governors when it finds violations in the block grants they administer and give them 60 days to secure voluntary compliance. 42 U.S.C. §§300w-7(b), 300x-7(b), 300y-9(h), 42 U.S.C. §708(b), 42 U.S.C. §8625(b) and 42 U.S.C. §9906(b) (Supp. V 1981).

54/ For specific procedures required to implement the provisions effectively see John Hope III, Acting Staff Director, U.S. Commission on Civil Rights, letter to Richard S. Schweiker, Secretary of Health and Human Services, Dec. 4, 1981 (hereafter cited as Block Grant Regulations Letter).

55/ The major civil rights laws OCR enforces cover all block grants, whether or not they contain specific nondiscrimination provisions. Theodore B. Olson, Assistant Attorney General, Office of Legal Counsel, memorandum to Michael Horowitz, Counsel to the Director, Office of Management and Budget, undated. Under these laws State agencies that receive Federal funds should ensure compliance by the ultimate recipients of these funds. Title VI regulations establish a specific requirement to this effect. See 28 C.F.R. §42.410 (1982) (Justice Department government-wide Title VI regulations).

56/ For civil rights problems in earlier assistance programs affording State and local agencies wide discretion and Commission concerns about the recurrence of such problems in the 1981 block grants see FY 82 Budget Statement, pp. 106-16; Block Grant Regulations Letter.

Although the health and human services block grants went into effect 2 years ago, OCR has not yet issued regulations implementing their civil rights requirements. 57/ Lacking regulations, OCR has not carried out its plans for compliance reviews focused on State agencies that administer block grant funds. 58/ While it again plans such reviews for FY 84, 59/ its ability to carry them out and to resolve pending complaints may continue to be hindered by delays in issuing the requisite regulations. 60/

57/ Marcella Haynes, Chief, Division of Policy and Special Projects Branch, OCR, telephone interview, Sept. 2, 1983 (hereafter cited as Haynes Sept. 2 Interview). OCR reports that procedures have been developed for block grant investigations and for involving governors' offices in resolving compliance problems. Dotson Testimony, p. 1236; Dotson October Letter, p. 8. The force of these procedures is unclear since they are not based on approved regulatory standards.

58/ OCR Implementation Plan; Dotson Testimony, pp. 1232, 1236. OCR reported it had modified its policy of deferring such reviews in instructions to regional offices on annual operating plans. Dotson October Letter, p. 9. The instructions, however, pertained to plans for FY 84 not FY 83. Haynes October Interview.

59/ OCR FY 84 Budget, p. 116.

60/ OCR sent draft regulations in February 1983 to the Justice Department and the Equal Employment Opportunity Commission (EEOC), which must approve them before they can be published. As of early September, there were unresolved differences of interpretation between OCR and EEOC, and the Justice Department had not communicated its views. Haynes Sept. 2 Interview. Since block grant regulations have not been approved, OCR has proceeded with compliance activities by using standards established in its regulations implementing major civil rights laws. Betty Lou Dotson, Director, OCR, memorandum to Regional Directors, Feb. 16, 1982; Dotson October Letter, p. 8. Enforcement based on such standards, however, must be limited because the major civil rights laws OCR administers do not cover all discriminatory policies and practices prohibited in block grant programs.

Civil rights compliance activities in block grants also have been hindered by inadequate resources. Since early FY 81, OCR has planned to test methods of involving States in complaint investigations and compliance reviews. 61/ It has had difficulty interesting States, however, because it has had no funds to compensate them for the extra efforts the project would entail. 62/ OCR has said it expects the project to be under way in FY 84, 63/ but under the proposed budget there still would be no funding for it.

Technical Assistance

Technical assistance to encourage voluntary civil rights compliance has been a key component of OCR's enforcement program since 1978 when regional units were established and substantial contract funds committed to assisting recipients, protected individuals, and other concerned groups in

61/ Betty Lou Dotson, Director, OCR, memorandum to the Secretary, Dec. 18, 1981.

62/ Haynes Sept. 2 Interview. OCR reports that failure to complete this project has not diminished its capacity to ensure civil rights compliance in block grant programs. Dotson October Letter, p. 9. State activities that could supplement OCR's and, therefore, increase the total enforcement effort may have been limited, however.

63/ Marcella Haynes, Chief, Special Projects Branch, OCR, telephone interview, Sept. 15, 1983.

understanding section 504. 64/ Despite OCR's increased emphasis on voluntary compliance with all the laws it enforces 65/ and the agency's belief that many victims of discrimination do not know their rights or how to secure them, 66/ resources for technical assistance have been severely limited. 67/

Since the end of FY 81, OCR has had no funds for new technical assistance contracts. 68/ A substantial portion of funds left over from earlier years, moreover, were committed

64/ Cynthia G. Brown, former Principal Deputy Director, OCR, Department of Health, Education, and Welfare, telephone interview, Sept. 22, 1983. Contract funds supported the development and dissemination of public information materials, compliance handbooks and models, workshops, hotlines and onsite visits to provide more individualized guidance, and other special projects. Regional technical assistance staff, on an ongoing basis, also met with groups of recipients and protected individuals and responded to requests for specific advice. Ibid.

65/ Dotson Testimony, p. 1217.

66/ OCR associates its declining complaint receipts with "a constituency which currently is generally uninformed about health and social services civil rights issues and protections." Implementation Plan Update.

67/ For previous Commission concerns about this problem see FY 83 Budget Report, p. 28. Reviewing an earlier draft of this chapter, OCR suggested the resource problem recently had been resolved by the transfer of 44 positions to the function principally responsible for technical assistance. Dotson October Letter, p. 10. As discussed below, it is unclear whether additional resources now are available for technical assistance activities except those related to project reviews.

68/ Steven Melov, budget analyst, Planning, Evaluation, and Budget Division, OCR, telephone interview, Sept. 22, 1983 (hereafter cited as Melov interview); Dotson October Letter, p. 10.

to section 504 technical assistance. 69/ OCR, therefore, has been unable to initiate comparable programs in other areas, such as Title VI, where increased awareness is needed. 70/ Under the proposed FY 84 budget, OCR again would have no funds for new technical assistance contracts, 71/ despite

69/ Technical assistance plans developed in FY 81, for example, indicate that in that year 88 percent of the funds to provide recipients and beneficiaries with immediate technical assistance involved section 504 issues. Sylvia Drew Ivie, Director, OCR, memorandum to the Under Secretary, Jan. 14, 1981, attached "Initiative Statement Number 5" (hereafter cited as Ivie Memorandum). OCR now maintains that no more than 22 percent of FY 81 technical assistance contract funds related to section 504. Dotson October Letter, p. 10. Information requested to resolve this discrepancy was not received in time for inclusion in this report.

70/ For deficiencies in Title VI technical assistance relating to Department of Health, Education, and Welfare programs now in the Health and Human Services Department see U.S., General Accounting Office, Agencies When Providing Federal Financial Assistance Should Ensure Compliance with Title VI (1980), pp. 27, 29. In 1980, OCR believed Age Discrimination Act technical assistance also was needed, including efforts to inform protected individuals of their rights. Stewart Paper, p. 327. OCR awarded only 4 relatively small Age Discrimination Act contracts, however. Ivie Memorandum. In FY 82, models for providing public information on civil rights requirements, including the Age Discrimination Act, were developed under contract. These, however, are intended for State agency, not OCR, use. U.S., Department of Health and Human Services, Report to the Congress on the Implementation of the Age Discrimination Act of 1975 During Fiscal Year 1982, As Required by Section 308(b) of the Age Discrimination Act of 1975, As Amended (March 1983), p. 4 (hereafter cited as Age Discrimination Act Annual Report).

71/ Melov Interview. OCR objected to an earlier draft of this discussion for over-emphasizing lost contract funds and cited considerable technical assistance activity by staff. Dotson October Letter, pp. 9-10. Further research would be required to determine whether staff activities adequately substitute for those formerly supported by contracts.

outstanding and possibly increasing needs. 72/

Regional technical assistance staff have increased, though possibly not enough to offset the loss of contract personnel. In FY 80, OCR lost most of these staff to the new Education Department and, as a result, had operating technical assistance units in only 3 of its 10 regions in FY 81 and FY 82. 73/ In FY 83, all 10 regions again had units providing technical assistance, 74/ and the overall staffing level was considerably

72/ Technical assistance in the past has been keyed to the publication of new regulations. OCR, for example, initiated section 504 technical assistance when it published its regulations because it believed compliance requirements otherwise might not be fully understood. James Bennett, branch chief, Voluntary Compliance and Outreach Division, OCR, interview, Apr. 7, 1983 (hereafter cited as Bennett Interview). OCR recently published Age Discrimination Act regulations and expects to issue block grant regulations "in the near future." Dotson Testimony, pp. 1232, 1236. It plans to provide training in compliance with the block grant regulations. Ibid. It also reports technical assistance regarding its Age Discrimination Act regulations but no specific projects in this area. Dotson October Letter, p. 10.

73/ Ivie Memorandum; U.S., Department of Health and Human Services, report submitted under OMB Circular No. A-11-53 (data on civil rights activities) for the FY 84 budget cycle, undated (hereafter cited as OCR A-11-53 Report).

74/ Bennett Interview. As reconstituted, these units have broader responsibilities for voluntary compliance and outreach efforts. Willem H. van den Toorn, Director, Planning, Evaluation, and Budget Division, OCR, memorandum to Pamela Proctor, civil rights analyst, U.S. Commission on Civil Rights, July 20, 1983 (hereafter cited as Van den Toorn July Memorandum).

higher. 75/

OCR's justification for this increase, however, indicates new staff will be used for negotiating corrective actions resulting from project reviews not technical assistance that would encourage recipients to resolve civil rights problems before an investigation became necessary or to increase protected individuals' awareness of their rights. 76/ The proposal thus would not address some major deficiencies in OCR's technical assistance program. 77/

Coordination

Since 1978, OCR has been responsible for coordinating enforcement of the Age Discrimination Act. 78/ It

75/ In July 1983, OCR reported a 37-position increase for voluntary compliance and outreach in FY 83 and an additional projected increase of 44 positions in FY 84. Van den Toorn July Memorandum, attachment. OCR now reports that the 44-position transfer proposed for FY 84 was completed in FY 83. Dotson October Letter, p. 10; Haynes October interview.

76/ Dotson Testimony, p. 1235; Dotson October Letter, p. 11. Although project reviews involve the units responsible for voluntary compliance and outreach, they are a type of investigation. Ibid., p. 1233. Commenting on an earlier draft of this chapter, OCR noted that project reviews have a particular technical assistance component but did not explain how it differs substantially from technical assistance provided in the course of other types of investigations. Dotson October Letter, p. 11.

77/ Project reviews will enable OCR to reach more recipients. Dotson Testimony, p. 1235; Dotson October Letter, p. 7. As discussed above, however, they will focus on a narrow range of substantive compliance problems. FY 84 plans, moreover, provide for as few as 40 project reviews targeted to Title VI problems and no such reviews for possible violations of the Age Discrimination Act. Dotson October Letter, p. 11.

specifically is required to ensure consistency among agencies required to publish regulations and report annually to Congress on implementation of the act. 79/ To some extent, OCR's ability to fulfill these responsibilities effectively and carry out plans for more vigorous leadership has been hindered by policy problems beyond its control. Scarce resources, however, would appear a more persistent limiting factor. 80/

OCR proposed Age Discrimination Act regulations for programs assisted by the Health and Human Services Department in September 1979. 81/ Apparently expecting to publish final regulations shortly thereafter, it planned to develop supplementary policies and procedures and, in FY 81, to begin

78/ OCR Implementation Plan, p. 2. Coordination responsibilities carried out by OCR were assigned by statute to the Secretary of Health, Education, and Welfare. 42 U.S.C. §6103(a)(1976 & Supp. V 1981).

79/ 42 U.S.C. §§6103(a)(4), 6106a (Supp. V. 1981). For Commission recommendations that Congress establish these responsibilities to ensure that State and local public and private agencies are not subject to inconsistent requirements see U.S., Commission on Civil Rights, The Age Discrimination Study (1977), pp. 45-46, 49.

80/ In FY 82 and FY 83, OCR had the equivalent of only 1 professional staff member for coordination. OCR A-11-53 report; Dotson October Letter, p. 11. Commenting on an earlier draft of this chapter, OCR objected to the suggestion it lacked adequate coordination resources and cited staff involvement in a number of Age Discrimination Act activities. Dotson October Letter, pp. 11-12. Many of these, however, relate to OCR's responsibilities for enforcing the act in health and human services programs rather than to responsibilities for coordinating enforcement by all Federal assistance agencies.

81/ 44 Fed. Reg. 55108 (1979).

age discrimination compliance reviews. 82/ With such enforcement experience, it expected to identify needs for further policy interpretations and possibly revisions in Age Discrimination Act regulations. 83/ The Office of Management and Budget, however, objected to OCR's proposed regulations. Conflicting views between the agencies ultimately delayed final publication until December 1982. 84/ In the interim, OCR delayed final approval of other agencies' regulations 85/ and deferred or scaled back planned activities such as

82/ Stewart Paper, pp. 326-27.

83/ Ibid., p. 326. OCR referred specifically to experience gained through processing Age Discrimination Act complaints, but presumably expected to benefit from experience with compliance reviews as well.

84/ 47 Fed. Reg. 57850 (1982). Consistent with the government-wide regulations, OCR's proposed regulations included a requirement that recipients evaluate their compliance with the act and correct any violations they identify. Compare 44 Fed. Reg. 55108, 55116, proposed §91.33 (1979) with 45 C.F.R. §90.43(b) (1982). This requirement has been found useful in promoting voluntary compliance. Paul T. Hill and Richard Rettig, Mechanisms for the Implementation of Civil Rights Guarantees by Education Institutions (Palo Alto, Calif.: Rand Center for Research on Education Finance and Governance, 1980). The Office of Management and Budget refused to approve the requirement on the grounds it would impose an unwarranted paperwork burden. Age Discrimination Act Annual Report, p. 3. OCR ultimately substituted a self-evaluation requirement that could be imposed in the context of an investigation. 47 Fed. Reg. 57850, 57860, proposed §91.33 (1982). This would not serve the same voluntary compliance function as the previous requirement.

85/ Age Discrimination Act Annual Report, p. 3. The self-evaluation issue would have been raised by these regulations, as well as OCR's, to the extent agencies had followed the government-wide regulations, as required.

compliance reviews. 86/

Pending resolution of this policy difference, OCR could have carried out other coordination activities. For example, OCR could have followed up with the many agencies that have not attempted to identify patterns and practices of age discrimination. It apparently instead accepted their rationale that compliance reviews are unnecessary because they receive no complaints. 87/

Effective coordination seems unlikely under the proposed FY 84 budget. As in the past, OCR expects to have the equivalent of only 1 professional staff in this area. 88/ With this minimal commitment, the agency may be able to keep up with

86/ OCR conducted 1 age discrimination compliance review in FY 82. Ibid., p. 5.

87/ Ibid., p. 6. For the Commission's view that the absence of complaints does not indicate nondiscrimination see U.S., Commission on Civil Rights, To Know Or Not to Know (1973), p. 61. OCR states its first priority has been to work with agencies to ensure publication of final regulations. Dotson October Letter, p. 12. With additional staff, however, it could carry out other activities simultaneously. OCR also cites activities carried out during the time approval of regulations was suspended, specifically an evaluation of the mediation process and a project to develop model outreach plans for State units on aging. Ibid. OCR, however, did not play a significant role in the former activity. Kathleen O'Brien, equal opportunity specialist, Division of Policy and Special Projects, OCR, telephone interview, Oct. 24, 1983. Since the models were not designed for use by other Federal agencies, the relation of the latter activity to coordination is unclear.

88/ OCR A-11-53 Report. In commenting on an earlier draft of this chapter, OCR indicated that additional staff time would be used for Age Discrimination Act activities but did not clearly distinguish between departmental enforcement and government-wide coordination functions. Dotson October Letter, p. 13.

requests for reviews of regulations and technical assistance, 89/ but probably not carry out additional leadership tasks.

Resource plans in other areas also would limit OCR's leadership in Age Discrimination Act enforcement. With fewer resources for compliance reviews, for example, OCR seems unlikely to set a good example for other agencies that should be investigating patterns and practices of age discrimination or to develop the experience necessary to assess current enforcement policies effectively. 90/ Increased technical assistance to familiarize recipients and protected individuals

89/ Agencies were required to publish proposed regulations within 90 days of the issuance of government-wide regulations and to submit final regulations for OCR review within the next 120 days. 45 C.F.R. §90.31 (b), (c) (1982). The government-wide regulations were published in June 1979. 44 Fed. Reg. 33768 (1979). Only 4 agencies have published final regulations, however. Age Discrimination Act Annual Report, p. 2. OCR comments on an earlier draft of this chapter indicated a further delay in approving other agencies' regulations pending the resolution of a suit contesting the validity of departures from the government-wide regulations. Dotson October Letter, p. 13. It thus is unclear at what point OCR will have a substantial number of regulations to approve and increased technical assistance requests from other agencies implementing the Age Discrimination Act. The case is Action Alliance of Senior Citizens v. Schweiker, No. 83-0285 (D.D.C. filed Feb. 2, 1983).

90/ OCR's ability to identify patterns and practices of age discrimination and needs for further work on policies and procedures also may be limited by inadequate information collection. OCR reports no survey of age discrimination and plans no such survey in FY 84. Dotson Testimony, p. 1235; OCR FY 84 Budget, p. 111. The agency uses other sources to target compliance problems. Dotson Testimony, p. 1235; Dotson October Letter, p. 13. The Commission, however, does not believe these are an effective substitute for surveys presenting a clear overall picture of possible civil rights violations.

with its relatively new regulations also seems doubtful.

Without more resources and renewed commitments, longstanding deficiencies affecting vital human needs seem likely to persist in OCR's enforcement program.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY

Enforcement Responsibilities

The Office of Fair Housing and Equal Opportunity (FHEO) of the Department of Housing and Urban Development (HUD) has the lead responsibility for Federal enforcement of Title VIII of the Civil Rights Act of 1968, the Fair Housing Act. 1/ Title VIII prohibits discrimination in the sale or rental of most housing in the United States. 2/ HUD's responsibility for processing and investigating complaints under the Federal fair housing law is specified under Title VIII. 3/

FHEO also enforces in HUD programs the civil rights provisions contained in Title VI of the Civil Rights Act of

1/ 42 U.S.C. §§3601-3619 (1976 & Supp. V 1981). Title VIII prohibits, with certain exceptions, discrimination on the basis of race, color, religion, sex, or national origin in the financing, brokerage, sale or rental of residential property. Id. §§3604-3606. FHEO also administers Executive Order 11,063, as amended, which in part directs Federal agencies to take action to prohibit discrimination on the basis of race, color, religion, sex or national origin in the sale or rental of housing assisted by Federal funds, guarantees, or insurance. Exec. Order No. 11,063, 3 C.F.R. 652 (1959-1963 Comp.), reprinted in 42 U.S.C. §1982 app. at 1217-17 (1976), as amended by Exec. Order No. 12,259, 3 C.F.R. 307 (1981), reprinted in 42 U.S.C. §3608 app. at 816-818 (Supp. V 1981).

2/ 42 U.S.C. §§3604-3606 (1976).

3/ 42 U.S.C. §3610 (1976).

1964, 4/ section 504 of the Rehabilitation Act of 1973, 5/ and the Age Discrimination Act of 1975. 6/ FHEO also administers several other nondiscrimination provisions contained in program legislation: for example, section 109 of the Housing and Community Development Act of 1974, requires nondiscrimination in HUD funded local block grant programs. 7/ Further, under Executive Order 12,259, FHEO is responsible for leading and coordinating the administration of all Federal activities relating to housing and urban development to promote the goal of fair housing. 8/

FHEO has been marked over many years by weaknesses in its enforcement efforts due to the lack of resources needed for a

4/ 42 U.S.C. §2000d-2000d-6 (1976 & Supp. V 1981). Title VI prohibits discrimination based on race, color, or national origin in programs or activities receiving Federal assistance. Id. §2000d.

5/ 29 U.S.C. §§794 (1976 & Supp. V. 1981). Section 504 prohibits discrimination on the basis of handicap in all federally assisted and federally conducted programs.

6/ 42 U.S.C. §§6101-6107 (1976 & Supp. V 1981). The Age Discrimination Act bars discrimination because of age in programs and activities receiving Federal financial assistance. Id. §6102.

7/ 42 U.S.C. §5309 (1976 & Supp. V 1981). Section 109 bars discrimination based on race, color, national origin, sex, age, and handicap funded under community development block grant programs.

8/ Exec. Order No. 12,259, 3 C.F.R. 307 (1981), reprinted in 42 U.S.C. §3608 app. at 816-818 (Supp. V 1981).

strong and reliable compliance program. 9/ During FY 83 FHEO civil rights activities continued to be hampered by inadequate staff levels, a problem likely to persist under the FY 84 budget. As a result, FHEO will continue to have difficulty protecting individual housing rights and preventing discrimination in HUD programs. Without effective enforcement efforts, HUD lacks the credibility to promote and gain voluntary civil rights compliance in the Nation's housing markets, a stated objective of Reagan Administration civil rights policy. 10/

9/ U.S., Commission on Civil Rights: The Federal Civil Rights Enforcement Effort--1974, vol. II: To Provide...For Fair Housing (1974), pp. 14, 38 (hereafter cited as 1974 Fair Housing Report); Twenty Years After Brown (1977) p. 126; and The Federal Fair Housing Enforcement Effort (1979), pp. 16-19, 232, 235 (hereafter cited as 1979 Fair Housing Report); and Chester C. McGuire, Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, letter to Henry Eschwege, Director, Community and Economic Development Division, U.S. General Accounting Office, Oct. 31, 1977, attachment: pp. 2, 3, 5; Patricia Roberts Harris, Secretary of Housing and Urban Development, letter to Arthur S. Flemming, Chairman, U.S. Commission on Civil Rights, Mar. 2, 1979. The Commission has found Federal fair housing enforcement to be undermined both by weak provisions in Title VIII and by inadequate budgetary resources for investigation and compliance activities. 1979 Fair Housing Report, pp. 230-32.

10/ The administration has forwarded to the 98th Congress proposed legislation to strengthen Title VIII enforcement. Fair Housing Legislation: Message to the Congress Transmitting Proposed Legislation, 19 WEEKLY COMP. OF PRES. DOC 991 (July 12, 1983). The legislation supported by the administration, S. 1612 and H.R. 3747, joined two other bills, S. 1220 and H.R. 3482, that had been introduced earlier in the 98th Congress to strengthen Title VIII. The Commission commented on the above bills in October 1983. See Clarence M. Pendleton, Jr., Chairman, U.S. Commission on Civil Rights, letter to Senator Charles McC. Mathias, Oct. 6, 1983 (transmitting staff analysis of legislation to strengthen Title VIII).

Budget Totals

As table 5 shows, funding for the Office of Fair Housing and Equal Opportunity has increased each year between FY 80 and FY 83. Inflation, however, has limited the impact of this increase on FHEO compliance activities. One means of measuring the impact of inflation on FHEO spending power is through the use of Gross National Product deflators supplied by the Congressional Budget Office (CBO). Although these deflators are not specifically geared to measure rising costs in Federal civil rights enforcement activities, 11/ they may provide an approximate measure of enforcement resources, including FHEO's.

The FY 84 budget appropriation for FHEO is \$28,675,000, an amount \$287,000 less than the FY 83 budget level. 12/ After adjusting for inflation with the CBO formula, it appears that the real spending power of FHEO in FY 84 would be only marginally greater (about 1 percent) than in FY 80. 13/

11/ For discussion of the use and limits of these measures, see chapter 1.

12/ FHEO's FY 84 budget was approved at the same level requested. Craig White, budget analyst, Office of Administration, Department of Housing and Urban Development (hereafter HUD), telephone interview, Nov. 1, 1983.

13/ In FY 83 FHEO's spending power was about 6 percent more than in FY 80 after adjustment for inflation. These estimates are derived by dividing the FHEO appropriation by a factor that accounts for annual inflation rates since 1980. Deflators for each fiscal year through FY 84 were provided by Steven Zeller, economist, Fiscal Analysis Division, Congressional Budget Office, telephone interview, June 20, 1983.

Table 5

FHEO Budget Totals: FY 1980-84

(in thousands of dollars)

<u>Fiscal Year</u>	<u>Appropriation a/</u> (annualized)
1980	\$22,060
1981	26,726
1982	27,304
1983	28,962
1984	28,675

a/ Figures represent what FHEO could have spent during the entire fiscal year under each spending ceiling.

SOURCES: U.S., Department of Housing and Urban Development: Congressional Justification for 1982 Estimates (March 1981), pp. R-1, S-1 (for FY 80 appropriation); Congressional Justification for 1983 Estimates (March 1982), pp. P-1, Q-1 (for FY 81 appropriation); Congressional Justification for 1984 Estimates (March 1983), attachment III, p. 1; attachment IV, p. 1 (for FY 82 and FY 83 appropriations); and Craig White, budget analyst, Office of Administration, Department of Housing and Urban Development, telephone interview, Nov. 1, 1983 (for FY 84 appropriation).

Staffing

The Commission has found in the past that staffing and appropriations for FHEO have been insufficient to carry out the multiplicity of civil rights responsibilities for fair housing leadership that are assigned to HUD. 14/ In the late 1970s, FHEO had fewer than 500 staff assigned to duties at HUD headquarters, 10 regional offices, and 41 area offices. 15/

After two sharply critical studies of FHEO performance were released in 1978-79, 16/ HUD began to seek substantially higher staffing for its civil rights activities. In FY 80, the FHEO staff was increased by more than 13.8 percent to fill 552 positions. 17/ In FY 81, HUD initially sought to increase the FHEO staffing authorization by 23.6 percent to 682 positions as part of a comprehensive strategy to improve the unit's

14/ 1979 Fair Housing Report, pp. 16, 17.

15/ Ibid., p. 15. See also HUD: The HUD Budget: Fiscal Year 1979 (Summary) (January 1978), p. FHEO-1; The HUD Budget: Fiscal Year 1980 (Summary) (January 1979), p. FHEO-1; and Budget: Fiscal Year 1981 (Summary) (January 1980), p. FHEO-1 (hereafter cited as FY 81 HUD Budget).

16/ 1979 Fair Housing Report, pp. 5-56, 230-35; and U.S., General Accounting Office, Stronger Federal Enforcement Needed to Uphold Fair Housing Laws (Feb. 2, 1978), pp. 4-29 (hereafter cited as GAO Report).

17/ See figures in FY 81 HUD Budget, p. FHEO-1; and HUD, FY 1982 Budget (Summary) (January 1981), FHEO-1 (hereafter cited as FY 82 HUD Budget).

performance. 18/ This figure subsequently was revised downward by the new administration, 19/ and FHEO staff filled only 610 positions in FY 81. 20/ As table 6 indicates, FHEO staffing has been declining since.

The staff of FHEO totaled 576 positions in FY 82, 438 in the field and 138 at headquarters. 21/ FHEO headquarters staff manages critical enforcement functions such as planning, evaluation, and the direction of FHEO field staff. The loss of even a limited number of headquarters staff positions can result in less effective HUD civil rights performance.

A reduction in force carried out by HUD during early FY 83 eliminated 16 (about 11.6 percent of the total) FHEO headquarters positions. 22/ The FHEO office responsible for overseeing Title VIII enforcement lost 4 of its 23 positions. 23/ The professional staff assigned to systemic Title VIII investigations affecting multiple complainants was

18/ FY 81 HUD Budget, pp. FHEO-1, 2.

19/ Justification for 1982 Estimates, p. S-1.

20/ HUD, Congressional Justification for 1983 Estimates (March 1982) p. Q-6 (hereafter cited as Justification for 1983 Estimates).

21/ U.S., HUD, Congressional Justification for 1984 Estimates, (March 1983), Attachment IV, p. 6 (hereafter cited as Justification for 1984 Estimates).

22/ Ibid. and Nokama Smith, budget officer, Office of Management and Field Coordination, FHEO, HUD, interview, May 17, 1983 (hereafter cited as Smith May Interview).

23/ Justification for 1984 Estimates, p. 7, 8-9 and Justification for 1983 Estimates, p. Q-7, Q-9.

Table 6

FHEO Full-Time, Permanent Staff Positions: FY 80-84

<u>Fiscal Year</u>	<u>Authorized a/</u>	<u>Actual b/</u>
1980	560	552
1981	590	610
1982	569	576
1983	558	545 <u>c/</u>
1984	558	---

a/ Number of full-time, permanent staff permitted under Congressional budget measures.

b/ Number of full-time, permanent staff actually employed by FHEO. Except as noted, figures are for the last day of each fiscal year.

c/ As of June 30, 1983.

SOURCES: U.S., Department of Housing and Urban Development: Congressional Justification for 1982 Estimates (March 1981), p. S-1 (for FY 80 actual staff); Congressional Justification for 1983 Estimates (March 1982), p. Q-1 (for FY 81 actual staff); Congressional Justification for 1984 Estimates (March 1983), attachment IV, p. 1 (for FY 82 actual staff); and Nokama Smith, budget officer, Office of Management and Field Coordination, FHEO, HUD, telephone interview, Aug. 3, 1983 (for FY 83 actual staff) and interview, May 17, 1983 (for FY 80 - FY 84 authorized staff).

cut from 4 to 2. 24/ The office responsible for compliance activities under Title VI and other authorities, lost more than 20 percent of its staff. 25/ Total FHEO headquarters staffing dropped to 119 during FY 83. 26/

Complaint Processing

Since FY 81, delays and backlogs in the handling of civil rights complaints have become a problem in FHEO operations. The Commission previously has noted that delays in HUD investigations can lead to a decline in willingness of the public to file complaints, permit discriminatory conduct to persist, and result in less successful FHEO investigative efforts. 27/

24/ Katrina Ross, Director, Fair Housing Enforcement Division, FHEO, HUD, interview, May 26, 1983 (hereafter cited as Ross May Interview). One of the lost systemic positions was restored by reassignment of other FHEO staff. This action, however, required time-consuming reorientation of the reassigned staff member. Ibid.

25/ Justification for 1984 Estimates, attachment IV, p. 7, and Smith May Interview.

26/ Nokama Smith, budget officer, Office of Management and Field Coordination, FHEO, HUD, telephone interview, Aug. 3, 1983 (hereafter cited as Smith August Interview). The figure cited is for FHEO staffing as of June 30, 1983. HUD points out that despite these figures, fair housing staffing and funding have been treated "more favorably" than staffing and funding at the Department overall. Antonio Monroig, Assistant Secretary for Fair Housing and Equal Opportunity, HUD, letter to Linda Chavez, Staff Director, U.S. Commission on Civil Rights, Sept. 19, 1983, p. 2 (hereafter cited as Monroig Letter and Enclosures).

27/ 1979 Fair Housing Report, pp. 29, 37.

The ability of FHEO to avoid delays and backlogs in complaint handling remains a matter of concern because Title VIII complaints to HUD are projected to continue at the current level of about 5,000 annually. 28/ Complaints of discrimination in HUD assisted programs are expected by HUD to increase substantially in FY 83 and FY 84. 29/

Backlogs of Title VIII cases open more than 90 days 30/ increased in both FY 81 and 82, and at the end of the first 6 months of FY 83 the backlog stood at 865 complaints. 31/ In FY 80, the backlog of the Title VIII cases had totaled only 35. 32/ These backlogs developed even as the number of

28/ Justification for 1984 Estimates, attachment IV, p. 14.

29/ Ibid., p. 15.

30/ Title VIII complaints that are open more than 90 days are considered to be backlogged. Ibid., p. 14. HUD believes the number of Title VIII complaints "over 90 days old" should be assessed in light of the fact that Title VIII requires termination of efforts by the HUD Secretary to obtain voluntary compliance "only when a Federal Court trial in a civil suit is brought by an individual." Monroig Letter and Enclosures, p. 5. HUD did not indicate the extent to which such efforts may have contributed to the recent growth of backlogged Title VIII cases.

31/ Ross May Interview. (Data received during interview are cited hereafter as FHEO Title VIII Data). The Title VIII backlog in FY 81 stood at 209; in FY 82 the backlog was 987 cases. Figures from Justification for 1983 Estimates, p. Q-16; and Justification for 1984 Estimates, attachment IV, p. 14.

32/ Justification for 1982 Estimates, p. S-21.

successful conciliations of Title VIII cases were increasing. 33/

At the end of the first half of FY 83, 54 percent of all open fair housing complaints were more than 90 days old. 34/ Moreover, one-quarter of all open Title VIII complaints were more than 180 days old. 35/ Such delays in resolving complaints are of particular concern because the time limits for the investigative phase of Title VIII complaints calls for prompt action. 36/ Further, private suits under Title VIII must "be commenced within one hundred eighty days after the alleged discriminatory housing practice occurred," 37/

33/ FHEO Title VIII Data. HUD cited the increase in successful conciliations as an indicator of more effective Title VIII enforcement. Monroig Letter and Enclosures, p. 1. HUD also cited monetary compensation awards that are "higher than ever" as a result of successful conciliations. Ibid. Review by Commission staff, however, of FHEO Title VIII data could not confirm this second point, nor did HUD provide supportive data on its comments on this chapter when in draft form.

34/ Calculated from FHEO/HUD Complaint and Compliance Review System Report EO2BBCA, "Title VIII and EO 11063 Complaint Aging Report" (through Mar. 31, 1983), p. 1.

35/ Ibid.

36/ HUD is required by Title VIII to complete Title VIII investigations within 30 days of the filing of complaints with HUD. 42 U.S.C. §3610(a) (1976). This 30-day limitation applies only to FHEO investigations or reactivation of complaints after previous referral to a State or local agency with fair housing responsibilities. Id. §3610(c), 24 C.F.R. §105.21(a) (1983). HUD currently requires State and local agencies to investigate "the average complaint" and "set [the complaint] for conciliation, within 30-45 days." 24 C.F.R. §115.2(c) (1983).

37/ 42 U.S.C. §3612(a) (1976).

a requirement that is less likely to be met by complainants who have not received administrative determination regarding their complaint. 38/

FHEO closures of Title VI and section 109 complaints during FY 82 did not keep pace with the increase in the number of these complaints. 39/ As a result, the number of open complaints on hand at the end of the fiscal year rose by 17 percent. 40/ During the first 6 months of FY 83, the number of open Title VI and section 109 complaints on hand increased significantly. 41/ For the same period, more than one-fourth of all open Title VI and section 109 complaints had been in that status for more than 180 days, 42/ indicating, as in earlier years, that delays continued to hamper FHEO

38/ HUD states that to protect individual rights it notifies complainants of their right to file a private suit within the required time limits of Title VIII regardless of whether HUD has completed its investigation. Monroig Letter and Enclosures, p. 5.

39/ Justification for 1984 Estimates, attachment IV, p. 15.

40/ Ibid. and Justification for 1983 Estimates, p. Q-17.

41/ HUD/FHEO Complaint and Compliance Review System Reports EO2CAC-A and EO2ANC-A, "Status Summary of Complaints" (Oct. 1, 1982 to Mar. 31, 1983), p. 4.

42/ Calculated from HUD/FHEO Complaint and Compliance Review System Report EO2BBCE, "Section 109 Complaint Aging Report" (through Mar. 31, 1983), p. 1; and EO2BBCC, "Title VI Complaint Aging Report" (through Mar. 31, 1983), p. 1.

enforcement action on complaints of discrimination in HUD-assisted programs. 43/

HUD reduced the staff time in FY 83 and FY 84 allocated to complaint processing and investigation. 44/ This action negatively affects both investigation of fair housing complaints and of possible discrimination in HUD programs.

HUD estimated its personnel would close about 2,300 Title VIII complaints a year in both FY 83 and FY 84. 45/ This would approximate the number of Title VIII closures in FY 82. 46/ Yet, the reduction in the FHEO staff time allocated to Title VIII complaint handling in both years by HUD 47/ would likely result in about 150 to 225 fewer complaint closures annually 48/ and would limit the capacity of FHEO to reduce

43/ 1979 Fair Housing Report, pp. 37-38. FHEO states that it seeks to close complaints of possible discrimination in HUD-funded program activities in less than 180 days but is not required to do so. HUD regulations for Title VI specify only that investigations shall be "prompt." 24 C.F.R. §1.7(c)(1983) and Waite Madison, supervisory equal opportunity specialist, Program Compliance Division, FHEO, HUD, telephone interview, July 28, 1983 (hereafter cited as Madison Interview).

44/ Justification for 1984 Estimates, attachment IV, pp. 14-15.

45/ Ibid., p. 14.

46/ Ibid.

47/ Ibid. The reductions would amount to about 7 fewer staff years for Title VIII complaint processing in both FY 83 and FY 84. Ibid.

48/ Ibid.

its existing large backlog of Title VIII complaints. 49/ HUD itself estimated that a backlog of 500 Title VIII complaints will continue during FY 83 and FY 84. 50/

For investigation and processing of complaints of discrimination in its programs in FY 83 and 84, HUD allocated 19 percent fewer staff years than in FY 82. 51/ In spite of these reductions, HUD estimated that in both FY 83 and FY 84

49/ FHEO staff stated that the planned issuance of a new field operations handbook in FY 83 and planned training for field staff in Title VIII complaint handling procedures could increase Title VIII activity by regional staff, thus enhancing the quality and quantity of Title VIII investigative results without increasing staff levels. Ross May Interview; Harry Carey, Acting Director, Office of Fair Housing Enforcement, FHEO/HUD, interview, June 1, 1983; and Katrina Ross, Director, Fair Housing Enforcement Division, FHEO, HUD, interview, June 1, 1983 (hereafter cited as Ross June Interview). FHEO, however, also indicated that it would not act to issue Title VIII regulations providing a comprehensive interpretation and definition of prohibited conduct under Title VIII for the use of HUD staff, the public, and the courts. HUD stated that it would defer issuance of Title VIII regulations until efforts to amend the Fair Housing Act in Congress were completed. Peter Kaplan, Director, Office of Program Standards and Evaluation, FHEO, HUD, interview, June 3, 1983 (hereafter cited as Kaplan June Interview).

50/ Justification for 1984 Estimates, attachment IV, p. 14. The backlog of Title VIII complaints is composed of unresolved cases referred by HUD to States and local agencies for handling and of cases retained by HUD for its own action.

51/ Justification for 1982 Estimates, attachment IV, p. 15. This discussion includes FHEO program non-discrimination responsibilities under Title VI, section 109, the Age Discrimination Act, section 504, and equal employment opportunity contract clauses involved in HUD-assisted activities. Ibid.

FHEO would close substantially increased numbers of program discrimination complaints. 52/ The level of staff hours allocated by HUD to meet its complaint closure objectives, however, appeared to be 52 percent too low for FY 83 53/ and 88 percent too low for FY 84, when measured against the past performance of FHEO. 54/

FHEO staff believe that improved staff efficiency and use of a detailed program complaint investigation manual now under preparation should increase effective use of its regional staff

52/ Ibid., p. 15. HUD projects that the number of program discrimination complaints will increase by about 23 percent in FY 83 and by the same percentage again in FY 84. Ibid. One reason for an increased number of complaints is the scheduled issuance in FY 84 of HUD regulations under section 504; these are expected to result in a major increase in section 504 complaints. Robert Ardinger, program analyst, Program Compliance Division, FHEO, HUD, interview, June 15, 1983.

53/ Calculated from FY 82 performance and staff years. Justification for 84 Estimates, attachment IV, p. 15. In FY 83, 21.5 staff years would be needed for HUD's estimate of 389 closures of complaints of program discrimination. HUD has allocated only 14.1 staff years for FY 83.

54/ Ibid. In FY 84, about 26.5 staff years would be required for HUD's estimate of 480 closures of complaints. HUD has allocated 14.1 staff years for FY 84.

investigators. 55/ Nonetheless, it appears unlikely that the efficiency of FHEO investigations can be improved to achieve the number of complaint closures that HUD has estimated for FY 83 and FY 84. If receipts of program discrimination complaints increased to the levels FHEO projected for FY 83 and FY 84, delays in investigations and backlogs of these complaints are likely to be continuing problems. 56/

55/ Laurence D. Pearl, Director, Office of HUD Program Compliance, FHEO, HUD, interview, May 27, 1983 (hereafter cited as Pearl May 27 Interview) and Madison Interview. FHEO stated that staff would also receive training in statistical analysis techniques and investigative procedures during FY 83 that would improve staff effectiveness. HUD stated that its investigations of Title VI and section 109 complaints of discrimination already has "become considerably more effective in identifying and correcting discriminatory practices." HUD stated that its findings of apparent noncompliance rose from 10 percent of the complaints investigated in FY 81, to 14 percent in FY 82, and to 24 percent in FY 83. Monroig Letter and Enclosures, p. 7. HUD did not discuss how these percentages were determined. Nonetheless, the improvement in the percentage of investigations leading to findings of noncompliance appears also to have been accompanied by a decline in the number of complaints being closed, when compared with FY 82 performance. HUD/FHEO Complaint and Compliance Review System, "Title VI: Status Summary of Complaints" (through Mar. 31, 1983) (EO2ANC-A), p. 2; and Justification for 1984 Estimates, attachment IV, p. 15.

56/ According to HUD, the number of Title VI and section 109 complaints remaining on hand at the end of FY 84 will equal almost 52 percent of the total number of receipts of these complaints during that year. Justification for 1984 Estimates, attachment IV, p. 15. Complaints carried over from the prior fiscal year combine with new receipts during the current year to form the total annual workload for staff. When complaints are carried over in substantial numbers from 1 fiscal year to another without staff increases to compensate for this added workload, a backlog is likely to develop.

Fair Housing Assistance to State and Local Agencies

HUD is required under the Civil Rights Act of 1968 to refer Title VIII complaints to State and local agencies administering fair housing laws that provide "rights" and remedies... substantially equivalent" to those under Title VIII. 57/ Since 1980, FHEO has provided financial assistance to State and local civil rights agencies to support the investigation of Title VIII complaints referred to them by HUD. 58/ Funds provided by FHEO's Fair Housing Assistance Program (FHAP) have encouraged State and local jurisdictions to adopt "equivalent" fair housing laws and to accept complaint referrals. 59/ During FY 82, more than half of all Title VIII complaints received by HUD were referred to State and local agencies for investigation. 60/

57/ 42 U.S.C. §3601(c) (1976), 24 C.F.R. §115.6 (1983):

58/ Steven Sacks, Director, Federal, State and Local Programs' Division, FHEO, HUD, interview, May 18, 1983 (hereafter cited as Sacks Interview).

59/ Justification for 1984 Estimates, attachment III, p. 3, 6-7.

60/ Ibid., attachment III, p. 7. In 1980, only 13.5 percent of HUD's Title VIII complaints were referred. Ibid.

Since 1980, HUD has sought a \$3.7 million annual appropriation for FHAP aid to State and local agencies. 61/ In FY 84, the number of State and local agencies assisted by the program will have increased to an estimated 90 agencies. 62/ Referral of growing numbers of individual fair housing complaints to State and local agencies potentially allows FHEO to increase its staff time devoted to broader Title VIII investigations that have a greater enforcement effect and that can lead to Department of Justice prosecutions. 63/

It is not clear that HUD can rely increasingly on the results of State and local investigation and conciliation

61/ Sacks Interview. FHEO staff characterized the current allocation for FHAP as "programmatically adequate" to fund annually the total number of agencies that have sought FHAP support. In fact, actual outlays for FHAP aid to State and local agencies between FY 80 and FY 82 were substantially below the annual appropriations during these years, due to delays in program implementation. As a result, a substantial carryover developed of funds appropriated for FHAP. Thus, in FY 83, FHEO estimated that obligations of FHAP aid to State and local agencies would total \$6,747,000, an amount almost double the FY 83 appropriation for the program. Justification for 1984 Estimates, attachment III, p. 1. When the funds carried over from earlier appropriations are exhausted, considerably reduced funds will be available for FHAP assistance to State and local agencies.

62/ Sacks Interview.

63/ FHEO investigation of systemic Title VIII complaints is discussed in greater detail beginning at p. 24.

activities. 64/ Almost two-thirds of all backlogged HUD Title VIII cases in early 1983 were of complaints that HUD had referred to State and local agencies. 65/ Further, a detailed program audit this year of FHEO performance in 1 HUD regional office found monitoring of State and local agencies to be

64/ The referral of Title VIII complaints to State and local agencies for investigation and enforcement action does not end HUD's responsibility for prompt handling of such complaints. The HUD Secretary retains the right to recall referred complaints upon certification that "the protection of the rights of the parties or the interests of justice require such action." 42 U.S.C. §3610(c) (1976). HUD regulations state that "such certification [and complaint recall] shall be made routinely when the State and local agency has not commenced proceedings within 30 days following the referral of the complaint to it, or...has not carried forth such proceedings with reasonable promptness within the judgment of the Assistant Secretary." 24 C.F.R. §105.20 (1983).

65/ FHEO Title VIII Data. The percentage of complaints backlogged at State and local agencies (66 percent) exceeded the percentage of Title VIII complaints referred to these agencies (61 percent) suggesting their complaint resolution activities are less timely than HUD's.

"inadequate." 66/ Also, Title VIII conciliation agreements gained by State and local agencies are obtaining monetary awards for complainants that average 90 percent less than those HUD obtains in its conciliations. 67/

The headquarters FHEO staff administering the FHAP State and local program has been limited to 5 or fewer positions

66/ Lee M. Stevens, Region V Inspector General for Audit, HUD Audit Report to Alfred C. Moran, Acting Regional Administrator, Region V, Audit Case No. 83-CH-174-0004, "Housing Discrimination Complaint Investigation," Region V, Jan. 14, 1983, p. 2 (hereafter cited as Housing Discrimination Complaint Investigation). The audit determined that one reason for this "inadequate" monitoring was the unreliability of FHEO data processing systems. Ibid., pp. 19, 20, 24, 27, 30. The audit found that the computer program needed for monitoring State and local agencies was never designed at headquarters because FHEO funds "ran out before the program could be developed." Ibid., p. 30. It is not clear when an adequate system will be in place. In commenting on this chapter, in draft, HUD reported, "In FY 1983 considerable activity occurred in the redesign of FHEO's ADP monitoring capability for State and local complaint processing. HUD's Office of Administration has committed resources in FY 1984 to implement these ADP improvements." Monroig Letter and Enclosures: Technical Corrections, p. 1. HUD did not indicate the level of resources to be committed in FY 84 to ADP improvements or the nature of these improvements.

67/ FHEO Title VIII Data. Monetary awards under successful conciliations by HUD averaged \$1,144, while State and local agencies gained only an average of \$118 in successful conciliations. HUD staff also were more likely to achieve Title VIII conciliations that included followup agreements. (Not all "successful" conciliations include followup agreements.) HUD observed, however, that efforts by State and local agencies to achieve early resolution of complaints (e.g., to obtain a unit of housing for complainants) may account for their lower average monetary awards in conciliations. HUD also believes that public hearings at the State and local level may result in gains in monetary relief that are not reported as having been achieved pursuant to conciliation efforts. Monroig Letter and Enclosures, p. 6.

since its inception. 68/ This staff must carry out time-consuming responsibilities for certifying Title VIII equivalency, conducting training and technical assistance, reviewing funding proposals, administering contracts and memoranda of understanding, and assisting regional staff in monitoring State and local handling of complaints. 69/ While emphasizing rapid implementation of FHAP funding for State and local agencies, FHEO has not made continuous evaluation of the performance of these agencies a priority. Staff charged with oversight of the program thus have not been able to determine why problems may be occurring in the complaint performance of the referral agencies. 70/ Nonetheless, FHEO Assistant Secretary Monroig believes that the program to strengthen State and local fair housing enforcement has been a success and "has increased dramatically the resources which are available to fight housing discrimination." 71/

68/ Sacks Interview.

69/ Ibid.

70/ Ibid. FHEO recently emphasized to its regional staff that careful monitoring of the "timeliness of State and local agency processing" of complaints should be achieved through continuation of the currently required 30/60/90 day series of progress checks on handling of individual complaints. Monroig Letter and Enclosures: Memorandum on Title VIII Recall Policy, Aug. 3, 1983.

71/ Monroig Letter and Enclosures, p. 1. The Assistant Secretary observed, "Many states and localities have laws stronger than Title VIII, thus increasing [by means of HUD referrals] the remedies available to victims of discrimination." Ibid.

The State and local agencies handling Title VIII complaints are outside HUD's immediate control and day-to-day oversight. Therefore, effective management of the FHAP program requires that staff be assigned to a continuing program of evaluation and early problem resolution. The FY 84 HUD budget, however, will not increase headquarters staffing for the FHAP State and local program, 72/ and no clear commitment has been made regarding plans for training of regional staff on FHAP matters during FY 84. 73/ Without increased staffing and training during FY 84, FHEO will lack the means to correct problems in the performance of State and local agencies on Title VIII complaints. 74/

72/ Ibid.

73/ It was not until April 1982 that HUD provided comprehensive training sessions for each regional office on the State and local referral program and FHAP, 2 years after the program's inception. Additional training appears to be all the more important because for both FY 83 and FY 84 HUD indicated that a considerably increased amount of regional office FHEO staff time would be devoted to "FHAP Activity." Justification for 1984 Estimates, attachment IV, p. 14. HUD stated that Regional Title VIII staff would receive training in late FY 83 on monitoring the complaint processing procedures of State and local referral agencies. HUD also noted that "sufficient funds will be available for a FHAP training session in FY 84." Monroig Letter and Enclosures: Technical Corrections, p. 1.

74/ FHEO staff believe a "systematic complaints monitoring" effort planned for FY 84, a new FHEO field operations handbook, and training of field staff should help to improve HUD regional office performance on monitoring of complaint handling by State and local agencies. Ross May and June Interviews; Justification for 1984 Estimates, attachment IV, p. 9; and Monroig Letter and Enclosures: Technical Corrections, p. 1.

Systemic Activities

In addition to its action on individual complaints, FHEO investigates broader pattern and practice discrimination in housing and in HUD programs. 75/ This is usually referred to as systemic activity. A single pattern and practice case under Title VIII often can include multiple complaints against a single respondent. 76/

The Assistant Secretary for Fair Housing has emphasized the importance of systemic complaint investigation and stated that increased FHEO activity on these cases would be likely to increase HUD referrals of Title VIII complaints to the Department of Justice (DOJ) for possible litigation. 77/ The Attorney General is limited to litigation of "pattern and practice" Title VIII cases or to cases which raise "an issue of general public importance involving a group of persons." 78/ The prosecution of substantial numbers of Title VIII cases is

75/ HUD, FY 1984 Budget (January 1983) (Summary), p. FHEO-2 (hereafter cited as FY 84 HUD Budget).

76/ Harry Carey, Acting Director, Office of Fair Housing Enforcement, FHEO, HUD, telephone interview, June 29, 1983.

77/ Antonio Monroig, Assistant Secretary for Fair Housing and Equal Opportunity, HUD, Testimony before the Subcommittee on HUD-Independent Agencies of the House Committee on Appropriations, Apr. 13-14, 1983 (hereafter cited as Monroig Testimony); Ross May Interview. HUD can resolve Title VIII complaints only through conciliation and persuasion. 42 U.S.C. §3601(a) (1976).

78/ 42 U.S.C. §3613 (1976).

critical to Federal Government efforts to curb housing discrimination. 79/ Persons who would violate Title VIII have little incentive to comply voluntarily with the Fair Housing Act when the possibility of Federal Title VIII litigation is unlikely. 80/

HUD's processing of thousands of Title VIII complaints each year potentially provides an opportunity for the agency to uncover and forward to DOJ substantial numbers of pattern and practices cases for possible litigation. In the past, however, the Commission found that HUD has referred only a very small number of its total annual Title VIII cases to DOJ for possible prosecution. 81/ Coordination and information sharing between the two agencies also were marked by problems. 82/ Such weaknesses have persisted.

79/ 1979 Fair Housing Report, pp. 62, 71-72.

80/ Ibid., p. 230.

81/ Ibid., pp. 31-32.

82/ Ibid., pp. 64, 69.

HUD reported that it referred three pattern and practice Title VIII cases to DOJ during FY 82. 83/ Delays of a year or more by FHEO between investigations of Title VIII complaints and their referral to DOJ also have lessened the possibility of swift litigation by the Department. 84/ Coordination of activities between HUD and DOJ still appeared to be a problem in 1983. 85/

The low number of Title VIII pattern and practice case referrals appears to result from the inadequate staff time and

83/ Monroig Letter and Enclosures: Technical Corrections, p. 1. The Department of Justice, however, reported only two such referrals by HUD during FY 82. Thomas M. Keeling, Acting Chief, General Litigation Section, for William Bradford Reynolds III, Assistant Attorney General, Civil Rights Division, Department of Justice, letter to James S. Arisman, civil rights analyst, U.S. Commission on Civil Rights, June 22, 1983 (hereafter cited as Keeling Letter). In FY 81, HUD referred 4 pattern and practice matters for possible prosecution. In 1980, no pattern or practice cases were referred. Additionally, FHEO has also referred to DOJ an annual average of 20 other Title VIII cases that are not pattern or practice matters and that apparently are provided only for DOJ's appraisal and general information. Ibid.

84/ William Bradford Reynolds III, Assistant Attorney General, Civil Rights Division, Department of Justice, letter to Antonio Monroig, Assistant Secretary for Fair Housing, HUD, Jan. 18, 1983 (hereafter cited as Reynolds Letter). The Assistant Attorney General's letter stressed that delays in HUD's referral of Title VIII complaints to DOJ had resulted in the need for reinvestigation of cases and made it difficult to locate witnesses. Ibid. The letter was written following reported expressions of concern by the Assistant Secretary regarding apparent inaction by DOJ on Title VIII case referrals. "HUD's Approach to Housing Bias Stresses Cooperation Over Litigation," Washington Post, Jan. 4, 1983, p. A-13.

85/ Reynolds Letter.

resources allocated by FHEO to its systemic Title VIII efforts. An effective program of pattern and practice investigations requires exacting headquarters coordination and monitoring of specially trained staffs of investigators, technicians, and analysts. 86/ In both FY 81 and FY 82, FHEO allocated about 32 staff years for the investigation of systemic Title VIII cases. 87/ In FY 81, FHEO closed 360 systemic Title VIII complaints and referred 4 of them to Justice for possible pattern and practice litigation. 88/ In FY 82, FHEO closed 246 systemic complaints. 89/

In FY 83 and FY 84, HUD allocated 33.3 staff years for systemic Title VIII investigations but predicted it would achieve major increases in the number of cases it would

86/ Budget: Fiscal Year 1981 (January 1980), p. FHEO-2; and 1980 Annual Report (September 1981), pp. 16-17 (hereafter cited as HUD 1980 Annual Report).

87/ Justification for 1983 Estimates, p. Q-16; and Justification for 1984 Estimates, attachment IV, p. 14.

88/ Justification for 1983 Estimates, p. Q-16; and Keeling Letter.

89/ Justification for 1984 Estimates, attachment IV, p. 14. As noted, DOJ states that HUD referred 2 pattern and practice cases during FY 82. Keeling Letter. HUD states that 3 such referrals were made during FY 82. Monroig Letter and Enclosures: Technical Corrections, p. 1.

close. 90/ FHEO estimated it would close 765 systemic cases in FY 83 and 995 cases in FY 84. 91/ During the first half of FY 83, FHEO closed only 134 such cases, 92/ indicating that the major increase in systemic activity projected by HUD had not occurred. 93/

Based on FHEO performance during FY 82, a total of 101 staff years would be required to achieve HUD's goal for pattern and practice Title VIII closures in FY 83. 94/ In FY 84, 131 staff years would be needed. 95/ FHEO's allocation of 33 staff years for systemic investigations in FY 83 and FY 84 96/

90/ Justification for 1984 Estimates, attachment IV, p. 14. FHEO emphasizes that Title VIII systemic complaint investigations are a "priority" and that referral of pattern and practice cases to the Justice Department for civil action is a "primary objective" for FHEO. FHEO added that it would "advise Regional offices...to provide for prompt processing of cases which have systemic issues" and would expedite referral of cases to DOJ for initiation of civil actions. Monroig Letter and Enclosures, p. 6.

91/ Justification for 1984 Estimates, attachment IV, p. 14. According to HUD, the number of systemic Title VIII complaint closures would triple in FY 83 and quadruple in FY 84 when measured against FY 82 performance. Ibid.

92/ Ross May Interview.

93/ On reviewing a draft of this chapter, HUD disagreed with this conclusion, asserting that "the number of cases involving systemic issues is increasing." HUD stated that it had 346 systemic cases "on hand" at the end of the first 6 months of FY 83 and planned to resolve 66 of these. Monroig Letter and Enclosures, p. 6.

94/ Ross May Interview. Calculated from HUD figures.

95/ Ibid. Calculated from HUD figures.

96/ Justification for 1984 Estimates, attachment IV, p. 14.

does not provide the staff needed to achieve its own enforcement objectives. The limited staffing for systemic Title VIII complaint activity also is likely to impede referrals of substantially increased numbers of pattern and practice cases to the Department of Justice for possible litigation.

Program Compliance Reviews

Compliance reviews by FHEO of local HUD-assisted program activities under Title VI, section 109 and other authorities offer a systematic means of uncovering unlawful discrimination and acting promptly to correct civil rights violations. FHEO currently concentrates its compliance reviews on community development block grant recipients and on local public housing authorities. 97/

Program compliance reviews also offer HUD the opportunity to act administratively against housing discrimination and segregation affecting large numbers of units of federally

97/ U.S., Department of Housing and Urban Development, Office of the Assistant Secretary for Fair Housing and Equal Opportunity, "FY 1982 Implementation Plan for Civil Rights Programs Covered by Executive Order 12250" (March 1982), p. 26, (hereafter cited as HUD Implementation Plan for Civil Rights Programs); Pearl May 27 Interview. The FY 1983 HUD Implementation Plan had not been submitted formally to the Department of Justice at the time this analysis was prepared and, therefore, was not available to Commission staff for review.

assisted housing at the local level. 98/ HUD's potential for results in this area is considerable: the agency's 2 largest housing assistance programs involve 2.7 million units of low-income housing. 99/

FHEO compliance reviews of HUD-assisted program activities have been marked by serious performance problems in the past, and their potential impact has been diminished. The Commission found in the late 1970s that FHEO was performing annually only a small number of Title VI reviews relative to its total number of program recipients, 100/ and the General Accounting Office found that many HUD program recipients had "virtually no chance of being reviewed." 101/ Inadequate staffing for compliance reviews also was cited by HUD and the Department of Justice

98/ HUD is empowered to seek compliance in Title VIII complaints only through voluntary conciliation. 42 U.S.C. §3610(a) (1976). In contrast, HUD has greater power in cases involving discrimination and segregation in federally-assisted housing in violation of Title VI of the Civil Rights Act of 1964. In these cases, administrative tools such as deferrals of funding, termination or reduction of funding, or imposition of required corrective actions for continued assistance can be brought to bear. Historically, however, HUD has been reluctant to exercise administrative procedures that would result in the interruption of funding of local programs. See 1979 Fair Housing Report, pp. 38-39.

99/ HUD, Programs of HUD (October 1982), pp. 26-27.

100/ 1979 Fair Housing Report, pp. 16-17, 38. The Commission found that HUD compliance reviews had not reached 2 percent of the recipients of HUD program recipients in any single fiscal year as of late 1977. Ibid., p. 38.

101/ GAO Report, pp. 14-15.

as the basis for the small number of reviews performed. 102/

HUD began to examine in 1979 the level of staffing increases that would be required to mount "a more extensive and effective compliance review program." 103/ Between FY 80 and FY 81 the authorized FHEO headquarters staffing for program compliance activities increased from 23 to 29 positions. 104/ At the same time, regional staff years for Title VI and section 109 program compliance reviews were increased by 20 percent. 105/ HUD also established a Headquarters Investigative Unit to handle program discrimination complaints

102/ Chester C. McGuire, Assistant Secretary for Fair Housing and Equal Opportunity, HUD, attachment to letter to Henry Eschwege, Director, Community and Economic Development Division, General Accounting Office, Oct. 31, 1977, pp. 2-3, citing U.S., Department of Justice, Civil Rights Division, "Interagency Survey Report" (September 1977).

103/ U.S., Department of Housing and Urban Development and U.S., Department of Justice, Civil Rights Division, Memorandum of Understanding: Regarding the Enforcement of Title VI of the Civil Rights Act of 1964 (June 18, 1979 and July 6, 1979) (hereafter cited as HUD and DOJ Memorandum of Understanding).

104/ Calculated from figures in Justification for 1982 Estimates, p. S-8; and Justification for 1983 Estimates, p. Q-10.

105/ Justification for 1982 Estimates, p. S-23; and Justification for 1983 Estimates, p. Q-17. The staff years rose from 40.8 to 49.1 years.

and compliance reviews under Title VI and section 109 that required highly developed statistical and analytical skills. 106/

These staffing gains were not sustained. The special compliance team was disbanded in 1981 because its travel costs were considered too high in light of the limited FHEO travel budget 107/ and because the team "would have required a far greater expenditure of staff than had been contemplated, at a time of increasingly scarce resources." 108/ Moreover, in FY 82 HUD reduced most of the increased regional staff years for compliance reviews that had been added in FY 81. 109/

106/ Justification for 1982 Estimates, p. S-14; HUD 1980 Annual Report, p. 17; and FY 81 HUD Budget, p. FHEO-3.

107/ Laurence D. Pearl, Director, Office of HUD Program Compliance, telephone interview, May 25, 1983. The Commission repeatedly has recommended that HUD carry out a program of reviews similar to those that were to be undertaken by this team. The Commission has called for at least 50 such reviews a year to determine the civil rights status of local agencies and activities receiving HUD assistance. See 1974 Fair Housing Report, p. 346; Twenty Years After Brown, p. 176; 1979 Fair Housing Report, pp. 34-35.

108/ Monroig Letter and Enclosures, p. 8.

109/ Justification for 1984 Estimates, Attachment IV, p. 16 and Justification for 1983 Estimates, p. Q-17.

In FY 82 the number of reported FHEO program compliance reviews declined. 110/ Most important, the actual number of compliance reviews conducted during FY 82 fell 33 percent short of the number of reviews that FHEO had set as its objective for the year. 111/ The number of compliance reviews performed in FY 82 was only 2 percent of HUD program recipients. 112/ In

110/ Ibid. Reported compliance reviews decreased from 549 in FY 81 to 279 in FY 82. FHEO indicates, however, that in FY 82 it changed the manner in which it counted these reviews. It said its previous procedures had "resulted, in some cases, in...double counting." Subsequent elimination of this double counting resulted in an "apparent reduction" in the number of compliance reviews conducted during FY 82. Monroig Letter and Enclosures, p. 7. Commission staff were unable to determine the degree to which this practice may have distorted prior data on compliance reviews conducted annually by FHEO. HUD also said that the reduced number of compliance reviews reflects new FHEO "work measurement standards" that require field staff to carry out more compliance reviews of larger recipients of HUD funding. It contended that any decline in the total number of annual reviews was balanced by increased HUD attention to recipients whose activities affect more persons. Pearl May 27 Interview.

111/ Justification for 1983 Estimates, p. Q-17 and Justification for 1984 Estimates, attachment IV, p. 15.

112/ Calculated from Justification for 1984 Estimates, attachment IV, p. 16 and HUD, Office of Fair Housing and Equal Opportunity, "A-11-53 Submission, Federal Civil Rights Program Classification Schedule, All Agency Civil Rights Programs for FY 1984, to the Office of Management and Budget" (Oct. 25, 1982). Calculated based on 279 compliance reviews and 13,500 total recipients. In FY 80 and FY 81, the number of compliance reviews reported by FHEO would have represented almost 4 percent of the total number of recipients of HUD program assistance. Calculated from data in Justification for 1983 Estimates, p. Q-17 and Justification for 1982 Estimates, p. S-23, based on 14,000 total recipients. As noted above, however, previous double counting of compliance reviews by FHEO limits the reliability of the figures for FY 80 and FY 81.

the first 6 months of FY 1983, FHEO completed only 89 compliance reviews. 113/

FHEO set a goal of 362 program compliance reviews each year for both FY 83 and FY 84. 114/ Achievement of this goal would require a 30 percent improvement over the actual number of compliance reviews completed in FY 82. 115/ The 42.4 staff years allocated for FY 84 FHEO program compliance review activity is far lower than appears necessary to achieve the increase in reviews projected. 116/ Without substantially higher staffing for compliance activities, it appears unlikely

113/ HUD/FHEO Complaint and Compliance Review System Report EO2AHC-A, "Summary of Compliance Reviews Conducted by Program" (Oct. 1, 1982-Mar. 31, 1983), pp. 1-2.

114/ Justification for 1984 Estimates, attachment IV, p. 16.

115/ Calculated from data in Justification for 1984 Estimates, attachment IV, p. 16.

116/ About 55 staff years would be needed, based on FY 82 performance. Ibid. FHEO's annual level of performance on compliance reviews is affected by the fact that such reviews are lengthy and take substantial time to resolve. At the end of the first 6 months of FY 83, more than 54 percent of all Title VI reviews and 46 percent of all section 109 reviews had been open for more than 180 days. HUD/FHEO Complaint and Compliance Review System Report EO2BBCD, "Title VI Compliance Review Aging Report" (through Mar. 31, 1983) p. 1; and EO2BBCF, "Section 109 Compliance Review Aging Report" (through Mar. 31, 1983).

that FHEO can achieve the goals it established for FY 83 and FY 84. 117/

FHEO believes that examining only the number of program compliance reviews FHEO conducts in a fiscal year does not fully reflect the effectiveness of its review efforts. 118/ On receiving a draft copy of this chapter, Assistant Secretary Monroig wrote:

The Department's strategy in the last few years proceeds on the assumption that we will never have the resources to conduct compliance reviews for more than a small percentage of the 13,500 recipients of HUD funds in any fiscal year. Thus, the important element becomes the selection of those recipients for review which are most likely to have compliance problems. 119/

FHEO also stated that its careful selection of those recipients to be reviewed has worked effectively and that the percentage of compliance reviews with findings of noncompliance rose from 5 percent in FY 80 to 29 percent in the first half of

117/ FHEO believes that two deskguides (operations manuals) now being prepared will improve FHEO program compliance reviews of public housing authorities and of HUD block grant activities. (Both deskguides were to have been produced in FY 82 but were delayed.) Pearl May 27 Interview; Monroig Letter and Enclosures, p. 7.

118/ Monroig Letter and Enclosures, p. 6.

119/ Ibid, p. 7.

FY 83. 120/ The increased findings by FHEO of noncompliance also may be the result, in part, of an actual increase in discriminatory conduct. 121/

If FHEO were able to achieve successfully its FY 84 objective of conducting 362 program compliance reviews, this level of activity, nonetheless, would examine only 2.7 percent of HUD's program recipients in FY 84. 122/ As a result, FHEO compliance reviews will continue to have limited effect in deterring and detecting unlawful discrimination in HUD-assisted activities because they reach so few recipients. FHEO continues to believe that improved targeting of reviews and staff training and guidance will permit it to achieve its numerical goals and improve program quality. 123/

120/ Ibid. Commission staff were not able to examine independently the improvement cited. By way of comparison, the Commission found in the mid-1970s that 21 percent of FHEO Title VI compliance reviews resulted in findings of noncompliance. 1979 Fair Housing Report, p. 39.

121/ Pearl May 27 Interview.

122/ Examining 2.7 percent of its program recipients a year (362 reviews), HUD would require more than 37 years to conduct 1 compliance review of each of its 13,500 program recipients. HUD's stated goal in the late 1970s was to conduct annual reviews of 4 percent of its program recipients. 1979 Fair Housing Report, p. 38. Even an annual 4 percent level of compliance review activity would mean that detailed auditing of the civil rights status of its program recipients would be infrequent.

123/ Monroig Letter and Enclosure, p. 7.

Reviews of Low-Income Public Housing

Low-income public housing is a program area in which inadequate HUD compliance review activities have had clearly negative consequences by leaving untouched deeply entrenched segregation in local public housing. 124/ FHEO itself has stated that HUD's public housing program "remains racially segregated" and in violation of both Title VI and Title VIII. 125/ HUD agreed in a 1979 Memorandum of Understanding with the Department of Justice to revise its policies to "promote desegregation" of its public housing projects 126/ but took no specific steps to carry out this agreement. 127/ HUD subsequently has taken no concerted action to correct segregation within public housing projects across the country. 128/

124/ "Management Control Assessment of the HUD Tenant Section and Assignment Policy," p. 14 (hereafter cited as Management Control Assessment), Attachment to HUD Implementation Plan for Civil Rights Programs. The Management Control Assessment notes that segregation in public housing assisted by HUD has been a longstanding problem. Ibid., p. 14.

125/ Ibid.

126/ Ibid., p. 8; HUD and DOJ Memorandum of Understanding, pp. 7-9.

127/ Management Control Assessment, p. 8. HUD had taken no further action as of May 26, 1983. Laurence D. Pearl, Director, Office of HUD Program Compliance, FHEO, HUD, telephone interview, May 26, 1983

128/ Pearl May 27 Interview.

FHEO itself has reported that it conducts few compliance reviews of public housing authorities and has acknowledged that its efforts to desegregate public housing have not been very successful. 129/ Compliance reviews by FHEO are so infrequent that they are an unlikely prospect in most years for most public housing authorities. 130/ As a result, there is little scrutiny by HUD and few resulting sanctions to induce local

129/ Management Control Assessment, p. 13-14. HUD notes, for example, that based on its performance in FY 81, "the average public housing authority would receive a compliance review approximately once every 21 years." Ibid., p. 13.

130/ Ibid. FHEO stated that it has "markedly increased" compliance reviews of public housing in the Atlanta, Chicago, and Fort Worth Regions in FY 82 and FY 83, areas which "contain the largest numbers of [public housing authorities] with segregated or racially identifiable housing patterns. Increased numbers of findings of apparent noncompliance and compliance agreements have been the result." Monroig Letter and Enclosures, p. 7. An internal HUD analysis concluded, however, that continuing public housing segregation and inaction by HUD to correct it have left HUD liable to a court order, similar to that in Adams v. Bell "where the Court took control of HEW's compliance review activities." The analysis concluded, "HUD could conceivably be ordered by a court to conduct compliance reviews beyond its capacity." Management Control Assessment, p. 9, citing Adams v. Richardson, 351 F. Supp. 636 (D.D.C. 1972), 356 F. Supp. 92, 94-100 (D.D.C. 1973), modified and aff'd., 480 F.2d 1159 (D.C. Cir. 1973), supplemental order sub. nom. Adams v. Weinberger, 391 F. Supp. 269 (D.D.C. 1975), second supplemental order sub. nom. Adams v. Califano, 430 F. Supp. 118 (D.D.C. 1977), Adams v. Califano, No. 3095-70 (D.D.C. Dec. 29, 1977), Adams v. Bell, No. 3095-70, and Women's Equity Action League v. Bell, No. 74-1720, order (D.D.C. Mar. 11, 1983).

authorities to halt discriminatory practices and to remedy the effects of such unlawful conduct. 131/

Support for Voluntary Compliance

HUD officials have emphasized their increasing reliance on voluntary means of gaining compliance with Title VIII. 132/

One longstanding HUD approach to achieving voluntary fair housing compliance has been through the establishment of local Community Housing Resource Boards (CHRBs), composed of persons concerned with fair housing issues. 133/ These boards are

131/ HUD has planned for FY 84 a "demonstration" project on public housing desegregation methods. As the total research budget for fair housing has been cut by more than 50 percent from its FY 82 level, lack of funds will limit the number or amount of individual grants that can be made under the project. HUD, FY 1984 Budget (Summary) (January 1983), pp. PDR-1, 2 (hereafter cited as FY 84 HUD Budget).

132/ Samuel R. Pierce, Jr., Secretary of Housing and Urban Development (remarks before the Ninth Annual Convention of the National Conference on Black Mayors, New Orleans, Louisiana, Apr. 20, 1983); and "HUD's Approach to Housing Bias Stresses Cooperation Over Litigation," Washington Post, Jan. 4, 1983, p. A-13. FHEO noted other aspects of its voluntary compliance effort. For example, a New Horizon Fair Housing Assistance Project encourages States and localities to utilize strategies "to affirmatively promote fair housing." FHEO also noted that its office of Voluntary Compliance organized and directed 6 regional symposia during FY 83, with a total of 2,000 participants, on the subject of public and private sector cooperation on housing problems. The same office conducted a conference in FY 82 for 400 participants on HUD's Community Housing Resource Boards. Monroig Letter and Enclosures, pp. 8-11.

133/ HUD, Community Housing Resource Boards (Handbook 8021.2) (June 1980), pp. 2-1 (hereafter cited as CHRB Handbook).

to work with local groups of real estate professionals that have signed Voluntary Affirmative Marketing Agreements with HUD, 134/ overseeing implementation of these agreements, recruitment of minority real estate personnel, and monitoring of local marketing procedures. 135/ The boards also carry out their own local education programs on fair housing matters. 136/ HUD believes that successes "have been achieved" in each of these areas. 137/

When the CHRB program began in the mid-1970s, HUD provided no direct financial assistance to it. 138/ Inadequate local funding, however, led HUD in FY 81 to seek a \$2 million annual authorization for the program. 139/ Between FY 81 and the

134/ Ibid. HUD notes that 1,200 such agreements have been signed. Monroig Letter and Enclosures, p. 8.

135/ Justification for 1984 Estimates, attachment III, pp. 5, 6.

136/ FY 84 HUD Budget, p. FHEO-4.

137/ Monroig Letter and Enclosures, p. 9. FHEO states that its national agreements with real estate organizations have led to "continuous dialogue" on fair housing issues, to increased use of the HUD fair housing symbol, to fair housing training, and to distribution of printed material regarding the fair housing obligations of the real estate industry. Ibid.

138/ Nathaniel K. Smith, Director, Housing and Community Development Division, Office of Voluntary Compliance, FHEO, HUD, telephone interview, June 7, 1983.

139/ HUD, Budget: Fiscal Year 1981 (Summary) (January 1980), p. FHEO-5-6.

beginning of FY 83, the number of boards grew from 375 to 613, according to HUD, although in each year only a limited number of these was funded. 140/ In FY 83, HUD said it would assist an estimated 170 boards, or about 28 percent of the total number. 141/ In FY 84, HUD will reduce its funding for the program by 50 percent to \$1 million. 142/ The number of local boards assisted will drop to only 50 (about 8 percent of the total number of CHRBS in FY 83). 143/

HUD has acknowledged that its local volunteer boards may cease operations without funding assistance. 144/ This

140/ See Justification for 1982 Estimates, p. R-6 and Justification for 1983 Estimates, P-6.

141/ Justification for 1984 Estimates, attachment III, pp. 1, 5.

142/ Ibid., attachment III, p. 5. HUD stated that the reduction in the FY 84 appropriation for CHRBS was due to earlier "delays" in obligating funds. HUD added, "These delays have now been rectified, and the obligations are matching the appropriations. We expect that the program will return to its full funding level in the future." Monroig Letter and Enclosures, p. 9.

143/ Justification for 1984 Estimates, attachment III, p. 5.

144/ Ibid.

problem was already apparent in late 1982 when HUD reported that only 67 percent of them were functioning. 145/

Coordination of Federal Fair Housing Activities

The Commission previously has concluded that HUD lacked sufficient resources to carry out effectively its responsibilities for coordination and leadership of Federal fair housing activities. 146/ In 1979 the Commission recommended that the President demonstrate his support of HUD's leadership role by emphasizing to all Federal agencies that under Title VIII 147/ HUD is vested with overall authority and responsibility for the administration of Federal fair housing efforts. 148/

145/ James C. Cummings, Jr., Director, Office of Voluntary Compliance, FHEO, HUD, memorandum to John Waller, management analyst, Management Systems and Services Division, FHEO, HUD Dec. 6, 1982. HUD described the remaining 33 percent of CHRBS as being "in need of reorganization." HUD counted a total of 585 CHRBS as "in existence" as of December 1982 but said only 400 of these were "functioning." Ibid. As of September 19, 1983, however, FHEO indicated that 600 CHRBS were "functioning." Monroig Letter and Enclosures, p. 9. HUD did not offer an explanation for the difference in the 2 numbers it reported.

146/ 1979 Fair Housing Report, p. 231.

147/ 42 U.S.C. §3608(a) (Supp. V 1981).

148/ 1979 Fair Housing Report, p. 233.

In 1980 the issuance of Executive Order 12,259 149/ underscored HUD's responsibilities for gaining the cooperation of all Federal agencies and coordinating their activities to advance national fair housing objectives. HUD was given the additional responsibility under the Executive order for issuing regulations defining the fair housing responsibilities of Federal agencies. 150/ During FY 83 FHEO took no action to carry out its Executive Order 12,259 responsibilities for leadership and coordination of Federal fair housing efforts. 151/

Similarly, FHEO did not act to develop implementing regulations for Executive Order 12,259. 152/ The FY 84 budget does not allocate staff hours or otherwise indicate that HUD will initiate activity in either area of its responsibilities under the Executive order during the coming fiscal year. 153/

149/ Exec. Order No. 12,259, 3 C.F.R. 307 (1981) reprinted in 42 U.S.C. §3608 app. at 816-18 (Supp. V 1981).

150/ Ibid.

151/ Peter Kaplan, Director, Office of Program Standards and Evaluation, FHEO, HUD, telephone interview, July 21, 1983.

152/ Kaplan June interview.

153/ According to the Assistant Secretary for Fair Housing and Equal Opportunity, "[T]he Department believes that the better time to develop such implementing regulations is after the amendments to Title VIII [now before the 98th Congress] have been adopted. To develop regulations to implement a law which will change in coverage, definitions, and sanctions would be a terrible waste of already scarce resources. The Department will move to carry out its leadership authority when the amendments have become law." Monroig Letter and Enclosures, p. 11.

DEPARTMENT OF LABOR

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

Enforcement Responsibilities

The Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) is responsible for enforcing Executive Order 11246, 1/ which prohibits discrimination in employment by Federal contractors because of race, sex, religion, color, or national origin and requires them to take affirmative action in hiring, promotion, pay, and training to assure nondiscrimination for minorities and women. It is also responsible for ensuring equal employment opportunity for handicapped workers 2/ and Vietnam-era veterans. 3/ These authorities protect more than a quarter of the Nation's workers and cover over 115,000 contractor facilities. 4/ In addition, a new law, the Job Training Partnership Act of 1982, requires OFCCP to issue regulations for determining the degree to which a training program satisfies a contractor's affirmative action

1/ Exec. Order No. 11,246 §202(6), 3 C.F.R. 339 (1964-65 Comp.) reprinted in 42 U.S.C. §2000e app. at 1232 (1976), 41 C.F.R. §60-1.2 (1982).

2/ Section 503 of the Rehabilitation Act of 1973, 29 U.S.C. §793(a) (1976 & Supp. V 1981), requires Federal contractors to take affirmative action to hire and promote qualified handicapped workers.

3/ The Vietnam-Era Veteran's Readjustment Assistance Act of 1974, 38 U.S.C. §2012(a) (1976 & Supp. V 1981), prohibits discrimination against Vietnam-era veterans and disabled veterans of all wars.

4/ Robert B. Collyer, Deputy Under Secretary for Employment Standards, Department of Labor, letter to Linda Chavez, Staff Director, U.S. Commission on Civil Rights, Sept. 28, 1983, p. 1 (hereafter cited as Collyer Letter and Enclosure).

obligations. 5/ As with many other Federal civil rights agencies, its enforcement activities include compliance reviews, complaint investigations, monitoring, and technical assistance.

OFCGP is another key Federal civil rights enforcement agency which has been under court orders governing its operations. 6/ Despite these court orders, which reflect

5/ Pub. L. No. 97-300, §481, 96 Stat. 1390 (codified at 29 U.S.C.A. §1781(b)(2) (West Supp. 1976-1982)).

6/ OFCCP remains under five court orders, all of which predate the present administration. J. Stanley Kelly, Acting Director, Division of Program Analysis, OFCCP, telephone interview, Oct. 17, 1983. For example, in 1977 a Federal district court issued a consent order settling complicated litigation against the Departments of Labor and Health, Education, and Welfare, including a suit by the Women's Equity Action League (WEAL), for failing to enforce nondiscrimination on the basis of sex in institutions of higher education. *Adams v. Califano*, No. 3095-70 (D.D.C. Dec. 29, 1977) (consent decree), and *WEAL v. Califano*, No. 74-1720 (D.D.C. Dec. 29, 1977) (consent order). That order committed OFCCP, among other things, to conduct each year a certain number of compliance reviews, including preaward reviews, and to maintain certain employment data. Finding that the 1977 order "has been violated in many important respects...", "the court in 1983 issued a new order, which the Labor Department has appealed. *Adams v. Bell*, No. 3095-70 (D.D.C. Mar. 11, 1983), appeal docketed, No. 83-1590 (D.C. Cir. June 3, 1980), and *WEAL v. Bell*, No. 74-1720 (D.D.C. Mar. 11, 1983) appeal docketed, No. 83-1516 (D.C. Cir. May 11, 1983) (the cases were consolidated on appeal Aug. 26, 1983) (hereafter cited as WEAL 1983 Order). The new order requires OFCCP, among other things, to complete an "appropriate" number of compliance reviews of higher education institutions and to complete complaint investigations within specific time frames. WEAL 1983 Order at 25. It also requires OFCCP to maintain employment data on these institutions and to report to plaintiffs, semi-annually, its compliance activities. *Id.* at 32-33. Under another consent order, OFCCP's New York City area office must conduct at least 10 compliance reviews of construction contractors each year, also within specific time frames. The New York area office conducted only seven reviews of construction contractors in the past 3 years. *Fight Back v. Donovan*, 97 D.L.R. (BNA) A-3 (S.D. N.Y. Apr. 29, 1983).

longstanding inadequate monitoring of Federal contractors, 7/ and despite its steadily increasing responsibilities, the agency's resources have been reduced significantly since FY 80. Those cuts have been accompanied by proposed policy changes, which, notwithstanding staffing inadequacies and court orders, involve relaxation of certain compliance requirements and expansion of efforts to induce voluntary compliance

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7/ See U.S., Commission on Civil Rights: The Federal Civil Rights Enforcement Effort--1974, vol. V, To Eliminate Employment Discrimination (1975), pp. 631-37 (hereafter cited as To Eliminate Employment Discrimination); The Federal Civil Rights Enforcement Effort--1977, To Eliminate Employment Discrimination: A Sequel (1977), pp. 61-143 (hereafter cited as Sequel); Civil Rights: A National, Not a Special Interest (1981), p. 44 (hereafter cited as FY 82 Budget Statement).

with Executive order requirements. 8/

8/ In 1981 and 1982 OFCCP proposed substantial changes in its affirmative action requirements for Federal contractors. The proposals would, among other things, free a substantial number of contractors from the requirement to develop written affirmative action plans, require fewer contractors to file with OFCCP basic employment reports (EEO-1 and EEO-6 forms), and offer a selection of affirmative action plans that, once approved, would require minimal OFCCP scrutiny. See 46 Fed. Reg. 42968 (1981); 47 Fed. Reg. 17770 (1982). The Labor Department noted that proposals to reduce reporting requirements would make them consistent with Title VII requirements imposed by the Equal Employment Opportunity Commission. Collyer Letter and Enclosure, p. 4. The Commission has pointed out before, however, that strict conformity between the coverage of OFCCP and EEOC reporting requirements is not necessary. "For OFCCP to require a contractor to complete a form when EEOC requires no form does not create the same type of conflict as would be created if the two agencies were requiring different forms from the same contractor...the more central question should be whether the completed reports will be useful to OFCCP...." U.S. Commission on Civil Rights, "Comments on Proposed Revisions and Redesignations of Regulations Issued by the Department of Labor, Office of Federal Contract Compliance Programs, on September 17, 1976," Dec. 27, 1976, p. 9, n. 19 (hereafter cited as Dec. 1976 Comments). For an evaluation of the Department's proposals and the Commission's recommendation that they be withdrawn, see U.S. Commission on Civil Rights: "Staff Comments on Proposed Rule (Affirmative Action Requirements for Government Contractors) Issued by the Department of Labor, Office of Federal Contract Compliance Programs," Oct. 26, 1981 (hereafter cited as Oct. 1981 Comments); "Staff Comments on Affirmative Action Requirements for Government Contractors Proposed by the Department of Labor, Office of Federal Contract Compliance Programs," May 24, 1982 (hereafter cited as May 1982 Comments); The Federal Civil Rights Enforcement Budget: Fiscal Year 1983 (1982), pp. 40-50 (hereafter cited as FY 83 Budget Report); and John Hope III, Acting Staff Director, U.S. Commission on Civil Rights, letter to Clarence Thomas, Chairman, Equal Employment Opportunity Commission, Mar. 15, 1983.

Budget Totals

As table 7 shows, OFCCP's budget declined by \$9.2 million between FY 80 and FY 83. The agency requested \$47.4 million for FY 84, the first increase in 4 years, but that figure would not restore OFCCP funding to the FY 80 level or compensate for inflation. While there is no exact measure of OFCCP's losses in spending power due to inflation since FY 80, a general formula for considering the impact of inflation is provided by the Congressional Budget Office (CBO). Its Gross National Product deflators are not geared specifically to rising costs in the Federal sector but may offer a rough approximation of trends in enforcement resources, including OFCCP's. Under its proposed FY 84 budget, OFCCP would appear, based on the CBO measure, to have about 29 percent less actual spending power than it had in FY 80. 9/

Staffing and Other Resources

Office of Federal Contract Compliance Programs staff resources also dropped significantly between FY 80 and FY 83. While it had 1,482 authorized positions in FY 80 and FY 81, the agency could not fill them because of hiring freezes and other

9/ This estimate is derived by dividing OFCCP's appropriations by a factor that accounts for annual inflation rates since FY 80. Deflators for each fiscal year through FY 84 were provided by Steven Zeller, economist, Fiscal Analysis Division, Congressional Budget Office, telephone interview, June 20, 1983. For a fuller discussion of the use and limits of these formulas, see chapter 1.

Table 7

OFCCP Budget Totals: FY 1980-84

(in thousands of dollars)

<u>Fiscal Year</u>	<u>Appropriation a/</u> (annualized)
1980	\$51,846
1981	50,086
1982	43,150
1983	42,614
1984 (Request)	47,393

a/ Figures represent what OFCCP could have spent during a whole fiscal year under each spending ceiling.

SOURCES: Robert B. Collyer, Deputy Under Secretary for Employment Standards, Department of Labor, letter to Linda Chavez, Staff Director, U.S. Commission on Civil Rights, Sept. 28, 1983, p. 5 (for FY 80 and FY 81 appropriations); and Ellen Shong, Director, OFCCP, letter to John Hope III, Acting Staff Director, U.S. Commission on Civil Rights, Mar. 25, 1983 (for FY 82 and FY 83 appropriations and FY 84 request).

employment restrictions imposed government-wide. 10/ As table 8 shows, in FY 83 it was authorized 1,008 positions, a sharp reduction from the FY 80 and FY 81 level. In early 1982, OFCCP reduced its staff by 19 percent. 11/ Two-thirds of the employees reduced in grade, transferred, or laid off at that time had carried out enforcement activities. 12/ For FY 83 and FY 84 the proposed staffing level is to remain at the FY 82 level. That figure would leave OFCCP with only 68 percent of its FY 80 authorized staffing strength.

10/ Collyer Letter and Enclosure, p. 4.

11/ Before that time, OFCCP had an actual employment level of 1,232. Ellen Shong, Director, OFCCP, letter to John Hope III, Acting Staff Director, U.S. Commission on Civil Rights, Mar. 25, 1983 (hereafter cited as Shong Letter and Enclosures).

12/ Of the 196 employees affected by the reduction in force, 132 were program staff. David A. Rutherford, program analyst, Planning Branch, Division of Analysis, OFCCP, memorandum to Joyce Long, civil rights analyst, U.S. Commission on Civil Rights, "OFCCP Data," May 11, 1983 (hereafter cited as OFCCP Data).

Table 8

OFCCP Full-Time, Permanent Staff Positions: FY 1980-84

<u>Fiscal Year</u>	<u>Authorized a/</u>	<u>Actual b/</u>
1980	1,482	1,304
1981	1,482	1,232
1982	1,008	988
1983	1,008	1,021 <u>c/</u>
1984 (Request)	1,008	---

a/ Number of full-time, permanent staff permitted under congressional budget measures.

b/ Number of full-time, permanent staff actually employed by OFCCP. Except as noted, figures are for the end of the fiscal year.

c/ As of July 31, 1983.

SOURCE: Robert B. Collyer, Deputy Under Secretary for Employment Standards, Department of Labor, letter to Linda Chavez, Staff Director, U.S. Commission on Civil Rights, Sept. 28, 1983, p. 6 (for FY 80 - FY 82 data and FY 83 actual staffing level); Charles E. Pugh, Deputy Director, OFCCP, telephone interview, Oct. 11, 1983 (for FY 83 and FY 84 authorized staffing levels).

In addition to major staff cutbacks, OFCCP has lacked other needed resources, especially a comprehensive and upgraded management information system. 13/ Without such a system, OFCCP is hampered in assessing data that contractors must report and the effects of its enforcement activities on employment opportunities for minorities and women, 14/ as well as in complying with certain court-ordered requirements. Indeed, OFCCP cited the lack of such a system as an obstacle to complying with the court's order in the WEAL litigation. 15/

OFCCP's proposed FY 84 budget includes funds for a new system to provide the agency with information to schedule and track compliance reviews, including construction reviews, which the current system does not track. 16/ This new system,

13/ FY 83 Budget Report, pp. 44-45. See also To Eliminate Employment Discrimination, pp. 285-88, 665-66; and Sequel, p. 120. Most regional offices have to rely on manual input of compliance data, which may result in untimely reports filled with errors. OFCCP, "Fourth Quarter FY 80 Quarterly Review and Analysis Feedback Report," p. 1. Yet, according to OFCCP staff cited in the Commission's 1982 review of the proposed FY 83 enforcement budget, OFCCP did not implement a comprehensive information processing system funded by Congress in FY 81 because it anticipated a reduced need for such a system as a result of projected reductions in contractor reporting. FY 83 Budget Report, pp. 44-45. The Labor Department now maintains, however, that the previously planned system was not "cost-effective." Collyer Letter and Enclosure, p. 7.

14/ For inadequacies in the employment data OFCCP collects, see Oct. 1981 Comments, pp. 38-41, 51-52.

15/ Plaintiffs Women's Equity Action League, Et. Al.'s Motion for Order to Show Cause, Women's Equity Action League v. Bell, No. 74-1720 (D.D.C. June 24, 1981), Adams v. Bell, No. 3095-70 (D.D.C. June 24, 1981), at 14.

16/ Collyer Letter and Enclosure, p. 7.

however, would not provide OFCCP such basic data as the number of a contractor's job vacancies filled during the year by race, ethnic, and sex group in relation to that contractor's goals and timetables. 17/ Without this information, OFCCP cannot monitor contractors' performance in complying with key affirmative action requirements under the Executive order. 18/

Compliance Reviews

Compliance reviews have been OFCCP's most effective enforcement activity. 19/ OFCCP's compliance reviews cover 400 times as many workers as the average complaint

17/ Charles E. Pugh, Deputy Director, OFCCP, telephone interview, Oct. 12, 1983.

18/ The Commission has cited this problem repeatedly. See To Eliminate Employment Discrimination, pp. 250-51, 285-87, 326-27, 665-66; Sequel, p. 120; and Oct. 1981 Comments, pp. 38-39 (pointing out the critical impact of this deficiency in the context of OFCCP's proposal for 5-year, rather than annual, affirmative action plans). Similar concerns were expressed by a Labor Department special task force and a Senate committee. See U.S., Department of Labor, Employment Standards Administration, OFCCP Task Force, "A Preliminary Report on the Revitalization of the Federal Contract Compliance Program" (1977), pp. 75-76 (hereafter cited as Preliminary Report); U.S., Congress, Senate Committee on Labor and Human Resources, Committee Analysis of Executive Order 11246 (The Affirmative Action Program), 97th Cong., 2d Sess. (1982), pp. 69-70.

19/ Craig A. Berrington, Associate Deputy Under Secretary for Employment Standards, Department of Labor, testimony, Departments of Labor, Health and Human Services, Education and Related Agencies Appropriations for 1982, before the Subcommittee on Labor, Health and Human Services, Education, and Related Agencies of the House Committee on Appropriations, 97th Cong., 1st Sess., part 1 (1981), p. 709 (hereafter cited as Berrington Testimony).

investigation, which often involves only one person. Moreover, compliance reviews are twice as likely to result in corrective action as complaint investigations. 20/

Nonetheless, the agency has not had enough staff in recent years to do as many compliance reviews as were done before Executive order enforcement was consolidated in OFCCP. 21/ In FY 80 and FY 81, for example, inadequate staffing prevented OFCCP from meeting its program plans for compliance activities. 22/ The 20 percent reduction in OFCCP's

20/ Ibid., p. 678.

21/ Until 1978, 11 different agencies were responsible for enforcement of Executive Order 11,246. In 1978 their responsibilities, and some staff, were transferred to OFCCP. That consolidation was intended to end duplicative and inconsistent enforcement. Exec. Order No. 12,086, 43 Fed. Reg. 46501 (1978). In FY 77, prior to consolidation, the Federal agencies responsible for reviewing contractors reportedly conducted a combined total of 16,000 reviews. These agencies had 1,600 staff assigned to contract compliance duties. OFCCP, FY 79 Budget Submission. The 16,000 figure is rough in that recordkeeping systems at various agencies prior to consolidation were of questionable quality. Collyer Letter and Enclosure, p. 8. In comparison with this estimate, which, while inexact, provides a general point of reference, OFCCP conducted 2,632 reviews in FY 80. OFCCP, "Fourth Quarter FY 80 Quarterly Review and Analysis Feedback Report," p. 35.

22/ Planned actions for FY 80 were reduced by nearly 25 percent during the first half of the fiscal year as a result of personnel problems, such as vacancies and inexperienced staff, at regional offices. OFCCP, "Fourth Quarter FY 80 Quarterly Review and Analysis Feedback Report," pp. 17, 22. In FY 81, program plans again were revised downward to reflect reduced staffing in the regions. OFCCP, "Fourth Quarter FY 81 Quarterly Review and Analysis Feedback Report," p. 1.

staffing level in early FY 82 temporarily affected staff productivity, 23/ although the agency managed to catch up with revised program plans by the end of the year. 24/ Ultimately, total compliance actions increased by the end of FY 82

23/ The agency had planned to complete 3,727 reviews and resolve 1,790 complaints in FY 82. OFCCP, "FY 1982 Program Plan" (hereafter cited as FY 82 Program Plan). In April 1982, the agency reduced its planned compliance reviews by 7 percent in order to increase planned complaint processing by 52 percent. Collyer Letter and Enclosure, p. 9. By the end of the second quarter of FY 82, OFCCP had completed only 32 percent of its revised planned compliance reviews and 40 percent of its revised planned complaint investigations for that period. OFCCP, "Second Quarter FY 82 Quarterly Review and Analysis Feedback Report," p. 4.

24/ By the end of FY 82, OFCCP accomplished 89 percent (3,452 planned; 3,081 completed) of the revised goal for compliance reviews and 95 percent (2,718 planned; 2,589 completed) of its revised goal for complaint resolutions. OFCCP, "Fourth Quarter FY 82 Quarterly Review and Analysis Feedback Report," p. 7. In contrast, by the end of FY 81, OFCCP exceeded its goal for compliance reviews by 1 percent (3,081 planned; 3,135 completed) and for complaint investigations by 55 percent (1,158 planned; 2,136 completed). OFCCP, "Fourth Quarter FY 81 Quarterly Review and Analysis Feedback Report," p. 5.

compared to FY 81. 25/ As a result of new management controls and staff training aimed at improving productivity, 26/ and also expected regulatory changes and new operating standards and procedures, 27/ the agency reported increased activities in

25/ OFCCP, "A-11-53 Submission (data on Federal civil rights activities) for FY 83 to the Office of Management and Budget" (hereafter cited as OFCCP A-11-53 Submission by fiscal year), p. 2. In FY 81, 9,225 actions were completed, as compared to 10,774 actions in FY 82. OFCCP, "Fourth Quarter FY 81 and FY 82 Quarterly Review and Analysis Feedback Reports," p. 5 and p. 7, respectively. These figures on compliance actions are problematic, however, because some activities were counted twice, inflating the figure for total actions. For example, some activities during a compliance review are included not only in the compliance review figure but also in other workload categories. OFCCP, Order No. 130g1, "Applicable Program Activity Structure (PAS) Codes for FY 82, and Time Coding Instructions," Apr. 16, 1982. After eliminating this double counting, the data show that, instead of completing 10,774 actions, OFCCP completed 9,663. OFCCP also double-counted in FY 81. Although it reported 9,225 completed actions, it completed only 8,193 actions that year. OFCCP, "Fourth Quarter FY 81 Quarterly Review and Analysis Feedback Report," p. 5. The Department explained that, for planning purposes, it does not specify time for these functions but counts them as distinct accomplishments. Collyer Letter and Enclosure, p. 9.

26/ One of these new controls was the establishment of comprehensive and stringent performance standards. Shong Letter and Enclosures.

27/ As noted, the Commission has expressed concern that some of these changes will significantly limit effective enforcement and permit contractors excessive flexibility in complying with Executive order requirements. See p. 4.

FY 83 and projects further increases in FY 84. 28/

In addition to increasing the planned number of compliance reviews, OFCCP has reduced the average hours allowed for each review. 29/ Reduced time frames for completing compliance reviews may prevent staff from thoroughly investigating discrimination problems. 30/ According to a former senior

28/ For FY 83, OFCCP had planned to conduct 4,424 reviews. OFCCP, "FY 83 Revised Program Plan." As its regulatory proposals had not yet been approved, however, the 4,224 figure was reduced to 4,026. Collyer Letter and Enclosure, p. 9. As of the third quarter, FY 83, the agency was ahead of that revised target by 317 reviews. Ibid. The Department projects 5,010 reviews in FY 84 if regulatory changes are made. Ibid., p. 10.

29/ In FY 81 staff were allotted an average of 200 hours to complete compliance reviews of a nonconstruction contractor. This was reduced to 190 hours in FY 82 and to 160 hours in FY 83. OFCCP, "FY 81, 82 and 83 Program Plans." Through the third quarter of FY 83, nonconstruction compliance reviews averaged 152 hours. Collyer Letter and Enclosure, p. 8.

30/ For the need for sufficient time to investigate pattern and practice or systemic discrimination, see Jeffrey M. Miller, Director, Office of Federal Civil Rights Evaluation, U.S. Commission on Civil Rights, letter to Philip J. Davis, Director, Office of Federal Contract Compliance, Department of Labor, July 11, 1973, and Dec. 1976 comments.

OFCCP staff member, the new time constraints could make OFCCP a "paper shuffling" program and prevent the agency from properly identifying and resolving discrimination. 31/ They also may deter staff from insisting on appropriate negotiated conciliation agreements because negotiations may delay case closures and, thus, hinder staff in meeting their program plans.

Conciliation agreements are used to correct and remedy systemic discrimination 32/ and require a contractor to provide relief, including back pay where appropriate, for affected class members. 33/ The number of cases closed with

31/ James Cisco, former Director, Program and Policy Division, OFCCP, Comments at Bureau of National Affairs Conference on "Equal Employment Opportunity and the Reagan Administration," Washington, D.C., June 2, 1983. The Labor Department maintains that it shares the Commission's concern over this possibility, but that "case quality and consistency" remain as important as timeliness and the total quantity of reviews. It believes that the quality of reviews depends basically upon the training and guidance provided OFCCP compliance staff and applies various quality control measures, such as case quality audits, to monitor the effectiveness of reviews. Collyer Letter and Enclosure, p. 10.

32/ Conciliation agreements also are used to correct major violations of the Executive order and regulations, such as "omitting a major ingredient from an affirmative action plan or insufficient good faith efforts." Collyer Letter and Enclosure, p. 11.

33/ 41 C.F.R. §60-2.1(b) (1982). An affected class is defined as "one or more employees, former employees, or applicants who have been denied employment opportunities or benefits because of discriminatory practices and/or policies by the contractor, its employees, or agents." OFCCP, Federal Contract Compliance Manual, p. 1-4.

these agreements has declined since FY 80. 34/ The number of potential affected class cases also has declined. 35/ Correspondingly, financial relief for victims of discrimination, including back pay, declined substantially between FY 80 and FY. 82. 36/ New Labor Department data

34/ In FY 81, 46 percent of the cases that identified violations were corrected with a conciliation agreement. In FY 82, 33 percent of the cases were closed with a conciliation agreement. As of the third quarter of FY 83, only 30 percent of the cases were closed with a conciliation agreement. Collyer Letter and Enclosure, p. 12. The remainder of the cases were closed with a letter of commitment, used to correct minor deficiencies.

35/ These cases must be remedied for a contractor to be considered in compliance. 41 C.F.R. §60-2.1(b) (1982). They are the most time consuming, but they yield more results in terms of resources, and they establish crucial legal precedents. Berrington Testimony, p. 707. In early 1982, OFCCP expected to place more emphasis on identifying and resolving affected class cases. Ibid. Yet, 47 percent fewer potential affected class cases were pending in FY 82 than in FY 80 and only 67 cases were closed, compared to 85 in FY 1980 and 113 in FY 81. In FY 82, 222 suspected affected class cases were pending compared to 467 cases pending in FY 80 and 361 pending in 1981. OFCCP, "Fourth Quarter Fiscal Years 1980, 1981, and 1982 Quarterly Review and Analysis Feedback Reports." This trend continued in FY 83. For the first quarter of FY 83, only 165 affected class cases were pending and 34 were closed as compared to 352 pending and 51 closed the first quarter of FY 82. OFCCP, "First Quarter Fiscal Years 1982 and 1983 Quarterly Review and Analysis Feedback Reports."

36/ In FY 80 financial settlements totaled \$16.2 million, of which back pay amounted to \$9.2 million for 4,334 employees. In FY 81 only \$8 million in financial settlements was obtained, \$5.1 million of it in back pay for 4,766 employees. These figures dropped still more in FY 82, to \$7.3 million in financial settlements of which \$2.1 million in back pay was obtained for 1,133 employees. OFCCP, "Fourth Quarter Fiscal Years 1980, 1981, and 1982 Quarterly Review and Analysis Feedback Reports."

indicate that this downward trend was reversed in FY 83. 37/

A Labor Department official suggests that OFCCP is finding fewer cases where conciliation agreements are necessary. 38/ Although 63 percent of the reviews conducted in the first three quarters of FY 83 resulted in findings of noncompliance, the deficiencies cited were primarily paperwork violations. 39/ Meanwhile, a Department representative testified in 1982 that job and wage disparities between minorities and nonminorities and women and men still exist among Federal contractors and are due to insufficient affirmative efforts to overcome the inequities, discrimination, and inadequate training to move minorities and women into better jobs. 40/

37/ Total financial settlements through the first three quarters of FY 83 were \$10.5 million, of which back pay totaled \$3 million. Collyer Letter and Enclosure, p. 12; Charles E. Pugh, Deputy Director, OFCCP, telephone interview, Oct. 12, 1983. Promotions and training are other elements of these financial settlements.

38/ Commission staff notes on testimony of Robert B. Collyer, Deputy Under Secretary for Employment Standards, Department of Labor, before the Subcommittee on Employment Opportunities of the House Committee on Education and Labor, June 8, 1983 (hereafter cited as Collyer 1983 Testimony) (maintained in Commission files).

39/ Ibid.

40/ Robert B. Collyer, Deputy Under Secretary for Employment Standards, Department of Labor, testimony, Oversight Hearings on the Activities of the Office of Federal Contract Compliance Programs of the Department of Labor, before the Senate Committee on Labor and Human Resources, 97th Cong., 2nd Sess., part 3 (1982), p. 9.

Preaward Reviews

As part of their enforcement efforts, some Federal agencies conduct compliance reviews before awarding funds. OFCCP is required to do such reviews when contracts total \$1 million or more. 41/ When Federal contracts are pending, these reviews can stimulate prompt compliance. 42/ OFCCP nonetheless has moved to eliminate preaward reviews. 43/

41/ 41 C.F.R. §60-1.20(d) (1983).

42/ Oct. 1981 Comments, p. 2, and FY 83 Budget Report, pp. 48-49. The Labor Department contends that the "previous leverage of preaward reviews is no longer effective as an inducement" to bring contractors into compliance because Federal courts have held that denial of contract awards constitutes debarment without due process and thus is unconstitutional. Collyer Letter and Enclosure, p. 13. Current regulations permit OFCCP to "pass over" (without a hearing) a contractor it has determined is not complying with Executive order requirements, unless a contractor is passed over twice. 41 C.F.R. §60-2.2(b) (1983). In the Commission's view, the constitutionality of the passover procedure is not at issue. The Federal courts and the Department itself have found such procedures inconsistent with the hearing requirements of section 208(b) of Executive Order 11,246. See *Illinois Tool Works v. Marshall*, 601 F. 2d 943 (7th Cir. 1979); *Pan American World Airlines v. Marshall*, 439 F. Supp 487 (S.D. N.Y. 1977), *Sunstrand v. Marshall*, 17 FEP 432 (N.D. Ill. 1978); Preliminary Report, pp. 135-149. Moreover, no legal problems render preaward reviews ineffective. Expedited and focused preaward hearing procedures, such as those proposed by OFCCP in 1979, adequately meet the Executive order's hearing requirements. 44 Fed. Reg. 77007 (1979)

43/ In 1981, OFCCP proposed to eliminate the requirement to conduct preaward reviews. 46 Fed. Reg. 42973 (1981). The agency expected to gain approximately 15-20 staff years by eliminating preaward reviews. OFCCP FY 83 A-11-53 Submission. OFCCP said preaward reviews deny it the discretion to use its scarce resources most effectively and subject companies that repeatedly receive large contracts to excessive reviews. 46 Fed. Reg. 42973 (1981). For an alternative to OFCCP's proposed total elimination of preaward reviews, see Oct. 1981 Comments, pp. 1-5.

In FY 82, OFGCP conducted only 130 preaward reviews of the 16,194 contractors bidding on Federal contracts that year. 44/ In FY 80, by contrast, it conducted 594 such reviews of the 14,177 requests for clearance. 45/ Despite the fact they are now required by court order 46/ as well as agency regulation, no preaward reviews were planned for FY 83 or FY 84. 47/

44/ OFGCP, FY 84 A-11-53 Submission, undated.

45/ OFGCP, "Fourth Quarter FY 80 Quarterly Review and Analysis Feedback Report," pp. 38-39. In FY 82 preaward reviews represented 0.05 percent of the 3,081 reviews conducted that year. OFGCP, "Fourth Quarter FY 82 Quarterly Review and Analysis Feedback Report," p. 7.

46/ The WEAL order requires OFGCP to conduct preaward reviews of education institutions bidding on contracts of \$1 million or more. WEAL 1983 Order at 25.

47/ OFGCP, FY 83 and FY 84 A-11-53 Submissions. These plans were predicated on proposed regulations that would have eliminated the requirement. Ibid. OFGCP staff explained that since those regulations are not yet in effect, OFGCP continues to conduct preaward reviews but, for program plan purposes, counts them as routine compliance reviews. Collyer Letter and Enclosure, p. 13. The agency does not know how many compliance reviews conducted in FY 83 were preaward reviews. Sometimes preaward clearance requests are approved without an onsite investigation if data available to OFGCP indicate no problems. For the first three quarters of FY 83, 271 such requests were cleared through this method. Charles E. Pugh, Deputy Director, OFGCP, telephone interview, Sept. 27, 1983.

Companies receiving Federal contracts totaling billions of dollars each year, 48/ therefore, will not be reviewed for compliance with nondiscrimination and affirmative action requirements prior to contract awards. There also appears little likelihood, given staff cutbacks and policy changes, that they will be reviewed very soon after they receive their contracts. 49/

Complaint Investigations

A complaint backlog accumulated at OFCCP in previous years because the agency devoted most of its resources to compliance reviews. 50/ By early FY 83, however, that backlog was largely eliminated, 51/ in part because resources were shifted to reduce it, 52/ but also because, for whatever reason,

48/ In FY 82 private companies received more than \$158 billion in Federal contracts. Contracts of \$10,000 or more amounted to \$147 billion. William Abner, Director, Federal Procurement Data Center, General Services Administration, telephone interview, Apr. 18, 1983.

49/ OFCCP has been able to review only 5 percent of the approximately 17,000 contractors and 115,000 establishments covered by the Executive order. OFCCP, FY 83 A-11-53 Submission.

50/ Berrington Testimony, p. 678. OFCCP estimated that, by the beginning of FY 82, it would have 5,000 complaints backlogged. Ibid., p. 710. For the connection between this backlog and OFCCP staffing cuts, see FY 82 Budget Statement, p. 44; FY 83 Budget Report, pp. 49-50.

51/ OFCCP, "Fourth Quarter FY 82 Quarterly Review and Analysis Feedback Report," p. 4. Pending complaints were reduced by 52 percent in FY 82, from 3,953 to 2,058. Ibid. Through the first three quarters of FY 83, pending complaints declined by 45 percent, down from 2,058 to 1,126. Collyer Letter and Enclosure, p. 13.

52/ Pugh May Interview.

substantially fewer new complaints were filed. 53/

Although more complaint cases have been closed, fewer have resulted in findings of discrimination. Sixteen percent of the investigations conducted in FY 82 sustained allegations of discrimination, 54/ as compared to 26 percent in FY 80. 55/ In addition, in FY 82 a higher percentage of complaints was closed without a full investigation. 56/ It is not clear what factors explain these changes.

53/ OFGCP, "Fourth Quarter FY 82 Quarterly Review and Analysis Feedback Report," p. 2. In FY 80, 4,902 complaints were filed. OFGCP, "Fourth Quarter FY 80 Quarterly Review and Analysis Feedback Report." In FY 81, 5,036 complaints were filed, compared to only 2,626 filed in FY 82. OFGCP, "Fourth Quarter FY 82 Quarterly Review and Analysis Feedback Report," p. 4.

54/ OFGCP Data.

55/ OFGCP, "Fourth Quarter FY 80 Quarterly Review and Analysis Feedback Report," p. 48.

56/ OFGCP, "Fourth Quarter FY 82 Quarterly Review and Analysis Feedback Report," p. 2. In FY 82, 35 percent of the 2,584 complaint cases closed were closed administratively. OFGCP Data. Administrative closures rose to 36 percent in the first quarter of FY 83. OFGCP, "First Quarter FY 83 Quarterly Review and Analysis Feedback Report," p. 4. OFGCP closes complaints "administratively" (without a full investigation) when it cannot determine if an alleged discriminatory company is a Federal contractor; when a complaint is untimely filed; when OFGCP lacks jurisdiction; in the case of an old complaint, when the complainant cannot be located; and when complainants refuse to permit OFGCP disclosure of their identity to contractors. Complaints also are closed administratively when a satisfactory settlement has been achieved and no further action by the agency is required. OFGCP has not been able to determine the precise nature of administrative closures in the past, but it reports that a special review of third quarter FY 83 information found that of 601 total complaint investigations/resolutions accomplished that quarter 66 (nearly 11 percent) were closed administratively because the violations were remedied satisfactorily after the agency's initial involvement but without a full onsite investigation. Collyer Letter and Enclosure, pp. 13-14. The other complaints were administratively closed for one or more of the reasons listed above.

Technical Assistance

OFCCP does not report technical assistance as a separate item in its budget. Such assistance is considered a fractional part of the work of its staff, accounting for only 1.4 percent of staff time in FY 82. That figure was to increase to 5.5 percent in FY 83, in line with the agency's greater emphasis on efforts to encourage voluntary compliance with contract compliance program requirements. 57/

One new agency initiative to promote voluntary compliance involves encouraging contractors and other interested parties to form liaison groups nationwide to improve communications between the agency and the public. 58/ OFCCP does not yet know

57/ This increased assistance generally involves increased availability of staff to respond to contractor inquiries about compliance requirements. Charles Pugh, Deputy Director, OFCCP, telephone interview, Aug. 10, 1983. The agency anticipated increased inquiries in connection with expected implementation of new affirmative action regulations and other policy changes. David A. Rutherford, program analyst, Planning Branch, Division of Program Analysis, OFCCP, telephone interview, Aug. 19, 1983. Assistance is also being provided contractors to develop new self-monitoring and reporting systems concerning their employment profile and progress in hiring and upgrading of minorities and women. Shong Letter and Enclosures.

58/ To date about 173 groups, almost all of which represent various industries, have been formed, and OFCCP expects formation of 200 groups by the end of FY 84. Collyer Letter and Enclosure, p. 14, and Collyer 1983 Testimony. The activities of the groups vary. Twelve industry liaison groups developed monographs to orient OFCCP about their industries so that agency staff would be more familiar with them before conducting compliance reviews. Cari Dominguez, Special Assistant to OFCCP Director, Comments at Bureau of National Affairs Conference on "Equal Employment Opportunity and the Reagan Administration," Washington, D.C., June 2, 1983.

whether such efforts will result in expanded job opportunities for minorities and women, 59/ the basic objective of the contract compliance program. Initiatives to promote voluntary compliance have not proven an effective alternative in the past, or even a significant supplement, to proper use of the agency's standard enforcement tools. 60/

59/ Shong Letter and Enclosures.

60/ U.S., Commission on Civil Rights, The Federal Civil Rights Enforcement Effort (1971), pp. 52 (n. 218), 84, 234-36, 351; and Barry L. Goldstein, Assistant Counsel, NAACP Legal Defense and Education Fund, Inc., "The Importance of the Contract Compliance Program: A Historical Perspective," 1981.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Enforcement Responsibilities

The Equal Employment Opportunity Commission (EEOC) is responsible for enforcing Title VII of the Civil Rights Act of 1964, 1/ the Equal Pay Act (EPA) of 1963, 2/ the Age Discrimination in Employment Act (ADEA) of 1967, 3/ and Section 501 of the Rehabilitation Act of 1973. 4/ These statutes require most private and public employers, including the Federal Government, to provide equal employment opportunity. In addition to investigating discrimination complaints (or charges), attempting to resolve them through conciliation, and undertaking litigation if conciliation fails, EEOC coordinates all Federal equal employment policies and procedures. 5/ As another important activity, the agency funds and provides

1/ 42 U.S.C. §§2000e-2000e-17 (1976 & Supp. V 1981). Title VII prohibits employment discrimination on the basis of race, color, religion, sex, or national origin.

2/ 29 U.S.C. §206(d) (1976). The Equal Pay Act prohibits discrimination on the basis of sex in compensation.

3/ 29 U.S.C. §§621-634 (1976 & Supp. III 1979). The Age Discrimination Act prohibits discrimination against older persons (aged 40-70) in hiring, promotion, discharge, compensation, and other terms, conditions, and privileges of employment.

4/ 29 U.S.C. §791 (1976 & Supp. V 1981). Section 501 requires Federal agencies to undertake affirmative action in the hiring, placement, and advancement of handicapped employees.

5/ Reorganization Plan No. 1 of 1978, 3 C.F.R. 321 (1979), reprinted in 42 U.S.C. app. at 672-75 (Supp. V 1981), Exec. Order No. 12,067, 3 C.F.R. 206 (1979) reprinted in 42 U.S.C. app. at 668-69 (Supp. V 1981) (hereafter cited as Reorganization Plan No. 1.)

technical assistance to designated State and local agencies to assist in processing Title VII and age discrimination in employment complaints. 6/

In recent years, EEOC's budget has increased. The increase has been small, however, and resource problems appear to have contributed to limited progress or scaling back of functions such as complaint backlog elimination, litigation, and systemic investigations. Despite clear leadership commitments 7/ and management reforms, it remains to be seen whether budget and staffing levels will permit EEOC to fully overcome those setbacks and achieve the new gains it projects under its proposed FY 84 budget without jeopardizing the quality of its work. 8/

6/ 42 U.S.C. §2000e-8(b) (1976).

7/ EEOC's Chairman has repeatedly pointed to continuing job bias in this Nation and the vital importance of strong Federal leadership in combatting it. See, for example, Clarence Thomas, Chairman, Equal Employment Opportunity Commission (hereafter EEOC) (speeches before National Urban League, New Orleans, La., Aug. 2, 1983, and State of Missouri Human Rights Conference, Columbia, Missouri, Mar. 20, 1983).

8/ In commenting on this chapter in draft, EEOC said it does not believe that major resource constraints pose a significant barrier to the achievement of any "current" EEOC goal. John Seal, Director, Office of Management, EEOC, letter to Deborah P. Snow, Assistant Staff Director for Federal Civil Rights Evaluation, U.S. Commission on Civil Rights, Sept. 13, 1983 (hereafter cited as Seal Letter).

Budget Totals

As table 9 shows, EEOC's budget has increased slightly in recent years. No formula has been developed to determine how these increases have been affected by inflation. Congressional Budget Office (CBO) Gross National Product deflators, which are used in budget analyses, do not measure rising costs in the Federal sector precisely. They may nevertheless provide an estimate of trends in enforcement resources. Using the CBO formula, EEOC would appear to have experienced a real loss of about \$5 million in actual spending power between 1980 and 1983. ^{9/} A similar adjustment for inflation indicates that despite the requested FY 84 increase, the agency still would appear to be left with about 20 percent less actual spending power in FY 84 than it had in FY 80.

Staffing

Although EEOC's budget has increased, its staff has been reduced. As table 10 indicates, authorized positions and actual staffing decreased between FY 80 and FY 83. During this period EEOC lost a total of 592 authorized positions, almost 16 percent of its FY 80 authorized strength. The FY 84 budget request, which would provide for the same staff level as in FY 83, will not make up for earlier losses of authorized positions.

^{9/} This estimate is derived by dividing EEOC's appropriation by a factor that accounts for annual inflation rates since FY 80. Deflators for each fiscal year through FY 84 were provided by Steven Zeller, economist, Fiscal Analysis Division, Congressional Budget Office, telephone interview, June 20, 1983. For a fuller discussion of the use and limits of this CBO measure see chapter 1.

Table 9

EEOC Budget Totals: FY 1980-84

(in thousands of dollars)

<u>Fiscal Year</u>	<u>Appropriation a/</u> <u>(annualized)</u>
1980	\$124,562
1981	141,200
1982	144,739
1983	147,421 <u>b/</u>
1984 (Request)	155,300

a/ Figures represent what EEOC could have spent during a whole fiscal year under each spending ceiling.

b/ This figure includes a \$4.6 million pay raise supplemental appropriation which EEOC received for FY 83.

SOURCE: John Seal, Director, Office of Management, Equal Employment Opportunity Commission, letter to Deborah P. Snow, Assistant Staff Director for Federal Civil Rights Evaluation, U.S. Commission on Civil Rights, Sept. 13, 1983 (for FY 80, FY 81, FY 82, and FY 83 appropriations); EEOC, 1984 Budget Submitted to the Congress of the United States (1983), p. 3 (for FY 84 request).

Table 10

EEOC Full-Time, Permanent Staff Positions: FY 1980-84

<u>Fiscal Year</u>	<u>Authorized</u> <u>a/</u>	<u>Actual</u> <u>b/</u>
1980	3,777	3,433
1981	3,416	3,412
1982	3,326	3,149
1983	3,185	3,167 <u>c/</u>
1984 (Request)	3,185	--

a/ Number of full-time, permanent staff permitted under Congressional budget measures.

b/ Number of full-time, permanent staff actually employed by EEOC. Except as noted, figures are for the last day of the fiscal year.

c/ As of the end of the first quarter of FY 83.

SOURCE: John Seal, Director, Office of Management, Equal Employment Opportunity Commission, letter to Deborah P. Snow, Assistant Staff Director for Federal Civil Rights Evaluation, U.S. Commission on Civil Rights, Sept. 13, 1983.

Complaints Processing

In the 1970s, EEOC's inability to resolve individual discrimination complaints in a timely manner resulted in a huge backlog of Title VII complaints. 10/ New procedures implemented in 1977 helped reduce that backlog by 65 percent by the end of FY 80 and were expected to eliminate the backlog completely by the end of FY 82. 11/ By that point, it was expected staff resources could be focused more on major patterns and practices of discrimination. 12/ FY 82 budget restrictions, however, forced EEOC to defer its target date of the end of FY 82 for elimination of the backlog to the end of FY 83. 13/

10/ In December 1977 EEOC had an inventory of 99,000 unresolved charges. EEOC, Sixteenth Annual Report, FY 81 (1982), p. 3 (hereafter cited as EEOC FY 81 Report). EEOC currently defines backlog charges generally as those received by EEOC on or before Jan. 29, 1979. At the end of FY 82, 7,000 charges of the old 1979 backlog still remained. EEOC, "Draft Annual Report 1982" (undated, unpaginated).

11/ J. Clay Smith, Jr., Acting Chairman, EEOC, written statement submitted in testimony before the Subcommittee on the Departments of Commerce, Justice, State, the Judiciary, and Related Agencies of the House Committee on Appropriations, Mar. 11, 1981, p. 2 (hereafter cited as Smith 1981 Statement).

12/ Eleanor Holmes Norton, Chair, EEOC, statement, Oversight Hearings on Federal Enforcement of Equal Employment Opportunity Laws, before the Subcommittee on Employment Opportunities of the House Committee on Education and Labor, 95th Cong., 2d Sess. (1978), pp. 3 and 8 (hereafter cited as Norton Statement).

13/ Smith 1981 Statement, p. 2. EEOC also said that processing times for charges would lengthen as a result of budget restrictions, and the agency would put off plans to "absorb the entire federal equal employment opportunity complaint process, including the initial investigation of complaints, as originally contemplated." Ibid., pp. 13-14.

Meanwhile, new individual charges began to accumulate. 14/ By FY 82, 42 percent of EEOC's active inventory was 300-day old charges, 15/ and the average processing time was 186 days. 16/ By EEOC standards, active charges involving no more than 180 days of agency work are considered healthy or "current." Those over 180 days old are considered "aging," and complaints over 300 days old are considered "cause for concern, and for action." 17/

In testimony before Congress in early 1982, EEOC drew a more complete picture of the actual and expected impact on the agency of its FY 82 and FY 83 budgets. As noted in tables 9 and 10, its FY 83 budget reflected, except for a supplemental appropriation to cover a pay raise, generally the same spending level as in FY 82 but a further reduction in authorized staff

14/ The Acting EEOC Chairman advised Congress that a "frontlog" of charges received since Jan. 26, 1979 was developing as new charges were increasing while staff was being reduced between FY 80 and FY 83. J. Clay Smith, Jr., Acting Chairman, EEOC, written statement submitted in testimony before the Subcommittee on the Departments of Commerce, Justice, State, the Judiciary, and Related Agencies of the House Committee on Appropriations, Feb. 25, 1982, p. 7 (hereafter cited as Smith 1982 Statement). See also EEOC, 1983 Budget Submitted to the Congress of the United States (1982), p. 16 (hereafter cited as EEOC FY 83 Budget).

15/ EEOC, 1984 Budget Submitted to the Congress of the United States (Jan. 1983), p. 16 (hereafter cited as EEOC FY 84 Budget).

16/ Seal Letter.

17/ EEOC, "Staff Discussion Paper, Fifth Annual EEOC/FEP Agency Conference" (1982), p. 3 (hereafter cited as 1982 EEOC/FEP Paper).

positions. EEOC informed Congress that, despite staff productivity increases, additional loss of staff, coupled with continually increasing workloads, would result in an increase in the agency's complaint inventory. 18/

The agency estimated that approximately 5,800 more charges would carry over at the end of FY 82 than at the end of FY 81, and that figure would increase to 7,500 charges at the end of FY 83. 19/ The age discrimination inventory, specifically, was expected to increase from 5,500 charges in FY 82 to 6,600 charges in FY 83. 20/ In reviewing these expected problems, a congressional committee questioned as "overly optimistic" EEOC's projection that the old Title VII backlog would be completely eliminated in FY 83. 21/

The FY 83 budget also would result in declining litigation,² according to EEOC. The number of lawsuits filed would be reduced further in FY 83, and the number of consent decrees and

18/ Smith 1982 Testimony, p. 7. The Acting EEOC Chairman noted that the agency "simply cannot improve upon our productivity at rates which would be required to offset our diminishing resources...." Ibid., p. 6.

19/ Ibid., p. 7.

20/ Ibid., p. 8.

21/ EEOC, "EEOC Responses to Additional Questions," Mar. 3, 1982 (requested by Subcommittee on the Departments of Commerce, Justice, State, the Judiciary, and Related Agencies of the House Committee on Appropriations) (hereafter cited as EEOC Responses).

settlements also would decrease. 22/ EEOC would be unable to fund new cases and would find it "exceedingly difficult" to support cases already in litigation. 23/

Persisting complaint backlogs and expected increases in new complaints thus were main elements of the unpromising situation facing the new leadership at EEOC in 1982. 24/ The agency has taken further steps to address these problems. To control the complaint inventory, for example, EEOC staff are being trained as generalists, rather than remaining specialists, and previously separate processing units (as have existed for age and equal pay complaint processing, for example) are being merged on a pilot basis. 25/ EEOC believes such steps will

22/ Smith 1982 Testimony, p. 8. The agency did not specify the decline in lawsuits to be filed but said the number of consent decrees and settlements would decrease from 237 in FY 82 to 200 in FY 83. Ibid.

23/ Ibid., p. 9.

24/ Clarence Thomas became EEOC Chairman in April 1982.

25/ EEOC FY 84 Budget, p. 15. There has been some criticism of the merger proposal. For example, a 1982 report of the Senate Special Committee on Aging concluded that EEOC had not gained "sufficient expertise in ADEA charge processing and investigation to warrant merger of all processing units." U.S., Congress, Senate, Special Committee on Aging, Equal Employment Opportunity Commission Enforcement of the ADEA: 1979 to 1982, 97th Cong., 2d Sess. (1982), p. 7.

permit better use of its resources. 26/

Nonetheless, the pre-1979 Title VII backlog had not yet been completely eliminated as FY 83 drew to a close, 27/ and the likelihood that the agency will be able to reduce its inventory of new complaints to a "healthy" level remains questionable. As of the end of the third quarter of FY 83, EEOC had received 48,547 charges 28/ of the 60,610 charges

26/ One step to specifically reduce the percentage of 300-day old charges involved incorporation of processing goals in staff performance standards. EEOC hoped to reduce this inventory of charges to no more than 5 percent of its active inventory in FY 83 and to retain it at that level in FY 84. EEOC FY 84 Budget, pp. 16 and 19. For FY 84, staff expect to reduce the pending Title VII, ADEA, and EPA inventory by roughly 4,000 charges through, in part, a 5 percent increase in staff productivity. In addition, a reduction in the average processing time (to less than 180 days) for charge resolution is projected. Ibid., p. 19. In FY 82, the average processing time was 186 days, and as of mid-year FY 83, it was 159 days. Seal Letter. See also Clarence Thomas, Chairman, EEOC, written statement submitted in testimony before the Subcommittee on the Departments of Commerce, Justice, State, the Judiciary, and Related Agencies of the House Appropriations Committee, Mar. 1, 1983.

27/ EEOC staff reported that as of the end of the third quarter of FY 83, 1,133 such charges still remained and could not estimate when they will be resolved. Some will require EEOC Commissioner clearance because they involve issues, such as comparable worth, on which EEOC policy has not yet been determined. John Schmelzer, Legal Advisor to the Director, Office of Program Operations, EEOC, telephone interview, Aug. 12, 1983.

28/ Ronald Passero, Director, Budget and Finance Division, Office of Management, EEOC, telephone interview, Sept. 30, 1983.

it had expected in all of FY 83. 29/ EEOC staff said that although complaints were therefore increasing in FY 83 at the expected rate, a "significant" reduction in the number of 300-day old charges had taken place. 30/

While inroads in FY 83 in reducing the pre-1979 backlog and 300-day old complaints, thanks to improved efficiency, have been reported, it should be noted that increased efficiency does not necessarily mean more effective enforcement. A top level EEOC official expressed concern that rapid charge processing procedures instituted in 1977 have led to a sharp decline in thorough investigations and a corresponding decline in the number of reasonable cause (possible discrimination)

29/ EEOC FY 84 Budget, p. 21. In FY 83 EEOC also expected at least 1,000 new charges as a result of its additional responsibility under a new Department of Justice-EEOC complaint referral rule. Elizabeth Thornton, Director, Coordination and Guidance Services, EEOC, interview, Apr. 28, 1983 (hereafter cited as Thornton Interview.) EEOC staff report, however, that less than 100 new charges were received during the first three months after publication of the rule, much fewer than expected. Seal September Letter. The referral rule, found at 48 Fed. Reg. 3570 (1983) (to be codified at 28 C.F.R. pt. 42; 29 C.F.R. pt. 1691), governs processing of employment discrimination complaints filed with Federal fund granting agencies under Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d-2000d-6 (1976 & Supp. V 1981), Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 (1976 & Supp. V 1981), the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. §1221-1265 (1976 & Supp. V 1981), and other Federal laws with provisions against discrimination on the basis of race, color, religion, sex, or national origin in programs and activities receiving Federal financial assistance. Under this rule, EEOC receives employment discrimination complaints that fall under Title VI as well as Title VII.

30/ John Seal, Director, Office of Management, EEOC, telephone interview, Sept. 29, 1983 (hereafter cited as Seal September Interview). As of this writing, requested data on this point had not been provided.

findings, which, in turn, has had a "deleterious" impact on the agency's litigation program. 31/

Another problem with regard to complaints, which EEOC acknowledges cannot be resolved without additional staff, concerns complaints filed by Federal Government employees. Since January 1979, EEOC has been responsible for holding hearings on Federal employee job discrimination complaints and processing appeals from agency decisions on such complaints. 32/ In FY 80 EEOC had eliminated a backlog of Federal sector complaints appeals. 33/ In 1981 the agency's Acting Chairman told Congress, however, that Federal sector complaints were increasing dramatically, and processing periods for hearings and appeals of these complaints could be expected to lengthen. 34/ EEOC staff recently predicted a 33 percent increase in Federal sector complaints in FY 84 over the FY 83 total, with yet another 20 percent increase in FY 85 over FY 84. 35/ Staff said the agency must have more staff to handle the appeals and hearings of Federal sector complaints

31/ David Slate, General Counsel, EEOC (speech delivered at Bureau of National Affairs Conference on "EEO and the Reagan Administration," Wash., D.C., June 3, 1983).

32/ Reorganization Plan No. 1.

33/ Smith 1981 Testimony, p. 8.

34/ Ibid., p. 14.

35/ Seal September Interview.

to prevent a major new backlog in that area from developing. 36/
State and Local Program

EEOC also funds and provides technical assistance to designated State and local fair employment practices (FEP) agencies to support their processing of Title VII and age discrimination in employment complaints. 37/ In 1981, FEP agencies resolved 43 percent of the Title VII national complaint workload. 38/ Despite the administration's plans to increase opportunities for States to participate in anti-discrimination enforcement efforts, 39/ less assistance from the FEPs in complaint processing is projected for FY 83 and FY 84. 40/ EEOC has attributed this decrease to fewer FEP staff available under EEOC contracts as a result of increased FEP operating costs. 41/

36/ Ibid.

37/ 42 U.S.C. §2000e-8(b) (1976). Title VII requires EEOC to defer for 60 days action on complaints where there is a governing State or local employment discrimination law. Qualified FEP agencies may process the complaints or waive jurisdiction. 42 U.S.C. §2000e-5(c) (1976).

38/ 1982 EEOC/FEP Paper, p. 2.

39/ U.S., Executive Office of the President, Office of Management and Budget, Special Analysis J, Civil Rights Activities, February 1982, p. 13.

40/ In FY 82 FEPs increased their Title VII charge resolutions over FY 81 by 18 percent. However, EEOC projected a 2.9 percent decrease in FEP charge resolutions in FY 83 and a 3.7 percent decrease in FY 84. EEOC FY 84 Budget, pp. 33-34.

41/ Ibid., p. 33.

Between FY 78 and FY 82, EEOC funding to State and local FEP agencies tripled. 42/ Although EEOC proposed a reduction in funding from \$18.2 million in FY 82 to \$18 million in FY 83, 43/ the agency received \$18.5 million under its FY 83 continuing resolution. 44/ Under the proposed FY 84 budget, however, EEOC again has requested the same reduced level of \$18 million. 45/

Like EEOC, some FEP agencies are experiencing problems processing complaints in a timely manner due to their reduced funding, limited staff resources, concentration on backlog cases, and increased complaint receipts. 46/ These problems

42/ State and local funding was as follows: FY 78 - \$6 million (1983 EEOC/FEP Paper, p. 1); FY 79 - \$15 million (EEOC, Fourteenth Annual Report (1979), p. 25; FY 80 - \$15 million (EEOC, Fifteenth Annual Report (1980), p. 29; FY 81 - \$17.7 million (EEOC FY 83 Budget, p. 33); and FY 82 - \$18.2 million (EEOC FY 84 Budget, p. 31).

43/ EEOC Responses.

44/ Seal Letter.

45/ EEOC FY 84 Budget, p. 31. In the continuing deliberations on the FY 84 budget, the Subcommittee on Commerce, Justice, State and the Judiciary of the Senate Committee on Appropriations voted to restore \$500,000 and add another \$500,000 so that the State and local program would receive \$19 million, if that change is finally adopted. Ernest F. Hollings, U.S. Senate, letter to Frederick B. Routh, Director, Community Relations Division, Office of Congressional and Public Affairs, U.S. Commission on Civil Rights, Aug. 5, 1983.

46/ EEOC FY 84 Budget, p. 32; 1982 EEOC/FEP Paper, p. 3. During FY 82, over one-third of the FEP agencies under contract with EEOC had accrued a "substantial" number of cases that were more than 300 days old. 1982 EEOC/FEP Paper, p. 3.

could force FEP agencies to waive jurisdiction over more EEOC complaint deferrals, further increasing, rather than decreasing, EEOC's own caseload, and further diverting its attention from broader enforcement efforts. 47/

Class and Systemic Activity

EEOC can address widespread discrimination by investigating individual complaints that allege employer discrimination against a whole class of protected persons or by initiating investigations of discriminatory patterns and practices. 48/ These "systemic" activities are important because they can eliminate broad-based employment discrimination and open up opportunities to excluded groups.

EEOC has described its systemic program as the most effective means to attack patterns and practices of employment discrimination. 49/ Yet, for a number of years, EEOC's emphasis on eliminating its Title VII backlog has resulted in

47/ To help deal with these problems, EEOC earmarked FY 82 and FY 83 funds for special 2-year inventory reduction contracts to underwrite additional staff to reduce these excess inventories. EEOC, "EEOC (FEP Agency Sixth Annual Conference, Mar. 16-18, 1983, Atlanta, Ga. Discussion Paper" (1983), p. 2.

48/ 42 U.S.C. §2000e-5(a)-(b) (1976).

49/ Norton Statement, p. 17.