EQUAL PAY

Policy Rational and Cost: Currently, American women earn about 75 cents for every dollar men earn. In the past, the Administration has announced a package of initiatives on equal pay, including endorsing legislation to strengthen enforcement of wage discrimination. This proposal suggests further steps the Administration can take (without legislation) in the EEOC and Department of Labor on this important issue. The measure includes: an education program for employees; new outreach to businesses to provide information on current law and offer technical assistance; and upgrading training for EEOC employees and resources for increases in enforcement capabilities. As a result of the initiative, EEOC states it will reach over 10 million workers through public service announcements and reach over 3000 small, medium, and large employers by providing technical assistance. The Department of Labor (Office of Federal Contract Compliance Programs) also seeks funding for a related Women in Non-Traditional Occupations Initiative, which will identify best practices, emphasize anti-discrimination and anti-harassment activities, and explore incentives to improve access for women into glass ceiling and nontraditional opportunities such as construction, technology, and manufacturing. (**Cost:** $17.3 million for EEOC and $10.4 million for DOL -- $6.8 million for DOL's non-traditional occupations and $3.8 million for DOL equal pay outreach and compliance reviews).

Uncertainty: EEOC did not receive any of the $17.3 million in their passback for this initiative, but they are appealing the entire amount. OMB did not fund this because they stated they prefer that EEOC continue to work on reducing its backlog, but OMB staff seems open to some funding for this initiative. DOL received only $383,000 out of the $6.8 million requested in a Women in Non-Traditional Occupations Initiative. OFCCP also requested $3.81 million in their base for the equal pay compliance reviews and outreach, but did not receive any of this request. DOL is currently not appealing any of the $10.4 million.

Vetting: The agencies produced the equal pay proposal at our request. The issue is one of the most important to Americans, and the proposal (while small) would certainly be greeted positively by groups active in the area. OMB implied to EEOC that they had to make a choice between reducing the backlog and undertaking this effort. We think both the equal pay measure and reducing the backlog are worthy of support.

Civil Rights Enforcement Agencies
(BA, in millions of dollars)

Civil Rights Enforcement Agencies	Original 2000 Request	2000 OMB Passback	2000 Agency Appeal
EEOC..	347	288	347
HUD-Fair Housing Activities..................	67	42	67
DOJ-Civil Rights Division.......................	79	76	77
Labor-OFCCP......................................	87	74	no appeal
Education-Office for Civil Rights............	73	71	73
HHS-Office of Civil Rights.....................	23	22	23
Agriculture-Civil Rights Programs...........	23	23	24
U.S. Commission on Civil Rights...........	16	11	16
DOT-Office of Civil Rights.....................	8	7	8
Labor-Civil Rights Center.......................	6	6	no appeal
EPA-Office of Civil Rights......................	2	2	no appeal
	--------	--------	--------
Subtotal, Civil Rights Enforcement..........	731	622	635

HUD

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY

BUDGET AND ADMINISTRATIVE SUPPORT DIVISION

DATE: 12/10/98

ORIGINATOR: Paul Christian PHONE: (202) 708-4150

SUBJECT:

NO. OF PAGES (INCLUDING THIS SHEET): 12

ORIGINATOR FAX NUMBER: (202) 708-0044

****

RECIPIENT NAME AND TITLE: Julie Fernandez

RECIPIENT ORGANIZATION: Domestic Policy Counsel

RECIPIENT FAX NUMBER: (202) 456-5581

RETAIN THIS RECORD FOR SIX MONTHS

HUD-21023.FHEO

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

FAIR HOUSING AND EQUAL OPPORTUNITY

FAIR HOUSING ASSISTANCE PROGRAM

PROGRAM HIGHLIGHTS

	ESTIMATE 1998	BUDGET ESTIMATE 1999	CURRENT ESTIMATE 1999	ESTIMATE 2000	INCREASE + DECREASE - 2000 vs 1999
	(Dollars in Thousands)				
Assistance to State and Local Agencies					
Number of Awards	80	85	85	90	+5
Obligations	$22,775	$23,000	$20,000	$30,500	+$10,500
Budget Authority					
Enacted or Proposed	$15,000	$23,000	$20,000	$30,500	+$10,500
Budget Outlays:	66,981	$13,879	$13,879	$16,750	+$2,871

Multiyear Estimates

	FY 2001	FY 2002	FY 2003	FY 2004
	(Dollars in Thousands)			
Program Level:	$30,500	$30,500	$30,500	$30,500
Budget Authority	$30,500	$30,500	$30,500	$30,500
Net Outlays	$23,675	$30,500	$30,500	$30,500

SUMMARY OF BUDGET ESTIMATES

1. SUMMARY OF BUDGET REQUEST

The fiscal year 2000 Budget request for the Fair Housing Assistance Program (FHAP) is $30.5 million. This is an increase of $10.5 million over the fiscal year 1999 appropriation and includes $7.5 million for an innovative Fair Housing Partnership between State and local government fair housing enforcement agencies and private fair housing groups and $3 million to support the increased number of FHAP agencies receiving funding and the increased number of complaints received as a result of the Anti-discrimination in Housing Initiative that began in fiscal year 1999. This partnership initiative will be funded equally by the FHAP and the Fair Housing Initiatives Program (FHIP) through a combined $15 million set-aside. (See the FHIP justification for a description of the FHIP component of the Fair Housing Partnership.) Through its support of joint efforts by governmental and private entities, the partnership initiative will foster substantial and new fair housing results that individual organizations could not achieve alone.

The fiscal year 2000 appropriation will be used to assist "substantially equivalent" agencies in case processing, data and information systems, training, capacity building activities, and education and outreach, in addition to the activities supported by the partnership initiative. A "substantially equivalent" agency is a State or local fair housing enforcement agency administering a fair housing law or ordinance that is substantially equivalent to the Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988). The FHAP complements the Department's enforcement activities by providing financial assistance to these agencies pursuant to the Fair Housing Act.

Despite more than 30 years of prohibitions against housing discrimination, audits of race and national origin discrimination in the rental and sales market continue to show high indices of discrimination nationwide. Although national homeownership rates have increased, a significant disparity continues to exist between the homeownership rate of Whites compared to that of minorities; 72 percent rate of Whites are homeowners, compared to a rate of less than 45 percent for Hispanics and Blacks. Home mortgage disclosure data indicate that lenders still reject Black and other minority applicants almost twice as often as Whites. Builders continue to construct inaccessible housing, and families with children in certain parts of the United States have extremely limited housing choices. Many cities with large populations continue to have no public or private fair housing organizations. Certain protected classes are not aware of their rights under the Fair Housing Act, while certain housing industry players are unfamiliar with their responsibilities under the Fair Housing Act. These conditions are addressed by the President's "One America" initiative, which recognizes continued significant barriers to equal housing economic and social opportunity for many groups in our society. Eliminating these barriers and creating conditions of equal opportunity is at the core of the Federal Government's role in forging an "opportunity" society for all Americans. This request reflects the Department's focus on eliminating housing and lending discrimination, which is vital to making homeownership and economic opportunity a reality for all Americans.

Thus, in fiscal year 2000 FHEO is proposing a partnership focused on underserved populations to ensure that persons who face language, cultural, and other barriers have the full protection of the Fair Housing Act. The focus is expected to include racial and ethnic minorities (e.g. immigrants), rural populations, persons with disabilities, and homeless persons. The Department will carry out this initiative through the existing Fair Housing Assistance Program and the Fair Housing Initiatives Program. The proposal includes a $7.5 million set-aside to support a fair housing partnership between the public and private fair housing sectors. The partnership effort will be funded equally by the Fair Housing Initiatives Program (FHIP) and the Fair Housing Assistance Program (FHAP) through an equal $7.5 million set-aside, for a combined $15 million set-aside.

To receive a portion of the proposed Partnership set-aside, State and local fair housing enforcement agencies and eligible private groups will be required to submit applications outlining the duties of each applicant, and the process by which each will work with the other partners. The partnership will require state and local enforcement agencies and private groups to engage in strategic planning in order to focus their fair housing activities. Further, they will be required to coordinate their activities to avoid duplication and ensure the results of their partnerships make a maximum contribution to the Department's goal of increasing its enforcement. Successful partnership applications will be funded by both FHIP and FHAP, allocating funding to enforcement and/or education initiatives.

Private fair housing groups (FHIPs) and State and local enforcement agencies (FHAPs) have different strengths and institutional orientations. Private fair housing groups have traditionally been community-based, and therefore more accessible to individuals who would not ordinarily approach a government entity. They also do not have enforcement authority, such as subpoena power, to fully investigate apparent violations of the Fair Housing Act. In contrast, State and local agencies have such enforcement authority. However, they have had only limited success in reaching out to underserved populations. The partnership is intended to create a new synergistic approach to draw upon the resources and strengths of both partners. Under the partnership initiative, State and local agencies will be able to carry out enforcement activities beyond case processing. Special enforcement efforts will include joint investigations of the following activities: 1) discriminatory lending practices; 2) noncompliance with design and construction requirements; and 3) hate crimes.

The balance of the $30.5 million requested for fiscal year 2000 will support the activities of approximately 90 substantially equivalent fair housing enforcement agencies, an increase of 10 over the 1998 level. These agencies will process housing discrimination complaints based on race, color, religion, sex, familial status, disability, and national origin.

The budget also proposes a fiscal year 2000 appropriation of $36.5 million for the Fair Housing Initiatives Program (FHIP), of which $7.5 million is for fair housing partnership projects. The total funding requested for both programs in fiscal year 2000 is $67 million. Together, these two programs form a nationalcomprehensive fair housing strategy against housing discrimination based upon greater cooperation between the public and the private sectors.

2. CHANGES IN THE 1998 ESTIMATES INCLUDED IN THE 1999 BUDGET

The expected number of agencies qualifying for equivalent status in 1998 is 80. This represents no change from the 1999 Budget. There is no change from the $15 million in obligations, nor from the $5,981 thousand in outlays.

3. CHANGES FROM 1999 BUDGET ESTIMATES

The changes from the 1999 Budget Estimate reflect a decrease of $3 million due to congressional action. There is no change in the outlays since the lower 1999 appropriation will first impact outlays in fiscal year 2000.

EXPLANATION OF INCREASES AND DECREASES

The fiscal year 2000 appropriation request for the Fair Housing Assistance Program (FHAP) represents an increase of $10.5 million over the 1999 appropriation of $20 million. This increase includes $7.5 million for a Fair Housing Partnership between state and local government fair housing enforcement agencies and private fair housing groups. This partnership will strengthen fair housing enforcement at the local level, and will result in more cases being filed directly with the Department. Examples of activities under this initiative include outreach by FHIP groups in areas where FHAPs have no physical presence, and training by FHAP agencies to community-based groups in order to expand the reach of FHAPs. The increase also includes $3 million to support the increased number of FHAP agencies receiving funding, and the increased number of complaints received as a result of the Anti-Discrimination in Housing Initiative begun in fiscal year 1999. The Anti-Discrimination in Housing Initiative reaches underserved areas, and has resulted in an increase in the number of complaints filed with State and local agencies. The fiscal year 2000 funding request will reach new and underserved populations, including racial and ethnic minorities, immigrants, rural populations, persons with disabilities, and homeless persons. In fiscal year 1999, a total of 85 State and local fair housing enforcement agencies will be eligible for funding as substantially equivalent agencies. The Department estimates that at least five additional agencies will be certified in fiscal year 2000.

PROGRAM DESCRIPTION AND ACTIVITY

The Fair Housing Assistance Program (FHAP) is a system for the Federal Government to encourage and assist State and local fair housing enforcement agencies to participate in the enforcement of the Fair Housing Act. FHAP agencies meeting specified criteria are reimbursed for services carried out in connection with the investigation of complaints brought by individuals who claim their fair housing rights have been violated. These services include complaint investigations, conciliations, administrative enforcement/judicial proceedings, training and outreach, technical assistance, and other support activities designed to eliminate housing discrimination. Eligible recipients are defined as those State and local fair housing enforcement agencies that are certified as substantially equivalent, or agencies operating under an interim agreement for referral of complaints. The availability of this Federal financial assistance has encouraged State and local agencies to enact equivalent fair housing laws and ordinances.

1. Legislative Authority. The Fair Housing Act prohibits discrimination in the sale or rental of housing; in residential real estate-related transactions; in the provision of brokerage services; and in other housing-related activities. Section 810(f) of the Fair Housing Act allows for the Secretary to refer complaints to the FHAP agency whenever a complainant alleges a discriminatory housing practice within the jurisdiction of the State or local agency that has been certified as providing rights, remedies, procedures, and the availability of judicial review which are substantially equivalent to those in the Fair Housing Act. Section 817 of the Fair Housing Act provides that the Secretary may assist State and local agencies in administering a fair housing law by providing them with financial assistance.

2. Program Background. Since 1980, the Department has provided financial assistance under the FHAP to State and local agencies administering substantially equivalent fair housing laws and ordinances. When the Fair Housing Amendments Act was enacted in September 1988, all State and local agencies were required to amend their respective laws and ordinances to obtain substantial equivalency certification with the amended Federal law.

The Fair Housing Act mandates that the Department cooperate with and render technical assistance to State and local agencies formulating or carrying out programs to prevent or eliminate discriminatory housing practices. Section 810 of the Fair Housing Act specifically encourages cooperation with State and local agencies charged with the administration of State and local fair housing laws. The Fair Housing Assistance Program and the substantial equivalency certification process both serve to further fair housing by providing financial assistance and by encouraging State and local governments to enact and enforce legislation designed to ensure fair housing. Through training, legal, and administrative technical assistance, issuance of written guidelines, participation at meetings and conferences, and review of proposed legislation, the Department provides extensive assistance to help State and local fair housing enforcement agencies obtain certification under the Fair Housing Act. The Department also provides individually tailored technical assistance to any State or local government requesting such assistance.

IMPLEMENTATION OF THE PROGRAM

The implementing regulation for the FHAP, 24 CFR part 115, requires that the fair housing law administered by the agency be substantially equivalent and that a written agreement be executed. Also, agencies that participate in the FHAP must (a) conform to reporting and record-keeping requirements; (b) agree to on-site technical assistance and guidance and implementation of corrective action; (c) adhere to policies and procedures provided by the Department; (d) not unilaterally reduce the level of financial resources currently committed to complaint processing; (e) spend at least 20 percent of its total annual budget on fair housing activities, and; (f) participate in HUD-sponsored or HUD-approved training. FHAP funds are divided into two categories: capacity building and contributions. Agencies receive capacity building funds in their first 3 years of participation in the program. The agencies become contributions agencies after the third year of participation in the FHAP. At that time, they are also eligible to receive case processing, training, special enforcement efforts, and administrative costs funds. Beginning in fiscal year 2000, a fifth component for fair housing partnership funded activities will be established under contributions.

Financial assistance to State and local fair housing enforcement agencies is contingent upon continued substantial equivalency. Substantial equivalency involves an affirmative conclusion on two separate issues: (1) whether the State or local law provides rights, remedies, procedures, and the availability of judicial review that are substantially equivalent to those found in the Fair Housing Act, and; (2) whether the agency has the administrative capability to carry out the provisions of its fair housing law.

All certified agencies will process complaints based on race, color, religion, sex, national origin, familial status, and handicap. This effort will require such agencies to commence and maintain the processing of each complaint through administrative and/or civil proceedings. The agencies will enter into partnerships with private fair housing groups to test for discrimination, and provide investigative assistance or any other assistance needed in order to further fair housing.

The $30.5 million funding level for agencies participating in the FHAP for fiscal year 2000 will be allocated as follows:

Case Processing--$13 million. It is estimated that in fiscal year 2000, FHAP agencies will process approximately 70 percent, or 7,000 complaints, of the total complaints expected to be received by the Department. This amount covers the costs incurred by the FHAP agencies to process complaints from receipt through the administrative and/or civil proceedings. For each complaint correctly processed, the agency will be paid $1,800, the same amount paid per complaint in fiscal year 1999. In addition to the $1,800 per complaint, the Department is proposing to add $1,000 per case for which the agency finds cause. This amount will cover the additional costs which result from preparing a case for hearing and from conducting a hearing and trial. The Department estimates that approximately 400 cases will fall into this category.

The Department expects to certify 90 State and local fair housing enforcement agencies as substantially equivalent in fiscal year 2000, up from 85 in fiscal year 1999.

Capacity Building--$1.875 million. The requested funds will be used in fiscal year 2000 to enable approximately 15 capacity-building agencies to develop and enhance comprehensive complaint processing resources, to train staff, and to develop and carry out activities deemed necessary for the efficient and effective implementation of the jurisdiction's fair housing ordinance. Each FHAP agency would receive $125,000, an increase of $10,000 over the fiscal year 1999 level.

Training--$1.750 million. All contributions agencies, which are agencies that have participated in the FHAP for 3 or more years, are eligible to receive training funds to support participation in HUD-sponsored or HUD-approved training and education and outreach activities. During fiscal year 2000, agencies may receive approximately $25,000 each for training. In addition, each FHEO "Hub" will have access to approximately $25,000 in order to supplement the training needs of FHAP agencies.

Administrative Costs--$2.4 million. The Department will allocate administrative costs to the agencies using a formula based on the number of complaints correctly processed in the previous funding year. If the agency does not meet the standards set out in Part 115 of 24 CFR for allocation by formula, a flat rate of $20,000 will be provided to the agency for administrative costs. This is a $5,000 increase over the flat rate amount for fiscal year 1999.

Special Enforcement Efforts (SEE)--$3.975 million. Agencies qualify to receive SEE funds based on the criteria in Part 115.305 of 24 CFR These funds are designed to help the agencies enhance their enforcement processes. The amount each agency will be eligible to receive will be based on a formula of 20 percent of the previous year's cooperative agreement. Approximately 70 percent of the agencies will be eligible to receive funds in this category.

Fair Housing Partnership Category--$7.5 million. FHAP agencies may apply, will qualify for funding under this category, based on criteria provided in the policy guidance outlined for this partnership. Funding will be available for partnership efforts that address discrimination against new and underserved populations. Such efforts may include activities other than those reimbursed under other program components, and may extend beyond complaint processing reimbursement. It is estimated that as many as 30 FHAP agencies will receive awards under this Fair Housing Partnership Component.

3. Performance Indicators. The Department continues to support the doubling of enforcement actions as a performance goal. However, the doubling of enforcement actions is an ongoing process and a standard definition of enforcement actions is still being developed. The request will increase the number of State and local agencies which administer laws which are substantially equivalent to the Fair Housing Act from 80 in 1998 to 85 in 1999 and 90 in 2000. In fiscal year 2000, the request will, for the first time, jointly fund (through the FHAP and Fair Housing Initiatives Program) fair housing partnerships of up to 30 substantially equivalent agencies and private fair housing groups. These partnerships will maximize resources and strengthen fair housing outcomes at the State, local and community level. The requested level of funding will enhance the quality of fair housing enforcement by State and local agencies by providing training and by providing final and technical assistance on testing, investigations, and resolution techniques to 80 agencies in 1998, 85 agencies in 1999, and 90 agencies in 2000.

PROGRAM HIGHLIGHTS AND ACCOMPLISHMENTS

A number of significant accomplishments have occurred to support fair housing agencies. These accomplishments include:

- FHEO, together with the Office of General Counsel (OGC), reviewed proposed and enacted fair housing laws and ordinances, and proposed and final regulations, legal opinions, and court cases of jurisdictions seeking equivalency. This process allowed FHEO to assist State agencies to enact substantially equivalent laws by providing clear and concise guidance and suggesting corrective actions that may be undertaken by the agency.

- FHEO has provided a model fair housing ordinance to jurisdictions seeking equivalency to assist them in writing and enacting a substantially equivalent law or ordinance.

- FHEO has provided technical assistance and training to FHAP agencies operating under an interim agreement to ensure successful performance in accordance with standards set forth in the Department's regulations.

- FHEO has provided on-site technical asstance and performance assessment visits to all agencies with interim certification. In each instance, detailed reports and guidance were provided to the agencies.

- FHEO continues to provide policy guidance and formal training to the FHAP agencies. The training includes investigative techniques, conciliation enforcement and intake procedures, data and information systems, legal updates, disability and familial topics, and other issues which serve to educate the agencies on the implementation of fair housing laws. The field offices provided agency-specific training as well as geographic training. The training was also expanded to include participation by private fair housing organizations.

- FHEO has provided computer software and hardware, as well as other training to assist the agencies in improving the efficiency and effectiveness with which they enforce the fair housing laws. These improvements include the use of the paperless file to organize and document investigation activity, and an enhanced case-tracking system.

- FHEO has provided technical assistance to several FHAP agencies whose equivalency status was severely jeopardized and assisted these agencies to retain their status as interim certified or certified agencies.

- FHEO and OGC assisted a State agency which lost its certified status to regain it.

- FHEO worked with several FHAP agencies whose cases drew significant national media attention due to the compelling nature of the facts.

- In 1998, FHEO worked closely with the State FHAP Agency in Texas and the local FHAP Agency in Fort Worth (which had also received FHIP funds) to settle a fair housing complaint that resulted in the largest monetary settlement ever in the history of the Fair Housing Act. The availability of Federal Funds under the FHAP and FHIP made it possible to fund an in-depth study of mortgage lending practices in Texas. The findings resulted in a landmark $1.4 billion settlement against Texas lenders. The Department predicted that as a result of the settlement, approximately 20,000 families would be able to secure mortgages over a 3-year period.

STATUS OF FUNDS

1. Unobligated Balances. The following table compares program obligations with funds available by year:

	ESTIMATE 1998	ESTIMATE 1999 (Dollars in Thousands)	ESTIMATE 2000
Unobligated balances, start of year	$7,775	...	...
Appropriations	15,000	$20,000	$30,500
Subtotal	22,775	20,000	30,500
Obligations	-22,775	-20,000	-30,500
Lapsed	...	...	...
Unobligated balance, end of year	...	...	...

2. Obligated Balances. The status of obligated balances is as follows:

	ESTIMATE 1998	ESTIMATE 1999 (Dollars in Thousands)	ESTIMATE 2000
Obligated balance, start of year	$9,162	$25,956	$32,077
Obligations incurred	22,775	20,000	30,500
Subtotal	31,937	45,956	62,577
Outlays	-5,981	-13,879	-16,750
Obligated balance, end of year	25,956	32,077	45,827

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

FAIR HOUSING AND EQUAL OPPORTUNITY

FAIR HOUSING ~~INITIATIVES PROGRAM~~

PROGRAM HIGHLIGHTS

	ESTIMATE 1998	BUDGET ESTIMATE 1999	CURRENT ESTIMATE 1999	ESTIMATE 2000	INCREASE + DECREASE - 2000 vs 1999
	(Dollars in Thousands)				
Private Enforcement Initiative					
Number of Awards	28	54	42	95	+53
Obligations	$9,300	$20,300	$16,600	$23,750	+$7,150
Education and Outreach Initiative					
Number of Awards	12	29	18	76	+58
Obligations	$4,536	$5,500	$4,500	$7,900	+$3,400
Administrative Enforcement Initiative					
Number of Awards	...	...	...	...	...
Obligations	NA	...	NA	NA	NA
Fair Housing Organizations Initiative					
Number of Awards	5	12	11	15	+4
Obligations	$1,200	$3,200	$1,900	$4,850	+$2,950
Total Obligations	$15,036	$29,000	$23,000	$36,500	+$13,500
Budget Authority					
Enacted or Proposed	$15,000	$29,000	$23,000	$36,500	+$13,500
Budget Outlays:	$17,137	$14,830	$14,830	$17,800	-$2,970

Multiyear Estimates

	FY 2001	FY 2002	FY 2003	FY 2004
	(Dollars in Thousands)			
Program Level:	$36,500	$36,500	$36,500	$36,500
Budget Authority	$36,500	$36,500	$36,500	$36,500
Net Outlays	$25,725	$33,125	$36,500	$36,500

SUMMARY OF BUDGET ESTIMATES

1. SUMMARY OF BUDGET REQUEST

The fiscal year 2000 Budget request for the Fair Housing Initiatives Program (FHIP) is $36.5 million; this is an increase of $13.5 million from the fiscal year 1999 estimate. The increase supports activities by private fair housing groups which will significantly contribute to the Department's goal of doubling enforcement efforts. This increase includes $7.5 million for an innovative Fair Housing Partnership between State and local government fair housing enforcement agencies and private fair housing groups. This partnership will be funded equally by the FHIP and the Fair Housing Assistance Program (FHAP) through a combined $15 million set-aside. (See the FHAP Justification for a description of this Partnership component). Through its support of joint efforts by governmental and private entities, the partnership will foster fair housing outcomes that individual organizations could not achieve alone. Also included is a $2 million increase to fully fund the audit based testing initiative in 20 communities, and a $4 million increase to reflect the expanded number of FHIP recipients, including disability groups funded through the continuing of the Fair Housing Organizations Initiative. The expanded number of FHIP recipients were funded in fiscal year 1999, and there are also an exceptionally large number of grantees whose enforcement grants end in fiscal year 1998 (approximately 65). Funding is needed to continue to support private activities which support the Department's enforcement of the Fair Housing Act, as well as the Department's affirmative administration of housing and community development programs. Funding is also needed to support the national initiative to increase the rate of homeownership among under-served groups.

The fiscal year 2000 funds will support the Secretary's commitment to fair housing and provide resources to implement those fair housing initiatives authorized under the Housing and Community Development (HCD) Act of 1987, as amended by the HCD Act of 1992.

The projected budget authority needs for fiscal years 2001 through fiscal year 2004 reflect the Department's goal of providing continuing support for the efforts of public and private organizations to provide fair housing education and enforcement services in addressing currently unmet needs.

Despite more than 30 years of prohibitions against housing discrimination, audits of race and national origin discrimination in the rental and sales market continue to show high indices of discrimination nationwide. Although national homeownership rates have increased, a significant disparity continues to exist between the homeownership rate of Whites compared to that of minorities: 72 percent rate of Whites are homeowners, compared to a rate of less than 45 percent for Hispanics and Blacks. Home mortgage disclosure data indicate that lenders still reject Black and other minority applicants almost twice as often as Whites. Builders continue to construct housing inaccessible to disabled populations and families with children have extremely limited housing choices. Many cities with large populations continue to have no public or private fair housing organizations. Many protected classes remain unaware of their rights under the Fair Housing Act, while certain housing industry players do not know their responsibilities. These conditions are addressed by the President's "One America" initiative, which recognizes continued significant barriers to equal housing economic and social opportunity for many groups in our society. Eliminating these barriers and creating conditions of equal opportunity is at the core of the Federal Government's role to forge an "opportunity" society for all Americans. This request reflects the Department's focus on eliminating housing and lending discrimination, which is vital to making homeownership and economic opportunity a reality for all Americans.

$15 million

Thus, in fiscal year 2000, a partnership initiative is proposed to focus on new and underserved populations by ensuring the full protection of the Fair Housing Act and other civil rights laws for persons who face language, cultural, and other barriers that currently limit the utility of these laws to address persistent housing discrimination. The focus will include racial and ethnic minorities (e.g., immigrants), rural populations, persons with disabilities and the homeless. The Department will carry out this initiative through the existing Fair Housing Assistance Program and the Fair Housing Initiatives Program. This request includes a $7.5 million set-aside that will be added to the FHIP to support a fair housing partnership between the private and public fair housing sectors. This fair housing partnership effort will be funded equally by the Fair Housing Assistance Program (FHAP) through an equal $7.5 million set-aside, for a combined $15 million set-aside. The Budget will also support other fair housing enforcement and education activities.

To receive a portion of the proposed Fair Housing Partnership component of $15 million, eligible State and local agencies and private groups will be required to submit applications detailing the duties of each partner and how they will work together. Thus, the program will require State and local Fair Housing enforcement agencies and private groups to jointly engage in strategic planning to focus their fair housing activities. Further, the recipients will be required to coordinate their activities with HUD to ensure no duplication exists and that the results of their partnerships make a maximum contribution to the doubling effort. Successful partnership applications will be funded by both FHIP and FHAP, allocating funding to enforcement and/or education initiatives consistent with the FHIP program framework, and to the fair housing partnership component of FHAP.

The Budget also proposes a fiscal year 2000 appropriation of $30.5 million for the Fair Housing Assistance Program (FHAP) which is described in a separate justification. The total funding requested for both programs in fiscal year 2000 is $67 million. Together, these two programs form a national comprehensive fair housing strategy against housing discrimination based upon greater cooperation between the public and the private sectors.

2. CHANGES FROM 1998 ESTIMATES INCLUDED IN THE 1999 BUDGET

There are no changes to the obligations and outlays or the overall total awards in the 1998 estimates.

3. CHANGES FROM 1999 BUDGET ESTIMATES

Changes reflect a decrease of $6 million due to Congressional action. There is no change in outlays.

EXPLANATION OF INCREASES AND DECREASES

The fiscal year 2000 Budget request of $36.5 million represents an increase of $13.5 million above the 1999 appropriation of $23 million. The increase for the FHIP is to enable HUD to implement a strategic partnership between State and local civil rights agencies and private groups. Private fair housing groups and State and local enforcement agencies have different strengths and institutional orientations. Private fair housing groups traditionally have an advocacy-oriented, community-based approach and are more accessible to individuals who would not ordinarily approach a government entity. They do not have enforcement authority, such as subpoena power, to fully investigate apparent violations of the Fair Housing Act. In contrast, State and local agencies have such enforcement authority, including effective tools to address such serious issues as hate crimes and racial violence. However, they have had only a limited ability and/or inclination to reach out to underserved populations, at least in part because FHAP currently focuses upon reimbursement for the processing of complaints. The partnership includes all covered real estate practices and all protected bases. The partnership is intended to authorize an approach which draw upon the resources, strengths and expertise of both partners to carry out partnership activities. Because all complaints generated as a result of the partnerships will come to HUD, the Department will realize a rapid increase in the number of enforcement actions.

The allocation of funds within the proposed increase reflects the need to include both education and enforcement activities in the partnership. Thus, the $7.5 million increase for joint activities is divided between Private Enforcement and Education and Outreach. Approximately 40 awards will be made to private fair housing groups to work with FHAP agencies across the country. The FHAP agencies will also receive funding support for this effort. That support is separately discussed in the Fair Housing Assistance Program budget.

The $23.75 million for the Private Enforcement Initiative is requested to continue to fund the $10 million audit-based enforcement initiative in 20 selected communities; $3.75 million will fund 40 joint partnership awards for cooperative enforcement efforts with substantially equivalent FHAP agencies, and $10 million will fund 2-year private enforcement projects carried out by Fair Housing Organizations to address specific needs in approximately 25 communities. Where applicable, awards will provide funding for the entire duration of 2-year projects. The increase is necessitated by the fact that the Department is moving to double its enforcement actions by implementing two new enforcement approaches in FHIP. The Department anticipates providing additional support for private fair housing organizations filing cases with HUD, and funding organizations that demonstrate effective working relationships with Fair Housing Assistance Program (FHAP) agencies and HUD.

The $7.9 million in the Education and Outreach Initiative for 2000 includes $3.75 million to fund 40 proposals under HUD's strategy for supporting joint partnerships with FHAP agencies. $4.15 million will support approximately 22 regional, local and community based awards, one award for educating the industry on recent fair housing developments and trends through newsletters and other national outreach mediums, and three awards to agencies to disseminate information from past national fair housing rights education campaigns in specialized projects to disseminate materials in other languages, accessible formats, and through culturally sensitive outreach efforts. The focus could be on protected classes such as Native Americans, African Americans, Hispanics, Asian Americans, persons with disabilities, families with children and additional underserved groups based on needs identified by applicants.

The $4.85 million in the Fair Housing Organizations Initiative includes $4.25 million to continue the development of fair housing agencies that were created through FHIP funding over the past few years. There is a period of time when newly created groups need funds to further develop their capacity to be full service, broad-based fair housing organizations assisting all protected classes. It is essential that HUD provide continued support to fair housing agencies that are further developing their capacity to enforce the Fair Housing Act.

An additional $600,000 will be used to fund the establishment of new fair housing organizations. It is envisioned that the focus of the funding for fiscal year 2000 will be on underserved groups. One group that has been in dire need of more fair housing activity is the residents of non-metropolitan areas, especially rural areas. Another group that has been underserved by existing fair housing organizations is non-English speaking minorities. It is envisioned that the outreach initiative funding could enable the creation of fair housing organizations to assist such populations.

PROGRAM DESCRIPTION AND ACTIVITY

1. Legislative Authority. Section 561 of the Housing and Community Development Act of 1987, as amended, authorizes the execution of grants, contracts, or cooperative agreements with State or local government agencies, public or private nonprofit organizations, institutions or other entities that are formulating or carrying out programs to prevent or eliminate discriminatory housing practices. FHIP supports projects and activities designed to enhance compliance with the Fair Housing Act and substantially equivalent State and local laws. Section 905 of the Housing and Community Development Act of 1992 expanded the provisions of the Fair Housing Initiatives Program to build the capacity of fair housing organizations in unserved and underserved areas, to establish a national media campaign for dissemination of fair housing information, and to establish funding for celebration of National Fair Housing Month.

FHIP is a critical component in the Department's effort to address fair housing education, enforcement and compliance. The other principal component of the Department's comprehensive fair housing strategy is the Fair Housing Assistance Program (FHAP), authorized by the Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988). That program, for which the Budget proposes a $30.5 million funding level in 2000, is described in a separate justification.

Fair Housing Initiative Program

The Fair Housing Initiatives Program was established by the Housing and Community Development Act of 1987 for the purpose of eliminating and preventing housing discrimination. This program provides a coordinated approach to further the purposes of the Fair Housing Act, to guarantee the rights of all people to seek housing in an open market free of discrimination, and to inform the public and the housing industry of its rights and obligations under the Fair Housing Act. FHIP also enhances and facilitates the delivery of the Department's housing and community development programs, such as HOME and Community Development Block Grants, by providing a free and open housing market.

2. Purpose. The Fair Housing Initiatives Program is intended to supplement current fair housing enforcement activities of the Department. These activities include programs of enforcement, voluntary compliance, and education and outreach. FHIP provides the financial means to assist projects and activities designed to enhance compliance with the Fair Housing Law and substantially equivalent State and local laws.

3. Program Components. There are four major program components under the Fair Housing Initiatives Program. Together, these components support public and private enforcement, education and outreach activities, and capacity building for fair housing enforcement organizations.

a. The Private Enforcement Initiative. The total proposed level of funding for this major component of FHIP is $23.75 million in fiscal year 2000. Under this component, $10 million is for the following multiyear projects: (a) carry out testing and other investigative activities, such as regional audits of new construction to determine compliance with accessibility requirements; (b) discover and remedy discrimination in public and private real estate markets and real estate-related transactions through assisting victims to identify practices that denied them equal housing opportunity, and; (c) respond to individual complaints of discrimination from home seekers.

To continue the Anti-Discrimination Initiative begun in fiscal year 1999, $10 million will be allocated for 2- to 3-year audit-based enforcement initiative in up to 20 additional communities. This audit-based enforcement project will establish local indices of discrimination based on race and national origin in sales and rental housing. This project will also allow development of an annual national index of discrimination. As important, the funding will continue the expansion of enforcement by HUD based upon testing carried out for HUD using a HUD-prescribed testing methodology. The communities selected will include metropolitan and non-metropolitan areas.

In addition, $3.75 million will be set-aside for private fair housing groups and other private non-profit organizations that participate in the innovative fair housing partnership with FHAP agencies. This partnership initiative is proposed to focus on new and underserved populations by ensuring the full protection of the Fair Housing Act to persons who have language, cultural, and other barriers that currently limit the utility of these laws to address persistent discrimination. The focus is expected to include racial and ethnic minorities (e.g., recent immigrants), rural populations, persons with disabilities, and homeless persons. This allocation, along with a total of $3.75 million from the Fair Housing Organizations Initiative (FHOI) and the Education and Outreach Initiative (EOI) described below, will be used with a set-aside of $7.5 million from FHAP. FHAP agencies and private groups will jointly engage in strategic planning to focus their fair housing enforcement activities. They will be required to coordinate their activities with HUD to ensure no duplication exists and that the results of their partnerships make a maximum contribution to the doubling of enforcement effort.

b. The Education and Outreach Initiative. A funding level of $7.9 million is requested for this component of FHIP for fiscal year 2000. Under this component, resources will be used for the following specific activities: a) $4.15 million for a national education and outreach projects, and for regional, local and community-based projects and, b) $3.75 million for new fair housing partnership projects with FHAP agencies. At the national level, HUD plans to continue to disseminate education and outreach materials developed under the fiscal year 1999 campaign and earlier national outreach projects. However, the focus for these national campaigns will be on those protected classes that have been underserved because of cultural and language barriers or accessibility barriers for persons with disabilities. This campaign will involve several awards to groups serving protected classes with special outreach needs. At the national level, the Department also considers it essential to continue efforts to educate members of the housing industry. One award will be to educate the industry on rights and responsibilities, with a focus on recent developments, trends and significant activities through newsletters and multimedia approaches. The Department also recognizes the importance of education efforts in select communities and has provided funding for approximately 22 awards for $125,000 to enable regional, local and community-based outreach.

c. The Administrative Enforcement Initiative. No funds are being requested under this initiative for fiscal year 2000 because eligible applicants under the Administrative Enforcement Initiative receive support for case processing and other enforcement related activities under the Fair Housing Assistance Program.

d. The Fair Housing Organizations Initiative. The fiscal year 2000 Budget request for this component of the FHIP is $4.85 million. Funding will be provided to build the capacity of existing organizations to enforce the rights granted under the Fair Housing Act and to create two new fair housing enforcement organizations. The focus of funding will be to develop agencies to serve underserved protected classes. There are many areas without a public or private fair housing group within a reasonable distance or where such populations are not being effectively served by established groups. In fiscal year 2000, we will fund the creation of two fair housing agencies to better serve underserved population groups, including those that face language and cultural barriers. The efforts to develop fair housing groups in underserved areas commenced in 1994. Those new groups made a notable difference in the knowledge that people had in those communities of their fair housing rights and responsibilities. Funds will also be provided to enable continued development of at least 10 private organizations with less than 4 years of experience in fair housing enforcement to better assist underserved groups.

4. Performance Indicators: The request will increase support for locally based actions which prevent and eliminate discriminatory housing practices by funding education and enforcement activities, making an estimated 45 awards in 1998, 71 in 1999, and 186 in 2000. The request will fund the establishment of a national fair housing index through the continued funding of a HUD directed audit-based testing program in up to 15 communities in 1999 and up to 20 communities in fiscal year 2000. The request will increase the fair housing presence in communities which currently lack private fair housing groups or substantially equivalent agencies (i.e. underserved areas) by creating new groups--one in 1998, two in 1999, and two in 2000. In fiscal year 2000, the request will, for the first time, jointly fund (through the FHIP and the Fair Housing Assistance Program) fair housing partnerships of up to 30 private fair housing groups and substantially equivalent State and local agencies. This Fair Housing Partnership program will maximize resources and strengthen fair housing compliance at the regional, local and community level.

PROGRAM HIGHLIGHTS AND ACCOMPLISHMENTS

1. Private Enforcement Initiative. Under this Initiative, private groups were funded to support testing projects used to conduct systemic investigations and testing of individual complaints for judicial and administrative enforcement. Tests have been conducted in the rental, sales, mortgage lending and insurance markets. Under this initiative, fair housing organizations are now working together regionally to enforce the fair housing laws. Beginning in 1997, the program has focused on broadening the impact of the program by encouraging full-service, broad-based projects that address all protected classes.

A prime example of FHIP enforcement action occurred in fiscal year 1998, when the Department, working closely with Housing Opportunities Made Equal (HOME) of Richmond, Virginia filed housing discrimination charges against the owners and managers of a Richmond apartment complex, who were accused of refusing to rent to African-Americans. HUD's investigation found several white tenants who stated that the on-site apartment manager boasted to white tenants that she was "keeping the niggers out." The apartment manager had also asked a tenant to stop her son's Black friends from visiting him.

HUD filed civil charges against the apartment management company and the owners of the apartments, alleging violations of the Fair Housing Act for discrimination against prospective black tenants. Additionally, HUD issued an order barring the apartment manager from employment by any company that receives HUD housing assistance for 1 year. The Wedgewood Village Apartments is a HUD-insured development under the Section 236 program, which provides subsidies to landlords who rent to low- and moderate-income families. As a result of these charges, HUD took legal action to end the discriminatory practices at Wedgewood and obtained financial relief for the people harmed by the discrimination.

2. Education and Outreach Initiative. Under the Education and Outreach Initiative, educational materials, pamphlets, brochures, print ads, posters, and videos concerning fair housing have been developed and distributed in many languages. FHIP funds under this initiative have been instrumental in providing fair housing training for the housing industry and the general public. In 1997, funding of projects to reduce community tensions commenced with funding eight local community organizations to address issues that arise when persons seek to expand their housing choices as provided under fair housing laws. This special focus continued in 1998, with most of the funding used to support additional groups in efforts to address tensions such as have occurred when residents of public housing seek to use certificates and vouchers in non-segregated areas or when housing providers seek to develop small group homes for persons with disabilities. The successful practices of these grants can be duplicated in communities throughout the nation.

3. Administrative Enforcement Initiative. This initiative has not been funded since fiscal year 1995.

4. Fair Housing Organizations Initiative. Since the first competition in 1994, 26 new fair housing enforcement organizations were established in areas that were identified as underserved or unserved in fair housing services. In 1998, funds were awarded to establish one more organization. These new organizations have made a substantial difference in the communities they serve and have assisted HUD and certified State and local agencies in documenting and addressing housing discrimination throughout the areas they serve. Competitions in recent years have funded the continued support of these new groups. Additionally, another 41 existing organizations have been funded to enhance their fair housing enforcement activities. In 1997, seven disability advocacy groups were funded under this initiative to develop their capacity to undertake fair housing enforcement activities, thus enabling such organizations to become full-service fair housing enforcement organizations, and seven other groups were assisted in general enhancement of their enforcement activities.

STATUS OF FUNDS

1. Unobligated Balances. The following table compares program obligations with funds available by year:

	ESTIMATE 1998	ESTIMATE 1999 (Dollars in Thousands)	ESTIMATE 2000
Unobligated balance, start of year	$36	...	...
Appropriations	15,000	$23,000	$36,500
Subtotal	15,036	23,000	36,500
Obligations	-15,036	-23,000	-36,500
Lapsed	...	...	...
Unobligated balance, end of year	...	...	...

2. Obligated Balances. The status of obligated balances is as follows:

	ESTIMATE 1998	ESTIMATE 1999 (Dollars in Thousands)	ESTIMATE 2000
Obligated balance, start of year	$30,175	$28,074	$36,244
Obligations incurred	15,036	23,000	36,500
Subtotal	45,211	51,074	72,744
Outlays	-17,137	-14,830	-17,800
Obligated balance, end of year	28,074	36,244	54,944

November 23, 1998
(corrected)

To: Maria Echaveste
Assistant to the President and Deputy Chief of Staff

Josh Gotbaum
Executive Associate Director, OMB

From: Christopher Edley, Jr.
Professor of Law

Subject: Proposed Major Policy Initiatives Related to the Race Book

Below and in the attachment, I offer some elaboration of the four ideas included in my November 11th memorandum to the President, in an effort to assist you and your staff colleagues in framing choices for him. As you know, I hope the President's report/book on race will avoid the laundry-list approach so characteristic of past race-related commissions.

(1) Educational achievement: The President's vision of One America with racial and ethnic justice requires that the nation undertake a more focused, dramatic and sustained effort to tackle the intolerable education achievement disparities between poor and rich, between minority and non-minority. The era of excuses is over -- for everyone.

Recommendation: The President should propose a **Compact for Equal Opportunity in Education** -- quite simply, a new covenant to benefit America's children. In those states and school districts willing to enter into this covenant:

- The federal government will offer new grant-in-aid support and greatly expanded flexibility in the use of current federal funding.

- In return, the state or school district would agree to establish a strong system of accountability for results in closing the measurable achievement gaps between minority and non-minority and between poor and non-poor students in public schools.

- The federal government would not dictate the means used; the state or district could even propose its own goals and timetables, with all the public scrutiny that entails. But the decision to award the federal funds and enter into a Compact would be based on a public review of the applicant's comprehensive strategy by an independent, diverse, peer review panel, including experts in successful school reform strategies.

The Compact bears some similarities to the tiny Comprehensive School Reform Demonstration Program (also known as Obey-Porter; $145 million in FY 1999) , but is far more substantial in scale, less prescriptive, focused on systems (and preferably metro areas) rather than individual school sites, and with accountability for results. The undertaking parallels the President's announced goal of narrowing health disparities. Instead of a formula program like Title I, this substantial "honey pot" would not attract participation from all jurisdictions initially, which is fine.

Flexibility should spur innovation, replication, and tailoring of approaches to fit local needs. We would expect *but would not require* that each Compact for Equal Opportunity in Education include such things as: (a) strategies for breaking through the red tape of various federal, state and local programs in education as well as related fields, and ways to build partnerships across jurisdictional lines of school districts and local government agencies; (b) ways to engage businesses and other local institutions; (c) a strategies focused on quality teachers; (d) creative responses to the needs of immigrant children with limited English skills; (e) ways to promote higher expectations for achievement and to take aggressive action when there is failure; (f) reduce disparities in resources; and (g) plans for accountability at all levels, so that performance is measured fairly and has consequences.

Budget: In FY 2000, a substantial round of planning and startup grants could be funded for $250 million, with a five-year total of $15 billion reaching approximately the size of Title I ($7 billion) in the final year. This is the only expensive discretionary proposal I plan to present to the President.

(2) Jobs: We must break the back of the endemic hyper-unemployment of young adults (18-30) in our most distressed poor communities, eventually eliminating the racial and regional disparities in joblessness.

Recommendation: Propose a **Jobs Gap Challenge Program** for states and metro area jurisdictions to raise the employment rate of young adults in distressed neighborhoods through regional strategies:

- Provide incremental new resources and greatly enhanced flexibility with categorical federal and state programs, for interested regional alliances willing to accept *accountability* for creatively tackling the especially difficult problems of young adult unemployment.
- Flexibly link programs in education, training, job search, transportation, employer networking, day care, housing assistance, drug treatment, and many more. But results must matter.
- Must include public-private partnerships, and strong involvement of schools, parents and community groups.

This builds on the Youth Opportunities Initiative within the Workforce Investment Act of 1998, and the $250 million FY99 appropriation for target grants for comprehensive out-of-school youth employment. But, returning to the President's broader vision of 1992 and 1993, this must be more than pilots and demonstrations, with resources and administrative incentives sufficient to promote the reinvention of federal, state and local delivery systems.

Budget: In FY 2000, expand the Labor Department's program by $250 million, add a complementary HUD program stressing regional approaches at $250 million, a $250 million "Transit-to-opportunity" program to permit coordinated, saturation attack on the problem of spacial mismatch between inner city workers and suburban jobs. This integrated package would grow to approximately the size of the CDBG program in the out years, for a five-year total of $10 billion.

Lesser budget options include: (a) trimming to do fewer grantees while maintaining sufficient sweetness to leverage systemic change; (b) trimming to be a modest Title I supplement while introducing stronger statutory and administrative enforcement of accountability in Title I, including funding sanctions; (c) minimal investment level in the budget, but statement of the ambitious, longer term vision in the President's book.

(3) Economic Development: We can do more to harness the power of financial institutions and markets to create opportunity in distressed communities here at home, just as we try to do abroad through a variety of US and multilateral programs.

Recommendation: Launch a major refocusing of the large housing-related GSEs -- FNMA, Freddie Mac and the Federal Home Loan Bank Board System. In particular, the FHLBB should have a new mission: working side-by-side with CDFIs to fuel economic revitalization in our most distressed communities through affordable financing of a range of community development and job-creating projects. In general, these entities commonly assert that they are "private" and must therefore not be expected to make uneconomic, tightly targeted investments. On the other hand, their profitability flows from their access to a government guarantee or a discount Fed window. The FHLBB is the most egregious at playing loose with the public purpose, making much of its profit through arbitrage. Specifically, the President could propose to:

GSEs and community development

- Adopt new regulatory and statutory provisions: to press the GSEs to focus their housing activity on severely distressed communities; to give the GSEs more effective tools to promote targeted lending for community development purposes.
- Re-charter the FHLBB system to stem abuses (especially arbitrage) and focus on investments and technical assistance that implement *comprehensive strategies for community economic development*, analogous to IMF and World Bank missions in developing nations.
- Make the fiscal impact of implicit Federal subsidies on-budget, on the PAYGO side; for example, FHLBB capital reserves for community development activities could be raised from private investors by offering deep tax incentives.

Budget: To be determined, but could be fashioned on the mandatory side for inclusion in a tax bill, whenever there is one. Could be scaled.

(4) Combating Discrimination and Hate : The fight against ordinary discrimination is not finished. Last year's budget included an increase for some civil rights law enforcement agencies, to help those standing in line waiting for justice.

Recommendation: Sustain that investment and extend it to other enforcers of our basic rights. Specifically:

- New investments for the DOJ Civil Rights Division and the Offices for Civil Rights at the Departments of Education and HHS. (1)
- With the investments, re-engineer enforcement activity to emphasize voluntary compliance, technical assistance, education and dispute resolution.
- Build a DOJ grant-in-aid program to support state attorneys general in their civil rights work, analogous to the HUD grants to public and nonprofit fair housing enforcers. Why (?)
- Major increase in the DOJ Community Relations Service to meet the demand for crisis dispute resolution, while building its work in prevention and community dialogue. (2)
- Restructure and rehabilitate the US Civil Rights Commission, especially its capacity for conducting investigatory hearings and issuing reports.
- Build a federal capacity for authoritative time series data on the extent discrimination in various sectors, starting with housing and entry-level employment.

also work w/USAs to create designated CR officers in each office (like tribal designates)

Budget: Total $100 million in FY 2000. We took unnecessary political criticism for not "rounding up" last year's investment request to $100 million from $86 million.

Budget Summary ($ M)

	FY 2000 NDD	5-yr NDD	5-yr PAYGO
Compact for Equal Opportunity in Education	250	15,000	--
Jobs Gap Challenge	750	10,000	???
Econ. Dev./GSE reform	–	–	5,000
Civil Rights Enforcement & Research	100	750	--

HHS

OFFICE FOR CIVIL RIGHTS

RESOURCE REQUIREMENTS ($000)

	FY 1998 Enacted		FY 1999 President's Budget		FY 1999 House		FY 1999 Senate		FY 2000 Estimate	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
Compliance Activities	187	$16,292	189	$17,285	189	$17,285	---	$ ---	189	$19,141
Legal Services	19	1,729	19	1,781	19	1,781	--	---	19	1,834
Program Management	18	1,638	17	1,593	17	1,593	--	---	17	1,641
Total, OCR	224	$19,659	225	$20,659	225	$20,659	---	$ ---	225	$22,616
Trust Fund Transfers included above		$3,314		$3,314		$3,314		$3,314		$3,314

GENERAL STATEMENT

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

Under the civil rights laws enforced by the Department, providers of health care and social services are prohibited from discriminating on the basis of race, color, national origin, disability, or age. OCR also has limited authority to investigate discrimination based on sex and religion. Recipients of HHS funds include hospitals, extended care facilities, children and family programs (including Head Start), mental health centers, alcohol and drug treatment programs, public assistance agencies, adoption and foster care programs, and senior citizens programs.

The civil rights statutes enforced by OCR include Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Title II of the Americans with Disabilities Act of 1990, the community service requirements of Titles VI and XVI of the Public Health Service Act, and provisions of the Omnibus Budget Reconciliation Act of 1981 relating to nondiscrimination in block grant programs. In addition, OCR is responsible for coordinating government-wide enforcement of the Age Discrimination Act. OCR also coordinates Department-wide implementation of the Section 504 regulation adopted in 1988 that prohibits discrimination on the basis of disability in programs and activities conducted by the Department.

Furthermore, during the past three fiscal years, working with the Administration for Children and Families, OCR has implemented civil rights compliance requirements under the interethnic adoption provisions of the Small Business Job Protection Act of 1996 (SBJPA) intended to prevent racial and national origin discrimination in foster care and adoption placements. This followed two years of activities which implemented similar provisions under the Multiethnic Placement Act of 1994.

EXECUTIVE SUMMARY

OCR is requesting $22,616,000 and 225 FTE for FY 2000. The 225 FTE is the same level that can be supported by the FY 1999 President's Budget. The request is for a $1,957,000 increase (9.5%) above the level included in the FY 1999 President's Budget. It is 15.0% above the enacted FY 1998 level. The increase above the President's FY 1999 budget level is composed of $894,000 for program initiatives and $1,063,000 in built-in increases (e.g., FY 2000 pay raise, annualization of the FY 1999 pay raise, costs associated with a mandatory regional office move and 2.1% inflation in other administrative costs).

During the past two decades, OCR has experienced continuous reductions in FTE and real dollar appropriations. In FY 1980, at the time of the creation of HHS, OCR's budget was $22,004,000, which supported 550 FTE. In FY 1998, the budget is $19,659,000, which is projected to support approximately 216 FTE. OCR's staffing has been reduced by more than 60 percent since FY 1980, while resources (not adjusted for inflation) have decreased by nearly 12 percent. The resource reduction on an inflation adjusted basis is significantly larger. Since the end of FY 1992, the last year prior to this Administration, OCR's FTE has been reduced by 31 percent (-97 FTE) and its budget has been reduced by $2.6 million, a nearly 12 percent reduction.

Under this Administration, OCR has made many adjustments to accommodate diminished resources and has undertaken several initiatives to enhance management efficiency and program effectiveness. These have included issuing an HHS Civil Rights Plan; streamlining and case process re-engineering initiatives including case triage techniques to concentrate on high priority or precedent-setting issues and development of a new Case Resolution Manual to guide compliance activities; implementing alternate dispute resolution techniques to resolve allegations of discrimination; forming partnerships with other Federal Agencies and HHS OPDIVs, State and local governments and/or beneficiary groups; piloting team compliance activities; and incorporating other modern management practices into regional and headquarters operations.

These steps have been undertaken in the absence of sufficient administrative resources to upgrade and re-train staff, cover technology investment/maintenance, and adjust to staffing imbalances caused by buyouts and attrition. For several years, OCR's operational budget has been out of balance, due largely to the need to commit the lion's share of resources to meeting payroll obligations. In FY 1999, if we are to support 225 FTE, the President's Budget would still provide less than one percent of total funds for travel, training and technology.

The travel budget, for example, has been pared down so severely that some regional offices have little more than two to three thousand dollars to support all staff investigation, technical assistance and partnership travel for a year. As a result, some regions have had to curtail travel within their regions even though they have knowledge of potential compliance problems. This has become a more serious problem in regions in which there are expensive air fares and/or distant locations that would require longer stays in order to complete business. For example, in OCR's New York region, a single HIV/AIDS complaint suggested a need for significant outreach and further compliance work. The shortfall in the travel budget precluded the region from working most effectively with advocacy groups and government officials to address compliance needs.

Given virtually no funding for skills development, OCR's staff training on investigative techniques, new team approaches to handling compliance work, new HHS programs, and use of technology has been intermittent and largely dependent on self-trained in-house resources and on-the-job learning. In the area of technology, the office currently still has more than one-third of its headquarters staff working on 386 personal computers, limited desktop access to the Internet, a majority of staff using DOS-based applications, and only one technology expert nationwide to support ten regional offices and headquarters. Some of this technology shortfall may be addressed during FY 1998, but the need to catch up and keep up with other components of the Office of the Secretary and the Department will remain.

The FY 2000 budget request seeks to sustain and build on the FY 1999 President's budget request for OCR, which included an increase of $1,000,000 over the FY 1998 appropriation. The FY 2000 request would continue to support the equal opportunity and non-discriminatory access goals of the Department by restoring balance to OCR's budget in operational areas including program travel, staff training, infrastructure, and the basic administrative building blocks necessary to manage an efficient civil rights program for the Department. The request includes $150,000 in additional travel funds to support outreach and compliance initiatives; $67,000 in program, team and technology training funds; $111,000 to support technology maintenance, applications development, and hardware/software upgrades; $350,000 for consultant services to support methodology and systems design and implementation of the sixth triennial cycle of Community Service Assurance reporting; and $216,000 to support an OS-wide technology enhancement initiative on electronic documents management. The total FY 2000 increase also includes $1,063,000 in mandatory costs for pay raises, rent/utilities, OCR's share of increased central network management charges, a regional office move, and inflation in other object classes.

The request will stem an erosion of OCR's capacity to use technology and skills upgrading necessary to meet the challenges facing a down-sized organization. It will also maintain the staff and constant dollar resources available to enforce nondiscrimination laws in facilities providing health and human services to the American public. It will enable OCR to continue implementation of its Civil Rights Plan and its ambitious Government Results and Performance Act (GPRA)

Annual Performance Plan. The GPRA plan that accompanies this budget identifies four key program areas and issues for priority civil rights attention (i.e., adoption and foster care, managed care, services to limited English proficient persons, and implementation of welfare reform) and seeks to capture and further develop customer-focused outcome measures that will supplement and eventually supplant output measures that concentrate on operational efficiency.

JUSTIFICATION OF ESTIMATES

Restoring balance to OCR's budget will enable the office to effectively support the President's Initiative on Race, the President's Adoption 2002 Initiative, and Secretarial initiatives in health care quality, children's health and welfare to work, while supporting ongoing statutory and regulatory responsibilities to investigate allegations of discrimination and conduct periodic reviews of compliance under all of the authorities that OCR enforces.

Purpose and Method of Operations

OCR enforces nondiscrimination requirements by processing and resolving discrimination complaints, by conducting reviews and investigations, by monitoring corrective action plans, and by carrying out voluntary compliance, outreach and technical assistance activities. OCR is comprised of an investigative and support staff, a legal services staff, and a program management component. The FY 2000 budget request supports 225 FTE on an annualized basis. This is the same as under the President's Budget for FY 1999 and nine FTE above the level that will be supported under the FY 1998 appropriation. The requested level is needed to support more effective enforcement of civil rights laws in the quickly evolving health and human services arena. OCR's priority is to allocate staff to frontline compliance activities, largely in OCR's regional offices. The FTE allocation, including FY 1998 actuals, is shown below:

	FY 1998 FTE	FY 1999 FTE	FY 2000 FTE
Compliance Activities	179	189	189
Legal Services	19	19	19
Program Management	18	17	17
TOTAL	216	225	225

From hospitals and nursing homes to Head Start centers and senior centers, the public expects to receive high quality services without regard to race, color, national origin, disability, age, sex and religion. As the primary defender of the public's right to nondiscriminatory access to and receipt of health and human services, OCR will be working to ensure equal opportunity for all to access such services.

Civil rights protection must keep pace with the rapid changes in health and social services delivery systems to increase the public's confidence that individuals will be treated equitably and fairly as these systems continue to evolve rapidly during the late 1990's (e.g., managed care and enhanced state flexibility through waivers or other reforms to help individuals and families achieve self sufficiency). This will be accomplished through partnerships with other components of the Department of Health and Human Services and with state and local governments in activities such as pre-grant reviews, outreach and technical assistance, data collection and analysis and investigations. The request will support new initiatives for working with state, local, and other partners to ensure that civil rights issues are addressed concurrently with major transformations in health and social services systems.

Civil Rights Plan

In January 1995, the Secretary approved the HHS Civil Rights Plan. During the past four years, this plan has focused on issues that were identified through a broadly consultative planning process that included clients and providers of HHS services and partners within the Department and at the state and local levels. This budget request is an extension of the plan's central concept: that civil rights protection must be an integral part of deliberations on issues as disparate as changes in the delivery of health care, changes in health insurance arrangements, implementation of welfare reform, long-term care, adoption and child welfare, immigration, job training and placement, preventive health initiatives, and the location and integration of services. The Civil Rights Plan and this budget request continue to anticipate challenges resulting from the accelerating changes in the diversity of our population and in the delivery of health and social services. The Government-wide imperative for change reflected in the Government Performance and Results Act (GPRA) and in recommendations of the National Performance Review, the Secretary's Continuous Improvement Program, and the HHS Strategic Plan are also addressed both in the Civil Rights Plan and in this budget request.

Under the Civil Rights Plan, the Department--with OCR leadership--will continue to work on addressing high priority nondiscrimination issues. OCR will use all available enforcement tools to ensure that all persons are served in a nondiscriminatory manner in HHS-funded programs. Consistent with the Civil Rights Plan and program-specific objectives set out in OCR's GPRA Annual Performance Plan, during both FY 1999 and FY 2000, OCR will address concerns related to: nondiscriminatory implementation of the Temporary Assistance to Needy Families (TANF) program and its welfare to work components, continuing growth in managed care plans and the relationship between access for minorities and persons with disabilities and the Secretary's quality of health care initiative, and access to information and services for persons with limited English proficiency. OCR also will seek to ensure nondiscriminatory implementation and provision of services under state Children's Health Insurance Programs (CHIP).

Program Performance Measures - GPRA

The Office for Civil Rights has a single program activity --- ensuring compliance with civil rights laws. The program is accomplished through several compliance methods (i.e., complaint investigations, post-grant reviews and investigations, pre-grant reviews, monitoring and voluntary compliance and outreach) that will be described in greater detail in the workload/output section of this justification. As noted previously, the GPRA plan identifies four key program areas and issues for priority civil rights attention and seeks to develop customer-focused outcome measures that will supplement output measures.

During FY 2000, OCR will continue to develop and refine outcome baselines that will support initiatives to link its GPRA Performance Plan to the HHS Civil Rights Plan goal of increasing access to and participation in HHS programs through the prevention or elimination of unlawful discriminatory barriers and practices. Consistent with the Civil Rights Plan's objective of focusing resources on high priority areas of potential discrimination, OCR's FY 1999 Performance Plan will concentrate on continuing development of appropriate outcome measures to assess the effect of post-grant reviews on reducing race and disability discrimination in access to health and human services. The GPRA Annual Performance Plan also incorporates output measures that serve both as measures of operational efficiency and as intermediate and interim measures of outcomes until OCR has been able to collect, monitor and validate two to three years of facility or other provider-based outcomes to develop population-based outcome measures.

As noted by many civil rights agencies government-wide, civil rights law enforcement does not have a "discrimination rate" that is comparable to crime rate data in the area of criminal law. There currently are no direct measures of the extent of discrimination against which OCR can assess the success of its compliance activities. OCR will pilot test measures that may include the number of persons whose rights have been protected, or the number of persons who have gained access to services who previously were unable to do so on the basis of a provider's noncompliant policy or practice. OCR will work with partners (health and human services providers, community groups, and/or other stakeholders) to review existing data and reports to determine changes in access, including changes in the numbers of minority and/or disabled individuals receiving services. The GPRA Performance Plan will aim at developing and defining performance baselines and targets that can be applied to each of OCR's compliance methodologies (i.e., complaint investigations, post-grant reviews and investigations, pre-grant reviews, monitoring and voluntary compliance and outreach).

HIGH PRIORITY PROGRAM INITIATIVES

In his radio address in which he announced an initiative to reduce what have been longstanding chronic racial and ethnic disparities in health status, President Clinton said:

> We do not know all the reasons for these disturbing gaps. Perhaps inadequate education, disproportionate poverty, discrimination in the delivery of health services, cultural differences are all contributing factors. But we do know this: No matter what the reason, racial and ethnic disparities in health are unacceptable in a country that values equality and equal opportunity for all. And that is why we must act now with a comprehensive initiative that focuses on health care and prevention for racial and ethnic minorities.

In Quality First: Better Health Care for All Americans, the final report of the President's Advisory Commission on Consumer Protection and Quality in the Health Care Industry, the Commission's proposed Consumer Bill of Rights states that "consumers have the right to considerate, respectful care, free of discrimination."

In FY 2000, as it carries out its civil rights compliance and outreach functions, OCR will be actively engaged in helping to resolve the problems noted above through support of several Presidential and HHS-wide initiatives. Twenty percent of OCR's post-grant and voluntary compliance and outreach (VCO) activities will support the Secretary's initiative on children's health through outreach, technical assistance, and reviews and investigations focused on state implementation of the Children's Health Insurance Program (CHIP) or on state and local implementation of the adoption and foster care nondiscrimination provisions of the Small Business Job Protection Act of 1996. These compliance activities will support the Secretary's children's health initiative by seeking to ensure that state CHIP programs employ "methods of administration" that provide civil rights protection for program participants. These activities also will support the President's Adoption 2002 Initiative by speeding up the placement of minority children into permanent and stable family situations. Permanency in placements should also help to improve the quality and continuity of health care for such children.

A further 30 percent of post-grant and VCO activities will support the Secretary's welfare-to-work initiative by ensuring nondiscrimination in implementation of the Temporary Assistance to Needy Families (TANF) program. An estimated 40 percent of the compliance activity increase is projected to support the Secretary's initiative on quality of health care by focusing on civil rights compliance in managed care plans and access to care for minorities, persons with limited English proficiency and persons with disabilities. This workload will include reviews following up on FY 1997 analyses of the fifth triennial cycle of Hill-Burton Community Assurance compliance reporting and a random sample of non-Hill-Burton hospitals subject to Title VI of the Civil Rights Act of 1964.

Overall, 90 percent of OCR's total compliance review, investigation, outreach, partnership, and technical assistance activities are projected to support Presidential and Secretarial initiatives noted above. Each of OCR's compliance activities ensures that individuals are treated in a nondiscriminatory manner by health and human services provider agencies or facilities. OCR's work helps ensure the protection of individual rights and simultaneously supports HHS goals for enhancing the health and well-being of individuals, families and communities by providing effective health and human services. Compliance initiatives, particularly targeted projects, such as reviews or outreach and education activities undertaken in partnership with OPDIVs, state and local governments or providers, are cost beneficial means by which the Department can ensure that these goals may be reached for all Americans. OCR will build on FY 1999 and earlier initiatives to support the HHS Civil Rights Plan and HHS Strategic Plan program objectives.

As described in our GPRA Annual Performance Plan, OCR will monitor providers and develop baselines for customer-focused outcome measures of change starting in FY 1999 and continuing for two to three years. Refinement of the allocation of resources among the priority issues will be

In Quality First: Better Health Care for All Americans, the final report of the President's Advisory Commission on Consumer Protection and Quality in the Health Care Industry, the Commission's proposed Consumer Bill of Rights states that "consumers have the right to considerate, respectful care, free of discrimination."

In FY 2000, as it carries out its civil rights compliance and outreach functions, OCR will be actively engaged in helping to resolve the problems noted above through support of several Presidential and HHS-wide initiatives. Twenty percent of OCR's post-grant and voluntary compliance and outreach (VCO) activities will support the Secretary's initiative on children's health through outreach, technical assistance, and reviews and investigations focused on state implementation of the Children's Health Insurance Program (CHIP) or on state and local implementation of the adoption and foster care nondiscrimination provisions of the Small Business Job Protection Act of 1996. These compliance activities will support the Secretary's children's health initiative by seeking to ensure that state CHIP programs employ "methods of administration" that provide civil rights protection for program participants. These activities also will support the President's Adoption 2002 Initiative by speeding up the placement of minority children into permanent and stable family situations. Permanency in placements should also help to improve the quality and continuity of health care for such children.

A further 30 percent of post-grant and VCO activities will support the Secretary's welfare-to-work initiative by ensuring nondiscrimination in implementation of the Temporary Assistance to Needy Families (TANF) program. An estimated 40 percent of the compliance activity increase is projected to support the Secretary's initiative on quality of health care by focusing on civil rights compliance in managed care plans and access to care for minorities, persons with limited English proficiency and persons with disabilities. This workload will include reviews following up on FY 1997 analyses of the fifth triennial cycle of Hill-Burton Community Assurance compliance reporting and a random sample of non-Hill-Burton hospitals subject to Title VI of the Civil Rights Act of 1964.

Overall, 90 percent of OCR's total compliance review, investigation, outreach, partnership, and technical assistance activities are projected to support Presidential and Secretarial initiatives noted above. Each of OCR's compliance activities ensures that individuals are treated in a nondiscriminatory manner by health and human services provider agencies or facilities. OCR's work helps ensure the protection of individual rights and simultaneously supports HHS goals for enhancing the health and well-being of individuals, families and communities by providing effective health and human services. Compliance initiatives, particularly targeted projects, such as reviews or outreach and education activities undertaken in partnership with OPDIVs, state and local governments or providers, are cost beneficial means by which the Department can ensure that these goals may be reached for all Americans. OCR will build on FY 1999 and earlier initiatives to support the HHS Civil Rights Plan and HHS Strategic Plan program objectives.

As described in our GPRA Annual Performance Plan, OCR will monitor providers and develop baselines for customer-focused outcome measures of change starting in FY 1999 and continuing for two to three years. Refinement of the allocation of resources among the priority issues will be based on feedback from the initial years of compliance initiatives targeted to the plan's and this budget's identified high priority civil rights issues. The allocation of resources to reviews, outreach, partnerships and technical assistance initiatives in each identified issue area will be determined in each year's operational plan based on the latest experiences in the field and on feedback from output and outcomes data collected on prior year targeted activities. Given ongoing improvements in complaint processing, the requested enhancement in travel and other operating budget resources and the maintenance of OCR's FTE at a stable level of 225 will enable OCR to add 60 more outreach and technical assistance activities during FY 2000 (21 percent above FY 1999 and 85 percent above FY 1998). OCR will also be able to start 40 more post-grant compliance reviews and investigations (18 percent above FY 1998 and 12.5% above FY 1999).

The following sections describe programs and issues on which OCR will focus its resources.

Quality of Care and Cost Containment - Managed Care and Home Health Care

Ongoing changes related to increased state flexibility in the organization of health care coverage and services for the poor and disabled receiving Medicaid are likely to continue to expand OCR's responsibilities for ensuring nondiscrimination in the expenditure of federal funds. In support of its GPRA Annual Performance Plan objectives, OCR will need to concentrate its resources on the critical civil rights issues surrounding changes in health care coverage and services that are undertaken in the states. To focus its compliance initiatives effectively in an increasingly complex and rapidly changing health care delivery environment, OCR must work with OPDIV partners to improve research and data collection efforts to support targeted enforcement in this changing arena. In doing so, OCR and its partners would be following through on recommendations in Quality First: Better Health Care for All Americans that call for increased attention to quality measurement and vulnerable populations and to collection of information on the multiple dimensions of quality, including the ease with which health care can be reached in the face of barriers.

HHS and the states have turned to managed care arrangements, either open or closed panels and either gatekeeper or non-gatekeeper models, in order to save money in the Medicaid and Medicare programs. The paradox of managed care for vulnerable populations is that, although such arrangements have the potential to improve access for minority and disabled populations, the underlying premise of managed care is control of over-utilization of services. Because managed care may be predicated, in part, on a belief in "excess" care, such systems raise important issues for populations for whom under-service rather than over-utilization has been the historic problem. OCR needs to be able to assess the effects of managed care on services to minority and disability communities.

OCR compliance initiatives in this arena will focus on managed care plans while simultaneously meeting the triennial Secretarial responsibility to ensure that health care facilities that received Hill-Burton funding are in compliance with their community service assurance. Hospitals, which have been the principal provider required to report in prior triennial Hill-Burton reporting cycles during the past 15 years, have in many cases experienced considerably reduced control over those whom they serve. Under managed care arrangements, many decisions regarding hospitalizations and services and which facilities provide such services have moved from providers to insurers. OCR will look at the effect of managed care arrangements on Hill-Burton facilities and others while carrying out the regulatory requirement for a sixth triennial Hill-Burton reporting cycle during FY 2000. In order to carry out this reporting cycle, OCR is requesting $350,000 in consultant services funding to support methodology and system design, survey mailings and analysis.

During FY 1999 and FY 2000, OCR investigations and reviews will continue to follow up on the FY 1996 Civil Rights Compliance Report. OCR surveyed all Hill-Burton short-term acute care hospitals nationwide and a random sample of 380 non-Hill-Burton hospitals subject to Title VI (race and national origin) compliance requirements. These OCR reviews will be based on analyses completed during FY 1997 and will focus on racial and ethnic minority individuals' access to hospital inpatient services. Ensuring nondiscrimination in the availability of such services and in facilities' outreach to racial and language minority communities will support several Public Health Service Healthy People 2000 risk reduction initiatives. These initiatives will focus on improving minority populations' health status and will support the recommendations concerning quality of care and vulnerable populations made by the President's Commission on Consumer Protection and Quality in the Health Care Industry..

In some cases, Hill-Burton and Title VI reviews will include analysis of the relationship of managed care and potential disproportions in services to minorities. Reviews and technical assistance work in this area will focus on the following issues: marketing and enrollment, member disenrollment, participating provider selection and compensation, quality assurance and utilization review, performance standards, member access to services, treatment of patients with certain conditions and disabilities, state oversight of plan practices and state standards of licensure and performance for Medicaid providers, and state payment methods for services.

As the expansion of managed care continues to change the shape of the health care delivery system, important issues concerning the effect of managed care on access to services for minorities and individuals with disabilities have begun to arise. These issues include possible differential provision of services, differential advertising and marketing of services, differential steering to providers, differential availability of resources, and discrimination in privileges related to participation in managed care systems. OCR will undertake a series of reviews concentrating on ensuring that, as both Medicare and Medicaid expand the use of managed care, racial and national origin minority individuals and persons with disabilities are treated in a nondiscriminatory manner. It is essential to make certain that programs are run and are perceived as being run equitably, as the Department and/or states encourage the use of diverse approaches.

A project in OCR's Chicago Regional Office illustrates how partnerships with the private sector, state officials and advocacy groups can address managed care practices proactively to avoid potentially discriminatory results. Travelers and Immigrant Aid in Chicago raised concerns that managed care plans were marketing services to persons with limited English proficiency (LEP) without providing interpreters or means by which LEP Medicaid beneficiaries could fully understand what they were agreeing to by choosing a particular plan. Working with HCFA, the Office of Minority Health, the Joint Commission on Accreditation of Health Care Organizations, the state Medicaid agency and community groups, OCR addressed marketing issues that could have had an adverse effect on minorities, particularly Asian-Americans. Following up on this activity, the region conducted several reviews during FY 1997 and FY 1998 that focused on managed care and Medicaid clients. In a review involving a major health maintenance organization in Chicago, the office provided technical assistance that resulted in changes in how the HMO's member services and marketing departments inform clients about interpreter services for both persons with hearing disabilities and those with limited English proficiency.

As part of an ongoing review of Pennsylvania's Southeastern region's Medicaid managed care program OCR is working with the state and with local plans to ensure effective communication in marketing, plan selection decisions, and service provision for hearing impaired individuals and persons with limited English proficiency. This effort has resulted in agreements to improve the availability of interpreter and translator services, translated documents, and other information that is accessible to the hearing and visually impaired public and limited English proficient persons.

Another significant area of change in the health care delivery system involves the expansion of home health care services. During FY 1999 and FY 2000, OCR will follow up on investigations undertaken in prior years indicating that some providers have engaged in medical redlining. In such cases, home health care agencies had policies that discouraged or prohibited visits to what they determined to be "high crime" areas. Such policies had a disproportionate adverse impact on minority populations. The result was lack of access to such care for racial and ethnic minority individuals. OCR negotiated agreements with two national home health care chains to prevent such discriminatory practices. OCR initiatives in ensuring nondiscrimination in availability of home health care are essential as this cost-saving service expands in both the Medicare and Medicaid programs.

Implementation of Adoption Nondiscrimination Requirements

Since the passage of the Multiethnic Placement Act (MEPA) and the interethnic provisions of the Small Business Job Protection Act of 1996 (SBJPA), OCR has reviewed the statutes, regulations and published policies of all 50 states. Section 1808 of SBJPA, entitled "Removal of Barriers to Interethnic Adoption", affirms and strengthens the prohibition against discrimination in adoption or foster care placements. It does this by adding to title IV-E of the Social Security Act a state plan requirement and penalties that apply both to states and adoption agencies. In addition, it repeals Section 553 of MEPA, which has the effect of removing from the statute the language that reads, "Permissible Consideration -- An agency or entity [which receives federal assistance] may consider the cultural, ethnic, or racial background of the child and the capacity of the prospective foster or adoptive parents to meet the needs of a child of such background as one of a number of factors used to determine the best interests of a child."

The SBJPA provisions clarified Congressional intent to eliminate completely delays in placement where they were in any way avoidable. Race, color, or national origin may not be used in a discriminatory manner as the basis for any denial of placement, nor may such factors be used as a reason to delay any foster or adoptive placement. The interethnic adoption provisions maintain a prohibition against delaying or denying the placement of a child for adoption or foster care on the basis of race, color, or national origin of the adoptive or foster parent, or the child involved. They further add a title IV-E state plan requirement that also prohibits delaying and denying foster and adoptive placements on the basis of race, color or national origin.

The provisions also subject states and entities receiving funding that are not in compliance with these title IV-E state plan requirements to specific graduated financial penalties. Administration for Children and Families (ACF) and OCR staff have worked on a common protocol for determining compliance with these interethnic adoption provisions, as well as policy and procedures for ACF to use in applying the title IV-E requirements, developing corrective action plans and imposing penalties.

OCR will continue to receive and investigate complaints related to SBJPA, and in addition will conduct independent reviews to test compliance within the states. ACF will also conduct reviews that focus on or include tests of SBJPA compliance. Both agencies will use the common protocol and review standards in order to ensure uniform application of the statute and equitable and effective enforcement.

During the past three years, OCR has worked in partnership with ACF to ensure that states eliminated policies, practices and statutory provisions that posed MEPA and Section 1808 SBJPA compliance problems. Following review of all states' statutes and regulations OCR identified thirty jurisdictions with identified MEPA problems. Corrective actions resulting from OCR's involvement included elimination of: discriminatory preferences in 28 statutes, regulations or policies; discriminatory consideration of race in nine statutes, regulations or policies; discriminatory time requirements in placement in nine statutes, regulations or policies; and discriminatory racial preference in recruitment in five statutes regulations or policies. For example, OCR's work with the states has resulted in elimination of policies that established a time period during which a same race/ethnicity search could occur and policies that established explicit preferences for same race/ethnic placements.

OCR regional offices continue to work with ACF and states to ensure that placement agencies comply with SBJPA requirements. These activities are consistent both with the joint OCR and ACF guidance to staff in their respective regional offices concerning compliance with Section 1808 and the joint letter to state agencies on such compliance. Casework in this area has resulted in several changes in state and local agencies' policies and procedures. For example, in a case in Michigan, OCR found that a supervisor and a new caseworker had misrepresented the facts in a case in which a premature African-American infant had been placed with white foster parents and was subsequently moved to an African-American foster home. In this case, the actions of a supervisor and caseworker circumvented a placement committee that had been created to ensure appropriate placements. Based on the discovered misrepresentation, the recipient fired the supervisor and placed the caseworker on probation and put new procedures in place to prevent recurrence of similar problems. Corrective actions taken as a result of OCR post-grant compliance reviews in this arena have included: modification of profiles of waiting children, editing of foster parent videos to comply with the law, revised training instructions, and renewed compliance assurances.

During FY 2000, OCR anticipates continuing technical assistance to states and placement agencies, ongoing partnership with ACF and others, reviews or investigations of compliance, and follow-up monitoring of corrective action plans associated with implementation of the strengthened adoption nondiscrimination provisions included in the Small Business Job Protection Act of 1996 and in guidelines for OCR and ACF implementation. OCR and ACF are exploring the potential for joint reviews and for OCR participation in ACF state agency reviews. Such activities will require additional travel funds in FY 2000. With enhancement of travel funds and the related increase in post-grant and VCO initiatives, OCR will be able to increase the number of partnerships, outreach initiatives and reviews of compliance that it can undertake, consistent with its GPRA Annual Performance Plan objectives, to increase the number of state and local agencies and adoption and foster care providers found to be in compliance with Title VI, Section 504 and the Americans with Disabilities Act

HIV/AIDS

Although the number of complaints filed on the basis of HIV/AIDS has diminished during the past few years, in part due to OCR's outreach and investigative activities, OCR will continue to investigate allegations of discrimination against persons with HIV or AIDS. During the past several years, a significant proportion of allegations have concentrated on nursing home and home health care access issues. OCR has found that many homes have policies that have effectively denied access to persons with HIV or AIDS. For example, in one case, OCR found that a home's requirement of a large deposit and naming of a guardian for a person with HIV were more extensive requirements than for non-HIV patients. The policy resulted in delayed admission and additional expenses for the patient's family. Corrective action in this case included: changes in policies to ensure that persons with communicable diseases, including AIDS, would be admitted in accordance with state health department rules, deposit requirements that are consistent for all patients regardless of disability, and reimbursement to the family for unnecessary additional expenses.

In a post-grant review, OCR discovered that, based on an outreach initiative in which renal dialysis facilities were advised of their obligations under Section 504 to serve HIV positive patients in a nondiscriminatory manner, a hospital changed its practice of routinely asking for HIV tests prior to admitting patients to its dialysis unit. This is an example of how outreach and technical assistance can reduce the incidence of discriminatory practices.

The Department and the Medicaid program in particular have considerable fiscal reasons for ensuring that persons with HIV/AIDS are not discriminated against in nursing home admissions, home health services and access to other non-acute care services. As persons with HIV/AIDS live longer due to protease inhibitors, AZT, DDI and other drug therapies, it is important to reduce Medicaid costs associated with providing quality care to such patients. Each hospitalization that can be avoided, in some cases through placement in skilled or other levels of nursing home care, can save several thousand dollars. Nondiscriminatory access to other non-acute care outpatient services may also save significant costs by reducing the number of high cost inpatient admissions for persons with HIV/AIDS. For example, in one case OCR used alternative dispute resolution that resulted in continuation of an HIV/AIDS outpatient treatment program at the medical school of a major university. A complaint filed with OCR had alleged that the clinic was going to be closed by the university and that the closure would be discriminatory.

National Origin Nondiscrimination

During FY 2000, as a key objective in its GPRA Annual Performance Plan, OCR will continue to work with health care and social services providers, state and local agencies and HHS partners, to ensure that persons of limited English proficiency (LEP) are not discriminated against on the basis of national origin. Recipients must ensure that policies and procedures do not exclude or have the effect of excluding or limiting the participation of beneficiaries in their programs on the basis of race, color or national origin. Consistent with the facts of each case and the type of service provided, reasonable steps should be taken to provide services and information in languages other than English in order to ensure that LEP persons are effectively informed and can effectively participate in and benefit from programs.

Non-English speaking persons have always faced language barriers. However, in the past 25 years, as immigration from Asia, Central and South America and Eastern Europe has increased, the United States has had to address the issue of access by LEP populations to the nation's health and social services. For over 15 years, OCR has received complaints and conducted compliance reviews and outreach initiatives addressing this issue. OCR has worked with numerous interest groups to help develop workable solutions. For example, the Atlanta regional office has worked with an Atlanta metro area county health department and with community groups to ensure the availability of bilingual staff and interpreter services in public health clinics. Additionally, as a result of this effort, a major area medical center opened a 24 hour outpatient center staffed by bilingual medical and administrative staff to serve the growing population of Hispanic and Asian persons with limited English proficiency living in the area.

OCR anticipates a critical need for outreach and technical assistance prior to undertaking systematic reviews and investigations of compliance in this arena. In FY 1998, OCR issued a staff guidance memorandum that clarified requirements for provision of services to persons with limited English proficiency. Each OCR regional office and headquarters held outreach meetings with providers, advocacy organizations, state and local officials, and HHS OPDIVs to present the guidance memorandum. Since these presentations, OCR has had many requests for additional information and presentations including, for example, a presentation to the Governor of Maine and his Cabinet. In New York, the Greater New York Hospital Association has indicated its interest in working with OCR's regional office in a partnership to reduce discrimination based on national origin and against limited English proficient persons. The guidance memorandum has generated additional requests for technical assistance and has stimulated interest in pursuing joint activities and partnerships to ensure compliance. Responding to this anticipated increased demand will require additional travel resources in FY 2000 to support regional forums, implementation of partnerships both within the Department and with organizations representing service providers and recipients, provision of technical assistance and training, and initiation of reviews of compliance with Title VI.

Temporary Assistance to Needy Families - Welfare Reform

As states and local governments continue implementation of the Temporary Assistance to Needy Families (TANF) welfare reform program, advocacy organizations have expressed concerns that racial and language minorities and persons with disabilities may be subjected to disparate treatment in assignment to work, training and education programs. OCR will work in partnership with ACF and others to ensure that programs are implemented in a nondiscriminatory manner. Examples of conduct that may violate Title VI would include circumstances in which a predominantly minority community is provided lower benefits, fewer services, or is subject to harsher rules than a predominantly nonminority community. Potential Section 504 noncompliance could include failure to provide reasonable accommodation in job training to a blind trainee (e.g., failure to provide instructional materials in braille). These and other examples of potential discrimination are included in an interagency guidance letter that will be sent to state and local agencies, advocacy organizations, and others. This guidance is likely to stimulate additional need for technical assistance and requests to pursue joint activities and partnerships to ensure compliance. Responding to this anticipated increased demand will require additional travel resources. As the restructuring of welfare agencies proceeds, it is essential that either the civil rights compliance components and/or the methods developed over the past three decades for ensuring that civil rights issues were addressed in program delivery are retained as integral aspects of state and local program implementation and oversight.

One area in which OCR Regional Offices have noted potential compliance problems that may impede some TANF recipients from making the successful transition to work is in the availability of day care for children with a variety of disabilities. In cases involving dismissal or non-acceptance in programs, OCR has reviewed and taken corrective actions to ensure that appropriate individualized assessments and physical and other accommodations are considered in determining acceptance and/or retention in a day care program.

With enhancement of travel funds and the related increase in post-grant and VCO initiatives, OCR will be able to increase the number of partnerships, outreach initiatives and reviews of compliance that it can undertake, consistent with its GPRA Annual Performance Plan objectives, to increase the number of state and local agencies and TANF service providers found to be in compliance with Title VI, Section 504 and the Americans with Disabilities Act.

Children's Health Insurance Program (CHIP)

The Office for Civil Rights has a significant role to play during the implementation of the greatest expansion of health care coverage since the advent of Medicare and Medicaid in the 1960's. The Children's Health Insurance Program being implemented in various forms by the states, is intended to reach millions of children not currently covered by health insurance. During the past few months, OCR has worked with HCFA and HRSA staff in reviewing initial state plan proposals. To date, OCR has received 40 plans for review and has completed 28 such reviews noting problems with regard to enrollment, outreach, provision of services, availability of materials, and site accessibility for persons with visual and hearing disabilities and persons with limited English proficiency. OCR plans to follow up with state agencies as they implement their plans to ensure that they incorporate methods of program administration that guarantee effective civil rights protection for program participants, including nondiscrimination policies, grievance and complaint procedures, translation of important program documents, use of systems for identifying interpreter services and auxiliary aids needed by clients and their families, and training of employees on Title VI and Section 504/ADA requirements. These outreach and partnership initiatives aimed at achieving voluntary compliance will require additional travel resources as an increasing number of states implement CHIP during the next two years. In addition, by FY 2000, OCR anticipates conducting post-grant reviews and investigations where information has come to our attention that compliance problems may exist.

COMPLIANCE ACTIVITIES

OCR will implement the high priority civil rights initiatives described above through a comprehensive compliance and enforcement program. OCR's compliance activities are as follows:

- Complaint Processing
- Reviews and Investigations
- Monitoring
- Voluntary compliance and outreach activities

Of the total 225 FTE in the request, 189 FTE (84 percent) are to be allocated to compliance activities. OCR plans to allocate just under 58 percent of investigative staff time to conduct post-award and pre-grant reviews, review-related and other non-complaint generated investigations, and voluntary compliance and outreach (VCO) activities in FY 2000. This represents an increase in the proportion of investigators' time allocated to such activities in FY 1998 and FY 1999 (56 percent). In addition, OCR will continue to restructure and refine the review and investigation process to expand coverage of the Department's program recipients. Productivity gains in processing the workload will also be relied on to increase case closures and the number of reviews, investigations, and VCO projects conducted in FY 2000.

The table on the following page compares the actual distribution of FTE among the compliance activities in FY 1998 to the projections for FY 1999 and FY 2000:

	FY 1998 FTE	FY 1999 FTE	FY 2000 FTE
Complaint Processing	78	83	80
Reviews & Investigations	80	78	79
Monitoring	5	4	4
Voluntary Compliance and Outreach	16	24	26
TOTAL	179	189	189

Complaint Processing

OCR's policy is to investigate all complaints of discrimination within our jurisdiction that are filed with the office. This policy is based on the Department's regulations implementing the various nondiscrimination statutes and the Department of Justice coordinating regulations requiring compliance agencies such as OCR "to establish procedures for the prompt processing and disposition of complaints" alleging discrimination (28 CFR Section 42.408(a)).

OCR complaint investigations have supported HHS goals for improving the health status of all Americans, including racial and ethnic minorities. In particular, ensuring nondiscriminatory access to hospital services, including clinic services, can assist in:

- reducing infant mortality rates among African-Americans and Hispanic-Americans,
- reducing the number of African-American low birthweight babies,
- increasing cancer examination and prevention services to Hispanic-Americans, and
- increasing immunization and infectious diseases services to Asian-Americans, Native Hawaiians and Other Pacific Islanders.

OCR investigations have resulted in hospitals' changing clinic locations or hours so that minority women gained access to pregnancy-related services that were not previously available. Where such access has resulted in first trimester services, such services have likely reduced the potential for low birthweight deliveries and improved the health prognosis for such children far into the future. Given the high cost of neonatal care for each low birthweight baby ($250,000-$500,000), improving access to early intervention and care, as noted in this example of OCR investigative and outreach initiatives, is also highly cost beneficial.

A case in a Midwestern hospital shows how OCR complaint investigations can help to improve access to health care services and the quality of such services for national origin minorities. Prior to OCR involvement, more than half of the hospital's patients who were limited English proficient used family members or friends as interpreters when communicating with medical and other hospital staff. OCR's experience is that using trained interpreters in the medical setting leads to more effective provision of quality care. After OCR's investigation, corrective actions were taken to ensure that interpreter services were provided by the facility in a timely manner. The facility policy was changed so that family members or friends were used to interpret only when expressly requested by the patient. Since the policy change, only 14 percent of limited English proficient patients used a family member or friend to communicate with medical personnel.

OCR complaint investigations have also resulted in enhancing services for persons with disabilities, while addressing cost containment concerns. For example, substantial cost savings can be generated through successful arrangements for independent living for persons with disabilities. A case in OCR's Kansas City office addressed the denial of home chore services to persons with developmental disabilities. The state in question had a policy under which a person with a physical disability could receive such services, but a person with both a physical and developmental disability could not receive home chore services. The state agency changed its regulations and agreed to change adult day care and transportation regulations so that persons with multiple disabilities, including developmental disabilities, can retain a maximum degree of independence and avoid expensive nursing facility care.

OCR complaint investigations in the area of disability address crucial issues about equity of services in the context of an aging population. For example, a complaint alleged that a nursing home had involuntarily discharged a patient with Alzheimer's disease thereby discriminating on the basis of disability. OCR secured corrective action including an offer of re-admission, as well as agreement to train staff on the care of Alzheimer's residents, to reimburse the patient for expenses incurred as a result of the discharge, and to maintain data on persons transferred and the reasons for such transfer or discharge. This facility also agreed to change its policy that effectively barred any patients with a communicable disease and to work with the state Health Department in admitting such patients on a case-by-case basis.

OCR's activities associated with guidance memorandums on limited English proficiency, interethnic adoption, and welfare reform and civil rights may affect complaint receipts in either direction - up or down. OCR's voluntary compliance and partnership activities are aimed at reducing incidences of discrimination over the longer term. However, informing the public, advocates, and providers of civil rights requirements may also stimulate an increase in complaints. OCR's management activities focusing on strengthening regional investigative capacities also may stimulate additional complaints and other requests for compliance assistance. As regional offices have continued to lose staff over the past several years, some have reached investigations staffing levels that have resulted in delays in case processing and reduced visibility for civil rights issues. In cases in which advocacy organizations and individuals have perceived a diminished capacity for rapid response, such perceptions have resulted in fewer complaint filings. OCR intends to manage operations with the requested enhanced budget to restore the public's confidence that complaints will be addressed quickly and effectively.

OCR's complaint receipts during the past decade have fluctuated considerably within a range of from 1,600 to 2,300 receipts annually. Complaint receipts peaked in FY 1992, shortly after implementation of the Americans with Disabilities Act. Since FY 1994, the number of receipts has decreased annually. However, during the most recent twelve month period, receipts have shown an upward trend. Based on regression analysis of these data, OCR projects receiving 1,570 complaints during FY 1998, 1,655 in FY 1999 and 1,710 in FY 2000.

In FY 1998, OCR projects completing 1,648 discrimination complaint cases, closing 76 percent of its complaint workload. This is a slightly higher percentage of complaint closures than was experienced during FY 1997. As a result of ongoing efforts to streamline complaint handling through changes in investigative processes, use of negotiated resolution and alternative dispute resolution, OCR expects continuing productivity increases and faster responses to complainants during both FY 1999 and FY 2000. Due to the substantive changes in complaint processing that were incorporated into OCR's streamlined Case Resolution Manual in FY 1996 and issues-related guidance that will be incorporated in a new Compliance Manual, OCR projects that, despite increases in receipts, the inventory of open complaints will remain constant in nominal terms comparing the end of FY 1998 to FY 1999 and FY 2000. OCR projects that the ending FY 2000 inventory will be 13.3% lower than the inventory at the beginning of FY 1998. Closures as a percentage of total workload will increase marginally from FY 1998 to FY 2000. Prudent case management and the application of new complaint processing techniques (e.g., triage, teaming, and ADR), will enable OCR to continue to focus resources on other compliance activities that address discrimination systemically. The following table summarizes the FY 1998 complaint workload and projects FY 1999 - FY 2000 activity:

Complaint Workload

Status/Activity	FY 1998	FY 1999	FY 2000
Beginning Inventory	599	521	520
Complaints Received	1,570	1,655	1,710
Total Workload	2,169	2,176	2,230
Complaints Closed	1,648	1,656	1,711
Ending Inventory	521	520	519

Reviews and Investigations

OCR conducts reviews and investigations as follows:

- Reviews of Compliance -- A review examines the compliance status of a program recipient. Reviews may be comprehensive or of limited scope with respect to the compliance issues involved and the statutory authorities applied.

- Investigations -- When a review, complaint case, or other information indicates serious problems of possible discrimination, OCR conducts an investigation.

- Pre-grant reviews -- A pre-grant review is conducted when health care facilities seek approval from the Department's Health Care Financing Administration to participate in the Medicare program.

During the past three years, OCR has continued to modify its compliance review approach to provide greater flexibility, to expand coverage, and to make it more consistent with regulatory provisions. Under the regulations implementing the nondiscrimination laws, OCR must periodically review the policies and practices of program recipients to assess compliance. In addition, the regulations require an investigation whenever a review, report, complaint, or other information indicates a possible failure to comply with nondiscrimination requirements. A pro-active review and investigation program enables OCR to target its compliance resources to address priority civil rights issues. This enables more effective prevention efforts than can be accomplished through handling of issues raised by complainants alone.

OCR estimates that a total of 446 post-grant reviews and investigations of compliance will be conducted in FY 2000, including carry-in cases and new starts. OCR expects to complete a total of 354 of these reviews and investigations by the end of the fiscal year. This is an increase of nearly 12 percent in the number of closures. Reviews and investigations will focus on supporting major HHS goals on quality of health care, welfare reform, and children's health, while supporting Presidential initiatives on adoption and on race.

An example of a review that supported the adoption initiative was conducted in our Atlanta regional office during FY 1997. OCR worked in concert with ACF staff to plan and conduct an investigation of foster care placements in Florida. The activity also included training of Florida state agency staff on how to conduct these investigations. State staff conducted interviews and reviewed case records while on-site with OCR staff at both the state and county levels. This effort resulted in issuance of a noncompliance "letter of finding" that the state Department of Children and Families impermissibly used race in foster care placements.

OCR estimates that the total workload for post-grant reviews and investigations will increase by more than 13 percent between FY 1998 and FY 2000 and, as noted, the number of closures will increase commensurately. The following table summarizes the FY 1998 compliance review workload and projects FY 1999 and FY 2000 activity:

Reviews of Compliance and Investigations

Status/Activity	FY 1998	FY 1999	FY 2000
Beginning Inventory	90	83	88
New Reviews/Investigations	305	320	360
Total Workload	395	403	448
Actions Completed	312	315	354
Ending Inventory	83	88	94

Pre-grant reviews are mandated when health care providers such as nursing homes and home health agencies apply to participate in the Medicare program. When providers seek Medicare certification, OCR conducts a pre-grant review to determine whether they will be able to comply with Title VI, Section 504, and the Age Discrimination Act. Such reviews are an effective means for working with health care providers because potential civil rights concerns can be identified prior to receipt of federal financial assistance. With the technical assistance that accompanies these reviews, health care providers can take steps to avoid future allegations of discrimination.

The number of pre-grant reviews increased substantially during the last five years. Early during FY 1998, while a moratorium on approval of new home health service providers was in effect, the number of such reviews dropped considerably. However, based on regression analysis of pre-grant receipt data covering the past 36 months, OCR projects that FY 1999 receipts will return to the average level of receipts between FY 1993 and FY 1997 (3,560) and that in FY 2000 receipts will increase by slightly more than one percent to 3,605. OCR projects assigning 41 FTE to pre-grant processing in FY 2000, the same number of FTE as in FY 1999. Efforts to work cooperatively with states and other partners to ensure civil rights certification prior to receipt of federal financial assistance will be implemented as voluntary compliance and outreach projects.

The following table summarizes the pre-grant review workload in FY 1998 and gives projections for FY 1999 - FY 2000:

Pre-Grant Reviews

Status/Activity	FY 1998	FY 1999	FY 2000
Beginning Inventory	1,329	988	1,046
New Reviews	3,125	3,560	3,605
Total Workload	4,454	4,548	4,651
Reviews Completed	3,466	3,502	3,662
Ending Inventory	988	1,046	989

Monitoring

The purpose of monitoring is to ensure that program recipients carry out the measures set forth in corrective action plans negotiated by OCR. Corrective action plans are negotiated to resolve compliance problems that are uncovered or verified during a review or a complaint or post-grant investigation. Monitoring involves reviewing reports or information submitted by program recipients. In some instances on-site visits may be necessary to assess a recipient's progress in implementing corrective measures. OCR anticipates that monitoring actions will be necessary in 694 cases and 736 cases in FY 1999 and FY 2000 respectively. To support this activity, OCR plans to allocate four FTE in FY 2000.

Pre-grant reviews are mandated when health care providers such as nursing homes and home health agencies apply to participate in the Medicare program. When providers seek Medicare certification, OCR conducts a pre-grant review to determine whether they will be able to comply with Title VI, Section 504, and the Age Discrimination Act. Such reviews are an effective means for working with health care providers because potential civil rights concerns can be identified prior to receipt of federal financial assistance. With the technical assistance that accompanies these reviews, health care providers can take steps to avoid future allegations of discrimination.

The number of pre-grant reviews increased substantially during the last five years. Early during FY 1998, while a moratorium on approval of new home health service providers was in effect, the number of such reviews dropped considerably. However, based on regression analysis of pre-grant receipt data covering the past 36 months, OCR projects that FY 1999 receipts will return to the average level of receipts between FY 1993 and FY 1997 (3,560) and that in FY 2000 receipts will increase by slightly more than one percent to 3,605. OCR projects assigning 41 FTE to pre-grant processing in FY 2000, the same number of FTE as in FY 1999. Efforts to work cooperatively with states and other partners to ensure civil rights certification prior to receipt of federal financial assistance will be implemented as voluntary compliance and outreach projects.

The following table summarizes the pre-grant review workload in FY 1998 and gives projections for FY 1999 - FY 2000:

Pre-Grant Reviews

Status/Activity	FY 1998	FY 1999	FY 2000
Beginning Inventory	1,329	988	1,046
New Reviews	3,125	3,560	3,605
Total Workload	4,454	4,548	4,651
Reviews Completed	3,466	3,502	3,662
Ending Inventory	988	1,046	989

Monitoring

The purpose of monitoring is to ensure that program recipients carry out the measures set forth in corrective action plans negotiated by OCR. Corrective action plans are negotiated to resolve compliance problems that are uncovered or verified during a review or a complaint or post-grant investigation. Monitoring involves reviewing reports or information submitted by program recipients. In some instances on-site visits may be necessary to assess a recipient's progress in implementing corrective measures. OCR anticipates that monitoring actions will be necessary in 694 cases and 736 cases in FY 1999 and FY 2000 respectively. To support this activity, OCR plans to allocate four FTE in FY 2000.

Voluntary Compliance and Outreach

Through voluntary compliance activities, OCR provides compliance information to beneficiaries and technical assistance to recipients of HHS funds to encourage voluntary compliance with non-discrimination laws and regulations. Technical assistance is made available through training, by developing and disseminating compliance information, and by providing recipients, recipient groups, and state and local officials with guidance on how to comply voluntarily with applicable civil rights laws. Initiatives undertaken with state and local governments, provider and beneficiary organizations and with advocacy groups are intended to prevent civil rights noncompliance through identification of issues and early intervention. As indicated previously in describing initiatives related to interethnic adoption and foster care, services to limited English proficient persons, and welfare reform, the issuance of guidance memoranda on civil rights compliance is expected to generate additional requests for technical assistance and to stimulate further partnership activities with state and local governments, providers and advocates.

OCR will allocate 26 FTE to voluntary compliance and outreach in FY 2000. This is ten more FTE than in FY 1998 and two more than during FY 1999. The assignment of staff time to voluntary compliance and outreach and partnership activities represents a commitment by OCR to listen to our customers and work in collaboration with our internal and external partners to focus our resources to address acute and chronic civil rights problems. With this allocation OCR will:

- Work with recipient state agencies to plan and initiate projects, including design and operation of cooperative pre-grant certification processes, to encourage sub-recipient compliance with nondiscrimination standards;

- Work with HHS staff, program providers, provider groups, advocacy groups, state agencies and others to develop and monitor remedial plans;

- Work with partners to prepare and distribute "methods of compliance" and "methods of administration" for state agencies to self-monitor and help state and local partners to monitor local efforts to achieve and maintain sub-recipient compliance;

- Bring together advocacy groups, providers, states and community leaders to address specific civil rights issues; and,

- Work jointly with HHS Operating Divisions, advocacy groups, provider organizations and others to produce program or industry-specific materials for use by grantees and their employees to help them to avoid civil rights problems.

VCO activities with HHS grantees increase their capacity to recognize, prevent and, as needed, resolve civil rights compliance problems. At the same time, OCR learns from such grantees and develops guidance and technical assistance based on such feedback. The following are examples of recent successful VCO activities that involved partnerships with state agencies and/or HHS OPDIVs.

OCR trained state agency staff on civil rights requirements and responsibilities in projects involving the Tennessee Department of Mental Health and Mental Retardation, the Tennessee Health Department (responsible for TENNCARE, Tennessee's Medicaid managed care program), the California Department of Social Services and the New York Department of Health. The training covered how to conduct compliance reviews and complaint investigations to ensure that their clients receive nondiscriminatory treatment and services. As a result, program staff in the state agencies will include civil rights compliance assessments in survey and certification and other periodic program reviews.

OCR's Dallas regional office conducted a special project under which the heads of all 26 state agencies in the region that receive HHS funds signed comprehensive civil rights "methods of administration" (MOAs) incorporating civil rights issues, policies and procedures into program planning and implementation by the agencies and their sub-recipients. The same office, in partnership with HCFA, HRSA, ACF, and OGC, the Food and Nutrition Service of the Department of Agriculture, the Arkansas Department of Human Services and the Arkansas Governor's Office planned and conducted a civil rights conference that attracted over 1,000 people from all five states in Region VI as well as several other states. Workshops at the conference focused on the application of civil rights laws to new state programs. Both the conference and the MOA project will help to enhance equal opportunity efforts in the design and implementation of all HHS programs, particularly new initiatives under TANF, managed care, CHIP and SBJPA.

OFFICE OF THE GENERAL COUNSEL (CIVIL RIGHTS)

OCR's budget request includes funds to support the Civil Rights Division of the Department's Office of the General Counsel. Division attorneys in headquarters and in the regional offices provide OCR staff with legal advice and assistance in interpreting and applying the nondiscrimination laws and regulations.

Specifically, the Civil Rights Division: (1) prepares cases for administrative enforcement proceedings and refers cases to the Department of Justice for enforcement; (2) assists the Department of Justice in litigating court cases involving civil rights issues and health and human services programs; (3) reviews or assists in developing civil rights regulations, policy interpretations, and guidelines; (4) issues legal opinions at OCR's request; and (5) provides legal guidance in applying the Privacy Act, the Freedom of Information Act, and other statutes and regulations with which OCR must comply.

OCR will allocate 19 FTE to legal services in FY 2000. This includes legal staff both in OCR headquarters and regional offices. OCR anticipates that at the planned FTE level the Civil Rights Division will be able to provide necessary legal assistance in connection with letters of findings, corrective action plans, regulations, legal interpretations, guidelines, and technical assistance materials. In FY 2000, the attorney staff is expected to provide legal advice in connection with investigated complaints, reviews, and corrective action plans, and litigation matters. In addition, the attorney staff will review potential enforcement actions, represent OCR at administrative hearings and appeals, and provide general legal guidance regarding court decisions and the scope and applicability of statutory and regulatory requirements.

PROGRAM MANAGEMENT

This component provides OCR with overall policy direction and management services needed to plan and accomplish program objectives. Management determines compliance and enforcement priorities, including program and long-range planning; provides policy direction; allocates staff to priority objectives; monitors and evaluates progress; makes final decisions on OCR's compliance standards, procedures, proposed regulations and policy determinations; formulates and executes the budget; provides a full range of administrative services in areas such as Information Resources Management, procurement, property management, supplies, and personnel; and ensures coordination with departmental officials and with other executive branch departments and agencies.

OCR will assign 17 FTE to management functions in FY 2000, one less than during FY 1998 and the same level as projected for FY 1999. This staff will continue to provide the office with the full range of administrative services, provide overall policy direction and program coordination, and implement and monitor operating plans. FTE allocated to these functions will have been reduced by just under 20 percent from the FY 1995 level. This is consistent with the streamlining goals of the National Performance Review to reduce administrative controls

Office for Civil Rights
Summary of Changes - FY 2000 Budget Request
(dollars in thousands)

Program Highlights:	Dollars	FTE
FY 1999 President's Budget, Discretionary Program Level	$20,659	225
Proposed FY 2000 Program Changes:		
Mandatory Increase to Program Level	+1,063	---
Compliance Program Travel	+150	---
Compliance Survey (Hill-Burton Community Assurance)	+350	---
Compliance and other Program Support Training	+67	---
Electronic Document Management	+216	---
Equipment, Software and Maintenance Support	+111	---
Total Program Changes Over FY 1999 President's Budget	+1,957	---
Total FY 2000 **OCR Budget Request**	$22,616	225
ANALYSIS OF COMMON COSTS (non-add within totals above)		
Annualization FY 1999 Pay Raise/Other Pay	+251	---
FY 2000 Pay Raise	+615	---
Regional Office Move (Chicago)	+75	---
Central Network Management Shared Cost Increase	+27	---
Rent/Utilities and other Inflation	+95	---
Total Mandatory Increases	+1,063	---

FAX TRANSMISSION

OFFICE FOR CIVIL RIGHTS
DEPARTMENT OF HEALTH & HUMAN SERVICES

Date: 12/10/98

TO: Julie Fernandez

Pages w/ cover: 28

Telephone:

FAX # 456-5581

COMMENTS:

FROM: DAVID Garrison
Office for Civil Rights
Department of Health and Human Servies
200 Independence Avenue, SW
Washington, D. C. 20201

Room No./Bldg.
522A - Humphrey

Phone No.
202-619-0403
Fax
202-619-3437