



**DEPARTMENT
of HEALTH
and HUMAN
SERVICES**

**Fiscal Year
2008**

Office for Civil Rights

*Justification of
Estimates for
Appropriations Committees*



DEPARTMENT OF HEALTH & HUMAN SERVICES

OFFICE OF THE SECRETARY

Voice - (202) 619-0403
TDD - (202) 619-3257
Fax - (202) 619-3818
<http://www.hhs.gov/ocr/>

Director
Office for Civil Rights
200 Independence Ave., SW Rm 506F
Washington, DC 20201

Dear Reader:

I am pleased to present the Office for Civil Rights' (OCR) performance-based Fiscal Year 2008 Congressional Justification. Consistent with the Secretary's policy guidance, this budget request continues support for the President's and Secretary's priority initiatives and reflects the goals and objectives in the Department's Strategic Plan. This justification includes the FY 2008 Annual Performance Plan and FY 2006 Annual Performance Report as required by the Government Performance and Results Act of 1993, along with a direct link of the budget discussion with program performance.

OCR's requested budget will ensure our ability to protect the public's right to equal access and opportunity to participate in and receive services in all the Department of Health and Human Services' (HHS) programs without facing unlawful discrimination, and to protect the privacy of individuals with respect to their personal health information. OCR's performance objectives are in line with HHS's objectives for transforming the healthcare system and protecting life, family, and human dignity, including: increasing access to high quality, effective health care; promoting the economic self-sufficiency and well-being of vulnerable families, children and individuals; and reducing disparities in ethnic and racial health outcomes.

Lastly, our Program Assessment Rating Tool (PART) submission to the Office of Management and Budget demonstrates our continued commitment to effectively and efficiently use our human capital to achieve results in support of our nondiscrimination and privacy compliance mission. As demonstrated in our budget submission, OCR has made significant contributions with measurable results in support of HHS-wide initiatives to improve the health and well-being of the public. To keep up this momentum during FY 2007 and FY 2008, as in FY 2006, individual performance plans at all levels of OCR's leadership and staff will be focused on achieving the goals and objectives set out in our performance plan and PART submission. In this way, everyone in OCR will be working together to achieve our shared objectives in protecting civil rights and the privacy of health information.

A handwritten signature in black ink that reads "Winston Wilkinson".

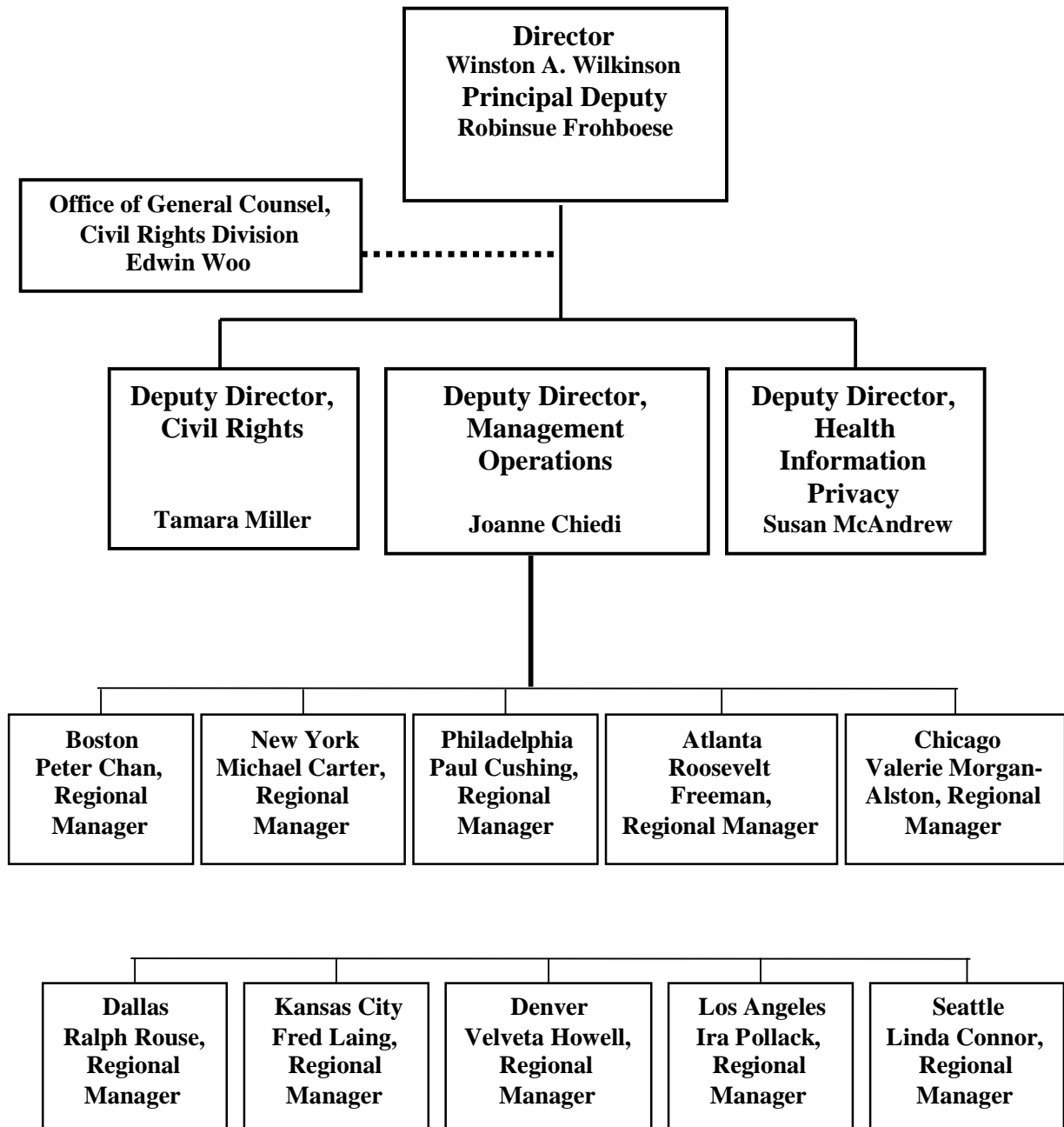
Winston Wilkinson, J.D.
Director

(This page intentionally left blank)

**DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE FOR CIVIL RIGHTS (OCR)**

FY 2008 Budget Table of Contents	Page
Organization Chart.....	4
PERFORMANCE BUDGET OVERVIEW	
Statement of OCR Mission.....	5
Discussion of OCR Strategic Plan.....	5
Overview of OCR Performance.....	9
Overview of OCR Budget Request	12
BUDGET EXHIBITS	
Appropriations Language.....	13
Amounts Available for Obligation	14
Summary of Changes.....	15
Budget Authority by Activity.....	16
Budget Authority by Object	17
Salaries and Expenses.....	18
Authorizing Legislation	19
Appropriations History Table.....	20
BUDGET NARRATIVE	
Activity Header Table.....	21
Statement of the Budget Request.....	21
Program Description	21
Rationale for the Budget Request.....	22
Performance Analysis.....	55
PERFORMANCE DETAIL	
Effects of the Continuing Resolution on Performance Targets	57
Changing Performance Targets and Reporting Performance Measures.....	58
Summary of Performance Targets and Results	59
Detail of Performance Analysis.....	60
Changes and Improvements over Previous Years	64
PART Summary Table CY 2002 – CY 2006	65
SUPPLEMENTAL MATERIAL	
Detail of Full-Time Equivalent Employment (FTE).....	67
Detail of Positions.....	68
Performance Budget Crosswalk	69
Full Cost Summary Table	70
Detail of Full Cost	70
<u>SPECIAL REQUIREMENTS</u>	
Financial Management Systems	73
HHS Consolidated Acquisition System	74
Information Technology.....	75
Enterprise Information Technology.....	76

Department of Health and Human Services Office for Civil Rights



PERFORMANCE BUDGET OVERVIEW

Statement of OCR Mission

The Department of Health and Human Services (HHS), through the Office for Civil Rights (OCR), promotes and ensures that people have equal access to and opportunity to participate in and receive services from all HHS programs without facing unlawful discrimination, and that the privacy of their health information is protected while ensuring access to care. Through prevention and elimination of unlawful discrimination and by protecting the privacy of individually identifiable health information, OCR helps HHS carry out its overall mission of improving the health and well-being of all people affected by its many programs.

By statute and regulation, OCR has the responsibility to be a key steward of the integrity of any HHS program for which Federal financial assistance has been authorized, to ensure that such funds do not support unlawful discrimination. HHS administers a nearly \$660 billion budget from which Federal financial assistance is provided to a vast array of health and human service programs. HHS programs are administered by and through a wide array of government, non-profit, and private entities. These programs and services affect the quality of life and well-being of virtually everyone in the United States. In addition, under the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, OCR has responsibility for ensuring the privacy practices of several million health care providers, plans, and clearinghouses, including those that receive Federal financial assistance through HHS, adhere to federal privacy requirements. Within this context, OCR's mission and responsibilities are broad and inclusive and, necessarily, its activities involve many dimensions and challenges given the number of authorities for which OCR has enforcement responsibility.

Discussion of OCR Strategic Plan

OCR's civil rights and health information privacy compliance objectives and cooperative activities within the Department play a crucial role in support of all eight goals of the HHS Strategic Plan. The protection of civil rights and individually identifiable health information advances is integral to the achievement of a wide spectrum of the HHS strategic goals, as outlined on page 8. OCR also supports a majority of the HHS Twenty Department-wide Objectives including, but not limited to:

- Promoting Health Information Technology by stimulating a sustainable electronic health information exchange that supports consumer privacy and risk protections;
- Emphasizing Faith Based and Community Solutions by supporting community-based approaches to reduce health disparities that affect racial, ethnic, and under-served populations;
- Broadening Health Insurance and Long-Term Care Coverage by increasing the awareness of the need for long-term care planning and expanding the options available to consumers, including community based care;
- Modernizing Medicare by increasing the number of individuals transitioned from institutions to communities; and

- Enhancing Emergency Preparedness and Response by expanding the use of the HIPAA Privacy Rule interactive tool for emergency planners and raising awareness of special needs populations, including persons with disabilities and those who have limited English proficiency.

OCR has two strategic goals to accomplish its mission. OCR's first strategic goal is to ensure compliance and to increase awareness and understanding of Federal laws requiring nondiscriminatory access to HHS programs and protection of the privacy of individually identifiable health information. This goal has two long-term measures and targets: (1) to increase the rate of resolution for civil rights and privacy cases and new Medicare application reviews to 100 percent of cases received per year and (2) to increase the number of covered entities that make substantive policy changes as a result of OCR intervention. OCR's second goal addresses efficiency by increasing the number of cases / reviews resolved per FTE assigned. The table entitled "Links to HHS Strategic Plan" on page 8 shows how the two goals and four program objectives and one management objective in OCR's Performance Plan support all eight "One HHS" program goals focused on protecting and improving the health and well-being of the American public.

Moreover, OCR's strategic goals, and its performance budget, also support all major priorities outlined in the Secretary's 500-Day Plan. In particular, by ensuring that people have equal access to and the opportunity to participate in and receive services from all HHS programs without facing unlawful discrimination, and that the privacy of their health information is protected while ensuring access to care, OCR supports the Secretary's goals of: transforming the health care system; modernizing Medicare and Medicaid; securing the homeland; protecting life, family and human dignity; and improving the human condition around the world.

In FY 2008, within the broad and inclusive objectives of the Government Performance and Results Act (GPRA), OCR will continue to address "One HHS" program goals and high priority areas – ensuring understanding of and compliance with the HIPAA Privacy Rule, nondiscrimination in health services programs, adoption, Temporary Assistance for Needy Families (TANF), nondiscriminatory quality health care, and enhancing the provision of appropriate services in the most integrated setting for individuals with disabilities. These issues have been consistently at the forefront of heightened Congressional, Departmental, and public interest during the past several years. In addition, Presidential and Secretarial priorities, continuing changes in health care delivery systems, recent research findings, media reporting, information from community-based organizations, and ongoing OCR compliance activities confirm that it is important that OCR continue, within a broadly-based compliance program, to address these key areas where substantial information indicates a high incidence of possible discrimination or the need for technical assistance on the Privacy Rule.

Further, OCR's activities concentrate on ensuring integrity in the expenditure of Federal funds by making certain that such funds support programs that ensure access by intended recipients of services free from discrimination on the basis of race, national origin, disability, age, and gender; and maintain public trust and confidence that the health care system will maintain the privacy of individually identifiable health information while ensuring access to care. In doing so, OCR's activities enhance the quality of services funded by the Department and the benefit of those

services, by working with covered entities to identify barriers and implement practices that can avoid potentially discriminatory impediments to quality services and privacy breaches. The Department's goal of providing quality health and human services cannot be met when individuals in need of services do not receive them as a result of practices that violate their fundamental rights of nondiscrimination or privacy.

OCR's activities support initiatives focusing on expanding opportunities and freedom for all Americans, ensuring the privacy of individually identifiable health information, and improving the health of the public through the HHS Strategic Plan and Secretary Leavitt's 500-Day Plan. In relation to the latter initiative, OCR's non-discrimination and Privacy Rule activities aim to maintain and increase access to health care, improve the quality of life, and eliminate health disparities among different segments of the population.

Links to HHS Strategic Plan

OCR's performance plan and PART are aligned with and support the HHS Strategic Plan (see chart below).

HHS STRATEGIC GOAL	OCR PERFORMANCE GOALS/OBJECTIVES				
	Goal 1: To ensure compliance and to increase awareness and understanding of Federal laws requiring nondiscriminatory access to HHS programs and protection of the privacy of individually identifiable health information.				Goal 2: To enhance operational efficiency
	Objective A: To increase access to and receipt of nondiscriminatory quality health and human services while protecting the integrity of HHS Federal financial assistance.	Objective B: To protect the privacy of personally identifiable health information for healthcare consumers.	Objective C: To provide information and training to representatives of health and human service providers, other interest groups, and consumers.	Objective D: To increase the number of covered entities which make substantive policy change as a result of intervention and / or review.	Objective: To increase the number of cases / reviews resolved per FTE assigned. (See note at the top of the following page.)
Goal 1: Reduce the major threats to the health and well-being of Americans.	X	X	X		X
Goal 2: Enhance the ability of the Nation's health care system to effectively respond to bioterrorism and other public health challenges.	X	X	X		X
Goal 3: Increase the percentage of the Nation's children and adults who have access to health care services, and expand consumer choices.	X	X	X	X	X
Goal 4: Enhance the capacity and productivity of the Nation's health science research enterprise.	X	X	X		X
Goal 5: Improve the quality of health care services.	X	X	X	X	X
Goal 6: Improve the economic and social well-being of individuals, families and communities, especially those most in need.	X	X	X	X	X
Goal 7: Improve the stability and healthy development of our Nation's children and youth.	X	X	X	X	X
Goal 8: Achieve excellence in management practices.	X	X	X	X	X

OCR's Goal 2 objective focuses on improving operational efficiency and therefore increases the proportion of resources being devoted to all issues. As such, the operational efficiency goal supports the entire HHS Strategic Plan goals, noted above, because success under this goal will result in increased resources focused on priority issues that address the HHS goals and other initiatives such as: improved human capital management, improved financial management, and integrating budget and performance information.

Overview of OCR Performance

As a result of the PART process, OCR recast the agency's performance measures to enhance its focus on performance-oriented goals. This refinement of OCR's performance measures allows OCR to consistently measure the effectiveness of its program annually and over the long-term. OCR's internet-based Program Information Management System (PIMS), an automated case management system, captures data in real-time related to complaint processing, Medicare application reviews, outreach and technical assistance.

OCR consolidated its reporting to capture results on the entirety of its complaint mission areas in a more comprehensive manner. This refinement reflects OCR's commitment to implement the President's Management Agenda, and particularly the priority for increased budget and performance integration.

OCR has organized its PART submission around two overarching strategic goals that directly support the HHS Strategic Plan and the Secretary's 500-Day Plan:

Goal I To ensure compliance and to increase the awareness and understanding of Federal laws requiring nondiscriminatory access to HHS programs and protection of the privacy of individually identifiable health information

Goal II To enhance operational efficiency

For a complete list of PART goals, measures, and targets see the Detail of Performance Analysis starting on page 60.

* * *

OCR's first strategic goal is to ensure compliance and to increase awareness and understanding of Federal laws requiring nondiscriminatory access to HHS programs and protection of the privacy of individually identifiable health information. Under Goal I, there are four program objectives that support the broad and inclusive program goal of increasing nondiscriminatory access and participation in HHS programs and protecting the privacy of individually identifiable health information:

Objective A To increase access to and receipt of nondiscriminatory quality health and human services while protecting the integrity of HHS Federal financial assistance

- Objective B To protect the privacy of personally identifiable health information for healthcare consumers
- Objective C To provide information and training to representatives of health and human service providers, other interest groups, and consumers
- Objective D To increase the number of covered entities that make substantive policy changes or develop new policies as a result of intervention and / or review

OCR's first strategic goal has a long-term consolidated output measure and target: to increase the rate of resolution for civil rights and privacy cases and new Medicare application reviews to 100 percent of cases received per year. That is, OCR will resolve as many cases / reviews as received each year. The average age of all open cases will be less than one year, excluding those requiring long-term monitoring and those in litigation or administrative enforcement. The actual target is on a graduated scale, which means that the annual improvement rate will decrease over time. The baseline in FY 2003 was 68.2 percent of cases resolved. In FY 2004, OCR slightly exceeded the target for that year of 78 percent. In FY 2005, OCR exceeded the target for that year of 82 percent. In November 2006, OCR set more realistic annual targets reflecting both higher projections in complaint receipts and more ambitious efforts to increase productivity based on existing staffing levels.

In FY 2006, having achieved a resolution rate of 96.6 percent against a target of 87 percent, OCR revised its forecasted targets to 96.8 percent in FY 2007 (from 92 percent) and 97.3 percent in FY 2008 (from 95 percent). These revised annual goals assume annual increases in productivity of 4 percent per FTE in place of the prior 3.3 percent assumption, and further assume that the rate of growth in receipts will moderate in the period from FY 2008 to FY 2012.

However, if OCR is funded at the FY 2006 CR level during FY 2007, one result will be a dramatic reduction in OCR's staffing from an actual level of 259 FTE in FY 2006 to an estimated 245 FTE in FY 2007, a reduction of 14 FTE. Consequently, OCR currently projects that staffing cuts of these magnitudes will result in OCR's not achieving its long-term measure -- to increase the resolution rate of civil rights and privacy cases and new Medicare application reviews to 100 percent of new cases / reviews received per year -- until 2019, or seven years after the current target of 2012. In FY 2007, OCR projects that the resolution rate will be 86.2 percent, in contrast to OCR's revised PART goal of 96.8 percent, and in FY 2008 the resolution rate will be 85.7 percent versus 97.3 percent.

OCR has two output measures that support this long-term goal and its related performance target. The first measure is the percentage of civil rights cases and new Medicare application reviews resolved to cases received. The baseline in FY 2003 was 85.1 percent of civil rights cases and reviews resolved. In FY 2004, OCR achieved a rate of 89.1 percent, 3.6 percentage points above the target of 85.5 percent for that year. In FY 2005, OCR exceeded the target of 89.9 percent for that year. In FY 2006, as previously stated, OCR set more realistic annual targets reflecting both higher projections in complaint receipts and more ambitious efforts to increase productivity based on existing staffing levels. In FY 2006, having achieved a resolution rate significantly above the target of 91.2 percent, OCR revised its forecasted targets to 102.5 percent in FY 2007

(from 92.1 percent) and 103 percent in FY 2008 (from 94.4 percent). However, if OCR is funded at the FY 2006 CR level during FY 2007, the targets would be reduced to 91.1 percent and 90.6 percent in FY 2007 and FY 2008, respectively.

The second measure is the percentage of privacy cases resolved to cases received. The baseline is 68.8 percent of privacy cases resolved in FY 2004 because FY 2004 was the first full year since implementation of the Privacy Rule. In FY 2005, OCR exceeded the target of 74.2 percent for that year. In FY 2006, OCR set more realistic annual targets reflecting both higher projections in complaint receipts and more ambitious efforts to increase productivity based on existing staffing levels. In FY 2006, having achieved a resolution rate of 91.8 percent against a target of 81.2 percent, OCR revised its forecasted targets to 91.8 percent in FY 2007 (from 86.4 percent) and 92.3 percent in FY 2008 (from 89.4 percent). However, if OCR is funded at the FY 2006 CR level during FY 2007, the targets would be reduced to 81.8 percent and 81.4 percent in FY 2007 and FY 2008, respectively.

* * *

OCR's management goal, Goal II as submitted in PART, is to enhance operational efficiency. The long-term measure is to increase the number of cases resolved per assigned FTE. The annual effort towards achieving this measure is designed to meet the HHS Departmental goal of a 10 percent overall program improvement over three years. The target of OCR's management goal is to enhance operational efficiency and is directly tied to OCR's efficiency measure, to resolve 50 cases each year per FTE assigned by the end of FY 2012. In FY 2006, as previously stated, OCR set more realistic annual targets and this measure was raised to resolve 62 cases each year per FTE assigned by the end of FY 2012.

The table on "Links to HHS Strategic Plan" on page 8 shows how the two goals and four program objectives and one management objective contribute to outcomes in support of all eight "One HHS" program goals focused on protecting and improving the health and well-being of the American public.

Further, for accountability purposes, OCR has taken steps to link individual performance directly to OCR's established goals. OCR has incorporated organizational goals in all OCR leadership plans and in FY 2006 cascaded these organizational goals into the performance plans for all staff.

OCR's PART findings concluded that OCR has a strong purpose and design, is well-managed, and that independent evaluations indicate that OCR is effective and achieving results. In order to maintain and improve upon its current PART rating, OCR utilizes high-quality efficiency measures, such as cases resolved per FTE, to track and evaluate performance. OCR obtained a PART rating of "Moderately Effective."

The Detail of Performance Analysis on page 60 sets forth all the measures and targets for the relevant past, present, and future fiscal years.

Overview of Budget Request

The Office for Civil Rights requests \$37,062,000 in FY 2008. This is an increase of \$779,000 over the FY 2007 President's Budget request of \$36,283,000 and an increase of \$2,416,000 over the FY 2007 Continuing Resolution (CR) level. This budget maintains the same programmatic focus as provided in the FY 2007 President's Budget.

OCR's FY 2008 budget request will fund a staffing level of 251 FTE, a decrease of 8 FTE from both the FY 2007 President's Budget level and the FY 2006 enacted level, and an increase of 6 FTE over the FY 2007 CR level.

Because resources at the FY 2007 CR level, as well as for FY 2008 as represented in this budget request, will necessitate significant reductions from the 259 on-board staffing level on which OCR's current PART goals are based, OCR will be unable to meet its long-range PART goal of matching the rate of case resolutions to complaint receipts and new preventative compliance reviews in the year 2012. OCR now estimates it will be 2019 before this performance goal can be attained.

The FY 2008 requested amount of \$37,062,000 would enable OCR to:

- Continue to address key nondiscrimination issues, including the President's New Freedom Initiative, community-based services for persons with disabilities, racial and ethnic health disparities, and Title VI and language access, while continuing to improve responsiveness to the public's questions about, and allegations of non-compliance with, the Privacy Rule.
- Promote privacy protection in the implementation of initiatives to create integrated and interoperable electronic networks for sharing health information, consistent with Secretary Leavitt's 500-day vision for transforming the U.S. health care system.
- Ensure emergency preparedness and response by engaging the disability community and providing guidance to partners to address the unique health needs of individuals with disabilities, and providing information and technical assistance to emergency providers on the disclosure of protected health information to assist with disaster relief efforts.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

OFFICE FOR CIVIL RIGHTS

For expenses necessary for the Office for Civil Rights, *\$33,748,000* together with not to exceed *\$3,314,000* to be transferred and expended as authorized by section 201(g)(1) of the Social Security Act from the Hospital Insurance Trust Fund and the Supplemental Medical Insurance Trust Fund.

**OFFICE FOR CIVIL RIGHTS
AMOUNTS AVAILABLE FOR OBLIGATION¹**

	<u>2006 Actual</u>	<u>2007 CR</u>	<u>2008 Estimate</u>
<u>Appropriation:</u>			
Annual	\$31,682,000	\$31,682,000	\$33,748,000
Enacted rescission	---	---	---
Enacted rescission	---	---	---
Enacted rescission	-317,000	-317,000	---
Subtotal, adjusted appropriation	31,365,000	31,365,000	33,748,000
Subtotal, adjusted budget authority.	31,365,000	31,365,000	33,748,000
<u>Trust funds:</u>			
Annual appropriation	3,314,000	3,314,000	3,314,000
Enacted rescission	---	---	---
Enacted rescission	-33,000	-33,000	---
Subtotal, adjusted trust funds	3,281,000	3,281,000	3,314,000
<u>Transfers:</u>	34,646,000	34,646,000	37,062,000
CMS Transfer	-24,000	---	---
<u>Total Budget Authority</u>	34,622,000	34,646,000	37,062,000
Unobligated balance lapsing	<u>- 17,000</u>	<u>---</u>	<u>---</u>
Total obligations.....	\$34,605,000	\$34,646,000	\$37,062,000

¹ Excludes the following amounts for reimbursable activities carried out by this account:
FY 2006 \$491,000, FY 2007 \$654,000, FY 2008 \$674,000.

**OFFICE FOR CIVIL RIGHTS
SUMMARY OF CHANGES**

2007	CR – General funds.....	\$31,365,000
	Trust funds transfer.....	3,281,000
	Total estimated budget authority.....	\$34,646,000
2008	Estimate – General funds.....	\$33,748,000
	Trust funds transfer.....	3,314,000
	Total estimated budget authority.....	\$37,062,000
	Net Change.....	+\$2,416,000

	<u>2007 Current</u> <u>Budget Base</u>		<u>Change from Base</u>	
	(FTE)	<u>Budget</u> <u>Authority</u>	(FTE)	<u>Budget</u> <u>Authority</u>
Increases:				
A. <u>Built-in</u> :				
1.	Annualization of January 2007 pay raise	(245) \$25,344,000	(+6)	+\$153,000
2.	Effect of January 2008 pay raise.....	(245) \$25,344,000	(+6)	+\$626,000
3.	Other personnel compensation and restoration of 6 FTE.....	(245) \$25,344,000	(+6)	+\$877,000
4.	Increase in rental payments to GSA, and Service and Supply Fund, Unified Financial Management System, IT Service Center and other built-in cost increases.....	(245) \$9,302,000	(+6)	+760,000
	Total increases.....	(245) \$34,646,000	(+6)	+\$2,416,000
B. <u>Program</u> : None				
Decreases: None				
	Net Change.....	(245) \$34,646,000	(+6)	+\$2,416,000

OFFICE FOR CIVIL RIGHTS
BUDGET AUTHORITY BY ACTIVITY¹
(Dollars in Thousands)

	2006		2007		2008	
	<u>Actual</u>		<u>Continuing Resolution</u>		<u>Estimate</u>	
	<u>FTE</u>	<u>Amount</u>	<u>FTE</u>	<u>Amount</u>	<u>FTE</u>	<u>Amount</u>
Compliance Activities.....	225	\$30,739	210	\$30,492	216	\$32,786
Legal Services.....	18	2,263	19	2,394	19	2,464
Program Management....	<u>16</u>	<u>1,620</u>	<u>16</u>	<u>1,760</u>	<u>16</u>	<u>1,812</u>
Total Budget Authority	259	\$34,622	245	\$34,646	251	\$37,062
General funds.....		\$31,341		\$31,365		\$33,748
HI/SMI trust funds.....		<u>3,281</u>		<u>3,281</u>		<u>3,314</u>
Total Budget Authority		\$34,622		\$34,646		\$37,062

¹ Excludes the following projected amounts for reimbursable activities carried out by this account: FY 2006 \$491,000 and two FTE; FY 2007 \$654,000 and two FTE; FY 2008 \$674,000 and two FTE.

**OFFICE FOR CIVIL RIGHTS
BUDGET AUTHORITY BY OBJECT**

	2007 <u>CR</u>	2008 <u>Estimate</u>	Increase or <u>Decrease</u>
Full-time equivalent employment.....	245	251	+6
Average SES salary.....	\$139,042	\$145,995	+\$6,953
Average GS grade.....	11.9	11.9	---
Average GS salary.....	\$82,535	\$85,195	+\$2,660
<hr/>			
Personnel compensation:			
Full-time permanent.....	\$19,420,000	\$20,680,000	+\$1,260,000
Other than full-time permanent.....	522,000	550,000	+28,000
Other personnel compensation.....	250,000	315,000	+65,000
Military personnel.....	90,000	90,000	---
Total, Personnel Compensation.....	20,282,000	21,635,000	+1,353,000
Civilian personnel benefits.....	5,014,000	5,317,000	+303,000
Military personnel benefits.....	27,000	27,000	---
Benefits to Former Personnel.....	21,000	21,000	---
Subtotal, Pay Costs.....	25,344,000	27,000,000	+1,656,000
Travel.....	275,000	325,000	+50,000
Transportation of Things.....	19,000	19,000	---
Rental payments to GSA.....	2,885,000	3,187,000	+302,000
Rental payments to others.....	27,000	28,000	+1,000
Communications, utilities, and others.....	310,000	360,000	+50,000
Printing and Reproduction.....	45,000	55,000	+10,000
Services from the Private Sector.....	841,000	975,000	+134,000
Purchases of goods and services from other government accounts.....	2,306,000	2,390,000	+84,000
(Service and Supply Fund payment).....	(1,694,000)	(1,730,000)	(+36,000)
Operation and Maintenance of Facilities.....	691,000	710,000	+19,000
Operation and Maintenance of Equipment.....	1,575,000	1,628,000	+53,000
Subtotal Other Contractual Services.....	5,413,000	5,703,000	+290,000
Supplies and Materials.....	274,000	285,000	+11,000
Equipment.....	54,000	100,000	+46,000
Subtotal, Non-Pay Costs.....	9,302,000	10,062,000	+760,000
Total Budget Authority by object class.....	\$34,646,000	\$37,062,000	+2,416,000

**OFFICE FOR CIVIL RIGHTS
SALARIES AND EXPENSES**

<u>Object Class</u>	2007 <u>CR</u>	2008 <u>Estimate</u>	Increase or <u>Decrease</u>
Personnel compensation:			
Full-time permanent (11.1).....	\$19,420,000	\$20,680,000	+\$1,260,000
Other than full-time permanent (11.3).....	522,000	550,000	+28,000
Other personnel compensation (11.5).....	250,000	315,000	+65,000
Military personnel (11.7).....	90,000	90,000	---
Total, Personnel Compensation.....	20,282,000	21,635,000	+1,353,000
Civilian personnel benefits (12.1).....	5,014,000	5,317,000	+303,000
Military personnel benefits (12.2).....	27,000	27,000	---
Benefits to Former Personnel (13.0).....	21,000	21,000	---
Subtotal, Pay Costs.....	25,344,000	27,000,000	+1,656,000
Travel (21.0).....	275,000	325,000	+50,000
Transportation of things (22.0).....	19,000	19,000	---
Rental payments to others (23.2).....	27,000	28,000	+1,000
Communications, utilities, and others (23.3).....	310,000	360,000	+50,000
Printing and Reproduction (24.0).....	45,000	55,000	+10,000
Services from the Private Sector (25.2).....	841,000	975,000	+134,000
Purchases of goods and services from other			
government accounts (25.3).....	2,306,000	2,390,000	+84,000
(Service and Supply Fund payment).....	<i>(1,694,000)</i>	<i>(1,730,000)</i>	<i>(+36,000)</i>
Operation and Maintenance of Facilities (25.4).....	691,000	710,000	+19,000
Operation and Maintenance of Equipment.(25.7).....	1,575,000	1,628,000	+53,000
Subtotal Other Contractual Services.....	5,413,000	5,703,000	+290,000
Supplies and Materials (26.0).....	274,000	285,000	+11,000
Subtotal, Non-Pay Costs.....	6,363,000	6,775,000	+412,000
Total Current Law Salaries and Expenses.....	\$31,707,000	\$33,775,000	+2,068,000

**OFFICE FOR CIVIL RIGHTS
AUTHORIZING LEGISLATION**

	2007 Amount <u>Authorized</u>	2007 Continuing <u>Resolution</u>	2008 Amount <u>Authorized</u>	2008 Budget <u>Estimate</u>
Office for Civil Rights:				
P.L. 88-352;				
42 U.S.C. 300s;				
P.L. 91-616;				
P.L. 92-157;				
P.L. 92-158;				
P.L. 92-255;				
P.L. 93-282;				
P.L. 93-348;				
P.L. 94-484;				
P.L. 95-567;				
P.L. 97-35;				
P.L. 103-382;				
P.L. 104-188;				
P.L. 92-318;				
P.L. 93-112;				
P.L. 94-135;				
P.L. 101-336;				
P.L. 104-191;				
P.L. 109-41	Indefinite	\$34,646,000	Indefinite	\$37,062,000

**OFFICE FOR CIVIL RIGHTS
APPROPRIATIONS HISTORY TABLE**

	Budget Estimate to Congress	House Allowance	Senate Allowance	Appropriation
1999				
Appropriation	17,345,000	17,345,000	17,345,000	17,345,000
Rescission	---	---	---	-34,000
1% Transfer	---	---	---	-7,000
Trust Funds	3,314,000	3,314,000	3,314,000	3,314,000
2000				
Appropriation	18,845,000	18,338,000	18,845,000	18,838,000
Rescission	---	---	---	-64,000
1% Transfer	---	---	---	445,000
Trust Funds	3,314,000	3,314,000	3,314,000	3,314,000
2001				
Appropriation	24,142,000	18,774,000	23,242,000	24,742,000
Rescission	---	---	---	-51,000
1% Transfer	---	---	---	---
Trust Funds	3,314,000	3,314,000	3,314,000	3,314,000
2002				
Appropriation	28,691,000	28,691,000	28,691,000	28,691,000
Rescission	---	---	---	-50,000
Rescission	---	---	---	-23,000
Rescission	---	---	---	-126,000
Transfer to GDM	---	---	---	-376,000
Trust Funds	3,314,000	3,314,000	3,314,000	3,314,000
2003				
Appropriation	30,328,000	---	30,328,000	30,328,000
Transfer to GDM	-385,000	---	-385,000	-385,000
Rescission	---	---	---	-219,000
Trust Funds	3,314,000	3,314,000	3,314,000	3,314,000
2004				
Appropriation	30,936,000	30,936,000	30,936,000	30,936,000
Rescission	---	---	---	-133,000
Rescission	---	---	---	-182,000
Trust Funds	3,314,000	3,314,000	3,314,000	3,314,000
Rescission	---	---	---	-14,000
Rescission	---	---	---	-19,000
2005				
Appropriation	32,042,000	32,042,000	32,042,000	32,043,000
Rescission	---	---	---	-61,000
Rescission	---	---	---	-255,000
Trust Funds	3,314,000	3,314,000	3,314,000	3,314,000
Rescission	---	---	---	-27,000
2006				
Appropriation	31,682,000	31,682,000	31,682,000	31,682,000
Rescission	---	---	---	-317,000
Trust Funds	3,314,000	3,314,000	3,314,000	3,314,000
Rescission	---	---	---	-33,000
CMS Transfer	---	---	---	-24,000
2007				
CR – General Funds	31,365,000	---	---	---
CR – Trust Funds	3,281,000	---	---	---
2008				
General Funds	33,748,000	---	---	---
Trust Funds	3,314,000	---	---	---

**DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE FOR CIVIL RIGHTS**

	FY 2006 <u>Actual</u>	FY 2007 President's <u>Budget</u>	FY 2007 Continuing <u>Resolution</u>	FY 2008 <u>Request</u>	Increase or <u>Decrease</u>
Budget Authority	\$34,622,000	\$36,283,000	\$34,646,000	\$37,062,000	+\$2,416,000
FTE	259	259	245	251	+6

Note: FTE level does not include two reimbursable FTE in FY 2007 and FY 2008.

Statement of Budget Request

The President's appropriation request of \$37,062,000 represents current law requirements. No proposed law amounts are included. OCR conducts public education; outreach; complaint investigation and resolution; and other compliance activities to prevent and eliminate discriminatory barriers, to ensure the privacy of individually identifiable health information, and to enhance access to quality HHS-funded programs.

Program Description

As the primary defender of the public's right to nondiscriminatory access to and receipt of federally funded health and human services, OCR works to ensure equal opportunity for all to access the wide range of services available and that the privacy of their health information is protected while ensuring access to care. Through prevention and elimination of unlawful discrimination and by protecting the privacy of individually identifiable health information, OCR helps HHS carry out its overall mission of improving the health and well-being of all people affected by the Department's many programs. OCR assesses compliance with nondiscrimination and Privacy Rule requirements by processing and resolving complaints. In addition, OCR also conducts pre-grant and preventative compliance reviews; monitoring of corrective action plans; and public education, outreach, voluntary compliance, training, technical assistance, and consultation activities as additional means of achieving compliance with nondiscrimination and Privacy Rule requirements. A number of OCR staff also play an essential role in day-to-day national policy formulation for key Administration priorities, including health information technology, the New Freedom Initiative, modernizing Medicare and Medicaid, and emergency preparedness.

OCR is comprised of compliance, policy, legal counsel, and program management staff. The majority of OCR's staff works on frontline civil rights nondiscrimination and Privacy Rule compliance activities, largely in OCR's regional offices. In support, a cadre of headquarters analysts provides program and policy coordination and initiatives to enhance program effectiveness and efficiency. OCR allocates staff time to mandated complaint investigations, Medicare pre-grant reviews, and OCR-initiated compliance activities (e.g., compliance reviews,

public education, outreach, voluntary compliance, and technical assistance). Staff time spent on OCR-initiated compliance activities focuses on particularly compelling, high profile, or systemic issues that benefit the greatest number of people possible. The issues surfaced in complaints and pre-grants also address public civil rights and privacy concerns.

Investigations of compliance, public education, outreach, voluntary compliance, technical assistance, training, consultation, and collaborative project activities are each equally significant methods by which OCR achieves corrective action and prevention of unlawful discrimination and Privacy Rule non-compliance. OCR uses these methods interchangeably and with flexibility to address the unique compliance circumstances facing individual HHS grantees, service providers, and other covered entities, with an emphasis on prevention and voluntary compliance. In some cases, public education and outreach may better serve the purpose of achieving compliance than a review or audit activity. In other instances, an investigation or review may be deemed the best means for achieving a positive compliance outcome. Each of the activities that are identified as results or indicators in this report are planned, substantive, and part of an overall compliance strategy that requires significant staff time and resources.

Rationale for the Budget Request

The following tables illustrate OCR’s projected receipt and complaint resolution workload for health information Privacy Rule and civil rights discrimination complaints, and preventative compliance review workload (primarily new Medicare application reviews) from FY 2006 through FY 2008.

Complaint Workload – Privacy Rule

	FY 2006 Actual	FY 2007 Projected	FY 2008 Projected
Beginning Inventory	4,853	5,439	6,793
Complaints Received	7,167	7,455	7,716
Total Workload	12,020	12,894	14,509
Complaints Resolved	6,581	6,101	6,284
Ending Inventory	5,439	6,793	8,225

Complaint Workload – Civil Rights

	FY 2006 Actual	FY 2007 Projected	FY 2008 Projected
Beginning Inventory	1,663	1,623	1,992
Complaints Received	3,471	3,645	3,827
Total Workload	5,134	5,268	5,819
Complaints Resolved	3,511	3,276	3,374
Ending Inventory	1,623	1,992	2,445

Workload – New Medicare Application Reviews (Pre-Grants)

	FY 2006 Actual	FY 2007 Projected	FY 2008 Projected
Beginning Inventory	1,005	917	1,129
New Reviews	2,853	2,900	2,950
Total Workload	3,858	3,817	4,079
Reviews Resolved	2,941	2,688	2,769
Ending Inventory	917	1,129	1,310

Total Workload

	FY 2006 Actual	FY 2007 Projected	FY 2008 Projected
Beginning Inventory	7,521	7,979	9,914
New Reviews	13,491	14,000	14,493
Total Workload	21,012	21,979	24,407
Reviews Resolved	13,033	12,065	12,427
Ending Inventory	7,979	9,914	11,980

Since implementation of the Privacy Rule in 2003, the number of complaints filed with OCR per year has more than quintupled, from 1,948 in FY 2002 to 10,638 in FY 2006. As a consequence, the backlog of unresolved complaints continues to grow. At the same time, OCR's authorized staffing level has declined from 267 to 259. To address this challenge, OCR has been implementing greater efficiencies in case resolution as a result of a reorganization effort begun in FY 2004 and ongoing improvements in case management techniques. In FY 2007, OCR will continue to identify competency gaps in critical positions to enhance staff performance and serve as a tool for management to remedy gaps in skill sets and to more efficiently deploy appropriate staff resources.

As OCR reported in its FY 2007 Congressional Justification, Privacy Rule complaints since implementation of the Rule in April 2003 have far exceeded original expectations. Complaints received in FY 2004 and FY 2005, the first two full years since implementation of the Privacy Rule, together totaled 13,173, or 25 percent more than forecasted at the time the Rule was implemented. In its FY 2007 Congressional Justification, OCR projected a gradual leveling off of Privacy Rule complaints to 6,750 per year in FY 2006 and FY 2007. Those figures, and the predicted leveling off of receipts, have proven too conservative, as OCR actually received 7,167 cases in FY 2006, or six percent more than originally projected. Based on the workload increases during FY 2006, OCR now projects a growth rate in Privacy Rule complaints of approximately four percent per year for FY 2007 and FY 2008.

OCR also experienced a greater than anticipated increase in civil rights complaint receipts since implementation of the Privacy Rule in FY 2003. Based on an analysis of data trends, OCR had projected in its FY 2007 Congressional Justification that the number of civil rights complaints

received that fiscal year would increase by approximately 1.6 percent over FY 2006. However, OCR experienced in FY 2006 a robust 14 percent increase in civil rights complaints over FY 2005 instead of the two percent originally forecasted. Because much of this growth occurred in the final months of the year, there is insufficient data to predict that FY 2007 and FY 2008 will experience similar double-digit increases. However, OCR believes it is prudent to plan on a growth of five percent per year in the volume of civil rights complaints in FY 2007 and FY 2008.

Evidence of OCR's success as well as the continuing challenge of workload growth can be seen in further data comparison between FY 2002 and FY 2006: staff in FY 2002 resolved 4,281 civil rights complaints and Medicare application reviews, while in FY 2006 staff resolved 13,033 civil rights and Privacy Rule complaints and Medicare application reviews. OCR carried 2,142 unresolved cases into FY 2003 (33 percent of the FY 2002 workload), and carried 7,979 unresolved cases into FY 2007 (38 percent of the FY 2006 workload). If OCR is funded at the FY 2006 CR level during FY 2007, one result will be a dramatic reduction in OCR's staffing from an actual level of 259 FTE in FY 2006 to an estimated 245 FTE in FY 2007. While the loss of 14 FTE will affect all of OCR's activities, the greatest impact will be felt where OCR has invested most of its enforcement resources – on its compliance activities, primarily those in OCR's ten Regions. OCR's FY 2008 request will restore six of the 14 FTE lost in FY 2007, but the effect on Regional compliance staffing will remain significant. By the end of FY 2008, OCR estimates that with the reduced staffing levels described above, staff will be able to resolve 12,427 cases that year, a five percent drop in productivity from FY 2006, and carry 11,980 cases into FY 2009 (49 percent of the FY 2008 workload).

OCR's long-term performance goal is to ensure compliance with, and to increase awareness and understanding of, Federal laws requiring nondiscriminatory access to HHS programs and protection of privacy of protected health information. OCR currently projects that staffing cuts described above will result in OCR's not achieving its long-term measure -- to increase the resolution rate of civil rights and privacy cases and new Medicare application reviews to 100 percent of new cases / reviews received per year -- until 2019, or seven years after the current target of 2012.

Incumbent on OCR, in its mission to ensure that people have nondiscriminatory access to HHS-funded health programs and that the privacy of people's health information be protected while accessing health care, is prompt and effective response to the public when violation complaints are filed. As noted above, there has been more than a five-fold increase in complaints from the public since before the advent of the health information Privacy Rule in FY 2003. OCR's long-term PART measure demonstrates OCR's public commitment to addressing the challenge of keeping up with complaint volume, supported by the organizational retooling and efficiency efforts cited above. The reality of an increasing complaint workload coupled with erosion in base resources threatens OCR's capacity to carry out its overall mission while at the same time providing prompt and effective response to the public's request for assistance to redress complaints that their civil rights or health information privacy rights have been violated.

OVERVIEW OF OCR ACTIVITIES

OCR will implement its civil rights and privacy of health information compliance activities through a comprehensive compliance and public education and outreach program. The program includes:

- Complaint Investigations and Enforcement
- Preventative Compliance Reviews, Medicare Pre-Grant Reviews, and Monitoring
- Public Education, Outreach, Technical Assistance, and Voluntary Compliance

In addition, OCR will ensure the integrity and efficiency of its compliance activities by conducting:

- Policy-making, Coordination, and Partnerships
- Legal Advisory Support for Policy
- Program Management and Operations Support

COMPLIANCE ACTIVITIES

COMPLAINT PROCESSING

OCR is responsible for investigating complaints of civil rights discrimination or noncompliance with privacy regulations within its jurisdiction that are filed with the office. This responsibility is based in part on the Department's regulations implementing the various nondiscrimination statutes and the Department of Justice (DOJ) coordinating regulations requiring compliance agencies, such as OCR, to establish procedures for the prompt processing and disposition of complaints alleging discrimination. It also derives directly from numerous other statutory and regulatory authorities, including the Americans with Disabilities Act (ADA) regulations and the Privacy Rule pursuant to the Health Information Portability and Accountability Act of 1996 (HIPAA).

I. Civil Rights

A. Disabilities

1. The Americans with Disabilities Act (ADA), Olmstead, and the New Freedom Initiative

OCR is involved in a variety of efforts to increase the independence and quality of life of persons with disabilities, including those with long-term needs. Most notably, OCR has played a critical role in the Administration's New Freedom Initiative that was announced in February 2001, and implemented through an Executive Order issued on June 19, 2001 (E.O.13217). The Executive Order commits the United States to a policy of community integration for individuals with disabilities and calls upon the Federal Government to work with states to implement the ADA regulation requiring that qualified individuals with disabilities be provided with services "in the most integrated setting appropriate to their needs," as interpreted by the U.S. Supreme Court in

Olmstead v. L.C. The Executive Order calls for swift implementation of the *Olmstead* decision and full enforcement of Title II of the ADA through investigations, complaint resolution, and the use of alternative dispute resolution.

As part of the Executive Order, the President directed the Secretary of HHS to coordinate the activities of other Federal agencies. At the Secretary's direction, OCR coordinated the efforts of nine Federal agencies in a rigorous self-evaluation, with public input, of their policies, programs, statutes, and regulations to determine whether any should be revised or modified to improve the availability of community-based services for qualified individuals with disabilities. This coordinated effort led to the production of *Delivering on the Promise*, a comprehensive compilation of the reports of nine Federal agencies outlining more than 400 specific steps the agencies will implement to support community living for the nearly 54 million Americans living with disabilities. OCR, on behalf of the Department, has sole responsibility for fulfilling certain specific commitments in *Delivering on the Promise*.

Since 1999, when the *Olmstead* decision was issued, OCR has received and resolved hundreds of complaints filed by individuals and organizations alleging individual and systemic violations of the Title II integration regulation of the ADA. OCR's response to *Olmstead* complaints has had a significant impact in facilitating the community integration of individuals with disabilities. OCR has received complaints filed by or on behalf of a wide range of individuals, including individuals with physical, psychiatric, developmental and cognitive impairments, and individuals of all ages, including children, young and middle-aged adults, and elderly persons. As a result of OCR's efforts, many individuals have been able to move from an institution to the community, and many individuals have avoided unnecessary institutionalization. For example:

- OCR's intervention and assistance have helped secure community services for individuals who had been institutionalized for decades.
- OCR's efforts have resulted in the provision or restoration of community services for individuals who lost their housing and/or community-based supportive services when they entered institutions due to an acute health care problem.
- OCR's work with complainants, states and other parties have resulted in providing community services to individuals with disabilities through "waiver" programs.
- OCR's efforts have resulted in individuals receiving increased hours of personal care and assistance.
- OCR's work has resulted in individuals with disabilities having greater control over their community-based care and services.
- OCR has helped ensure that individuals are provided reasonable accommodations where they resided, rather than having to move to a more restrictive setting.

OCR's website features accounts of satisfactorily resolved complaints affecting approximately 250 individuals. More than 160 individuals involved in these cases moved from institutional to community settings, and more than 80 individuals who resided in the community avoided institutionalization as a result of OCR's work. As can be seen from these accounts, the resolution of these matters varied according to each set of facts and circumstances, and was tailored to appropriately and practically address the interests of the parties involved. Complainants, government entities and other parties worked cooperatively with OCR, often devising creative

solutions to the issues involved in the complaints. Some of OCR's activities resulted in systemic change. During FY 2008, OCR's investigation and resolution of *Olmstead*-related complaints as well as its public education and direct technical assistance to the states will continue to underscore the Administration's commitment and the Secretary's goal to Modernize Medicaid by increasing the number of individuals transitioned from institutions to communities.

The following are specific examples of OCR *Olmstead* complaint investigation outcomes and their impact:

- Washington Department of Social and Health Services (DSHS) - An individual with quadriplegia, alleged that the State violated the *Olmstead* decision in that Medically Needy Medicaid clients whose income exceeded the Categorically Needy level could receive long-term services only in a nursing home. Based on his income level, the complainant was able to receive the Medicaid long-term personal care services he needed only if he resided in a nursing home. As a result of OCR intervention and the State's long-term efforts, the State established two new waiver programs under which the State could provide long-term personal care services to both Categorically Needy and Medically Needy clients in the full-range of settings, from institutional to in-home. The State also agreed to commit State funds to equalize the personal needs allowance provisions available for Medically Needy and Categorically Needy individuals, thus making home-based services equally available to Medically Needy individuals.
- Pennsylvania Department of Public Welfare - The Philadelphia chapter of a nationwide advocacy group alleged that the State fails to provide services in the most integrated setting to persons with disabilities. OCR initiated an investigation based on this complaint and as a result, the State took the following actions: developed a long term plan to address the waiting list for mental retardation services in Pennsylvania; created ongoing regional planning groups to address community mental health for adults; and created a program for reducing beds in State mental institutions and transferring funds to the community. The State also initiated a home and community based services stakeholder planning team to examine services to people with disabilities. OCR concluded that the State had made progress in systemic planning and involving interested parties in the planning process. OCR also stated, however, that the work to achieve the goals outlined in the *Olmstead* decision is a long-term process and thus continues to monitor the development and implementation of the State's long-range planning to ensure that services are provided to people with disabilities in the most integrated setting appropriate to their needs.
- New Jersey Department of Human Services (NJ DHS) - A complaint filed by an advocacy organization on behalf of a 42-year old man with mental illness who had been residing at a psychiatric hospital for over three years alleged that the NJ DHS discriminated against the man by keeping him institutionalized at the hospital. As a result of effective collaboration between OCR and NJ DHS, the man was discharged from the hospital and relocated to a boarding home. The boarding home is a less restrictive and more integrated setting as compared to the hospital and the man's family was satisfied with the new placement. Another complaint with a similar allegation, this time filed on behalf of

a 49-year old man with mental illness who had been residing at a psychiatric hospital for almost 16 years, was also resolved successfully. As a result of effective collaboration between OCR and NJDHS, the man was discharged from the hospital and relocated to a specialized residence. While supervision exists at the specialized residence, it is a less restrictive and more integrated setting than the hospital and the man expressed satisfaction with the new placement.

- Maryland Department of Health & Mental Hygiene - An advocacy organization filed this complaint alleging that the State failed to provide services in the most integrated setting appropriate. During the course of OCR's involvement with the State on this issue, 28 individual complaints also were filed against the State. As a result of OCR's intervention and the State's cooperation, 19 of the 28 individuals who had filed complaints were moved from institutional settings to community based services. OCR determined that the State was in compliance with the law with respect to the remaining nine individuals. OCR also recognized that while the State had made significant progress in systemic planning and involving interested parties in the planning process, considerable work remained to be done. OCR committed to continue monitoring the development and implementation of long-range planning in the State.
- West Virginia Department of Health and Human Services - A complaint filed by a mother on behalf of her adult son alleged that he was not receiving services in the most integrated setting appropriate for his needs. The complainant's son was residing at a psychiatric hospital. Through the Olmstead Mediation Pilot Project coordinated by OCR and the U.S. Department of Justice, this complaint was successfully mediated. As a result of mediation and to the satisfaction of all parties, the complainant's son relocated to a supervised apartment, which was a more integrated setting as compared to the hospital.

2. Other OCR Activities to Ensure Non-Discriminatory Treatment of Individuals with Disabilities: HIV/AIDS, Accessibility, and Effective Communication

In addition to enforcing Title II of the ADA, OCR enforces Section 504 of the Rehabilitation Act of 1973, which prohibits recipients of Federal financial assistance from discriminating against qualified individuals on the basis of disability. HHS recipients subject to Section 504 include many hospitals, nursing homes, mental health centers, medical providers, and human services programs.

OCR is continuing its long history of using Section 504, along with other non-discrimination authorities, to respond to the HIV/AIDS epidemic and the continuing stigma and discrimination faced by some persons living with HIV and AIDS. For example, OCR works to ensure that providers who participate in the Medicaid program do not unlawfully refuse to treat persons with HIV infection who are protected by Section 504 and/or Title II of the ADA. Minorities bear a disproportionate share of the burden of these new HIV infections each year, bringing to bear OCR's commitment to reducing health disparities in addition to our focus on disability rights and our efforts to protect the privacy of health information so important to persons with HIV. In 2005, OCR mounted a national OCR HIV/AIDS in-service Training and Conference for our

staff. OCR and CDC trainers provided updates on legal authorities and new tools for investigative and outreach activity. In FY 2007 and 2008, OCR will use tools for HIV/AIDS work developed in 2005 in conjunction with this training, such as an analytic investigatory guide, a review of pertinent case law, a PowerPoint outreach presentation for lay audiences, a revised fact sheet on HIV/AIDS discrimination, and resource and referral information posted on OCR's website.

OCR's investigative activities in this area have resulted in health care providers modifying their practices and policies to afford equal access to individuals with HIV infection. Other 504 cases have resulted in facilities ensuring effective communication for persons who are deaf or hard of hearing, making facilities more accessible, and accommodating people with learning disabilities. The following are a sample of OCR complaints concerning Section 504 of the Rehabilitation Act and/or Title II of the ADA.

An example of OCR's investigative work on HIV/AIDS cases includes:

- Carolina Healthcare Systems - The complainant, an HIV positive man, alleged that the respondent hospital engaged in conduct that violated the ADA, Section 504 and the HIPPA Privacy Rule. Specifically, the complainant alleged that while he was a patient at the hospital, staff: 1) placed a red sign outside his hospital room specifying he had herpes and HIV; 2) discussed his HIV status in public, outside of his room, and without his permission; and 3) changed his bed sheets in a different manner than other patients' bed sheets were changed. The hospital denied all allegations. OCR utilized its informal complaint resolution process and, as a result, the parties agreed that the hospital would issue the complainant a letter of apology for any inconvenience and misunderstanding, and the hospital would provide training on cultural and racial sensitivity to its staff that are in patient contact positions.

Examples of OCR's investigative work relating to effective communication for deaf and hard of hearing persons include:

- Division of Youth & Family Services in New Jersey (DYFS) - The complainant alleged that DYFS failed to provide her with a sign language interpreter during her scheduled appointments with a DYFS caseworker. OCR's investigation examined DYFS policies and practices for ensuring effective communication with deaf/hard of hearing individuals. As a result of the investigation OCR found deficiencies in the implementation of DYFS policies, practices and procedures for providing effective communication with deaf/hard of hearing individuals. OCR recommended corrective steps for DYFS in order to reach a mutual resolution with OCR and to voluntarily comply with Section 504 and Title II of the ADA. DYFS agreed to the implementation of the suggested corrective actions regarding its policies and procedures and has taken the following additional steps: revised its handbook; provided new worker training manuals; and posted signs to include that sign language interpreter services are to be provided at no cost to the individual. DYFS advised OCR that the corrective actions will be implemented throughout the entire State of New Jersey, which includes 41 local offices that provide services to approximately 60,000 children and their families.

- Northeast Center for Special Care, Lake Katrine, NY - OCR received a complaint alleging that the Northeast Center for Special Care discriminated against persons who are deaf or hard of hearing. OCR negotiated a resolution agreement requiring the Center to provide interpreters and other auxiliary aids and services for deaf or hard of hearing persons where necessary for effective communication. The agreement required the Center to develop policies and procedures as well as provide extensive training for staff.
- Graham-Windham Services to Children and Families, Bronx, NY - The complainant, who is deaf, alleged that he was denied an interpreter in violation of Section 504 of the Rehabilitation Act of 1973. OCR successfully addressed the issues raised in the complaint by developing a resolution agreement which required Graham-Windham to provide interpreters and other auxiliary aids and services for deaf or hard of hearing persons where necessary for effective communication. The agreement required Graham-Windham to develop policies and procedures as well as provide extensive training for staff.

Examples of OCR's investigative work on physical accessibility cases include:

- San Francisco Department of Public Health (SFDPH) - The complaint, filed by the Independent Living Resource Center (an advocacy agency that represents disabled persons, including those with mobility and sensory impairments), alleged that the SFDPH discriminated against disabled clientele since its contractors did not ensure disability accommodations, including physical, programmatic, and communication access. SFDPH, with the cooperation of the City Attorney's Office and its Equal Opportunity and Cultural Competency Division succeeded in addressing the deficiencies noted in OCR's investigation. All questioned facilities were re-surveyed and corrective actions were voluntarily undertaken to remedy structural and communication barriers to accessibility. The City agreed to adopt necessary changes, promulgate policies consistent with ADA guidelines, conduct compliance training, and institute a three-level review process which includes monitoring of the 190 community-based contractors. All of this has translated to the providers' enhanced capacity to offer services to people with disabilities.
- Massachusetts General Hospital (Boston, Massachusetts) - OCR resolved a complaint against the Bone Density Clinic of Massachusetts General Hospital that it was not readily accessible to persons using wheelchairs. When OCR's investigation substantiated the allegations, the Hospital voluntarily took steps to come into compliance. Working with code consultants and an architectural firm, the hospital developed a comprehensive plan that included: installation of fire alarms and ADA compliant signage; removal of barriers identified by the design team; constructing an accessible entrance; creating an accessible path of travel, and maneuvering space within the examination room along with a handicapped accessible bathroom. The Hospital also created a second bone density examination room in its Ambulatory Care Center, a completely accessible location, with accessible path of travel, elevators and restrooms. This second examination room has adequate turning space, and the bed at this location can be lowered to accommodate transfers from a wheelchair.

An example of OCR's investigative work on accommodating persons with learning disabilities includes:

- Massachusetts Department of Transitional Assistance (DTA) - OCR investigated a complaint filed by the Massachusetts Law Reform Institute on behalf of two women alleging that the DTA denied the women and other people with learning disabilities an equal opportunity to participate in the Employment Services Program in violation of the ADA and Section 504. OCR's investigation determined that the DTA was in violation of the ADA and Section 504. On December 28, 2006, OCR and the DTA entered into a comprehensive resolution agreement that ensures people with learning disabilities have equal access to participate in and benefit from DTA's Employment Services Program. The agreement includes, but is not limited to, provisions that require DTA to notify program applicants and participants of their rights under the ADA and Section 504 in a variety of forms and at various application and participation stages of DTA programs; provide ADA and Section 504 training to all staff; offer free screening for learning disabilities to program participants; offer Employment Service Program participants free diagnostic assessments if screening indicates potential learning disabilities; monitor contractors of the Employment Services Program for compliance with the ADA and Section 504; continue to utilize "accommodation teams" consisting of DTA staff, which respond to reasonable accommodation requests from people with disabilities, assist in negotiating reasonable accommodations, and ensure that Employment Service Program contractors implement approved reasonable accommodations; notify individuals whose benefits have been terminated since January 19, 2001 for failure to comply with DTA requirements of the availability of screening and assessment for learning disabilities and the continuing right to reapply for benefits; and provide general notice to the public on the availability of screening and assessment for current and future Employment Service Program participants, including former participants who reapply.

B. Title VI (Race, Color and National Origin) Access Initiatives

OCR's jurisdictional basis for working with states, localities, and providers with respect to potential race and national origin discrimination is Title VI of the Civil Rights Act of 1964. Recipients of HHS Federal financial assistance 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. Ensuring Title VI compliance is a core function of OCR's mission.

1. *Limited English Proficiency (LEP)*

On August 8, 2003, HHS published revised LEP guidance in the Federal Register. Following its publication, OCR has focused on developing technical assistance. OCR continues to be a leading member of the Federal Interagency LEP working group that is also coordinating and developing resources for recipients across Federal agencies, including use of a centralized website (www.LEP.gov). For example, a 35-minute educational video on Title VI and the rights of LEP individuals and multilingual brochures were produced by OCR in collaboration with the Departments of Justice (DOJ) and Agriculture (USDA) and are used by OCR at conferences and

meetings with providers and community-based organizations serving LEP populations. The video is dubbed in Spanish and Vietnamese and subtitled in Chinese and Korean for use in reaching out to LEP communities as well as for use in outreach to recipients and the general public.

OCR continues to leverage its available resources through partnerships with other Federal agencies involved in Title VI and other language access activities. OCR works with other HHS offices and agencies, particularly the Office on Minority Health, the Centers for Medicare and Medicaid Services (CMS), Administration on Children and Families (ACF), Health Resources and Services Administration, and the Substance Abuse and Mental Health Services Administration to identify ways to maximize existing HHS resources for language assistance and to develop initiatives to enhance resources and technical assistance for recipients. These initiatives include clarifying what Federal financial assistance can be used to pay the costs of language assistance, identifying and providing translation of common forms and notices, developing sample assessment tools and model language assistance plans, and developing links to Federal, state, and local sources for various forms of language assistance services.

In FY 2008, OCR will continue to work with health care and social service providers, state and local agencies, and other HHS components to ensure that LEP persons are not discriminated against on the basis of national origin in federally funded programs (e.g., emergency room care, welfare to work, child protective services, senior centers, and in-home services).

The following are specific examples of OCR LEP complaint investigation outcomes and their impact:

- Maryland Department of Health and Mental Hygiene (DHMH) – OCR investigated an allegation that caseworkers in Maryland were asking questions regarding immigration status and social security numbers in determining eligibility for Emergency Medical Assistance (EMA), Maryland Children’s Health Insurance Program (MCHIP) and the Maryland Pharmacy Program (MPP), thus creating discriminatory barriers. As a result of OCR’s intervention, the state modified its policies and application procedures to eliminate these questions. OCR provided significant technical assistance to the State Health Department on their existing LEP Plan, policies and procedures. OCR also opened LEP reviews in Prince George, Wicomico and Baltimore counties to assist in assessing the implementation of DHMH’s LEP Plan. Each review was closed with significant corrective action. OCR provided technical assistance to local health departments in developing systems to identify and track LEP clients. At the state level changes were made to the state’s data system to ensure that forms and letters would be sent out in the primary language of the client.
- Community Legal Services, Inc. (CLS) v. Philadelphia County Assistance Office (PCAO) - Attorneys from Community Legal Services filed several complaints alleging national origin discrimination by the Philadelphia County Assistance Office (PCAO). The complainants alleged that the PCAO did not provide the language assistance needed for LEP persons to have meaningful access to services/benefits at the district offices of the PCAO. OCR corroborated the complainants’ allegations and identified the existence

of systemic problems in ensuring meaningful access to LEP persons. OCR prepared written recommendations and provided ongoing technical assistance in addressing the deficiencies identified. The PCAO implemented OCR's recommendations and took the following additional steps; designated first-level managers as LEP Coordinators in each district office and provided them with training on their roles and responsibilities; installed dual handset phones at the front desks of each district office for use with the Language Line in identifying the person's primary language and the purpose of the visit; private booths were designated in each district office to ensure privacy when interviewing LEP clients using the Language Line; recruitment and re-assignment of bilingual staff in an effort to assign LEP clients to caseworkers who speak their primary language. The PCAO revised its LEP Training Outline and partnered with OCR in conducting LEP training sessions for district office staff.

- Sole Practitioner – OCR resolved with positive change a complaint regarding a sole medical practitioner that denied effective communication assistance to a patient of Sudanese descent who spoke Arabic as her primary language. The patient was told that the physician would be unable to see her for a scheduled appointment because the patient had failed to bring along an interpreter. Once OCR initiated an investigation of this matter, the medical provider agreed to take steps to address his obligations in this situation. The provider entered into a formal arrangement with CyraCom, Inc., a private firm that provides interpreter services via telephonic language lines in over 150 languages. OCR's involvement in this matter prompted the management group that provides administrative services to this medical provider, as well to five others, to enter into arrangements with CyraCom to provide language assistance to all of the practices involved. As a result of OCR's intervention, these providers made the necessary systemic changes to their policies and procedures to ensure the provision of effective language assistance to hundreds of LEP clientele in their immediate service area comprising Knoxville, TN.

2. Health Disparities – "Closing the Gaps in Health Care"

Despite notable progress in the overall health of the Nation, there are continuing disparities in illness and death and access to care experienced by members of minority racial and ethnic groups, compared to the U.S. population as a whole. Demographic changes anticipated over the next decade magnify the importance of addressing disparities in health status, which is a primary goal of *Healthy People 2010* and the Secretary's goal of transforming the healthcare system. Groups currently experiencing inferior health status are expected to grow as a proportion of the total U.S. population; therefore, the future health of the Nation as a whole will be influenced substantially by the Department's and others' success in improving the health of these groups. HHS has identified six priority health areas on which to focus health disparity activities (cancer screening and management, cardiovascular disease, diabetes, HIV infection/AIDS, immunizations, and infant mortality).

OCR is a key participant in the Department's health disparities initiative, has conducted civil rights sessions at regional and HHS National Leadership Summits on Eliminating Racial and Ethnic Disparities in Health, and has partnered with the Office of Minority Health on activities

geared toward the elimination of racial and ethnic health disparities. In support of the Secretary's goal to support community-based approaches to close the healthcare gap, OCR recently published on its website a summary of its promising practices in working with black churches and faith-based organizations to provide outreach on Title VI race discrimination to African American communities. In FY 2008, OCR will continue to focus on a broad range of Title VI access issues including disparities in access, quality, and availability of health services.

C. Non-Discrimination in Adoption and Foster Care

OCR will continue to address race, color, and national origin discrimination in the context of strengthening families by promoting non-discrimination in adoption and foster care. For example, the requested FY 2008 budget will enable OCR to further its implementation of Congressional mandates to eliminate delays and denials of foster and adoptive placements on the basis of race, color or national origin, as clarified through the Small Business Job Protection Act of 1996 (SBJPA). Section 1808 of the SBJPA affirms and strengthens the prohibition against discrimination in adoption or foster care placements. Since the passage of the SBJPA, OCR has worked with the HHS Administration for Children and Families (ACF) to ensure that states eliminate policies, practices, and statutory provisions that pose Section 1808 compliance problems. For example, OCR and ACF have jointly issued the *Multi-Ethnic Placement Act (MEPA) / Section 1808 Internal Evaluation Instrument*. This voluntary instrument is designed to assist states and other entities involved in adoption and foster care to assess their compliance with the Section 1808 and MEPA. The instrument is also useful as a self-assessment of compliance with Title VI in this area, because a violation of MEPA or Section 1808 constitutes a violation of Title VI.

The following are typical examples of how OCR's work in this area is helping to facilitate non-discriminatory placement of children:

- Dauphin County, Franklin County, Lancaster County, PA – OCR conducted reviews of three Pennsylvania county agencies regarding the provision of foster care and adoption services to children and families. OCR had concerns regarding the staff's understanding of the civil rights obligations under MEPA/Section 1808. Agency staff appeared to routinely consider race and ethnicity in its placement decisions. In addition, staff made additional inquiries of potential adoptive parents who are willing to adopt trans-racially. The additional inquiries of potential adoptive parents interested in trans-racial adoption and the routine consideration of race in making placements are practices which are non-compliant with the Title VI or MEPA/Section 1808. Based on a review of the policies, OCR made recommendations for each county, depending on the specific findings for the county. Recommendations included the following: 1) Modify the MEPA/Section 1808 provisions of the Policy and Procedure Manual to more accurately reflect HHS's interpretation of MEPA/Section 1808; 2) Inform staff of the revised provisions and initiate training on MEPA/Section 1808 and the revised policy; 3) Revise the procedures for interviewing potential adoptive/foster parents to ensure that those who wish to adopt trans-racially are not subjected to treatment different than that provided to other potential adoptive/foster parents; and 4) Complete a MEPA/Section 1808 Internal Evaluation Instrument to self-monitor its compliance with Section 1808 and Title VI. Further, OCR assisted two of the counties in conducting the training and reached over 90 case workers in the effort.

- Ohio Department of Job and Family Services and the Hamilton County Department of Jobs and Family Services - In 1999, OCR commenced a review of the Ohio Department of Job and Family Services (ODJFS) and its county agency in Cincinnati, the Hamilton County Department of Job and Family Services (HCJFS), for compliance with Title VI, the Multiethnic Placement Act of 1994 (MEPA), and Section 1808 in the administration of the state's public adoption program. The program is funded in large part by HHS through Title IV-E of the Social Security Act, administered by the Administration for Children and Families (ACF). In October 2003, OCR found that HCJFS discriminated against individual children and families and ACF then assessed a \$1.3 million penalty against ODJFS in November 2003. In July 2004, ODJFS and HCJFS executed a Corrective Action and Resolution Plan (CARP), which both ACF and OCR approved. ODJFS thereafter appealed the requirement to submit, execute, and adhere to an acceptable corrective action plan. On April 14, 2006, the Departmental Appeals Board (DAB) affirmed and held that ACF was within its rights in requiring ODJFS to implement a corrective action plan. As a result of this ruling OCR will monitor this matter for the next five years.

D. Age Discrimination Act of 1975

OCR enforces the Age Discrimination Act of 1975, which is a national law that prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. It applies to persons of all ages. The Age Discrimination Act and HHS implementing regulation apply to each HHS recipient. OCR also plays a unique role with respect to the Age Discrimination Act as it has primary responsibility for compiling an annual report to Congress as well as determining what each of twenty-six Federal agencies has done to eliminate age discrimination government-wide. HHS and the Office of the General Counsel (OGC) review all proposed and final Federal agency regulations pursuant to the Age Discrimination Act prior to publication in the Federal Register. A memorandum is prepared to the agency with OGC and HHS's recommendations prior to publishing the regulations.

OCR screens all complaints upon receipt and refers those that describe actions covered by the Age Discrimination Act to the Federal Mediation and Conciliation Service (FMCS). Complainants and recipients are required to participate in an effort to reach a mutually satisfactory mediated settlement of the complaint. OCR investigates complaints that are unresolved by the FMCS or when cases are reopened because the mediation agreement is violated. The following is an example of OCR's work in this area:

- Care One at Moorestown, LLC (Care One) - OCR completed its investigation of a complaint filed on behalf of a 58 year old African American male against a skilled nursing and rehabilitation center; Care One at Moorestown, LLC (Care One). The complaint alleged that the affected party was denied admission to Care One. Although OCR determined that the complaint allegations were unfounded, during the course of the investigation, OCR learned that Care One did not accept pediatric patients or patients under the age of 18. In order to resolve any potential violations of the Age Discrimination Act of 1975, Care One has revised its nondiscrimination policy as regards

to age. The policy now references all applicable federal regulations prohibiting discrimination and has disseminated a notice to its staff advising them of the revised nondiscrimination policy and the requirement that age will not be used in making admissions decisions. Care One has 24 facilities throughout New Jersey that provide services to approximately 24,000 individuals. Care One's corrective action steps impact all individuals who receive services from all 24 Care One facilities.

II. Privacy

OCR enforces the Privacy Rule issued pursuant to HIPAA. The Privacy Rule established for the first time a Federal foundation to protect the privacy of medical information and to provide rights to individuals with respect to that information, including access and notice. Covered entities (other than small health plans) were required to comply with the Privacy Rule as of April 14, 2003. On that date, OCR began accepting complaints against these entities, which include large health plans, health care providers that engage in electronic transactions, and health care clearinghouses. OCR's work in privacy enforcement is a critical element in securing the Secretary's goals of increasing access to quality health care services and of transforming the healthcare system through the use of health information technology.

As of December 31, 2006, OCR received approximately 24,000 privacy complaints, and has responded to more than 18,500. Of the approximately 6,000 complaints for which OCR had authority to investigate, OCR found no violation in about 2,000 cases and obtained change in the investigated entity's privacy practices and corrective action in over 4,000 cases.

OCR refers to the DOJ appropriate cases involving the knowing disclosure or obtaining of individually identifiable health information in violation of the Privacy Rule for criminal investigation. As of December 31, 2006, OCR made over 362 such referrals to DOJ.

The following are some specific examples of OCR privacy complaint investigations:

- Lifepoint Hospitals, Tennessee - OCR achieved corrective action from LifePoint Hospitals, Inc., resulting in Privacy Rule compliance in all 50 hospitals in the chain. The covered entity revised the policy for all of its hospitals regarding the authorization and identification of persons who claim to be personal representatives of patients and retrained its personnel in how to determine an individual's authority to act on behalf of unemancipated minors.
- Kaiser Permanente, California - Through its investigation, OCR discovered that a programming change in the health plan's information systems had mistakenly caused errors in the person designated as the subscriber for a family's health coverage. OCR required the health plan to determine if others had been similarly affected. It was found that the same fault in the computer system had affected the information for nearly 2,000 other families. OCR required the health plan to develop a corrective action plan that included the following: correct the computer error; review all transactions affected by the

defective programming for a six-month period, and make corrections to any corrupted subscriber information.

- New York City Human Resources Administration (HRA) - HRA disclosed protected health information in the course of processing Medicaid applications by sending consolidated data to computer vendors. OCR required HRA to develop a new internal procedure pertaining to the mailing, faxing, and receipt of material that contains protected health information to their business associates and to train staff on the new processes. The new procedures will directly impact 19 Medicaid offices and 8 independent health care programs under the jurisdiction of HRA.
- Kroger Pharmacies, North Carolina – Kroger maintained pseudophedrine purchaser logbooks in a manner that individuals’ personal information was visible on the counter to other customers. OCR required Kroger to acknowledge that the logbooks contained information protected by the Privacy Rule and to implement procedures to safeguard the logbooks and to train staff on the safeguards in all stores.

COMPLIANCE REVIEWS

OCR conducts routine preventative compliance reviews for its traditional civil rights authorities. However, through 2008, OCR is conducting Privacy Rule compliance reviews only where compelling and unusual circumstances demand, to prevent the diversion of resources from the timely investigation and completion of action on complaints.

I. Civil Rights

- Preventative Compliance Reviews - A review examines the compliance status of a program recipient after receipt of HHS funds (therefore, these reviews are also referenced as post-grant reviews). Reviews may be comprehensive or of limited scope with respect to the compliance issues involved and the statutory authorities applied.
- Pre-Grant Reviews - A pre-grant review is conducted when health care facilities seek approval from the CMS to participate in the Medicare program.

A. Preventative Compliance Reviews

Under regulations implementing the nondiscrimination laws, OCR must periodically review the policies and practices of program recipients to assess compliance. In addition, the regulations authorize OCR to investigate when a report or other information indicates a possible failure to comply with nondiscrimination requirements. A proactive 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 complaints alone.

Some examples of OCR's preventative review work are listed below:

- Compliance Review of South Carolina Department of Social Services (SCDSS) -OCR conducted a state-wide review of the adoption and foster care policies, procedures, and practices being implemented in South Carolina. The results of this review disclosed that the SCDSS's adoption placement policies and practices involve impermissible considerations regarding race as prohibited under MEPA/Section 1808/Title VI. The prohibited policies/practices uncovered during the course of OCR's investigation included the following: the agency treats race differently in the policies and practices used to Amatch@ children with prospective adoptive parents based on parents= initially expressed preferences regarding the characteristics of children they are willing to adopt; the agency improperly implements policies/practices to Amatch@ infants with prospective adoptive parents in accord with the racial preference of birth parents who surrender these children for adoption; the agency subjects prospective adoptive families who desired to adopt trans-racially to different treatment and extra scrutiny in comparison to those interested in same-race adoptions; and the agency routinely uses Aculture@ as a proxy for race. After issuing findings, OCR has been collaborating with ACF in negotiating with the state agency to develop acceptable remedial measures to address the foregoing violations.
- Phoenix Area Hospitals - OCR launched a four-hospital wide compliance review to determine whether major hospitals in Phoenix, Arizona were taking reasonable steps to ensure that persons who are limited English proficient (LEP) have meaningful access to services. While the hospitals are of varying sizes, all of them serve areas with significant Spanish speaking populations. OCR initiated the reviews after seeing media reports of a Phoenix area hospital's failure to provide language access that allegedly resulted in inadequate treatment and death to a patient. After conducting compliance reviews, OCR entered into resolution agreements with three of the four hospitals. OCR then monitored the hospitals to ensure compliance with the resolution agreements. In 2006, OCR's monitoring of the hospitals was complete. As a result of OCR's compliance work in these reviews, the hospitals now train their staff on language assistance policies and procedures and translate vital documents. Two hospitals developed programs whereby they utilize trained bi-lingual staff for interpreter services, as well as written notices in several languages to patients about the availability of interpreters. The hospitals have also designated staff to coordinate the provision of language services. In addition, the parent corporation of one of the hospitals hired a consultant to review language access and communication policies and procedures at all of its 42 hospitals in Arizona, California, and Nevada, to ensure compliance with civil rights laws. The resolution agreements also address the needs of people who are deaf or hard of hearing, providing for interpreters and other auxiliary aids, and services where necessary for effective communication.

B. Pre-Grant Reviews

Pre-grant reviews are conducted when health care providers, such as hospitals, nursing homes, home health agencies, and rehabilitation facilities, apply to participate in the Medicare program.

CMS requires health care providers to meet certain legal requirements in order to participate in the Medicare Part A program established by Title XVIII of the Social Security Act. Those legal requirements include ensuring that health care providers receiving Federal financial assistance from HHS do not deny benefits or services to qualified persons based on their race, color, national origin, disability, or age. When providers seek Medicare certification, OCR conducts a pre-grant review to determine if they will be in compliance with Title VI, Section 504, and the Age Discrimination Act when they receive HHS funds. Such reviews promote compliance because they both educate health care providers about their legal responsibilities to refrain from illegal discrimination and identify potential civil rights concerns prior to receipt of Federal financial assistance.

The pre-grant review enables recipients to establish appropriate policies and procedures or correct potential noncompliance in a voluntary context. Approximately 60 percent of OCR's pre-grant reviews result in corrective action mainly related to LEP and sensory-impaired persons' communication issues. Because of the self-corrective and direct technical assistance nature of the pre-grant review, OCR's experience has been that recipients are generally cooperative and view the activity as an informative and positive step that can help them prevent civil rights compliance problems from arising in the future. Facilities administrators have reported that the increased awareness brought about by OCR's technical assistance efforts has great ripple effects as administrators often move on to other facilities, applying the civil rights knowledge to the new entities. OCR is continually improving the efficiency of its pre-grant review process. For example, in response to a National Pre-Grant Survey that identified bottlenecks causing delays in case processing, OCR revised its data request form to streamline the process and improve recipient comprehension of civil rights laws and OCR's expectations for clearance.

Examples of the impact of pre-grant reviews include:

- Affinity (Oakdale, NY) – Affinity is skilled nursing facility with 350 employees. OCR helped the facility revise its policies for communication with persons of limited English proficiency and communication with sensory-impaired persons, and helped the facility develop a nondiscrimination policy. As a result of technical assistance by OCR, they now have a qualified sign language and foreign language interpreters on their staff.
- Regency at Puyallup Rehabilitation Center - OCR's pre-grant review revealed that Regency's policy on communicating with LEP persons was not compliant with Title VI. Regency's policy appeared to rely on family and friends as the first source for interpreters and did not state that Regency would provide a qualified interpreter at no cost to the LEP person. After OCR provided technical assistance, Regency revised its written policy to state that Regency will provide a qualified interpreter at no cost to the LEP person and that family and friends will not be used as interpreters unless the LEP person, after having been informed of the free services of a qualified interpreter, chooses the services of the family or friend. OCR also provided technical advice to assist Regency in bringing its policy on communicating with sensory impaired persons into compliance with Section 504. As a result, Regency revised and expanded its written policies for communicating with sensory-impaired persons to include: a) procedures for providing a qualified sign

language interpreter at no cost to hearing impaired persons; b) a contract for on-call sign language interpretive services; c) an expanded list of available auxiliary aids; and d) procedures for training staff on effective communication with sensory impaired persons and the availability and use of auxiliary aids.

II. Privacy

OCR has conducted a very limited number of compliance reviews since the Privacy Rule compliance date in 2003, focusing its resources instead on handling the over 24,000 complaints received since that date. Several compliance reviews have been satisfactorily resolved by obtaining corrective action from the entities under review. For example, in one compliance review, press reports indicated that files of medical records belonging to a covered entity providing radiology services and containing protected health information were found in a dumpster. A passerby discovered the discarded records and contacted a television station, providing them with access to the dumpster. After being informed of the media report, OCR contacted the covered entity, which acknowledged discarding the records in the dumpster. The U.S. Department of Justice, which took custody of several of the boxes of records, investigated the matter and, finding no criminal intention to disclose medical information returned the files to the covered entity.

OCR then conducted its compliance review and provided technical assistance to the covered entity on its responsibilities under the Privacy Rule regarding the safeguarding of records, including during disposal activities. OCR required the covered entity to develop new policies and procedures concerning safeguards for protecting the privacy of patient records.

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 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.

Several examples of a positive outcome from OCR's monitoring work follows:

- Oregon Dept. of Humans Services (DHS) TANF Compliance Review – The voluntary resolution agreement for this case is nearing the end of the monitoring period. As a part of this agreement, DHS developed new client disability screening tools and an improved client data system. More than 350 TANF staff were trained in the new systems. DHS now reports that, due to the effectiveness of the new screening and tracking systems, the percentage of new TANF clients that are identified with disabilities and limitations has increased from about 8 percent to over 33 percent of the total. This represents an increase in the number of such clients in the TANF program from 666 to 2,572. This upward trend is continuing. The new data system also provides much improved client detail, which will have an increasingly significant impact on program design, funding and

management. DHS is currently working on the development of its internal oversight and compliance monitoring system, to assure that the new procedures have a positive impact on TANF program outcomes for disabled clients.

- Yavapai Regional Medical Center (Prescott, AZ) – OCR investigated a complaint alleging that the hospital failed to provide a Spanish-speaking interpreter to a patient, thus delaying services to that patient. The complaint also alleged that the facility failed to translate materials about the patient’s medical condition into Spanish. As a result of OCR’s investigation, the hospital signed a resolution agreement in May 2006 to resolve the issues in the complaint. This agreement is notable because the facility is the only hospital in the Prescott Valley, an area which has seen a surge of LEP patients, primarily Spanish-speakers, in the last 10 years. As a result of the agreement, the facility now has a comprehensive language assistance program available for LEP patients. OCR officially closed the monitoring of the agreement with the facility on December 29, 2006.

PUBLIC EDUCATION, OUTREACH, AND VOLUNTARY COMPLIANCE

The assignment of staff time to public education, outreach and voluntary compliance, and collaborative projects represents a commitment by OCR to listen and respond cooperatively to its customers. OCR’s work also evidences collaboration with other HHS components and Federal agencies, states, local governments, providers, and community and faith-based and other organizations to address acute and chronic civil rights problems, and to work with covered entities and consumers to address Privacy Rule issues. Outreach activities often involve several of OCR’s legal authorities at once, and therefore are not easily differentiated on that basis. In FY 2008, with this allocation, OCR will conduct a variety of national outreach, public education, and technical assistance activities including:

- Partnering with other HHS agencies, state agencies, trade associations, community-based organizations, provider groups, as well as community groups and faith-based organizations working with target populations, to raise awareness regarding complying with Title VI, the ADA, and MEPA/Section 1808 of the Small Business Act. OCR’s public education and outreach activities include presenting at national and state forums, providing training and technical assistance, responding to phone inquiries and correspondence, and developing targeted industry-specific materials.
- Providing technical assistance, policy clarification, public education, and other guidance to covered entities under the Privacy Rule through continued operation of toll-free phone lines; updating of FAQs for the OCR website; provision of public education and informational documents targeted to specific health care service providers and other categories; and presentations either on-site at conferences or through telephone and/or web-based conferences.

I. Civil Rights

A. Disabilities

OCR is promoting compliance with Title II of the ADA and Section 504 of the Rehabilitation Act by providing outreach, training, and technical assistance to states and community-based organizations. OCR has also provided extensive technical assistance to states in their *Olmstead* planning efforts.

Examples of OCR's work with Federal agencies and state and local organizations and groups include:

- 2006 National HIV/AIDS Prevention Leadership Summit - OCR participated in the 2006 Summit entitled, "Stop HIV/AIDS in Black and other Communities of Color; New Approaches/ New Challenges: Where Are We?" OCR staff conducted a roundtable discussion regarding best practices for preventing discrimination in health and welfare settings against persons with HIV/AIDS. OCR was assisted by representatives from the Emory University School of Medicine HIV/AIDS Training Center and from the LaSima Foundation, a Dallas AIDS services organization. OCR also sponsored an informational booth and distributed business cards, fact sheets, fliers and other information on all aspects of OCR's mission and regulatory mandates, including HIV/AIDS. Approximately 2500 persons attended the conference and approximately 500 to 600 visited OCR's booth. The conference interactive workshops and plenary sessions dealt with such topics as HIV/AIDS and Communities of Color; Faith-Based Approaches and HIV disease; Coalition Building; Bringing HIV/AIDS Facts to the African-American Community; HIV Prevention and Care after a Major Disaster; African-American Women, HIV, and the Relationship to Other Health Disparities; Attracting, Engaging, and Retaining Latinos and other Hispanics in HIV/AIDS Programs Designed for Persons who are High Risk. The OCR representatives also participated in interactive working groups which engaged participants in discussions focused on the major lessons learned from integrated, multi disciplinary, research and community-based experiences regarding HIV/AIDS.
- Church Alive interview (New York and New Jersey) – OCR staff were interviewed by the pastor and founder of the Church Alive Community Church on Church Alive, a cable television program dealing with civil rights and HIV/AIDS issues. The interview was aired at various times on three consecutive days in May 2006 on several cable channels in the Bronx, Teaneck/Hackensack in New Jersey and in Manhattan. OCR's "1-800" number appeared periodically during the interview and again during the credits. The television program's audience consists of approximately 900,000 families in the Bronx, Manhattan, Brooklyn, Queens, Staten Island and New Jersey combined. The ethnic breakdown of the audience is as follows: 50 percent Latino/ Caribbean; 30 percent African-American; 10 percent African; and 10 percent White European and Asian. The Church Alive Cable television program has won nine Beta awards for best education in health programs since 1987.

B. Title VI

1. Health Care Disparities

OCR works with community groups and faith-based communities to provide public education and awareness of civil rights protections in access to health care for racial and ethnic minorities. OCR provides training and conducts workshops at national, regional, and local meetings of African-American, immigrant and refugee, and Native American organizations. OCR collaborates with state and local government agencies to develop strategies to reduce health disparities, including education and training opportunities. OCR participates with other HHS agencies to sponsor large-scale public education/health expo activities. For example:

- Eliminating Disparities in Clinical Trials Formulating Policies, Baylor College of Medicine – OCR staff participated in interactive small group roundtable discussions/sessions at the “Eliminating Disparities in Clinical Trials Formulating Policies” conference sponsored by Baylor College of Medicine’s Chronic Diseases Prevention and Control Research Center (CDPCRC) and the Intercultural Cancer Council (ICC). The CDPCRC and ICC are conducting a four-year (2005-2009) research program funded by Genetech, Inc. to improve participation of minority and underserved patients in oncology and asthma clinical trials. Approximately 130 healthcare providers, researchers, advocates, and state and federal representatives participated in roundtable sessions to develop policy recommendations. Participants agreed upon several policy areas to address the issues of diverse recruitment, retention and return necessary to eliminate inequities in clinic trials. These policy areas included the following: education and training of healthcare providers, incentives for pharmaceutical partnerships, regulatory oversight and enforcement, publication of related policies, insurance access, community partnerships, disease burden studies, targeted funding and patient navigation assistance.
- Partnership with Colorado Department of Public Health and Environment and the Public Health Service (Denver, CO) – Working with the Office of Health Disparities, Colorado Department of Public Health and Environment; the Public Health Service; and other partners, OCR planned and co-hosted three health disparities-related public education events, *The Culture of Data: Moving from Data to Impact*, *Working Together: The 2006 Colorado Health Disparities Conference*; and *The Mental Health Disparities Summit*. These consecutive events occurred on October 11-13, 2006 and attracted more than two hundred and fifty participants. Dr. Joseph R. Bentancourt, Director of Multicultural Education, Massachusetts General Hospital and Thomas A. LaVeist, Director, Center for Health Disparities Solutions, Johns Hopkins University were keynote speakers. The events featured a variety of plenary and breakout sessions, including a session on OCR’s limited English proficiency (LEP) Policy Guidance. The events facilitated the development of a model for local planning to address health disparities and link community-based programs to Colorado’s strategic plan for more effectively addressing determinants of health.

- 2006 National Health Disparities Summit – OCR served as an official co-sponsor of this event, which brought together leaders to advance key issues and opportunities for improving minority health and closing the health gap. This summit was intended to promote best practices and collaborative actions that are vital to improving minority health. Workshops were held throughout the Summit highlighting progress, challenges, and strategies for improving minority health since the release of the 1985 "Report of the Secretary's Task Force on Black and Minority Health" which created the Office of Minority Health and served as the impetus for addressing health disparities in this country. OCR maintained an exhibit booth that provided current OCR Fact Sheets and the OCR general brochure on OCR programs, individual rights under the civil rights and privacy laws that OCR enforces, as well as OCR complaint and investigation procedures. Additionally, OCR presented four workshops: 1) Protecting Individuals with HIV/AIDS From Disability-Based Discrimination; 2) Immigrant Families and Access to Primary Care: Federal, State and Local Solutions; 3) Patient Distrust and the American Healthcare System-Overcoming the Legacy of Tuskegee and, 4) Overcoming Language Barriers: Promising Practices in Health Settings. OCR's significant participation and presence at this event brought attention to the important work of OCR and allowed OCR the opportunity to engage in creative dialogue with government, community and health care leaders about the future of minority health and health disparities.

2. LEP

OCR has conducted numerous public education and awareness outreach activities to educate LEP populations, covered entities, and appointed officials about the importance of language access, and to share information about OCR's efforts to assist states in revising benefits applications. OCR initiated an outreach to national and state hospital associations to develop and provide technical assistance in compliance with Federal civil rights laws requiring effective communication with people with disabilities and limited English proficient individuals, focusing on understanding how to evaluate the need for, plan for, and utilize interpreting services in a manner that enhances the quality of care provided and the opportunity to participate and benefit from services. Examples of OCR's work with Federal agencies and state and local organizations and groups include:

- Fifth National Conference on Quality Health Care for Culturally Diverse Populations – OCR was a major participant at this October 2006 conference entitled "Building the Essential Link between Quality, Cultural Competence, and Disparities Reduction." The objective of the conference was to identify and highlight work in the areas of health care quality and provide a forum for cross-discipline discussion. The conference brought together over 600 participants and included nationally recognized speakers who discussed health disparities, language access programs and culturally competent health care. OCR staff presented at both a pre-conference intensive workshop and a general session workshop. The pre-conference workshop focused on funding sources available for language assistance programs in health care, health care interpreter certification standards, and advocacy strategies for addressing language assistance programs in health care. The second session included a panel consisting of two OCR staff members, a CMS representative, an OMH representative and an advocate from the National Health Law

Program. This session provided an overview of the major sources of federal funding for language assistance services.

- “Celebra La Vida Con Salud” (Celebrate A Healthy Life) – OCR staff reached out to more than 15,000 Hispanics across the country during the Fall 2006 "Celebra La Vida Con Salud" health fairs. The health fairs are organized by the Office of Minority Health to promote HHS's campaign to eliminate racial and ethnic health disparities, and are focused on the Hispanic community in order to increase Spanish speakers' awareness of Federal health care initiatives. HHS participants also included CDC, the National Institutes of Health, CMS, FDA, HRSA, Administration on Aging, the Office of HIV/AIDS Policy, and the Office of Women's Health. At the fairs, OCR staff distributed Spanish-translated outreach materials about civil rights and information about filing complaints with OCR involving discrimination related to limited English proficiency (LEP). OCR is also slated to participate in the Spring 2007 health fairs, which are scheduled to occur in San Diego, Phoenix, San Antonio, Dallas, Denver and Boston.
- Texas Health and Human Services Commission (THHSC) – OCR provided LEP guidance to representatives of the THHSC and its Program agencies. THHSC is the largest State health and human services agency within Region VI and serves hundreds of thousands of HHS beneficiaries. THHSC administers the Children's Health Insurance and the Medicaid Programs. OCR conducted multiple training sessions providing guidance to THHSC's agencies in the development of their LEP needs assessment. Approximately 300 individuals attended these sessions. Most of the questions from the audience centered on how the agency would determine the number of LEP persons in its service area and how to provide language assistance in circumstances where interpreters are not readily available.
- South Carolina Hospital Association (SCHA) - Beginning in the Fall of 2003 and concluding in the Spring 2006, OCR collaborated with the SCHA in a “Voluntary Compliance Program.” This initiative was aimed at providing technical assistance and guidance to members of the SCHA interested in working informally with OCR in developing and implementing communication assistance policies/procedures for LEP persons. The SCHA has 65 or so full-service hospital members, of that group twelve (12) from around the State agreed voluntarily to work with OCR and SCHA to develop acceptable language assistance programs. As a result of this collaboration, each of the 12 members of SCHA participating in this initiative developed, with extensive OCR assistance and guidance, individualized communication assistance policies/procedures that resulted, in part, from a balancing of the following four factors: 1) the number and proportion of LEP persons eligible to be served or likely to be encountered by AMH's program; 2) the frequency with which LEP individuals come in contact with the program; 3) the nature and importance of AMH's healthcare program to people's lives; and 4) the resources available and costs of the program. After compiling pertinent information to assess each of these factors, participating hospitals were able to undertake the essential task of identifying and assessing the unique communication needs of LEP individuals in their respective service areas. This in turn enabled all hospitals to identify specific

reasonable steps that could be undertaken to ensure that LEP individuals have meaningful access to their services. As a result of OCR's intervention and participation in this effort, key medical providers serving at least 40 percent of the LEP population in the State now have language assistance programs that comply with Title VI.

C. Non-Discrimination in Temporary Assistance for Needy Families (TANF) and Adoption and Foster Care

On February 8, 2006, the President signed the Deficit Reduction Act of 2005 (DRA) into law. The DRA included changes to the TANF program. On June 29, 2006, HHS published an interim regulation implementing the DRA changes to TANF. On the heels of these statutory and regulatory changes, OCR initiated outreach to underscore the continued obligation of TANF agency civil rights compliance. Examples of OCR's work with Federal agencies and state and local organizations and groups regarding TANF and Adoption and Foster Care include:

- Administration for Children and Families (ACF) Region VI Technical Assistance annual training conference – OCR sponsored an information booth at the Administration for Children and Families (ACF) Region VI Technical Assistance annual training conference. The theme of the conference was “Supporting our Families and Communities for the well-being of Children and Families.” The conference was focused on improving the delivery of service to human service practitioners from state, local, community and faith-based agencies. OCR provided resource information to approximately 250 individuals about Civil Rights which included guidance and fact sheets on LEP, MEPA, HIPAA and OCR's other statutory authorities.
- U.S Department of Labor 2006 National Equal Opportunity Conference – OCR staff participated in the U.S Department of Labor (DOL) 2006 National Equal Opportunity Conference. The conference was targeted to State and local officials involved in the delivery of work-related services through one-stop centers. Many State and local TANF programs are administered at these one-stop centers. OCR's involvement in the conference was two-fold. On August 1, 2006, OCR's Director gave a speech on OCR's work in ensuring civil rights compliance by recipients of TANF funds at a conference plenary session. On August 2, 2006, OCR staff collaborated with DOL Civil Rights Center staff in the presentation of a conference workshop entitled “The New TANF Regulation and Serving Customers with Disabilities.”
- National Association of State TANF Administrators – On November 17, 2006, OCR staff conducted a presentation at the annual meeting of the National Association of State TANF Administrators. The participants of the meeting included approximately 100 State and local TANF directors and policy staff from across the United States, and all meeting participants attended the OCR presentation. OCR presented on relevant civil rights laws and how civil rights (especially disability rights) issues arise in the TANF context. OCR's presentation underscored the continued importance of civil rights compliance, given the recent statutory and regulatory changes to TANF. OCR also steered meeting attendees to resources that may help to make civil rights compliance easier, including

OCR's 2001 guidance entitled *Prohibition Against Discrimination on the Basis of Disability in the Administration of TANF*.

D. Cross-Cutting: Race, Color, National Origin, and Disabilities

OCR's outreach work often targets particular populations, but addresses more than one of its legal authorities simultaneously. Often, OCR achieves greater efficiencies by working with governmental entities and other groups to educate audiences about a variety of OCR civil rights authorities. The following are examples of crosscutting outreach activities:

- Privacy, Confidentiality, Discrimination, Notification, and the Law Conference, November 8, 2006, Los Angeles, California – This conference was organized and sponsored by the HIV/AIDS Legal Services Alliance (HALSA) and the Los Angeles County Department of Health Services Office of AIDS Programs and Policies (OAPP). The conference was attended by 90 persons representing all of the organizations funded by OAPP, which also distributes HHS financial assistance from the Ryan White CARE Act. OCR staff spoke on the HIPAA Privacy Rule and on OCR's protections against HIV/AIDS discrimination in health care and human services. OCR staff and other panelists remained to address questions from the audience. OCR also distributed its fact sheets on HIPAA and on HIV/AIDS and copies of both power point presentations. The purpose of the conference was to educate social workers and case managers on the HIPAA privacy rights and civil rights of their clients with HIV/AIDS, and to educate them on how their clients can secure their rights, such as referring the client to HALSA or OCR. OCR found the audience highly interested in the presentations and made contacts for future outreach and technical assistance opportunities.
- Annual Southeast Civil Rights Training Conference - This year's event, hosted by the Mississippi Department of Health, was held July 11-14, 2006, in Jackson, MS, where approximately 400 participants attended. This year's theme, "*Equal Rights: Review and Revive in 2006*," highlighted the sponsor's commitment to having conferees focus on the importance for all interested parties to review and/or recommit themselves to recognizing, and collaborating to overcome, current barriers that may limit the access of vulnerable populations to needed services, benefits, and programs. The conference covered a broad range of topics/issues, including plenary sessions dedicated to civil rights concerns arising from recovery/reconstruction strategies/efforts relating to Hurricane Katrina, as well as a session focusing on the problems faced by persons who are limited English proficiency (LEP). There were workshops on Title VI ("The Heart of Title VI") and on "Emerging Issues and Challenges." Moreover, there were sessions featuring assessments/perspectives of representatives of several faith-based institutions/organizations regarding the specific programs/initiatives they are implementing on behalf of some of the most vulnerable Americans.
- Effective Communication in Hospitals Initiative - OCR has launched an initiative designed to develop and disseminate technical assistance resources that will assist hospitals in their efforts to communicate effectively with individuals who have limited English proficiency and individuals who are deaf or hard of hearing. In this project,

OCR is working with selected state hospital associations to 1) assess the issues and concerns of hospitals related to this issue; 2) develop and implement educational and other activities to effectively and efficiently improve language access for the target populations; 3) evaluate the process and the outcomes of the collaborative efforts; and 4) share the results of these efforts in a manner that will assist other hospitals and state associations facing similar issues. Each partnership will have the flexibility to develop and conduct the program that best meets the needs of the hospitals in the state. As resources permit, OCR's technical assistance and information will be available to hospital associations and hospitals in other areas on an ongoing basis. Complementing the state level projects is a dedicated OCR webpage, "Hospitals and Effective Communication" (<http://www.hhs.gov/ocr/hospitalcommunication.html>) and cooperative efforts at the national level with the American Hospital Association. AHA introduced the initiative to the state hospital associations through transmittal of a letter from the OCR Director. Additionally, AHA and OCR will exchange information and resource materials that will assist hospitals in their efforts to effectively and efficiently communicate with individuals who are limited English proficient or who are deaf or hard of hearing; and will collaborate on efforts to share the results of the initiative with other hospitals.

- Regional Emergency Planning – OCR's regional offices are collaborating with public agencies and community organizations to ensure HIPAA Privacy Rule and civil rights protections, as well as the needs of vulnerable populations, such as persons with disabilities or who are limited English proficient, are addressed in emergency planning and response efforts.
- National Conference on Best Practices and Technologies for Successful Emergency Preparedness, Response and Continuity (New Orleans, LA) – OCR Director Winston Wilkinson presented a keynote address on "Emergency Preparedness Planning: HIPAA Privacy and Special Needs Population Considerations" at the New Orleans National Conference on Best Practices and Technologies for Successful Emergency Preparedness, Response and Continuity, on December 4, 2006. Director Wilkinson described OCR's role and available technical assistance materials on the OCR website to assist emergency preparedness and response planners to understand how to handle protected health information during an emergency and how to plan for and respond to special needs populations, including people who are limited English proficient; deaf or hard of hearing, mobility impaired and those with other disabilities; and aging populations. Approximately 100 Federal, State, and local government and private sector representatives attended, including many contractors who work on information technology planning. Also, OCR staff conducted a workshop on the HIPAA Privacy Decision Tool for emergency preparedness planners.
- Conference on Returning Veterans and Their Families - From March 16-18, 2006, OCR participated in a conference sponsored by the Substance Abuse and Mental Health Services Administration (SAMHSA) entitled "The National Behavioral Health Conference on Returning Veterans and Their Families." OCR collaborated with HHS's Office on Disability and the U.S. Department of Veterans Affairs in developing and

presenting a workshop at the conference entitled “Help for Veterans through Civil Rights Laws, the Privacy Rule, and Disability-Related Federal Supports.” OCR’s presentation focused on the health privacy rights of veterans, and the right of veterans with disabilities to receive services in the most integrated setting appropriate as required by the Americans with Disabilities Act of 1990 and *Olmstead v. L.C.*

Examples of OCR’s outreach activities related to Indian Tribes include:

- Native American Regional Tribal Consultation - OCR participated in the Regional Tribal Consultation and two programs on Native American Perspective on HIV/AIDS. OCR staff networked and provided relevant information to Tribal representatives, social service providers, doctors and nurses on OCR’s work regarding HIS/AIDS, Health Disparities and Native American priorities.
- 2006 Annual Tribal Consultation Session - OCR continues its efforts to reach Indian Tribes with information about civil rights and HIPAA through its participation on the Regional HHS Interagency Tribal Issues Workgroup. This initiative will culminate in the 2006 Annual Tribal Consultation Session, in Albuquerque, New Mexico. Information provided by OCR staff will include OCR’s authorities and processes for serving people with disabilities in Indian Country, and Fact Sheets about Title VI, Section 504 of ADA, Age Discrimination, and HIPAA.

Examples of OCR’s outreach activities related to Immigrant Access include:

- American Public Health Association Annual Convention (Boston, MA) – OCR staff members answered specific civil rights and HIPAA questions, networked with service providers and public health professionals, and attended workshops at the American Public Health Association Annual Convention. Approximately 13,000 peers and leaders in public health were in attendance. Workshops included sessions on racial and ethnic disparities in healthcare, mental health issues in minority populations, differences in the healthcare experiences of diverse immigrant populations in the United States, and emergency preparedness.

II. Privacy

In FY 2008, OCR will continue to focus heavily on education and technical assistance activities to prevent Privacy Rule violations. OCR's public education activities will continue to entail outreach and technical assistance to health care providers, health care clearinghouses, and health plans to ensure that they understand their responsibilities under the Privacy Rule. OCR will also undertake efforts to educate health care recipients about their rights under the Rule. OCR will continue to utilize a variety of methods to educate the public about the Rule. For example, OCR will continue to make available a free call-in line for HIPAA questions. Calls are routed to OCR regional offices, where staff are able to respond directly to many frequently asked questions. Currently OCR responds to approximately 2,200 calls per month about the Privacy Rule.

In addition, in 2008 OCR will continue to make its senior experts available on a regional and national basis for presentations at conferences and seminars attended by all sectors of the healthcare industry. Presentations are typically at national healthcare association conferences that include both providers and health plans, as well as at national, state and local bar associations, medical societies, and universities. OCR participates regularly with many professional organizations and government-sponsored events including: national HIPAA Summits, the American Health Information Medical Association, the Workgroup for Electronic Data Information, and DOL Employee Retirement Income Security Act conferences. OCR has partnered with other HHS operating divisions as well, including teleconferences sponsored by CMS and conferences sponsored by the National Institute of Health (NIH) and the CDC.

From April 2003 through December 2006, OCR had over 3.5 million visits to its Privacy web pages and also had over 4 million Privacy Rule answers viewed on the frequently asked questions site maintained by HHS. OCR and its sister divisions in the Department, particularly CMS, but also the NIH, CDC, and the Substance Abuse Mental Health Services Administration among others, have worked and continue to work in concert to produce materials and guides responsive to the needs of the wide range of healthcare industry segments that are affected by the Privacy Rule. OCR's FY 2007 and FY 2008 activities also will include issuing additional guidance to aid in implementation and to dispel misconceptions about the Privacy Rule.

OCR uses its listserv that currently has 17,229 subscribers to distribute announcements, notices of available resources, and other educational information about the Privacy Rule. As new guidance and FAQs have been published, OCR has used the listserv to notify the public that such information is available. Recently, for example, OCR disseminated over its listserv a series of FAQs on the how the Privacy Rule applies to disclosures in the litigation context.

OCR's varied public education and technical assistance activities with respect to the Privacy Rule combined to quickly respond to the unprecedented aftermath of Hurricanes Katrina and Rita and the related devastation to the Gulf Coast. Within days of Hurricane Katrina, OCR released guidance materials on September 1 and September 9 of 2005 to assist covered entities and others working in health care and emergency services in understanding how the HIPAA Privacy Rule permits disclosures of health information for use in responding to treatment and other needs of evacuees. In addition to these efforts, OCR delivered in-person presentations to audiences in New Orleans and Illinois to provide additional guidance and to answer questions about the application of the Privacy Rule to issues raised in the context of this emergency (see details below).

The following are examples of OCR's outreach activities related to the Privacy Rule:

- Training Conferences for Privacy Officers of the Military Health System – In the summer of 2006, OCR Region IX provided two presentations in San Diego and Los Angeles, California to Privacy Officers serving military health facilities overseen by the TRICARE Management Activity (TMA) Privacy Office. Approximately 100 persons attended each presentation. The topics included tips on working with OCR during an active investigation and examples of common Privacy Rule complaints investigated by OCR. The information was well-received and OCR received a letter of thanks and appreciation

from TRICARE praising OCR staff for the presentation and its contents. Another presentation took place in Arlington, VA, which was presented by staff from OCR Headquarters. The TMA Privacy Office is responsible for military health facilities serving approximately 9.2 million active duty and retired service members.

- Emergency Preparedness Planning and HIPAA Decision Tool – In late June, 2006, OCR posted a new web-based interactive decision tool designed to assist emergency preparedness and recovery planners in determining how to access and use health information about persons with disabilities consistent with the HIPAA Privacy Rule. OCR prepared this tool with support from the HHS Office on Disability. The tool guides emergency preparedness and recovery planners through a series of questions regarding how the HIPAA Privacy Rule applies to a particular disclosure. By helping users focus on the source of the information being disclosed, to whom it is being disclosed, and the purpose of the disclosure, users of the tool will better meet, for example, the needs of the elderly or persons with disabilities in the event of an evacuation. The tool was demonstrated for the first time in late June at a joint HHS/Department of Homeland Security *Working Conference on Emergency Management and Individuals with Disabilities and the Elderly* in Washington, D.C. It also was featured, along with civil rights emergency preparedness and response issues, at a key-note address delivered by OCR’s Director on December 4, 2006 at a conference in New Orleans on Best Practices and Technologies for Successful Emergency Preparedness, Response, and Continuity.
- National Hispanic Medical Association Tenth Annual Conference – OCR participated in a panel entitled, “Business Perspectives in Health Care and HIPAA,” at the National Hispanic Medical Association’s Tenth Annual Conference, “SOMOS UNIDOS: United to Eliminate Health Disparities for Hispanics.” OCR’s presentation included an update on Privacy Rule compliance activities and addressed issues of significance to health care providers serving Hispanic communities. Over 650 persons attended this conference, including physicians, medical students, faculty members, government, and industry representatives.

ACTIVITIES TO ENSURE INTEGRITY AND EFFICIENCY OF OCR’S COMPLIANCE WORK

I. POLICY-MAKING AND COORDINATION

Headquarters staff is responsible for coordinating and supporting the compliance, review, pre-grant, and outreach activities of the organization. In addition, headquarters staffs are responsible for policy development and rule-making activities, and providing representation on or liaison to a number of secretarial advisory committees, intra and interdepartmental workgroups, committees, and councils. OCR will continue to devote resources to these efforts. OCR regularly receives requests for policy interpretations of its civil rights and privacy regulations and continues to receive a high volume of calls with questions related to these regulations. OCR will continue to provide advice on the civil rights regulations and the Privacy Rule in response to these requests

during FY 2008 to facilitate compliance. Some of the headquarters policy-related activities will include the following:

- Analyzing the need for modifications to civil rights and privacy regulations and proposing regulatory modifications when necessary;
- Coordinating complaint investigation activities with other Federal agencies, such as DOJ which coordinates all Title VI and ADA regulatory activities and enforces sanctions for criminal violations of the Privacy Rule, and CMS, which enforces the other HIPAA administrative simplification rules;
- Ensuring that Departmental regulatory, policy, and outreach issuances are consistent with Federal civil rights and privacy statutes and regulations;
- Working with other Departmental offices to ensure that Departmental initiatives are resolved in accordance with civil rights and privacy policy; for example:
 - OCR will continue to work with the HHS Office on Disability (OD), created by HHS in 2002 as part of the Department's activities to carry out the New Freedom Initiative. Through various methods, OCR has supported OD's coordination and leadership of HHS disability-related activities, including by consulting with OD staff on matters with possible civil rights implications, attending intra-departmental meetings convened by OD, and participating on OD-initiated subcommittees to develop the Surgeon General's Call to Action on Health and Wellness for Persons with Disabilities and its subsequent Action Plan, to develop guidance materials for disaster planning and first responders; and to raise public awareness of health-related problems faced by individuals with disabilities. OCR will also continue to participate in other HHS activities related to the New Freedom Initiative and E.O. 13217, including efforts to support and implement Federal agencies' response to the recommendations of the New Freedom Commission on Mental Health.
 - Responding to requests for a second level of review of complaint findings by regional offices.
- Actively participating in Departmental working groups such as the Health Disparities Council; the HIPAA Privacy Council; the Intra-departmental Council on Native American Affairs; the Secretary's Advisory Committee on Genetics, Health, and Society; the Global Healthy Policy Core Group; the National Committee on Vital and Health Statistics; the Health Information Technology Policy Council; and the Consumer Empowerment and Confidentiality, Privacy, and Security Workgroups under the American Health Information Community.
- Coordinating with CMS in enforcing HIPAA and in reviewing home and community services waivers for persons with disabilities and demonstration grant applications for Money Follows the Person;

- Reporting or compiling reports such as the Annual Age Discrimination Report to Congress as required by the Age Discrimination Act, through which twenty-six Federal agencies report on the steps taken during the preceding fiscal year to comply with the Age Discrimination Act;
- Responding to media requests about the Privacy Rule and various civil rights authorities; and
- Responding to a range of correspondences asking questions about issues under OCR's jurisdiction. Writers include national trade associations, advocacy organizations, consumers, covered entities, Federal, state and local governmental bodies; and members of Congress. In answering letters, OCR often explains or clarifies particular provisions of the Privacy Rule or its civil rights regulations or policies.

COMPLIANCE LEGAL COUNSEL - OGC (CIVIL RIGHTS)

OCR's budget submission includes funds to support compliance legal advisory services provided by 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 and the Privacy Rule. Staff attorneys in each of OCR's regional offices and in Headquarters address issues related to most integrated setting and other ADA/Section 504 case law, health disparities, quality of care, Title IX, immigration/public charge issues, and privacy of health information.

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

OCR anticipates that at the FTE level included in the FY 2008 request, the Civil Rights Division will be able to provide necessary legal assistance in connection with letters of findings, corrective action plans, regulations, legal interpretations, policy development, guidelines, and technical assistance materials. In FY 2008, the legal staff is expected to provide legal advice in connection with investigated complaints, reviews, corrective action plans, and litigation matters. In addition, the attorney staff will review potential enforcement actions, advise on the development of Privacy Rule exception determinations, 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.

COMPLIANCE PROGRAM MANAGEMENT

This component of the budget supports OCR's leadership, policy setting, planning, management systems, and program oversight functions. This includes providing overall policy and program direction; coordinating with HHS officials and with other executive branch departments and agencies; establishing compliance priorities; developing short- and long-range program plans, including formulating and executing the budget; and setting measures for program outcomes and staff performance. Compliance program management leadership and support also includes allocating staff to accomplish program objectives; monitoring, evaluating, and reporting on program effectiveness; implementing management and quality improvement projects; developing and maintaining program management information systems; and coordinating with administrative service providers in the Office of the Secretary and the Department to address a wide array of resource management issues.

Compliance program management staff will continue to provide the office with the leadership, planning, and oversight necessary to manage OCR's headquarters and regional operations.

Performance Analysis

OCR's PART findings concluded that OCR has a strong purpose and design, is well-managed, and that independent evaluations indicate that OCR is effective and achieving results. To maintain and improve upon its current PART rating, OCR utilizes high-quality efficiency measures, such as cases resolved per FTE, to track and evaluate performance.

Performance Goal	Results	Context
<p>Increase the rate of resolution for civil rights and privacy cases, and new Medicare application reviews received each year, to 100% per year by the end of FY 2012.</p>	<p>OCR has met its annual target since establishing the baseline in FY 2003. However, if OCR is funded at the FY 2006 CR level during FY 2007, OCR will not meet the target until at least 2019.</p>	<p>As the Department's law enforcement agency responsible for resolving complaints of non-compliance, OCR's performance measures are the rate of civil rights and privacy complaint cases resolved each year, and the number of new Medicare application reviews resolved to cases / reviews received. Output measures are appropriate for OCR since its functions are primarily investigating and resolving complaints and ensuring compliance with privacy and civil rights laws.</p>
<p>Increase the number of individuals who are, or represent, health and human service providers, other interest groups, and consumers to whom OCR provides information and training.</p>	<p>OCR established the baseline in FY 2005 (33,118), and developed ambitious future targets according to the framework developed in OCR's PART. However, if OCR is funded at the FY 2006 CR level during FY 2007, OCR will be unable to meet the revised PART measures of 76,385 individuals in FY 2007 and 78,675 in FY 2008 as approved November 2006.</p>	<p>Each year, OCR will provide information and training to individuals who are, or represent, health and human services providers, other interest groups, and consumers. Information and training for the purpose of this goal is defined as presentation of speeches, literature handouts, and training. It excludes radio and television broadcasts to the public, but includes video and WEBEX.</p>
<p>Increase the number of covered entities that make a substantive policy change or develop new policies as a result of OCR intervention and/or review.</p>	<p>OCR established the baseline in FY 2005 (1,019 covered entities) and in November 2006 developed ambitious future targets of 2,550 covered entities in FY 2007 and 2,625 in FY 2008. Meeting these targets is unlikely if OCR is funded at the FY 2006 CR level during FY 2007.</p>	<p>By increasing the number of covered entities that make substantive policy changes or develop new policies as a result of OCR intervention, OCR will have a measurable outcome to assess its impact on the population it serves.</p>

No follow-up actions were identified for OCR during its PART evaluation. To improve on its performance, OCR is taking the following actions: evaluate performance goals to ensure they are sufficiently ambitious; consider projected performance when making funding decisions; and ensure partnership agreements with other offices of Health and Human Services and other Federal agencies include attainment of annual and long-term measures. Now in its second year under PART, OCR continues to evaluate its actual performance in relation to established measures. Once the initial evaluation period is complete, OCR will work to adjust the measures where appropriate. Actual performance in relation to established goals is one factor that is used in determining the allocation of resources within OCR. OCR now mandates inclusion of its PART goals and measures in all of its partnership agreements.

Effects of the Continuing Resolution on Performance Targets

If OCR is funded at the FY 2006 CR level during FY 2007, one result will be a dramatic reduction in OCR's staffing from an actual level of 259 FTE in FY 2006 to an estimated 245 FTE in FY 2007, a reduction of 14 FTE. OCR currently projects that staffing cuts of this magnitude will result in OCR's inability to resolve approximately 700 civil rights and Privacy Rule complaints and Medicare application reviews in FY 2007 alone; by the end of FY 2008, OCR anticipates a 20 percent growth in the number of cases carried into the following year, to approximately 12,000. This carry-in number represents almost half of OCR's total complaint and Medicare pre-grant workload in FY 2008. The reality of an increasing complaint workload coupled with erosion in base resources threatens OCR's capacity to carry out its overall mission while at the same time providing prompt and effective response to the public's request for assistance to redress complaints that their civil rights or health information privacy rights have been violated.

OCR has two long-term performance goals: to ensure compliance and to increase awareness of Federal laws requiring nondiscriminatory access to HHS programs and protection of the privacy of individually-identifiable health information. Funding at the CR level will result in OCR's not achieving its long-term PART measure -- to increase the resolution rate of civil rights and privacy cases and new Medicare application reviews to 100 percent of new cases / reviews received per year -- until 2019, or seven years after the current target of 2012. In FY 2007, OCR projects that the resolution rate will be 84.5 percent, in contrast to OCR's revised PART goal of 96.8 percent, and in FY 2008 the resolution rate will be 83.7 percent versus 97.3 percent. OCR has two output measures that support this long-term goal and its related performance target. The first measure is the percentage of civil rights cases and new Medicare application reviews resolved to cases received. The second measure is the percentage of privacy cases resolved to cases received. See page 62 for details on the projected decline in performance against these two output measures that support OCR's long-term PART measure.

Targets & Accomplishments for FY 2004 – FY 2005; and PART–Framework Enhancements for FY 2003 – FY 2008

Objectives	FY 03		FY 04		FY 05		FY 06		FY07		FY08	
	Target	Actual	Target	Actual	Target	Actual	Target	Actual	Target	Actual	Target	Actual
FY 03 - FY 05 Plans												
A. Health Care	770	783	6500 P ¹ : 5030 CR ¹ : 1470	12725 P: 10534 CR: 2191	6600 P: 5100 CR: 1500	---	---	---	---	---	---	---
B. Social Services	614	617	295	426	400	---	---	---	---	---	---	---
C. Community-based Services/Disability	258	491	1265	1474	1432	---	---	---	---	---	---	---
Total Revised Targets and Accomplishments	1642	1897	8060	14625	8432	---	--	--	---	---	---	---
CY 05 PART- Framework Plans												
Output goal measure: Increase the rate of resolution for civil rights and privacy cases and new Medicare application reviews to 100% of total receipts by the end of FY 2012	68.2%	68.2%	78.0%	78.5%	82.0%	100.4%	87.0%	96.6%	96.8%	---	97.3%	---
The percentage of civil rights cases and new Medicare application reviews resolved to cases received	85.1%	85.1%	85.5%	89.1%	89.9%	125.7%	91.2%	102.0%	102.5%	---	103.0%	---
The percentage of privacy cases resolved to cases received			68.8%	68.8%	74.2%	79.7%	81.2%	91.8%	91.8%	---	92.3%	---
Annual goal measure: To provide information and training to an additional 33,118 individuals per year					72,000	72,000	74,160	74,313	76,385	---	78,675	---
Long-term Outcome Goal Measure: To increase the number of covered entities that make substantive policy changes as a result of OCR intervention					1,019	1,019	1,070	2,466	2,550	---	2,625	---

¹ CR = Civil Rights Nondiscrimination

¹ P = HIPAA Privacy Rule

Summary of Performance Targets and Results¹

Since FY 2002, as a result of the broader conceptual framework of OCR's restructured objectives and measures, OCR has reduced the number of performance measures for reporting accomplishments by 73 percent, thereby concentrating efforts on those measures that can be attributed directly to OCR's resources and activities. In FY 2005 for the first time, OCR portrayed its performance results through submission of the PART. The PART process allowed OCR another opportunity to recast its outcome performance measures and portray OCR as a results-based program. While it is recognized that this refinement of OCR's performance measures is a departure from that portrayed in previously submitted documents, OCR will continue to use the revised PART-established framework to further refine its performance measures.

	Measures	Total Reported		Total Met	Total Not Met		
FY	Total in Plan	Results Reported	% Reported	Met	Total Not Met	Improved	% Met
2003	17 (11)	4	24%	3	1	0	75%
2004	4	4	100%	4	0	0	100%
2005	4	4	100%	4	0	0	100%
2006	4	4	100%	4	0	0	100%
2007	6	data in late Fall 07	data in late Fall 07	data in late Fall 07	data in late Fall 07	data in late Fall 07	data in late Fall 07
2008	6	data in late Fall 08	data in late Fall 08	data in late Fall 08	data in late Fall 08	data in late Fall 08	data in late Fall 08

¹ The numbers in parentheses are the numbers of developmental measures for which baseline data were not available and targets, therefore, had or have not been set.

Detail of Performance Analysis

OCR has organized its performance measures around the two overarching strategic goals that directly support the HHS Strategic Plan, the Department-wide Top 20 Objectives, the Secretary's 500-day plan and priority initiatives, and the President's Management Agenda.

Long Term Goal: To ensure compliance, to increase awareness, and to increase understanding of Federal laws requiring nondiscriminatory access to HHS programs and protection of the privacy of protected health information.			
Measure	FY	Target	Result
OCR's consolidated long-term measure (output) is to increase the resolution rate of civil rights and privacy cases and new Medicare application reviews to 100 percent of new cases/reviews received per year by the end of FY 2012	2008	97.3%	Oct-08
	2007	96.8%	Oct-07
	2006	87.0%	96.6%
	2005	82.0%	100.4%
	2004	78.0%	78.5%
	2003	Baseline	68.2%
OCR's first measure (output) is percentage of civil rights cases and new Medicare application reviews resolved to cases/reviews received	2008	103.0%	Oct-08
	2007	102.5%	Oct-07
	2006	91.2%	102.0%
	2005	89.9%	125.7%
	2004	85.5%	89.1%
	2003	Baseline	85.1%
OCR's second measure (output) is the percentage of privacy cases resolved to cases received	2008	92.3%	Oct-08
	2007	91.8%	Oct-07
	2006	81.2%	91.8%
	2005	74.2%	79.7%
	2004	Baseline	68.8%
OCR's annual measure (output) is the number of individuals who are or represent health and human service providers, other interest groups, and consumers to whom OCR provides information and training annually.	2008	78,675	Oct-08
	2007	76,385	Oct-07
	2006	74,160	74,313
	2005	Baseline	72,000
OCR's long-term measure (outcome) is to increase the number of covered entities that make substantive policy changes as a result of OCR intervention	2008	2,625	Oct-08
	2007	2,550	Oct-07
	2006	1,070	2,466
	2005	Baseline	1,019
Data Source: OCR has an internet-based Program Information Management System (PIMS) that captures data in real time related to complaint processing, Medicare application reviews, outreach and technical assistance. All of the data required for OCR's short and long-range goals is drawn from PIMS.			
Data Validation: OCR has achieved considerable efficiencies through continuous updates to its IT systems, particularly the automated case management system, PIMS. The system allows paperless storage, retrieval, review, and communication of case files. The files are not only accessible by the investigator assigned to the case, but also by management personnel in the regional office as well as at the headquarters. This system, which was developed in 2002, supports OCR's efficiency goal of increasing the number of cases resolved per FTE assigned.			
Cross Reference: This performance goal supports all eight HHS Strategic Goals and all major priorities outlined in Secretary Leavitt's 500-day plan.			

OCR serves two major roles in the Department with respect to its non-discrimination and HIPAA Privacy Rule responsibilities: (1) compliance activities that consist of: rule-making, issuing formal guidance on laws and regulations; investigating complaints filed by the public; providing public education, outreach, and technical assistance; and conducting civil rights compliance reviews, including civil rights reviews of new Medicare providers; and (2) advisor to the Secretary, Department, and other Federal agencies on policy and cross-cutting issues in these areas.

Several key issues have increased the impact and visibility of OCR's work. These issues include a growing recognition of the need to address privacy concerns associated with natural disasters and bioterrorism, and the importance of continued demonstrated commitment to privacy in the context of the Department's significant health information technology initiatives. For example, OCR's Privacy Rule expertise was instrumental in ensuring the appropriate flow of health information following Hurricane Katrina and continues to be critical in planning for a flu pandemic. Similarly, in FY 2006 the Secretary gave OCR responsibility to develop and issue standards, policies, and regulations for enforcing the Federal privilege and confidentiality protections of Section 922 of Title IX of the Public Health Service Act, as amended by the Patient Safety and Quality Improvement Act of 2005. OCR continues to be a major contributor to the President's New Freedom Initiative in response to President Bush's Executive Order calling upon HHS for "swift implementation" of the ADA and the Supreme Court's June 1999 decision in the Olmstead most-integrated setting case. OCR provides key support to the Secretary's 500-Day plan, the HHS Top 20 Objectives, and numerous high-level activities, such as the Department's HIPAA Council, the New Freedom Initiative Workgroup, the Steering Committee for the Federal Partners Mental Health Action Agenda, and the Minority Health and Health Disparities Steering Committee, and the Inter-agency Limited English Proficiency Workgroup.

OCR compliance staff provides the mission-critical function of conducting investigations to resolve complaints from the public concerning allegations of civil rights violations and HIPAA Privacy Rule violations. OCR ensures that HHS funded programs do not support unlawful discrimination and that the privacy of medical records is protected. The compliance staff also develops technical assistance and conducts outreach events to prevent discrimination and privacy violations. In addition, compliance staff in OCR HQ provides major input to the development of compliance and enforcement strategies as well as expert advice to regional staff in their formulation of investigative plans and letters of investigative findings during regional conduct of compliance reviews and complaint investigations. Moreover, compliance staff serves as expert consultants during negotiation of compliance agreements.

The Pre-grant Section of the Civil Rights Division oversees and coordinates a nationwide civil rights pre-grant review program for new Medicare applicants, in support of the civil rights laws and regulations including Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. Pre-grant Equal Opportunity Specialists (EOSs) conduct reviews of facilities applying to participate in the Medicare program, to ensure compliance with civil rights laws and regulations. They also provide technical assistance to the applicants, review health care facilities' policies and procedures for civil rights compliance, and send clearance letters to the facilities after they have

demonstrated compliance. They negotiate with recipients who are reluctant to cooperate with the reviews, including situations involving denial of access to information.

OCR's first long-term performance goal is to ensure compliance with, and to increase awareness and understanding of, Federal laws requiring nondiscriminatory access to HHS programs and protection of the privacy of individually identifiable health information. OCR's first long-term goal has a consolidated long-term output measure: to increase the rate of resolution for civil rights and privacy cases and new Medicare application reviews to 100 percent of cases / reviews received per year. That is, OCR will resolve as many cases and reviews as received each year. The average age of all open cases will be less than one year, excluding those requiring long-term monitoring and those in litigation or administrative enforcement. The actual goal is on a graduated scale, which recognizes that improvement will become more difficult as OCR approaches 100 percent. The baseline in FY 2003 was 68.2 percent of cases resolved. In FY 2004, OCR slightly exceeded the target for that year of 78 percent. In FY 2005, OCR exceeded the target for that year of 82 percent. In November 2006, OCR set more realistic annual targets reflecting both higher projections in complaint receipts and more ambitious efforts to increase productivity based on existing staffing levels.

In FY 2006, having achieved a resolution rate of 96.6 percent against a target of 87 percent, OCR revised its forecasted targets to 96.8 percent in FY 2007 (from 92 percent) and 97.3 percent in FY 2008 (from 95 percent). These revised annual goals assume annual increases in productivity of 4 percent per FTE in place of the prior 3.3 percent assumption, and further assume that the rate of growth in receipts will moderate in the period from FY 2008 to FY 2012.

However, if OCR is funded at the FY 2006 CR level during FY 2007, one result will be a dramatic reduction in OCR's staffing from an actual level of 259 FTE in FY 2006 to an estimated 245 FTE in FY 2007. OCR currently projects that staffing cuts of these magnitudes will result in OCR's not achieving its long-term measure -- to increase the resolution rate of civil rights and privacy cases and new Medicare application reviews to 100 percent of new cases / reviews received per year -- until 2019, or seven years after the current target of 2012. In FY 2007, OCR projects that the resolution rate will be 86.2 percent, in contrast to OCR's revised PART goal of 96.8 percent, and in FY 2008 the resolution rate will be 85.7 percent versus 97.3 percent.

OCR has two output measures that support the long-term goal. These numbers directly relate to OCR's previous budget submissions and exhibits. OCR previously reported results on issue-specific subsets. OCR consolidated this reporting into three objectives (Health Care, Social Services, and Community-based Services/Disability) in FY 2004. OCR has since refined its measures to capture results on the entirety of its complaint and review workload. OCR's internet-based PIMS captures data in real-time related to complaint processing, Medicare application reviews, outreach and technical assistance. Therefore, OCR can crosswalk previously reported measures to its current, refined framework.

The first measure is the percentage of civil rights cases and new Medicare application reviews resolved to cases received. The baseline in FY 2003 was 85.1 percent of civil rights cases and reviews resolved. In FY 2004, OCR achieved a rate of 89.1 percent, 3.6 percentage points above

the target of 85.5 percent for that year. In FY 2005, OCR exceeded the target of 89.9 percent for that year. In FY 2006, as previously stated, OCR set more realistic annual targets reflecting both higher projections in complaint receipts and more ambitious efforts to increase productivity based on existing staffing levels. In FY 2006, having achieved a resolution rate significantly above the target of 91.2 percent, OCR revised its forecasted targets to 102.5 percent in FY 2007 (from 92.1 percent) and 103 percent in FY 2008 (from 94.4 percent). However, if OCR is funded at the FY 2006 CR level during FY 2007, the resolution rates are projected to be 91.1 percent and 90.6 percent in FY 2007 and FY 2008, respectively.

The second measure is the percentage of privacy cases resolved to cases received. The baseline is 68.8 percent of privacy cases resolved in FY 2004 because FY 2004 was the first full year since implementation of the Privacy Rule. In FY 2005, OCR exceeded the target of 74.2 percent for that year. In FY 2006, OCR set more realistic annual targets reflecting both higher projections in complaint receipts and more ambitious efforts to increase productivity based on existing staffing levels. In FY 2006, having achieved a resolution rate of 91.8 percent against a target of 81.2 percent, OCR revised its forecasted targets to 91.8 percent in FY 2007 (from 86.4 percent) and 92.3 percent in FY 2008 (from 89.4 percent). However, if OCR is funded at the FY 2006 CR level during FY 2007, the resolution rates are projected to be 81.8 percent and 81.4 percent in FY 2007 and FY 2008, respectively.

Efficiency Measure		Target	Result
OCR's efficiency goal is to increase the number of cases resolved per FTE assigned	2008	54.40	Oct-08
	2007	52.00	Oct-07
	2006	41.30	50.32
	2005	39.98	49.85
	2004	Baseline	38.70
Data Source: See the previous performance detail table on page 60 for a detailed explanation.			
Data Validation: See the previous performance detail table on page 60 for a detailed explanation.			
Cross Reference: This efficiency measure supports all eight HHS Strategic Goals and all major priorities outlined in Secretary Leavitt's 500-day plan.			

OCR's management goal, Goal II as submitted in PART, is to enhance operational efficiency. The long-term measure is to increase the number of cases resolved per assigned FTE. The annual effort towards achieving this measure is designed to meet the HHS Departmental goal of a 10 percent overall program improvement over three years. The target of OCR's management goal is to enhance operational efficiency and is directly tied to OCR's efficiency measure, to resolve 50 cases each year per FTE assigned by the end of FY 2012. In FY 2006, as previously stated, OCR set more realistic annual targets and this measure was raised to resolve 62 cases each year per FTE assigned by the end of FY 2012. However, if OCR is funded at the FY 2006 CR level during FY 2007, achievement of the target would be delayed by at least three years.

Changes and Improvements over Previous Years

As a result of the PART process, OCR recast its performance measures to reflect more results-oriented goals. OCR will continue to use the PART-established framework to further refine its performance measures. The current approach will allow OCR to be more consistent and comprehensive in how it measures the effectiveness of its program over the long-term.

In FY 2004, OCR consolidated its reporting into three objectives (Health Care, Social Services, and Community-based Services/Disability). This consolidation was a significant step away from OCR's previously reported results on issue-specific subsets that changed from year to year, and which had resulted in frequent changes in its stated goals. OCR now refines these measures to capture results on the entirety of its complaint mission areas in a more comprehensive manner.

The chart on page 58 summarizes the changes OCR has made from the FY 2004 – FY 2005 Plan to the FY 2008 PART-framework enhancements. OCR's internet-based PIMS captures data in real-time related to complaint processing, Medicare application reviews, outreach and technical assistance. Therefore, OCR can crosswalk measures reported previously, to its current, consolidated framework.

**OFFICE FOR CIVIL RIGHTS
PROGRAM ASSESSMENT RATING TOOL SUMMARY
CY 2002 – CY 2006
(Dollars in Millions)**

Program	FY 2007 CR	FY 2008 Request	FY 2008 +/- FY 2007 PB	Narrative Rating
CY 2005 PART				
Office for Civil Rights (OCR)	\$34.6	\$37.1	+\$2.4	Moderately Effective

In CY 2005, OCR underwent the PART process. As reflected on the performance reporting web site, www.ExpectMore.gov, OCR earned a PART rating of “Moderately Effective.” The PART process allowed OCR an opportunity to recast its outcome goals and performance measures to more accurately reflect its results-oriented focus. Although some of the newly revised outcome goals and performance measures presented in this submission are refinements of those stated in previous submissions, OCR will continue to use the revised PART-established framework to further refine its performance measures. Based on the demonstrated continuous operational performance improvement, OCR funding should be continued at the requested level. OCR’s PART findings concluded that OCR has a strong purpose and design, is well-managed, and that independent evaluations indicate that OCR is effective and achieving results. OCR demonstrates the use of performance information in day-to-day decision-making, including partnership agreements.

OCR is taking the following actions to improve performance:

- Revising performance goals to ensure they are sufficiently ambitious.
- Considering projected performance when making funding decisions.
- Ensuring partnership agreements with other offices of Health and Human Services and other Federal agencies include attainment of long-term and annual measures.

(This page intentionally left blank)

**OFFICE FOR CIVIL RIGHTS
DETAIL OF FULL-TIME EQUIVALENT (FTE) EMPLOYMENT**

	<u>2006 Actual</u>	<u>2007 CR</u>	<u>2008 Estimate</u>
Headquarters:			
Office of the Director and Principal Deputy	6	5	5
Office of the General Counsel (Civil Rights).....	7	8	8
Civil Rights Division	18	22	23
Management Operations Division.....	24	18	19
Privacy Division.....	14	17	21
Regional Offices.....	<u>190</u>	<u>175</u>	<u>175</u>
 Total, OCR ¹	 259	 245	 251

Average GS Grade

2003.....	11.6
2004.....	11.8
2005.....	11.7
2006.....	11.7
2007.....	11.9

¹ The FTE level does not include two reimbursable FTEs projected in each of FY 2007 and FY 2008.

**OFFICE FOR CIVIL RIGHTS
DETAIL OF POSITIONS**

	2006 <u>Actual</u>	2007 <u>CR</u>	2008 <u>Estimate</u>
Executive Level I.....	---	---	---
Executive Level II.....	---	---	---
Executive Level III.....	---	---	---
Executive Level IV.....	---	---	---
Executive Level V.....	---	---	---
Subtotal.....	---	---	---
Total - Executive Level Salaries.....	---	---	---
Total - SES.....	5	6	6
Total - SES Salaries.....	<u>\$658,097</u>	<u>\$834,256</u>	<u>\$875,969</u>
GS-15.....	26	27	29
GS-14.....	48	42	43
GS-13.....	28	27	29
GS-12.....	88	89	90
GS-11.....	19	17	18
GS-10.....	1	---	---
GS-9.....	15	15	10
GS-8.....	7	5	9
GS-7.....	8	5	9
GS-6.....	6	5	4
GS-5.....	6	4	4
GS-4.....	6	7	3
GS-3.....	2	1	3
GS-2.....	1	1	---
GS-1.....	---	---	---
Subtotal.....	<u>261⁵</u>	<u>245</u>	<u>251</u>
Total - GS Salary.....	\$20,133,438	\$20,221,014	\$21,383,942
<hr/>			
Average GS grade.....	11.7	11.9	11.9
Average GS salary.....	\$77,140	\$82,535	\$85,195
Average Special Pay.....	---	---	---

⁵ Reflects the number of positions encumbered as of the end of FY 2006.

**OFFICE FOR CIVIL RIGHTS
PERFORMANCE BUDGET CROSSWALK**
(Dollars in Thousands)

Performance Program Area	Budget Activity	FY 2006 Enacted	FY 2007 CR	FY 2008 Estimate
Civil Rights and Privacy Rule Compliance	Access to nondiscriminatory health care	\$17,680		
	Access to nondiscriminatory social services	\$4,090		
	Access to community-based services and nondiscriminatory treatment for persons with disabilities	\$10,110		
	To ensure compliance and to increase awareness and understanding of Federal laws requiring nondiscriminatory access to HHS programs and protection of the privacy of individually identifiable health information		\$34,646	\$37,062
Total		\$31,880	\$34,646	\$37,062

**OFFICE FOR CIVIL RIGHTS
SUMMARY OF FULL COST**
(Dollars in Millions)

Civil Rights and Privacy Rule Compliance	FY 2006	FY 2007	FY 2008
Access to nondiscriminatory health care	\$17.7		
Access to nondiscriminatory social services	\$4.1		
Access to community-based services and nondiscriminatory treatment for persons with disabilities	\$10.1		
To ensure compliance, to increase awareness, and to increase compliance and understanding of Federal laws requiring nondiscriminatory access to HHS programs and protection of the privacy of protected health information			
The rate of resolution for civil rights and privacy cases and Medicare application reviews		\$28.9	\$30.9
The number of individuals who are or represent health and human service providers, other interest groups, and consumers to whom OCR provides information and training annually		\$1.9	\$2.1
The number of covered entities that make a substantive policy changes or develop new policies as a result of OCR intervention and/or review		\$3.8	\$4.1
Full Cost Total	\$31.9	\$34.6	\$37.1

Detail of Full Cost

As a result of the PART process, OCR revised its objectives, as reflected in the Performance Budget Crosswalk (see also the discussion in Overview of OCR Performance on page 9). For crosswalk purposes, the distribution of costs, which are calculated by output measures for the previously identified performance objectives, is included above. In the FY 2006 Congressional

Justification, OCR had estimated that 92 percent of its actual obligations were associated with measures and targets in the three program objectives, by excluding costs connected with policy and rule-making. In the FY 2008 projections, OCR is including 100 percent of the costs of its entire program. OCR's PART measures capture results on the entirety of its mission areas in a more comprehensive manner, represented by complaint resolution for both civil rights and Privacy Rule, policy changes made by covered entities, and outreach as represented by the number of individuals to whom OCR provides information and training annually.

(This page intentionally left blank)

Financial Management Systems

UFMS Development and Implementation

The Unified Financial Management System (UFMS) is being implemented to replace five legacy accounting systems currently used across the Operating Divisions (Agencies). The UFMS will integrate the Department's financial management structure and provide HHS leaders with a more timely and coordinated view of critical financial management information. The system will also facilitate shared services among the Agencies and thereby help management reduce substantially the cost of providing accounting service throughout HHS. Similarly, UFMS, by generating timely, reliable and consistent financial information, will enable the component agencies and program administrators to make more timely and informed decisions regarding their operations. UFMS has been in production for the Center for Disease Control (CDC) and the Food and Drug Administration for over a year, with new functionality releases of Grants and CDC's Interactive Voice Response system in October 2005 and eTravel in April 2006. The PSC implementation was moved to production on October 16, 2006.

UFMS Operations and Maintenance (O&M)

The PSC has the responsibility for ongoing Operations and Maintenance (O & M) activities for UFMS. The scope of O & M services includes post-deployment support and ongoing business and technical operations services. Post-deployment services include supplemental functional support, training, change management and technical help-desk services. Ongoing business operation services involve core functional support, training and communications, and help desk services. Ongoing technical services include the operations and maintenance of the UFMS production and development environments, ongoing development support, and backup and disaster recovery services. In accordance with Federal and HHS policy, the UFMS application is under approval to operate through February 16, 2007 by the designated Certifying Authority and designated Approving Authority (DAA). The UFMS application will be approved for operation for one year after this date. After October 2007, when all agencies will be operational on UFMS, then a three-year certification will be completed. This approval to operate assures that the necessary security controls have been properly reviewed and tested as required by the Federal Information Security Management Act (FISMA). OCR requests \$91,000 to support these efforts in FY 2008.

Administrative Systems

With the implementation of a modern accounting system, HHS has efforts underway to consolidate and implement automated administrative systems that share information electronically with UFMS. These systems will improve the business process flow within the Department, improve Funds Control and provide a state of the art integrated Financial Management System encompassing Finance, Budget, Acquisition, Travel and Property. As the UFMS project is nearing completion, the integration of administrative systems is the next step in making these processes more efficient and effective. OCR requests \$9,000 to support these efforts in FY 2008.

HHS Consolidated Acquisition System

The HHS Consolidated Acquisition System (HCAS) initiative is a Department-wide contract management system that will integrate with UFMS. The applications within the HCAS are Compusearch PRISM and a portion of the Oracle Compusearch Interface (OCI). PRISM is a Federalized contract management system that helps streamline the procurement process. The implementation of PRISM includes the functionality of contract writing, simplified acquisitions, electronic approvals and routing, pre-award tracking, contract monitoring, post-award tracking, contract closeout and reporting. Major functions include transfer of iProcurement requisition for commitment accounting and funds verification to PRISM and transmission of the award obligation from PRISM to Oracle Financials.

The following benefits will be realized by the Department and the individual OPDIVs and STAFFDIVs once the HCAS system is fully implemented:

- Commitment accounting
- Integration to other HHS administrative systems
- Decreased operational costs
- Increased efficiency and productivity
- Improved decision-making – Unified systems
 - Data integrity
 - Reporting
 - Performance measurement
 - Financial accountability
- Standardization
 - Business processes
 - Information technology
- Consistent customer service levels
- Refocus personnel efforts on value-added tasks
- Knowledge sharing
- System enabled work
 - HHS acquisition personnel – contracting
 - Customers in requirement preparation – requisitioning
- Meets organizational drivers and goals (President’s Management Agenda, One HHS, Line of Business)

The HCAS team is working closely with the UFMS PMO and HHS PMO to ensure a smooth roll-out of both PRISM and iProcurement. An integrated team, including personnel from UFMS, Acquisition and Assets has been formed to ensure maximum utilization of in-house expertise. OCR requests \$29,000 to support these efforts in FY 2008.

Information Technology

OCR's Program Information Management System (PIMS) enables OCR to enhance its efforts to build an infrastructure that modernizes and improves its web-enabled e-business presence and access for the public. This investment will allow OCR to implement its e-Gov strategy consistent with the requirements of the Government Paperwork Elimination Act as well as meet the requirements of other laws [e.g., the Clinger-Cohen Act and Federal Information Security Management Act] and guidelines.

To make OCR's web presence citizen-friendly, OCR's Senior Civil Rights and Privacy Analysts serve as content managers for determination of documents for inclusion in the web-based central repository, and appropriate linkages for each program priority area. This helps to ensure that the public can access critical information that they need to be informed about their rights under the laws enforced by OCR. Further, more than 200,000 group and institutional providers, including state agencies, are subject to the nondiscrimination requirements that OCR enforces and hundreds of thousands of other entities are subject to the Privacy Rule. An enhanced web presence will enable those who have responsibilities to provide services or to ensure the privacy of medical information to gain ready access to information concerning their responsibilities under the civil rights and privacy rights laws that OCR enforces.

OCR has completed:

- an automation of the pre-grant review process, resulting in improved delivery of services to OCR clients and more rapid turnaround in assessing the compliance of entities applying to become HHS-funded service providers;

OCR projects implementation of web-enabled e-business to the public including:

- clearance and use of a web-enabled complaint filing form; and

OCR continually works to:

- improve access to information for OCR clients who will benefit substantially from simple, direct access to comprehensive information about OCR programs, policies and procedures, and activities.

In addition, consistent with the Workforce Investment Act of 1998, OCR has taken appropriate steps to ensure that the electronic and information technologies it uses are accessible to individuals with disabilities as required by Section 508 of the Rehabilitation Act of 1973, as amended.

OCR's budget request includes funding to support the President's Management Agenda e-Gov initiatives and Departmental enterprise information technology initiatives identified through the HHS strategic planning process.

FY 2008 HHS Enterprise Information Technology Fund-PMA e-Gov Initiatives

OCR will provide \$41,000 of its FY 2008 budget to support Department enterprise information technology initiatives as well as the President's Management Agenda (PMA) Expanding E-Government initiatives. Operating Division contributions are combined to create an Enterprise Information Technology (EIT) Fund that finances both the specific HHS information technology initiatives identified through the HHS Information Technology Capital Planning and Investment Control process and the PMA initiatives. These HHS enterprise initiatives meet cross-functional criteria and are approved by the HHS IT Investment Review Board based on funding availability and business case benefits. Development is collaborative in nature and achieves HHS enterprise-wide goals that produce common technology, promote common standards, and enable data and system interoperability. The HHS Department initiatives also position the Department to have a consolidated approach, ready to join in PMA initiatives. Of the amount specified above, \$9,000 will be allocated to support the President's Management Agenda Expanding E-Government initiatives for FY 2008.