UNITED STATES COMMISSION ON CIVIL RIGHTS
WASHINGTON, D.C. 20425

OFFICE OF STAFF DIRECTOR

September 15, 2005

The Honorable Jerry Lewis
Chairman
U.S. House of Representative
Committee on Appropriations
Washington, DC 20515

Dear Chairman Lewis:

Under the direction of new leadership, the United States Commission on Civil Rights (the "Commission") is working to resolve profound management and financial challenges, which have developed over a period of many years. These challenges are well documented by a series of Government Accountability Office (GAO) and Office of Personnel Management (OPM) reports dating back to the 1990s.[1] The reports document financial management, internal control, strategic planning, project planning, and internal communications failures, compounded by diminishing budgetary resources. New leadership, appointed in December 2004, discovered and reported that these failures had included violations of the Anti-Deficiency Act under prior management during fiscal year 2004 (FY04).

In H.R. Rep. 109-118 (2005), a report and bill on the appropriations for science, the Departments of State, Justice, Commerce, and related federal agencies for FY06, the House Committee on Appropriations requested that the Commission file a report, no later than September 15, 2005, "describing proposed structural and management changes for the Commission that will generate more efficient operations, including potential cost savings, but not jeopardize the mission of the agency." I am pleased to submit this report on planned and implemented agency reforms and cost-savings.

[1] The Government Accountability Office (formerly the General Accounting Office) and OPM reports include: U.S. *Commission on Civil Rights: Agency Lacks Basic Management Controls,* GAO-HEHS-97-125 (Government Accountability Office: July 1997); U.S. *Commission on Civil Rights: Update on Its Response to GAO Recommendations,* GAO-HEHS-98-86R (Government Accountability Office: February 1998); U.S. *Commission on Civil Rights: More Operational and Financial Oversight Needed*, GAO- 04-18 (Government Accountability Office: October 2003); *U.S. Commission on Civil Rights: Management Could Benefit from Improved Strategic Planning and Increased Oversight, GAO-05-77* (Government Accountability Office, October 2004); U.S. *Commission on Civil Rights: Deficiencies Found in Financial Management and Internal Control,* GAO-05-68R (Government Accountability Office: March 2005); *Report of an Oversight Review of the Commission on Civil Rights,* Office of Personnel Management (October 1999).

In December 2004, new leadership assumed office at the Commission, recognizing the Commission's prior weaknesses but committed to reforming the agency. In early 2005, the Commission demonstrated a top-down commitment to strengthening its internal control environment and implementing GAO's recommendations by voting to implement all GAO and OPM recommendations issued since 1997 by mid-January 2006, to the extent that they are non-repetitive, that funds are available, and that implementation is consistent with restrictions imposed by the Anti-Deficiency Act. Throughout 2005, the Commission swiftly moved to begin enacting a series of reforms aimed at strengthening the agency's internal and financial controls, reforming the agency's project planning and execution processes, restructuring the agency's internal and external agency communications, and demonstrating that the agency has embraced higher standards.

New policies have been created requiring that payroll expenses be accounted for in the proper period for accounting purposes to avoid distorting the Commission's financial records. Policies requiring that non-salary related expenditures be properly authorized, approved, and have supporting documentation to avoid paying unauthorized commitments have been developed and previously existing policies are being re-emphasized. The Commission continues improving financial management by requiring that a purchase order be issued before financial expenditures take place to ensure that funds are available and that they are promptly obligated to cover the purchase. Instructing the accounting services provider and the agency's budget and finance office to engage in weekly and monthly reconciliations of various financial accounts and records was necessary to ensure accuracy and to guard against violation of the Prompt Payment Act and the payment of unauthorized or improper payments.

The agency moved to improve its tracking of project related expenses and resources by requiring monthly reports on project costs. These reports will enable managers to track expenditures and staff resources and, consequently, position the agency to be better able to justify its use of resources and future requests for additional resources. In August 2005, the Commission secured U.S. General Services Administration (GSA) as its new accounting services provider, beginning FY06, and the transition is already underway. GSA has also been asked to collaborate with the Commission on revisions to existing agency fiscal management and internal controls.

In addition to retaining an accounting services provider, the Commission is engaged in the process of hiring an experienced, GS-15 level, director for its Budget and Finance Division and contracting with an accounting firm to conduct a full-scope FY05 audit. The contract with the accounting firm would also include an option for providing the Commission consulting services to prepare it for receiving a clean financial audit in FY06. The consulting would involve a review of applicable financial controls.

The Commission recently took steps to address procurement-related shortcomings by creating document control checklists to ensure that procurement activity is accurately documented and supported, creating policies delegating micro-purchasing authority to office and division heads, increasing funding for training for staff with procurement authority in FY06, and continuing its contractual relationship with a procurement specialist to provide technical support to the Commission's procurement staff. These and other actions should prevent the Commission from engaging in unsupported or improper transactions as was noted by GAO in a report on the agency's procurement operations. Most of the reforms in financial management and procurement are reflected in new written internal policies, as well as a renewed emphasis on enforcing previously existing policies that have been ignored or circumvented over time.

This effort will result in improvements in the agency's program performance, the efficient and effective use of financial and human capital resources, improved data collection and analysis, and increased accountability. In the same vein, in FY05, the Commission began a strategic planning process that will revise its outdated 1997 plan and bring the agency more fully into compliance with the Government Performance and Results Act (GPRA). As a result, the Commission's goals and objectives, means and strategies, and performance measures will be more clearly defined in comparison to previous years. The Commission is also developing a Strategic Human Capital Plan and a Human Capital Accountability System to increase workforce accountability and improve the management of human capital. Furthermore, a human capital skills assessment survey was conducted to identify areas were improvement in the skill sets of staff is required to fulfill the Commission's mission. These plans and assessments create a blueprint for improving agency performance by gathering data, monitoring, and evaluating the use of human capital relative to agency mission and strategic plan, employee performance, and the ability of managers to lead and manage successfully.

The reforms described here are a part of an overall reform *effort* that should reasonably ensure that the Commission's financial documents are accurate, that Anti-Deficiency Act violations are avoided, that expenditures are made for only properly authorized transactions, and that financial and human capital resources support accomplishment of the agency's mission.

The agency is also reforming agency reporting and annual internal assessments of financial and program management. Proper stewardship of resources is fundamental to the effective operation of any agency and it begins with sound management practices and reliable self-assessments conducted by agency managers. Previously, reports were not filed or, when filed, they often were inadequate. For example, the FY03 Federal Managers' Financial Integrity Act (FMFIA) report noted no deficiencies and material weaknesses in financial management and Commission programs in spite of the fact that GAO reported ongoing financial and internal control failures. Therefore, in addition to reviewing and revising, as necessary, the agency's current FMFIA assessment tool the Commission will hold managers accountable for effectively operating their offices/divisions, identifying areas of weakness and high risk, and developing a written action plan and timeline for implementing the necessary changes.

To strengthen overall agency reporting procedures, the Commission monitors reporting obligations and assigns responsibilities to specific offices to ensure completion of reports. To ensure legal sufficiency of reporting, legal counsel reviews reports before they are filed.

The Commission has also recently adopted new reforms to correct prior documented project planning weaknesses relating to Commissioner involvement in agency projects. These new reforms provide increased Commissioner involvement during the background and planning, discovery, and report drafting stages of projects. During the background and planning stage, Commissioners are provided an outline of projects that includes a summary of research, a discussion of the scope and direction of the project, a statement on the proposed project methodology, and a project completion timeline. Commissioners also guide the discovery stage of projects through a procedure requiring their review and approval of interrogatories, subpoenas, document requests and other requests for information from external sources. No discovery takes place until Commissioners approve a discovery plan. Opportunities to shape project reports, including the findings and recommendations, are created by providing Commissioners a first draft of each project report for review and comment before Commission staff prepares a final draft. All final staff draft reports, to the extent possible (and supported by a majority of Commissioners), reflect comments received from Commissioners. Commissioners, upon receiving a final staff draft report, subject the draft to debate and discussion. A draft final report can now be approved or rejected in whole, or it may be severed into separate sections and voted on section-by-section. Dissenting statements are allowed and may either be published in a separate statement at the end of the report or integrated into the text of the entire report. These project reforms increase the probability that Commission reports will be supported by a majority of the Commissioners and ensure that dissenting opinions are reflected in reports. These reforms also maximize the efficient use of staff resources by providing early substantive guidance that decreases the amount of time devoted to significantly revising reports and making passage of report more likely.

The Commission recently adopted policies governing internal and external communications. These new policies increase transparency, create a method for Commissioner-staff communications, increase communications regarding projects, and clarify rules concerning making formal statements on behalf of the Commission. The new rules formally designate the Chairman and the Staff Director as the spokespersons for the Commission but still allow individual Commissioners to speak to matters before the Commission in their individual capacities. A separate policy requires that the Chairman and Staff Director, in their roles as designated Commission spokespersons, acknowledge the existence of dissenting viewpoints when speaking on behalf of the Commission. Other new policies include requiring a majority vote of the Commissioners before issuing letters to public officials purporting to represent the Commission as a whole; requiring a majority vote before issuing a press release regarding Commission business or civil rights policy and that the statement or release acknowledge that it was approved by a majority; maintaining a complete record of all approved Commission policies as of January 2005; weekly reporting by the Staff Director to the Commissioners of important upcoming events; and encouraging contact between Commissioners and staff.

The regional offices support the state advisory committees as they engage in fact-finding and other civil rights-related activities on the state, local and regional levels. The Commission is currently considering a new policy that would create advisory committee term limits to provide more opportunities for advisory committee service. Currently, advisory committee members serve for 2-year terms with no assurance of reappointment. Consideration is also being given to adopting new committee membership criteria that include skills particularly suited to social scientific evaluation, legal analysis, and report writing; and expanding the Commission's oversight role for committee written reports, and fact-finding and other activities. A Commissioner working group is tasked with making recommendations for advisory committee operations.

The Commission's past financial operation and management did little to create confidence in the agency that translated into additional funding. As a result, funding has been a challenge to achieving the agency's strategic goals since the 1980s. The Commission's budget has remained substantially stagnant since 1995. Between 2001 and 2002, however, the Commission's budget increased 2.2 percent, from $8.9 million to $9.1 million but inflation absorbed this increase in the budget. After adjusting for inflation, between 1995 and 2001, the Commission's budget slowly decreased from $8.8 million to $7.7 million. Since 2003, after adjusting for inflation, each year the Commission's $9.1 million budget is actually worth less. Salary and benefits account for the bulk of the Commission's annual appropriation. These expenses rise, however, and the Commission's appropriation remains essentially the same. This disparity has created a situation of long-term financial pressure at the Commission. During most years, the Commission managed this pressure through attrition.

Continuing to achieve its mission of advancing civil rights through objective and comprehensive investigation, research, and analysis on issues of fundamental concern to the federal government and the public will become increasingly difficult for the Commission should staffing levels continue to decline. The Office of General Counsel, for example, currently has two attorneys compared to more than ten in 1999. This office provides the legal expertise and activity required to conduct hearings and issue subpoenas, conduct briefings, interpret the agency's statute, and to ensure the legal integrity of Commission written products. The General Counsel is the agency's chief legal advisor on a range of legal issues and the office represents the agency in administrative hearings and other matters.

Likewise, the operation of the Public Affairs Unit is a key component to the Commission achieving its goal of increasing public awareness of civil rights issues, policies, and protections and enforcement efforts during FY07. While three employees staffed this unit in 1999, the unit was vacant in 2004 and 2005. The entire Congressional Affairs Unit has also been vacant for the last five years. In the absence of a staffed congressional affairs office the Commission's capacity to comment on legislative developments was drastically reduced. The consequence was that the work of the Commission was not a source of reliable and timely civil rights information.

The Commission has pursued cost-savings as aggressively as it has agency management reforms. When the agency faced a deficit of approximately $265,000 in FY05 cost-cutting measures were developed to close the deficit and provide a sufficient cushion against unexpected costs so that the agency was assured of operating within its means. In April 2005, the Commission took steps to ensure that it remained firmly within its budget authority for FY05 by freezing hiring of new career and non-career employees, freezing all but essential operational expenditures, and offering Voluntary Early Retirement Authority to eligible employees. Later, the agency took additional measures to close the FY05 gap, and close a projected FY06 deficit, that included approving a reduction in force (RIF) of up to four employees in FY05, the furlough of Commission staff in FY05, and the closure of two regional offices in early FY06. Additionally, some employees took leave without pay to support the agency's cost-cutting measures. Based on attrition, significant cost-saving measures, and the decision by Commissioners to defer hiring special assistants, the Commission avoided a RIF and office closures in FY05 and expects that they will not be necessary in FY06 if the agency is funded at the level approved by this Committee.

The Commission has also shown fiscal responsibility by consolidating office space at its headquarters office and saving slightly more than $100,000 a year. As mentioned, the agency contracted with GSA to provide accounting services and this switch should not only improve the Commission's financial management but is estimated to save $25,000 a year in costs related to accounting services. The agency is leasing less document storage space from the General Printing Office warehouse and is storing more records in-house. This change should result in a savings of approximately $40,000 in FY05 and slightly less in subsequent years. Finally, the agency reviewed the holdings in its public library and was able to save an estimated $20,000 by subscribing to online services and discontinuing several publications that had low public demand.

The new leadership at the Commission has brought a new commitment to improved financial management, program performance, and accountability. The agency is implementing an ambitious reform plan that it believes addresses the concerns voiced by Congress, GAO, and others about the management of the agency. Beginning in FY05 and continuing through FY07, the agency's focus will remain on reforming fiscal management, improving budget processes and reporting, decentralizing its operating budget, completing strategic planning, improving GPRA compliance, conducting internal assessments and developing plans for corrective action, improving regional operations and state advisory committee functions, increasing the number of briefings and related written work products studying, evaluating and analyzing civil rights issues, and attracting and retaining staff sufficient to achieve its mission.

I appreciate being given this opportunity to report on the Commission's reformation under new leadership.

Very truly yours,

KENNETH L. MARCUS
Staff Director