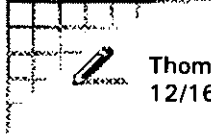


NLWJC - Kagan

DPC - Box 041 - Folder 013

**Race-Race Initiative Policy - Civil
Rights Enforcement [3]**

Race Int M - Civ Rts Ent



Thomas L. Freedman
12/16/97 03:15:16 PM

Record Type: Record

To: Elena Kagan/OPD/EOP
cc: Laura Emmett/WHO/EOP, Mary L. Smith/OPD/EOP
Subject: Civil Rights Enforcement Initiative

OMB called to ask if we are asking for \$72 million for the initiative now and what we think that includes. Also attached is Susan Carr's calculation of where OMB is: about \$75 million.

----- Forwarded by Thomas L. Freedman/OPD/EOP on 12/16/97 03:11 PM -----



Susan M. Carr



12/16/97 11:31:37 AM

Record Type: Record

To: Thomas L. Freedman/OPD/EOP
cc: See the distribution list at the bottom of this message
Subject: Civil Rights Enforcement Initiative

My latest number is \$74.533, which rounds to \$75 million!

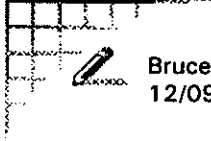
\$55.4 m	OMB Director's Review Crosscut, approved increases
2.0 m	Addback for Civil Rights Commission appeal
8.0 m	Addback for Fair Housing appeal
9.0 m	Addback to EEOC for mediation (DPC request)
.133 m	Addback to Labor OCR for additional FTEs (DPC request)

\$74.533 million

Message Copied To:

Michael Deich/OMB/EOP
Theodore Wartell/OMB/EOP
Patricia E. Romani/OMB/EOP
Alan B. Rhinesmith/OMB/EOP
Francis S. Redburn/OMB/EOP

Race Int Ppt -
div Rts Enf



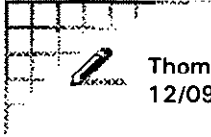
Bruce N. Reed
12/09/97 03:16:55 PM

Record Type: Record

To: Thomas L. Freedman/OPD/EOP
cc: Elena Kagan/OPD/EOP, Mary L. Smith/OPD/EOP
Subject: Re: civil rights memo

This looks much, much better. Two questions: 1) How did \$78 million in improvements grow to 107 million? And 2) Did we get rid of that Educ. Dept \$1.5 million survey? We should. That office is just looking for ways to block education reform.

Rou lit PJ-
div Rts Enf



Thomas L. Freedman
12/09/97 03:22:46 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP

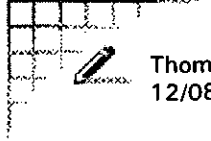
cc: Mary L. Smith/OPD/EOP

Subject: Re: civil rights memo

1. We grew the initiative primarily by adding two programs-- an expansion of ADR at EEOC from a \$4 million pilot program to a \$40 million program over three years and \$23 million for the OFCCP program on compliance. 2. We don't mention the ed survey in the memo but I think it was on OMB's approved list. We can try and get rid of it.

Have we sent it in? There was a word in the memo I wanted to delete...

Race mit policy -
civil vts enf



Thomas L. Freedman
12/08/97 11:36:04 AM

Record Type: Record

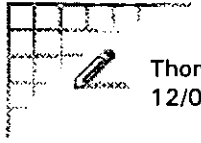
To: Elena Kagan/OPD/EOP

cc: Laura Emmett/WHO/EOP, Mary L. Smith/OPD/EOP

Subject: ADR and EEOC

EEOC will come back to us by early afternoon with an estimate of how much it would cost to do ADR for everyone who wants it immediately, or if we ramped it up in three years. They say that it is really guesswork figuring how many people would want it-- they've hope to have done only 400 cases by the end of the first year of the program. I said figure it so that everyone could have the option. (Incidentally, they did have a succesful million settlement recently.) 7

Race Int Policy -
Civil Rts Eng



Thomas L. Freedman
12/09/97 04:44:28 PM

Record Type: Record

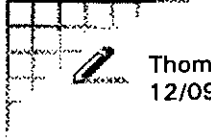
To: Elena Kagan/OPD/EOP

cc: Mary L. Smith/OPD/EOP, Laura Emmett/WHO/EOP

Subject: Future Cuts to OFCCP

Our memo says that the additional money will enable OFCCP to review 30% of companies that do business with the government. They say they can do it even if we cut \$5 million from the fund, they will shift the money around. If we want to do much deeper cuts to the program, we may need to adjust the 30% figure.

Race Int Policy -
Div Rts Ent



Thomas L. Freedman
12/09/97 04:44:28 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc: Mary L. Smith/OPD/EOP, Laura Emmett/WHO/EOP

Subject: Future Cuts to OFCCP

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MEMORANDUM

TO: ELENA KAGAN

FROM: TOM FREEDMAN, MARY SMITH, TANYA MARTIN

RE: FEDERAL ENFORCEMENT OF CIVIL RIGHTS

DATE: OCTOBER 5, 1997

I. SUMMARY

In your August 22, 1997 meeting with federal civil rights agencies, you asked each agency to provide a memorandum describing its structure and legal authority, fiscal status, current initiatives and potential improvements that might be pursued as a part of the Race Initiative. Summarized below are the memoranda received from EEOC, Education, HHS, Justice, SBA, and the US Commission on Civil Rights. With few exceptions, the agencies do not discuss potential improvements, but focus solely on on-going initiatives. The following agencies have not submitted the requested memoranda: HUD, Interior, USDA and Labor. We are contacting those agencies to ask them to submit memoranda.

This memorandum also includes a revised proposed timeline for handling this issue with all of the participating agencies. However, we recommend focusing our initial efforts on the EEOC and U.S. Commission for Civil Rights given their broad responsibility for civil rights enforcement and the recent attention paid to backlog and productivity issues within those agencies.

Below are summaries of the key points in the agencies' memoranda.

II. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

The EEOC was created in 1964 to investigate employment discrimination charges relating to race, color, religion, sex, or national origin. Since that time, the EEOC has also become responsible for administering laws prohibiting discrimination on the basis of age, gender, and disability. As a result of its reinvented administrative enforcement program, the EEOC managed to trim its claim backlog by 30%-- to 79,448 charges from an all-time high of 111,345 -- by the end of fiscal year 1996. As of the third quarter of 1997, the EEOC was continuing to resolve charges at a faster pace than they were being filed. The agency also tracks the amount of monetary benefits obtained for discrimination victims -- which totaled over \$100 million for fiscal year 1997.

The number of FTEs has fallen from a high of 3,390 in 1980 to 2,680 today. This decline has occurred at the same time that enforcement obligations have substantially expanded to cover ADA and sexual harassment claims. Charges under the ADA, enacted in 1990, account for one quarter of the EEOC's caseload. Overall, the number of filings have increased from 62, 135 in FY 1990 to a

projected 80,00 in FY 1997. The EEOC has requested a budget of \$246 million for FY 1998, an increase of \$6 million (2.65%) over the current level.

III. U.S. COMMISSION ON CIVIL RIGHTS (USCCR)

The U.S. Commission on Civil Rights is an independent, bipartisan agency first established by Congress in 1957 and reestablished in 1983. It is directed to investigate complaints, study and collect information, appraise federal laws and policies, serve as a national clearinghouse, submit reports and findings to the President and issue public service announcements. USCCR recently released a study, *Funding Federal Civil Rights Enforcement*, that found a gross disparity between agency resources and agency substantive responsibility, and urged action to increase resources to provide full and effective enforcement of anti-discrimination laws.

The workforce of the USCCR has decreased from over three hundred employees in the early 1980s to its current level of under one hundred. In its FY 1998 budget, the Commission requested an increase of \$1.3 million -- but anticipates that, for the third consecutive year, it will be funded at \$8.7 million. *Note: In July 1997, GAO reported that USCCR lacks basic management and financial controls: key documents are lost or nonexistent; accurate cost data on programs or project is unavailable; and reports take so long to complete that published data is often outdated or inaccurate.*

IV. JUSTICE -- CIVIL RIGHTS DIVISION (CRD)

The mission of the Civil Rights Division (CRD) of the Department of Justice is to serve as the chief civil rights enforcement agency of the federal government. Unless otherwise specified by law, the conduct of government litigation is reserved to the Department of Justice. CRD enforces a broad range of civil and criminal statutes and presidential executive orders and has certain coordination and public education responsibilities. CRD's general goals focus on police and official criminal misconduct; hate crimes; voting rights; employment, housing, credit and education discrimination; rights of the institutionalized; anti-discrimination in public services, programs and activities; and immigration-related unfair employment practices.

The Division's FY 1997 budget is \$62 million -- that funds a staff of 560 persons, including 250 attorneys. For the past three years, funding for CRD has remained flat. For FY 1998, CRD has requested a budget of \$67.4 million, an increase of 8% over the FY 1997 level, to enhance prosecution of hate crimes and police misconduct, as well as for enforcement of the Americans with Disabilities Act. In order to maintain optimal vigorous enforcement, the Division estimates that a budgetary increase of approximately 20% would be required.

V. EDUCATION --OFFICE FOR CIVIL RIGHTS (ED-OCR)

ED-OCR enforces civil rights laws that prohibit discrimination on the basis of race, color, national

origin, sex, disability and age among recipients of Federal education funds. ED.¹ The majority of ED-OCR employees (primarily attorneys and investigators) are organized into four enforcement divisions made up of 12 regional offices that are responsible for resolving complaints and conducting compliance reviews. Unlike complaints, compliance reviews target resources on compliance problems that appear particularly acute or national in scope -- e.g., tracking or targeting minority/disabled students away from honors/advanced classes.

ED-OCR has reached the limit of efficiencies and improvement to be gained from organizational and procedural reforms, and may well be losing ground as staff losses take its toll. While ED-OCR loses staff -- its most vital resource, as civil right enforcement relies in large measure on human presence and investigation -- its workload continues to grow. The number of FTEs has decreased from 820 to 724. At that same time the caseload has grown from 3,384 complaints filed and 32 compliance review initiated to 4,828 complaints filed and 146 compliance review initiated. For 1998, ED-OCR has requested a budget of \$61.5 million, an increase of \$6.5 million over 1997.

ED-OCR's recommendations for improved civil rights enforcement include presidential directives to evaluate nondiscrimination assurances by federal contractors; enforcement coordination on designated administration priorities, designing a cross-cutting decision-making process, sharing best practices and case targeting criteria, and improved public outreach -- such as a guide to federal civil rights agencies and a toll-free referral number.

VI. HEALTH & HUMAN SERVICES -- OFFICE FOR CIVIL RIGHTS (HHS-OCR)

HHS-OCR ensures that people have access to, and the opportunity to participate in and receive services from, all HHS programs without facing unlawful discrimination. Approximately 230,000 group and institutional providers are subject to the nondiscrimination laws HHS-OCR enforces. Major compliance actions and initiatives include: implementation of adoption non-discrimination requirements; reviews of minorities' access to hospital inpatient and emergency room services (Title VI); racial and health status discrimination in the health care industry; the effect of managed care on access to services for minorities and individuals with disabilities; discrimination against persons with HIV/AIDS; ensuring that welfare reform programs are implemented in a non-discriminatory manner; and access to services for limited English proficient individuals.

The FY 1998 budget request for HHS-OCR is \$20.5 million, a \$1 million (5%) increase over the FY 1997 budget authority of \$19.5 million. This \$1 million increase will be used to help implement initiatives that address discriminatory issues involving immigration, inter-ethnic adoption, managed care, Medicaid waivers, nursing home care, home health care and welfare reform.

¹Civil rights enforcement for programs and services provided by schools of medicine, dentistry, nursing and other health-related schools remains with HHS.

VII. U.S. SMALL BUSINESS ADMINISTRATION (SBA)

Historically, the Department of Justice permitted SBA to interpret the guaranty on SBA loans as financial assistance covered by Title VI. However, officials at Justice recently made a preliminary determination that exempts most SBA recipients from Title VI jurisdiction because Title V explicitly excludes "guarantees" in its definition of federal financial assistance. With the exception of three programs e.g., SBA-funded lending partners, all of SBA's financial assistance is rendered through guaranty programs.

SBA's civil rights office receives 30-40 external complaints annually, There is no backlog of pending cases. Complaints are transferred, when possible. Other agencies with larger enforcement mechanisms can process cases more cost-effectively. Also, SBA's only sanction is to withdraw its financial or guaranty assistance, it cannot provide any direct relief or remedy to the claimant. Once SBA assistance is withdrawn (or repaid), SBA loses jurisdiction over the matter. Those cases that are retained are investigated, and voluntary compliance negotiated, if possible, where discrimination has been found.

SBA has drafted a proposed "EO Guide for Small Businesses" to cover a variety of civil rights requirements. SBA suggests making the guide available to small businesses that are not SBA recipients -- but would require funding to print sufficient copies.

VIII. PROPOSED FOLLOW-UP

- Follow-up contacts with agencies that submitted memoranda to request any specific ideas for improvements; contact agencies that have not yet submitted memoranda.
- Follow-Up Meetings -- October:
 1. Agencies -- discuss preliminary recommendations for improvements
 2. Backlog/Productivity Issues --- in-depth meetings to request/suggest further proposals to remedy on-going problems in specific agencies e.g., EEOC and USCCR.
 3. Outreach -- meet with groups monitoring civil rights enforcement for suggestions of possible improvements, such as:
 - Citizen's Commission on Civil Rights
 - ACLU
 - American Council on Education
 - NAACP
 - National Urban League
 - National Council of La Raza
 - National Asian-Pacific American Legal Consortium
 - Urban Institute
 4. Coordination Issues -- possible separate discussion with Justice on coordination of civil rights effort across the government.

- Feedback to agencies on improvement proposals in mid-late October.
- Progress meetings on implementation of improvement proposals/ideas in Oct-Dec.

Race Initiative Policy - Housing




U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
 THE SECRETARY
 WASHINGTON, D.C. 20410-0001

September 22, 1997

MEMORANDUM

FOR: ERSKINE BOWLES, CHIEF OF STAFF

CC: ANN LEWIS, DIRECTOR OF COMMUNICATIONS
 MIKE McCURRY, PRESS SECRETARY
 RAHM EMANUEL, SENIOR ADVISOR TO THE PRESIDENT
 BRUCE REED, DOMESTIC POLICY ADVISER
 JUDITH WINSTON, DIRECTOR OF THE RACE INITIATIVE
 SYLVIA MATHEWS, DEPUTY CHIEF OF STAFF
 THURGOOD MARSHALL, SECRETARY TO THE CABINET

FROM: SECRETARY ANDREW CUOMO 

SUBJ: HUD'S FAIR HOUSING FOR THE 21ST CENTURY INITIATIVE

In January 1994, the President issued an Executive Order (Executive Order 12892) establishing the "President's Fair Housing Council" and naming the Secretary of Housing and Urban Development (HUD) as Chair of that Council.

In this context, we at HUD have developed a Fair Housing for the 21st Century initiative which is ready to support the President's "One America" initiative -- and may be particularly relevant for the President's upcoming speech in Arkansas this Thursday.

Housing Discrimination: The Racism That Hits Americans Where They Live

- Nearly 30 years after this nation passed the Fair Housing Act, Americans of color seeking a new home are still the victims of housing discrimination -- perhaps the most persistent remnant of racism in America. These Americans are being shut out of the American dream and that is wrong. As we approach the 21st Century, we must have zero tolerance for discrimination. **How can we become One America when we cannot even become one neighborhood?**

- Sometimes housing discrimination is subtle. Americans of color are told there are no homes available when, in fact, there are homes available. They are told there is an expensive security deposit when, in fact, there is no security deposit. They are literally steered into neighborhoods across town instead of where they want to live.
- Other times housing discrimination is flagrant, ugly, and violent. When Americans of color try to move into their new home, their new neighbors welcome them -- not with warm greetings -- but with racial slurs, crosses burning on their front lawns, bullets shooting in their windows, and death threats for them and their children.

Fair Housing for the 21st Century

HUD's Fair Housing for the 21st Century initiative is a three prong plan designed to promote minority homeownership opportunities by addressing the discriminatory obstacles that all too often impede homeownership opportunities, including:

- At the President's request, HUD will double the number of civil rights enforcement actions by the year 2000 -- from 1,085 to 2,170. HUD will do this by forging working relationships within the federal government (e.g. USDA, DOJ, VA), by cooperating and supporting not-for-profit fair housing advocacy groups and by making the pursuit of civil rights housing cases a Secretarial priority. Toward that end, we will begin in the coming weeks announcing a series of enforcement actions against egregious violators of housing civil rights law.
- Aggressively pursuing and rooting-out race-based housing discrimination in the marketplace, such as predatory lending, insurance scams and exclusionary zoning practices. This form of housing discrimination is much more subtle and complex than the type of cases HUD traditionally pursues but it stands as one of the most pernicious obstacles to improving minority homeownership rates.
- Launching a Public Education Campaign in the spring of 1998 -- the 30-year anniversary of the passing of the Fair Housing Act -- designed to promote minority homeownership opportunities.

I believe announcing the doubling of enforcement actions could be a valuable piece of the President's speech in Little Rock. My staff will follow up on this issue.

MEMORANDUM

TO: ELENA KAGAN
FROM: TOM FREEDMAN, MARY L. SMITH, TANYA MARTIN
RE: CIVIL RIGHTS PROPOSALS
DATE: OCTOBER 21, 1997

I. GENERAL SOLUTIONS PROPOSED BY CIVIL RIGHTS GROUPS

1. Ensure that executive order signed on 8-08-94 which coordinates role of civil rights policies is being enforced.
2. Appoint a senior White House person to coordinate civil rights enforcement.
3. Improve process of nominating persons, including judges.
4. Improve Title VI enforcement (for recipients of federal dollars).
5. Follow up to speech in Little Rock--disintegration.
6. DOJ more proactive in desegregation cases.
7. Increase mobility programs in housing.
8. Permitting students to transfer from failing schools.
9. Failure to implement regulations quickly --hospital regs in Bush Administration, contractors to issue affirmative action plans, contractors to show range of salaries.
10. Improve data collection.
11. PSA campaign on Houston initiative on November 4.

II. EEOC

A. SOLUTIONS THE EEOC HAS ADOPTED ALREADY

1. In 1996, the EEOC adopted a national enforcement plan that sets priorities for the processing of charges and litigation on the national and local level. Priority is placed on class-action lawsuits, claims that involve allegations of company-wide

discrimination, and those that are likely to develop key legal principles. The reforms mark a fundamental change for the agency because it no longer fully investigates every charge it receives. Instead, charges are prioritized so those with little merit are dismissed without a probe while priority cases are investigated.

2. The EEOC beefed up its mediation strategy, using many volunteer mediators under the Administrative Dispute Resolution Act.
3. The agency is also targeting high-profile cases to bring suit such as the Mitsubishi sexual harassment suit in Illinois.

B. PROPOSED SOLUTIONS

1. Backlog elimination project (removal of 70,000 case backlog with the goal of 6-month disposition of cases). **Needed new technology: \$10M --** so that all EEO field offices can look at case files online
2. Make a good and early appointment for the head of the EEOC.
3. More money for mediation program (Ellen Vargyas)
4. More money for training
5. Software to let potential claimants determine if they have a charge in a public area of EEO field offices.
6. Improve enforcement of discrimination in the federal workplace (Wade Henderson).

The EEOC already has some initiatives regarding this per the Washington Post on October 3

- **Government agencies be required to implement dispute resolution programs to encourage parties in discrimination cases to resolve cases before they go to hearings.**
- **The EEOC implement a mandatory training program for equal employment officers inside the government agencies.**
- **EEOC administrative judges resolve cases faster.**
- **Government agencies be prohibited from overturning EEOC rulings**

that find in favor of workers while giving agency officials the right to appeal EEOC rulings.

7. Oppose efforts to remove authority to intervene in private suits: This measure is contained in the pending appropriation bill.
8. Improve the number of cases resolved (Wade Henderson).
9. Improve the manner in which cases are generated in the field (Wade Henderson).
10. More funding for staff to address the backlog
11. Give the EEOC "cease and desist" authority, that is, authority to issue injunctions in cases of egregious violations (Ellen Vargyas doesn't endorse)
12. Give judicial deference to an EEOC determination of "cause" or "no cause," permitting only appellate review based on a "substantial evidence" standard of review
13. Mandate that a certain class of cases will be subject to non-binding arbitration on an expedited basis (perhaps cases under a certain dollar amount, and after they have been classified as "A," "B," or "C")
14. Encourage binding ADR on an accelerated schedule before EEOC does investigation
15. Criminalize job discrimination in the strongest cases, where there is profound damage and willful violations of the law with direct economic impact.
16. Change the procedure for USPS employees to match what other federal employees have in filing an EEO claim --right now, they have two avenues, grievance and EEO, other federal employees have to make a choice

III. JUSTICE -- CIVIL RIGHTS DIVISION (CRD)

Possible Improvements

- Police brutality case expansion
- Coordination project (appointment of coordinator for civil rights)
- Caseload improvements -- because of the vast jurisdiction of the CRD, its overall

workload is affected by nearly every expansion of civil rights protections.

- Title VI enforcement
- Expansion of hate crimes control
- ✓• Law enforcement training grants
- Task force on duplication of efforts in discrimination cases (elimination of agencies?)
- Coordination -- improve data collection/dissemination among agencies.

IV. DEPARTMENT OF EDUCATION -- OFFICE OF CIVIL RIGHTS (ED-OCR)

Potential Improvements

- Improve data collection to collect data on elementary and secondary schools
- Reduce delay -- some education civil rights groups have complained to the Department about the speed of enforcement actions and delivery of the Elementary and Secondary School Survey data.
- Provide more proactive technical assistance/guidance to school districts/states.
- More collaboration between Education, DOJ, and other agencies on major issues, particularly those involving litigation -- like school desegregation, model urban school, model suburban school

V. HEALTH AND HUMAN SERVICES -- OFFICE FOR CIVIL RIGHTS (HHS-OCR)

Potential Improvements

- Improve data collection (2-phased survey on hospitals serving minorities)
- Reduce racial disparities in health delivery through survey and pilot tester program
- Increase funding -- HHS-OCR is below its FY 1981 funding and FTE levels, while the number of complaints is increasing.
- Increase the availability of data on Title VI compliance by health care facilities
- Technical assistance on items such as transracial adoption guidance to states, and guidance

on changes in benefit levels to immigrants

- Technological improvements to put HHS administrative decisions online

**VI. HOUSING AND URBAN DEVELOPMENT
OFFICE OF FAIR HOUSING AND EMPLOYMENT OPPORTUNITY (FHEO)**

Potential Improvements

- Increase the number of state/local agencies qualifying as “substantially equivalent” under the FHAP program. The number decreased due to the implementation of more stringent requirements in the Fair Housing Amendments Act of 1988. In 1990, approximately 125 agencies were certified, by 1993 the number qualifying was 52.
- In 1994, the Civil Rights Commission found that in most cases HUD did not reach a conclusion as to just cause within the 100-day benchmark set by Congress. The average case-processing time in 1993 was 151 days.

**VII. DEPARTMENT OF LABOR (DOL)
OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS (OFCCP)
OFFICE OF CIVIL RIGHTS**

Potential Improvements

- Technical assistance such as providing seminars to small federal contractors for federal compliance
- Expand the office of ombudsman (an office that provides assistance to contractors on how to draft affirmative action plans)
- Data collection --improve EEO data collection for **salary banding** (where do women and minorities fall in pay scale)
- More coordination at litigation strategies
- OFCCP's FY 1998 budget includes resources for a tiered-review process, which will reduce the paperwork burden on federal contractors and increase coverage of the contractor universe.
- Increase amount of compliance assistance provided to contractors
- Expand ADR into Title VI area: Allow states 60 days to perform ADR

Rae Unit PD - Civ Rts Enf

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, DC 20507

1.2

November 5, 1997

Office of
the Chairman

MEMORANDUM

TO : Tom Freedman
Special Assistant to the President
Domestic Policy Council

FROM : Maria Borrero
Executive Director

SUBJECT : Possible Special Projects

As you requested, the following represents some special projects that EEOC can implement:

1. **Technology:** The EEOC needs approximately \$25 million over a three year period to complete implementing an agency-wide computer system. Due to workload capacities, we can only use \$10 million dollars a year, beginning with fiscal year 1999. For fiscal year 1998, we would need \$500,000. If we were able to get the \$25 million, we ask that it be allocated as "no-year" funds so that funds could be used over a three year period.
2. **ADR (Mediation):** With 4 million dollars (at \$500 per mediation) we could contract for 8,000 charges to be mediated.
3. **Inventory Reduction:** To reduce the private sector inventory to six months by the year 2000, would require 165 new FTEs at a cost of \$6,036,166. ~
4. **Data Collection:** Develop an "Interactive Diskette" data collection to replace "Paper Forms," for all EEOC employment survey data collection programs. This would benefit the employers and the business community. The estimate cost is: \$200,000.
5. **Data Collection:** Perform a one time data collection from employers to obtain bench mark EEO survey data for the Americans with Disabilities Act (ADA) of 1990. The cost estimate is \$250,000.

6. **Outreach and Technical Assistance to Employers:** A number of projects under this category include:

- Three video productions at a total cost of \$225,000 on subjects such as: Information for Small Employers; Mediation to Resolve Charges; and, Best Practices for Employers;
- Develop a Public Service Announcement at a cost of \$100,000;
- Stakeholder meetings around the country for our 25 offices at a cost of \$125,000; and,
- Translate pamphlets into several languages and production costs of \$280,000.

Raw Unit Pol-Civ Rts End



DEPARTMENT OF LABOR
BUREAU OF LABOR STATISTICS
DIVISION OF FINANCIAL PLANNING AND MANAGEMENT
POSTAL SQUARE BUILDING
2 MASSACHUSETTS AVENUE, N.E.
WASHINGTON, DC 20212

OAS & M / Civil Rights

TO	TOM FREEMAN
ORGANIZATION	Domestic Policy Council
PHONE NO.	456-5581
FAX NO.	456-7431

FROM	ANNABELLE T. LOCKHART
ROOM NO.	4135 FPB.
PHONE NO.	606-202-219-8927
FACSIMILE NO.	(202) 606-6640 219- 8757 5658

Number of Pages (Excluding cover sheet) :

COMMENTS:

Per request
from Annabelle T. Lockhart.

November 7, 1997

Memorandum for Thomas Freeman
Domestic Policy Council
White House

From:


Annabelle T. Lockhart

Subject:

Proposal for Enhanced Resources for Civil
Rights Enforcement in DOL

Attached is the information that you requested relative to enhanced civil rights enforcement of programs receiving federal financial assistance from the Department of Labor. If you need anything, further, please call me on 202-219-8927.

Attachment

11/01/81 11:22 AM 202 000 0000

Department of Labor's Proposal for Enhanced Civil Rights Enforcement of Financially Assisted Programs

Background

The Directorate of Civil Rights (DCR) is responsible for enforcing the varied Federal statutes and regulations, that (1) prohibit discrimination in all DOL programs, (2) prohibit discrimination on the basis of disability by certain public entities and in DOL conducted activities, (3) prohibit discrimination within DOL workplaces.

DOL Jurisdiction

The DOL provides approximately 35 billion dollars in financial assistance to over 900 grant recipients annually. These programs include: the Job Training Partnership Act (JTPA) programs to prepare youth and adults facing serious barriers to employment for participation in the labor force by providing job training and other services that will result in increased employment and earnings, increased educational and occupational skills and decreased welfare dependency. They include the Job Corps, State Employment Security Older Worker Program, Migrant and Seasonal Farmworker Program, Disabled Person, Program, and Indian and Native American Program and the Unemployment Insurance Program. In addition, \$3 billion of new funding is being provided to DOL for the Welfare to Work program.

Additional Resource Requirements

This proposal envisions compliance monitoring activities which include compliance reviews, technical assistance and outreach to cover the financial assistance universe on a three year cycle.

Compliance Activities - 21 FTE and \$1,890,000

Compliance Monitoring

18 FTE will be required to provide total compliance monitoring coverage on a 3 year cycle. Within existing resources only 4 compliance reviews can now be conducted, due to the regulatory need to process complaints. This will enable staff to conduct 18 reviews per year.

Compliance Assistance

3 FTE will be required to conduct 20 technical assistance visits per year. This represents staff being on the road two weeks out of every month.

Mediation - 11 FTE and \$990,000

7 FTE will be required to market ADR and to assist states in developing and designing ADR programs. In addition, 4 FTE will be needed to provide ADR for those complainants who request ADR in the processing of their complaints with DCR.

Technology - \$155,000

\$155,000 for technology improvements – The existing database needs major substantive revisions. We have preliminarily explored the possibilities of upgrading our existing system and estimate that at least 75,000 will be needed to obtain licenses and data base conversions to a new system. Additionally, 80,000 will be required for computers to support the additional staff resources.

Summary

This request is for a total of \$3,035,000. When added to the existing budget for DCR, this represents less than one-half of one percent of the total financial assistance DOL dollars to ensure minimal enforcement of applicable nondiscrimination laws.

Race Int PDR - Civ Rts Enf

Fax for Tom Freeman
FAX: 202-456-7431 or 456-7028
PHONE: 456-5587

DATE: 11/7/97

FROM: Gale Barron Black
Executive Assistant
Department of Labor
Office of Federal Contract Compliance Programs, OFCCP
FAX: 202-219-6195
PHONE: 202-219-9475, Ext. 191



SUBJECT: OFCCP Proposal for Enhanced Enforcement

Per your request, attached is an overview of the OFCCP additional resources proposal. Please don't hesitate to contact us if you need additional information.

**Department of Labor's Office of Federal Contract
Compliance Programs Proposal for Enhanced Civil
Rights Enforcement**

BACKGROUND

The Office of Federal Contract Compliance Programs' (OFCCP) administers and enforces three equal employment opportunity laws: Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended. These programs¹ prohibit discrimination by federal contractors and subcontractors and require them to take affirmative action to ensure that all individuals have an equal opportunity for employment, without regard to race, sex, ethnicity, national origin, religion, disability or status as a Vietnam era or special disabled veteran. The programs apply to contractors and subcontractors holding federal or federally assisted contracts over \$10,000. The laws are designed to ensure that federal taxpayers' dollars do not perpetuate employment discrimination.

Compliance Enhancement

OFCCP requested an additional \$8,550,000 and 101 FTE for its compliance (affirmative action) initiative. Within existing resources, OFCCP reviews only 3 per cent of its contractor universe.

\$4.8 million and 101 FTE would significantly increase the coverage of the contractor universe in a single year and ultimately improve the opportunities and employment utilization rates for women, minorities, veterans and individuals with disabilities.

OFCCP will implement the program's three-pronged Fair Enforcement Strategy and initiate a comprehensive technical assistance strategy designed to promote compliance with Executive Order 11246. Additional resources for the three-pronged strategy will allow OFCCP to revise the requirements for the Affirmative Action Plan, fully implement the Affirmative Action Program Summary Report, and enhance the tiered compliance review enforcement strategy. The initiative will

¹ Executive Order 11246; Section 503 of the Rehabilitation Act of 1973, as amended; and the affirmative action provisions (Section 4212) of the Vietnam Era Veterans' Readjustment Assistance Act, as amended.

also provide for the development of an Alternative Dispute Resolution system for the handling of some enforcement cases and complaint investigations, the stronger enforcement of the Family and Medical Leave Act, and expanded use of technology to enforce the Vietnam-Era Veterans Readjustment Assistance Act.

Information Technology - \$3.75 Million

These funds will be used to upgrade the agency's infrastructure and replace outmoded systems hardware with more modern technology, enabling OFCCP to meet its current requirements and to development the systems necessary for Federal contractors to submit data electronically to the program.

Specifically, OFCCP will develop a system to collect, analyze and disseminate information on the AAP Summary report electronically, fully automate the management information system and permit online filing and reporting by contractors and complainants.

The information technology project will complete the provision of modern PCs and network connections for all OFCCP field offices. These connections will be used for the PC based software building the compliance review data base directly and will permit field staff to analyze contractor data. Additionally, field staff will have online access to the AAP Summary reports and their analyses.

Data Collection

OFCCP is proposing to reengineer its compliance review process and the affirmative action program (AAP) requirements. To accomplish this, OFCCP is proposing an Affirmative Action Program Summary Report (AAPSR). This report would be submitted annually to OFCCP by all Federal contractors. The AAPSR submission would significantly reduce the amount and types of paperwork and analyses which would be needed in the affirmative action plan. Further, the data in the AAPSR would be used to implement a compliance review selection process which would have various levels of review rather than subjecting all contractors to the same level of review.

*Rau luit 7d - Civ Rts Ent***MEMORANDUM**UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C.*22 mill*

NOV 5 1997

TO : Tom Friedman
Special Assistant to the President
for Policy and PlanningFROM : Norma V. Cantú *Norma V. Cantú*
Assistant Secretary
for Civil Rights
Department of Education

SUBJECT: FY 1999 Special Projects

This memorandum is in response to a telephone call from Tom Friedman requesting a "wish list" of special initiatives from civil rights enforcement agencies that could be implemented in FY 1999 if the White House created a special fund of \$10 million to be shared by the agencies. The Office for Civil Rights' (OCR) response to this request was prepared with its FY 1999 Budget Request in mind.

Overview of OCR's FY 1999 Budget Request

The Office for Civil Rights has requested a funding level of \$69,676,000 in FY 1999. Funding at this level supports 724 full-time equivalent (FTE) staff and provides sufficient resources to support an enforcement program designed to maximize the impact of OCR's limited resources and ensure an appropriate balance of civil rights enforcement under all of the Federal laws that it enforces.

Since FY 1994, budget constraints as a result of the appropriations levels authorized by the Congress, have necessitated that OCR operate significantly below its authorized ceiling in order to minimally fund essential civil rights activities. This was the case in FY 1997 and continues to be the situation in FY 1998. OCR started FY 1998 with a staffing level of approximately 660 FTE, 64 FTE below its approved ceiling. Attaining and maintaining a staff level of 724 FTE in FY 1998 and FY 1999 is OCR's first priority. OCR's work is labor-intensive and its staff is its most valuable resource. The staff level has a direct relationship to the efficiency, effectiveness, and timeliness of OCR's enforcement activities and initiatives.

Funding essential support activities (travel, surveys, training, etc.) at an adequate level is OCR's next priority. If OCR FY 1999 appropriation is insufficient to support these activities at the requested levels, OCR would use any additional funds provided to staff and support its enforcement program.

OCR has requested funding for essential program support activities, including:

- Travel to investigate complaints, perform compliance reviews, monitor resolution agreements, and provide proactive technical assistance. The proposed level will allow OCR to meet its enforcement responsibilities and be more responsive to requests from recipients for on-site technical assistance.
- Advisory and assistance services to hire consultants and experts to assist in complex case investigations for which expertise is not available within OCR or the Department.

Page 2 - Tom Friedman

- Training to improve technology skills, retrain current staff, and increase training in civil rights issues.
- Technology to cover OCR's share of network support contracts and the overall management and maintenance of the network and to upgrade and replace personal computers to comply with agency standards. Also, OCR plans to design, develop, install, and implement a computer-based electronic document management system to facilitate the storage, retrieval, distribution and archiving of vital OCR documents. This new document management system will prove to be a major asset in helping OCR to meet all three goals of its Strategic Plan.
- Surveys and data collection projects, primarily the Elementary and Secondary Education School Survey. Data from this survey are requested and used extensively by OCR, other parts of the Department, other Federal agencies, advocacy groups, educational institutions, and researchers for a variety of purposes.
- Printing civil rights technical assistance materials and publications for dissemination to the public and producing the materials in alternative formats (i.e., Braille, large print, and audio cassette).

FY 1999 "Wish List"

If OCR is funded at its requested level, OCR has identified two "wish list" activities it would like to undertake with additional funding from the White House.

• Elementary and Secondary (E&S) School Civil Rights Compliance Report

OCR would like to conduct a survey of the universe of school districts in the country. The last universal E&S Survey was conducted in 1974. There are approximately 15,000 school districts in the United States, Puerto Rico and the Trust Territories. OCR conducts a random sampling survey of approximately 5,700 school districts every two years in even numbered years. The survey collects data on school districts in a number of areas including, but not limited to: number and types of schools within a school district; the demographics of the school district (students and teachers) by race and gender; the number of students by race and gender in gifted and talented programs; the number of students with disabilities by race and gender; the number and types of disabilities being served; the number of students in math, science and computer programs by race and gender, etc.

OCR's survey data are nationally recognized for their reliability, and in many instances, OCR is the only source for these data. Data from this survey are requested and used extensively by other parts of the Department, other federal government agencies, members of Congress, Congressional Committees, advocacy groups, educational institutions, and researchers. For example, the Department of Justice's Civil Rights Division uses data from this survey in its enforcement activities for approximately 400 Federal court order school districts. In addition, information and data obtained by the survey would be used as a baseline for OCR's proposed activities under the Government Performance and Results Act. OCR's proposes conducting this survey in the year 2000 to coincide with the 2000 census being conducted by the Department of Labor. OCR estimates this project will cost \$1,700,000.

Page 3 - Tom Friedman

• **Linked Civil Rights Data Bases**

OCR proposes that the five agencies with civil rights enforcement responsibilities (Departments of Justice, Labor, Health and Human Resources, Education and the Equal Employment Opportunity Commission) conduct a study to determine the feasibility and cost of linking their databases to facilitate civil rights enforcement. For example, the Department of Education collects and maintains data on employment demographics in school districts that would be useful to EEOC in the investigation of complaints from teachers. Linking the data bases of the two agencies would make historical data on a school district's employment demographics readily available to EEOC. The Department of Housing and Urban Development maintains demographics on housing that would be assist ED/OCR in identifying racial isolation when linked to school district demographic data. Linking technology might also be a way to improve coordination among the civil rights agencies. The cost of this project is not easily calculated. A contractor could be hired to conduct a study and recommend methods for implementation at cost of \$100,000 to \$500,000, a task force of technical and program staff from each agency could be convened to develop a proposal and recommendations, or combination of the two approaches could be implemented, i.e., a consultant working with a task force.

Summary

In preparing OCR's response to this request from Mr. Friedman, we operated under the assumption that this is a one-time only request, so we did not include the need for additional staff as one of the options we proposed. Additionally, whether or not OCR receives the additional funding for the projects proposed above, OCR will still pursue the other non-fiscal activities included in this memorandum, e.g., improved communications and coordination among civil rights agencies.

For additional information, please contact, Kelly Saunders at 205-8162.



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Rau luit PD - Civ Rts Enf

November 6, 1997

Director
Office for Civil Rights
Washington, D.C. 20201

MEMORANDUM

TO : Tom Freedman
Special Assistant to the
President for Policy Planning

FROM : Dennis Hayashi *[Signature]*
Director
Office for Civil Rights

SUBJECT : Proposed Civil Rights Initiatives

5.2

In response to your request, we are submitting the following description of new initiatives which this office could undertake with the availability of supplemental funding:

Compliance and Enforcement

Testing Program - Nursing Home Admissions and Program Abuse: OCR proposes establishing a new program modeled on a pilot testing program in the nursing home sector that has been undertaken during the past two years in cooperation with the Department of Justice, the first such testing program ever at HHS. OCR's work with the Department of Justice (DOJ) on the health care sector testing pilot has uncovered present day discriminatory and abusive practices. OCR would broaden the use of testing, first in the nursing home sector and subsequently in other sectors of the health care industry, including home health agencies and managed care organizations. The testing program would be accompanied by consumer education initiatives based on what we have learned from tests run during the pilot and from results of the proposed expanded testing program. Consumer education and outreach will be targeted toward informing racial minority, language minority and disability communities about discriminatory and abusive admissions and marketing practices so that they can report questionable practices to OCR and to the HHS Inspector General, DOJ and State and local authorities as appropriate. (\$2,600,000)

State and Local Program: OCR's Strategic Plan promulgates increasing partnership with state and local agencies to expand the scope of civil rights compliance coverage of HHS grantees. OCR proposes to pilot test contracting with states and local civil rights agencies to conduct investigations, thus expanding our capacity to enforce civil rights while giving states an active role in such enforcement. (\$500,000)

Public Service Announcements: OCR proposes a media campaign advising the public of civil rights protections and recourse as part of the Secretarial quality of care and consumer protection initiative. (\$250,000)

New Technology:

Civil Rights on the Internet: To date, OCR's Internet presence has been limited to home pages (HQ and two regions) that give the public basic information about the civil rights compliance program. OCR proposes to expand its Internet presence to enhance interactivity. For example, OCR would bring in technology that would enable the public to file complaints with us by computer, making it easier for them to access OCR services. Similarly, technical assistance to grantees could be accomplished using the Internet and

Page 2 - Proposed Civil Rights Initiatives

computerized correspondence. Survey data collections, pre-grant certifications, investigative data requests and responses could also be expedited. (\$250,000)

Geo-coded/Mapping Data Base on a Civil Rights Intranet: OCR proposes development, in conjunction with the Census Bureau and the Department of Justice of a government-wide pilot project that would make geo-coded mapping of race, ethnicity and national origin (language) Census data available to all civil rights agencies on a Civil Rights Intranet. Such a resource would enable civil rights agencies to have immediate access to tract level data during the course of investigations and reviews. Other uses of such an Intranet could include a government-wide index of administrative decisions, letters of findings, and entities under civil rights investigation or review and findings. (\$350,000)

Enhanced Data Collection

Analysis of Differential Treatment Modalities: OCR, working with the HHS Data Council, would investigate medical decision-making at the individual facility level to see how it is influenced by race and ethnicity. OCR would contract for the development of methodologies to determine potential areas of discrimination or differential access to services through assessment of Departmental and State level administrative data sets. The analyses would focus on differential treatment modalities and would address both access and quality of care issues at the facility and area-wide levels. (\$500,000)

Managed Care: OCR's FY 1999 budget request seeks consultant services funding of approximately \$200,000 to develop data collection measuring the effect of managed care arrangements on Hill-Burton facilities and others. Additional funding would support pilot implementation of the collection and analysis of data to address issues regarding marketing and enrollment, member disenrollment, participating provider selection and compensation, quality assurance and utilization review, performance standards, member access to services, treatment of patients with certain conditions and disabilities, State oversight of plan practices and State standards of licensure and performance for Medicaid providers, and State payment methods for services. (\$250,000)

Outcome Measurement: OCR is moving from output and process measures to assessing the extent to which the number and quality of services to protected classes has changed. Data from HHS and State and local administrative data sets are critical in determining service changes. OCR would contract for design of systems for using current data, or to collect data during investigative work and in post-findings monitoring on increases in services and the quality of such services for minorities and persons with disabilities. (\$250,000)

Mediation

Mediation Partnerships: OCR would contract with providers of mediation services in from five to ten pilot urban and rural areas to test expansion of third party mediation (in HHS, currently only Age Discrimination Act complaints are mediated by a third party - the Federal Mediation and Conciliation Service). OCR proposes decentralizing the use of third party mediation services for a subset of complaints assessed through its case triage process. (\$250,000)

The total of all of the activities that OCR proposes as potential uses of enhanced funding is \$5,200,000. This would represent an enhancement of 23.1% above our FY 1999 budget request.

10-5-97 Mary Frances Barry

Civ rts enf recent - bad in way as Reaf - no cases resolved
compliance reviews by OCR

Not adopting recs they've been since
- DOJ doesn't coord - re stds of law

This hasn't rewritten
recs in 25 yrs.

new recs need to be written:

- stds for bilingual ed teachers
- ed: teaching
- stds for teachers in tracks



Pres Summit - to stir imagination

DOJ VI enforcement to speed up in this part / yrs need to be by / yrs need to train state + locals

inner city: grant to fund HHS -> HHS/CDC
for transportation projects

Remove a CR whg pp -

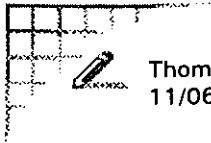
stop license in fed prog!
(in every area)

pre-award compliance reviews
DOJ doesn't coordinate any of this stuff

Model programs - do in a state or two.

Regular mtgs - feedback.
WH involvement / program office involvement

Race Int Policy -
Civil Rts Enf



Thomas L. Freedman
11/06/97 10:03:29 PM

Record Type: Record

To: Elena Kagan/OPD/EOP
cc: Laura Emmett/WHO/EOP, Mary L. Smith/OPD/EOP
Subject: Civil rights enforcement package



INTRO4.W This is the latest draft of the OMB introduction to the civil rights package. The package states its four components are compliance, ADR, information and data improvements across the lead agencies. The package is now a \$56 million increase -- a 13.2% increase over the FY 1998 enacted level (a 10.6% real increase).

The major specific initiatives are still the improvements at EEOC (6 month goal, more ADR), HUD audit enforcement (a \$14 million project), and compliance at OFFCP.

Raines is slated to sit down with OMB staff Wednesday of next week to review this.

I've asked for and received from the agencies more project ideas in the areas of compliance, mediation, data collection, and technology they would make. As of today, I have new projects in these areas but they don't ask for much more money-- from HHS another \$5.5 million, from Education another \$2.2 million, EEOC \$1.2. DOL and DOJ should get their's in tomorrow. Of course, if we just gave the agencies what they asked for in their budget requests it was about \$80 million.

PIR (the english guy) called to say they were sitting in on the Raines meeting and wanted to discuss our package prior. Regards, Tom

CIVIL RIGHTS CROSSCUT DIRECTOR'S REVIEW OVERVIEW

In June 1997, President Clinton launched his President's Initiative on Race (PIR), a campaign to improve race relations in the post-civil rights era by encouraging Americans to "learn together, talk together and act together to build one America" and to "help educate Americans about the facts surrounding issues of race". The seven-member Board agreed at its first meeting July 14 to focus its first initiatives on education and economic opportunity issues. President Clinton and Vice President Gore participated in a second Board meeting on September 30, where the President reiterated his commitment to looking for practical steps that will move the country forward toward common goals. He called on the PIR to consider publishing a compendium of local efforts that address promising practices of diverse communities in successfully promoting tolerance and models of behavior.

This crosscut review has three sections. The first section asks for decision on funding for the six principal civil rights enforcement agencies and the U.S. Commission on Civil Rights. The six enforcement agency proposals discussed in the issue papers comprise a \$56 million "Presidential Civil Rights Initiative", discussed below. The second and third sections are informational only. The second section discusses enforcement programs for which funding decisions are not requested, and programs that have been considered "civil rights" related, but are non-enforcement in nature; decisions for these programs will be made in the context of agency reviews. The third section discusses Administration efforts in a variety of areas that may be considered race-related.

The Domestic Policy Council's Civil Rights Working Group Efforts. The Domestic Policy Council (DPC) and HTF Division staff have been engaged for several months in meeting with both civil rights advocacy group leaders and agency officials to hear their recommendations for improving Federal civil rights efforts. The advocates recommended a range of ideas including improved White House coordination of civil rights policies and stronger enforcement of civil rights laws by and in the Federal Government. All agreed strongly that a coordinated approach to civil rights policies, with a full-time senior person in the White House responsible for civil rights issues, could assist in numerous ways, including: identifying civil rights priorities and focusing resources incrementally in key areas which could aide the Assistant Secretaries in defending their budgets during the appropriations process; focusing the need for Cabinet Secretaries to play a more visible role in advancing the Administration's civil rights agenda; giving strategic attention to Presidential appointments and the timing of major initiatives; and coordinating the fight against discrimination by Federal agencies.

The DPC also conducted a series of meetings with Federal civil rights agencies including the Equal Employment Opportunity Commission (EEOC), the Department of Justice's Civil Rights Division, and the civil rights offices of Education, HHS, Labor, and HUD. These agency meetings were held to discuss ideas for assisting the Administration obtain its civil rights enforcement budgets from the appropriators.

Presidential Civil Rights Initiative. DPC and HTF Division staff believe increased resources are necessary to implement many of the proposals for agencies to conduct business more effectively and efficiently. A Presidential announcement would highlight a \$56 million “Civil Rights Initiative” to assist the key civil rights enforcement agencies:

- to improve compliance;
- to implement greater use of alternative dispute resolution techniques;
- to invest in information systems upgrades; and
- to develop better data collection capabilities.

The increased funding would be more than a symbolic statement about the President’s commitment to civil rights; it would provide the enforcement agencies with badly needed resources. For example, EEOC could invest in technology and implement greater use of mediation to quickly resolve complaints without significant increases in staffing. OFCCP would continue its streamlining and compliance assistance initiatives. And our recommendation for HUD is to develop a targeted, audit-based enforcement initiative that would raise the Nation’s and communities’ awareness of the extent of housing discrimination through focused and publicly released audit results and subsequent enforcement action. Detailed agency proposals are discussed in the subsequent issue papers. The funding levels for each agency are shown in the table below:

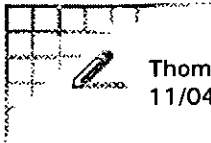
Presidential Civil Rights Initiative (Budget Authority, in millions of dollars)					
Agency	FY 1998 Enacted	FY 1999 OMB Guidance	FY 1999 RMO Recomm	Presidential Initiative	Delta: Recomm. Less Guidance
EEOC	240	236	270	+30	+34
HUD	30	34	44	+14	+10
DOJ	65	67	70	+5	+3
OFCCP	62	69	67	+5	-2
Education	62	63	64	+2	+1
HHS	20	20	20	+0	+0
Total:	479	489	535	+56	+46

Civil Rights Information in the President's Budget. Both the advocates community and the civil rights agencies discussed the need for better and more available data on civil rights programs. During President Clinton's first term, there was no discussion on civil rights programs in the annual budget presented to Congress. For the FY 1998 Budget, a brief discussion on overall funding for civil rights activities in housing and employment was included in the short "Highlights of the Federal Budget" document in "Chapter VI, Expanding Economic Opportunity". This contrasts sharply to fuller analyses of civil rights activities that had been an integral part of the President's Budget through FY 1987. The "Special Analysis J" section (see Appendix A) listed budget authority for principal federal civil rights activities and descriptions of the coverage and scope of voting rights, equal employment opportunity, fair housing and equal credit, activities of the U.S. Commission on Civil Rights, and non-discrimination in Federally assisted programs. When the FY 1988 budget was consolidated into a single document, the production of most special analyses ceased. With the resurrection of the Analytical Perspectives component of the President's Budget in _____, all of the previous analysis were again included, with the exception of civil rights activities. OMB may want to include a civil rights section in the FY 1999 Budget as part of an Administration effort to highlight government-wide program and financial information for civil rights activities.

Summary of Civil Rights Enforcement Funding. Most of the Federal dollars that go toward civil rights objectives are provided to agencies for enforcing Federal civil rights statutes. In January 1997, at the request of Wade Henderson of the Leadership Conference on Civil Rights, the Housing, Treasury, and Finance Division developed a post-budget crosscut table of FY 1998 spending for civil rights programs. The President proposed \$608.6 million for Federal civil rights programs, a \$51.7 million or 9.3 percent increase in budget authority over FY 1997. Funding increases were proposed for nearly every civil rights agency, spreading scarce Federal resources over a broad group of agencies and programs. The average increase in enforcement programs was 8.3 percent, with increases ranging from 3 percent for the EEOC to between 10 and 30 percent for Education's civil rights programs, Labor's OFCCP, HUD's fair housing activities, and the U.S. Commission on Civil Rights. Non-enforcement programs were proposed to increase 15.6 percent, primarily reflecting a 38 percent increase in SBA's minority and women small business programs.

This crosscut reviews only the six key civil rights enforcement agencies, plus the U.S. Commission on Civil Rights. Despite the \$503.5 million proposed in FY 1998 for the six principal agencies, Congress is likely to provide \$465.7 million, equal to the FY 1997 enacted level, and \$37.8 million, or 7.5 percent, below the President's request for FY 1998 (see Attachment A). For FY 1999, OMB is proposing \$537.2 million for key enforcement activities, a 4.4 percent increase over the President's FY 1998 request and a 13.2 percent increase over the FY 1998 enacted level. Using a 2.3 percent GDP deflator, the real increase for OMB's recommended level over the FY 1998 budget request is 2 percent, and the real increase over the FY 1998 enacted level is 10.6 percent. Individual agency increases range from 33 percent for fair housing activities, to 8 percent for EEOC and level funding for Education's Office of Civil Rights.

Race Unit PD -
Civ Rts Enf



Thomas L. Freedman
11/04/97 09:38:26 PM

Record Type: Record

To: Elena Kagan/OPD/EOP
cc: Mary L. Smith/OPD/EOP, Laura Emmett/WHO/EOP
Subject: Civil Rights Cross Cut Meeting

Michael Deich suggests a \$60 million maximum package.

That buys a good EEOC package of:

- * New performance goal (cases averaging 6 months, requires 114 new FTE's);
- * The \$10 million new technology piece;
- * A commitment to doing 10% of all cases by ADR.

It gets a good fair housing package from HUD (\$10 million new targeted, audit based enforcement).

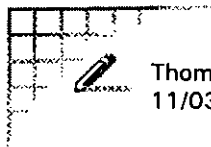
There is no recommendation for the Department of Education in the package as OMB wants to wait and review it in context with the rest of education. ED OCR has requested increased resources including more staff and a more collaborative approach with schools that will rely on improved technical assistance.

For DOL the package includes a 10% increase in the number of compliance reviews conducted (OFCCP started a tiered compliance review system in FY 1998 by which they target serious cases).

HHS OCR is basically maintained, sparing it from the average 4% reduction in other HHS discretionary activities. The funding includes a triaging front-loaded program to focus more resources on outreach and technical assistance.

Michael says it leaves another up to \$10 million of new money to play with. Among the options: a beefed up emphasis on compliance and mediation by education and hhs. Some money to improve DOJ's role as coordinator which many groups mentioned to us.

Race lit 707 -
Civil Rts Enf



Thomas L. Freedman
11/03/97 12:34:20 PM

Record Type: Record

To: Elena Kagan/OPD/EOP
cc: Laura Emmett/WHO/EOP, Mary L. Smith/OPD/EOP
Subject: Civil Rights Initiative

Susan Carr is sending a draft civil rights cross-cut to you and Michael Deich this afternoon. She is putting a place holder in for our across the board enforcement provision. I tentatively asked for a \$100 million special fund to do the new things (mediation, technology, compliance) we discussed. Other than that, we could add \$84 million to the total if we just gave the lead agencies what they asked for. Susan's draft is recommending \$39 million of what the agencies asked for. The total budget of the agencies is \$574 (the biggest being EEOC at \$240 million FY'98 enacted). The agencies have been slow getting back to us, but OMB wants to sit down with Raines middle of next week so we need to have a justifiable figure soon...

Talk to him

Outline for Draft EEOC Proposal

I. EEOC Background

Total pending charge/complaints: 72,630
Investigators available: 803
Current inventory average in months: 8
Caseload per investigator: 84.7

The EEOC filed 296 lawsuits in FY'97. 87 of them were class action. As of June 1995, the inventory was 111,451. It is a 36% decrease in two years. Use of prioritization system works, but likely has left hardest cases.

ADA accounts for approximately 20% of the agency's caseload. EEOC's staffing at the beginning of FY 1997 was 2,680 FTE -- the lowest level in 20 years. In FY 1980 the agency had a staff of 3,400.

The President requested \$246 million for EEOC for FY 1998. This represents a \$6 million increase or 2.5%.

II. Performance Goals.

A. **Goal**-- Bring inventory to 6 months within one and half years (FY 2000).

B. EEOC Projections to meet this goal

FTE: 165 (123 investigators, 24 clericals, 18 supervisors)

Cost: \$6,036,166

Assumes constant of 80,000 charges/complaints a year

Projects caseload per investigator of 54.8

Projects inventory lowering to 4.5 months by FY 2001

III. Strengthening EEOC Actions in the Federal Government

Currently, agencies are able to ignore recommendations they don't like. When EEOC judges make decisions that favor the agency, the decisions stand all but 0.1 percent of the time. When the decisions favor employees, agencies reverse the decisions 63 percent of the time.

The commission also wants to require every agency to develop ADR procedures.

IV. Process Reform: Alternative Dispute Resolution

We requested OMB prepare a simple "back of the envelope" calculation of potential savings through increased use of mediation versus full investigation.

OMB calculates as follows: EEOC's budget allocates \$140 million to private sector compliance activity. This is the full cost of salaries and rent and computers and travel that the Commission spends on processing individual complaints of discrimination from private sector employees. EEOC spends an average \$1,750 on each of an estimated 80,000 cases annually.

Using ADR contracts of \$500 per case results in "savings" of \$1,250 per case processed. If 10 percent of the 80,000 cases were resolved using ADR, this would result in a "savings" of \$10 million for FY 1999. This funding could support 200 additional positions for private sector enforcement of more complex cases as well as help to reduce the time it takes the Commission to resolve cases from 1 year to 6 months by 2002. We have asked them to look to savings if we look to the year 2000 as our goal.

EEOC requested \$4 million to do ADR in 10% of their cases. EEOC projected informally that up 70% might be eligible for mediation.

V. Compliance Increase.

We have asked EEOC to suggest means and potential for increasing compliance activities.

VI. Technology Increase

EEOC has requested \$10 million. This involves installing a computer system that is linked nationwide so files may be transmitted electronically. We have asked OMB to project resource and time savings if this was approved.

The new technology might also include a program installed in agency waiting areas that would allow individual citizens to input their concerns without staff assistance and determine whether EEOC is the proper agency to take their concerns to and whether they have a possible case.

VII. Coordination

This would involve centralizing discussions in the DOJ-CRD in some formal fashion.

How to Better Enforce Civil Rights

The Clinton administration inherited a weak civil rights enforcement apparatus that had been ripped to shreds by the disinterest in enforcement going back over many years. A major job of the Commission on Civil rights is to monitor enforcement and suggest correctives. Commission reports document the failure of the Clinton administration to improve enforcement in most areas. There are a number of legislative actions that could be proposed: Expand the use of testers in every area of federally subsidized or funded programs to ferret out discrimination. There are also regulatory action: Require standards for qualifications for bilingual education program teachers; require standards for the use of ability grouping to avoid discrimination and standards for the qualifications of teachers used to teach children in the lowest ability groups who usually get the least qualified teachers. It is also the case that every federal civil rights enforcement agency is underfunded given the size of their workloads.

However, these are not items that are likely to stir the public imagination. The President should identify continued discrimination as a major problem and embark upon a public strategy of insisting on the end of denial of opportunity for invidious reasons. Enforcing non-discrimination in the federal

sector and in the use of federal taxpayers monies would be a major start. Even politicians who are against affirmative action say they are for non-discrimination. No American should be abused by the federal government or denied access to programs or activities funded by federal taxpayers because of race color or national origin.

What is the Problem:

1. How we treat each other and insufficient non-governmental efforts to end discrimination. Response: Stepped up Public Service Announcements: USCCR has used its relatively new authority to do this with PSA's by Mary Chapin carpenter and ER star Eric Lasalle and Philicia Rashad of Cosby on the Radio. Stepped up Radio and new television announcements should be initiated. Perhaps agencies can collectively earmark funds from their budgets in the absence of additional resources to fund the increased activity.
2. Within the government billions of dollars of federal taxpayers funds are being distributed without enforcement of title VI prohibition against discrimination based on race, color and national origin, while discrimination is commonplace in these programs.

Federal enforcement of Title I is a joke. Attention has been focused on the backlog of employment discrimination cases at EEOC and well it should but at last employment cases are being pursued by private litigators and the federal government is not in complicity with the discriminators. With the increased use of

block grants awareness that state and local officials and the federal government are not enforcing title ~~VI~~ ought to call for a VI major effort. In the past politicians tried to impede civil rights enforcement with the argument that having to ensure non-discrimination was not as important as ensuring the free flow of funds to programs even if they discriminated. That objection should not carry as much weight today.

A federal court in Tennessee found that black elderly were ~~being~~ denied admission to some nursing homes funded through medicare and medicaid. State civil rights officials in the state and others say the federal government has never monitored title Vi enforcement, tried to enforce title i itself or trained them in how to enforce it.

Minorities complain that inadequate resources and grant support is distributed by HHS to colleges and universities they operate or to minority researchers and scholars. Minorities complain about the maintenance of parks and recreation facilities in their communities; they complain about toxic waste and environmental risks, about loan discrimination about road and highway funding disparities and inaccessibility of public transportation. In all of these areas the federal government is supposed to ensure non-discrimination before distributing federal funds. Practically no program exists for dong so.

The department of education is the only department that has a structure that makes it possible to enforce Title VI The Department of education, however, does not have the resources to

do the job. Every other agency and department that distribute federal funds has a weak, skeleton of a civil rights enforcement office with in most cases inaccessibility to the agency head. Preaward reviews and post award audits are almost non-existent. The Justice Department does little to coordinate Title i enforcement.

Response: While the people do their job of trying to stop mistreating each other the government will do its job of making sure that there is fair access to programs funded by the taxpayers whether they are run by the federal government or distributed to the states or grantees. This involves coordination by the Justice Department, training staff, working with state officials who run programs and human rights agencies and reviewing the track record of those who receive the funds before they get them and routine oversight of their use of federal funds. Perhaps there should be a proposal that those states and local governments and private grantees who do a good job could get a bonus.

Civil Rights enforcement in programs cannot occur without coordination between the programs and the enforcers. Convene the Civil Rights Working Group with the principals present to announce the President's intention that this activity be a major priority and routinely convene meetings for follow-up ,



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

400 Seventh St., S.W.
Washington, D.C. 20590

October 31, 1997

MEMORANDUM TO: Elena Kagan
Executive Assistant to the President
Domestic Policy Council

FROM: Jerry L. Malone
Deputy Chief of Staff

A handwritten signature in black ink, appearing to read 'Jerry L. Malone', written over the printed name.

SUBJECT: Report on Civil Rights Enforcement

Thank you for the opportunity to provide information on the U.S. Department of Transportation's perspective on federal civil rights enforcement. Our Department has a direct impact on the lives of almost everyone in America every day. By creating and maintaining a transportation system which is integrated in form, international in reach, intermodal in delivery, intelligent in character, and inclusive in service, we will further contribute to the legacy of this Administration. We have approached this report broadly, considering civil rights as covering all the traditionally discriminated against groups in American society. Our suggestions are intended to be creative and to provoke a broad range of thought, dialogue, and debate. They are not intended to lay out a single acceptable path through this difficult and controversial subject. Rather, we encourage the Working Group and others in the Administration to determine which of these suggestions are worthy of further consideration.

We have provided thoughts on several large topics: equal employment opportunity for our own staff, equitable federally conducted programs, spending the federal dollar in a nondiscriminatory manner, nondiscrimination in services by transportation providers, and affirmative action. In reviewing our activities, we have sought not only to eliminate barriers to equal access and opportunity, but also to identify opportunities for innovation. Some of our suggestions identify creative ways to leverage limited resources and provide new avenues for equal opportunity and equal rights. There is no question that a top quality civil rights workforce is needed to accomplish the ambitious goals we have laid out.

In addition to performing our traditional compliance and enforcement responsibilities, we have already embarked on some proactive strategies needed to foster positive civil rights enforcement. For example, DOT's Garrett A. Morgan Technology and Transportation Futures Program is reaching out to one million young people in the United States, helping them prepare for jobs in the growing transportation segment of the American economy. DOT, in support of its responsibility to ensure that opportunities are made available to small and disadvantaged businesses, has proposed new regulations for the Disadvantaged Business Enterprise (DBE) program, and has met with many of its customers and stakeholders to educate them and seek comments on how to keep the program successful while complying with legal requirements. The Administration's NEXTEA legislative proposal, the principal funding legislation for surface transportation, contains unprecedented initiatives to extend the benefits of the transportation infrastructure to all Americans. The Federal Transit Administration (FTA) has established an "800" telephone number for receiving information regarding possible noncompliance with the Americans with Disabilities Act. DOT's Diversity Management Program is helping to emphasize that the organizational culture of DOT should be one where all employees are valued for what they can contribute.

Our report recommends modifications to federal laws and policies to strengthen protection under the laws and improve coordination of the vast array of federal programs that directly or indirectly affect civil rights. Our recommendations range from the need for new statutes, to the day-to-day realities of budget and staffing. We hope this report meets your needs, and trust that you will contact us should you desire additional information on any of the items.

Attachment

I. Civil Rights Enforcement Structure and Mechanisms in Department of Transportation

- A. **Structure:** The Department of Transportation is composed of the Office of the Secretary (OST) and ten operating administrations (OAs). Our civil rights enforcement structure and mechanisms parallel this composition. OST has a Departmental Office of Civil Rights (DOCR), which coordinates, monitors, and guides civil rights in the Department. DOCR has primary responsibility for developing policy for both our internal equal employment opportunity activities, and for our external civil rights programs. In addition, DOCR investigates and issues final agency decisions in complaints of discrimination filed by employees within the Department and applicants for DOT employment. DOCR also develops and maintains Department-wide civil rights case reporting systems and is the docketing and distribution site for about half of all incoming external complaints. Each of the nine OAs has civil rights staff; some OAs have formal offices, but smaller OAs function with collateral duty officials. Each investigates external civil rights complaints under its jurisdiction, and performs other external civil rights programmatic functions. All have responsibility for providing appropriate informal EEO counseling services to DOT employees and applicants for DOT employment. The OAs' legal counsels become involved through providing advice to the OA civil rights staff.

DOCR and the OAs' civil rights staffs do not bear sole responsibility for civil rights efforts in DOT. Other DOT entities which have some responsibility for civil rights enforcement include the Office of the General Counsel; the Office of Small and Disadvantaged Business Utilization; the Assistant Secretary for Transportation Policy (vehicle accessibility, over-the-road buses, representation on the Access Board); the Assistant Secretary for Intergovernmental Affairs (Native Americans); and the personnel office (EEO data collection and diversity).

- B. **Staffing:** DOT currently has 268 FTEs assigned to civil rights programs. Over the past several years, civil rights staff resources within the Department have decreased. Much of the decrease is attributable to attrition without backfilling in the Departmental Office for Civil Rights. In addition, there have been some decreases in the OAs. For example, in the National Highway Traffic and Safety Administration (NHTSA), the number of staff assigned to civil rights has declined in five years from five full-time staff members to three full-time staff members. In the United States Coast Guard (USCG), the desired ratio of Military Civil Rights Counselors/ Facilitators to customers was determined to be 1:2091. It is currently 1:3137. There are no DOT-wide statistics available on the number of collateral-duty EEO counselors, although an EEO counselors working group will be able to develop such figures. The perception is that there are currently an insufficient number of EEO counselors. Although the number of DOT staff have declined in recent years, as noted elsewhere in this report, the number of EEO complaints is rising.

At the same time that staffing has decreased, new responsibilities, such as the Americans with Disabilities Act, have been added. This has meant that resources are often insufficient to adequately cover critical statutorily mandated responsibilities, such as investigating complaints. It also means that resources for proactive efforts are more limited.

- C. **Budget:** Funding for civil rights efforts in DOT has varied. In some OAs, such as NHTSA, it has decreased substantially--by over 50 percent in five years. In the Federal Highway Administration (FHWA), it has decreased by 24 percent in the same period. In the USCG, funding has varied, but has decreased by approximately 17 percent since FY 93. In the Federal Transit Administration (FTA), funding for civil rights has decreased approximately 8 percent since FY 93. On the other hand, DOCR funding had increased substantially in the previous three years, before suffering decreases in the past year. The DOCR increases and OA decreases were due in part to the Departmental consolidation of internal civil rights (EEO formal complaint processing) that took place. During this internal consolidation, some resources formerly devoted to investigation of EEO complaints in the OAs were transferred to DOCR. The decreases were due in part to the effects of streamlining. A proposal to consolidate external civil rights efforts was disapproved by Congress. Although a few civil rights offices, such as FTA, have recently received additional resources, the net effect DOT-wide has been a decrease in funding for civil rights efforts. This has particularly negatively affected our ability to travel to investigate EEO complaints, and our ability to conduct external civil rights training.
- D. **Mechanisms:** The Department's primary mechanism for enforcement and compliance is through technical assistance, program reviews, and investigating complaints.

DOCR has responsibility for investigating internal complaints of discrimination and issuing final agency decisions. During the period FY 90-95, the number of EEO complaints filed against the Department increased over 125 percent. As a percent of the workforce, complaints more than tripled. This increase in DOT EEO complaints in part mirrors an increase in EEO complaints filed across the federal government. It has been surmised that some of the increase can be traced to the recent availability of compensatory damages to prevailing complainants pursuant to the Civil Rights Act of 1991. However, no evidence other than anecdotal information has been presented to confirm that supposition. During the same time period, the total number of EEO complaints filed in the federal government increased by 61 percent. EEO complaints in the Federal Aviation Administration (FAA) grew 34 percent between FY 93 and FY 96. At the same time, the number of employees fell 7.6 percent. Thus, the number of complaints per employee grew from .006 to .009.

In terms of its EEO functions and responsibilities, DOCR has made significant progress in investigating complaints more efficiently. In FY 96, DOCR regional offices received, investigated, and resolved more complaints than at any time in the history of the Department. They reduced the average case processing time from 542 days to 212, while substantially reducing a large backlog of overage EEO complaints.

The OAs have responsibility for ensuring compliance with external civil rights laws. In carrying out these responsibilities, the OAs provide extensive technical assistance to recipients, and conduct external program and compliance reviews. In addition, the OAs investigate external complaints of discrimination in federally assisted programs and issuing letters of findings. External civil rights complaint receipts are growing. From FY 90 to

FY 96, external civil rights complaints filed per year with DOT increased by about 600 percent. DOT receives the second largest number of Americans with Disabilities Act Title II (public service, including public transportation) complaints of any Executive Branch agency. DOT is successfully developing an automated tracking system to record and report information on these and other external complaints. Integrated into this is a sub-system for responding much more quickly to new complaints.

Although DOT has authority to withhold funds or to refer cases to DOJ when civil rights violations are found in its external programs, this authority is almost never used. When external investigations uncover violations, they have typically been resolved through informal settlements with the entities being regulated.

Because of the increase in complaints, a significant amount of DOT civil rights resources are devoted to complaint investigations. However, DOT has also undertaken proactive efforts to reduce and prevent discrimination, some of which are discussed elsewhere in this paper, and in our submission for the President's Race Initiative. For example, diversity and opportunities for minority education, training, and employment are receiving more attention at all levels of the organization. FHWA has developed and implemented a program of reaching out to and training state departments of transportation on preventing problems under Title VI of the Civil Rights Act of 1964 (Title VI). DOT is involved in implementing the President's Title IX Initiative. DOT is in the forefront of the Administration's efforts in environmental justice.

Unfortunately, due to budget and staffing constraints, we cannot carry out the desired level of proactive activities, such as pre-award reviews (desk audits of entities for civil rights compliance before federal financial assistance is awarded); full compliance reviews (agency-initiated investigations of entities); and monitoring of entities. Standard assurance forms (forms filled out by grant-receiving entities, assuring DOT that they will comply with federal civil rights laws) are collected from entities, raising concerns that it has been simply a routine to be complied with rather than an opportunity for the entity to seriously renew its commitment to civil rights compliance. Non-discrimination statements do not regularly appear on DOT publications. Only a limited amount of training is provided to DOT staff and to regulated entities.

II. Recommendations for White House action, leadership, and guidance

- A. Like other governmental systems which have grown up over time, the procedures for processing EEO complaints need to be reinvented. Issues that specifically need to be addressed include the following:
 - 1. Eliminate backlogs of complaints/ handle the significant rise in complaints filed.
 - 2. Reduce frivolous/ baseless complaints, if any, which otherwise tie up substantial enforcement resources.

3. Assess benefits/detriments of the recently introduced Federal Employee Fairness Act of 1997 (H.R. 2441) which contains many restructuring elements, such as removing investigation of EEO complaints from agencies where the complaints originate.
 4. Evaluate the pros/ cons of granting some form of "prosecutorial discretion" to investigating agencies.
- B. To address several possible initiatives, we propose establishing a legislative task force, perhaps as a subgroup of the Civil Rights Working Group, to consider what new, revised, or amended legislation may be needed. The task force would also need to consider whether an additional commitment of resources was needed to implement any proposed legislation. Items for the task force to consider could include the following:
1. Civil rights offices need more enforcement tools. Legislative changes could be proposed to give them subpoena power and the ability to seek injunctive relief in appropriate circumstances.
 2. Remedies under Title VI need to be more flexible. Title VI should be revised to provide remedies short of (but in addition to) fund cut-off when violations are found.
 3. Consider whether to extend protections currently available to many segments of society, to segments not now protected by federal statutes. This effort could include consideration of the need for legislation providing for nondiscrimination against individuals on the basis of sexual orientation, low income (socio-economic status), and religion. (For federal employees, Title VII of the Civil Rights Act of 1964 already prohibits discrimination on the basis of religion.)
 4. Consider whether to give explicit statutory protections to domestic airline passengers against discrimination on the basis of race, color, national origin, sex, and age by airlines. (Airline passengers with disabilities are now protected by the Air Carrier Access Act.)
- C. Ensure that Civil Rights Programs have sufficient resources. Specifically, we recommend:
1. That the Office of Management and Budget (OMB) advise agencies to provide **line items** in their budgets for civil rights program activities, so that civil rights efforts do not get short-changed, when compared to programmatic activities. OMB should also scrutinize agency budget proposals, to ensure that civil rights programs are adequately funded.

2. Exempt civil rights programs from some or all of the streamlining requirements of the National Performance Review. Specifically, the equal opportunity specialist series should be exempted from personnel streamlining efforts. Instead, emphasize the need to reinvent, rather than cut, federal civil rights enforcement efforts. Standard Government Performance and Results Act (GPRA) outcome measures should be developed for civil rights programs.
- D. Help to clarify the message on controversial aspects of our civil rights programs.
 1. Clarify the difference between affirmative action and nondiscrimination.
 2. Reiterate that civil rights requirements are not unfunded mandates.
 - E. Establish a system of accountability (i.e., via the GPRA process) to hold each cabinet level officer responsible for enforcement of civil rights laws and regulations within his/her respective agency.
 - F. Issue a clear statement of White House civil rights priorities and objectives.
 - G. Begin planning government-wide efforts to address the growing proportion of minorities, such as Hispanics, in the United States. This would include, but not be limited to, ensuring that provisions are made to address the needs of limited English proficient persons for access to government services and safety and health protections.
 - H. Issue an Executive Order on managing diversity. (Expertise is available to assist in designing such an Order.)
 - I. Establish a White House Steering Committee on Civil Rights composed of civil rights directors from federal agencies.
 - J. Create an umbrella authority or office to ensure that those involved in Administration human services initiatives coordinate, avoid duplication, and look for opportunities for synergy with the efforts of civil rights offices.
 - K. Establish an Executive Branch-wide civil rights group of practitioner-experts, who would be devoted to solving difficult, controversial, and/or fast-breaking civil rights problems.
 - L. Establish an interagency civil rights training center.
 - M. Hold an annual federal civil rights conference at which best practices would be shared, training conducted, and legal updates provided.

- N. Encourage agencies to conduct interagency compliance reviews of entities which receive federal financial assistance from more than one agency. Conduct industry-wide reviews. Address patterns and practices of discrimination.
- O. Refocus the Administration's Information Superhighway initiative to ensure that low income and minority populations are substantive recipients of its benefits.

BACKGROUND FOR RECOMMENDATIONS

Although some of the information provided is duplicative of earlier information, it is presented here, along with new information, to provide the context within which this background should be considered.

I. Growing need for federal civil rights enforcement activities

A. EEO complaints are growing.

1. During the period FY 90-95, the number of EEO complaints filed against the Department increased over 125 percent. As a percent of the workforce, complaints more than tripled. This increase in DOT EEO complaints in part mirrors an increase in EEO complaints filed across the federal government. It is possible that some of the increase can be traced to the recent availability of compensatory damages to prevailing complainants pursuant to the Civil Rights Act of 1991. During the same time period, the total number of EEO complaints filed in the federal government increased by 61 percent. EEO complaints in the Federal Aviation Administration (FAA) grew 34 percent between FY 93 and FY 96. At the same time, the number of employees fell 7.6 percent. Thus, the number of complaints per employee grew from .006 to .009.
2. EEO practitioners within DOT note two problems in particular that are not being addressed under the current EEO process. First, an increasing number of resources are being tied up in baseless complaints. Finding ways to discourage baseless complaints without shortchanging people of their right to redress of grievances is a challenge that has not yet been addressed. However, it must not be overlooked that supervisors and managers must be trained to and held accountable for creating and maintaining an environment which minimizes the potential for the filing of those baseless complaints which are the result of frustration, anger, and resentment over perceived management indifference.

Second, EEO practitioners note that the resolution of complaints often does not address underlying root problems. More analysis of EEO complaints is needed to determine patterns within specific organizations that might suggest systemic problems or policies creating barriers to equal opportunity. Greater attention could then be focused on removing systemic causes of complaints. Standards of behavior and the consequences of engaging in unacceptable behavior must be communicated to all employees, supervisors, and managers. An example of this approach is DOT's Diversity Management program, which is designed to create an atmosphere and organizational culture where all employees are valued, and where no one should need to resort to formal redress processes.

3. More concentrated efforts must be made to resolve complaints at the earliest possible stage. DOT's Alternative Dispute Resolution (ADR) program and Ombudsman Program should help bring this about. The Department is discussing the creation of a "roadmap" to the various redress processes available to employees. This should help direct their concerns to the person, place, and process most likely to result in quick and equitable resolution of problems.

The **EEO counselor program** has great potential for helping to resolve problems early, and contribute to equitable findings and remedies downstream. However, within DOT, the counseling program is staffed by collateral duty employees. This method of staffing often means that the counselors do not have sufficient time to devote to the counseling effort. In addition, counselors often lack adequate training to properly fulfill their roles.

4. Finally, under the current system, agencies have almost no discretion, but must investigate any complaint which meets a very low threshold. This means that investigations of more serious cases can be significantly delayed. Consideration should be given to granting agencies some form of "prosecutorial discretion" in investigating complaints. However, a proper framework would have to be developed to ensure that any such discretion is appropriately and consistently used within the agency and across agencies.

II. Devote adequate resources to the federal civil rights effort, measure how effectively these resources are used, make informed program evaluation decisions

- A. A universal concern raised by DOT civil rights staff is the lack of personnel and budgetary resources for their efforts and activities, including travel and training. Even before downsizing and streamlining, civil rights programs within DOT were often targets of efforts to reduce staffs and budgets. We recommend that, in light of the success of the Administration in reaching its downsizing goals, civil rights be exempted from further downsizing requirements, and that, as appropriate, personnel and budgets be restored to a pre-downsizing status.

We are not advocating that federal civil rights efforts be exempted from the **GPRA**. Rather, GPRA concepts, such as identifying and measuring outcomes, should be used in civil rights. Often, civil rights staffs measure their outputs, rather than outcomes. They measure number of investigations, compliance reviews conducted, letters of findings issued, number of instances of technical assistance provided, etc. They do not measure how much they have caused discrimination to decrease among employees, beneficiaries of their funded programs, or in their regulated industries. We have suggested the following outcome measure for civil rights in DOT: "To eliminate and prevent discrimination in DOT, and in transportation and transportation-related entities."

- B. Funding for civil rights offices in DOT has varied. In some modes, such as NHTSA, it has decreased substantially--by over 50 percent in five years. In FHWA, it has decreased by 24 percent in the same period. In the USCG, funding has varied, but has decreased by approximately 17 percent since FY 93. On the other hand, DOCR had increased very substantially in budget in the previous three years, before suffering decreases in FY 97. The increases were due in part to the consolidation of internal civil rights (EEO formal complaint processing) that had taken place. Some staff resources were transferred from the OAs to DOCR. The decreases were due in part to the effects of streamlining.

One possible approach to budgetary problems that would also provide an incentive to prevent discrimination would be charging the full costs of resolving complaints to the OA from which the complaint stemmed. Consideration should also be given to making civil rights a line item in agency and OA budgets. This would preserve the significance and autonomy of civil rights efforts.

- C. One way to make more effective use of constrained resources is concentration on a few areas, instead of trying to "cover the waterfront." These areas would have to be chosen for maximum potential impact. We could hold listening sessions to receive input from advocacy and beneficiary stakeholders on where we should concentrate.

Some organizations have achieved extraordinary success by effectively targeting their resources. For example, the Southern Poverty Law Center has obtained civil judgments against hate groups, which effectively put such groups out of business. The Disability Rights Section of the Civil Rights Division/DOJ focuses its litigation resources on egregious examples of inaccessibility against which it can win precedent-setting settlement agreements, and then promulgates such agreements as examples throughout an industry. Some fair housing and other civil rights advocates have used "testing" to prove that minorities are discriminated against. This type of testing is a process whereby minority and non-minority applicants with identically matched backgrounds, financial statements, and/or resumes are sent out on interviews or appointments for housing, mortgages, insurance, or jobs. Turndowns for the minority testers are clearly the result of discrimination. Consideration should be given to adapting such techniques across the federal government.

III. Civil rights organizations must have credibility

Although usually composed of dedicated people, civil rights organizations in the federal government often lack credibility with advocacy groups. This problem is due not only to backlogs of complaints experienced by many federal offices, but also to the rarity in which findings of discrimination are made, to a lack of use of administrative enforcement hearings to reach decisions on findings, and to a lack of litigation to obtain judicial decisions. As a substitute for an enforcement-oriented approach, some agencies have developed partnerships with regulated entities. While partnerships with regulated entities are valuable tools in obtaining unity of national transportation efforts, there is a tension

between such partnerships and the necessity for the entities to take federally required actions. Often, these partnerships lead to a lack of credibility among beneficiaries of federal programs and advocates, because they are left out of the partnership, and do not reap its benefits.

- A. Even within their own agencies, civil rights staff also lack credibility. In part, this is due to a lack of adequate training. (The perceived or real lack of support from senior management also contributes heavily to the lack of credibility.) Since there are no standards for what constitutes well-trained civil rights staff, the knowledge of such staff varies widely. To be credible, all those involved in civil rights in the agency must be well-trained. Resources must be allocated within the agency to such training. Training needs include Title VI basics, "How to Investigate External Civil Rights Complaints," EEO Counselor Training, Americans with Disabilities Act follow-up, and reasonable accommodation.

Credibility within the organization could also be increased by enhancing the position of civil rights professionals within DOT. There is some question among civil rights staff in DOT as to whether opportunities for advancement in the civil rights field are as good as those in other fields in DOT. Some civil rights director positions are slotted as GS-15s rather than SESs, even though they carry significant programmatic and supervisory responsibilities. This creates a perception that the grade level structure is not equivalent to OA programmatic offices. The organizational structure within government agencies should make clear (through words and actions) that experience in civil rights is career enhancing, and vital personnel experience for a future manager.

IV. Creation of a civil rights legislative task force to consider what new legislation could strengthen civil rights enforcement

- A. Many federal civil rights offices do not possess **subpoena power**, and cannot compel testimony. Therefore, recipients of federal financial assistance and other regulated entities under investigation frequently are less than cooperative in providing requested information. If these legal tools were to be obtained, it would help show the Administration's commitment to civil rights enforcement, and would speed up resolution of complaints and compliance reviews (agency-initiated investigations).
- B. Federal civil rights agencies should have the ability to seek **injunctive relief** under specified circumstances that would allow an administrative law judge to order an especially egregious recipient to cease and desist inappropriate practices. Currently, such injunctive relief is only available if cases go to litigation in federal court.
- C. A major problem for civil rights enforcement even after a violation finding is made is the **extremity of the fund cutoff remedy**. The severity of the penalty acts as a deterrent to its use. There is a need for remedies to violations of federal civil rights laws short of fund cutoff, recognizing that fund cutoff should still be available for circumstances which are warranted.

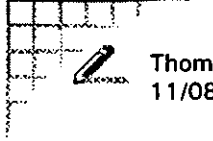
V. Assess need for new statutes to protect other disadvantaged groups

- A. One of the last remaining classifications without federal statutory protection against discrimination is sexual orientation. We acknowledge that the subject is controversial, but some agencies, including DOJ, have taken steps to prevent discrimination against employees on this basis. We recommend that a civil rights legislative task force consider whether the time has come to extend broader statutory protections to federal employees, beneficiaries and employees of federally assisted programs, and to the population in general.
- B. Another traditionally discriminated against group without federal statutory protection is low income people. The lack of such statutory protections creates problems for implementing and enforcing other Administration initiatives, such as Executive Order 12898 on Environmental Justice (EJ). That Order requires federal agencies to avoid adverse effects on minority populations and low income populations by federal projects and programs. When dealing with recipients of federal financial assistance on EJ matters, Title VI provides coverage for minorities, while there is no similar statute defining recipients' obligations with respect to low income populations.
- C. Discrimination on the basis of religion is not adequately prohibited in external federal civil rights activities.
- D. Expansion of statutory protections would require a commitment of additional resources to enforce.

VI. Civil rights must clearly be a top priority

- A. Civil rights expectations of agencies should be clearly articulated by the President. The White House should consider issuing a statement on its civil rights priorities and objectives. The President should also consider issuing an executive order on managing diversity.
- B. Currently, there is not a clear system of accountability for the performance of civil rights responsibilities. Performance measures for accomplishments should be developed for civil rights, for managing diversity, EEO, and affirmative action. This system of accountability should apply to all Cabinet level officials and all senior officials within agencies.
- C. Consideration should be given to requiring mandatory training on EEO/diversity/sensitivity for senior managers within agencies to ensure that they are adequately educated about and aware of these issues.

Race Initiative 711 - Civ Rts
Enhancement



Thomas L. Freedman
11/08/97 05:02:10 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc: Laura Emmett/WHO/EOP, Mary L. Smith/OPD/EOP

Subject: EEOC Caseload Data

If we get to 6 months average charge/complaint inventory within a year and half:

	FY'97 Est.	FY'98 Est.	FY 1999 Est.	FY 2000	FY 2001
Total Pending Charge/Complaint	79,448	68,019	68,689	62,854	50,515
Charge/Complaint Inventory (months)	8.1	9.3	8.0	6.0	4.5
Caseload per available investigator	84.7	85.5	72.9	54.8	41.4

**Department Of Health & Human Services
Office for Civil Rights**

Compliance and Enforcement

Testing Program - Nursing Home Admissions and Program Abuse: OCR proposes establishing a new program modeled on a pilot testing program in the nursing home sector that has been undertaken during the past two years in cooperation with the Department of Justice, the first such testing program ever at HHS. OCR's work with the Department of Justice (DOJ) on the health care sector testing pilot has uncovered present day discriminatory and abusive practices. OCR would broaden the use of testing, first in the nursing home sector and subsequently in other sectors of the health care industry, including home health agencies and managed care organizations. The testing program would be accompanied by consumer education initiatives based on what we have learned from tests run during the pilot and from results of the proposed expanded testing program. Consumer education and outreach will be targeted toward informing racial minority, language minority and disability communities about discriminatory and abusive admissions and marketing practices so that they can report questionable practices to OCR and to the HHS Inspector General, DOJ and State and local authorities as appropriate. **(\$2,600,000)**

State and Local Program: OCR's Strategic Plan promulgates increasing partnership with state and local agencies to expand the scope of civil rights compliance coverage of HHS grantees. OCR proposes to pilot test contracting with states and local civil rights agencies to conduct investigations, thus expanding our capacity to enforce civil rights while giving states an active role in such enforcement. **(\$500,000)**

Public Service Announcements: OCR proposes a media campaign advising the public of civil rights protections and recourse as part of the Secretarial quality of care and consumer protection initiative. **(\$250,000)**

New Technology:

Civil Rights on the Internet: To date, OCR's Internet presence has been limited to home pages (HQ and two regions) that give the public basic information about the civil rights compliance program. OCR proposes to expand its Internet presence to enhance interactivity. For example, OCR would bring in technology that would enable the public to file complaints with us by computer, making it easier for them to access OCR services. Similarly, technical assistance to grantees could be accomplished using the Internet and computerized correspondence. Survey data collections, pre-grant certifications, investigative data requests and responses could also be expedited. **(\$250,000)**

Geo-coded/Mapping Data Base on a Civil Rights Intranet: OCR proposes development, in conjunction with the Census Bureau and the Department of Justice of a government-wide pilot project that would make geo-coded mapping of race, ethnicity and national origin (language) Census data available to all civil rights agencies on a Civil Rights Intranet. Such a resource would enable civil rights agencies to have immediate access to tract level data during the course of investigations and reviews. Other uses of such an Intranet could include a government-wide index of administrative decisions, letters of findings, and entities under civil rights investigation or review and findings. **(\$350,000)**

Enhanced Data Collection

Analysis of Differential Treatment Modalities: OCR, working with the HHS Data Council, would investigate medical decision-making at the individual facility level to see how it is influenced by race and ethnicity. OCR would contract for the development of methodologies to determine potential areas of discrimination or differential access to services through assessment of Departmental and State level administrative data sets. The analyses would focus on differential treatment modalities and would address both access and quality of care issues at the facility and area-wide levels. **(\$500,000)**

Managed Care: OCR's FY 1999 budget request seeks consultant services funding of approximately \$200,000 to develop data collection measuring the effect of managed care arrangements on Hill-Burton facilities and others. Additional funding would support pilot implementation of the collection and analysis of data to address issues regarding marketing and enrollment, member disenrollment, participating provider selection and compensation, quality assurance and utilization review, performance standards, member access to services, treatment of patients with certain conditions and disabilities, State oversight of plan practices and State standards of licensure and performance for Medicaid providers, and State payment methods for services. **(\$250,000)**

Outcome Measurement: OCR is moving from output and process measures to assessing the extent to which the number and quality of services to protected classes has changed. Data from HHS and State and local administrative data sets are critical in determining service changes. OCR would contract for design of systems for using current data, or to collect data during investigative work and in post-findings monitoring on increases in services and the quality of such services for minorities and persons with disabilities. **(\$250,000)**

Mediation

Mediation Partnerships: OCR would contract with providers of mediation services in from five to ten pilot urban and rural areas to test expansion of third party mediation (in HHS, currently only Age Discrimination Act complaints are mediated by a third party - the Federal Mediation and Conciliation Service). OCR proposes decentralizing the use of third party mediation services for a subset of complaints assessed through its case triage process. **(\$250,000)**

The total of all of the activities that OCR proposes as potential uses of enhanced funding is \$5,200,000. This would represent an enhancement of 23.1% above our FY 1999 budget request.

**Department of Labor's Office of Federal Contract
Compliance Programs Proposal for Enhanced Civil
Rights Enforcement**

Compliance Enhancement

OFCCP requested an additional \$8,550,000 and 101 FTE for its compliance (affirmative action) initiative. Within existing resources, OFCCP reviews only 3 per cent of its contractor universe.

\$4.8 million and 101 FTE would significantly increase the coverage of the contractor universe in a single year and ultimately improve the opportunities and employment utilization rates for women, minorities, veterans and individuals with disabilities.

OFCCP will implement the program's three-pronged Fair Enforcement Strategy and initiate a comprehensive technical assistance strategy designed to promote compliance with Executive Order 11246. Additional resources for the three-pronged strategy will allow OFCCP to revise the requirements for the Affirmative Action Program Summary Report, and enhance the tiered compliance review enforcement strategy. The initiative will also provide for the development of an Alternative Dispute Resolution system for the handling of some enforcement cases and complaint investigations, the stronger enforcement of the Family and Medical Leave Act, and expanded use of technology to enforce the Vietnam-Era Veterans Readjustment Assistance Act.

Information Technology

These funds will be used to upgrade the agency's infrastructure and replace outmoded systems hardware with more modern technology, enabling OFCCP to meet its current requirements and to development the systems necessary for Federal contractors to submit data electronically to the program.

Specifically, OFCCP will develop a system to collect, analyze and disseminate information on the AAP Summary report electronically, fully automate the management information system and permit online filing and reporting by contractors and complainants.

The information technology project will complete the provision of modern PCs and network connections for all OFCCP field offices. These connections will be used for the PC based software building the compliance review data base directly and will permit field staff to analyze contractor data. Additionally, field staff will have online access to the AAP Summary reports and their analyses.

Data Collection

OFFCP is proposing to reengineer its compliance review process and the affirmative action program (AAP) requirements. To accomplish this, OFCCP is proposing an Affirmative Action Program Summary Report (AAPSR). This report would be submitted annually to OFCCP by all Federal contractors. The AAPSR submission would significantly reduce the amount and types of paperwork and analyses which would be needed in the affirmative action plan. Further, the data in the AAPSR would be used to implement a compliance review selection process which would have various levels of review rather than subjecting all contractors to the same level of review.

**Department of Labor's Proposal for Enhanced Civil Rights
Enforcement of Financially Assisted Programs**

Additional Resource Requirements

This proposal envisions compliance monitoring activities which include compliance reviews, technical assistance and outreach to cover the financial assistance universe on a three year cycle.

Compliance Activities - 21 FTE and \$1,890,000

Compliance Monitoring

18 FTE will be required to provide total compliance monitoring coverage on a 3 year cycle. Within existing resources only 4 compliance reviews can now be conducted, due to the regulatory need to process complaints. This will enable staff to conduct 18 reviews per year.

Compliance Assistance

3 FTE will be required to conduct 20 technical assistance visits per year. This represents staff being on the road two weeks out of every month.

Mediation - 11 FTE and \$990,000

7 FTE will be required to market ADR and to assist states in developing and designing ADR programs. In addition, 4 FTE will be needed to provide ADR for those complainants who request ADR in the processing of their complaints with DCR.

Technology - \$155,000

\$155,000 for technology improvements. The existing database needs major substantive revisions. We have preliminarily explored the possibilities of upgrading our existing system and estimate that at least \$75,000 will be needed to obtain licenses and data base conversions to a new system. Additionally, \$80,000 will be required for computers to support the additional staff resources.

**Department of Education
Civil Rights**

Elementary and Secondary (E&S) School Civil Rights Compliance Report

OCR would like to conduct a survey of the universe of school districts in the country. The last universal E&S Survey was conducted in 1974. There are approximately 15,000 school districts in the United States, Puerto Rico and the Trust Territories. OCR conducts a random sampling survey of approximately 5,700 school districts every two years in even numbered years. The survey collects data on school districts in a number of areas including, but not limited to: number and types of schools within a school district; the demographics of the school district (students and teachers) by race and gender; the number of students by race and gender in gifted and talented programs; the number of students with disabilities by race and gender; the number and types of disabilities being served; the number of students in math, science and computer programs by race and gender, etc.

OCR's survey data are nationally recognized for their reliability, and in many instances, OCR is the only source for these data. Data from this survey are requested and used extensively by other parts of the Department, other federal government agencies, members of Congress, Congressional Committees, advocacy groups, educational institutions, and researchers. For example, the Department of Justice's Civil Rights Division uses data from this survey in its enforcement activities for approximately 400 Federal court order school districts. In addition, information and data obtained by the survey would be used as a baseline for OCR's proposed activities under the Government Performance and Results Act. OCR's proposes conducting this survey in the year 2000 to coincide with the 2000 census being conducted by the Department of Labor. OCR estimates this project will cost \$1,700,000.

Linked Civil Rights Data Bases

OCR proposes that the five agencies with civil rights enforcement responsibilities (Departments of Justice, Labor, Health and Human Resources, Education and the Equal Employment Opportunity Commission) conduct a study to determine the feasibility and cost of linking their databases to facilitate civil rights enforcement. For example, the Department of Education collects and maintains data on employment demographics in school districts that would be useful to EEOC in the investigation of complaints from teachers. Linking the data bases of the two agencies would make historical data on a school district's employment demographics readily available to EEOC. The Department of Housing and Urban Development maintains demographics on housing that would be assist ED/OCR in identifying racial isolation when linked to school district demographic data. Linking technology might also be a way to improve coordination among the civil rights agencies. The cost of this project is not easily calculated. A contractor could be hired to conduct a study and recommend methods

for implementation at cost of \$100,000 to \$500,000, a task force of technical and program staff from each agency could be convened to develop a proposal and recommendations, or combination of the two approaches could be implemented, i.e., a consultant working with a task force.

U.S. Equal Employment Opportunity Commission

Data Collection: Develop an "Interactive Diskette" data collection to replace "Paper Forms," for all EEOC employment survey data collection programs. This would benefit the employers and the business community. The estimate cost is: \$200,000.

Data Collection: Perform a one time data collection from employers to obtain bench mark EEO survey data for the Americans with Disabilities Act (ADA) of 1990. The cost estimate is \$250,000.

Outreach and Technical Assistance to Employers: A number of projects under this category include:

Three video productions at a total cost of \$225,000 on subjects such as: Information for Small Employers; Mediation to Resolve Charges; and, Best Practices for Employers;

Develop a Public Service Announcement at a cost of \$100,000;

Stakeholder meetings around the country for our 25 offices at a cost of \$125,000;
and

Translate pamphlets into several languages and production costs of \$280,000.