



# Ten-Year Check-Up: Have Federal Agencies Responded to Civil Rights Recommendations?

Volume II: An Evaluation of the Departments of Justice, Labor,  
and Transportation

U.S. Commission on Civil Rights  
September 2002

## **U.S. Commission on Civil Rights**

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

- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, age, disability, or national origin, or by reason of fraudulent practices.
- Study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice.
- Appraise Federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice.
- Serve as a national clearinghouse for information in respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin.
- Submit reports, findings, and recommendations to the President and Congress.
- Issue public service announcements to discourage discrimination or denial of equal protection of the laws.

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Responded to Civil Rights Recommendations?

Volume II: An Evaluation of the Departments of Justice, Labor, and Transportation

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## Letter of Transmittal

The President

The President of the Senate

The Speaker of the House of Representatives

Sirs:

Pursuant to Public Law 103-419, the United States Commission on Civil Rights transmits this report, *Ten-Year Check-Up: Have Federal Agencies Responded to Civil Rights Recommendations? Volume II: An Evaluation of the Departments of Justice, Labor, and Transportation*. This volume, the second in a series, evaluates the extent to which the Departments of Justice, Labor, and Transportation have responded to Commission recommendations directed to them during the 1990s. The volume focuses on whether civil rights enforcement at the three departments has improved or changed as a result of previous findings and recommendations made by the Commission.

This study finds that the three departments implemented many of the Commission's recommendations and that improvements occurred in the areas of data collection and analysis, policy guidance, complaint processing, technical assistance, education and outreach, staff training, and community involvement. However, a paucity of resources significantly affected each department's ability to completely and thoroughly implement many of the recommendations. As a result, the Commission urges the executive and legislative branches of government to provide each department with the necessary resources to execute and strengthen their civil rights enforcement programs.

For the Commissioners,

Mary Frances Berry  
*Chairperson*

## Acknowledgments

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## Executive Summary

In the 1950s, landmark cases such as *Brown v. Board of Education* convinced the nation that the government indeed had a responsibility to ensure that equal protection of the law was afforded to all citizens. The turbulent decade of the 1960s brought the realization that segments of our society needed the support of the federal government in ensuring their civil rights. During this decade, the sweeping Civil Rights Act of 1964 was passed, covering equal opportunity in many areas. Presidential executive orders and congressional actions in the 1970s and 1980s resulted in an array of government programs designed to enforce civil rights laws. For examples, the Voting Rights Act Amendments of 1975 and the Civil Rights Restoration Act of 1987 were enacted. In the 1990s, despite calls proclaiming that equality had been achieved on all fronts, the nation continued to struggle to ensure equal participation for all its citizens. However, legislative action was necessary to protect the civil rights of people with disabilities. Thus, the Americans with Disabilities Act of 1990 was passed into law.

Over the years, the U.S. Commission on Civil Rights strived to ensure equal rights by issuing reports examining and suggesting ways to improve the civil rights enforcement efforts of federal agencies. The Commission has seen the civil rights focus shift from passing laws to enforcing them and has documented the development of civil rights enforcement of various departments and agencies. It has identified good practices as well as inadequacies and made recommendations for improvement. Commission reports established where federal agencies succeeded or failed at their civil rights obligations. The Commission found that some improvements have been tenuous and limited in scope. Many federal agencies continue to fail, leaving citizens to seek recourse where none should be needed and, often, where it is difficult to attain.

This report is part of a series that reviews recommendations the Commission made to federal agencies between 1992 and 2000. Volume I of this series of reports establishes elements fundamental to effective civil rights enforcement, without which the federal government's duty cannot be fulfilled. This, the second volume, evaluates the Departments of Justice, Labor, and Transportation (DOJ, DOL, and DOT) specifically against those elements to determine how effectively they have implemented the Commission's recommendations. Major findings of this report include:

- **Department of Justice**

The Department has improved in civil rights enforcement, particularly in coordination, planning, and technical assistance. However, this report concludes that civil rights enforcement at the Office of Justice Programs is inadequate, primarily because of uncertainty about the future role of the office. The Commission was concerned about the lack of civil rights authority and priority at the Office of Justice Programs in 1996, and that concern remains. The Commission is alarmed that the FBI's implementation of the Hate Crimes Statistics Act has not changed since a 1992 review. There is serious underreporting of such crimes due to numerous factors, including that the reporting is voluntary and that FBI guidance to law enforcement officials minimizes the importance of the civil rights function.

- **Department of Labor**

The Commission finds that many of the recommendations it made to the Civil Rights Center in 1996 have not been addressed. For example, the Center has conducted very few pre- or post-award reviews and also lacks an appropriate annual compliance review schedule. The lack of resources is the primary reason the Commission's recommendations were not implemented. In 1993 OFCCP needed improvements in planning, compliance reviews, and community development. Although the Commission finds that many of its recommendations have not been implemented, OFCCP is now able to enforce civil rights compliance better since it no longer uses localized affirmative action agreements to determine compliance.

### ▪ **Department of Transportation**

The Department of Transportation's record of implementing Commission recommendations is mixed. While the Commission is heartened by progress, much work remains to improve civil rights enforcement in some operating administrations. Staff and resource limitations remain a bane for several operating administrations. An example is the Federal Highway Administration's Office of Civil Rights (FHWA/OCR). Because of inadequate resources, FHWA has not sufficiently increased the number of civil rights staff members. On the other hand, the National Highway Traffic Safety Administration Office of Civil Rights' budget increased 52 percent over the previous year.

### ▪ **Model Programs**

The Departments of Justice, Labor, and Transportation have made some improvements in response to previous Commission recommendations. In fact, each department has practices worthy of being emulated by other agencies. The exemplary elements include data collection and analysis, policy guidance, complaint processing, technical assistance, education and outreach, coordination, staff civil rights training, and community involvement. For example, the Department of Labor's data collection and analysis system for its job-training program (previously the Job Training Partnership Act, which was replaced with the Workforce Investment Act of 1998) was an excellent model of a recipient compliance evaluation system that facilitated Title VI enforcement. Today, DOL's grant office has management information systems for all of its programs. In 1998, the Department of Justice's Disability Rights Section (DRS) showed strengths in providing technical assistance to its stakeholders and using mediation (or alternative dispute resolution) in its civil rights enforcement program. Today, DRS' technical assistance program and the use of mediation for the enforcement of the Americans with Disabilities Act serve as models for other components in the Department. Finally, the Department of Transportation's National Highway Traffic Safety Administration has a particularly strong education and outreach program. The agency's commitment to reach persons with limited English proficiency extends to its state recipients. This is an improvement since the Commission previously found that education and outreach were not available.

Overall, recommendations made to the three federal agencies were implemented. Model programs as well as deficiencies are identifiable across the departments. It is not the purpose of this report to measure the vigor with which the departments have advanced civil rights. Other reports of the Commission have done that. Its purpose is to review the effectiveness of the three agencies in implementing recommendations made earlier. It is only through constant review and monitoring by the Commission and careful consideration of the recommendations by the current administration, Congress, and agency staffs that the full promise of the civil rights laws will be realized.

#### **Conclusion:**

- Most Commission recommendations were implemented.
- The Department of Justice has improved in civil rights enforcement; however (1) the Office of Justice Programs' civil rights enforcement continues to be inadequate and (2) the FBI's weak implementation of the Hate Crimes Statistics Act, which causes serious underreporting of such crimes, has not changed.
- The Department of Labor's Civil Rights Center still has not addressed many of the Commission's 1996 recommendations, primarily because of a lack of resources.
- The Department of Transportation has a mixed record of implementing Commission recommendations. Much work remains to improve civil rights enforcement in some operating administrations. Staff and resource limitations remain a bane for several operating administrations.

## CHAPTER 1

# Introduction

*“A weakening economy and compelling national security interests should not provide an excuse to fail to support either the congressional appropriations or the high-quality executive branch leadership needed to carry out the various federal agencies’ civil rights enforcement obligations.”<sup>1</sup>*

—The Citizens’ Commission on Civil Rights

During the 1990s, the U.S. Commission on Civil Rights issued numerous civil rights enforcement reports evaluating the operations of many federal agencies. These reports contain recommendations to improve federal civil rights enforcement. This report, volume II in a series, discusses the Commission’s recommendations directed to the Departments of Justice, Labor, and Transportation between 1992 and 2000. This report sets out to discover answers to important questions: Have the departments implemented recommendations directed to them by the Commission? If not, why not? If so, have their civil rights programs improved?

The Department of Justice is the largest and, considered by some, the major federal civil rights enforcement agency. It is responsible for enforcing every major civil rights statute, covering such areas as the administration of justice, education, employment, housing, disability, and voting. In addition to its enforcement role, the Department is also responsible for the coordination and oversight of other federal agencies’ civil rights enforcement activities. By examining the Department of Justice, the study sets the stage for evaluating the civil rights efforts of the other agencies. Many of the other agencies seek guidance and assistance in their civil rights program from the Department.

In past Commission reports, the Departments of Labor and Transportation emerged as having exemplary elements of civil rights enforcement in segments of the agency but not widespread across the Departments’ programs. The Department of Labor, for example, had superior Title VI guidelines, policies, and procedures and a solid Title VI enforcement program that was narrowly applied to only its main job-training program, the Job Training Partnership Act, which has since been replaced. The Department of Transportation and its operating administrations had good enforcement elements—staff training, a state monitoring program, a technical assistance program, and a data collection and analysis program—in isolated operating administrations or in the Office of the Secretary. This review examines whether these agencies could build upon these efforts to implement more comprehensive enforcement programs.

## SCOPE

The review covers the Department of Justice, including the Civil Rights Division and two of its sections, the Coordination and Review Section and the Disability Rights Section, the Office of Justice Programs, and the Federal Bureau of Investigation’s enforcement of the Hate Crimes Statistics Act; the Department of Labor’s Civil Rights Center and the Office of Federal Contract Compliance Programs; and the Department of Transportation and its Office of Civil Rights and seven operating administrations.

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<sup>1</sup> Citizens’ Commission on Civil Rights, *Rights at Risk: Equality in an Age of Terrorism*, 2002, p. 8.

The study assesses the extent to which the departments implemented the Commission's recommendations contained in four earlier reports:

- *Civil Rights Issues Facing Asian Americans in the 1990s* (1992);
- *Enforcement of Equal Employment and Economic Opportunity Laws and Programs Relating to Federally Assisted Transportation Projects* (1993);
- *Federal Title VI Enforcement to Ensure Non-discrimination in Federally Assisted Programs* (1996); and
- *Helping State and Local Governments Comply with the ADA: An Assessment of How the U.S. Department of Justice is Enforcing Title II, Subpart A, of the Americans with Disabilities Act* (1998).

The Commission's previous reports and analyses support that there are essential elements for effective civil rights enforcement. They include:

- the priority of civil rights at the federal agency;
- the resources (funding and staffing) that are provided to carry out the work;
- effective planning;
- the policy guidance prepared and issued;
- technical assistance;
- education and outreach;
- effective complaint processing;
- quality compliance reviews;
- staff training; and
- initiatives that maximize effectiveness in accomplishing civil rights enforcement. Such initiatives include oversight and quality assurance of the civil rights program, effective coordination, and community involvement throughout the program.

All the programs evaluated in this report are done so in the context of the foregoing elements.

## METHODOLOGY

In assessing whether the three departments or their components under review have responded to the Commission's recommendations, and whether enforcement has improved, the Commission reviewed relevant policy, planning and budget documents, annual reports, and civil rights imple-

mentation plans; prepared interrogatories that solicited the most current information on civil rights initiatives and directions within the three departments and reviewed responses; interviewed civil rights staff; and reviewed other relevant reports and sources.

## OVERVIEW

### Department of Justice

During the past decade, the Commission directed more than 100 recommendations to the Department of Justice and five of its components. Overall, the Commission's studies found the Department weak in the following elements: coordination, guidance, and technical assistance and outreach to its stakeholders; planning and evaluation of civil rights activities; and adequate funding and resources for its civil rights components. The weaknesses found within the Department were mirrored in the Commission's review of the Civil Rights Division, particularly the Coordination and Review Section, as well as in the Office of Justice Programs' Office for Civil Rights. Two of the components, the Disability Rights Section and the Federal Bureau of Investigation's specific authority over the data collection and reporting of hate crimes, were just beginning to undertake their responsibilities at the time of the Commission's review in the 1990s. Both showed strength in some areas. For example, the Disability Rights Section already had a strong technical assistance program and had incorporated mediation successfully in its enforcement program. In its fulfillment of the Hate Crimes Statistics Act, the FBI prepared and issued guidelines and a training manual for law enforcement agencies, and offered technical assistance to police departments almost immediately.

In this report, the Commission finds that the Department, the Civil Rights Division, and the two sections reviewed have shown improvement in the elements where they were weak. In particular, the Commission finds a significant improvement in the Title VI work performed by the Division's Coordination and Review Section. The Section attributes its guidance and technical assistance initiatives to the recommendations made in the Commission's 1996 report. The Office of Justice Programs' Office for Civil Rights (OCR) shows improvement in planning and technical assistance initiatives, which

it attributes to the 1996 recommendations made by the Commission. However, OCR still shows serious deficiencies in civil rights enforcement, particularly in its compliance activities. With respect to the FBI's enforcement of the Hate Crimes Statistics Act, the Commission's 2002 review finds serious underreporting of such crimes. While several factors contribute to the problem, generally, there has been little change in the implementation of the law since 1992. The FBI acknowledges flaws in the program and indicates that there will be new initiatives to maximize the effectiveness of reporting hate crime data in the future. These future initiatives warrant attention from the Commission through monitoring.

### Department of Labor

In 1996, the Commission found that the Department of Labor's Civil Rights Center was not effectively fulfilling its civil rights responsibilities. For example, its civil rights implementation plans, which are a required civil rights planning and reporting document, did not meet the Department of Justice's requirements. In addition, the Center was not effectively addressing the other key elements in civil rights enforcement effectively. For example, it was performing very few pre- and post-award compliance reviews.

In this review, the Commission finds that although the Civil Rights Center has not implemented many of the Commission's 1996 recommendations, the Center did attempt to improve its civil rights enforcement by reorganizing into three new offices; placing high priority on technical assistance and training to DOL funding recipients; establishing a reminder system to follow-up on corrective action plans or conciliation agreements; and collaborating with the Department of Justice in revising its Title VI regulations to reflect the Civil Rights Restoration Act of 1987.<sup>2</sup>

In its 1993 study, the Commission found that overlapping jurisdiction caused inconsistency and duplication of efforts between the Department of Labor and the Department of Transportation; that the Office of Federal Contract Compliance Program's (OFCCP's) contacts with community groups during compliance reviews were inadequate; and

that OFCCP needed to reassess its approach to determine compliance under localized affirmative action agreements.

In its 2002 review, the Commission finds that DOL's December 1979 memorandum of understanding with the Department of Transportation has not been updated to reflect the interim agreement to exchange information. In addition, OFCCP still does not solicit involvement from the community in selecting companies for compliance reviews. However, after reassessing its approach to determine compliance, OFCCP no longer uses localized affirmative action agreements.

### Department of Transportation

Within the Department of Transportation (DOT), the Office of the Secretary (OST) has delegated the responsibility for enforcement of external civil rights to the operating administrations. The Commission's 1993 and 1996 studies examined several factors affecting the enforcement of civil rights in DOT's federally assisted programs. Among the most important are OST/Office of Civil Rights' (DOCR's) effectiveness in its oversight of the operating administrations (OA), adequacy of staffing and funding, location of the OAs' offices of civil rights in the organizational hierarchy, a comprehensive Title VI program, and detailed civil rights implementation plans. The Commission's 2002 study finds that DOT's progress is uneven. In 1993 and 1996 the Commission found that DOCR's oversight process was inadequate, but that by 2002 it had improved. Inadequate staffing and funding for civil rights enforcement, on the other hand, remains a major problem for several OAs. At the same time, directors of the offices of civil rights of two OAs now report to their respective administrators, a recommendation the Commission made in 1996. Even so, three of the OAs still do not have civil rights implementation plans.

### SUMMARY

Overall, this report concludes that most Commission recommendations were implemented by federal agencies, either fully or in part. The report shows that despite shortages in funding and other resources, all three agencies have implemented civil rights enforcement effectively at least in cer-

<sup>2</sup> Pub. L. No. 100-259, 102 Stat. 28 (1988).

tain programs but not comprehensively. Where recommendations were not implemented, agencies cited:

- deficient resources;
- turnover that resulted in lack of continuity between staff;
- redefined responsibilities and priorities brought about by changes in law;
- new advancements in technology that rendered some recommendations obsolete;
- the establishment of new offices;
- the absence of coordination with other agencies; or
- changes in priorities of administrations.

The Departments of Justice, Labor, and Transportation must expand civil rights efforts to involve all agency programs and to include all the necessary elements of an enforcement program. New findings and recommendations in this report offer guidance as to how these agencies can accomplish this expansion.

This study was necessitated by the fact that resource reductions over a period beginning in the 1980s forced the Commission to reduce its monitoring program. The monitoring program was then supported by a \$1 million budget, with a staff dedicated solely to that function. In fiscal year 1984, the monitoring office had 13 employees, and a separate research and report-writing office had 26 employees. Today, both functions are carried out by one office, which has only 11 employees (see table 1).

**TABLE 1—U.S. Commission on Civil Rights Monitoring and Research Employees, 1984 and 2002**

Fiscal Year	Office of Research	Office of Federal Civil Rights Evaluation*
1984	26	13
2002	11	

\*The Office of Federal Civil Rights Evaluation, now the Office of Civil Rights Evaluation, is the former monitoring office.  
SOURCE: Budget of the United States Government, Fiscal Year 1984, p. 109.

The Commission's monitoring activities previously consisted of constant follow-up on recommendations, frequent meetings with agency staffs to anticipate problems and assess progress, and the issuance of regular evaluations. Monitoring activities have been cut back and now consist of reviews of material disseminated by and about federal agencies, augmented by occasional first-person contact with agency staffs. Thus, in this study the Commission thoroughly evaluates agencies' responsiveness to recommendations of the past decade since it has not been able to do so on an ongoing basis.

Monitoring federal agencies is one of the Commission's most important responsibilities and makes possible for all Americans an external review of civil rights offices. Since civil rights enforcement is a multimillion dollar public investment, the government, as steward of that investment, must devote resources sufficient to support the original intent of Congress that the Commission ensure the public is receiving protections promised by civil rights laws.

## CHAPTER 2

# Department of Justice

The Department of Justice (the Department or DOJ) is the federal agency with predominant responsibility for protecting the constitutional, civil, and statutory rights for all Americans. In 2001, it had 38 component organizations, offices, and divisions, and employed approximately 120,000 people throughout the country. Its employees include attorneys, investigators, law enforcement personnel, civil rights analysts, policy analysts, coordinators, paralegals, statisticians, and others.<sup>1</sup>

It is mainly through its Civil Rights Division (Division) that DOJ protects the civil rights of all citizens in areas such as housing, education, employment, immigration, disabilities, law enforcement, and voting. The Division also carries out the Department's coordination and oversight responsibilities with respect to other federal agencies' civil rights enforcement activities, including the implementation of Title VI. The Division, established in 1957, has 10 program sections that carry out civil rights enforcement and coordination.<sup>2</sup> Other com-

ponents in the Department, such as the Federal Bureau of Investigation, the Community Relations Service, and the U.S. attorneys, also bear civil rights responsibilities. Additionally, civil rights offices within components have internal and external civil rights responsibilities. Ultimate responsibility for the Department's civil rights policies and programs rests with the U.S. attorney general.

This chapter discusses and assesses the implementation of the Commission's recommendations to the Department of Justice and five of its components over the past decade. In reports written during this period, the Commission made more than 100 recommendations to the Department of Justice, including recommendations to its Office of the Attorney General, the Civil Rights Division, two sections in the Division—the Coordination and Review Section (CORS) and the Disability Rights Section (DRS)—and the Office of Justice Programs (OJP).

### **Department of Justice Components Reviewed:**

- Civil Rights Division
  - Coordination and Review Section
  - Disability Rights Section
- Office of Justice Programs
- Federal Bureau of Investigation

<sup>1</sup> See U.S. Department of Justice, Office of the Attorney General, *Fiscal Year 2000 Performance Report and Fiscal Year 2002 Performance Plan*, April 2001, pp. iii, 7 (hereafter cited as DOJ, *Performance Report and Plan*); U.S. Commission on Civil Rights, *Federal Efforts to Eradicate Employment Discrimination in State and Local Governments*, September 2001, p. 79 (hereafter cited as USCCR, *Federal Efforts to Eradicate Employment Discrimination*).

<sup>2</sup> U.S. Department of Justice, Civil Rights Division, Financial Operations Staff, *FY 2001 Congressional Budget Submission*, p. G-2 (hereafter cited as DOJ/CRD, *FY 2001 Congressional Budget Submission*). The 10 program sections are the Employment Litigation Section, the Appellate Section, the Coordination and Review Section, the Criminal Section, the Disability Rights Section, the Educational Opportunities Section, the Housing and Civil Enforcement Section, the Office of Special Counsel for Immigration Related Unfair Employment Practices, the Special Litigation Section, and the Voting Rights Section. In addition to the program sections, the Division also includes the Administrative Management Section and the Office of Redress Administration.

During the period, the Commission also reported on hate crimes against Asian Pacific Americans and made recommendations to strengthen the Department's enforcement of the Hate Crimes Statistics Act with respect to collecting data on acts of bigotry and violence, particularly against the Asian Pacific American community. The Department's component responsible for collecting and reporting hate crime data is the Federal Bureau of Investigation.

This chapter summarizes the nature of the Commission's recommendations made to the Department and certain components with emphasis on where they were strong or weak in civil rights enforcement. It also assesses how the recommendations have been addressed. For this assessment, the Commission relied heavily on the Department's information through interrogatories, interviews, and available documents.

## OVERVIEW

Overall, the Commission's studies in the 1990s found the Department weak in the following areas: coordination, guidance, and technical assistance and outreach to its stakeholders; planning and evaluation of civil rights activities; and funding and resources for civil rights enforcement. The weaknesses found within the Department were mirrored in the Commission's review of the Civil Rights Division, particularly the Coordination and Review Section, as well as in the Office of Justice Programs. Two of the components, the Disability Rights Section with its responsibility for enforcing the Americans with Disabilities Act and the Federal Bureau of Investigation with authority over the data collection and reporting of hate crimes, were just beginning to undertake their civil rights responsibilities at the time of the Commission's reviews in 1998 and 1992, respectively. Both entities showed strengths in some areas. For example, at the time of the review, the Disability Rights Section was strong in technical assistance and in the use of mediation (alternative dispute resolution) as an enforcement strategy. Similarly, in the fulfillment of its new responsibility, after the passage of the Hate Crimes Statistics Act in 1990, the FBI prepared and distributed guidelines and a training manual, and offered technical assistance to law enforcement agencies almost immediately.

In the 2002 review, the Commission finds that the Department, the Civil Rights Division, and the two sections reviewed have shown improvement in the following areas: coordination, guidance, technical assistance and outreach to its stakeholders; planning and evaluation of civil rights activities; and funding and resources for civil rights enforcement. The Office of Justice Programs' Office for Civil Rights shows improvement in planning and technical assistance, but deficiencies in civil rights enforcement. The Department's improvement in

most of these areas began in the 1990s, with new civil rights initiatives that promulgated departmental actions to address flaws. With respect to the FBI's enforcement of the Hate Crimes Statistics Act, the Commission's 2002 review finds little significant change in the implementation of the law since 1992.

## PREVIOUS FINDINGS AND RECOMMENDATIONS TO THE COORDINATION AND REVIEW SECTION

### Priority of Civil Rights

Authority for coordinating and monitoring Title VI enforcement at the federal level is held by the Civil Rights Division's Coordination and Review Section (CORS). Established in 1979, CORS has responsibility to make certain that designated federal agencies meet their responsibilities for ensuring nondiscrimination under Title VI of the Civil Rights Act of 1964.<sup>3</sup> In 1996, the Commission is-

<sup>3</sup> CORS enforces Executive Order 12,250, which gives the U.S. attorney general authority and leadership responsibility for coordinating Title VI enforcement efforts. *See* Exec. Order No. 12,250, 3 C.F.R. 298 (1981), *reprinted* in 42 U.S.C. § 2000d-1 (1988). Pursuant to Executive Order 12,250, the Department of Justice is responsible for coordinating the implementation of Section 504 by the various federal agencies. 28 C.F.R. § 41.1 (1999). In addition to monitoring and coordinating federal Title VI activities, CORS also enforces Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in federally assisted education programs, and coordinates the enforcement of the nondiscrimination provisions of more than 60 program-specific statutes and three executive orders. 20 U.S.C. §§ 1681-1688 (1994). DOJ/CRD, *FY 2001 Congressional Budget Submission*, p. G-42; Department of Justice's Interrogatory Response to the United States Commission on Civil Rights' Ten-Year Review of Civil Rights Enforcement, Coordination and Review Section, Mar. 15, 2002, p. 1 (hereafter cited as DOJ/CORS, Interrogatory Response). Since the Commission's 1996 report, CORS became responsible for the enforcement and governmentwide coordination of two additional executive orders. Executive Order 13,166, which was issued in August 2000, is titled "Improving Access to Services for Persons with Limited Proficiency." Exec. Order No. 13,166, 65 Fed. Reg. 50,121 (Aug. 16, 2000). The purpose of the executive order is to eliminate limited English proficiency as a barrier to full and meaningful participation in all federally assisted and federally conducted programs. Executive Order 13,160, which was issued in June 2000, prohibits discrimination in federal education and training programs on the basis of race, color, sex, national origin, disability, religion, age, sexual orientation, or status as a parent. Exec. Order No. 13,160, 65 Fed. Reg. 39,775 (June 27, 2000). U.S. Department of Justice, Civil Rights Division, "Purpose of Coordination and Review Section," n.d., <<http://www.usdoj.gov/crt/cor/purpose.htm>>.

sued its Title VI report,<sup>4</sup> which assessed the enforcement of Title VI by CORS and DOJ's Office of Justice Programs. In the Title VI report, the Commission found that the Department lacked commitment to the enforcement of Title VI.<sup>5</sup> DOJ's civil rights priorities shifted from Title VI to other civil rights statutes, a change that was reflected in the budget and resources available for the coordination and enforcement of Title VI.<sup>6</sup>

### Resources—Funding and Staffing

Despite plans to strengthen Title VI enforcement, DOJ transferred CORS staff to other sections and reduced drastically the resources available for Title VI enforcement activities.<sup>7</sup> The Commission noted that CORS lacked adequate resources and funding to support Title VI enforcement and because of the Department's poor planning could not carry out the enforcement of Title VI effectively. As a result, the Commission found CORS' Title VI work inadequate and recommended changes in the organizational structure of the section.<sup>8</sup>

### Policy Guidance

The Commission also concluded that DOJ failed to provide leadership necessary to fulfill its Title VI responsibilities. The Department had not updated regulations, and relied on policies and procedures more consistent with programs in the 1960s and 1970s.<sup>9</sup> The Commission urged the Department to issue a policy statement or guidance about its Title VI authority or any future changes in its authority that could have resulted from an amended Title VI statute or revised or new executive order.<sup>10</sup>

### Technical Assistance

The Commission found that CORS did not have a formal Title VI technical assistance program. The Commission recommended that CORS establish a formal technical assistance program for agencies and other outside organizations, and produce and disseminate information on Title VI for the public and those affected by the law.

### Coordination

The Commission recommended that CORS strengthen its Title VI monitoring and coordinating role and provide regular technical assistance through policy guidance and training to federal agencies on their implementation of the law. The Commission suggested that CORS reassess its priorities, resources, and workload for its Title VI coordinating functions.<sup>11</sup>

Executive Order 12,250 requires the U.S. attorney general to evaluate the Title VI agencies' implementation of the law, advise agency heads of the results of the evaluations, and provide recommendations for improving the implementation or enforcement of Title VI.<sup>12</sup> In 1981, DOJ issued guidelines to help agencies formulate plans for implementing their responsibilities under the executive order. By 1996, the civil rights implementation plan (CRIP) emerged as the principal DOJ document for evaluating federal Title VI enforcement. CORS relied "exclusively" on agencies' CRIPs to evaluate the implementation of the law.<sup>13</sup> CORS coordinators reviewed the CRIPs and recommended plans for approval or disapproval.<sup>14</sup>

The Commission found the CRIPs to be insufficient in addressing the elements necessary for civil rights planning, enforcement, and evaluation.<sup>15</sup> The Commission recommended that CORS issue guidelines and requirements so that CRIPs would include compliance information that could be evaluated. The Commission also found that the evaluation of the plans was a " cursory review" of the CRIPs Title VI agencies submitted.<sup>16</sup> The

<sup>4</sup> See U.S. Commission on Civil Rights, *Federal Title VI Enforcement to Ensure Nondiscrimination in Federally Assisted Programs*, June 1996 (hereafter cited as USCCR, *Federal Title VI Enforcement*).

<sup>5</sup> USCCR, *Federal Title VI Enforcement*, p. 129.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*, pp. 132–33.

<sup>9</sup> *Ibid.*, pp. 141–42.

<sup>10</sup> *Ibid.*, p. 131.

<sup>11</sup> *Ibid.*, pp. 133–39.

<sup>12</sup> *Ibid.*, p. 89.

<sup>13</sup> For the history and purpose of the civil rights implementation plan, see USCCR, *Federal Title VI Enforcement*, pp. 89–92.

<sup>14</sup> USCCR, *Federal Title VI Enforcement*, p. 93.

<sup>15</sup> *Ibid.*, pp. 150–51.

<sup>16</sup> *Ibid.*, pp. 93–98, 150.

Commission urged that CORS conduct a formal annual review of the agencies' goals and accomplishments, to be included in a more comprehensive document.<sup>17</sup>

### Community Involvement

In 1996, CORS offered very little education and outreach to community and advocacy groups representing funding recipients about Title VI responsibilities or beneficiaries about their civil rights. The Commission recommended that CORS provide information to the public on Title VI and consult with stakeholders regularly.

## PREVIOUS FINDINGS AND RECOMMENDATIONS TO THE OFFICE OF JUSTICE PROGRAMS

### Priority of Civil Rights

The Office of Justice Programs (OJP) administers funds to support criminal justice initiatives at the state and local levels. Funds have been used to prevent and control crime, improve the criminal and juvenile justice systems, increase knowledge about crime and related issues, assist crime victims, and help state and local jurisdictions to better ensure public safety.<sup>18</sup> OJP partners with federal, state, and local agencies and national and community-based organizations, to develop, operate, and evaluate a wide range of criminal and juvenile justice programs.<sup>19</sup> In 1996, OJP was the largest fund-granting agency within DOJ, distributing \$790 million through 20 different programs to 601 recipients.<sup>20</sup> In 1996, OJP described itself as a program-focused agency. Civil rights at OJP was not a priority in 1996.<sup>21</sup>

At the time of the Title VI report, OJP was headed by the assistant attorney general for the

<sup>17</sup> Ibid., p. 150.

<sup>18</sup> U.S. Department of Justice, Office of Justice Programs, *Fiscal Year 2000 Annual Report*, p. 1, <<http://www.ojp.usdoj.gov/annualreport/chapter1.htm>> (hereafter cited as DOJ/OJP, *FY 2000 Annual Report*).

<sup>19</sup> U.S. Department of Justice, Office of Justice Programs, *Report to the House and Senate Appropriations Committees on the Reorganization of the Department of Justice's Office of Justice Programs* (n.d., circa 2002), p. 4 (hereafter cited as DOJ/OJP, *Report to the Appropriations Committees on the Reorganization*).

<sup>20</sup> USCCR, *Federal Title VI Enforcement*, p. 478.

<sup>21</sup> Ibid., pp. 478–80.

Office of Justice Programs and consisted of five bureaus and an Office for Civil Rights (OCR).<sup>22</sup> OJP's OCR was headed by a director who reported directly to the deputy assistant attorney general. OCR was responsible for ensuring that recipients of its financial assistance programs did not discriminate under various regulations and statutes, including Title VI. OCR also was responsible for monitoring compliance by recipients of financial assistance and enforcing civil rights compliance laws at OJP.

In 1996, the Commission found a lack of support from OJP management for civil rights enforcement, as well as flaws in the organizational structure of OJP.<sup>23</sup> As a result, the Commission concluded that OCR was unable to carry out its civil rights coordination and enforcement role effectively, and provide technical assistance to its many federally assisted program recipients. In the Title VI report, the Commission recommended an organizational structure that would strengthen OCR's coordination and oversight of its funding recipients' activities.

### Resources—Funding and Staffing

In 1996, the Commission found that OJP did not provide OCR with the resources to enforce its civil rights responsibilities effectively.<sup>24</sup> Instead, the Department explored the possibility of other components assisting the small staff of three with its work.<sup>25</sup>

<sup>22</sup> The five bureaus included the Bureau of Justice Assistance, the Bureau of Justice Statistics, the National Institute of Justice, the Office for Victims and Crimes, and the Office of Juvenile Justice and Delinquency Prevention. USCCR, *Federal Title VI Enforcement*, p. 478. OJP is still headed by an assistant attorney general, who is responsible for overall management and oversight of OJP, and has the same five bureaus, as well as five program offices and an Office for Civil Rights. See DOJ/OJP, *FY 2000 Annual Report*, p. 1; OJP, Organizational Chart, updated Oct. 1, 2001, <<http://www.ojp.usdoj.gov/or.htm>>. On the Web site, this document is also called the OJP "FY 2000 Program Plan."

<sup>23</sup> USCCR, *Federal Title VI Enforcement*, pp. 480, 490–500.

<sup>24</sup> Ibid., pp. 479–81, 490–500. In fiscal year 1994, OCR had four full-time employees who divided their time between internal and external civil responsibilities. By 1996, it had increased its staff to eight, but only three performed external civil rights work. Ibid., p. 484.

<sup>25</sup> USCCR, *Federal Title VI Enforcement*, p. 481.

## Policy Guidance

Addressing OJP's Title VI administrative efforts, the Commission found that OJP/OCR had not (1) updated its regulations and list of federal financial programs since 1981; (2) issued Title VI guidelines or policy statements for recipients; (3) prepared detailed procedures for OCR staff on compliance reviews, complaint investigations, performance evaluations, and the collection and analysis of data; and (4) provided the staff with Title VI instruction.<sup>26</sup> In 1996, OJP's pre-award review process for large contracts only ensured that recipients submitted assurances of nondiscrimination and did not include desk-audit pre-award or post-award reviews.<sup>27</sup>

## Technical Assistance

In the 1996 review, the Commission found OCR's technical assistance for funding recipients to be almost nonexistent and recommended that OCR establish a regular technical assistance program about civil rights responsibilities for recipients. The Commission recommended that OJP improve by regularly offering technical assistance, by preparing and disseminating civil rights information describing its grant program, and by soliciting comments and suggestions from affected communities and funding recipients.<sup>28</sup> The Commission found that OJP/OCR's outreach and public education activities were limited to publishing program announcements and responding to inquiries.<sup>29</sup>

## Compliance Reviews

In 1996, OJP had not conducted a post-award review and had only proposed limited strategies for conducting pre-award reviews and investigating complaints. CORS and OJP staff later developed a memorandum of understanding (MOU) whereby CORS would be responsible for some of OCR's Title VI work.<sup>30</sup> In the Title VI report, the Commission criticized the use of the MOU between OJP and CORS, finding that such an agreement

might pose a conflict of interest with CORS' Title VI oversight responsibility. The Commission concluded that to ensure that OJP carried out its Title VI responsibilities and that CORS did not oversee itself, the MOU between the two Department components should not be approved.<sup>31</sup>

## Staff Training

In 1996, OCR staff received civil rights training, but it did not address Title VI.<sup>32</sup> Staff members indicated that they would plan for additional staff training so they could perform pre-award and post-award reviews.<sup>33</sup>

## Coordination

In the 1996 report, the Commission found that OCR did not ensure that states fulfilled their regulatory obligations with respect to Title VI. At the time, OCR did not require recipients to develop equal employment opportunity plans (EEOs); however, OCR conducted post-award reviews primarily of those plans submitted. The Commission concluded that although OCR planned to review more than 200 reviews of the EEOs, the reviews were limited to equal employment opportunity issues and insufficient to ensure compliance with Title VI.<sup>34</sup>

## PREVIOUS FINDINGS AND RECOMMENDATIONS TO THE DISABILITY RIGHTS SECTION

### Priority of Civil Rights

The Americans with Disabilities Act (ADA) became law on July 26, 1990.<sup>35</sup> In 1998, the Commission released two companion reports on the ADA, one of which assessed DOJ's enforcement of Title II of the statute.<sup>36</sup>

<sup>26</sup> Ibid., pp. 491–94.

<sup>27</sup> Ibid., pp. 484–85.

<sup>28</sup> Ibid., p. 497.

<sup>29</sup> Ibid., p. 487.

<sup>30</sup> Ibid., p. 481.

<sup>31</sup> Ibid., pp. 490–91.

<sup>32</sup> Ibid., p. 488.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> Pub. L. No. 101-336, 104 Stat. 327 (codified as amended at 42 U.S.C. §§ 12101–12213 (1994)).

<sup>36</sup> U.S. Commission on Civil Rights, *Helping State and Local Governments Comply with the ADA*, September 1998, pp. 1, 5 (hereafter cited as USCCR, *ADA Report, Vol. I*). Note that before the ADA state and local government programs and activities that received federal financial assistance were prohibited from discriminating against individuals based on dis-

Along with its other responsibilities, DOJ's Civil Rights Division is charged with monitoring and revising ADA regulations, investigating and resolving complaints of discrimination, enforcing state and local governments' compliance with the law, and coordinating Title II enforcement with other designated federal agencies.<sup>37</sup> In 1995, the Disability Rights Section (DRS) was established within the Division to implement these responsibilities.<sup>38</sup>

### Resources—Funding and Staffing

In the 1998 report, the Commission found DRS' Title II enforcement efforts to be "highly effective."<sup>39</sup> The Commission recommended a significant increase in DRS' staff and budget to expand and improve its enforcement of the ADA.<sup>40</sup>

### Technical Assistance

The Commission also commended DRS on its technical assistance and education and outreach programs explaining ADA requirements to its stakeholders. At the time of the Commission's report, DRS assigned staff to such activities, had a toll-free information telephone line, a Web site, and numerous technical assistance documents addressing questions about the new law.<sup>41</sup>

### Complaint Processing

The Commission commended DRS for using mediation or alternative dispute resolution to re-

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ability under Section 504 of the Rehabilitation Act of 1973. Pub. L. No. 93-112 § 504, 87 Stat. 355, 394 (1973) (codified as amended at 29 U.S.C. § 794 (1994)). Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in, or shall be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by such entity." 42 U.S.C. §§ 12131–12165 (1994). See 42 U.S.C. §§ 12131–12134 (1994); 28 C.F.R. §§ 35.101–35.190 (1997).

<sup>37</sup> USCCR, *ADA Report, Vol. I*, p. 5.

<sup>38</sup> *Ibid.*, pp. 5–6, 9–10.

<sup>39</sup> *Ibid.*, p. 133.

<sup>40</sup> *Ibid.*, p. 134. At the time of the report, DRS had a staff of 15 investigators, 23 staff attorneys, and six architects. The Commission found this to be insufficient considering the thousands of ADA complaints it had received each year.

<sup>41</sup> USCCR, *ADA Report, Vol. I*, p. 132.

solve Title II complaints. However, the Commission found an overreliance on mediation to settle ADA disputes and recommended that DRS develop a more balanced enforcement strategy to ensure that more cases, especially those important for developing legal precedent, were litigated. The Commission recommended that DRS more actively initiate litigation against public entities, especially in cases involving accessibility to public buildings.<sup>42</sup>

### Coordination

The Commission faulted DRS for not adequately monitoring and coordinating the ADA Title II implementation, compliance, and enforcement efforts of the other Title II federal agencies. Because of limited resources, DRS had not assigned staff to those important functions.<sup>43</sup>

### Community Involvement

The Commission recommended that DRS regularly consult with and seek input from disability and minority advocacy groups about ADA issues, particularly, in developing guidance, training, and education and outreach programs.

## PREVIOUS FINDINGS AND RECOMMENDATIONS TO THE FEDERAL BUREAU OF INVESTIGATION

### Priority of Civil Rights

In April 1990, Congress enacted the Hate Crimes Statistics Act, which calls for the U.S. attorney general to collect nationwide data on the "incidence of criminal acts that manifest prejudice based on race, religion, homosexuality or heterosexuality, ethnicity, or such other characteristics as the Attorney General considers appropriate" and to publish reports analyzing the data.<sup>44</sup> The responsibility for collecting and disseminating hate crime

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<sup>42</sup> *Ibid.*, p. 136.

<sup>43</sup> *Ibid.*, p. 133.

<sup>44</sup> Hate Crimes Statistics Act of 1990, 28 U.S.C. § 534 (1994). This act requires the Department of Justice to collect data on hate crimes. Hate crimes are defined as "manifest prejudice based on race, religion, sexual orientation, or ethnicity." These statistics are compiled by the FBI using the Uniform Crime Reporting system. In 1994, Congress expanded coverage of the act to require FBI reporting on crimes based on "disability."

data was given to DOJ's Federal Bureau of Investigation (FBI).

In 1992, the Commission released the report, *Civil Rights Issues Facing Asian Americans in the 1990s*. It noted numerous acts of bigotry and violence perpetuated against members of the Asian Pacific American community, particularly against recent immigrants.<sup>45</sup> The Commission criticized the paucity of hate crime information and commended Congress for passing the Hate Crimes Statistics Act. However, the Commission recognized that for the act to be meaningful, there had to be action in addition to collecting and reporting statistics. In its 1992 assessment, the Commission said that the act should provide an opportunity to learn more about hate crimes and document the extent of hate-motivated violence against Asian Pacific Americans and other groups nationally, and that such information should assist in the prosecution of such offenses.<sup>46</sup> The report recommended that hate crime data collection be coordinated with an enforcement component in order to address the problem effectively. Currently, the collection of hate crime information, and the investigation and prosecution of such offenses are performed by different components within the Department.<sup>47</sup>

<sup>45</sup> U.S. Commission on Civil Rights, *Civil Rights Issues Facing Asian Americans in the 1990s*, 1992, pp. 22–45 (hereafter cited as USCCR, *Civil Rights Issues Facing Asian Americans*).

<sup>46</sup> USCCR, *Civil Rights Issues Facing Asian Americans*, p. 192.

<sup>47</sup> Since the Commission's 1992 report, there have been numerous hate crimes-related acts, amendments, and provisions. For example, in 1994 Congress passed the Violent Crime Control and Law Enforcement Act of 1994. The act provides for the prosecution of hate crimes and expands the definition of a hate crime as an offense in "which the defendant intentionally selects the victim, or in the case of a property crime, the property that is the object of the crime, because of the actual perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person." Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796, § 280003 (1994) (codified in part at 28 U.S.C. § 994 (1994)). The Department of Justice is responsible for enforcing all of the hate crimes legislation. However, the implementation of the laws is the responsibility of different components. The prosecution of hate crimes is primarily the responsibility of the Civil Rights Division's Civil Prosecution Section. In recent years, the prosecution of hate crime offenses has been a priority civil rights area that is provided enhanced enforcement resources. See DOJ/CRD, *FY 2003 Budget Request to Congress*, p. G-9 (hereafter cited as DOJ/CRD, *2003 Budget Request*); DOJ/CRD, *FY 2001 Budget Submission*, pp. G-18, G-20–21; DOJ/CRD, *FY 2000 Budget*

## Resources—Funding and Staffing

In the 1992 report, the Commission recommended that DOJ be provided with adequate resources to implement the act, particularly to provide training for police personnel in identifying and investigating such offenses.

## Policy Guidance

Almost immediately after the passage of the Hate Crimes Statistics Act, the FBI's Uniform Crime Reporting Section prepared guidelines and a training manual for police departments, which have become the major conduits for providing hate crime information. The guidelines, which have been revised, define hate crimes and give examples of such acts, require that all crimes be reviewed at two levels to determine whether they are motivated by bias, and specify the information police departments must provide about each hate crime.<sup>48</sup>

## Coordination

The FBI sponsored regional training conferences with police departments that were to be completed by October 1991.<sup>49</sup> In the 1992 report, the Commission recommended steps for successful implementation of the act, including outreach to victims, resources for police training on hate crimes, and formation of police units that specialize in identifying, investigating, and reporting hate

*Submission*, pp. G-19–20. The collection of hate crime data and the investigation of such crimes are the responsibility of the FBI. The FBI states that in 2002, the national priority within its civil rights program is the investigation of hate crimes. However, the Bureau does not indicate in its budget report how it uses the information collected from the hate crime data in its investigations, even though it is responsible for gathering and reporting the information. See U.S. Department of Justice, Federal Bureau of Investigation, *FY 2003 Authorization and Budget Request for the Congress*, pp. 1-24–25 (hereafter cited as FBI, *2003 Authorization and Budget Request*).

<sup>48</sup> The FBI's Uniform Crime Reporting Section prepared a pamphlet titled "Hate Crime Data Collection Guidelines" and developed the "Training Guide for Hate Crime Data Collection." The guidelines included the type of offense, location, type of bias (race, ethnicity, national origin, etc.), type of victim or establishment, the number of offenders, and the race of the offenders. See USCCR, *Civil Rights Issues Facing Asian Americans*, pp. 47–48.

<sup>49</sup> USCCR, *Civil Rights Issues Facing Asian Americans*, p. 48.

crimes.<sup>50</sup> The Commission also recommended that in addition to hate crimes guidelines, the Department of Justice develop and disseminate a civil rights handbook to inform all groups, particularly recent immigrants, of their civil rights.<sup>51</sup>

### Community Involvement

The Commission urged the Department, in addition to law enforcement agencies, to encourage and include schools, organizations, churches, and state and local governments in identifying, reporting, and providing information on hate crimes in their jurisdictions.<sup>52</sup>

## DEPARTMENT OF JUSTICE'S RESPONSE TO THE RECOMMENDATIONS

### Priority of Civil Rights

The Department remains the largest federal civil rights agency with additional responsibilities in civil rights enforcement and coordination since the 1996 report. Civil rights is a priority as evidenced by the placement of the Civil Rights Division within the Department; however, with so many statutes to enforce and ever-evolving civil rights issues, effectively carrying out all its responsibilities remains a serious challenge for the Department.

### Resources—Funding and Staffing

In the Department, planning and performance are incorporated into the budget process. All departmental components prepare resource allocation and annual performance plans that accompany their budget requests to the Department.<sup>53</sup> Budget submissions and appropriations are based on outside priorities and initiatives of the Department, the administration, and courts, and not solely on the components' assessment of their needs.<sup>54</sup> During

the 1990s, the Commission recommended increased funding and staff for the Civil Rights Division and its sections to carry out their numerous civil rights responsibilities.<sup>55</sup> Since fiscal year 1994, the Division's appropriations have increased. Over the past 10 years, the Civil Rights Division's budget has increased from a 1992 level of \$47.6 million to its current fiscal year 2002 level of \$100.6 million, which reflects a \$53 million (or 112 percent) net increase.<sup>56</sup> However, the Commission has consistently found the Division's resources not commensurate with its expanding workload.<sup>57</sup> To illustrate, although \$71.9 million was requested for the Division in fiscal year 1995, Congress approved only \$62.2 million. Further, the fiscal year 1998 budget appropriation equaled the 1994 appropriation in real dollars.<sup>58</sup> With evolving civil rights issues, it is likely the Division's responsibilities will increase in the future. For example, in its reorganization, which has not been finalized, the Office of Justice Programs is considering a proposal to make its Office for Civil Rights a part of the Civil Rights Division.<sup>59</sup> If the proposal is

<sup>55</sup> See U.S. Commission on Civil Rights, *Funding Federal Civil Rights Enforcement*, June 1995, pp. 23–35; U.S. Commission on Civil Rights, *Funding Federal Civil Rights Enforcement: 2000 and Beyond*, February 2001, pp. 27–39; USCCR, *Efforts to Eradicate Employment Discrimination*, pp. 10, 63.

<sup>56</sup> Department of Justice's Interrogatory Response to the United States Commission on Civil Rights' Ten-Year Review of Civil Rights Enforcement, Civil Rights Division, Mar. 15, 2002, p. 2 (hereafter cited as DOJ/CRD, Interrogatory Response).

<sup>57</sup> For example, between fiscal years 1994 and 2000, the Division's budget increased by 22 percent, and in real terms the fiscal year 2000 budget request for the Division was 24 percent higher than the fiscal year 1994 request. However, over the same period, while appropriations increased, the Division experienced enormous growth in its workload and responsibilities. In addition, although the Division's budget increased during this period, congressional appropriations for the Division declined in real spending power. USCCR, *Funding Federal Civil Rights Enforcement: 2000 and Beyond*, pp. xi–xii, 30.

<sup>58</sup> U.S. Commission on Civil Rights, *Funding Civil Rights Enforcement: 2002–2003*, April 2002, p. 10.

<sup>59</sup> Tracy Henke, principal deputy assistant attorney general, and Michael Alston, acting director, Office for Civil Rights, Office of Justice Programs, DOJ, interview in Washington, D.C., May 6, 2002, p. 13 (hereafter cited as Henke and Alston interview). Also present was Loretta King, deputy assistant attorney general, Civil Rights Division, Department of Justice. Ms. King is the DOJ liaison and coordinator for this study.

<sup>50</sup> *Ibid.*, p. 192.

<sup>51</sup> *Ibid.*, p. 205.

<sup>52</sup> *Ibid.*, p. 192.

<sup>53</sup> DOJ, *Performance Report and Plan*, p. iv. Each DOJ component submits a performance plan that is reviewed at the departmental level. This plan influences budget allocations and priorities for the component.

<sup>54</sup> USCCR, *Federal Efforts to Eradicate Employment Discrimination*, p. 80.

implemented, the Division will need more resources.

The Commission finds it difficult to evaluate the adequacy of civil rights resources at the Department. Except for the Civil Rights Division, the components discussed in this review lack a formal document that provides detailed information about civil rights resources.<sup>60</sup> In addition, civil rights funding, staffing, and workload are not itemized in the Department's 2002–2003 budget reports.<sup>61</sup> In the Department's budget summaries, civil rights expenditures and resources are included under litigating divisions or management operations, and administration categories.

## Planning

One of the major findings in the Commission's Title VI report was DOJ's lack of planning to develop goals, objectives, and strategies at the Department.<sup>62</sup> The Government Performance and Results Act (GPRA)<sup>63</sup> was enacted in 1993. The act requires federal agencies to set goals and prepare performance plans noting the expected progress toward achieving those goals. Partly in response to GPRA, DOJ has developed two strategic plans<sup>64</sup> and other planning documents.<sup>65</sup> All of these

<sup>60</sup> Each fiscal year, the Civil Rights Division prepares a budget submission that includes funding, staffing, and workload information. The Commission requested civil rights budget and staffing information from OJP and the FBI from 1995 to 2002. The Commission received some of the information from OJP in a separate information request.

<sup>61</sup> See DOJ, *2003 Budget Summary*, pp. 3–4, 7, 83–95, 128–47; U.S. Department of Justice, Justice Management Division, *FY 2002 Budget Summary*, pp. 76–86, 126–47. See also FBI, *2003 Authorization and Budget Request*, pp. 11–4–11–19; U.S. Department of Justice, Federal Bureau of Investigation, *FY 2002 Authorization and Budget Request for the Congress*.

<sup>62</sup> See USCCR, *Federal Title VI Enforcement*, p. 140.

<sup>63</sup> Government Performance and Results Act of 1993, Pub. L. No. 103-62, 197 Stat. 285 (codified at 31 U.S.C. § 1101 (Supp. V 2002)).

<sup>64</sup> U.S. Department of Justice, *Strategic Plan, 1997–2002*, September 1997 (Revision 1—Oct. 20, 1997), updated Oct. 14, 1997, <<http://www.usdoj.gov/archive/mps/cover.htm>>; U.S. Department of Justice, *Strategic Plan, Fiscal Years 2000–2005*.

<sup>65</sup> See U.S. Department of Justice, Justice Management Division, *FY 2000 Summary Performance Plan*, March 1999; U.S. Department of Justice, Office of the Inspector General, *FY 2000 Summary Performance Plan, Government Performance and Results Act*, Report No. 00-11, March 2000, Executive Summary; DOJ, *Performance Report and Plan*.

documents include civil rights goals and objectives.

Each fiscal year, the Civil Rights Division prepares a budget submission document that includes the previous and current funding, staffing, workload, activities, and performance measures for the Division and each section.<sup>66</sup> In the budget submissions, 214 indicators address the Division's 10 program areas, including measures of the workload, outcomes, and productivity and efficiency. The deputy assistant attorney general assigned to the sections determines whether objectives have been met. Four factors are used to justify objectives that are not met: whether unique cases or investigations consumed a disproportionate amount of time and resources; whether new requirements were put into place during the evaluation period; whether staff and funding allocations increased or decreased from originally planned levels; and whether workload changed from originally projected levels.<sup>67</sup>

The Civil Rights Division claims the performance measurement indicators for the sections, the communication from the Office of the Assistant Attorney General to the section chiefs, and the oversight and accountability of the civil rights work of the Division's sections are sufficient for effective civil rights enforcement.<sup>68</sup> The Division does not require sections to submit annual civil rights assessments as the Commission recommended.<sup>69</sup> The Division notes that it has also established a case management system into which all professional staff report the time they have worked on each case. The Division states it has had success in ensuring that the sections are aware of their responsibilities, their resource needs, and their accomplishments.<sup>70</sup>

In addition to the Department's and the Civil Rights Division's planning documents, several components, including the Office of Justice Programs (OJP) and the Federal Bureau of Investigation (FBI), produce strategic plans. OJP has a fiscal

<sup>66</sup> See U.S. Department of Justice, Civil Rights Division, Financial Operations Staff, *FY 1993–2003 Budget Submissions*; DOJ/CRD, Interrogatory Response, p. 4.

<sup>67</sup> DOJ/CRD, Interrogatory Response, pp. 4–5.

<sup>68</sup> *Ibid.*, pp. 3–5.

<sup>69</sup> *Ibid.*

<sup>70</sup> *Ibid.*, p. 4.

year 1999 strategic plan, which is being revised.<sup>71</sup> The plan's civil rights focus areas include providing technical assistance to grantees on the preparation of plans, conducting on-site complaint investigations, and conducting negotiations to secure voluntary compliance with civil rights laws.<sup>72</sup> The plan lists goals to integrate civil rights awareness into OJP programs through technical assistance.<sup>73</sup> OJP acknowledges in the plan that it has "worked hard to incorporate the observations and recommendations of the Commission [in its 1996 report] into its planning efforts."<sup>74</sup>

The FBI has a 1998–2003 strategic plan,<sup>75</sup> with a civil rights component that addresses hate crimes and hate crime statistics. One civil rights strategic goal, "Deter Civil Rights Violations through Aggressive Investigative and Proactive Measures," notes the importance of hate crime statistics in reducing acts of bigotry and violence.<sup>76</sup> The strategic

<sup>71</sup> U.S. Department of Justice, Office of Justice Programs, Office for Civil Rights, *Strategic Plan Fiscal Year 1999*, Apr. 30, 1999 (hereafter cited as OJP/OCR, *FY 1999 Strategic Plan*). In a report to the House and Senate Appropriations Committees on OJP's reorganization, the Department stated that OJP will prepare an "overall" strategic plan that reflects statutory requirements, as well as the mission and goals of the present administration. DOJ/OJP, *Report to the Appropriations Committees on the Reorganization*, p. 8. An OJP official said OJP hopes to have the new strategic plan by the 2004 budget submission. Some goals and principles that will be included will address OJP's need to be more responsive to its customers, more streamlined, and more cost efficient. She indicates that OJP's strategic plan will fit into the Department's strategic plan and goals, and will include "stuff for civil rights." However, to date, it is unknown whether the revised strategic plan will have specific civil rights goals, objectives, or performance measures. See Henke and Alston interview, Statement of Henke, pp. 6, 8–9.

<sup>72</sup> OJP/OCR, *FY 1999 Strategic Plan*, p. 1.

<sup>73</sup> *Ibid.*, pp. 2, 4, 6.

<sup>74</sup> *Ibid.*, p. 2.

<sup>75</sup> U.S. Department of Justice, Federal Bureau of Investigation, *Draft FBI Strategic Plan: 1998–2003, Keeping Tomorrow Safe*, May 8, 1998 (hereafter cited as FBI, *1998–2003 Strategic Plan*). Although the document is titled "Draft," the DOJ liaison for information for this report indicated that it is the FBI's final strategic plan. See Loretta King, deputy attorney general for civil rights, Civil Rights Division, DOJ, letter to Terri A. Dickerson, assistant staff director for civil rights evaluation, USCCR, Apr. 5, 2002.

<sup>76</sup> FBI, *1998–2003 Strategic Plan*, p. 26; Department of Justice's Interrogatory Response to the United States Commission on Civil Rights' Ten-Year Review of Civil Rights Enforcement, Federal Bureau of Investigation, May 10, 2002, p. 4 (hereafter cited as DOJ/FBI, Interrogatory Response).

plan calls for community entities to report such incidents and says the FBI "will develop a comprehensive outreach program" to identify targeted populations, issues, and possible solutions. The plan lists critical factors to improve the reporting of hate crimes, which mirror the Commission's 1992 recommendations: the enlistment of all components in the community, including the police, in reporting such offenses, and resources for the training of police officers in identifying hate crime offenses.<sup>77</sup>

## COORDINATION AND REVIEW SECTION'S RESPONSE TO THE RECOMMENDATIONS

### Priority of Civil Rights

Since the Title VI report, CORS' governmentwide coordinating responsibilities have increased with the enforcement of two additional executive orders.<sup>78</sup> The Commission finds that CORS' increased responsibilities have not adversely affected its enforcement of Title VI. Overall, the Commission finds that Title VI enforcement has improved at the Department since 1996.

In 2002, CORS reports that it has not had any major reorganizations despite the Commission's recommendation that one be performed. Thus, it has not created the six units, including a Title VI unit, that the Commission recommended.<sup>79</sup> CORS states that to maximize its resources, all staff must be familiar with most of the Section's responsibilities. According to CORS, all 18 professional staff spend a substantial amount of time on Title VI-related responsibilities. There is a section chief and two deputy section chiefs. The seven coordinators and investigators report to one of the deputy section chiefs; and eight attorneys report to the other deputy. CORS regards its present organizational

<sup>77</sup> FBI, *1998–2003 Strategic Plan*, pp. 20, 25–27. The strategic plan does not contain specific performance measures for the civil rights program. The FBI reports that the hate crime data collection efforts to improve training, data quality, participation, and implement procedures to trend hate crime data are ongoing. DOJ/FBI, Interrogatory Response, p. 5.

<sup>78</sup> See Exec. Order No. 13,166, 65 Fed. Reg. 50,121 (Aug. 16, 2000); Exec. Order No. 13,160, 65 Fed. Reg. 39,775 (June 17, 2000).

<sup>79</sup> DOJ/CORS, Interrogatory Response, p. 3; see Civil Rights Division, Coordination and Review Section, Organizational Chart, n.d.

structure as adequate for its civil rights responsibilities.<sup>80</sup>

### Resources—Funding and Staffing

Since the 1996 report, CORS' resources have increased each fiscal year.<sup>81</sup> For 2002, it requested three additional staff, including two attorneys and one program specialist, and it received an increase in appropriations of \$3,725,000.<sup>82</sup> The Section was allocated three additional attorneys and sufficient travel funds to provide training on Title VI.<sup>83</sup> CORS officials state that its current resources are sufficient for the Section to carry out its responsibilities.<sup>84</sup>

### Policy Guidance

Since the Commission's 1996 report, CORS has issued a policy guidance titled "The Enforcement of Title VI of the Civil Rights Act and Related Statutes in Block-Grant Type Programs." CORS attributes its development to recommendations made by the Commission and other advisory groups.<sup>85</sup>

### Technical Assistance

Perhaps the strongest improvement of CORS' work since the 1996 study has been the technical assistance and information now provided on Title VI. CORS has established a formal technical assistance program that includes informational training documents and other materials,<sup>86</sup> all available on

its Web site.<sup>87</sup> For example, CORS has the *Title VI Legal Manual*, which includes an overview of Title VI and relevant definitions and interpretations of programs and activities. It addresses legal principles and issues regarding Title VI enforcement from a federal agency perspective.<sup>88</sup> The manual is used in the Section's Title VI technical assistance and training programs.<sup>89</sup>

The Section has also developed a training course that provides participants with information about Title VI and delivers shorter presentations that provide an overview of Title VI and the regulations.<sup>90</sup> In the 2002 budget submission, CORS requested additional funds to conduct "technical assistance reviews" of federal agencies' civil rights programs.<sup>91</sup> CORS conducts Title VI Technical Assistance Reviews (TARs), which are assessments of selected aspects, functions, or issues concerning an agency's compliance with and enforcement of Title VI.<sup>92</sup> It uses a team of CORS' attorneys and coordinators to review documents and make site visits to federal agency offices and funding recipients. The agencies or recipients that are visited are chosen using such criteria as substantial assistance and numbers of beneficiaries, the number of Title VI complaints filed, information obtained from CRIPs, and information obtained from organizations or agencies that indicate civil rights problems in the program.<sup>93</sup> TARs are

<sup>80</sup> DOJ/CORS, Interrogatory Response, pp. 2–3; Coordination and Review, Organizational Chart, n.d.

<sup>81</sup> See DOJ/CRD, *FY 1995–2003 Budget Submissions*.

<sup>82</sup> DOJ/CRD, *FY 2003 Budget Submission*, p. G-3.

<sup>83</sup> DOJ/CORS, Interrogatory Response, p. 2.

<sup>84</sup> *Ibid.*

<sup>85</sup> See Bill Lann Lee, former assistant attorney general for civil rights, DOJ, memorandum to executive agency civil rights directors, "Policy Guidance Document: Enforcement of Title VI of the Civil Rights Act of 1964 and Related Statutes in Block Grant-Type Programs," Jan. 28, 1999, pp. 1–2, <<http://www.usdoj.gov/crt/cor/pubs/blkgmnt.htm>>.

<sup>86</sup> DOJ/CORS, Interrogatory Response, pp. 6–8, 10–11. Documents include an investigation procedures manual, a Title VI legal manual, Title VI guidance documents, and other legal memoranda. See U.S. Department of Justice, Civil Rights Division, Coordination and Review Section, "Publications Related to Activities of the Coordination and Review Section," <<http://www.usdoj.gov/crt/cor/pubs.htm>>; U.S. De-

partment of Justice, Coordination and Review Section, "Index of Training Materials," Nov. 13, 2001, <<http://www.usdoj.gov/crt/cor/coord/train.htm>>. The index includes available Title VI training materials, including the Title VI Statute, Title VI Regulations, and Procedures for Complaints Filed Against Recipients of Federal Financial Assistance.

<sup>87</sup> CORS first posted its Web site in April 1999 and considers the Internet to be one of its most effective outreach tools and research sources. DOJ/CORS, Interrogatory Response, p. 11.

<sup>88</sup> U.S. Department of Justice, Civil Rights Division, Coordination and Review Section, *Title VI Legal Manual*, Jan. 11, 2001, <<http://www.usdoj.gov/crt/cor/coord/vimannual.htm>>.

<sup>89</sup> According to CORS, Title VI training is held monthly for federal agencies. The training lasts two or two and a half days and includes an overview of Title VI, discussion of Title VI investigation procedures, and short vignettes involving the trainees' programs. See U.S. Department of Justice, Coordination and Review Section, "Index of Training Materials," n.d., <<http://www.usdoj.gov/crt/cor/coord/train.htm>>.

<sup>90</sup> DOJ/CORS, Interrogatory Response, p. 6.

<sup>91</sup> *Ibid.*, p. 8.

<sup>92</sup> *Ibid.*

<sup>93</sup> *Ibid.*, pp. 8–9.

designed to yield practical recommendations to strengthen Title VI enforcement.<sup>94</sup>

### Coordination

CORS' primary responsibility with respect to Title VI is to coordinate the implementation of the law by monitoring the enforcement activities of the agencies covered under the law. Since 1996, CORS has established several methods to ensure the accountability of and the effective coordination among federal agencies that provide financial assistance: requiring them to submit annual implementation plans; conducting investigations where a recipient is funded by more than one agency; developing delegation agreements to avoid duplicative investigations; providing investigative assistance to agencies; conducting ongoing Title VI technical assistance; providing policy and legal advice; and conducting advisory meetings with federal agencies.<sup>95</sup>

In 1996, the Commission found the civil rights implementation plans (CRIPs) inadequate for evaluating federal agencies' civil rights compliance activities and performance. It recommended revising the CRIPs so that they can be used as a civil rights enforcement plan to measure compliance activities of the federal agencies. In 2002, CORS is still using CRIPs to measure the agencies' Title VI performance.<sup>96</sup> However, CORS indicates that several years ago, it revised the guidelines for the CRIP "to make them less burdensome," and to "require more succinct information to be evaluated by the Section."<sup>97</sup> A CORS' coordinator is assigned to the agency to review the CRIP, and a legal advisor is assigned to each agency to answer legal questions. If deficiencies are found, the coordinator communicates the concerns to the agency and makes recommendations that are sent to the head of the civil rights office at the agency. The review's findings and recommendations are sent to the agency when the review is completed, approximately three to six months after the CRIP is received.<sup>98</sup>

<sup>94</sup> See *ibid.*, p. 8.

<sup>95</sup> *Ibid.*, p. 4.

<sup>96</sup> *Ibid.*, p. 14.

<sup>97</sup> *Ibid.*

<sup>98</sup> *Ibid.*, p. 15.

### Community Involvement

In developing guidance, CORS states it consults with community and advocacy groups, as well as organizations representing recipients of financial assistance.<sup>99</sup> Additionally, a departmental brochure, "Federal Protections Against National Origin Discrimination," is produced in 16 languages, including Spanish, Arabic, Chinese, Farsi, Hindi, Hmong, Punjabi, and Cambodian. It resembles a civil rights handbook like that recommended by the Commission in 1992.<sup>100</sup>

### OFFICE OF JUSTICE PROGRAMS' RESPONSE TO THE RECOMMENDATIONS

#### Priority of Civil Rights

In the 1996 review, the Commission found a lack of support from OJP management for civil rights enforcement. Civil rights was not a focus or a priority at the agency. The OJP organizational structure minimized the Office for Civil Rights' (OCR) authority and hindered OCR's ability to fulfill its external civil rights responsibilities.<sup>101</sup> In 2002, the Commission finds the same problems.

In 1997, Congress directed OJP to develop an organizational structure to address its significant increase in grants and responsibilities, streamline and coordinate agency programs and activities, and improve its coordination with funding recipients.<sup>102</sup> Between 1995 and 1998, appropriations for OJP grew from \$1.1 billion to over \$3.4 billion,<sup>103</sup> in-

<sup>99</sup> *Ibid.*, p. 13.

<sup>100</sup> *Ibid.*, pp. 11–12; USCCR, *Civil Rights Issues Facing Asian Americans*, p. 205; U.S. Department of Justice, "Federal Protections Against National Origin Discrimination," October 2000, <[http://www.usdoj.gov/crt/legalinfo/nordwg\\_brochure.html](http://www.usdoj.gov/crt/legalinfo/nordwg_brochure.html)>.

<sup>101</sup> See USCCR, *Federal Title VI Enforcement*, pp. 480, 490–500.

<sup>102</sup> DOJ/OJP, *FY 2000 Annual Report*, chap. 1, p. 4.

<sup>103</sup> *Report of the U.S. House of Representatives, Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Bill, Fiscal Year 1999*, Report No. 105-636 (July 20, 1998) as incorporated by reference in U.S. Congress, *Making Omnibus Consolidated and Emergency Supplemental Appropriations for Fiscal Year 1999: Conference Report to Accompany HR 4328, Department of Transportation and Related Agencies Appropriations Act for 1999*, Report No. 105-825 (Oct. 19, 1999) as cited in DOJ/OJP, *Report to the Appropriations Committees on the Reorganization*, footnote 1, p. 2. See also DOJ, *2003 Budget Summary*, p. 127. The number and funding of grants and programs at OJP are still growing. In 2000, the OJP administered \$4 billion in

creasing the number of funding recipients and promulgating the need for stronger civil rights enforcement at OJP.<sup>104</sup>

The reorganization plan was approved by Congress and the previous administration in fiscal year 1999. The plan included three components with civil rights implications: a central information center for receiving and disseminating OJP information on technical assistance; an office to provide geographically based contact with recipients; and offices that would better address program policy, model program implementation, pre-award activities (including grantee selection) related to discretionary and formula grants, training and technical assistance, publications, and other support activities.<sup>105</sup> These initiatives addressed some of the Commission's recommendations in the Title VI report.

Although the 1999 reorganization plan was approved,<sup>106</sup> it was never implemented.<sup>107</sup> The new administration decided not to implement it because they wanted a plan that reflected their new initiatives. Consequently, OJP is preparing an alternative plan, in which OJP would become a collaborative, coordinated "set of programs" that provides for the most efficient use of resources. The attorney general's position is that the "reorganization of OJP should be more than just streamlining, and

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grants and programs. DOJ/OJP, *FY 2000 Annual Report*, p. 4. In 2002, OJP's budget totaled nearly \$5 billion targeted for the administration of its grants and programs, and funding in response to September 11 and terrorism initiatives. DOJ, *2003 Budget Summary*, pp. 127–49.

<sup>104</sup> Most of OJP's funds are statutorily directed to states or units of government. However, certain grant programs have statutory requirements that direct a percentage of funding to underserved populations, such as American Indians, Alaska Natives, and battered immigrant women. In addition, all OJP grantees are required to certify compliance with equal employment opportunity laws, and OCR must investigate any reported civil rights violations that involve recipients. Department of Justice's Interrogatory Response to the United States Commission on Civil Rights' Ten-Year Review of Civil Rights Enforcement, Office of Justice Programs, Apr. 10, 2002, p. 14 (hereafter cited as DOJ/OJP, Interrogatory Response).

<sup>105</sup> See DOJ/OJP, *Report to the Appropriations Committees on the Reorganization*, p. 7.

<sup>106</sup> *Ibid.*, p. 2.

<sup>107</sup> DOJ/OJP, Interrogatory Response, p. 3; OJP, Henke and Alston interview, p. 6.

creating efficiencies and coordination."<sup>108</sup> Although nothing in the plan is final, an OJP official, involved in the development of the reorganization plan, states any reorganization will not change OJP's responsibilities or compliance with Title VI.<sup>109</sup>

Because the approved reorganization was not implemented and the proposed plan has not been completed, OJP's organizational structure has not significantly changed since the Commission's 1996 review.<sup>110</sup> The responsibility for external civil rights enforcement at OJP remains with OCR. OCR is charged with monitoring civil rights compliance by recipients of financial assistance from OJP, its bureaus, and other offices. OCR investigates complaints that allege violation of Title VI and other applicable laws and conducts reviews to ensure compliance with them.<sup>111</sup> OCR's responsibilities, including the enforcement of Title VI, have not changed since 1996.<sup>112</sup>

For nearly two years, an acting director has headed OCR who reports to the principal deputy assistant attorney general at OJP.<sup>113</sup> The principal deputy assistant attorney general, who reports to

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<sup>108</sup> DOJ/OJP, *Report to the Appropriations Committees on the Reorganization*, p. 7. The attorney general stated that there will be a new mission at OJP and that the proposed reorganization will incorporate the old and new missions. Under the old mission, OJP will continue to assist state and local law enforcement with more traditional crimes. According to Attorney General John Ashcroft, "The attacks of September 11th have redefined the mission of the Department of Justice. Defending our nation and defending the citizens of America against terrorist attacks is now our first and overriding priority." The statement reflects the "number one priority of the OJP, which is to assist state and local public safety officers and citizens across the country in maintaining our liberties and safeguarding our nation's internal security." Attorney General Ashcroft also stated, "The Department's Office of Justice Programs and grant management system also will be fundamentally restructured to meet our new antiterrorism mission." DOJ/OJP, *Report to the Appropriations Committees on the Reorganization*, pp. 1, 7.

<sup>109</sup> OJP, Henke and Alston interview, Statement of Henke, pp. 12, 46.

<sup>110</sup> DOJ/OJP, *Report to the Appropriations Committees on the Reorganization*, p. 5; Office of Justice Programs, Organizational Chart, Dec. 10, 2001.

<sup>111</sup> OJP/OCR, *FY 1999 Strategic Plan*, p. 1.

<sup>112</sup> DOJ/OJP, Interrogatory Response, p. 1.

<sup>113</sup> OJP, Henke and Alston interview, pp. 14–15. Mr. Alston has been the acting director since November 2000. Ms. Henke explained that Mr. Alston is one of the few staff members still in an acting capacity because the new reorganization plan has not been finalized and approved.

OJP's assistant attorney general, reviews the work of OCR to ensure the quality of civil rights enforcement activities.<sup>114</sup> The acting director has no policy- or decision-making roles at OJP.<sup>115</sup> The principal assistant attorney general states that although OJP would like to have a permanent director in OCR, it is unlikely that a permanent person will be hired before the new reorganization is approved.<sup>116</sup> Currently, there are several proposals for reorganization. OCR could remain a separate office with a director, or it could become a division within OJP's Office of General Counsel.<sup>117</sup> A third proposal is to make OCR a "part" of the Civil Rights Division.<sup>118</sup> Details have not been formulated for any of these proposals. The principal assistant attorney general states it is difficult to hire someone in a permanent position until the issues are resolved.<sup>119</sup>

### Resources—Funding and Staffing

OCR has had an increase in funding and staffing since the Commission's 1996 report. In fiscal year 1997, the annual budget for OCR was \$378,241.<sup>120</sup> In fiscal year 2001, the OCR budget had increased to \$911,793.<sup>121</sup> In 1996, three OCR staff members were assigned external civil rights enforcement responsibilities, including the director of OCR, a civil rights compliance specialist, and a secretary.<sup>122</sup> Currently, OCR has 10 full-time employees. Five full-time attorneys and one part-time

attorney investigate civil rights complaints, conduct compliance reviews, and provide technical assistance to recipients.<sup>123</sup> One full-time legal technician reviews equal employment opportunity plans (EEO) that major public recipients (awards of \$500,000 or more) must submit to OCR for review.<sup>124</sup> OCR also has a writer-editor, a legal program technician, and paralegals. In 2002, as a result of the increase in resources since 1996, OJP officials state that OCR has the appropriate staff and funding to meet its responsibilities under law and existing departmental policy.<sup>125</sup> However, OCR's increase in resources from 1996 to 2001 is misleading. Since the Commission's 1996 review, the number of OJP's federal financial assistance recipients has reached the thousands, which must have affected OCR's Title VI workload.

### Policy Guidance

An important responsibility of any Title VI agency is to provide updated guidance and regulations to its recipients concerning their civil rights responsibilities. OJP reports that no civil rights regulations have been published since the Commission's 1996 report.<sup>126</sup> In 1997, OCR created in-house guidance for investigating compliance re-

<sup>114</sup> OJP, Henke and Alston interview, Statement of Henke, pp. 33–34. As principal deputy assistant attorney general, Ms. Henke is the assistant attorney general's "alter ego." Ms. Henke briefs the assistant attorney general on personnel, resources, and other issues.

<sup>115</sup> When the interview with OJP was requested, the Commission submitted subject matters that would be discussed and the need for an OJP official who could discuss policy-related issues. DOJ staff recommended Ms. Henke for policy-related issues and the acting director concerning issues related to OCR staff.

<sup>116</sup> OJP, Henke and Alston interview, Statement of Henke, pp. 15–16. Ms. Henke said it would be unfair to advertise for a position that is uncertain.

<sup>117</sup> OJP, Henke and Alston interview, Statement of Henke, pp. 12, 16.

<sup>118</sup> *Ibid.*, p. 13.

<sup>119</sup> *Ibid.*, pp. 15–16.

<sup>120</sup> DOJ/OJP, Interrogatory Response, p. 2.

<sup>121</sup> *Ibid.*

<sup>122</sup> USCCR, *Federal Title VI Enforcement*, p. 480.

<sup>123</sup> DOJ/OJP, Interrogatory Response, pp. 2–3. Currently, OCR has one full-time attorney on detail. In fiscal year 2001, OCR lost three full-time attorneys and a full-time paralegal through attrition. A hiring freeze has prevented their replacement.

<sup>124</sup> DOJ/OJP, Interrogatory Response, pp. 2–3. The purpose of the equal employment opportunity plans (EEOs) is to ensure full and equal participation of men and women regardless of race or national origin in the workforce of the recipient agency. The EEO analyzes the agency's workforce according to race, sex, or national origin. U.S. Department of Justice, Office of Justice Programs, Office for Civil Rights, *Civil Rights Seven-Step Guide to the Design and Development of an Equal Employment Opportunity Plan*.

<sup>125</sup> DOJ/OJP, Interrogatory Response, p. 2; Henke and Alston interview, Statement of Henke, pp. 26–27. Ms. Henke said that although there has been an increase in funding and staff, a review of resources can still be done to see if the resources are adequate to do OCR's kind of work.

<sup>126</sup> DOJ/OJP, Interrogatory Response, p. 9. OCR's senior staff works on policy issues. OJP reports that in January 2001, a "moratorium" was placed on the publication of new regulations until the President named new leadership at OJP. With the appointment of a new assistant attorney general in September 2001, OCR has returned to the task of proposing regulations for publication. DOJ/OJP, Interrogatory Response, p. 9.

views and complaint investigations titled “Procedures for Investigating Civil Rights Cases.”<sup>127</sup>

### Technical Assistance

Since the Commission’s Title VI report, OCR has improved in technical assistance and outreach initiatives. OJP reports that in fiscal year 1998, OCR designed a technical assistance program for the administrative staff of state agencies and subgrantees.<sup>128</sup> The technical assistance program offers on-site training programs, a civil rights briefing to state program officers, and a one-day training session to subgrantees in which OCR explains the federal civil rights laws that apply to recipients of federal financial assistance.<sup>129</sup> To date, OCR has not developed formal selection criteria to identify states for technical assistance, but uses informal criteria such as requests for training, the amount of the awards, and the number and nature of discrimination complaints that OCR has received.<sup>130</sup>

OCR has published a brochure for general distribution providing a general overview of the civil rights protections for employees and beneficiaries of OJP-funded programs and activities.<sup>131</sup> OCR has posted public information on OJP’s Web site, with information in languages other than English available on request. OCR also has made presentations on civil rights enforcement issues at conferences sponsored by such groups as the National Black Prosecutors, the Hispanic Bar Association, and the National Center for Women and Policing.<sup>132</sup>

<sup>127</sup> DOJ/OJP, Interrogatory Response, p. 9. See U.S. Department of Justice, Office of Justice Programs, Office for Civil Rights, *Procedures for Investigation: Data Collection and Information Gathering*, April 1997.

<sup>128</sup> DOJ/OJP, Interrogatory Response, p. 5.

<sup>129</sup> *Ibid.*, pp. 5–7. In planning technical assistance programs for fiscal year 2002, OCR formalized a system for evaluating the effectiveness of the training programs in accordance with the Government Performance and Results Act of 1993.

<sup>130</sup> DOJ/OJP, Interrogatory Response, p. 6.

<sup>131</sup> *Ibid.*, p. 7; see U.S. Department of Justice, Office of Justice Programs, Office for Civil Rights, *Civil Rights Laws Prohibit Discrimination by Agencies that Receive Federal Financial Assistance*.

<sup>132</sup> DOJ/OJP, Interrogatory Response, p. 8.

### Compliance Reviews

In 1996, the Commission reviewed OCR’s civil rights implementation plans (CRIPs). Although the CRIPs followed the Department’s outline, they revealed that OJP did little to enforce civil rights laws, including Title VI.<sup>133</sup> In its plans, OCR proposed limited strategies for conducting pre-award reviews and investigating complaints, and no strategies for conducting post-award reviews, collecting data from recipients, or improving education and outreach.<sup>134</sup> OCR did not propose to initiate a post-award compliance review until its 1994 plan,<sup>135</sup> and did not conduct its first one until fiscal year 1997.<sup>136</sup> OCR states it has received sufficient funding to conduct three or four compliance reviews each year.<sup>137</sup>

In its fiscal year 1996 CRIP, OCR stated it used the findings and recommendations of the Commission’s Title VI report as a “management tool for setting goals and priorities” in improving its CRIPs.<sup>138</sup> OCR has followed the same framework for preparing CRIPs since then.<sup>139</sup> These plans follow the outline provided by the Department. The fiscal year 1996–2000 CRIPs contain compliance goals and activities, including on-site complaint investigations, compliance reviews, technical assistance programs, and administrative projects.<sup>140</sup> However, OCR’s information on its enforcement activities, such as the extremely low number of planned post-award and pre-award reviews, continues to concern the Commission.

<sup>133</sup> USCCR, *Federal Title VI Enforcement*, p. 489.

<sup>134</sup> *Ibid.*

<sup>135</sup> *Ibid.*

<sup>136</sup> OJP/OCR, *FY 1999 Strategic Plan*, p. 4; DOJ/OJP, Interrogatory Response, p. 11.

<sup>137</sup> DOJ/OJP, Interrogatory Response, p. 11.

<sup>138</sup> OJP/OCR, FY 1996 CRIP, p. 1. The other CRIPs that OJP submitted for this review (the 1998–2000 CRIPs) are “updates” to the FY 1996 CRIP and closely model that document in information.

<sup>139</sup> See DOJ/OJP, Interrogatory Response, pp. 4–5, citing the framework given in OJP’s fiscal year 1999 strategic plan.

<sup>140</sup> DOJ/OJP, Interrogatory Response, pp. 4–5. See U.S. Department of Justice, Office of Justice Programs, Office for Civil Rights, FY 1996 Civil Rights Implementation Plan, p. 1 (hereafter cited as OJP/OCR, FY 1996 CRIP); U.S. Department of Justice, Office of Justice Programs, Office for Civil Rights, Civil Rights Implementation Plan, Update, Fiscal Year 2000, pp. 1–12 (hereafter cited as OJP/OCR, FY 2000 Implementation Plan (Update)).

In 1996, the Commission raised concern over a proposed memorandum of understanding (MOU) between OJP and CRD, which authorized the sharing of some Title VI responsibilities. CORS is responsible for coordinating and overseeing the Title VI work of the federal agencies that are covered under the law. Its major responsibility is to monitor and evaluate the civil rights activities of those agencies, not to do their work. Under the MOU, CORS was to be responsible for conducting post-award compliance reviews and investigating complaints on the bases of race, national origin, color, sex, age, and religion in service programs funded by OJP.<sup>141</sup> The Commission saw the possibility of a conflict of interest with respect to CORS' role in the agreement,<sup>142</sup> questioning how CORS could objectively evaluate OJP's Title VI enforcement when it performed some of the responsibilities. In 2002, CORS indicates that its responsibilities have changed in the final MOU. Under the approved MOU, both CORS and OCR investigate individual complaints of services discrimination. CORS indicates that it has decreased the number of administrative complaints it was investigating pursuant to the final MOU. Currently, CORS only shares non-employment services complaints with OCR for implementation of Title VI.<sup>143</sup> OCR shares responsibility with other sections in the Civil Rights Division for disability-related complaints and administrative complaints alleging pattern or practice of discrimination by a law enforcement agency.<sup>144</sup> Both CORS and OJP justify the use of the MOU and conclude it has been working effectively.<sup>145</sup> The principal deputy assistant attorney general states the MOU gives OCR an opportunity to use departmental resources efficiently and effectively, including resources and staff with expertise, and to

ensure that overlap and duplication in OCR activities do not occur.<sup>146</sup> The Commission finds that the conflict of interest issue with respect to CORS' involvement in the MOU has been addressed. However, CORS' involvement in OCR's complaint processing raises the concern that OCR's current staff may not be able to handle its Title VI workload adequately and will not be able to perform the responsibilities if CORS, because of its workload, cannot continue to assist in OCR's Title VI work.<sup>147</sup>

### **Pre-award Reviews**

In fiscal year 1999, OJP awarded 11,117 federally assisted grants. There were 14,808 recipients.<sup>148</sup> In fiscal year 1999, OCR conducted one pre-award on-site review and 291 desk audits.<sup>149</sup>

At OCR, the review of the recipients' equal employment opportunity plans (EEOPs) functions as a "form of a pre-award compliance review."<sup>150</sup> Since 1996, OCR has reviewed more than 1,000 EEOPs. However, the use of an EEOP as a pre-award compliance review addresses discrimination only in funded employment programs and not with regard to services.<sup>151</sup> OCR has established "minimum standards" for an acceptable EEOP and notifies recipients of the consequences, but agency standards apply to the preparation, submission, or implementation of an EEOP, and not to any other

<sup>141</sup> USCCR, *Federal Title VI Enforcement*, p. 481.

<sup>142</sup> *Ibid.*, pp. 481, 490–91.

<sup>143</sup> DOJ/CORS, Interrogatory Response, p. 1.

<sup>144</sup> *Ibid.* The Disability Rights Section handles disability-related complaints against any OJP grant recipient. The Special Litigation Section is sent administrative complaints alleging a pattern or practice of discrimination by a law enforcement agency. CORS has decreased the number of administrative complaints it was investigating in order to devote more time to the three executive orders it currently coordinates and implements. See also OJP/Civil Rights Division, Memorandum of Understanding Between the Office of Justice Programs and the Civil Rights Division, n.d., pp. 3–7.

<sup>145</sup> DOJ/CORS, Interrogatory Response, p. 1.

<sup>146</sup> OJP, Henke and Alston interview, p. 23.

<sup>147</sup> *Ibid.*, pp. 23–26, 33–34.

<sup>148</sup> Some recipients receive more than one award. OJP/OCR, FY 2000 CRIP, pp. 10–11. In the interview with OJP, OCR's acting director said the number of federal financial assistance recipients has decreased since the fiscal year 1999 report. He reports that currently there are between 7,000 and 14,000 such recipients. The acting director confirmed that the amount of OCR's compliance work has not changed significantly since the fiscal year 1999 CRIP. He acknowledged that components within the Civil Rights Division were also performing Title VI enforcement work. OJP, Henke and Alston interview, Statement of Alston, pp. 19, 21–22, 48.

<sup>149</sup> OJP/OCR, FY 2000 CRIP, p. 10. A desk audit is a structured review of compliance information obtained before or without going on site. Desk audits do not include routine reviews of assurance forms or other documents to ensure that they have been properly completed.

<sup>150</sup> DOJ/OJP, Interrogatory Response, p. 10.

<sup>151</sup> *Ibid.*

program.<sup>152</sup> Currently, only one staff member (a legal technician) reviews the EEOPs.<sup>153</sup>

### **Post-award Reviews**

OCR reports that the goal for the number of on-site reviews it plans to conduct varies each year.<sup>154</sup> It has conducted more than a “dozen” on-site compliance reviews since 1996.<sup>155</sup> In fiscal year 2000, OCR reported that it planned to conduct at least three post-award compliance reviews during the fiscal year.<sup>156</sup> However, in fiscal year 2000, OCR conducted only one post-award review.<sup>157</sup>

OCR’s procedures for selecting which funding recipients will receive on-site investigations include gathering preliminary data, reviewing the data in the light of the regulatory selection criteria,<sup>158</sup> and then presenting a justification memorandum to the Office of the Assistant Attorney General for approval to initiate the investigation.

The review includes staffing patterns of the facility, information on group participation rates and applicants, and interview materials that could reveal possible barriers to participation. The recipient provides information on its civil rights policies and practices.<sup>159</sup> The director of OCR reviews the compliance review reports and sends them to other components of the Department for comment before the results are sent to the recipient.<sup>160</sup>

### **Staff Training**

In this assessment, the Commission is concerned not only about the small number of OCR staff assigned to external civil rights responsibili-

ties, but also the training and expertise that may be necessary to carry out the many different compliance activities. Currently, OCR relies on in-house training for staff, which means utilizing the expertise and knowledge within the office and the Department. For Title VI staff training, OCR relies heavily on CORS. However, the staff who carry out compliance responsibilities, such as reviews, investigations, coordination, and monitoring, may need other training to perform these kinds of tasks.<sup>161</sup> Another consideration would be to hire staff with different job classifications and expertise, such as investigators and compliance officers, to perform specialized tasks.<sup>162</sup>

### **Coordination**

One important responsibility of the Title VI agencies is to monitor and oversee the compliance activities of their recipients. OCR views its technical assistance program as “an informal method” for monitoring and overseeing compliance of state and local governments. OCR believes that technical assistance, outreach, and training work to review how the state monitors its subgrantees. However, the monitoring and oversight focus has often been on the recipient’s employment practices rather than on the delivery of services and benefits.<sup>163</sup> In an interview with OJP, staff said efforts are underway to improve monitoring. OCR is networking with program managers in different OJP offices and bureaus to keep OCR abreast of recipients’ activities. There also is “financial monitoring” whereby financial managers make site visits and notify OCR of any irregularities in the programs. However, staff members said there must be guidance to these grant and financial managers because they

<sup>152</sup> *Ibid.* OCR has developed an electronic tracking system for monitoring delinquent EEOP reports and established procedures for notifying recipients of deficient EEOPs and the consequences of noncompliance.

<sup>153</sup> DOJ/OJP, Interrogatory Response, p. 2.

<sup>154</sup> *Ibid.*, p. 11.

<sup>155</sup> *Ibid.*

<sup>156</sup> OJP/OCR, FY 2000 CRIP, pp. 1–2.

<sup>157</sup> *Ibid.*, p. 11.

<sup>158</sup> An EEOP that shows a significant underutilization of minorities in a recipient’s workforce may prompt OCR to investigate whether the recipient is providing adequate services to minority populations. DOJ/OJP, Interrogatory Response, pp. 11–12.

<sup>159</sup> DOJ/OJP, Interrogatory Response, pp. 11–12.

<sup>160</sup> *Ibid.*, p. 12.

<sup>161</sup> For the most part, OCR staff training is in-house. According to OCR, it “guides and trains its own staff.” OCR also uses the services of the Coordination and Review Section of the Civil Rights Division to “train junior attorneys.” OCR encourages its staff to attend professional training programs provided by the Department of Justice. DOJ/OJP, Interrogatory Response, pp. 2, 14. OJP, Henke and Alston interview, p. 32.

<sup>162</sup> As part of developing the reorganization plan, Ms. Henke stated that OJP may conduct a “desk audit” of OCR staff to ensure that the workload is fairly distributed and appropriate for the level of activity. OJP, Henke and Alston interview, Statement of Henke, p. 47.

<sup>163</sup> DOJ/OJP, Interrogatory Response, p. 13.

are not experts in the area of civil rights and compliance.<sup>164</sup>

## DISABILITY RIGHTS SECTION'S RESPONSE TO THE RECOMMENDATIONS

### Priority of Civil Rights

The Disability Rights Section's (DRS) authority to enforce the Americans with Disabilities Act has remained the same since the Commission's 1998 report. In the 1998 review, the Commission concluded that the new section needed sufficient resources and an organizational structure that would enhance its ability to enforce the ADA.

Since the earlier assessment, the Section has added another deputy section chief to manage an Investigations Unit, which is responsible for investigating and resolving Title II and Title III ADA complaints and conducting major compliance reviews. Currently, 14 professional staff are assigned to the Investigations Unit.

### Resources—Funding and Staffing

Before DRS was established and immediately after its inception, resources for ADA, Title II, enforcement were shifted from other CRD components, mainly from CORS.<sup>165</sup> In fiscal year 2001, DRS received over \$14 million in appropriations, and in fiscal year 2002, nearly \$16 million in appropriations. In fiscal year 1994, 48 staff members were assigned ADA responsibilities. Currently, the Section has 99 permanent positions.<sup>166</sup> DRS states its resources are sufficient to carry out its current responsibilities.<sup>167</sup>

### Technical Assistance

Technical assistance and education and outreach are still major parts of the DRS' ADA activities, an emphasis demonstrated by an increase in the number and scope of ADA documents on the

Web site. Many of these documents have been translated into different languages.<sup>168</sup> DRS uses census data as a guide when selecting languages for translations and when targeting materials to attendees at events held in different areas.<sup>169</sup>

### Complaint Processing

In its 1998 study, the Commission applauded DRS' use of mediation and technical assistance in the enforcement of the ADA, but cautioned against an overreliance on alternative dispute resolution (or mediation) as the enforcement tool. In 2002, DRS uses a multifaceted approach to achieving compliance with the ADA that combines mediation with regulatory, coordination, and technical assistance activities, all required by law.<sup>170</sup> The Section's litigation activities include cases filed in response to an individual complaint; cases that allege a pattern or practice violation; and participation (as *amicus* or intervener) in cases filed by other parties. The Section has identified litigation priorities, uses other Department attorneys for investigations, and trains U.S. attorneys and their staff on ADA matters.<sup>171</sup> DRS officials believe that the Section's multifaceted approach for ADA enforcement is effective.<sup>172</sup>

DRS emphasizes the use of mediation as its primary enforcement mechanism for ADA.<sup>173</sup> DRS representatives state that its criteria for mediation result in the best outcomes for individuals and the most return for resources invested.<sup>174</sup> Indeed, the Department cites DRS' use of mediation as one of the agency's most effective enforcement tools.<sup>175</sup>

<sup>164</sup> OJP, Henke and Alston interview, pp. 38–41, 43.

<sup>165</sup> See USCCR, *Funding Civil Rights Enforcement*, pp. 33–34.

<sup>166</sup> DOJ/CRD, *FY 2003 Budget Submission*, p. G-3.

<sup>167</sup> Department of Justice's Interrogatory Response to the United States Commission on Civil Rights' Ten-Year Review of Civil Rights Enforcement, Disability Rights Section, Mar. 15, 2002, p. 1 (hereafter cited as DOJ/DRS, Interrogatory Response).

<sup>168</sup> DOJ/DRS, Interrogatory Response, p. 4.

<sup>169</sup> *Ibid.*, pp. 4–5.

<sup>170</sup> DOJ, *Performance Report and Plan*, p. 114.

<sup>171</sup> DOJ/DRS, Interrogatory Response, pp. 8–9.

<sup>172</sup> To illustrate, over the past four fiscal years (1998–2001), DRS has participated in 168 cases and achieved successful results in 100 of them; of the individual complaints investigated, DRS obtained favorable outcomes in the resolution of 1,147 complaints; and DRS achieved successful results in 583 of 757 completed mediations. DOJ/DRS, Interrogatory Response, p. 6.

<sup>173</sup> DOJ/DRS, Interrogatory Response, pp. 6–7; DOJ/CRD, *FY 2001 Budget Submission*, p. G-53; DOJ, *Performance Report and Plan*, pp. 114–15.

<sup>174</sup> DOJ/DRS, Interrogatory Response, pp. 6–7.

<sup>175</sup> DOJ, *Performance Report and Plan*, pp. 114–15.

## Coordination

In 1996, DRS did not have the resources to implement a strong coordination program involving the other federal agencies and state and local governments with ADA responsibilities. In 2002, the Section has doubled the size of its Certification and Coordination Unit, which has 16 professional staff members. Seven professional staff members, including a supervising attorney, are dedicated to encouraging state and local governments to revise building codes to meet ADA standards.<sup>176</sup> Eleven DRS staff members spend “most of their time on interagency coordination.”<sup>177</sup> Other staff members participate in coordination activities as needed. DRS attributes the improvement in its coordination activities to its increase in resources.<sup>178</sup>

## Community Involvement

In the 1998 ADA report, the Commission found that DRS developed policy guidance and other initiatives without consulting disability and minority advocacy groups and strongly recommended that the Section regularly contact these groups about ADA issues and when developing outreach, training, and education programs.<sup>179</sup> DRS now communicates with these organizations and maintains ongoing dialogue with several disability and minority groups about their concerns.<sup>180</sup>

## FEDERAL BUREAU OF INVESTIGATION’S RESPONSE TO THE RECOMMENDATIONS

The FBI’s implementation of the Hate Crimes Statistics Act has not changed significantly since the Commission’s review in 1992.<sup>181</sup> In this review, the Commission concludes that the FBI has not implemented the recommendations made in 1992, which called for comprehensive networking

with many different entities in the community, including police departments, advocacy organizations, and victims; resources to carry out the act; and extensive training for the collection, reporting, and dissemination of hate crime information. However, the FBI reports future initiatives that will address some of the Commission’s earlier concerns.

## Priority of Civil Rights

At the FBI, there is a Civil Rights Unit within the Criminal Investigative Division located at the FBI’s headquarters in Washington, D.C. The Civil Rights Unit is responsible for enforcing federal criminal civil rights laws, and investigations are conducted by the FBI’s 56 field offices.<sup>182</sup> The reporting and collection of hate crime data are assigned to the FBI’s Uniform Crime Reporting (UCR) Program in Clarksburg, West Virginia, where all crime information is reported.<sup>183</sup> The collection of hate crime data is not viewed as a civil rights function. The UCR program’s focus is to improve the overall quality of crime data collected by the FBI, including hate crime data.<sup>184</sup>

## Resources—Funding and Staffing

The FBI provided the Commission with information on funding allocated for civil rights enforcement, including fiscal year 2001 funding and staffing for the UCR program. In fiscal year 2001, the FBI spent approximately \$8 million on the program, which employs 108 employees. However, the implementation of the Hate Crimes Statistics Act is not a separate unit or division with funding and staffing levels established by Congress. Thus, a funded position and resource level is not avail-

<sup>176</sup> DOJ/DRS, Interrogatory Response, pp. 1–2.

<sup>177</sup> *Ibid.*, p. 10.

<sup>178</sup> *Ibid.*

<sup>179</sup> USSCCR, *ADA Report, Vol. I*, pp. 133, 143.

<sup>180</sup> DOJ/DRS, Interrogatory Response, pp. 4–5.

<sup>181</sup> The FBI’s interrogatory response indicates that there are future initiatives to improve the data collection program. If these initiatives are implemented, some of the Commission’s 1992 recommendations and concerns would be addressed. The initiatives are discussed later in the section. *See* DOJ/FBI, Interrogatory Response, pp. 1–10.

<sup>182</sup> DOJ/FBI, Interrogatory Response, p. 2.

<sup>183</sup> The UCR program is charged with providing a national view of crime based on data submitted by city, county, and state law enforcement agencies. The statistics are used primarily by law enforcement administrators for strategic planning of resource allocation and as a tool to address crime as a social problem. Hate crime statistics can be used by law enforcement to enforce laws against crimes based on bias and prejudice only in the development of a reasonable response to a community’s situation. As part of the UCR Program, the hate crime statistics are viewed as any other crime data collected by the FBI. DOJ/FBI, Interrogatory Response, pp. 1, 6.

<sup>184</sup> DOJ/FBI, Interrogatory Response, pp. 1, 6.

able for hate crime data collection activities.<sup>185</sup> Currently, no individual is assigned to the hate crime program full time.<sup>186</sup> The UCR program has designated a full-time coordinator to organize and lead training sessions, provide technical assistance, and publicize the benefits of reporting hate crimes to law enforcement agencies.<sup>187</sup> There is currently a request for additional senior statisticians for the UCR program, which would improve the program's ability to provide guidance to the contributors and users of hate crime statistics.<sup>188</sup>

### Policy Guidance

In this evaluation, the Commission reviewed the FBI's revised hate crimes collection and reporting guidelines and training documents. The guidelines minimize both the importance of collecting and reporting hate crime data and the need for additional resources to implement the Hate Crimes Statistics Act. For example, the guidelines state:

The primary emphasis in developing an approach for collecting national hate crime statistics was to avoid placing new reporting burdens on law enforcement agencies contributing data. Although there were no comprehensive statistics on the incidence of hate crimes, the limited statistics gathered in existing local and state hate crime programs indicated that the number of hate crimes reported annually . . . should not constitute a major reporting burden. Hate crime reporting should not, therefore require large new commitments of personnel and other resources by local, state, and federal data contributors. . . . Hate crimes are not separate, distinct crimes, but rather traditional offenses motivated by the offender's bias. It is unnecessary to create a whole new crime category. To the contrary, hate crime data can be collected by merely capturing additional information about offenses already being reported.<sup>189</sup>

<sup>185</sup> Loretta King, deputy assistant attorney general, Civil Rights Division, DOJ, letter to Terri A. Dickerson, assistant staff director for civil rights evaluation, USCCR, July 12, 2002, FBI Responses and Comments to U.S. Commission on Civil Rights, p. 4 (hereafter cited as King July 12 letter, FBI response).

<sup>186</sup> King July 12 letter, FBI response, p. 7.

<sup>187</sup> DOJ/FBI, Interrogatory Response, p. 9.

<sup>188</sup> *Ibid.*

<sup>189</sup> U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division, *Hate Crime Data Collection Guidelines*, revised October 1999, pp. 1–2.

This guidance would not result in any extra efforts by police departments to collect information or train personnel to identify and analyze hate crimes.

### Technical Assistance

The Commission also finds that the lack of training in identifying, analyzing, and reporting hate crimes contributes to the underreporting. For the most part, law enforcement officials, particularly police officers, receive FBI hate crime training and technical assistance. The information, however, focuses on indicators prevalent more than 10 years ago.<sup>190</sup> The training manual presents indicators usually found in obvious bias-related offenses, such as the race of the victim and offender, and signs and symbols of hate.<sup>191</sup> Today, hate crimes may not be so obvious if there are no identifiable indicators to distinguish the act from just another criminal offense.<sup>192</sup> For example, the burning or beating of a person may on the surface appear to have been a murder. A further investigation may reveal other factors, such as the person attacked happened to be in a neighborhood where such persons of his race are not welcomed.<sup>193</sup> Another example is the burning, desecration, and vandalism of nonreligious establishments such as minority-owned stores, landmarks, and cemeteries.<sup>194</sup> These offenses, which may be hate crimes, are usually reported or classified as arson or van-

<sup>190</sup> See U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division, *Training Guide for Hate Crime Data Collection*, n.d.

<sup>191</sup> See FBI, *Training Guide for Hate Crime Data Collection*.

<sup>192</sup> King July 12 letter, FBI response, p. 8. The FBI explains that the collection of hate crime information occurs within the already existing operational context of law enforcement. The UCR program was created to collect crime data within this law enforcement context, and not created to see hate crimes as a separate substantive offense.

<sup>193</sup> See Southern Poverty Law Center, "The Hate Crime Statistics Act: Ten Years Later, the Numbers Don't Add Up: Discounting Hate," *Intelligence Report*, Issue 104, Winter 2001, pp. 12–13 (hereafter cited as SPLC, "The Numbers Don't Add Up"). The SPLC is a "watchdog" organization in Montgomery, Alabama, that monitors and reports on hate crimes nationwide.

<sup>194</sup> For example, in Arkansas, authorities are investigating the vandalism of a Civil War-era cemetery as a hate crime. Over one-fourth of the headstones were spray-painted with racial slurs in the predominantly African American cemetery. "Across the USA, Arkansas," *USA Today*, May 30, 2002.

dalism.<sup>195</sup> Police departments are not receiving the technical assistance or training necessary to investigate and identify offenses that on the surface may not appear to be hate crimes, but, in fact, are.<sup>196</sup>

In 2000, the Department sponsored a one-day Hate Crimes Summit in Washington, D.C., which brought together about 300 representatives from the law enforcement community, including members of the Immigration and Naturalization Service, the Secret Service, the District of Columbia and suburban police departments, and security guards from area colleges.<sup>197</sup> Attendees were told of identifiable “clues” that may be signs of a hate crime, such as hateful symbols, hateful speeches or literature, and the race of the victim and perpetrator. These are obvious, distinguishable hate crime indicators or signs, but many hate crimes may not have these obvious “clues” or indicators.<sup>198</sup>

<sup>195</sup> SPLC, “The Numbers Don’t Add Up,” p. 12. *See also* “Across the USA, New Mexico: Albuquerque,” *USA Today*, May 6, 2002. In its national coverage of news events, the newspaper reports that a task force has been established to probe nearly “60 suspicious fires” in a forest near and around the Mescalero Apache Reservation. The tribe has posted a monetary reward for information leading to a conviction.

<sup>196</sup> The FBI reports that the subtle indicators in identifying hate crimes today are now taught in its UCR course. The current training to law enforcement officers is to encourage them to thoroughly examine all aspects of a crime before identifying it as bias motivated. For example, the FBI explains that a swastika painted on the side of a building may be the result of a prank more than destruction or vandalism of property based on hate. King July 12 letter, FBI response, pp. 7–8.

<sup>197</sup> *See* Stacey Pamela Patton, “Hate Crime Clues Shared at Summit,” *The Washington Post*, June 29, 2000, p. A5 (hereafter cited as Patton, “Hate Crime Summit”).

<sup>198</sup> Patton, “Hate Crime Summit,” p. A5; The summit was part of the Department’s nationwide response to several “high profile hate-related incidents” that occurred during the year. “High-profile” hate crimes usually receive national media attention and have obvious indicators for being hate crimes. The “high-profile” incidents in 2000 included the dragging death of an African American male in Jasper, Texas, by white perpetrators; a deadly attack on a gay college student in Wyoming by persons who did not like gays; and the shootings of minorities and Jewish children in Chicago and Los Angeles, respectively, by white perpetrators who belonged to bias-related organizations. Even the Department acknowledged that “high-profile” hate crimes are not the majority of such offenses.

### **Underreporting of Hate Crimes**

In November 2001, the FBI released its annual report on bias-motivated incidents.<sup>199</sup> During 2000, law enforcement agencies reported 8,063 incidents, which involved a total of 9,430 offenses, 9,924 victims, and 7,530 known (distinguishable) offenders.<sup>200</sup> However, a Southern Poverty Law Center (SPLC) report, also released in November 2001, found a large discrepancy between the number of hate crimes it received and the FBI’s figures. The SPLC attributed the discrepancy in numbers to the underreporting of such incidents to the FBI.<sup>201</sup>

Since the FBI began collecting and reporting hate crime data under the act,<sup>202</sup> it has reported about 8,000 hate crimes each year in the United States.<sup>203</sup> The SPLC contends that the number is closer to 50,000.<sup>204</sup> The SPLC’s report attributes the underreporting of such incidents to several factors. One is that participation in the FBI’s annual Hate Crime Statistics Report is voluntary and that several states have not participated or have not reported fully.<sup>205</sup> This has generated inconsistent and

<sup>199</sup> U.S. Department of Justice, Federal Bureau of Investigation, *Hate Crime Statistics 2000* (Clarksburg, WVA: Uniform Crime Reports), November 2001 (hereafter cited as FBI, *Hate Crime Statistics 2000*).

<sup>200</sup> FBI, *Hate Crime Statistics 2000*, p. 5. *See* U.S. Department of Justice, Federal Bureau of Investigation, “Hate Crime Statistics, 2000,” press release, Nov. 19, 2001.

<sup>201</sup> *See* SPLC, “The Numbers Don’t Add Up,” pp. 6–15. *See also* Darryl Fears, “FBI Data Miss Hate Crimes, Watchdog Group Says; Analysis Finds 50,000 a Year in U.S.; Some States Do Not Participate Fully in Reporting,” *The Washington Post*, Nov. 29, 2001, p. A2 (hereafter cited as Fears, “FBI Data Miss Hate Crimes”).

<sup>202</sup> The Hate Crimes Statistics Act was amended in 1996 to extend the data collection from the original five years to “each calendar year,” making hate crimes statistics a permanent component of the FBI data collection program.

<sup>203</sup> *See* SPLC, “The Numbers Don’t Add Up,” p. 7; FBI, *1998–2003 Strategic Plan*, p. 26; Patton, “Hate Crime Summit,” p. A5; U.S. Department of Justice, Federal Bureau of Investigation, *Hate Crimes 1995* (Clarksburg, WVA: Uniform Crime Reports), p. 1, n.d., <<http://www.fbi.gov/ucr/hatecm.htm>>.

<sup>204</sup> SPLC, “The Numbers Don’t Add Up,” p. 7; Fears, “FBI Data Miss Hate Crimes,” p. A2.

<sup>205</sup> In 2000, 48 states and the District of Columbia participated in the Hate Crime Data Collection Program. The 1,690 reporting agencies represented 84.2 percent of the nation’s population. *See* FBI, “Hate Crime Statistics,” press release, p. 2; SPLC, “The Numbers Don’t Add Up,” p. 7; FBI, *Hate Crime Statistics 2000*, p. 5.

inaccurate reporting.<sup>206</sup> SPLC states that another reason for the discrepancy is that minimal resources have been allocated to train police officers to determine whether a crime is due to bias.<sup>207</sup> SPLC's report also states that victims are reluctant to come forward to report such incidents to police departments, and that other community organizations must be included in hate crime data collection.<sup>208</sup>

According to an SPLC spokesperson, the underreporting of hate crimes means that "the overall numbers are virtually useless, and we will not get a complete picture of what happened in the wake of September 11th and attacks against members of the Arab community."<sup>209</sup> The FBI states it is aware of the weaknesses in the data collection process and is working with law enforcement agencies as well as organizations such as the SPLC and the Anti-Defamation League to find solutions to these problems.<sup>210</sup> The FBI also acknowledges that its hate crimes reports are "insufficient to allow a valid national or regional measure of the volume and types of crimes motivated by hate," but contends that the numbers offer "perspectives on the general nature of hate crime occurrence."<sup>211</sup>

### Coordination

The FBI is encouraging state and local agencies to submit data via the Internet. The UCR program is also beginning to work closely with criminal justice information technology industry representatives to provide law enforcement agencies with software and system support for their records management systems.<sup>212</sup> The UCR program is in the process of revising the forms used by local law enforcement agencies to report hate crimes. The

FBI's goal is to increase the number of law enforcement agencies reporting UCR data by 10 percent by fiscal year 2004, which should result in an increase in agencies submitting hate crime data.<sup>213</sup>

### Community Involvement

The FBI's hate crime training curriculum recommends to law enforcement agencies that they canvass many components, including schools, churches, and community groups, to get an accurate account of hate crimes nationwide. Trainers stress that such entities are invaluable resources in support of hate crime victims, prevention of hate crimes, and in promoting hate crime awareness and recommend that state and local enforcement agencies work closely with local groups and organizations to build relationships with minority communities to improve and increase the information on hate crimes.<sup>214</sup> However, the final decision of reporting hate crimes is left to the local reporting law enforcement agency.<sup>215</sup>

The UCR program staff has been working closely with community organizations through a working group that will provide guidance through recommendations on such new issues as gender-based bias crimes. The FBI has not received the working group's final recommendations.<sup>216</sup>

### New Initiatives

#### *Oversight and Quality Assurance*

The FBI states it is initiating efforts to improve the reporting of hate crimes. Currently, the FBI's hate crime training program is being studied to determine its efficacy. The FBI plans to include Web-based training as an option to traditional face-to-face training. The new module is being tested.<sup>217</sup> The hate crime data collection has been incorporated into the UCR Quality Assurance Reviews (QAR). The UCR program uses the QAR to provide feedback to agencies on their problem reporting areas. Additionally, the UCR program has con-

<sup>206</sup> SPLC, "The Numbers Don't Add Up," pp. 8–10.

<sup>207</sup> *Ibid.*, p. 8.

<sup>208</sup> *Ibid.*, pp. 8–10.

<sup>209</sup> Fears, "FBI Data Miss Hate Crimes," p. A2.

<sup>210</sup> DOJ/FBI, Interrogatory Response, p. 7.

<sup>211</sup> FBI, "Hate Crime Statistics," press release, p. 2. *See also* FBI, *FY 2003 Authorization and Budget Request*, pp. 1–25. The budget report states that while the FBI's collection of hate crime data may be the most comprehensive hate crime data technique in existence today, it is insufficient to "allow valid measures of the volume and types of hate crimes. Its shortcomings result in the fact that participation by law enforcement agencies is voluntary and all hate crimes are not reported."

<sup>212</sup> DOJ/FBI, Interrogatory Response, p. 9.

<sup>213</sup> *Ibid.*, pp. 8–9.

<sup>214</sup> *Ibid.*, pp. 5–6.

<sup>215</sup> *Ibid.*, p. 5.

<sup>216</sup> *Ibid.*, pp. 7–8.

<sup>217</sup> *Ibid.*

ducted studies of issues that may contribute to better reporting from the states.<sup>218</sup>

The FBI's priority is to provide easier reporting for participating law enforcement agencies through automation and modernization of the UCR program. By the end of fiscal year 2002, the FBI plans to implement a "prototype system to handle online

electronic receipt of UCR data."<sup>219</sup> By 2003, the FBI plans to test the electronic distribution of UCR data, and by fiscal year 2004, the goal is to decrease the time it takes to publish annual crime reports from seven months to approximately two months.<sup>220</sup>

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<sup>218</sup> Ibid., p. 7.

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<sup>219</sup> Ibid., p. 9.

<sup>220</sup> Ibid., p. 10.

## CHAPTER 3

# Department of Labor

The Department of Labor (DOL) office responsible for enforcing Title VI is the Civil Rights Center, the only organizational unit within the Department with civil rights enforcement authority over financial assistance programs. In this report, the Directorate of Civil Rights (DCR), which was the name of the civil rights office when the Commission's 1996 report was published, is also referred to as the Civil Rights Center (CRC), its name today. The name change took effect in 1998. The Office of Federal Contract Compliance Programs (OFCCP) within DOL is responsible for coordinating and enforcing civil rights compliance by federal contractors. Between 1993 and 1996, the Commission made 35 recommendations to the Department of Labor, which included 26 to the Civil Rights Center<sup>1</sup> and nine directed to OFCCP.<sup>2</sup>

### OVERVIEW

In 1996, the Commission found that the Directorate of Civil Rights was strong in some areas and weak in others. For example, the Commission found that DOL's DCR could serve as a model for other federal agencies in how it handles many of its day-to-day functions. DCR was rated highly in terms of staff training, data collection and analysis, and policy guidance. Areas in which DCR was lacking in its enforcement of civil rights included the ineffective use of its policy guidance and regu-

lations, the organization and structure of its office, the preparation and use of its civil rights implementation plan, its lack of direct interaction with community and advocacy groups, its nonperformance of pre-award and post-award compliance reviews, its lack of a monitoring system for following up on action plans or conciliation agreements, and its lack of an oversight and monitoring system to evaluate Title VI compliance policies and activities at the state and local levels.

In its 2002 review, the Commission finds that some of the areas in which the Civil Rights Center has improved include the reorganizing of the Center into three new offices, placing a high priority on providing technical assistance and training, revising its Title VI regulations, and establishing a system to follow-up on corrective action plans or conciliation agreements. The Center did not implement some of the Commission's recommendations for various reasons, including lack of resources. The implementation of the Workforce Investment Act of 1998 and other pressing tasks caused resources to be diverted from other tasks.

#### **Department of Labor Components Reviewed:**

- The Civil Rights Center (previously the Directorate of Civil Rights)
- The Office of Federal Contract Compliance Programs

<sup>1</sup> U.S. Commission on Civil Rights, *Federal Title VI Enforcement to Ensure Nondiscrimination in Federally Assisted Programs*, June 1996 (hereafter cited as USCCR, *Federal Title VI Enforcement*).

<sup>2</sup> USCCR, *Federal Title VI Enforcement*; U.S. Commission on Civil Rights, *Enforcement of Equal Employment and Economic Opportunity Laws and Programs Relating to Federally Assisted Transportation Projects*, January 1993 (hereafter cited as USCCR, *Programs Relating to Federally Assisted Transportation Projects*).

In 1993, the Commission found that because the Department of Labor's Office of Federal Contract Compliance had overlapping jurisdiction with the Department of Transportation in relation to airport construction, there was inconsistency and duplication of effort; OFCCP's contacts with community groups during compliance reviews were inadequate; and OFCCP needed to reassess

its approach to determine compliance under the system of localized affirmative action agreements known as Hometown Plans.

In 2002, the Commission finds that there is still inconsistency and a duplication of effort between the Department of Transportation and OFCCP because the Department of Labor still has not updated its December 1979 memorandum of understanding with the Department of Transportation to reflect the interim agreement to exchange information. In addition, OFCCP still does not solicit involvement from the community in selecting companies for compliance reviews. However, OFCCP did reassess its approach to determining compliance and now applies uniform compliance standards to all covered construction contractors and subcontractors.

### THE CIVIL RIGHTS CENTER

The purpose of the Civil Rights Center (CRC or the Center), located in the Office of the Assistant Secretary for Administration and Management, is to ensure compliance with nondiscrimination statutes. CRC enforces various federal statutes and regulations that prohibit (1) discrimination in DOL-funded programs and activities, (2) discrimination based on disability by certain public entities and in DOL-conducted activities, and (3) discrimination within DOL itself.<sup>3</sup> When the Commission's 1996 Title VI enforcement report was published, CRC consisted of two offices, the Office of Equal Employment Opportunity and Affirmative Action and the Office of Program Compliance and Enforcement (OPCE). The Office of Equal Employment Opportunity and Affirmative Action oversaw internal civil rights and equal employment opportunity matters, such as processing employment-related complaints filed against DOL and managing special emphasis and affirmative action programs within DOL. OPCE was responsible for all external, recipient-related civil rights activities and consisted of the Division of Technical Assistance and Compliance Monitoring and the Division of Equal Opportunity Investigations and Enforcement. Within OPCE, these two divisions were responsible for conducting post-award compliance

<sup>3</sup> U.S. Department of Labor, "U.S. DOL-OASAM Civil Rights Enforcement for DOL Grant Recipients, Civil Rights Program," n.d., <<http://www.dol.gov/dol/oasam/public/programs/civil.htm>>.

and technical assistance activities and processing discrimination complaints filed against recipients. The Center has since been reorganized.<sup>4</sup>

The statutory authorities for the Civil Rights Center remain the same as in 1996, except for a change in the workforce system financial assistance programs.<sup>5</sup> On August 7, 1998, President Clinton signed the Workforce Investment Act of 1998 (WIA).<sup>6</sup> As a result, many of the recommendations made by the Commission to the Civil Rights Center concerning the Job Training Partnership Act of 1982 (JTPA) were not implemented because the WIA supersedes the JTPA as the Department of Labor's primary mechanism for providing financial assistance for a comprehensive system of job-training and placement services for adults and eligible youth.<sup>7</sup> The WIA, which became effective on July 1, 2000, is the first major reform of the workforce development system since the JTPA. Through WIA, Congress sought to replace the fragmented training and employment system that existed under the previous program.<sup>8</sup>

### PREVIOUS FINDINGS AND RECOMMENDATIONS TO THE CIVIL RIGHTS CENTER

In evaluating DOL, the Commission found that DOL/CRC could serve as a model for other federal agencies in how it handles many of its day-to-day functions.<sup>9</sup> The Commission found DOL to be strong in staff training, data collection and analysis, and policy guidance. However, recommendations were made that could enhance DOL's effectiveness in such areas as organizational structure, funding and resources, oversight of state recipients, and complaint investigation.

<sup>4</sup> See pp. 32–33 of this report.

<sup>5</sup> Department of Labor's Interrogatory Response to the United States Commission on Civil Rights' Ten-Year Review of Civil Rights Enforcement, Civil Rights Center, Mar. 15, 2002, p. 1 (hereafter cited as Civil Rights Center Interrogatory).

<sup>6</sup> 29 C.F.R., Part 37 (1999).

<sup>7</sup> WIA and JTPA Statute and Regulation Index, <<http://www.oalj.dol.gov/public/jtpa/refrnc/jstatin.htm>>.

<sup>8</sup> General Accounting Office, "Workforce Investment Act—Better Guidance Needed to Address Concerns Over New Requirements," October 2001, p. 6.

<sup>9</sup> USCCR, *Federal Title VI Enforcement*.

## Priority of Civil Rights

In terms of organizational structure, in 1996 the Commission suggested that the DCR director's ability to obtain funding for civil rights enforcement, influence DOL policy development on civil rights enforcement, and promote DCR's mission relative to other DOL obligations could be better served if DCR was established as an independent office headed by an assistant secretary who reported directly to the Secretary.<sup>10</sup> To promote a more efficient Title VI enforcement program, the Commission also recommended that DCR acquire legal staff to provide legal guidance and interpretation for Title VI enforcement. At the time the Title VI report was published, the legal staff was located in the Office of the Solicitor.

When the Commission issued its 1996 report, OPCE was divided into units responsible for internal and external civil rights enforcement. The Commission recommended that DCR create additional divisions for external civil rights enforcement and acquire staff specifically assigned to perform pre-award reviews, community outreach and public education, and Title VI staff training.<sup>11</sup>

The Commission also found that only one person, a senior policy advisor to the director, was assigned to policy development. At that time, staff addressed policy issues in an ad hoc fashion. The Commission recommended that DCR establish within OPCE a policy and planning unit to provide enforcement policy guidance to DCR staff and state recipients with Title VI enforcement responsibilities. It also suggested that DOL model the organizational structure of its external civil rights enforcement unit after the Department of Education's Office for Civil Rights.<sup>12</sup>

## Resources—Funding and Staffing

The Commission found that DCR's regional staff did not perform activities related to Title VI enforcement. As a result, DCR must ensure that it has budgetary resources to finance travel costs for headquarters staff to perform on-site reviews of recipients and states that perform civil rights enforcement activities. The Commission concluded

that if travel costs outweigh the expense of regional external civil rights enforcement staffing, DOL should consider placing some external civil rights enforcement staff in regional offices.<sup>13</sup>

The Commission also found that OPCE's staff size was insufficient to ensure adequate enforcement of Title VI in all federally assisted and conducted programs. During the 1980s, DCR's allocation of staff and resources to OPCE for civil rights enforcement for federally assisted and federally conducted programs decreased, resulting in equal opportunity enforcement efforts being limited to JTPA programs. The Commission recommended that DOL provide DCR with sufficient staff and resources to ensure that DCR's implementation, enforcement, compliance, oversight, and monitoring activities for Title VI enforcement reached all federally assisted DOL programs and not just JTPA programs.<sup>14</sup>

## Planning

In 1996, the Commission discovered that DCR's civil rights implementation plans provided a detailed description of DOL's Title VI enforcement program; however, the plans did not function, as the Department of Justice requires, as a planning tool for DOL. As a result, the Commission recommended that DCR develop planning and priorities initiatives that incorporate the qualities of its implementation plan, strategic plan, and work plan.<sup>15</sup>

## Policy Guidance

Although DOL's Title VI guidelines, regulations, policies, and procedures, especially those pertaining to the JTPA, were better than those of many other federal agencies in providing guidance on Title VI enforcement in 1996, several deficiencies were identified. The Title VI regulations did not contain an appendix listing the federally assisted programs to which the regulations apply, nor did they reflect the amendments to Title VI created by the Civil Rights Restoration Act of 1987. Although DOL does not meet the Department of Justice's requirement that it have Title VI guidelines for each of its federally assisted programs, DOL

<sup>10</sup> Ibid., pp. 354–55, 373.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid., pp. 354–55, 373–74.

<sup>13</sup> Ibid., pp. 355, 374.

<sup>14</sup> Ibid., pp. 357–59, 375.

<sup>15</sup> Ibid., p. 384.

had issued detailed guidance manuals or guidebooks for at least three of its federally assisted programs. The Commission recommended that DOL add an appendix to its general Title VI regulations specifying the types of financial assistance programs DOL administers. In addition, it recommended that DOL issue Title VI guidelines or policy guidance stating the implications of the Civil Rights Restoration Act of 1987 and provide practical illustrations of civil rights issues based on DOL-assisted programs.<sup>16</sup>

The Commission found that DOL used training materials developed for the states as a Title VI complaint manual and communicated standard operating procedures to be followed in processing Title VI complaints and in conducting compliance reviews by issuing directives on specific topics. At that time, Center officials indicated that they were working on compliance and complaint manuals that would replace other documents used for those purposes.<sup>17</sup> The Commission recommended that DOL promulgate uniform Title VI enforcement procedures for its civil rights enforcement staff and funding recipients, including instructions for implementing Title VI, from the application and pre-award process through compliance review and complaint processing, in each type of program DOL sponsors.<sup>18</sup>

### **Technical Assistance and Education and Outreach**

When the Commission's 1996 report was published, several recommendations were made to DCR concerning education and outreach and technical assistance. DCR generally had no direct interaction with community and advocacy groups and instead delegated education and outreach activities to its recipients. As a result, the Commission recommended that DCR solicit comments and suggestions from affected communities and funding recipients on its Title VI enforcement efforts.<sup>19</sup> It also recommended that DCR ensure that recipients educate the public about program accessibility. Although DCR provided technical assistance on request and regularly conducted training semi-

nars for state and local agency staff on enforcement topics such as data collection and analysis, on-site compliance reviews, complaint processing, and resolution of noncompliance, the Commission recommended that DCR regularly train its staff and recipients' staff on the methods of enforcement, such as conducting compliance reviews.<sup>20</sup>

### **Complaint Processing**

The Commission found that during the mid-1980s and into the early 1990s, although DCR received an increasing number of civil rights complaints, the number of Title VI complaints received declined dramatically. As a result, the Commission recommended that DCR increase its public education about Title VI's nondiscrimination requirement and the rights afforded federal funding program participants and beneficiaries.<sup>21</sup>

### **Compliance Reviews**

Conducting pre-award reviews, post-award desk-audit reviews, and on-site compliance reviews is essential to an effective Title VI enforcement program. In 1996, the Commission found that DCR (1) did not conduct pre-award reviews, (2) did not perform desk audits except as part of its on-site compliance review process, and (3) had performed a decreasing number of Title VI compliance reviews. The Commission recommended that before granting funding DCR should ensure that a state would maintain an active Title VI enforcement program. The Commission also recommended that DCR implement pre-award reviews for all programs receiving federal funds. In addition, DCR should conduct post-award desk audits of information from its data collection and analysis system to ensure continuing compliance with Title VI among all recipients. This asset would allow it to reach a large number of recipients in desk-audit reviews. The Commission recommended that DCR conduct on-site compliance reviews of all grant recipients' facilities, or at least those identified to be in noncompliance by desk-audit reviews.<sup>22</sup> When found to be in noncompliance, DCR encouraged recipients to comply voluntarily with Title

<sup>16</sup> Ibid., p. 376.

<sup>17</sup> Ibid., p. 361.

<sup>18</sup> Ibid., pp. 361, 377.

<sup>19</sup> Ibid., p. 381.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid., p. 380.

<sup>22</sup> Ibid., pp. 378–79.

VI. The Commission recommended that DCR establish a system of monitoring these commitments to corrective actions.<sup>23</sup>

### Staff Training

In 1996, the Commission found that DCR's staff training was among the best offered by federal agencies evaluated in the Title VI report. It conducted ongoing training for its external civil rights enforcement staff, including computer training, instruction on writing and management skills, seminars concerning particular DOL funding programs, briefings on each of DOL's federally funded programs, instruction on methods for conducting enforcement activities, and training on statutes DCR enforces. But DCR had not conducted training specifically on Title VI. As a result, the Commission recommended that DCR hold regular training for its staff and recipients' staff on issues specific to Title VI enforcement and compliance.<sup>24</sup>

### Oversight and Quality Assurance

The Commission concluded that the Job Training Partnership Act data collection and analysis system was an excellent recipient compliance evaluation model that facilitated Title VI enforcement. But one drawback of the system was that DCR could only gather information from the database during compliance reviews. The Commission recommended that DCR require state recipients to maintain information on applicants for JTPA funding and all collected data be accessible online or through other means at any time instead of only during compliance reviews.<sup>25</sup> The Commission also recommended that DCR provide detailed instructions on the type of data to be collected from recipients and subrecipients.

The Commission also found that DCR never used methods of administration as a means of monitoring states' enforcement efforts until 1993. As of 1996, DCR's Title VI enforcement activities and oversight of state-administered programs focused primarily on its JTPA programs. The Commission recommended that DCR establish a systematic oversight and monitoring program to

evaluate the Title VI compliance policies and activities connected with all programs and activities administered at the state and local levels, not just JTPA programs.<sup>26</sup>

## CIVIL RIGHTS CENTER'S RESPONSE TO THE RECOMMENDATIONS

### Establishing Priorities

In terms of organizational structure and line authority, the Civil Rights Center continues to report to the Secretary through the assistant secretary for administration and management. The Center claimed that this reporting structure does not impede its ability to achieve its objectives.<sup>27</sup> Additionally, legal guidance and interpretation for agencies within DOL continue to be provided through the Office of the Solicitor. No agency within DOL, except for the Inspector General's Office, has independent legal staff.<sup>28</sup>

Shortly before the Commission's Title VI report was published, the Center was reorganized and three new offices were established.<sup>29</sup> The Office of Enforcement plans, coordinates, and conducts the Center's enforcement activities to ensure that recipients of financial assistance from DOL and its program offices adhere to equal opportunity and nondiscrimination laws, regulations, policies, standards, procedures, and guidelines and that uniform remedies and sanctions are appropriately imposed.<sup>30</sup> According to the Center, the Office of Enforcement has engaged in pre-award reviews with the Employment and Training Administration, the major DOL grant-making agency, in the review of grant applications under the new Workforce Investment Act, which prohibits discrimination based on race, color, and national origin.<sup>31</sup> The second new office, the Office of Compliance Assistance and Planning, is responsible for overall program planning, and conducting and coordinating compliance and technical assistance activities related to

<sup>23</sup> Ibid., p. 380.

<sup>24</sup> Ibid., pp. 369, 383.

<sup>25</sup> Ibid., p. 383.

<sup>26</sup> Ibid., p. 381.

<sup>27</sup> Civil Rights Center Interrogatory, p. 3.

<sup>28</sup> Ibid., p. 4.

<sup>29</sup> Ibid.

<sup>30</sup> U.S. Department of Labor, Civil Rights Center, "Mission and Organization," p. 5 (hereafter cited as CRC, "Mission and Organization").

<sup>31</sup> Civil Rights Center Interrogatory, pp. 4-5.

civil rights statutes.<sup>32</sup> The Office of Mediation, Counseling, and Evaluation handles the mediation of complaints filed by participants and beneficiaries of DOL federal financial assistance programs.<sup>33</sup>

Under the new organization, the office of Compliance Assistance and Planning develops and disseminates standards, procedures, guidelines, and regulations to assist DOL grant-making agencies and funding recipients in meeting their equal opportunity responsibilities. Additionally, the Office reviews legislative proposals, new legislation, executive orders, regulations, and administrative actions to determine their impact on the Center's compliance and enforcement activities.<sup>34</sup>

### Resources—Funding and Staffing

In 2002, the Center stated that regional staff still does not perform Title VI enforcement functions, and that there are no current plans to place external civil rights enforcement staff in regional offices.<sup>35</sup> The Center's budget remained at \$4.9 million or below from fiscal years 1993 to 1999, until fiscal year 2000 and after when it increased to \$5.7, then \$5.9 million (see figure 1). External civil rights activities received 57 percent of the Center's funding and staffing.<sup>36</sup> However, during fiscal year 2000 and after CRC was burdened with implementing the new WIA program. Thus, little of the increased funding was likely to finance the ongoing costs of compliance reviews, particularly travel costs for site visits.

In 2002, the Center indicated that DOL has provided additional staff and resources to implement a comprehensive enforcement program for Title VI (see figure 1 and table 2).<sup>37</sup> According to the Center, when reductions have occurred, it was because the effects of inflation and pay increases had to be absorbed. Although the Center indicated it had received additional staff, in actuality staffing

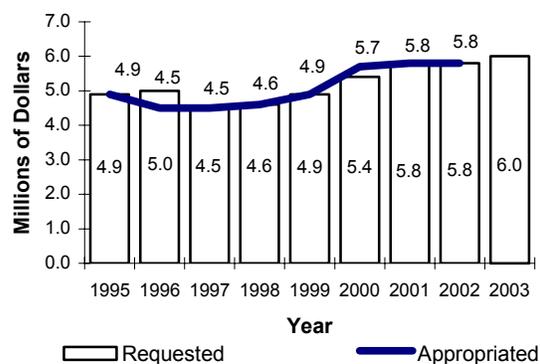
levels have fluctuated during the past decade and between fiscal years 1993 and 2002 the number of FTEs decreased by 28 percent (see table 2). Since fiscal year 2000, the Center's budget has remained flat (see figure 1).

**TABLE 2—Civil Rights Center Staffing History**

Fiscal Year	Full Time Equivalents (FTEs)
1993	68
1994	61
1995	60
1996	56
1997	52
1998	50
1999	52
2000	51
2001	53
2002	50

SOURCE: Department of Labor's Interrogatory Response to the U.S. Commission on Civil Rights' Ten-Year Review of Civil Rights Enforcement, Civil Rights Center, Mar. 15, 2002, p. 3.

**FIGURE 1—Budget History of the Civil Rights Center**



<sup>32</sup> CRC, "Mission and Organization," p. 7. The civil rights statutes include Title VI and Title VII of the Civil Rights Act of 1964, the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, Title II of the Americans with Disabilities Act, and others.

<sup>33</sup> CRC, "Mission and Organization," p. 7.

<sup>34</sup> Ibid., p. 8.

<sup>35</sup> Civil Rights Center Interrogatory, p. 5.

<sup>36</sup> Ibid., p. 3.

<sup>37</sup> Ibid., p. 2.

## Planning

The Center submits its civil rights implementation plans to the Department of Justice annually. According to the Center, the reports are prepared in accordance with instructions from the Department of Justice (DOJ), and all questions and concerns posed by DOJ have been fully addressed.<sup>38</sup>

In its January 2002 implementation plan, the Center failed to describe letters of finding, settlement agreements, or other resolutions of complaint investigations or compliance reviews issued since the previous year's submission. In addition, it listed only five activities and/or objectives that it would be conducting to enforce Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and similar statutes covered by Executive Order 12,250. The Center indicated that it did not perform any pre-award and post-award reviews in fiscal year 2001.<sup>39</sup>

## Policy Guidance

The Commission finds that the compliance and complaint manuals that were supposed to have been issued several years ago have not been updated since the 1996 report was issued.<sup>40</sup> The Center does have a methods of administration training manual.<sup>41</sup>

In addition, work began on the development of the Title VI appendix immediately after the Commission issued its 1996 report. However, before completion, resources for legislative/regulatory issues were diverted to other pressing tasks, such as the development of (1) legislation to replace the JTPA; (2) regulations implementing the Workforce Investment Act (WIA) and its nondiscrimination and equal opportunity provisions; (3) training and written guidance on the new legislation; and (4) regulations, guidance, and training on new welfare-to-work legislation. As a result, the work on the Title VI appendix will have to begin anew.<sup>42</sup>

With leadership from the Department of Justice, the Center is revising Title VI regulations to reflect the language of the Civil Rights Restoration Act of 1987. A proposed revision to DOL's Title VI and Section 504 rules was published in the *Federal Register* on December 6, 2000. The Center has reviewed and processed DOJ's final preamble and rule through DOL's departmental clearance process. At the time this report was being prepared the Center was awaiting DOJ's publication of the final rules in the *Federal Register*.<sup>43</sup>

Now that WIA has replaced JTPA, the regulations implementing the nondiscrimination and equal opportunity provisions of WIA are applicable only to recipients of WIA Title I financial assistance. The Center does not have the authority to extend their applicability to DOL recipients who receive no WIA Title I financial assistance. DOL's general Title VI regulations have not been revised to incorporate the requirements of the nondiscrimination and equal opportunity provisions of WIA or to make these provisions broadly applicable to other DOL-assisted programs.<sup>44</sup>

As of 2002, the Center has not developed policies specific to Title VI. According to the Center, it does not have the resources to develop policies related to enforcement specific to each nondiscrimination law it enforces. Instead, regulations and policies have been developed for the nondiscrimination and equal opportunity provisions of WIA, which prohibits discrimination based on Title VI and nine other bases. Since the passage of WIA, the Center's attention has been focused on providing guidance to the Center's staff and DOL recipients as to the compliance issues associated with WIA and its nondiscrimination and equal opportunity provisions. When WIA's Section 188 was published, the Center began working on guidance for its state recipients on the development of WIA methods of administration. DOL has also published guidance to recipients on meeting the needs of those who are limited English proficient, highlighting practices considered discriminatory.<sup>45</sup>

According to the Center, policy directives are distributed to pertinent staff and recipients. The distribution to Title VI staff members is through e-mails and in-boxes, since they are all located in

<sup>38</sup> Ibid., p. 5.

<sup>39</sup> Civil Rights Center, "FY 2002 Implementation Plans," pp. 1, 4.

<sup>40</sup> USCCR, *Federal Title VI Enforcement*, p. 361; Civil Rights Center Interrogatory, p. 14.

<sup>41</sup> U.S. Department of Labor, Civil Rights Center, "Methods of Administration Under the Workforce Investment Act," n.d.

<sup>42</sup> Civil Rights Center Interrogatory, p. 11.

<sup>43</sup> Ibid., p. 12.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid., pp. 12-13.

Washington, D.C. Recipients obtain copies of policy directives through the mail, as participants in one of the Center's training programs, or through the Center's Web site.<sup>46</sup>

### Technical Assistance and Education and Outreach

During the Commission's 2002 review, the Center indicated that it places a high priority on providing technical assistance and training to DOL funding recipients.<sup>47</sup> The training and assistance provided recently includes training conferences on the implementation of WIA, annual equal opportunity conferences, training courses on alternative dispute resolution, workshops on methods of administration, and information on equal opportunity and nondiscrimination in DOL financial assistance programs, which is available on the Center's Web site.<sup>48</sup> Technical assistance, education, and outreach training that has taken place since the Commission last reviewed the Civil Rights Center includes:

- Staff participated in each of the six WIA Implementation Training Conferences.<sup>49</sup> During the conferences, the Center addressed an audience of approximately 600 to 800 recipients on the states' responsibility to comply with the civil rights provisions in WIA and its corresponding regulations.
- At the Center's annual Equal Opportunity Conference in 1999, staff conducted three training workshops on the WIA's civil rights regulations. The individuals who drafted these regulations were the presenters. Handouts included copies of the draft regulations and slides of the presentations. The last plenary session of the conference was devoted to the requirements for methods of administration and the changes in these requirements from those under JTPA.<sup>50</sup>
- As a result of the new requirements that recipients' complaint procedures include an alternative dispute resolution (ADR) process, the Center contracted for an institute to provide training for three 40-hour ADR training courses in Bal-

timore, Maryland, during fiscal year 2001. Ninety-four individuals representing 45 of the 53 states and Local Workforce Investment Areas (LWIA) registered for the ADR training.<sup>51</sup>

- At the DOL Employment and Training Administration's request, the Center conducted a methods of administration (MOA) technical assistance workshop on June 19–20, 2001, in Seattle, Washington, for the states of Alaska, Hawaii, Idaho, Nevada, Oregon, and Washington.<sup>52</sup>

In addition to formalized training and technical assistance, the Center staff also provides technical assistance for recipients on an ongoing basis, telephonically, or through the exchange of electronic documents.<sup>53</sup>

Currently, the Center is developing several publications that will be widely disseminated to beneficiaries and potential beneficiaries, and the public. The publications will be available in English and several other languages, but until those publications are available the Center will continue to use the Department of Justice's generic publications, such as its Title VI brochure.<sup>54</sup>

The Center indicated that in developing certain policies, guidance, training syllabuses, and enforcement tools, comments and suggestions from affected communities and funding recipients are considered. For example, in developing the guidance on limited English proficiency, the Center solicited comments and suggestions from affected communities and funding recipients.<sup>55</sup> However, the Center has not strategically planned and designed an outreach plan that uses 2000 Census data and other labor market or demographic data to target groups that may be victims of discrimination.<sup>56</sup>

### Complaint Processing

The number of Title VI complaints the Center receives has continued to decline since the Commission published its 1996 report. Between fiscal years 1997 and 2001, complaints decreased by 76

<sup>46</sup> Ibid. p. 13.

<sup>47</sup> Ibid., p. 6.

<sup>48</sup> Ibid., pp. 6–9.

<sup>49</sup> Ibid., p. 6.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid., pp. 7–8.

<sup>52</sup> Ibid., p. 8.

<sup>53</sup> Ibid., p. 9.

<sup>54</sup> Ibid., p. 11.

<sup>55</sup> Ibid., p. 10.

<sup>56</sup> Ibid., p. 11.

percent, from 107 in 1997 to 26 in 2001.<sup>57</sup> In the 1996 report, the Center indicated that it received so few Title VI complaints because most of them were resolved at the state level.<sup>58</sup>

As recommended by the Commission in 1996, the Center has increased its public education about Title VI nondiscrimination requirements through several training modules. With the implementation of WIA, priority was on training and education. One of the training modules developed was titled “Equal Opportunity and Nondiscrimination Laws Applicable to USDOL Financial Assistance Recipients” and it was designed to educate funding recipients on Section 188 of WIA, the Age Discrimination Act, Section 504, and Title VI. The module begins with the showing of the Department of Justice’s Title VI video titled “Understanding and Abiding by Title VI of the Civil Rights Act of 1964.” More than 250 copies of the video have been distributed to DOL recipients in English, Spanish, Korean, Vietnamese, and Chinese. When national conferences are included, the Center’s education and training has reached every state and more than 33 percent of the nation’s 600 local workforce areas.<sup>59</sup>

### Compliance Reviews

In 2002, the Center indicated that resources continue to limit its ability to conduct pre-award reviews of *all* DOL funding recipients.<sup>60</sup> In fiscal year 2001, the Center did not conduct any pre-award reviews or post-award reviews or have any legal administrative enforcement (see table 3). However, all DOL grant agreements include equal opportunity and nondiscrimination assurance language as specified and required by the Center. In fiscal year 2000, the Center conducted 76 pre-award reviews (desk audits) but no post-award reviews.<sup>61</sup> With the implementation of WIA, all states were required to submit applications for receipt of financial assistance. The Center committed resources to the pre-award review process and assigned three staff persons to participate with the

Department’s grant-making agency in the review of all state applications. The Center’s collaboration was necessary for a state’s application for financial assistance to be approved. The Department’s grant-making agency and the Center continue to coordinate on pre-award reviews of all major WIA grant modifications states submit.<sup>62</sup>

**TABLE 3—Civil Rights Center Workload**

Fiscal Year	Pre-award Reviews	Post-award Reviews	Administrative Enforcement
2001	0	0	0
2000	76	0	0
1999	0	0	10
1998	0	84	8
1997	0	2	0

SOURCE: Department of Labor, Civil Rights Center, *Civil Rights Implementation Plans, FYs 1997–2002*.

Post-award desk reviews are conducted as an enforcement mechanism independent of on-site reviews.<sup>63</sup> The last time the Center conducted a post-award review was in fiscal year 1998, when it completed 84 post-award reviews (see table 3).<sup>64</sup> According to the Center, under WIA each state is required to submit methods of administration. The MOA describes the actions a state will take to ensure that its WIA financially assisted programs, activities, and recipients are complying, and will continue to comply, with the nondiscrimination and equal opportunity requirements of WIA and its implementing regulations.<sup>65</sup> The WIA regulations require each governor to establish an MOA for the state’s programs.<sup>66</sup> By submitting an MOA, the governor agrees to follow its provisions and failure to do so may result in a finding of noncompliance. The Center indicated that the MOA provides a reasonable guarantee of compliance with federal civil rights laws.<sup>67</sup>

<sup>57</sup> Ibid., p. 22.

<sup>58</sup> USCCR, *Federal Title VI Enforcement*, p. 364.

<sup>59</sup> Civil Rights Center Interrogatory, p. 23.

<sup>60</sup> Ibid., p. 14.

<sup>61</sup> U.S. Department of Labor, Civil Rights Center, *FY 2001 Civil Rights Implementation Plan*, pp. 7–12.

<sup>62</sup> Civil Rights Center Interrogatory, p. 14.

<sup>63</sup> Ibid., pp. 14–15.

<sup>64</sup> U.S. Department of Labor, Civil Rights Center, *FY 2001 Civil Rights Implementation Plan*, pp. 5–11.

<sup>65</sup> Civil Rights Center Interrogatory, p. 15.

<sup>66</sup> 29 C.F.R., Part 37. See also Civil Rights Center Interrogatory, p. 15.

<sup>67</sup> Civil Rights Center Interrogatory, p. 21.

In its annual post-award desk reviews, the Center verifies that each state and local workforce investment area has designated equal opportunity officers. In addition, desk audits are designed to review different administrative requirements each year. In fiscal year 2002 they will evaluate communications about equal opportunity, such as whether posters describing how to file a discrimination complaint are prominently displayed for the general public. Desk audits will also examine data reporting and record keeping with respect to requirements for maintaining discrimination complaint logs.<sup>68</sup>

The Center has conducted post-award on-site compliance reviews since the Commission's 1996 review, but indicated that staff resources do not permit an extensive annual compliance review schedule.<sup>69</sup> Additionally, there are thousands of primary and secondary recipients for national and state block grant programs and it would be impossible to perform an on-site review of all grant recipients' facilities.<sup>70</sup> According to the Center, to best utilize resources, compliance reviews are initiated based on congressional request, the nature and frequency of complaints, and strategic planning goals. Further, desk audits often assess compliance with regulatory requirements that would not necessarily require an on-site visit to validate noncompliance. If desk audits established an inference of disparate impact, an on-site review would be conducted to confirm or invalidate the desk-review findings.<sup>71</sup>

When the Center conducts on-site reviews, the area of focus determines the plan and design of the review. A compliance review of a program or activity within a program always includes interviews of recipient officials, community members, and beneficiaries affected by the recipient's program; analysis of statistical evidence on both participation rates and application rejection rates; and other evidence that may establish different treatment on protected grounds.<sup>72</sup>

The results of on-site reviews are put in writing and include specific findings, recommendations, and timetables for achieving compliance. In addition, all recipients in the full funding stream, including the primary recipient from the Department, are advised in writing of the findings.<sup>73</sup>

In response to the Commission's recommendation that the Center develop a system for monitoring the commitments to corrective actions, the Center reported that it has a reminder system to follow-up on corrective action plans or conciliation agreements.<sup>74</sup>

### Staff Training

According to the Center, DOL is committed to life-long learning for staff. Within the Department, CRC staff has the freedom to take training from a variety of sources. The Center's premier training initiative is its annual National Equal Opportunity Conference.<sup>75</sup> The conference is in its 13th consecutive year, and attendance has grown from an average of 100 recipient staff to about 300.<sup>76</sup> The national conference, designed to reach recipient staff with direct equal opportunity responsibility, includes 26 workshops and three plenary sessions. In addition, a full week in the summer is set aside for an off-site staff civil rights training retreat, where staff receives updates on recent court decisions, complaint planning and investigation procedures, processing ADA Title II complaints, and creating an investigative file.<sup>77</sup> Staff has also been provided with weeklong courses in mediation and compliance monitoring.<sup>78</sup>

### Oversight and Quality Assurance

Today, the Department's grant office has management information systems for all its programs. According to the Center, it does not prescribe how (either manually or electronically) recipient data must be maintained. Nor will the Center require

<sup>68</sup> Ibid., p. 16.

<sup>69</sup> Ibid., p. 18.

<sup>70</sup> Ibid., pp. 16–17. In 2001, the number of recipient sites included 2,768 WIA One-Stop Centers. There were also 1,503 Employment Services Offices and 949 Senior Centers. These are just a few of DOL's assisted programs.

<sup>71</sup> Civil Rights Center Interrogatory, pp. 17–18.

<sup>72</sup> Ibid., p. 18.

<sup>73</sup> Ibid., p. 16.

<sup>74</sup> Ibid., p. 22.

<sup>75</sup> Ibid., p. 24. See also U.S. Department of Labor, Civil Rights Center, *11th Annual National Equal Opportunity Training Conference*, Aug. 9–11, 2000.

<sup>76</sup> Civil Rights Center Interrogatory, p. 24.

<sup>77</sup> Ibid.

<sup>78</sup> Ibid.

submission of data that can be obtained from existing reporting requirements of the Department's grant office. But each recipient is required to collect data and maintain records in accordance with procedures the Center prescribes, as it deems necessary to determine whether the recipient has complied or is complying with the nondiscrimination and equal opportunity provisions. The system and format in which the records and data are kept must be designed to allow the Center to conduct statistical or other quantifiable data analyses to verify the recipient's compliance with all nondiscrimination regulations. Records must include, but not be limited to, records on applicants, registrants, eligible applicants/registrants, participants, terminees, employees, and applicants for employment. Each recipient must record the race/ethnicity, sex, age, and where known, disability status, of every applicant, registrant, eligible applicant/registrant, participant, terminee, applicant for employment, and employee.<sup>79</sup>

The Center does have full access to the Department's grant office's information systems to retrieve any data desired. Although all systems are electronic, they cannot be all accessed online. Under the current Workforce Investment Act program, a funding recipient creates an individual record and electronically forwards it to the Department's grant office, where the records are merged to form a national database. According to the Center, it has access to this database and is able to sort data fields over any period of time.<sup>80</sup>

According to the Center, with the passage of WIA, the WIA methods of administration has become the principal vehicle for oversight and monitoring of continuing state programs at the state and local levels. The Department's strategic planning and the Center's annual planning guide the monitoring priorities. Currently, the President's agenda and the Secretary of Labor's strategic goals focus on improving access to people with disabilities and, as a result, the Center's monitoring is aligned with these initiatives. For fiscal years 2002 and 2003, the Center's monitoring will focus on reviewing recipients' compliance with disability laws and regulations. The Center will review a rep-

resentative sample of the One-Stop Centers in the cities of New York and Miami in this regard.<sup>81</sup>

### **OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS (OFCCP)**

Under Executive Order 11,246, the Office of Federal Contract Compliance Programs requires federal contractors to (1) refrain from discrimination based on race, color, national origin, creed, or sex; and (2) take affirmative action in promoting equal employment opportunity for protected minority groups and women. OFCCP has jurisdiction over all contractors and subcontractors holding nonexempt federal contracts and subcontracts exceeding \$10,000.<sup>82</sup> The regulations implementing the executive order establish different compliance requirements for construction and nonconstruction (supply and service) contractors. Although all covered contractors and subcontractors, including construction and nonconstruction, are required to engage in nondiscriminatory employment practices and take affirmative steps to ensure equal employment opportunity, nonconstruction contractors that have a contract of \$50,000 or more and 50 or more employees are also required to develop written affirmative action programs.<sup>83</sup>

The Commission's monitoring of OFCCP focused on implementation of Executive Order 11,246 at the Denver International Airport and Hartsfield Atlanta International Airport and resulted in a 1993 report.<sup>84</sup> The study raised concerns about DOL's civil rights enforcement planning; the agency's contact and coordination with other agencies, such as the Department of Transportation (DOT), that have overlapping jurisdiction for civil rights enforcement; the methods of selecting contractors to receive compliance reviews; the involvement of community groups in the compliance

<sup>81</sup> Ibid. A One-Stop Center is a place where all employment and training services are put into one place to make them easy to use. These career centers help workers find jobs and help employers find qualified employees.

<sup>82</sup> Department of Labor's Interrogatory Response to the United States Commission on Civil Rights' Ten-Year Review of Civil Rights Enforcement, Office of Federal Contract Compliance Programs, Mar. 15, 2002, p. 2 (hereafter cited as OFCCP Interrogatory).

<sup>83</sup> OFCCP Interrogatory, p. 2.

<sup>84</sup> USCCR, *Programs Relating to Federally Assisted Transportation Projects*.

<sup>79</sup> Ibid., p. 19.

<sup>80</sup> Ibid., p. 20.

review process; and the monitoring of contractors' affirmative action commitments and training programs for minority and female workers.

Since the Commission published its 1993 report, the Department of Labor's civil rights responsibilities have not changed, although two recent statutory amendments have altered OFCCP's jurisdiction regarding veterans.<sup>85</sup> OFCCP's responsibilities regarding Executive Order 11,246, as amended, have not changed. OFCCP continues to provide the leadership for administering nondiscrimination and equal employment laws and regulations that apply to federal contractors and subcontractors through compliance evaluations, complaint investigations, and a comprehensive compliance assistance plan.<sup>86</sup>

## PREVIOUS FINDINGS AND RECOMMENDATIONS TO OFCCP

### Planning

In 1993, the Commission recommended that Congress require DOL to submit annual reports on civil rights enforcement efforts relating to federal contracts and financial assistance programs.<sup>87</sup> The Commission indicated that this would assist DOL in establishing aggressive, fully integrated, and fully funded civil rights programs.<sup>88</sup>

### Compliance Reviews

As a result of its review in 1993, the Commission recommended that OFCCP audit compliance reviews conducted of Denver International Airport contractors by its Denver district office to ensure that the district office was appropriately selecting contractors for compliance reviews.<sup>89</sup>

Regulations require OFCCP to evaluate individual federal contractors' and subcontractors' affirmative action commitments for work performed in a particular geographic area. In 1993, the Commission found that contractors in the Denver metropolitan area were required to submit only one

affirmative action report encompassing all sites in a geographic area.<sup>90</sup> The Commission was concerned that a contractor could comply with nondiscrimination laws at one site and not at another. Furthermore, OFCCP was not able to enforce civil rights compliance because it was unable to target a specific site of a given contractor.<sup>91</sup> The Commission recommended that OFCCP reassess its approach to determining compliance under this system of localized affirmative action agreements known as Hometown Plans.<sup>92</sup>

### Coordination

In its 1993 report, the Commission was concerned about the overlapping jurisdiction of DOL and DOT in relation to airport construction. In an attempt to minimize inconsistency and duplication of effort, in 1979 DOL/OFCCP and the Federal Highway Administration entered into an interim memorandum of understanding for exchanging information. Although DOT and DOL were to develop similar agreements applicable to all operating components of DOT within 120 days of ratifying the MOU, the Commission found that this never happened.<sup>93</sup> In addition, the Commission recommended that DOT and DOL establish a joint-review and information-sharing agreement between OFCCP's regional office, the city and county of Denver, and the Federal Aviation Administration (FAA).<sup>94</sup>

It was also recommended that the FAA, OFCCP, and Denver City and County Contract Compliance Office undertake a joint study to address several questions raised by the Commission's Denver forum speakers.<sup>95</sup> Some of the questions were (1) are all federal employment and contracting guidelines regarding opportunities for women and minorities being met, (2) are federally mandated outreach programs for both contracting and employment used appropriately and consistently, and (3) are reasonable and appropriate training and apprenticeship programs in place and are they

<sup>85</sup> OFCCP Interrogatory, pp. 1–2.

<sup>86</sup> U.S. Department of Labor, *Fiscal Year 2001 Annual Report*, p. 113.

<sup>87</sup> USCCR, *Programs Relating to Federally Assisted Transportation Projects*, p. 15.

<sup>88</sup> *Ibid.*

<sup>89</sup> *Ibid.*, p. 14.

<sup>90</sup> *Ibid.*, p. 13.

<sup>91</sup> *Ibid.*

<sup>92</sup> *Ibid.*, p. 15.

<sup>93</sup> *Ibid.*, p. 9.

<sup>94</sup> *Ibid.*, p. 15.

<sup>95</sup> *Ibid.*

servicing all members of the Denver metropolitan area?<sup>96</sup>

The Commission also discovered that lack of training for unskilled workers was widely cited as a major hurdle facing minorities and women seeking to participate in federally assisted projects.<sup>97</sup> As a result, the Commission recommended that the Secretary of Labor investigate existing training apprenticeship programs to determine whether they conform to federal affirmative action guidelines, ensure that training and apprenticeship programs are mandatory for federal and federally assisted construction contractors, and direct a national effort to develop and implement training and apprenticeship programs.<sup>98</sup>

Current OFCCP regulations require federal and federally assisted construction contractors to develop on-the-job training opportunities and/or participate in training programs that expressly include minorities and women.<sup>99</sup>

### Community Involvement

A concern expressed during the Commission's 1992 Denver forum was that OFCCP's contacts with community groups during compliance reviews have been inadequate.<sup>100</sup> These contacts are needed to gauge whether contractors are making good-faith efforts to recruit women and minorities and to identify contractors that are alleged discriminators.

## OFCCP'S RESPONSE TO THE RECOMMENDATIONS

### Planning

In 2002, OFCCP stated it does not submit annual reports directly to Congress, but continues to submit performance information to Congress in DOL's annual report.<sup>101</sup> For example, in DOL's fiscal year 2001 annual report, one of DOL's goals is to foster equal opportunity workplaces.<sup>102</sup> Pro-

gress in fair and equitable federal contractor workplaces is measured by whether the equal employment opportunity performance of federal contractors and subcontractors is improved among those that have had prior contact with DOL through evaluations, outreach, or technical assistance; and within industries where data indicate the likelihood of equal opportunity problems is greatest; and by whether federal contractors' and subcontractors' compensation for discrimination is reduced.<sup>103</sup>

To achieve these ends, during fiscal year 2001, OFCCP was to identify industries in which data indicated the likelihood of equal employment problems is greatest and establish baselines for the indicators. During fiscal year 2001, DOL was behind schedule in establishing baselines for all its measures of the effects of its enforcement activities.<sup>104</sup>

### Compliance Reviews

OFCCP is required to use neutral selection criteria to select contractors for compliance reviews.<sup>105</sup> A Compliance Evaluation Scheduling List is generated from OFCCP's database and sets the agenda for the majority of compliance evaluations OFCCP conducts.<sup>106</sup> Other types of OFCCP compliance evaluations are targeted using neutral factors such as the size of the contractor.<sup>107</sup>

According to OFCCP, it does monitor, at both the regional and national office levels, district office selection decisions to ensure that contractors are selected appropriately.<sup>108</sup> District offices must complete exceptions reports justifying any deviation from the ordering of contractors on the selection list the national office provides.<sup>109</sup> Monitoring to ensure vigorous enforcement of all OFCCP programs is performed at the regional level and through the Quality Assurance Program at OFCCP's national office.<sup>110</sup> OFCCP's regional and national offices also review the conciliation agreements the district office develops.<sup>111</sup> In addi-

<sup>96</sup> Ibid.

<sup>97</sup> Ibid., p. 14.

<sup>98</sup> Ibid.

<sup>99</sup> OFCCP Interrogatory, p. 6.

<sup>100</sup> USCCR, *Programs Relating to Federally Assisted Transportation Projects*, pp. 4, 10.

<sup>101</sup> OFCCP Interrogatory, p. 6; see DOL, *FY 2001 Annual Report*.

<sup>102</sup> DOL, *FY 2001 Annual Report*, p. 111.

<sup>103</sup> Ibid., p. 113.

<sup>104</sup> Ibid.

<sup>105</sup> OFCCP Interrogatory, p. 3.

<sup>106</sup> Ibid.

<sup>107</sup> Ibid.

<sup>108</sup> Ibid.

<sup>109</sup> Ibid.

<sup>110</sup> Ibid.

<sup>111</sup> Ibid.

tion, OFCCP's national office monitors the status of cases that have been referred to the Solicitor's Office for administrative enforcement.<sup>112</sup>

The localized affirmative action agreements, known as Hometown Plans, were voluntary tripartite affirmative action agreements between a local area's construction contractors, unions, and community representatives. They were originally developed because of OFCCP's belief that the localized activities of construction contractors needed a geographical approach.<sup>113</sup> According to OFCCP, these plans seemed successful in increasing minority and female participation in federally funded construction contracts, but county governments, which funded the Hometown Plans, stopped financing them.<sup>114</sup> It was also difficult to obtain agreement among the three parties involved in these plans, resulting in the number of approved plans declining steadily. When contractors and local groups were unable to come to an agreement, OFCCP used Imposed Plans for certain geographic areas.<sup>115</sup> Because of the difficulties encountered, OFCCP no longer uses the Hometown Plan approach to determine if a contractor is in compliance.<sup>116</sup>

OFCCP now applies uniform compliance standards to all covered construction contractors and subcontractors. This is preferable to the Hometown Plan approach because (1) compliance standards apply to all construction contracts and not just to contracts in a local area; (2) compliance standards apply directly to the contractors and subcontractors, rather than to the Hometown Plan; (3) once coverage is established for a particular construction contractor or subcontractor, all the employees are also covered, even if they do not perform work on a federally funded construction project; and (4) few Hometown Plans operated with the cooperation of all parties and results were difficult to monitor.<sup>117</sup>

## Coordination

According to OFCCP, the Department of Labor still has not updated its December 1979 memorandum of understanding with the Department of Transportation to reflect the interim agreement to exchange information. However, operating procedures are in effect whereby OFCCP regional and district offices work with the local Federal Highway Administration (FHWA) and state DOT officials to exchange information on major construction projects underway in their respective geographic areas.<sup>118</sup>

In 2002, OFCCP indicated that its regional and district offices work closely with their local FHWA and state DOT counterparts when scheduling highway construction contractors for compliance reviews.<sup>119</sup> While some OFCCP offices have program implementation plans and written agreements, others have periodic meetings with FHWA and state DOT officials to avoid duplication and to reduce the burden on federal contractors.<sup>120</sup> OFCCP offices are notified of the highway contracts DOT and state officials award. In addition, when pre-construction conferences on projects that involve federal funds are scheduled, DOT and state highway officials notify OFCCP regional and district offices.<sup>121</sup> During pre-construction conferences and joint seminars, OFCCP personnel provide compliance assistance training.<sup>122</sup>

In response to the Commission's 1993 recommendation that DOT and DOL develop operating procedures that would create coordinated civil rights enforcement activities and thus avoid confusion over responsibilities and duplicated efforts, especially for enforcement of Title VI, OFCCP indicated that it does not have any enforcement responsibility pertaining to Title VI.<sup>123</sup> Under its executive order program, OFCCP is authorized to conduct compliance evaluations of federal and federally assisted construction contractors to determine, among other things, whether those contractors are in compliance with OFCCP requirements.<sup>124</sup> OFCCP

<sup>112</sup> Ibid.

<sup>113</sup> Ibid., p. 4.

<sup>114</sup> Ibid.

<sup>115</sup> Ibid.

<sup>116</sup> Ibid.

<sup>117</sup> Ibid., pp. 4-5.

<sup>118</sup> Ibid., p. 5.

<sup>119</sup> Ibid., p. 6.

<sup>120</sup> Ibid.

<sup>121</sup> Ibid., pp. 6-7.

<sup>122</sup> Ibid., p. 7.

<sup>123</sup> Ibid., p. 5.

<sup>124</sup> Ibid.

is also authorized to investigate complaints of discrimination filed against federal or federally assisted construction contractors. If the complaint involves an individual claim of discrimination, OFCCP refers the matter to the U.S. Equal Employment Opportunity Commission (EEOC) for appropriate processing under Title VII of the Civil Rights Act of 1964, as amended. This agreement is based on a 1981 memorandum of understanding with EEOC, which was revised in April 1999.<sup>125</sup>

During the Commission's 2002 review, OFCCP indicated it has no record of participating in a joint study with FAA, Denver City, and the County Contract Compliance Office.<sup>126</sup> OFCCP stated these recommendations go beyond the enforcement requirements afforded by Executive Order 11,246 and its implementing regulations.<sup>127</sup> According to OFCCP, it does not have enforcement authority over federally mandated outreach programs and training apprenticeship programs serving the Denver

metropolitan area.<sup>128</sup> In addition, OFCCP program requirements do not cover all federal employment and contracting guidelines regarding opportunities for women and minorities.<sup>129</sup>

### **Community Involvement**

Today, OFCCP still does not solicit involvement from the community in selecting companies for compliance reviews.<sup>130</sup> However, before a scheduled compliance evaluation, OFCCP does contact the EEOC district office, the state and local Fair Employment Practices Agencies, the local Veterans Employment and Training Services, and if the federal contractor is located near an Indian reservation, the reservation's Tribal Employment Rights Council for complaint information on the federal contractor.<sup>131</sup> OFCCP could also contact the affected communities at this point.

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<sup>125</sup> Ibid.

<sup>126</sup> Ibid., p. 7.

<sup>127</sup> Ibid.

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<sup>128</sup> Ibid.

<sup>129</sup> Ibid.

<sup>130</sup> Ibid., p. 3.

<sup>131</sup> Ibid., p. 4.

## CHAPTER 4

# Department of Transportation

The Commission's Office of Civil Rights Evaluation previously reviewed the Department of Transportation (DOT) in a 1993 report that evaluated selected aspects of civil rights enforcement by DOT and the Department of Labor (DOL)<sup>1</sup> and in a 1996 report that reviewed how effective DOT's Office of the Secretary (OST) and most of its operating administrations (OAs) were in fulfilling their civil rights enforcement responsibilities within financial assistance programs. The OAs reviewed included the Federal Aviation Administration (FAA), the Federal Highway Administration (FHWA), the Federal Railroad Administration (FRA), the Federal Transit Administration (FTA), the National Highway Traffic Safety Administration (NHTSA), the Research and Special Program Administration (RSPA), and the U.S. Coast Guard (USCG).<sup>2</sup> There were 96 recommendations, eight in the 1993 report and 88 in the 1996 report.

The statutes for which DOT has external civil rights responsibilities include Section 504 of the Rehabilitation Act of 1973, as amended, Title II of the Americans with Disabilities Act (ADA) of 1990, the Age Discrimination Act of 1975, and Title VI of the Civil Rights Act of 1964. In addition, DOT has civil rights responsibilities arising from the executive order on environmental justice and the Disadvantaged Business Enterprise (DBE)

program.<sup>3</sup> The Commission's 1993 and 1996 reports focused on Title VI and the DBE program.<sup>4</sup> The Commission revisited OST and the OAs in the present study to determine whether there had been improvement and progress relative to recommendations previously made.

### **Department of Transportation Components Reviewed:**

- Office of the Secretary (OST)
- Federal Aviation Administration (FAA)
- Federal Highway Administration (FHWA)
- Federal Railroad Administration (FRA)
- Federal Transit Administration (FTA)
- National Highway Traffic Safety Administration (NHTSA)
- Research and Special Program Administration (RSPA)
- U.S. Coast Guard (USCG)

At the time of this evaluation, the Department of Transportation consists of the Office of the Secretary and 11 OAs. In addition to those studied in the Commission's 1996 report and the Maritime Administration, the Department now includes the

<sup>1</sup> U.S. Commission on Civil Rights, *Enforcement of Equal Opportunity Laws and Programs Relating to Federally Assisted Transportation Project*, January 1993 (hereafter cited as USCCR, *Enforcement of Equal Opportunity Laws and Programs*).

<sup>2</sup> U.S. Commission on Civil Rights, *Federal Title VI Enforcement to Ensure Nondiscrimination in Federally Assisted Programs*, June 1996 (hereafter cited as USCCR, *Federal Title VI Enforcement*).

<sup>3</sup> U.S. Department of Transportation, Office of the Secretary, "External Policy & Program Development Division," n.d., <<http://www.dot.gov/ost/dpcr/about/externalpolicy.html>>.

<sup>4</sup> The DBE program provides federal grants or contracts to small business concerns that are at least 51 percent owned by one or more socially and economically disadvantaged individuals, specifically women and people of color, and whose management and business operations are controlled by one or more of these same individuals. DOT has established policies and guidelines under DBE for entities that administer programs awarding federal funds. See USCCR, *Enforcement of Equal Opportunity Laws and Programs*, p. 3.

Bureau of Transportation Statistics, Federal Motor Carrier Safety Administration, and Saint Lawrence Seaway Development Corporation.<sup>5</sup> DOT regulations delegate the authority of the Secretary to the OAs to carry out and enforce Title VI programs, including conducting reviews and complaint investigations, under the general policy guidance of the Office of the Secretary Office of Civil Rights (DOCR).<sup>6</sup> As a consequence, DOCR has an important oversight role.

## OVERVIEW

The Commission's 1993 report found that the then Secretary of Transportation failed to monitor and assess aspects of civil rights enforcement. DOCR had not established procedures to ensure OAs were implementing effective DBE programs. Thus, civil rights enforcement was not a priority and not integral to DOT's primary mission planning. In 1996, the existing organizational structure in several OAs' offices of civil rights was not conducive to effective enforcement of civil rights. The director of the FRA Office of Civil Rights (FRA/OCR) did not report to the administrator of FRA. Equally important, several OAs acutely lacked funding and staffing, which affected their ability to enforce civil rights. The FHWA Office of Civil Rights' (FHWA/OCR's) increasing workload in other civil rights areas reduced staff resources available for Title VI compliance and enforcement. Most civil rights implementation plans (CRIPs) did not conform to Department of Justice (DOJ) guidelines. The offices of civil rights of NHTSA, FRA, and USCG did not have in place regulations, guidelines, policies, or procedures for Title VI. Findings on compliance reviews were not reassuring either. The FRA Office of Civil Rights' (FRA/OCR's) post-award reviews were not focused on the broad issues covered by Title VI.

Civil rights enforcement has shown improvement in 2002, but must be further strengthened. On a positive note, the priority of civil rights has gen-

erally advanced. One indication is that DOCR now plays an important role in DOT's DBE program. It sits on the DOT DBE committee that helps develop and issue policy guidance and interpretation of the law on DBE issues. Organizationally, there has been progress as well. NHTSA and FRA have followed the Commission's advice and the civil rights directors now report to the administrator of the agencies. At the same time, Congress did not approve funding to OST for consolidation of its external civil rights program. The Commission is concerned to find many OAs still badly handicapped by a lack of funding and staffing for civil rights enforcement. The RSPA Office of Civil Rights (RSPA/OCR) has two staff members who are responsible for eight functional program areas. On the other hand, DOCR has sufficient resources for civil rights enforcement. Four of the eight CRIPs now conform to DOJ guidelines, but three OAs still do not have them. As to compliance reviews, the Commission is heartened by NHTSA/OCR's progress. In the area of policy guidance, there has been improvement. DOCR has made appropriate changes to its regulations to conform to the *Cureton* decision<sup>7</sup> and FAA/OCR has prepared a draft revised FAA Order 5100.30 for review. However, FTA/OCR and NHTSA/OCR still need to develop and issue manuals for pre-award and post-award compliance reviews. Finally, there is clear evidence of coordination, collaboration, and community involvement.

<sup>5</sup> U.S. Department of Transportation, Office of the Secretary, "U.S. Department of Transportation," n.d., <<http://www.dot.gov/chart.html>>.

<sup>6</sup> 49 CFR Part 1.45(a)(10). See Department of Transportation's Interrogatory Response to the United States Commission on Civil Rights' Ten-Year Review of Civil Rights Enforcement, Office of the Secretary, Mar. 22, 2002, p. 1 (hereafter cited as DOT/OST, Interrogatory Response).

<sup>7</sup> *Cureton v. NCAA*, 198 F.3d 107 (3d Cir. 1999). In 1997, Trial Lawyers for Public Justice filed a class-action lawsuit against the National Collegiate Athletic Association (NCAA), alleging that the organization discriminated against black athletes because of its eligibility requirements. The lawsuit was filed on behalf of two black students who were barred from competing as freshmen at Division I colleges because they failed to meet eligibility requirements. Eligibility was based on a formula combining the student's GPA and SAT scores. *Cureton v. NCAA*, 198 F.3d 107 (3d Cir. 1999). The NCAA appealed and in May 2001, the U.S. Court of Appeals for the Third Circuit ruled in favor of the NCAA, overturning the district court decision that NCAA's freshman-eligibility standards discriminated against black athletes. Judge Buckwalter later rejected an attempt by lawyers for the plaintiffs to amend *Cureton* by adding a claim of intentional discrimination. The Third Circuit affirmed Judge Buckwalter's ruling. *Cureton v. NCAA*, 252 F.3d 67 (3d Cir. 2001). See Karla Haworth, "Lawsuit Says NCAA's Eligibility Standards are Racially Biased," *The Chronicle of Higher Education*, Jan. 17, 1997, p. A46. Welch Suggs, "NCAA Warns Members Not to Interpret Judge's Ruling on Standards Too Freely," *The Chronicle of Higher Education*, Apr. 2, 1999, p. A48.

## PREVIOUS FINDINGS AND RECOMMENDATIONS TO THE DEPARTMENT OF TRANSPORTATION

### Priority of Civil Rights

The 1993 report found that the then Secretary of Transportation, despite having oversight responsibility, had failed to monitor and assess aspects of civil rights enforcement such as budget and compliance reviews. As a direct consequence, civil rights enforcement at the departmental level and within at least one OA, FAA, was grossly underfunded. Furthermore, DOCR had not established procedures to ensure OAs implement effective DBE programs. Clearly, civil rights enforcement was not a top priority and not an integral part of DOT's primary mission planning.<sup>8</sup>

In addition to responsible oversight, organizational structures of civil rights offices and their directors' reporting line also have bearing on the priority of civil rights. The 1996 study found several deficiencies in some organizational structures. The structure of OST's external civil rights program did not provide adequate control over Title VI enforcement. The Commission recommended that OST continue to request funding for consolidation of the external civil rights office. The consolidated office, it said, should consist of a headquarters office responsible for coordination and oversight of external civil rights activities with regional offices charged with day-to-day civil rights enforcement. Additionally, the headquarters office should have a policy development unit, program planning and data analysis office, and an oversight office. Regional offices should have separate offices for external civil rights compliance and enforcement activities.<sup>9</sup>

The Commission noted that FAA/OCR did not have a separate unit devoted to external civil rights enforcement activities, including Title VI. As a result, resources for Title VI enforcement had declined as other civil rights enforcement activities, such as DBE, took precedence. Furthermore, regional staff that carried out most of the day-to-day civil rights enforcement activities did not report to the director of FAA/OCR. Finally, regional staff members were not specialized, and thus none was able to develop expertise and focus sufficient attention to Title VI matters. As a result, the Com-

mission recommended that FAA restructure so that all staff engaged in civil rights enforcement activities report to the director of FAA/OCR. Furthermore, FAA/OCR should be separated into four units: internal civil rights enforcement, external civil rights enforcement, the disadvantaged business program, and the historically black colleges program.<sup>10</sup>

In 1996, the Commission recommended that FHWA/OCR restructure to improve civil rights enforcement. The office, the Commission said, should be separated into four distinct units: internal civil rights enforcement, external civil rights enforcement, DBE, and historically black colleges program, each with its own policy and operational components.<sup>11</sup> To ensure priority attention to civil rights enforcement, the director of the Office of Civil Rights should report to the FHWA administrator. Regional and field division civil rights staff should report to the director and specialize in either internal or external civil rights functions, resources permitting.<sup>12</sup>

FTA/OCR did not have a separate unit with separate supervisory staff responsible for external civil rights enforcement. Furthermore, none of the civil rights staff specialized in civil rights enforcement. The Commission recommended that FTA/OCR reorganize into three areas: external civil rights, internal civil rights, and other civil rights. All civil rights staff should specialize in specific civil rights functions.<sup>13</sup>

Further, directors of the offices of civil rights at FRA, NHTSA, and USCG should report to their respective agency administrator.<sup>14</sup>

### Resources—Funding and Staffing

Neither DOCR nor OAs had sufficient resources to fully meet their civil rights enforcement responsibilities. During the 1993 and 1996 reviews, funding and staffing for civil rights implementation, enforcement, and compliance in DOT were inadequate. The 1993 report recommended that DOCR hire additional compliance officers to oversee enforcement activities; still, in 1996, only

<sup>8</sup> USCCR, *Enforcement of Equal Opportunity Laws and Programs*, p. 13.

<sup>9</sup> USCCR, *Federal Title VI Enforcement*, pp. 517–18.

<sup>10</sup> *Ibid.*, p. 536.

<sup>11</sup> *Ibid.*, p. 555.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*, p. 580.

<sup>14</sup> *Ibid.*, pp. 564, 590, 607.

one person was assigned to external civil rights compliance and enforcement activities.<sup>15</sup> Among OAs, FAA/OCR had only one person assigned to the external civil rights program; FHWA/OCR's increasing workload in other civil rights areas reduced staff resources available for Title VI enforcement; FRA/OCR's workload increased but its resources remained unchanged; FTA/OCR's workload also increased but staffing was reduced; NHTSA/OCR's resources had been reduced to pre-1970 levels; RSPA/OCR drew heavily on staff untrained in civil rights enforcement to ensure compliance with Title VI; and USCG/OCR had just two staff members assigned to Title VI enforcement.<sup>16</sup>

As a result, the Commission recommended that DOT, FAA, FRA, FTA, and USCG develop management systems to track expenditures and workload separately for each civil rights statute and for different types of civil rights activities. Moreover, they should retrieve and use the data to conduct workload analyses. In addition, the findings should be used to document the existence of a workload-resource gap, support the need for additional resources, and prepare budget requests.<sup>17</sup> FHWA/OCR, the Commission said, should use its existing information management system for the same purposes.<sup>18</sup> Because the office already had the ability to track expenditures separately for the statutes it enforced, but the ability did not extend to regional and field units, the Commission said, tracking must be expanded.<sup>19</sup> The Commission also recommended that NHTSA/OCR and RSPA assign additional staff to program and policy development and an adequate number to operational responsibilities.<sup>20</sup>

## Planning

The Commission found that RSPA did not prepare a CRIP, while DOCR and the other six OAs had CRIPs that were not in conformance with De-

partment of Justice guidelines.<sup>21</sup> Thus, RSPA/OCR must prepare a CRIP while DOCR and the other OAs should revise their CRIPs to fully conform to Department of Justice guidelines. Finally, the Commission said that all should use the CRIP as a management tool. Some of the 1996 findings on DOCR's CRIP are telling. DOCR's CRIP, submitted for the first time in several years, did not provide sufficient information for DOJ or the public to gain an understanding of DOT's civil rights enforcement program. Its goals and objectives were vague, and DOCR did not use it as a management tool.<sup>22</sup>

## Policy Guidance

Different situations prevailed at OST and OAs in regard to policy guidance, according to the Commission's 1996 report. FHWA had an inclusive set of regulations, guidelines, policies, and procedures that formed a sound basis for its Title VI program.<sup>23</sup> OST, on the other hand, had adequate but outdated Title VI regulations for its compliance and enforcement program. And except for issuing a few general civil rights directives, DOCR had failed to fulfill its policy development role. Thus, the Commission recommended that the office update Title VI regulations to reflect recent changes in legislation, and that civil rights standards and policies be developed and issued. Furthermore, DOCR should have a unit focused solely on policy development and issuance.<sup>24</sup>

FAA Order 5100.30 detailed the responsibilities of FAA components and recipients and laid out the procedures for conducting post-award reviews. However, the Commission found that it had language limiting FAA's jurisdiction under Title VI to airport operators that was inconsistent with Title VI as clarified by the Civil Rights Restoration Act of 1987. Moreover, the order did not clearly indicate the extent of FAA's jurisdiction over employment discrimination under Title VI. Thus, the Commission recommended that the order be revised.<sup>25</sup> And, since FAA had not issued the Title

<sup>15</sup> USCCR, *Enforcement of Equal Opportunity Laws and Programs*, p. 14; USCCR, *Federal Title VI Enforcement*, p. 518.

<sup>16</sup> USCCR, *Federal Title VI Enforcement*, pp. 537, 555, 565–66, 580–81, 584, 590, 598, 602.

<sup>17</sup> *Ibid.*, pp. 518, 537, 580–81, 564–65, 607–08.

<sup>18</sup> *Ibid.*, p. 555.

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*, pp. 584, 590, 598.

<sup>21</sup> *Ibid.*, pp. 609–10.

<sup>22</sup> *Ibid.*, p. 520. For the Commission's comments on FAA, FHWA, FRA, FTA, NHTSA, RSPA, and USCG, see *ibid.*, pp. 539–40, 557, 567, 582–83, 592, 600, 609–10.

<sup>23</sup> USCCR, *Federal Title VI Enforcement*, pp. 555–56.

<sup>24</sup> *Ibid.*, pp. 518–19.

<sup>25</sup> *Ibid.*, p. 537.

VI guidelines DOJ required, it needed to develop detailed guidelines for each of its federally assisted programs.<sup>26</sup>

FTA/OCR and USCG/OCR had Title VI guidelines, but neither had issued policy statements.<sup>27</sup> The Commission therefore recommended that they regularly issue Title VI policy statements to expand, update, and clarify Title VI policies and guidelines. On the other hand, NHTSA/OCR, RSPA/OCR, and FRA did not have Title VI regulations, guidelines, policies, or procedures for conducting civil rights enforcement activities.<sup>28</sup> Thus, the Commission recommended that they develop these items. Furthermore, RSPA should assign an additional person to RSPA/OCR to develop regulations, guidelines, policies, and procedures for Title VI.<sup>29</sup>

At the same time, the Commission said FTA/OCR and NHTSA/OCR should develop and issue a procedures manual for handling complaint investigations and conducting pre-award and post-award compliance reviews.<sup>30</sup>

### Technical Assistance

FHWA/OCR had a good technical assistance program that could serve as a model.<sup>31</sup> Both DOCR and FTA/OCR, however, provided technical assistance only on request.<sup>32</sup> As to FAA/OCR and USCG/OCR, technical assistance was generally provided during infrequent on-site compliance reviews. FRA/OCR provided little technical assistance, while RSPA/OCR's technical assistance was limited to program personnel helping applicants and recipients submit Title VI assurances.<sup>33</sup> Finally, NHTSA/OCR did not provide any technical assistance.<sup>34</sup>

Thus, the Commission recommended that technical assistance be provided regularly, on request, and when circumstances warrant it. In addition, FHWA/OCR's technical assistance program could

be further strengthened through use of an information system to track and plan technical assistance activities.<sup>35</sup> DOCR needed to regularly provide technical assistance during oversight and monitoring reviews of OAs' Title VI programs; FTA/OCR should incorporate technical assistance during pre-award and post-award compliance reviews; FAA/OCR must expand its technical assistance program; and FRA/OCR should adopt, with appropriate modification, FHWA's model.<sup>36</sup> Finally, NHTSA/OCR must implement an effective monitoring system that included technical assistance and training.<sup>37</sup>

### Education and Outreach

FTA, FRA, and NHTSA did not perform any education and outreach activities.<sup>38</sup> DOCR, FAA/OCR, USCG/OCR offered these activities on a limited basis.<sup>39</sup> RSPA/OCR delegated the responsibility to RSPA's program offices.<sup>40</sup>

Accordingly, the Commission recommended that FTA, FRA, and NHTSA develop and implement thorough education and outreach programs on Title VI.<sup>41</sup> This would help ensure that recipients and program participants and beneficiaries understand their rights and responsibilities under Title VI. On the other hand, DOCR, FAA/OCR, and USCG/OCR needed to implement expanded and active programs, and RSPA/OCR needed to assume full responsibility for education and outreach.<sup>42</sup>

### Compliance Reviews

A central theme in the Commission's 1996 report was ensuring compliance. The Commission's previous examination of OST revealed that state recipients carried out many Title VI compliance functions, but DOCR did not have a significant role in monitoring the states' Title VI programs. The Commission advised DOCR to take a more

<sup>26</sup> *Ibid.*, p. 538.

<sup>27</sup> *Ibid.*, pp. 581, 608.

<sup>28</sup> *Ibid.*, pp. 590–91, 565.

<sup>29</sup> *Ibid.*, p. 590.

<sup>30</sup> *Ibid.*, pp. 581, 590–91.

<sup>31</sup> *Ibid.*, p. 556.

<sup>32</sup> *Ibid.*, pp. 519, 582.

<sup>33</sup> *Ibid.*, pp. 566, 599.

<sup>34</sup> *Ibid.*, pp. 587, 591.

<sup>35</sup> *Ibid.*, p. 556.

<sup>36</sup> *Ibid.*, pp. 519, 582, 539, 566.

<sup>37</sup> *Ibid.*, pp. 587, 591.

<sup>38</sup> *Ibid.*, pp. 581–82, 566, 591.

<sup>39</sup> *Ibid.*, pp. 519, 538, 608–09.

<sup>40</sup> *Ibid.*, p. 599.

<sup>41</sup> *Ibid.*, pp. 581–82, 566, 591.

<sup>42</sup> *Ibid.*, pp. 519, 538, 599.

active role in monitoring the Title VI activities of DOT's state recipients.<sup>43</sup> Although DOCR had chief responsibility for overseeing OAs, it had not overseen their Title VI programs or coordinated its own Title VI program with those of the OAs. Thus, DOCR also should actively carry out its coordination and oversight role. In addition, DOCR should require OAs to submit annual Title VI self-assessments for review and evaluation. Finally, regular on-site monitoring and evaluation of the OAs was necessary.<sup>44</sup>

The Commission found that while FAA had a detailed memorandum on pre-award procedures, FAA/OCR conducted very few pre-award reviews. Thus, the Commission recommended that regional civil rights staff conduct in-depth pre-award reviews of all applicants that received major amounts of FAA funding and that FAA/OCR monitor the quality of the reviews. Equally disconcerting, FAA/OCR did not conduct post-award desk-audit reviews.<sup>45</sup> As a result the Commission recommended that the office conduct post-award desk-audit reviews and require recipients to submit annual Title VI self-assessments. FAA/OCR also had not conducted any on-site compliance reviews in recent years. Thus, it should develop procedures for selecting recipients for review, set a target number of reviews to be conducted by the regional offices annually, monitor the quality of the reviews, and provide technical assistance to regional staff where necessary.<sup>46</sup> In regard to state recipients, the Commission found that FAA/OCR evaluated just one state in FAA's block grant program. It also did not require state recipients to submit Title VI self-assessments for review. Consequently, FAA/OCR should develop its Title VI guidelines using FHWA as a model, require states to submit annual self-assessments for review, and conduct periodic on-site evaluation reviews of states' Title VI compliance programs.<sup>47</sup>

Limited resources clearly affected FHWA's ability to fulfill its compliance responsibilities. The Commission found that FHWA's regional offices did not conduct as many compliance reviews as

were needed. FHWA should commit additional resources to the regional offices to increase the number of on-site compliance reviews.<sup>48</sup> At the same time, the Commission was somewhat heartened to learn that despite legislated formulas for allocation of state highway aid, FHWA was still able to impose administrative sanctions on recipients, such as fund deferral and suspension, that provided a means to compel compliance.<sup>49</sup> However, limited staff and transformation of federal assistance into block grant programs prevented full use of sanctions. Thus, FHWA/OCR should request additional resources to enhance the use of sanctions and develop ways of using them in block grant programs. Furthermore, the Commission directed FHWA to inform Congress and DOJ of the complexities of Title VI enforcement in block grants though it did not specify a timeframe.<sup>50</sup>

FRA/OCR conducted pre-award reviews when new applicants applied for funding.<sup>51</sup> Unfortunately, the Commission found that its post-award reviews were not focused on the broader issues covered by Title VI, but limited to Section 905 recipients and the fulfillment of their equal employment and affirmative action responsibilities. As a result, FRA/OCR must broaden the focus of on-site compliance reviews and develop a procedures manual for pre-award and post-award compliance reviews and complaint investigations.<sup>52</sup> Furthermore, since austere budgets seriously handicapped FRA/OCR's on-site reviews of state recipients, FRA must provide the office with adequate resources for periodic on-site compliance reviews of state recipients.<sup>53</sup>

FTA's regional staff conducted pre-award reviews of all FTA grantees and also attempted to carry out post-award reviews of each recipient once every three years.<sup>54</sup> However, most of the

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<sup>43</sup> *Ibid.*, p. 520.

<sup>44</sup> *Ibid.*, pp. 519–20.

<sup>45</sup> *Ibid.*, p. 538.

<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.*, p. 539.

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<sup>48</sup> *Ibid.*, pp. 555–56.

<sup>49</sup> FHWA had no direct role in allocating funds for its recipients, all state transportation agencies. Funds were allocated based on a legislated formula and state transportation agencies had legislated contracting authority to distribute funds for their programs. See USCCR, *Federal Title VI Enforcement*, pp. 543, 548.

<sup>50</sup> USCCR, *Federal Title VI Enforcement*, p. 556.

<sup>51</sup> *Ibid.*, p. 560.

<sup>52</sup> *Ibid.*, p. 565.

<sup>53</sup> *Ibid.*, p. 566.

<sup>54</sup> *Ibid.*, p. 573.

post-award reviews were desk audits. At the same time, FTA was planning to increase the number of on-site reviews conducted through use of contractors. As a result, the Commission recommended that outside contractors for on-site reviews be selected carefully, contractor-prepared manuals be examined closely, and contractors' performance of on-site compliance reviews be monitored carefully.<sup>55</sup> FTA delegated considerable responsibilities to state recipients to ensure Title VI compliance of its subrecipients. However, FTA did not oversee states' Title VI compliance programs. As a result, FTA/OCR needed to allocate resources to oversee states' Title VI compliance programs, review documents submitted by their liaison officers, and conduct on-site reviews of their programs.<sup>56</sup>

The Commission found that NHTSA/OCR did not have an operational program on Title VI enforcement and did not conduct pre-award or post-award reviews, or process complaints. Further, it did not require recipients to report on their Title VI compliance. NHTSA/OCR needed to implement an operational Title VI enforcement program. It should conduct pre-award and post-award desk-audit reviews and select recipients for on-site compliance reviews.<sup>57</sup> Moreover, NHTSA's recipients, which were all state agencies, did not understand their Title VI compliance responsibilities and NHTSA/OCR did not monitor and oversee their Title VI compliance programs. As a result, the Commission said NHTSA/OCR should implement an effective system for monitoring states' Title VI responsibilities.<sup>58</sup>

RSPA/OCR staff conducted cursory pre-award reviews of funding applicants. Thus, the Commission recommended that the office develop pre-award review procedures and require applicants to submit sufficient data for desk audits of their programs.<sup>59</sup> The Commission further recommended that RSPA/OCR supplement the work of RSPA program personnel by instituting its own post-award reviews, to be conducted for all recipients. In addition, RSPA should conduct on-site reviews of recipients. Finally, state and university recipi-

ents of continuing grants needed to be reviewed periodically, while others needed to be selected for on-site review when post-award desk audits revealed potential problems.<sup>60</sup>

Despite the requirements stated in USCG guidelines, the Commission found that USCG/OCR only conducted cursory pre-award reviews of all applicants and did not conduct periodic post-award reviews. Thus, it recommended that in-depth pre-award reviews be conducted on all applicants and that all recipients undergo annual post-award desk audits. In addition, periodic on-site reviews should be conducted to ensure accuracy of the data the recipients submitted, and on selected recipients when a desk audit suggested possible problems.<sup>61</sup>

### Staff Training

Comprehensive training for civil rights staff is necessary, including that which addresses the applicability of Title VI to DOT's federally assisted programs. Periodic update training is equally important to deepen and refresh understanding of Title VI and address emerging Title VI issues. Unfortunately, the Commission's study found that FRA/OCR, USCG/OCR, and NHTSA/OCR did not provide staff training on Title VI nor had not done so in recent years.<sup>62</sup> Finally, FAA/OCR and RSPA/OCR offered little or inadequate training to civil rights staff.<sup>63</sup>

Thus, the Commission recommended that FRA/OCR, USCG/OCR, and NHTSA/OCR develop and implement a staff-training program to provide regular as well as refresher training on Title VI and other civil rights statutes to civil rights staff engaged in Title VI activities and recipients with significant Title VI responsibilities.<sup>64</sup> NHTSA/OCR, in particular, should seek experienced staff. FAA/OCR and RSPA/OCR must provide appropriate staff training on a regular basis.<sup>65</sup> Further, FAA/OCR should collaborate with DOCR in developing formal staff training modules.<sup>66</sup>

<sup>55</sup> Ibid., p. 581.

<sup>56</sup> Ibid., p. 582.

<sup>57</sup> Ibid., p. 591.

<sup>58</sup> Ibid.

<sup>59</sup> Ibid., p. 598.

<sup>60</sup> Ibid., pp. 598–99.

<sup>61</sup> Ibid., p. 608.

<sup>62</sup> Ibid., pp. 566, 591.

<sup>63</sup> Ibid., pp. 539, 599.

<sup>64</sup> Ibid., pp. 566, 591.

<sup>65</sup> Ibid., pp. 539, 599.

<sup>66</sup> Ibid., p. 539.

## Oversight and Quality Assurance

Although DOCR incorporated data collection, reporting, and analysis in its internal order, DOT 1000.12, the Commission found that it did not ensure OAs collect or analyze the data, nor did it use data in evaluating the OAs' Title VI programs. DOCR, therefore, must ensure OAs incorporate data-reporting and -analysis requirements into their Title VI programs. Further, DOCR should periodically assess OAs' data collection systems. In addition, DOCR should require OAs to include in their annual Title VI self-assessments analyses of the data provided by recipients on program participants. Moreover, DOCR needed to review the analyses.<sup>67</sup>

At the same time, FAA/OCR, NHTSA/OCR, and RSPA/OCR did not have a system for collecting and analyzing data on program participants submitted by recipients.<sup>68</sup> NHTSA and RSPA/OCR did not even have reporting requirements for their recipients, while FRA/OCR did not have an adequate data collection and analysis system.<sup>69</sup>

Thus, the Commission directed FAA/OCR, NHTSA/OCR, and RSPA/OCR to each implement data collection systems to gather sufficient information from recipients with which to conduct post-award desk-audit reviews and general analyses to ascertain if all individuals have an equal opportunity to participate.<sup>70</sup> Reporting requirements should be included in Title VI guidelines and, in the case of RSPA/OCR, data requirements for state recipients and universities receiving research grants should be different. FRA/OCR needed to require recipients to collect data on program participants, program applicants, and eligible populations by demographic characteristics. Furthermore, recipients receiving funds for large projects should provide demographic analyses on the affected communities to be included as a standard part of the Title VI enforcement process.<sup>71</sup>

## Coordination

The Commission 1993 report found that the failure of DOT, the Department of Labor (DOL),

and the city and county of Denver in 1993 to formulate a memorandum of understanding (MOU) to coordinate and share information when conducting compliance reviews hampered civil rights enforcement efforts.<sup>72</sup> As a result, the Commission recommended that DOT and DOL update a December 1979 memorandum of understanding, initiate and monitor coordinated enforcement activities, and determine if community groups and organizations represented at the Commission's 1991 forum continued to have difficulty obtaining contracts or employment. Further, DOT and DOL should establish a joint-review and information-sharing agreement between DOL's Office of Federal Contract Compliance Programs' (OFCCP) regional office and the city and county of Denver, and encourage such coordinated actions elsewhere. Finally, OST must take immediate action to assess the impact the Intermodal Surface Transportation Act (ISTEA) would have on the civil rights programs of the OAs.<sup>73</sup>

## DEPARTMENT OF TRANSPORTATION'S RESPONSE TO THE RECOMMENDATIONS

### Priority of Civil Rights

DOCR has made significant progress in its oversight of DOT's DBE program. It currently has an active role on the DOT DBE committee that helps develop and issue policy guidance, guidelines, and interpretation of the law on DBE matters.<sup>74</sup> It has developed and maintains DOT's database, XTRAK, to track the status and disposition of DBE and Title VI complaints and ascertain trends and patterns. Further, DOT's DBE program

<sup>72</sup> USCCR, *Enforcement of Equal Opportunity Laws and Programs*, p. 13.

<sup>73</sup> *Ibid.*, p. 14. The Intermodal Surface Transportation Act (ISTEA) of 1991 includes the DBE program, which promotes the "goal that not less than 10 percent of authorized highway and transit funds be expended with DBEs." This act was reauthorized in 1998 as the Transportation Equity Act for the 21st Century (TEA-21). TEA-21 continues the DBE program. See U.S. Department of Transportation, Office of Small and Disadvantaged Business Utilization, "Transportation Link," *ISTEA Updates*, 1998, <<http://osdbuweb.dot.gov/translink/jan98/isteaupd.html>>; U.S. Department of Transportation, Federal Highway Administration, "TEA-21—Transportation Equity Act for the 21st Century: Moving Americans into the 21st Century," *A Summary—Rebuilding America's Infrastructure*, 1998, <<http://www.fhwa.dot.gov/tea21/suminfra.htm#dbe>>.

<sup>74</sup> DOT/OST, Interrogatory Response, p. 9.

<sup>67</sup> *Ibid.*, p. 520.

<sup>68</sup> *Ibid.*, pp. 538, 591, 600.

<sup>69</sup> *Ibid.*, p. 566.

<sup>70</sup> *Ibid.*, pp. 538, 591, 600.

<sup>71</sup> *Ibid.*, pp. 566–67.

has undergone extensive review and modification throughout DOT following the Supreme Court's *Adarand*<sup>75</sup> decision. In 2001, the Court upheld DOT's program.<sup>76</sup>

Only some of the 1996 recommendations on restructuring the offices of civil rights to improve priority given to civil rights enforcement have been implemented. The directors of FRA/OCR, NHTSA/OCR, and USCG/OCR now report directly to their respective administrators. FAA/OCR's regional offices report to the FAA/OCRE director.<sup>77</sup> On the other hand, OST has not consolidated its external civil rights program because Congress did not approve funding. FHWA/OCR's current structure is not consistent with the Commission's 1996 recommendation.<sup>78</sup>

<sup>75</sup> *Adarand v. Peña*, 515 U.S. 200 (1995). The Supreme Court ruled that federal affirmative action programs using race as a basis for selection must be subjected to strict judicial scrutiny and that such programs must serve a compelling governmental interest and be narrowly tailored to serve that interest. In *Adarand v. Mineta*, 534 U.S. 103 (2001), the Supreme Court announced that it would review an appeals court decision rejecting the plaintiff's equal protection challenge to a federal program. On November 27, 2001, the justices unanimously decided not to hear the case because of procedural and technical flaws. See Lyle Denniston, "High Court Declines to Rule on Race-based Government Programs," *The Boston Globe*, Nov. 28, 2001, p. A2.

<sup>76</sup> DOT/OST, Interrogatory Response, pp. 2–3.

<sup>77</sup> Department of Transportation's Interrogatory Response to the United States Commission on Civil Rights' Ten-Year Review of Civil Rights Enforcement, Federal Railroad Administration, Mar. 22, 2002, p. 2 (hereafter cited as DOT/FRA, Interrogatory Response); Department of Transportation's Interrogatory Response to the United States Commission on Civil Rights' Ten-Year Review of Civil Rights Enforcement, National Highway Traffic Administration, Mar. 22, 2002, pp. 1–2 (hereafter cited as DOT/NHTSA, Interrogatory Response); Department of Transportation's Interrogatory Response to the United States Commission on Civil Rights' Ten-Year Review of Civil Rights Enforcement, Research and Special Programs Administration, Apr. 12, 2002, p. 2 (hereafter cited as DOT/RSPA, Interrogatory Response); Department of Transportation's Interrogatory Response to the United States Commission on Civil Rights' Ten-Year Review of Civil Rights Enforcement, Federal Aviation Administration, Mar. 22, 2002, p. 2 (hereafter cited as DOT/FAA, Interrogatory Response).

<sup>78</sup> Department of Transportation's Interrogatory Response to the United States Commission on Civil Rights' Ten-Year Review of Civil Rights Enforcement, Federal Highway Administration, Apr. 12, 2002, pp. 1–2 (hereafter cited as DOT/FHWA, Interrogatory Response).

## Resources—Funding and Staffing

Funding and staffing for civil rights enforcement remain a serious problem for a majority of OAs. FAA/OCR's headquarters two-member external program was assigned an additional position in 2001, but it remains unfilled due to budget restraints.<sup>79</sup> The headquarters external program is now operating with just two staff members; although the entire external program has 11 members, nine of whom are assigned to regional offices.<sup>80</sup> Past studies on FHWA/OCR's resource needs, conducted internally and by DOCR and DOJ, have documented staffing inadequacy.<sup>81</sup> Despite this, FHWA has failed to sufficiently increase the number of civil rights staff. The gravity of the situation is seen in the use of project teams, whose members are drawn from different FHWA divisions, to fulfill some of the responsibilities of FHWA/OCR.<sup>82</sup> FRA/OCR remains woefully lacking in resources. Its staff of only three members has responsibility for all equal employment programs, as well as the minority-owned and women-owned business enterprise programs, and the diversity program.<sup>83</sup> RSPA/OCR's two staff members have responsibility for eight functional program areas,<sup>84</sup> and repeated requests for additional resources have been unsuccessful.<sup>85</sup> The office's

<sup>79</sup> DOT/FAA, Interrogatory Response, p. 2.

<sup>80</sup> Kathleen Connon, national external program manager, Office of Civil Rights, DOT/FAA; Wilbur Barham, external program manager, Office of Civil Rights, DOT/FAA, telephone interview, Apr. 4, 2002. Marc Brenman, senior policy advisor, DOT/OST, e-mail to Sock-Foon MacDougall, social scientist, USCCR, July 11, 2002.

<sup>81</sup> DOT/FHWA Interrogatory Response, p. 3.

<sup>82</sup> Ed Morris, Jr., director, Office of Civil Rights, DOT/FHWA, telephone interview, Apr. 24, 2002.

<sup>83</sup> Carl Ruiz, director, Office of Civil Rights, DOT/FRA, letter to Debra A. Carr, deputy general counsel, USCCR, Mar. 29, 2002.

<sup>84</sup> DOT/RSPA, Interrogatory Response, p. 2. These included the EEO program and Title VI for RSPA recipients of federal financial assistance (including RSPA Alternative Dispute Resolution Program, Diversity Program, Disability Program, Random and Pre-Employment Drug Testing Program, Graduate Internship Program, and RSPA's Educational Initiatives Program). See RSPA/OCR's "introduction" to DOT/RSPA, Interrogatory Response. It also coordinates and oversees all civil rights enforcement in RSPA's Hazardous Materials and Pipeline Safety Offices as well as the Volpe Center and the TSI training center. See DOT/RSPA, Interrogatory Response, p. 2.

<sup>85</sup> DOT/RSPA, Interrogatory Response, pp. 1–2. RSPA/OCR had access to a part-time contractor and may call upon the

recent budget requests have been premised on a limited Title VI program.<sup>86</sup> USCG/OCR claims that it has sufficient resources even though it has just one staff dedicated to civil rights enforcement.<sup>87</sup> Finally, FTA/OCR simply states guardedly that the resource needs of the office are duly considered when resource allocations are made.<sup>88</sup>

On the other hand, DOCR officials maintain the office has been allocated sufficient funding and staffing for civil rights enforcement. DOCR's budgets for fiscal years 1995 through 2003 showed a generally upward trend. Budgets for fiscal year 2002 (\$8.5 million) and 2003 (\$9.2 million) are higher than budgets for previous fiscal years.<sup>89</sup> NHTSA/OCR officials claim sufficient funding and resources have been allocated for civil rights enforcement in the current fiscal year.<sup>90</sup> An examination of its budget over a period of years finds that the office's budget for fiscal year 2002 is \$637,463.<sup>91</sup> However, further analysis of the budget establishes that resources for these offices have not kept up with inflation.

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services of attorneys from the RSPA/Chief Counsel's Office, as well as DOCR. It should be noted that after the September 11 attacks, RSPA staff, including the director of RSPA/OCR, had been called away to work on high-priority issues relating to, for example, national pipeline security. *See* DOT/RSPA, Interrogatory Response, p. 3.

<sup>86</sup> *See* DOT/RSPA, Interrogatory Response, p. 4.

<sup>87</sup> Walter Somerville, assistant commandant, Office of Civil Rights, DOT/USCG; Yvonne Deaver, chief, civil rights resource management staff, Office of Civil Rights, DOT/USCG; Michael Freilich, compliance manager, external civil rights compliance and outreach programs, Office of Civil Rights, DOT/USCG; Tina Calvert, director, external civil rights compliance and outreach programs, Office of Civil Rights, DOT/USCG; Matt Glomb, deputy chief, Office of General Law, DOT/USCG, telephone interview, Apr. 22, 2002 (hereafter cited as Somerville et al. interview).

<sup>88</sup> Department of Transportation's Interrogatory Response to the United States Commission on Civil Rights' Ten-Year Review of Civil Rights Enforcement, Federal Transportation Administration, Apr. 12, 2002), p. 1 (hereafter cited as DOT/FTA, Interrogatory Response).

<sup>89</sup> DOT/OST, Interrogatory Response, pp. 1-2.

<sup>90</sup> DOT/NHTSA, Interrogatory Response, p. 1.

<sup>91</sup> George Quick, director of civil rights, DOT/NHTSA, letter to Sock-Foon MacDougall, social scientist, USCCR, Apr. 26, 2002 (hereafter cited as Quick letter).

## Planning

A current review of the status of civil rights implementation plans (CRIPs) finds four CRIPs conforming to Department of Justice guidelines and one still under internal review. Three OAs do not have a CRIP. Specifically, DOCR, FAA/OCR, FHWA/OCR, and NHTSA/OCR have developed CRIPs that conform to the Department of Justice guidelines and use them as a management tool.<sup>92</sup> Additionally, FHWA/OCR has a set of civil rights initiatives and the resource centers' and division offices' staff members have prepared civil rights work plans.<sup>93</sup> However, the FHWA administrative manual, which addresses FHWA/OCR's civil rights compliance and enforcement responsibilities, does not address the civil rights responsibilities of the state-level division offices, which have compliance and enforcement as one of their primary functions.<sup>94</sup> RSPA/OCR has an implementation plan that was developed in 1996 in response to an EEOC audit, but it is still under consideration in RSPA. The office provides input to DOT's annual report to DOJ, which, in effect, serves as RSPA/OCR's implementation plan.<sup>95</sup>

FRA/OCR does not have a CRIP, but intends to develop one that will incorporate the office's current action plan within the next year.<sup>96</sup> FTA/OCR also does not have a CRIP, but it annually produces several documents that identify specific civil rights activities to be undertaken.<sup>97</sup> At the same time, FTA has developed a strategic plan with performance goals, performance measures, and an assessment of accomplishments to carry out civil rights activities.<sup>98</sup> Each civil rights program is included in the plan, and accomplishments are reported quarterly. In addition, FTA's ADA and Title VI/environmental justice program areas are

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<sup>92</sup> DOT/OST, Interrogatory Response, p. 5; DOT/FAA Interrogatory Response, pp. 4-5; DOT/FHWA, Interrogatory Response, p. 7; DOT/NHTSA Interrogatory Response, p. 2.

<sup>93</sup> DOT/FHWA, Interrogatory Response, p. 7.

<sup>94</sup> *Ibid.*, p. 5.

<sup>95</sup> DOT/RSPA, Interrogatory Response, p. 4.

<sup>96</sup> Carl Ruiz, director, Office of Civil Rights, DOT/FRA, and Rhonda Dews, telephone interview, Apr. 26, 2002 (hereafter cited as Ruiz and Dews interview).

<sup>97</sup> DOT/FTA, Interrogatory Response, 7.

<sup>98</sup> *Ibid.*, p. 9.

included in DOT's strategic plan.<sup>99</sup> The FTA strategic plan is developed in consultation with community and advocacy groups and stakeholders, such as the NAACP and the Environmental Defense Fund.<sup>100</sup> USCG/OCR no longer has a CRIP, but provides input for inclusion in DOJ's CRIP.<sup>101</sup> USCG has a business plan that addresses the agency's program activities, including the Title VI program. USCG/OCR plans to incorporate civil rights performance goals, performance measures, and assessments of accomplishments into the business plan.<sup>102</sup>

### Policy Guidance

DOCR has made appropriate changes to its regulations, including changes to comply with the *Cureton* decision under the guidance of the Department of Justice. Additionally, interim procedures for processing external complaints have been developed and guidance on limited English proficiency published.<sup>103</sup> DOCR does not have a unit focused on policy development and issuance; it depends on its External Policy Program Development Division to develop policy and provide guidance.<sup>104</sup>

FAA/OCR has issued Title VI enforcement guidelines and procedures for the federally assisted programs for which the office is responsible, such as DBE, environmental justice, and the ADA.<sup>105</sup> It has revised FAA Order 5100.30 and is seeking comments from FAA and DOT. A final order is expected to be ready soon.<sup>106</sup> Similarly, FRA/OCR has developed and issued policy guidance relating to Title VI and ADA.<sup>107</sup> FRA/OCR officials state that as a rule, new internal and external policies

and procedural guidance are developed when changes occur and when administrations change.<sup>108</sup>

FRA/OCR has also issued a complaint resolution manual.<sup>109</sup> Although the process of monitoring state recipients has not changed, FTA/OCR is now revising the assessment tools used to conduct Title VI compliance reviews and has commissioned a panel to review and revise a circular that addresses the process for monitoring state recipients.<sup>110</sup> RSPA/OCR has developed Title VI guidelines modeled after FTA's guidelines. According to the office, the guidelines specify the relative responsibility of RSPA and its state recipients. RSPA/OCR officials also claim DOT's Title VI regulations and DOT Order 1000.12 cover this area sufficiently.<sup>111</sup> USCG/OCR has developed and issued new internal guidelines and procedures.<sup>112</sup> It has collaborated with DOT, the USCG Boating Safety Office, and USCG funding recipients on external guidance to provide special language services to those with limited English proficiency.<sup>113</sup> NHTSA claims that it has not identified a need for Title VI regulations and guidelines beyond those of DOT and DOJ. The office has developed procedures for conducting pre-award reviews and prepared an internal procedures manual for investigating complaints.<sup>114</sup>

### Technical Assistance

There has been improvement in technical assistance to funding recipients. DOCR currently provides standard guidance, resource materials, and technical assistance for implementing civil rights programs to OAs, and reviews the proposed guidance materials they developed.<sup>115</sup> DOCR's External Policy and Program Development Division trains

<sup>99</sup> Ibid., p. 7; John Day, legislative analyst, Office of Civil Rights, DOT/FTA, e-mail to Sock-Foon MacDougall, social scientist, USCCR, Apr. 23, 2002 (hereafter cited as Day e-mail).

<sup>100</sup> DOT/FTA, Interrogatory Response, p. 10; Day e-mail.

<sup>101</sup> Department of Transportation's Interrogatory Response to the United States Commission on Civil Rights' Ten-Year Review of Civil Rights Enforcement, U.S. Coast Guard, Apr. 16, 2002, p. 2 (hereafter cited as DOT/USCG, Interrogatory Response).

<sup>102</sup> Somerville et al. interview.

<sup>103</sup> DOT/OST, Interrogatory Response, pp. 8-9.

<sup>104</sup> Ibid., p. 2.

<sup>105</sup> DOT/FAA, Interrogatory Response, p. 8.

<sup>106</sup> Ibid., p. 8.

<sup>107</sup> DOT/FRA, Interrogatory Response, p. 5.

<sup>108</sup> Ibid.

<sup>109</sup> Day e-mail.

<sup>110</sup> FTA Circular 4702.1, "Title VI Program Guideline for FTA Recipients"; Day e-mail.

<sup>111</sup> DOT/RSPA, Interrogatory Response, p. 11.

<sup>112</sup> DOT/USCG, Interrogatory Response, p. 4, referring to COMDTINST 5350.20, which is now in the process of being updated. It addresses civil rights compliance by recipients of federal financial assistance from the Coast Guard.

<sup>113</sup> Michael Freilich, compliance manager, external civil rights compliance and outreach programs, DOT/USCG, e-mail to Sock-Foon MacDougall, social scientist, USCCR, Apr. 29, 2002 (hereafter cited as Freilich e-mail).

<sup>114</sup> DOT/NHTSA, Interrogatory Response, pp. 5, 6.

<sup>115</sup> DOT/OST, Interrogatory Response, p. 4.

OA staff in policies and procedures relating to their external civil rights program responsibilities.<sup>116</sup>

FAA/OCR, FHWA's Resource Center, FRA/OCR, FTA/OCR, RSPA/OCR, and USCG now provide technical assistance on a regular basis and when new circumstances warrant.<sup>117</sup> This is usually combined with conference participation, workshops, and/or written memoranda. FTA/OCR and FHWA have collaborated on an Environmental Justice Summit for FTA recipients and community groups. FHWA still has no particular systems in place to capture the nature and scope of the technical assistance they provide.

### Education and Outreach

For the most part, the OST and OAs have shown improvement in education and outreach, but some are clearly further along than the others. FTA and FHWA have collaborated on education and outreach.

The education and outreach programs of OST, FTA, NHTSA, and RSPA are more advanced than the FAA, FRA, and USCG programs. DOCR has shown improvement in its education and outreach program. Activities have included distributing informational leaflets, publishing the limited English proficiency (LEP) regulation, and developing DOT's Indian policy order. Further, DOCR representatives often make presentations on civil rights issues at regional and national transportation conferences. The office also maintains a public, readily accessible Web site. Finally, since September 11, DOCR has been actively working with Muslim, Sikh, and Arab American advocacy and education groups on anti-scapegoating activities.<sup>118</sup>

FTA/OCR generally plans outreach activities based on requests from advocacy and community groups, specific compliance concerns in a geo-

graphic area, and requests from transit industry groups. It has a Title VI education and outreach program and has worked with FHWA to make a Title VI/environmental justice brochure available in Spanish.<sup>119</sup> All documents prepared by FTA/OCR are available on FTA's Web site with links to other federal agencies' civil rights information. Moreover, it offers daily informal guidance on ADA to lawyers, advocacy groups, and people with disabilities, as well as transit staff.<sup>120</sup>

NHTSA/OCR has a particularly strong education and outreach program to disseminate information in different formats, and in English and other languages, such as Spanish and Chinese. Multilingual and multicultural materials are readily accessible to the public through a multicultural Web site. In addition, NHTSA's program offices also conduct education and outreach activities and create products for the public that address the needs of people of color.<sup>121</sup> NHTSA/OCR also has developed a complaint brochure that describes Title VI and its complaint process.<sup>122</sup>

RSPA/OCR provides interpreters to assist Indian tribes and limited-English-proficient persons with the grant application process. Moreover, a Spanish language video is used in training sessions on awareness and familiarization of the risks associated with hazardous materials.<sup>123</sup>

FAA/OCR's education and outreach activities include Title VI training and issuance of posters on Title VI requirements in Spanish.<sup>124</sup> FRA/OCR integrates information received from DOCR on limited English proficiency, environmental justice, ADA, or any other legislative changes, or White House initiatives into training updates and makes them available to FRA employees.<sup>125</sup> Issuance of information on Title VI civil rights enforcement has been scheduled for fiscal year 2002, while use of external resources, such as census information, to design outreach activities has been set for fiscal

<sup>116</sup> *Ibid.*, p. 7. This is sometimes done through coordination with DOJ's Civil Rights Division/Coordination and Review Section. DOCR is now planning training for all OAs' external civil rights staff. It will include Title VI complaint investigation, ADA, Sections 504 and 508, DBE, and other civil rights programmatic areas.

<sup>117</sup> DOT/FAA, Interrogatory Response, pp. 6-7; DOT/FHWA, Interrogatory Response, p. 13; DOT/FRA, Interrogatory Response, p. 4; DOT/FTA, Interrogatory Response, pp. 14-15; DOT/RSPA, Interrogatory Response, p. 6; DOT/USCG, Interrogatory Response, p. 3.

<sup>118</sup> DOT/OST, Interrogatory Response, pp. 7-8.

<sup>119</sup> DOT/FTA, Interrogatory Response, p. 15.

<sup>120</sup> *Ibid.*, p. 19.

<sup>121</sup> NHTSA/OCR Reference, Tabs 4, 5, 8, Apr. 26, 2002.

<sup>122</sup> *Ibid.*, Tab 12.

<sup>123</sup> DOT/RSPA, Interrogatory Response, pp. 6-8.

<sup>124</sup> DOT/FAA, Interrogatory Response, p. 7.

<sup>125</sup> DOT/FRA, Interrogatory Response, p. 5.

year 2003.<sup>126</sup> Finally, USCG/OCR relies on grant recipients for education and outreach.<sup>127</sup>

### Compliance Reviews

An examination of OST and OAs on compliance reviews yields mixed results. NHTSA/OCR has made remarkable progress, and DOCR has made significant progress, while others, such as USCG/OCR, need further improvement.

OAs have responsibility for ensuring that recipients—including state recipients—Title VI programs are in compliance, usually through compliance reviews and/or desk audits.<sup>128</sup> DOCR, on the other hand, aids OAs in their Title VI compliance activities through its Data and Evaluation Division and the XTRAK complaint system.<sup>129</sup> DOCR also requires OAs to provide guidance to states on their Title VI compliance responsibilities through DOT Order 1000.12.<sup>130</sup> DOCR's Data and Evaluation Division, created in 1995, monitors and evaluates OAs on a case-by-case basis. A formal review of FAA's Eastern region has been conducted.<sup>131</sup> DOCR also now requires OAs to submit annual self-assessments on civil rights enforcement through the individual annual reports on civil rights compliance efforts under Executive Order 12,250 and the Age Discrimination Act.<sup>132</sup> OAs' civil rights enforcement is coordinated daily through development of cross-modal initiatives such as the Environmental Justice Order, the Indian Policy Order, Section 508 Policy, and the LEP Guidance. In addition, DOCR holds monthly direc-

tors of civil rights meetings to address concerns and discuss major civil rights issues with OAs' OCR directors.<sup>133</sup>

Some FAA/OCR regional offices have conducted pre-award reviews, and FAA/OCR monitors the quality of pre-award reviews.<sup>134</sup> The office has conducted post-award on-site compliance reviews of some recipients and periodically reviews the quality.<sup>135</sup> FAA's Performance Management Standards addresses the selection of recipients for on-site compliance reviews, and other guidance instructs regional offices to conduct on-site visits as necessary to make certain that any issue involving ADA or the Rehabilitation Act is resolved.<sup>136</sup> FAA/OCR has a skeletal program for oversight of state recipients. It has not developed guidelines that specify the responsibilities of FAA/OCR and its state recipients and does not regularly conduct reviews of Title VI compliance policies and activities of states.<sup>137</sup>

FHWA/OCR considers "post-award reviews" a meaningless concept in the context of federal highway aid. States do not have to apply for highway grants because congressionally mandated formulas allocate highway funds to them for appropriate use.<sup>138</sup> Nonetheless, today, within FHWA's existing structure, state-level FHWA division offices are responsible for on-site reviews.<sup>139</sup> FHWA/OCR is considering establishing an interdisciplinary team to review individual states. Team members will be drawn from the division offices with Resource Center involvement.<sup>140</sup>

FRA/OCR, unfortunately, still has not developed a procedures manual for conducting pre-award and post-award compliance reviews and investigations.<sup>141</sup> In fact, the complaint processing and investigation procedures that were developed several years ago have yet to be approved by DOCR. FRA/OCR indicated that it would follow-

<sup>126</sup> Ibid.

<sup>127</sup> Somerville et al. interview.

<sup>128</sup> DOT/OST, Interrogatory Response, p. 11.

<sup>129</sup> Ibid.

<sup>130</sup> Ibid., pp. 11–12.

<sup>131</sup> The Commission found that the FAA report is under review. The review was prompted internally, i.e., within the agency, and motivated by an interest in evaluating the civil rights program's operation, organization, staff, and effectiveness. See the transcript of the telephone interview with Jeremy Wu, director, Office of Civil Rights, DOT/OST; Joseph Austin, chief, external policy and program development division, Office of Civil Rights, DOT/OST; Marc Brenman, senior policy advisor, Office of Civil Rights DOT/OST; Mary N. Whigham Jones, deputy director, Office of Civil Rights, DOT/OST; Debra Rosen, attorney, Office of General Counsel, DOT/OST, Apr. 8, 2002.

<sup>132</sup> DOT/OST, Interrogatory Response, p. 4.

<sup>133</sup> Ibid.

<sup>134</sup> DOT/FAA, Interrogatory Response, p. 10.

<sup>135</sup> Ibid.

<sup>136</sup> Ibid., citing FAA Order 1400.9.

<sup>137</sup> DOT/FAA, Interrogatory Response, pp. 12–13.

<sup>138</sup> DOT/FHWA, Interrogatory Response, pp. 17–18. By the same argument, pre-award reviews would also not be meaningful.

<sup>139</sup> DOT/FHWA, Interrogatory Response, pp. 16–17.

<sup>140</sup> Ibid., pp. 17–18.

<sup>141</sup> DOT/FRA, Interrogatory Response, p. 6.

up on this.<sup>142</sup> At the present, FRA/OCR merely requires funding applicants to sign assurance statements indicating that they will comply with federal laws and statutes.<sup>143</sup> FRA/OCR has not conducted any post-award compliance reviews because of its small staff.<sup>144</sup> It does not plan to develop guidelines specifying the relative responsibilities of its office and the states for block grant programs until 2004.<sup>145</sup>

FTA officials report that staff review manuals prepared by contractors before they are finalized. Contractors are required to inform headquarters staff of pending on-site compliance reviews and reporting of preliminary findings. In most cases, FTA/OCR staff attends the opening and exit conferences of the contractors and recipients. On completion of the compliance review, FTA/OCR staff works with the contractors in report preparation and follow-up until corrective actions are completed. Finally, biweekly conference calls with the contractor are conducted to ensure a smooth working relationship and effective results.<sup>146</sup> FTA/OCR requires state recipients to document how they intend to comply with Title VI in their responses to the requirements in FTA's circular on state oversight. The office reviews each state recipient once every three years.<sup>147</sup> In addition, FTA/OCR is participating in joint compliance review efforts with the Federal Highway Administration.<sup>148</sup>

NHTSA/OCR has implemented a pre-award review system and post-award desk-audit program.<sup>149</sup> Before awarding a grant, background checks are made on applicants to ensure there are no outstanding complaints.<sup>150</sup> NHTSA/OCR monitors the quality of pre-award reviews.<sup>151</sup> NHTSA/OCR's program for post-award compliance reviews includes not just desk audits but on-site compliance reviews.<sup>152</sup> Recipients are selected to receive com-

pliance reviews according to the number of ADA and Title VI complaints received.<sup>153</sup> For oversight of state recipients, NHTSA/OCR is currently conducting on-site reviews in the 50 states.<sup>154</sup> Guidance to states on their Title VI responsibilities is provided through findings and recommendations included in the compliance review reports.<sup>155</sup> To ensure that recommendations are followed through, NHTSA enters into a voluntary compliance agreement with the state and requests follow-up reports on complaints and remedial efforts.<sup>156</sup>

RSPA/OCR has developed informal procedures for a pre-award system and monitors the quality of pre-award reviews.<sup>157</sup> It does not, however, conduct post-award reviews as the Commission recommended for civil rights enforcement. At best, post-award reviews are conducted randomly. When a RSPA/OCR staff member is in the field conducting civil rights work and a recipient is in the vicinity, the staff takes advantage of the situation and reviews that recipient.<sup>158</sup> Clearly, this approach to post-award review invariably results in RSPA/OCR missing some noncompliant recipients.<sup>159</sup>

USCG/OCR now works with USCG's Office of Boating Safety to conduct pre-award reviews. The process involves review of grant applications, civil rights checklists, and supporting documents that indicate recipient compliance with relevant federal civil rights laws.<sup>160</sup> The Commission is concerned that USCG/OCR does not conduct post-award reviews because its program is very small (about \$59 million a year), similar from year to year, limited in scope, and receives no complaints. Furthermore, the office depends on recipients' assurances and checklists to make a determination about their Title VI compliance. Unfortunately, USCG/OCR does not see a need to go beyond this system.<sup>161</sup> For oversight of state recipients, USCG/OCR again relies on self-certifications and information from

<sup>142</sup> *Ibid.*, p. 7.

<sup>143</sup> *Ibid.*, p. 6.

<sup>144</sup> *Ibid.*

<sup>145</sup> *Ibid.*, p. 8.

<sup>146</sup> DOT/FTA, Interrogatory Response, pp. 21–22.

<sup>147</sup> *Ibid.*, p. 25.

<sup>148</sup> *Ibid.*, p. 23, citing FTA Circular 4702.1.

<sup>149</sup> DOT/NHTSA, Interrogatory Response, p. 6.

<sup>150</sup> Quick letter.

<sup>151</sup> DOT/NHTSA, Interrogatory Response, p. 6.

<sup>152</sup> *Ibid.*

<sup>153</sup> *Ibid.*

<sup>154</sup> Quick letter.

<sup>155</sup> DOT/NHTSA, Interrogatory Response, pp. 7–9.

<sup>156</sup> Quick letter.

<sup>157</sup> DOT/RSPA, Interrogatory Response, p. 9.

<sup>158</sup> Helen Hagin, director, Office of Civil Rights, DOT/RSPA; Paul Sanchez, attorney, DOT/RSPA, telephone interview, Apr. 25, 2002.

<sup>159</sup> *Ibid.*

<sup>160</sup> Freilich e-mail.

<sup>161</sup> Somerville et al. interview.

state recipients to determine their Title VI compliance. Only in the event of questions or doubts, does USCG/OCR engage in discussions with the relevant state recipients.<sup>162</sup>

### Staff Training

NHTSA's staff training program has shown the most improvement, while other OAs programs need further strengthening. NHTSA and USCG have collaborated with other federal agencies to provide staff training.

NHTSA/OCR provides enforcement staff with annual training on internal procedures for civil rights enforcement activities and semiannual training on applicable civil rights statutes and policies. Several staff members have attended training given by DOJ that was coordinated through DOCR. NHTSA/OCR states it would benefit from DOT coordinating civil rights enforcement training for all OAs.<sup>163</sup>

FAA, FRA, RSPA, and USCG do not have a fully developed program to train civil rights staff. FAA/OCR provides training for civil rights enforcement staff once a year when there is adequate funding. Staff, however, attend conferences and training provided by FHWA and DOJ.<sup>164</sup> FRA/OCR has a training program on Title VI and ADA, but enforcement training is nonexistent. FRA/OCR's fiscal year 2002 plan places emphasis on training, and the office is working with another operating administration to provide cross training to staff.<sup>165</sup> In regard to FTA/OCR, civil rights training is offered through annual conferences for headquarters and regional staff, weekly calls from headquarters staff to individual regional civil rights officers, and circulation of updates and overviews of different civil rights subject areas.<sup>166</sup> RSPA/OCR still does not have regular or formalized staff training; although discussions about developing Title VI training within RSPA have occurred.<sup>167</sup> Currently, USCG/OCR staff receives training sponsored by DOJ and DOT.<sup>168</sup>

<sup>162</sup> Ibid.

<sup>163</sup> Quick letter.

<sup>164</sup> DOT/FAA, Interrogatory Response, p. 15.

<sup>165</sup> DOT/FRA, Interrogatory Response, p. 9.

<sup>166</sup> DOT/FTA, Interrogatory Response, p. 29.

<sup>167</sup> DOT/RSPA, Interrogatory Response, p. 14.

<sup>168</sup> Somerville et al. interview.

### Oversight and Quality Assurance

DOCR indicates it ensures OAs incorporate data collection, reporting, and analysis on their funding applicants and recipients into their Title VI programs. However, DOCR has not required OAs to incorporate analyses of the data on program participants they receive from their funding recipients in their annual Title VI self-assessments. Finally, DOCR evaluates OAs through analyses of the annual data they provide.<sup>169</sup>

FAA/OCR has implemented a data collection system to collect information from funding recipients for post-award desk-audit reviews.<sup>170</sup> On the other hand, FRA recipients have to sign assurances that include data collection requirements. At the same time, FRA/OCR states Amtrak and Union Station in Washington, D.C., have provided information on program participants. However, the office has not required recipients that receive large amounts of funding to provide demographic analyses on affected communities.<sup>171</sup>

On the other hand, RSPA/OCR has not ensured all funding recipients incorporate data collection, reporting, and analysis on their program participants into their Title VI programs.<sup>172</sup> And, it imposes no data-reporting requirements on funding recipients.<sup>173</sup>

### Coordination

DOT has not updated the December 1979 memorandum of understanding (MOU) because it only applied to FHWA.<sup>174</sup> FHWA is developing an MOU on on-the-job training with DOL.<sup>175</sup> DOCR is participating in DOT's Surface Transportation Reauthorization efforts to help ensure coverage of civil rights and equal opportunity matters. At the same time, OAs' offices of civil rights have an ongoing assessment of the civil rights impacts of transportation legislation.<sup>176</sup> NHTSA/OCR and USCG/OCR have worked with offices within their

<sup>169</sup> DOT/OST, Interrogatory Response, pp. 10–11.

<sup>170</sup> DOT/FAA, Interrogatory Response, p. 10.

<sup>171</sup> Carl Ruiz, director, Office of Civil Rights, DOT/FRA, telephone interview, May 6, 2002.

<sup>172</sup> DOT/RSPA, Interrogatory Response, p. 11.

<sup>173</sup> Somerville et al. interview.

<sup>174</sup> DOT/OST, Interrogatory Response, p. 8.

<sup>175</sup> Ibid., p. 3.

<sup>176</sup> Ibid.

respective OAs. The NHTSA/OCR director and the Office of the Chief Counsel jointly develop and issue civil rights policies and procedures, while USCG/OCR cooperates with the USCG Office of Boating Safety to conduct pre-award reviews.<sup>177</sup> FTA/OCR has collaborated with FHWA to provide technical assistance.<sup>178</sup>

### **Community Involvement**

DOCR and some OAs engage with community groups in their civil rights activities. The FTA's

strategic plan is developed in consultation with the NAACP and the Environmental Defense Fund.<sup>179</sup> Since September 11, DOCR has been working actively with Muslim, Sikh, and Arab American community groups on anti-scapegoating activities.<sup>180</sup> Further, it participated with DOT's Office of Small and Disadvantaged Business Utilization as part of its national outreach effort to the small business community, including minority and disadvantaged businesses.<sup>181</sup>

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<sup>177</sup> Quick letter; Freilich e-mail.

<sup>178</sup> DOT/FTA, Interrogatory Response, pp. 14–15.

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<sup>179</sup> *Ibid.*, p. 10; Day e-mail.

<sup>180</sup> DOT/OST, Interrogatory Response, p. 8.

<sup>181</sup> *Ibid.*, p. 3.

## CHAPTER 5

# Findings and Recommendations

### 1. INTRODUCTION

**Finding 1.1:** Prior to 1986, the U.S. Commission on Civil Rights had a separate office with a \$1 million budget and more than 20 staff members who monitored and evaluated the federal civil rights enforcement effort. The office monitored the work of the agencies daily by meeting with staffs of enforcement offices, reviewing their plans and programs, assessing their progress made on implementing recommendations, and preparing regular evaluations and reports on agencies' progress or need for improvement. Because of budget reductions, the monitoring office was abolished and the Commission's monitoring efforts diminished significantly. During some years, the function was eliminated completely because of competition for scarce resources. Monitoring remains an important responsibility of the Commission and, moreover, safeguards the public investment in civil rights enforcement.

**Recommendation 1.1:** Congress should appropriate sufficient resources to enable the Commission to return its monitoring program to its pre-1986 level.

### 2. DEPARTMENT OF JUSTICE

#### Resources—Funding and Staffing

**Finding 2.1:** There is a strong need for uniform, consistent, and comprehensive information about the resources and activities for civil rights enforcement at the Department of Justice. In its 2002 review, the Commission finds that except for the Department of Justice's Civil Rights Division, which prepares budget submissions every fiscal year, there is very little information about the Department's civil rights resources (funding and staffing) or civil rights activities and performance. In the Department's 2002 and 2003 budget summa-

ries, there is no civil rights category or breakdown that gives the resources for civil rights functions. In the Department's 2002–2003 budget summaries, civil rights functions (including the Civil Rights Division) are included under "Litigating Divisions," which covers much more than civil rights. In the FBI's budget reports, there is no civil rights category or heading, rendering it difficult to assess the adequacy of resources for civil rights enforcement within the Department.

**Recommendation 2.1:** The Department of Justice should include a separate civil rights category or heading in its annual budget summaries, and require all its components with civil rights responsibilities to submit to the Department a civil rights "report" on funding and staffing that would be included in the final departmental budget document.

**Finding 2.2:** Previous Commission funding reports concluded that the Civil Rights Division's resources were not commensurate with its many civil rights responsibilities. The Division appeared not to have enough resources for its 10 program sections to carry out their responsibilities effectively, particularly when the budget numbers were adjusted for inflation. In addition, over the years, the Division's responsibilities have expanded and the workload increased, particularly for the two sections under this review.

CRD's resources, especially when adjusted for inflation, are still not adequate to meet all of its responsibilities. In addition, there is always the likelihood that the Division's responsibilities will increase. For example, there is a proposal to place the Office of Justice Programs' Office for Civil Rights in the Division. This will certainly create the need for additional resources.

**Recommendation 2.2:** The Department of Justice, particularly the Civil Rights Division, should conduct annual assessments of the Division's responsibilities and workload, especially if it re-

ceives additional civil rights enforcement responsibilities.

## Planning

**Finding 2.3:** The Civil Rights Division's budget submissions, which are prepared every fiscal year, are useful documents that present detailed information on the Division's civil rights resources and activities. The budget submissions include the previous, current, and projected funding, staffing, workload, activities, priorities, and performance indicators for each of the Division's sections. The document can be analyzed for actual and expected appropriations and expenditures, as well as trends in budget and staffing, over periods of time and reviewed for changes in workload and outcomes. This civil rights information allows for an assessment of not only the Division's civil rights resources and workload, but also of each of its 10 program sections.

**Recommendation 2.3:** The Department of Justice should require all its components with civil rights responsibilities to prepare and distribute civil rights information in a document that is closely modeled after the Civil Rights Division's fiscal year budget submissions. These documents should include previous, current, and projected funding, staffing, activities, priorities, workload, and performance indicators. These reports should be compiled and included in the final Department's budget summaries under a separate civil rights category.

## COORDINATION AND REVIEW SECTION

### Resources—Funding and Staffing

**Finding 2.4:** Since the Commission's 1996 report, CORS' enforcement and coordinating responsibilities have increased with two additional executive orders relative to ensuring the benefits of federal funds to many groups of people. CORS' increased responsibilities have not adversely affected its enforcement of Title VI. In the Title VI report, the Commission determined that CORS' resources were inadequate for effective Title VI enforcement. Since the report, CORS' resources have increased each fiscal year, and its staff includes additional attorneys, investigators, coordinators, and a program specialist. CORS also has received funding to travel and provide training on Title VI. CORS' assessment of its resources is that

funding and the number of staff are adequate to carry out its current responsibilities.

**Recommendation 2.4:** While CORS' current resources may be adequate to meet its current responsibilities, it should assess its resources regularly so that new challenges and responsibilities can be met effectively.

### Technical Assistance

**Finding 2.5:** Perhaps the strongest improvement of CORS' work since the 1996 study has been the technical assistance and information now provided on Title VI. CORS has established a formal technical assistance program that includes Title VI guidance, technical assistance brochures, and legal and investigative manuals for federal Title VI agencies and their recipients. All are available on its Web site. The Section also has developed a training course that provides participants with information about Title VI and delivers shorter presentations that provide an overview of Title VI and the regulations. In the 2002 budget, CORS requested additional funds to conduct "technical assistance reviews" of federal agencies' civil rights programs. As a result, it initiated the Title VI Technical Assistance Review (TAR) program, which is an assessment of selected aspects, functions, and/or issues concerning an agency's compliance with and enforcement of Title VI. It is designed to strengthen and improve an agency's Title VI enforcement.

**Recommendation 2.5:** CORS' technical assistance initiatives implemented since the 1996 review are commendable, and it should continue its technical assistance programs and produce additional informational documents as needed.

### Coordination

**Finding 2.6:** The Department of Justice requires annual reporting of Title VI activities by the affected agencies. The agencies' civil rights implementation plan is the major tool to measure Title VI performance. In the Title VI report, the Commission found the information in the civil rights implementation plans to be inadequate for effective evaluation of Title VI performance. In this review, the Commission finds that CORS revised the guidelines and requires "more succinct" information in the document. Each plan is re-

viewed and, if deficiencies are found, CORS communicates them to the appropriate agency. However, it takes approximately three to six months after receipt of a civil rights implementation plan for CORS to review the document and write a letter to the agency asking for it to be improved. The Commission's assessment is that three to six months after a plan has been submitted is too long a period for feedback. In some instances, the agency is continuing the same efforts and beginning its work on the next plan. Thus, inadequacies would not be corrected in a timely fashion.

**Recommendation 2.6:** In order to expedite reviews and responses to agencies, CORS should provide feedback to the Title VI agencies more quickly or conduct interim reviews. These responses could be informal contacts to address any concerns before the next formal review.

**Finding 2.7:** In 1996, CORS' monitoring and coordination of federal agencies' Title VI activities were seriously flawed. Since the review, CORS has established a variety of measures to ensure the accountability of and the effective coordination among the federal agencies that provide financial assistance: requiring improved implementation plans, conducting formal and regular technical assistance programs and reviews, preparing guidance and other materials to assist agencies in Title VI enforcement, conducting investigations, and providing investigative assistance to agencies.

**Recommendation 2.7:** CORS' improvement of its Title VI monitoring and coordination efforts is commendable, and it should continue to enhance these activities to ensure that federal agencies and their recipients are in compliance with the law. CORS also should develop methods to assess the effectiveness of its monitoring and coordination of Title VI through surveys and meetings, as examples, with recipients and stakeholders.

## OFFICE OF JUSTICE PROGRAMS

### Priority of Civil Rights

**Finding 2.8:** In the 1996 Title VI report, the Commission recommended that OJP initiate a new organizational structure that would strengthen the Office for Civil Rights' (OCR) external enforcement and coordination roles with respect to its funding recipients. In fiscal year 1997, Congress also directed OJP to develop a new organizational

structure that would streamline and coordinate agency programs and strengthen its coordination activities. In fiscal year 1999, Congress and the previous administration approved OJP's reorganization plan. The plan had definitive civil rights components. However, OJP never implemented the plan, and the present administration is proposing another reorganization plan (as well as a revised strategic plan). Because the 1999 approved reorganization plan was never implemented and the 2002 plan is not complete, OJP's organizational structure has not significantly changed since the Commission's 1996 review. At the time of this report, neither the proposed strategic plan nor the reorganization plan had been finalized.

**Recommendation 2.8:** OJP's final strategic plan and reorganization plan should include a strong civil rights enforcement component with goals, objectives, and performance indicators that address the many civil rights responsibilities of a Title VI agency and consider the Commission's 1996 and 2002 recommendations.

**Finding 2.9:** For the past two years, there has not been a permanent director in OJP's Office for Civil Rights and there may be an acting director indefinitely. The lack of a permanent civil rights leader with authority is a strong sign that civil rights is not a priority at the agency, and is detrimental to the enforcement of civil rights.

**Recommendation 2.9:** OJP should begin the process of hiring a permanent director in OCR immediately. He or she should have the authority to initiate civil rights policy and authority to enforce civil rights laws.

**Finding 2.10:** OJP officials are beginning to address the issue of OCR's structure and have three proposals: OCR could remain an office at OJP with a permanent director; it may be merged into the OJP's Office of the General Counsel; or it could become a part of the Civil Rights Division. There is no indication as to how any of these proposals would be implemented.

**Recommendation 2.10:** Under no circumstance does the Commission support that OCR be merged or consolidated as a division with staff in the OJP's Office of the General Counsel or any other OJP office or bureau. The civil rights component is already weak at OJP, and any efforts to lower OCR from an office status would make civil rights weaker in priority and authority. The Commission recommends that with all of its civil rights

responsibilities, OCR should remain an office at OJP with a permanent director who has the authority to enforce Title VI and other civil rights laws. The director should be a major part of the OJP management team and included in policy and decision-making initiatives at OJP. If the final decision is to place OCR in the Civil Rights Division, it should be another program-related section, headed by a section chief, with the support for activities, authority, and resources afforded to the other Division sections.

### Resources—Funding and Staffing

**Finding 2.11:** In 1996, the Commission concluded that OCR did not receive adequate resources to carry out its external civil rights responsibilities. Since 1996, OCR's funding has increased significantly, and in 2002, OJP/OCR states that based on the increase, it has the appropriate funding and staff to implement its responsibilities under the present law and existing departmental policy. However, OCR's increase in appropriations and staff is misleading, as the number of federal financial assistance recipients also has increased significantly during this period. The increase in funding and staffing is not commensurate with OCR's external civil rights responsibilities and workload.

**Recommendation 2.11:** OJP should conduct an analysis of OCR's resources to evaluate whether they are commensurate with OCR's responsibilities and workload, and a desk audit of OCR staff to assess their responsibilities and workload. Resources should address the findings.

**Finding 2.12:** Currently, OCR has 10 staff members. However, six attorneys and one legal technician are primarily responsible for external civil rights activities. They carry out responsibilities that usually warrant numerous staff members with various job classifications and expertise, such as program managers, coordinators, compliance officers, civil rights analysts, and investigators.

**Recommendation 2.12:** Congress should provide OCR with additional funds to increase the number of employees who have different backgrounds and expertise. Until funds are made available to hire such staff, the Department of Justice should detail staff from other components with the expertise and/or make arrangements with Title VI agencies to have appropriate staff members detailed to OCR.

### Policy Guidance

**Finding 2.13:** OCR has not prepared regulations or guidance since the Commission's Title VI report. OCR states that in January 2001, a "moratorium" was placed on the publication of new regulations until the President named new leadership at OJP. In September 2001, a new assistant attorney general was appointed at OJP.

**Recommendation 2.13:** OJP should vigorously enforce civil rights by hiring a director of OCR and assigning appropriate staff or task forces to begin moving OJP toward Title VI enforcement by promulgating relevant guidance, updated regulations, and procedures for implementing the law.

### Technical Assistance

**Finding 2.14:** OCR's technical assistance program has improved since the Commission's last review. In 1996, technical assistance was limited to publishing several documents. In 1998, OCR designed a "comprehensive" technical assistance program for the administrative staff of state agencies and subgrantees. Since the 1996 assessment, OCR also developed a brochure that provides a general overview of civil rights protections for employees and beneficiaries of OJP programs and posted public information on a Web site. It has also made presentations to different advocacy groups on civil rights enforcement issues. However, to date, OCR has not developed any formal selection criteria for identifying states for technical assistance. There also is no mechanism in place to evaluate the effectiveness of the technical assistance program and activities.

**Recommendation 2.14:** OCR should develop a formal technical assistance program with selection criteria and mechanisms to evaluate the effectiveness of the program and activities.

### Compliance Reviews

**Finding 2.15:** OCR's civil rights compliance efforts have not improved significantly over the decade. OCR focuses the majority of its efforts on employment programs. When the number of recipients is considered, OCR has conducted very few pre-award and post-award reviews. In fiscal year 1999, OCR reported one pre-award on-site review and 291 desk audits. It reported only one post-award review. Although OCR states it has re-

ceived sufficient funding to conduct three or four on-site compliance reviews, the review of recipients' equal employment opportunity plans (EEOs) is the major form of a pre-award review. This review addresses recipients' employment practices and does not address discrimination in services. And even with the review of more than 1,000 EEOs, OCR has "minimum standards" for an acceptable EEO.

The Civil Rights Division and OJP have a memorandum of understanding (MOU) whereby some Division sections, including CORS, handle some of OJP's complaints. In 1996, the Commission was concerned that the MOU concerning CORS' involvement could create a conflict of interest for CORS in carrying out its Title VI responsibilities. However, the conflict of interest concern has been addressed. In 2002, CORS' involvement in OCR's caseload is an indicator that OCR cannot meet its Title VI workload effectively.

**Recommendation 2.15:** OJP should provide support for external civil rights enforcement at the agency. The Commission stresses the need for OJP to conduct desk audits or staff analysis of the OCR staff to assess its workload and responsibilities and provide for a study performed by outside consultants (in the Department or from other Title VI federal agencies) on developing effective methods for conducting civil rights compliance activities that can address the thousands of federal financial assistance recipients at OJP. Rather than a memorandum of understanding with CORS on assisting in OCR's workload, CORS could be better used as a resource for assisting OCR in training, communicating and coordinating with other Title VI agencies that have the same recipients, and providing OCR with guidance on how to carry out its Title VI responsibilities more effectively.

### Staff Training

**Finding 2.16:** Because OCR's staff is so small, the office lacks expertise in some civil rights enforcement areas. OCR relies heavily on in-house training and assistance from other Department components to carry out its work.

**Recommendation 2.16:** Until OCR receives the resources to expand its staff and to hire personnel with different expertise, OCR, in addition to utilizing CORS for training of some staff and assistance in its Title VI work, should contact other Ti-

tle VI agencies' civil rights offices to receive training in different areas and to study some of the different and similar techniques used in external civil rights enforcement.

### Coordination

**Finding 2.17:** In 1996, OCR did not monitor and oversee the recipients' Title VI activities. In 2002, the Commission finds that OCR still does not have a formal monitoring and oversight program in place. OCR views its technical assistance program as an "informal method" for monitoring and overseeing compliance of state and local governments and subrecipients. However, technical assistance is provided, usually on request, to recipients concerning information about their responsibilities in implementing the law and what the law encompasses. It is a means of correcting known flaws in a recipient's program and planning in anticipation of problems. It is not a tool to monitor and evaluate how well recipients carry out their responsibilities. Technical assistance is also made available so that flaws that have already been identified can be corrected.

**Recommendation 2.17:** OCR should develop formal guidelines and procedures for monitoring and overseeing its recipients and beneficiaries. The guidance and procedures should be shared with program and financial managers. OCR should contact CORS and other Title VI agencies for guidance on how to develop such guidelines and procedures.

## DISABILITY RIGHTS SECTION

### Resources—Funding and Staffing

**Finding 2.18:** DRS' authority and responsibility for the Americans with Disabilities Act (ADA) have remained the same since the Commission's 1998 report. In fiscal year 2002, DRS received more than \$15 million in appropriations and nearly 100 staff members to carry out its responsibilities. DRS claims that its current resources are sufficient to fulfill its civil rights responsibilities. However, ADA law is ever evolving and many additional issues could surface in the future, causing a need for more resources.

**Recommendation 2.18:** Because of the potential change in DRS' workload, annual assessments of DRS' resources should be conducted by the Department, the Civil Rights Division, and DRS so

that DRS' resources can keep pace with new ADA issues.

### Technical Assistance

**Finding 2.19:** Technical assistance remains a major part of DRS' ADA responsibilities. Since 1998, DRS has expanded its technical assistance program and, today, the program has become a model for other components in the Department.

**Recommendation 2.19:** DRS should expand its technical assistance program as new ADA issues arise and help other ADA agencies develop their technical assistance programs.

### Complaint Processing

**Finding 2.20:** In 1998, the Commission applauded the use of mediation in the enforcement of the ADA. In 2002, DRS reports that its enforcement plan is based on a variety of approaches, including mediation and litigation, and using criteria that result in the best outcomes for individuals and the most return for resources invested. DRS officials state that the "multifaceted" approach in enforcement is effective. To illustrate, over the past four fiscal years (1998–2001) the Section participated in 168 cases and achieved successful results in 100 cases; of the individual complaints investigated, DRS obtained favorable outcomes in the resolution of 1,147 complaints; and DRS achieved successful results in 583 of the 757 completed mediations. As a result of its success, particularly in the use of mediation, DRS' enforcement program has become a model in the Department.

**Recommendation 2.20:** DRS' enforcement program should become a model for other federal agencies that seek to incorporate mediation and litigation into their enforcement efforts.

### Coordination

**Finding 2.21:** In the 1998 assessment, the Commission found that the Section had not assigned staff to coordinate and monitor the enforcement efforts of the other designated federal agencies with ADA responsibilities, mainly because of a lack of resources. In 2002, DRS reports that 11 staff members spend "most of their time on interagency coordination." Other staff members participate in coordination as needed. DRS attrib-

utes the improvement in its coordination activities to its increase in resources.

**Recommendation 2.21:** DRS should develop formal coordination procedures and a review process of activities and agencies' feedback and concerns.

### Community Involvement

**Finding 2.22:** In the ADA report, the Commission found that DRS developed its policy guidance and other initiatives without consulting the disability community and minority advocacy groups about their concerns, and strongly recommended that DRS contact such organizations about policy initiatives in the future. In 2002, DRS reports that it maintains ongoing dialogue with several disability and minority groups about their concerns.

**Recommendation 2.22:** DRS should establish a formal program for communicating with the public, particularly people with disabilities and their advocacy groups, about ADA concerns and issues. Perhaps, a survey could be posted on DRS' Web site to solicit information from the public. DRS could consider the survey responses when developing policy.

## FEDERAL BUREAU OF INVESTIGATION

### Priority of Civil Rights

**Finding 2.23:** Although the Department of Justice, including the FBI, supports the need for hate crime data in enforcing laws against such offenses, the collection and reporting of hate crimes is a separate, disconnected function from the prosecution and investigation of hate crimes, which are civil rights enforcement responsibilities. The collection and reporting of hate crime data at the FBI is treated as additional crime information rather than as a civil rights function. The reporting and collecting of hate crime data is a civil rights function that should not be separated from other hate crime enforcement activities.

**Recommendation 2.23:** Congress should amend the Hate Crimes Statistics Act so that hate crime reporting is implemented as a civil rights function and connected with other federal hate crime enforcement activities.

**Finding 2.24:** Hate crimes are underreported. One major factor is that Congress did not provide provisions to make reporting of hate crimes man-

datory or provide for specific resources and accountability provisions for collecting and reporting such information.

**Recommendation 2.24:** Congress should amend the Hate Crimes Statistics Act to include provisions that make the reporting a required function of every state and police department; and provide the Department of Justice with resources to implement community and police training and outreach programs for identifying and reporting such offenses. Congress should require the Department to report past and current data on hate crimes so that trends can be analyzed over a period of time.

### Resources—Funding and Staffing

**Finding 2.25:** Although the Commission requested information on the FBI's hate crime resources, the agency did not provide it. Thus, the Commission cannot determine whether the FBI has sufficient funding and staffing to carry out its hate crime data collection responsibilities effectively.

**Recommendation 2.25:** The FBI should develop a budget report closely modeled after the Civil Rights Division's fiscal year budget submissions, including previous, current, and projected civil rights resource needs, as well as staffing and workload information that can be provided on request.

### Policy Guidance

**Finding 2.26:** Since the Commission's 1992 report, the FBI has revised its guidelines and training documents for the implementation of the Hate Crimes Statistics Act. The guidelines minimize the importance of the information and the resources necessary for the effort. In addition, the FBI's technical assistance and training do not reflect a changing, diverse society since the 1990s, or the complexity in identifying and analyzing hate crimes today.

**Recommendation 2.26:** The FBI should revise the guidelines and training manual again to stress the importance of reporting hate crime information, and include updated indicators and different examples of hate crimes that do not reflect obvious hate crime incidents or indicators.

### Technical Assistance

**Finding 2.27:** The FBI's technical assistance and training activities are still targeted mainly to police departments. However, many police departments have not received adequate training on how to identify and analyze hate crimes.

**Recommendation 2.27:** Because Congress mandated that the Department of Justice take responsibility for hate crime reporting and enforcement, the Department must improve and implement hate crime technical assistance programs and training. The Commission reiterates its 1992 recommendation that the Department of Justice initiate a comprehensive, nationwide training program to assist police departments and other local entities on how to identify and report hate crimes.

### Community Involvement

**Finding 2.28:** In 1992, the Commission recognized the need to involve state and local entities, including police departments, schools, organizations, churches, and victims in hate crime reporting. There is very little evidence that the FBI networks to a great degree with other state and local entities, such as advocacy groups, schools and churches, and victims to encourage reporting of hate crimes.

**Recommendation 2.28:** In addition to training police officers, the Department of Justice should develop an extensive education and outreach program about hate crimes for the public that can be monitored and reviewed, and encourage the participation of such groups in reporting hate crimes to police departments and the FBI. The FBI should solicit the assistance of hate crime advocacy groups in the development and participation in hate crime information programs. Efforts to solicit and encourage reporting of hate crime statistics from the community should be made through the media, on the Web site, and through telephone hot lines.

## 3. DEPARTMENT OF LABOR

### THE CIVIL RIGHTS CENTER

#### Resources—Funding and Staffing

**Finding 3.1:** Regional staff still does not perform Title VI enforcement functions, and there are no plans to place external civil rights enforcement staff in regional offices.

**Recommendation 3.1:** Staffing and resource levels should be evaluated to determine the extent to which additional staff and resources are needed to implement a comprehensive Title VI enforcement program. In submitting its budget request, the Center needs to be more forceful in requesting and documenting its need for additional funding. It should document the full range of civil rights enforcement activities it is obligated to perform, including conducting pre- and post-award reviews of all funding recipients and providing technical assistance, outreach, and education. It should tie its current resources to the activities it performs and compare that with its obligations in terms of enforcement activities, federally assisted programs, and applicable civil rights statutes.

### Planning

**Finding 3.2:** In its January 2002 implementation plan, the Center failed to describe letters of finding, settlement agreements, and other resolutions of complaint investigations or compliance reviews issued since the previous year's submission. In addition, it listed only five activities and/or objectives that it would be conducting to enforce Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and similar statutes covered by Executive Order 12,250. The Center did not perform any pre-award or post-award reviews in fiscal year 2001.

**Recommendation 3.2:** The Center's civil rights implementation plan should be updated every three months and allow for changes due to increases and decreases in actual compliance activities and responsibilities and new or developing civil rights enforcement issues.

### Policy Guidance

**Finding 3.3:** Work began on the development of Title VI regulations immediately after the Commission issued its 1996 report. However, before completion, resources for legislative/regulatory issues were diverted to other pressing tasks, such as the development of legislation to replace the Job Training Partnership Act (JTPA); regulations implementing WIA and its nondiscrimination and equal opportunity provisions; training and written guidance on the new legislation; and regulations, guidance, and training on new welfare-to-work

legislation. As a result, the work on the Title VI appendix will have to begin anew.

**Recommendation 3.3:** The Center should add an appendix to its Title VI regulations specifying the types of financial assistance programs the Department of Labor administers. Since work began on developing the Title VI appendix several years ago, the Center should salvage as much of the previous work as possible so that it is able to complete the appendix expeditiously.

**Finding 3.4:** The Title VI compliance and complaint manuals have not been updated since the Commission's 1996 report was issued. The Center does have a methods of administration training manual.

The Center has not developed policies specific to Title VI. Instead, regulations and policies have been developed for the nondiscrimination and equal opportunity provisions of the Workforce Investment Act (WIA), which prohibits discrimination based on Title VI and nine other bases. Since the passage of WIA, the Center's attention has been focused on providing guidance to the Center's staff and DOL recipients as to the compliance issues associated with WIA and its nondiscrimination and equal opportunity provisions.

**Recommendation 3.4:** The Center should promulgate uniform Title VI enforcement procedures for its civil rights enforcement staff and funding recipients, including step-by-step instructions for implementing Title VI, from the application and pre-award process through compliance review and complaint processing, in each type of program DOL sponsors. The Center should expeditiously complete its work on its compliance and complaint manuals.

### Technical Assistance

**Finding 3.5:** Currently, the Center is developing a number of publications that will be widely disseminated to beneficiaries and potential beneficiaries and the public. The publications will be available in English and several other languages, but until those publications are available the Center will continue to use the Department of Justice's generic publications, such as its Title VI brochure.

**Recommendation 3.5:** The Center should expeditiously complete its development of publications in other languages. As the population shifts from being predominately English speaking to one

that is more multilingual, those individuals who do not speak English are not being reached, and as a result, are not aware of their rights and responsibilities under Title VI.

**Finding 3.6:** In developing certain policies, guidance, training syllabuses, and enforcement tools, comments and suggestions from affected communities and funding recipients are considered. For example, in developing the guidance on limited English proficiency, the Center solicited comments and suggestions from affected communities and funding recipients. However, in planning and conducting education and outreach, the Center has not strategically planned and designed an outreach plan that uses 2000 Census data and other labor market or demographic data to target groups that may be victims of discrimination.

**Recommendation 3.6:** Each time a new census is conducted, the Center should use the most current census figures in developing policies, guidance, training syllabuses, and seeking comments and suggestions from affected communities and funding recipients. The current census indicates that the minority population of the United States is becoming the majority, and the Hispanic population is now equal to that of African Americans.

### Complaint Processing

**Finding 3.7:** The number of Title VI complaints the Center receives has continued to decline since the Commission published its 1996 report. Between fiscal years 1997 and 2001, the number of Title VI complaints decreased by 76 percent, from 107 in 1997 to 26 in 2001. Very few Title VI complaints are received because most of them are resolved at the state level. The Center has increased its public education about Title VI nondiscrimination requirements through several training modules.

**Recommendation 3.7:** The Center should expand on its public education by ensuring that all information pertaining to Title VI is in languages other than English and that this information is reaching all potential victims.

### Compliance Reviews

**Finding 3.8:** In fiscal year 2001, the Center did not conduct any pre- or post-award reviews or have any legal administrative enforcement. In fiscal year 2000, the Center conducted 76 pre-award reviews

(desk audits) but no post-award reviews. The last time the Center conducted a post-award review was in fiscal year 1998, when it completed 84.

Since the Commission's 1996 review, the Center has conducted on-site compliance reviews, but staff resources do not allow for an extensive annual compliance review schedule. To best utilize resources, compliance reviews are initiated based on congressional request, the nature and frequency of complaints, and strategic planning goals.

**Recommendation 3.8:** As was recommended in 1996 to meet the Department of Justice requirement that agencies establish a post-award compliance review process, the Center should utilize post-award desk-audit reviews to ensure continuing compliance with Title VI among all recipients. Since the Center has full and complete access to the Department's grant office's information system and is able to access and sort data fields over any period of time, it should rely on this asset to reach a large number of recipients in desk-audit reviews. In addition, the Center needs to conduct compliance reviews other than upon congressional request.

DOL should also delegate the responsibility for ensuring civil rights compliance among its secondary recipients to its primary recipients and establish an oversight system for reviewing the civil rights enforcement activities of its primary recipients. Thus, primary recipients should impose reporting requirements on the subrecipients so that desk audits can be performed on the secondary recipients. The primary recipients should use the desk audits to identify secondary recipients with questionable practices or policies, conduct on-site compliance reviews, and provide technical assistance to ensure that they comply with civil rights statutes. For more information on the type of data secondary recipients should report, on how that data are to be reviewed in desk audits, on how subrecipients should be selected to receive on-site reviews, and on how DOL should design an oversight system for its primary recipients, see volume I, chapter 2, of this report.

### Staff Training

**Finding 3.9:** DOL supports and encourages life-long learning for staff, and the Center's staff training continues to be among the best offered by federal agencies. However, the Center does not conduct training specifically on Title VI.

**Recommendation 3.9:** The Center needs to hold regular Title VI training in areas such as instruction on conducting enforcement procedures; the nexus between Title VI and other civil rights enforcement provisions relevant to ensuring non-discrimination in federally funded activities; Title VI nondiscrimination requirements in particular types of DOL programs; and the nexus between Title VI and a particular funding program's objectives and administration.

## OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

### Coordination

**Finding 3.10:** The Department of Labor still has not updated its December 1979 memorandum of understanding with the Department of Transportation to reflect the interim agreement to exchange information. However, operating procedures are in effect whereby OFCCP regional and district offices work with the local Federal Highway Administration (FHWA) and state DOT officials to exchange information on major construction projects underway in their respective geographic areas.

**Recommendation 3.10:** As was recommended in 1993, DOT and DOL should update their December 1979 memorandum of understanding and include, among other things, operating procedures that will create coordinated civil rights enforcement activities and thus avoid confusion over responsibilities and duplicated efforts.

**Finding 3.11:** OFCCP's contacts with community groups during compliance reviews are inadequate. These contacts are needed to gauge whether contractors are making good-faith efforts to recruit women and minorities and to identify contractors that are alleged discriminators. Today, OFCCP still does not solicit involvement from the community in selecting companies for compliance reviews.

**Recommendation 3.11:** When OFCCP contacts the EEOC district office, the state and local Fair Employment Practices Agencies, and other pertinent agencies prior to a scheduled compliance evaluation, DOL officials should also contact affected communities and advocacy groups to get feedback on whether local contractors working on federally funded transportation projects are employing racial and ethnic minorities and women.

**Finding 3.12:** The Commission recommended that the Secretary of Labor investigate existing training apprenticeship programs to determine whether they conform to federal affirmative action guidelines, ensure that training and apprenticeship programs are mandatory for federal and federally assisted construction contractors, and direct a national effort to develop and implement training and apprenticeship programs.

Current OFCCP regulations require federal and federally assisted construction contractors to develop on-the-job training opportunities and/or participate in training programs that expressly include minorities and women.

**Recommendation 3.12:** The Center should conduct a study of all federal contractors to determine whether the money set aside for on-the-job training and apprenticeship programs is being used for its intended purpose. The study should collect information on the number of minorities and women receiving on-the-job training and apprenticeships under this program and determine whether contractors are complying with civil rights laws. To the extent that construction contractors are funded by the Department of Transportation, OFCCP should coordinate this study with that agency.

The Center should impose any necessary reporting requirements on federal contractors to collect this information as required for such a study, involving the Department of Justice's guidelines for Title VI enforcement of civil rights enforcement to do so.

If federal construction contractors are not in compliance with civil rights statutes in on-the-job training and apprenticeship programs, DOL should develop and implement technical assistance programs to inform them of their deficiencies, obtain their voluntary agreement to comply, and monitor their future compliance. In short, DOL should develop and implement a full-fledged Title VI civil rights enforcement program and apply it to the on-the-job training and apprenticeship programs that federal construction contractors are required to operate. (For further details on the elements necessary to implement a successful enforcement program see volume I of this report).

## 4. DEPARTMENT OF TRANSPORTATION

### Priority of Civil Rights

**Finding 4.1:** The Office of the Secretary Office of Civil Rights (DOCR) has made significant progress in its oversight of the Disadvantaged Business Enterprise (DBE) program. It currently has an active role on the Department of Transportation (DOT) DBE committee that helps develop and issue policy guidance, guidelines, and interpretation of the law on DBE issues. Additionally, DOCR now has the ability to track the status and disposition of DBE and Title VI complaints to ascertain trends and patterns.

**Recommendation 4.1:** DOCR should annually analyze the collected data to discern recurring areas of complaints in the DBE and Title VI programs and draw implications for improvement. The analysis should be shared with the operating administrations for implementation where appropriate.

**Finding 4.2:** The Office of the Secretary (OST) is not able to consolidate its external civil rights activities because Congress did not approve DOT's request for funding in 1994. DOCR's current structure bears some resemblance to the one proposed in 1996. The office now consists of an External Policy and Program Development Division, Internal Policy and Program Development, a Data and Evaluation Division, Compliance Operations Division, and six regional offices.

**Recommendation 4.2:** DOCR's regional offices should have separate offices for external civil rights compliance and enforcement activities.

**Finding 4.3:** Within the Federal Aviation Administration Office of Civil Rights (FAA/OCR), external civil rights and internal civil rights are generally separately managed, while the DBE program falls under the former. The headquarters external program is responsible for ensuring compliance with Title VI and other civil rights statutes.

**Recommendation 4.3:** FAA/OCR should make external civil rights, internal civil rights, and DBE into distinct entities. Within the external civil rights program, policy and regulatory development and issuance responsibilities should be separated from operational responsibilities.

**Finding 4.4:** The director of the Federal Highway Administration Office of Civil Rights (FHWA/OCR) still reports to the executive director of FHWA. Furthermore, only the 12 civil rights staff members in the headquarters office report to

the director of FHWA/OCR. Finally, most civil rights staff members have not specialized in specific civil rights areas.

**Recommendation 4.4:** The director of FHWA/OCR should report to the FHWA administrator in order to ensure priority attention to civil rights enforcement. All civil rights staff should report to the director and specialize in either internal or external civil rights functions.

**Finding 4.5:** The Federal Railroad Administration (FRA) is not subjected to DOT's DBE regulations because there is no DBE program statute that is parallel to those covering the FAA, FTA, or FHWA.

**Recommendation 4.5:** The FRA administrator should take necessary steps to develop a DBE program statute for FRA's incorporation into DOT's DBE regulations.

**Finding 4.6:** The Federal Transit Administration Office of Civil Rights (FTA/OCR) is in the process of being restructured.

**Recommendation 4.6:** FTA/OCR should be organized into separate units with separate supervisory staff for external civil rights, including Title VI and DBE activities.

### Resources—Funding and Staffing

**Finding 4.7:** Resources for civil rights enforcement remain inadequate for most of the operating administrations (OAs).

**Recommendation 4.7:** The DOT Secretary and the OA administrators should request, and Congress approve, additional resources for civil rights enforcement throughout the Department of Transportation.

**Finding 4.8:** The National Highway Traffic Safety Administration Office of Civil Rights' (NHTSA/OCR's) budget for fiscal year 2002 is \$637,463, the highest amount for the years 1995 through 2002, and represents a 52 percent increase over fiscal year 2001.

**Recommendation 4.8:** NHTSA/OCR should conduct regular workload analyses to ensure that adequate resources remain available for civil rights activities and share the findings with the administrator.

## Planning

**Finding 4.9:** DOCR and three OAs have civil rights implementation plans (CRIPs) that conform to the Department of Justice guidelines, one agency's CRIP is still under review, and the remaining three did not have CRIPs. At the same time, FHWA's administrative manual does not address the civil rights enforcement responsibilities of state-level division offices.

**Recommendation 4.9:** FRA, FTA, the Research and Special Program Administration (RSPA), and U.S. Coast Guard (USCG) should prepare CRIPs that conform to Department of Justice guidelines. Further, FHWA's administrative manual should be revised to cover the civil rights responsibilities of state-level division offices.

## Policy Guidance

**Finding 4.10:** FRA/OCR has not developed a procedures manual for conducting pre-award and post-award compliance reviews and investigations.

**Recommendation 4.10:** FRA/OCR should develop a procedures manual for pre-award and post-award compliance reviews and investigations as soon as possible. The post-award procedures should state that post-award reviews focus on the broader issues covered by Title VI and not be limited to Section 905 recipients.

## Technical Assistance

**Finding 4.11:** DOCR and the OA offices of civil rights have generally shown improvement in providing technical assistance to funding recipients. Technical assistance programs can be strengthened with the development and implementation of a system capable of capturing the nature and extent of technical assistance provided to recipients.

**Recommendation 4.11:** DOCR and OA offices of civil rights should develop such a system. They should regularly review the data and use the findings to improve technical assistance programs. Furthermore, DOCR and the OA offices of civil rights should find ways to collaborate to maximize limited resources. Finally, they should develop the capability to deliver technical assistance in languages other than English in the event of need.

## Education and Outreach

**Finding 4.12:** Some OAs have shown improvement in education and outreach. NHTSA is much further along than others, such as USCG. Of note is a joint effort between FTA and FHWA. Education and outreach programs can be strengthened with the development and implementation of a system capable of capturing the nature and extent of education and outreach.

**Recommendation 4.12:** DOCR and OA offices of civil rights should develop such a system. They should regularly review the data and use the findings to improve education and outreach programs. Moreover, DOCR and OA offices of civil rights should collaborate to maximize limited resources. Education and outreach information should be available in languages appropriate to recipients and in a variety of formats, such as brochures, workshops, and videos.

**Finding 4.13:** FTA/OCR offers education and outreach on request, while FAA/OCR and FRA/OCR do not have comprehensive programs, and USCG/OCR relies on grant recipients to provide education and outreach.

**Recommendation 4.13:** FTA/OCR should be proactive and conduct education and outreach on a regular basis and when situations warrant. FAA/OCR, FRA/OCR, and USCG/OCR should review and strengthen their respective programs. Finally, USCG/OCR should immediately assume responsibility for education and outreach.

## Compliance Reviews

**Finding 4.14:** Examination of the compliance review efforts of DOCR and OA offices of civil rights yields mixed results. FAA/OCR's conducted some limited pre-award reviews and did not carry out post-award on-site compliance reviews of all recipients. Further, the office has a skeletal program for oversight of state recipients.

**Recommendation 4.14:** FAA should make available additional resources to FAA/OCR for thorough pre-award and post-award reviews of applicants and funding recipients. FAA/OCR should review and strengthen its program for oversight of state recipients.

**Finding 4.15:** FHWA/OCR considers "post-award reviews" a meaningless concept in the federal highway aid program. States do not have to

apply for highway grants because congressionally mandated formulas allocate highway funds to them for appropriate use. FHWA/OCR is considering establishing an interdisciplinary team to review individual states.

**Recommendation 4.15:** FHWA/OCR should give priority to establishing the interdisciplinary review team.

**Finding 4.16:** FRA/OCR still has not developed a procedures manual for conducting pre-award and post-award compliance reviews and investigations. It has not conducted any post-award compliance reviews.

**Recommendation 4.16:** FRA/OCR should immediately develop a procedures manual for conducting pre-award and post-award compliance reviews and investigations. The office should begin to conduct post-award compliance reviews.

**Finding 4.17:** RSPA/OCR does not have the resources to conduct thorough post-award reviews for civil rights enforcement. Furthermore, compliance reviews are done randomly.

**Recommendation 4.17:** RSPA should make available adequate resources to RSPA/OCR to enable thorough pre-award, post-award, and on-site compliance views.

**Finding 4.18:** USCG/OCR works with USCG's Office of Boating Safety to conduct pre-award reviews. However, USCG/OCR does not conduct post-award reviews. The office does not see a need to go beyond this approach. For oversight of state recipients, USCG/OCR again relies on self-certifications and information from state recipients to determine their Title VI compliance.

**Recommendation 4.18:** USCG/OCR should implement immediately a comprehensive pre-award, post-award, and on-site compliance review program. The office should bear the responsibility for determining the compliance status of funding recipients.

### Staff Training

**Finding 4.19:** There has been some improvement in staff training, but further improvement is needed.

**Recommendation 4.19:** Where feasible and appropriate, DOCR and OA offices of civil rights should collaborate on staff training to maximize resources. Furthermore, OAs are encouraged to

work with OST to develop formal training modules for civil rights enforcement.

**Finding 4.20:** FAA, FRA, RSPA, and USCG do not have staff training programs offering regular and thorough training for civil rights staff.

**Recommendation 4.20:** FAA, FRA, RSPA, and USCG should provide comprehensive civil rights training and periodic update training to civil rights staff. In addition, RSPA/OCR must provide appropriate training to RSPA program personnel involved in civil rights enforcement.

### Oversight and Quality Assurance

**Finding 4.21:** Oversight and quality assurance are generally weak. DOCR has not required OAs to incorporate an analysis of the data they receive from their funding recipients in annual Title VI self-assessments. FRA/OCR has not required recipients that receive large amounts of funding to provide demographic analyses on affected communities. RSPA/OCR still does not have a data-reporting requirement system in place for determination of recipient compliance with Title VI. Finally, USCG/OCR imposes no data-reporting requirements on funding recipients.

**Recommendation 4.21:** DOCR should work with all OAs to find ways to ensure responsible oversight and quality assurance in civil rights enforcement.

### Coordination

**Finding 4.22:** DOCR is involved in DOT's Surface Transportation Reauthorization efforts to help ensure coverage of civil rights and equal opportunity matters. It is developing a departmentwide civil rights council. Among OAs, FHWA is developing an MOU covering on-the-job training with DOL. NHTSA/OCR and USCG/OCR have collaborated with offices in their respective agencies to facilitate civil rights activities. The NHTSA/OCR director works with the Office of the Chief Counsel to develop and issue civil rights policies and procedures, while USCG/OCR works with the USCG Office of Boating Safety to conduct pre-award reviews. FTA/OCR has worked with FHWA to provide technical assistance.

**Recommendation 4.22:** OST and OAs are encouraged to explore ways to increase coordination

of civil rights enforcement to maximize limited resources.

### **Community Involvement**

**Finding 4.23:** Involvement of community and advocacy groups in civil rights planning and policy development is uneven and inconsistent across DOCR and the OAs.

**Recommendation 4.23:** DOCR and OA offices of civil rights should consistently engage community and advocacy groups in civil rights planning and policy development. Furthermore, the involvement with groups should be interactive, meaningful, and not limited to inclusion of organizations on mailing lists.