

FUNDING FEDERAL CIVIL RIGHTS ENFORCEMENT: 2004

June 2003

U.S. Commission on Civil Rights

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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Acknowledgments

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Introduction

In past reports, the U.S. Commission on Civil Rights warned that reductions in the resources allocated for civil rights enforcement threatened the effective enforcement of federal civil rights legislation.¹ The Commission's latest funding report again concluded that inadequate funding endures in each of the six agencies. This examination updates earlier ones by adding the most recent resource data available. The Office of Civil Rights Evaluation reviewed data relevant to civil rights enforcement funding, staffing, and workload levels for FY 1994–2004 for:

- U.S. Department of Education (DOEd), Office for Civil Rights (OCR)
- U.S. Department of Justice (DOJ), Civil Rights Division (CRD)
- U.S. Department of Health and Human Services (HHS), Office for Civil Rights (OCR)
- U.S. Equal Employment Opportunity Commission (EEOC)
- U.S. Department of Labor, Office of Federal Contract Compliance Programs (OFCCP)
- U.S. Department of Housing and Urban Development (HUD), Office of Fair Housing and Equal Opportunity (FHOO), which includes the Fair Housing and Assistance Program (FHAP) and Fair Housing Initiatives Program (FHIP)

Since 1957, Congress and the President have greatly expanded the federal civil rights effort through the creation of additional substantive rights and other enforcement agencies. Today, the major statutes and executive orders affecting civil rights enforcement are:

- Equal Pay Act of 1963
- Civil Rights Act of 1964
- Voting Rights Act of 1965
- President Johnson's Executive Order 11,246 of 1965
- Age Discrimination in Employment Act of 1967
- Title VIII of the Civil Rights Act of 1968
- Title IX of the Education Amendments of 1972
- Equal Employment Opportunity Act of 1972
- Rehabilitation Act of 1973
- Voting Rights Act Amendments of 1975
- Age Discrimination Act of 1975
- President Carter's Reorganization Plan No. 1
- Executive orders relating to equal opportunity in 1978–1979
- Voting Rights Amendments of 1982
- Civil Rights for Institutionalized Persons Act of 1986
- Housing and Community Development Act of 1987
- Civil Rights Restoration Act of 1987

¹ U.S. Commission on Civil Rights, *Funding Federal Civil Rights Enforcement*, June 1995, p. 1.

- Civil Liberties Act of 1988
- Fair Housing Amendments Act of 1988
- Americans with Disabilities Act of 1990
- Civil Rights Act of 1991
- Voting Rights Language Assistance Act of 1992

Scope and Methodology

This review describes and analyzes federal budget requests from FY 1994 to FY 2004, as well as the funding levels appropriated by Congress in response to the Presidents' requests. This study also analyzes the changes in workload and staffing levels of the six civil rights agencies. Information in this report was obtained from the agencies or accessed on their Web sites. In some instances, data have been updated and will differ from those in the previous funding reports.

All references to real funding are expressed in constant 1994 dollars. Expression in constant dollars accounts for inflationary trends and more accurately reflects the actual purchasing power of the funds. In previous Commission reports, as well as this one, adjusted values have been referred to as "real funding" or "real spending power." The deflators used are the same as those used by the U.S. Office of Management and Budget in *Budget of the United States: Historical Tables, Fiscal Year 2004*, table 1.3, p. 25. The deflators have been used in other analyses performed by the Commission, including its 1995 *Funding Federal Civil Rights Enforcement* report, its 2001 *Funding Federal Civil Rights Enforcement: 2000 and Beyond* report, and its 2002 *Funding Federal Civil Rights Enforcement: 2000–2003* report.

This study does not evaluate the effectiveness of civil rights enforcement, nor does it evaluate qualitative measures such as the efficiency of the workforce or the nature of discrimination. It presents and contrasts agency budget and workload trends on a yearly basis. By tracking agency outputs and outcomes, it establishes a baseline from which the government can begin to demonstrate and act upon funding of civil rights programs. The results demonstrate the federal commitment to civil rights enforcement and the impact of funding decisions on staffing and workload of federal civil rights offices.

Analysis

The Commission's 1995 report on funding levels for federal civil rights enforcement concluded that "reductions in funding and staff continue to undermine our national enforcement of civil rights."² The Commission reviewed civil rights funding again in 2001 and concluded that "the nation's civil rights laws remain, in large measure, unfunded mandates."³ In its 2002 review, the Commission once again concluded that "inadequate funding endures in each of these agencies, thus hindering them from sufficiently exercising their civil rights enforcement authority."⁴ Although no new laws have been enacted since the last funding report, adequate funding is still needed so that agencies can carry out their civil rights responsibilities. The reductions in civil rights agencies' budgets occurred at times when the civil rights enforce-

² Ibid., p. 4.

³ U.S. Commission on Civil Rights, *Funding Federal Civil Rights Enforcement: 2000 and Beyond*, February 2001, p. 59.

⁴ U.S. Commission on Civil Rights, *Funding Federal Civil Rights Enforcement: 2000–2003*, April 2002, p. 20.

ment responsibilities of the agencies had grown substantially. The data, which follow, demonstrate that since the 1995 report, the nation's enforcement of civil rights laws continues to be threatened by insufficient funding and staffing for federal civil rights agencies and programs.

For FY 2004, after accounting for inflation, the President's request amounts to increases for five enforcement agencies, which includes one agency program reviewed.⁵ The largest increase represented in the President's request is for HUD/FHAP, which is 18.6 percent, followed by HHS in which the President requested a 4.1 percent increase. The President's largest request for decreased funding is a 28.5 percent reduction for HUD/FHEO (see Summary Table 1).

Summary Table 1—Civil Rights Enforcement Funding, FY 2002–2004
(1994 inflation-adjusted dollars)

Civil rights enforcement agency	President's request	Congressional appropriation
	<i>FY 2002–2003 change</i>	
DOEd	↑ 5.9%	↑ 5.6%
EEOC	↑ 2.4%	↓ 2.3%
OFCCP	↑ 0.2%	↓ 1.2%
DOJ/CRD	↑ 2.1%	↑ 1.7%
HHS	↓ 1.1%	↑ 4.5%
HUD/FHEO	↑ 14.2%	↓ 21.9%
HUD/FHAP	↑ 9.7%	↓ 1.4%
HUD/FHIP	↓ 5.6%	↓ 2.9%
	<i>FY 2003–2004 change</i>	
DOEd	↑ 3.9%	
EEOC	↑ 1.6%	
OFCCP	↓ 1.4%	
DOJ/CRD	↑ 2.5%	
HHS	↑ 4.1%	
HUD/FHEO	↓ 28.5%	
HUD/FHAP	↑ 18.6%	
HUD/FHIP	↓ 11.4%	

For FY 2003, the President requested budget increases for six civil rights enforcement agencies, which includes one agency program reviewed, but not HHS and FHIP (see Summary Table 1).

Furthermore:

- Since FY 1994, DOEd/OCR's budget, in actual dollars, has increased 51.2 percent. But after adjusting for inflation, the agency realized a 27.0 percent increase in funding. For each fiscal year between 1994 and 2004, had Congress appropriated the President's request, DOEd/OCR's budget would have increased 61.3 percent. After

⁵ HUD's FHAP and FHEO programs are evaluated separately in this study.

adjusting for inflation, the agency would have received a 32.5 percent increase in its budget. Between FY 1994 and 2002, OCR's full-time-equivalent (FTE) staff level decreased 15 percent and the number of initiated compliance reviews decreased 92 percent. The number of backlogged complaints is now lower than in FY 1994.

- Between FY 1994 and 2003, congressional appropriations for EEOC increased 34.3 percent. After adjusting for inflation, EEOC's budget has increased 12.4 percent in the past nine years. Between FY 1994 and 2004, had Congress met the President's request, EEOC's cumulative increase would have been 42.6 percent in actual dollars, and 17.2 percent in real spending power. After decreasing to a low of 2,544 in FY 1998, the number of FTEs now stands at 2,783, which is nearly 2 percent less than what it was in FY 1994. EEOC's private sector pending inventory decreased 65 percent, from 86,547 in FY 1994 to 30,245 in FY 2002. Pending inventory for federal sector enforcement after increasing from FY 1994 through 1999 has continuously declined. The majority of EEOC's total resolutions continue to fall under the no cause decision category.
- Since FY 1994, OFCCP's budget has increased 38.0 percent. But once inflation is taken into account, this increase amounts to 15.8 percent. Had the President's requests been met between FY 1994 and 2004, OFCCP would have received an increase of 44.4 percent, which would have represented an 18.8 percent increase after adjusting for inflation. Between FY 1994 and 1997, the number of FTEs declined, as did the number of resolved complaints and compliance reviews.
- Of the federal agencies reviewed in this report, DOJ/CRD received the largest percentage increase in its budget over the past 10 years. Between FY 1994 and 2003, the division's budget grew 74.1 percent. After adjusting for inflation, the budget grew 45.7 percent. Between FY 1994 and 2004, if Congress had approved funding based on the President's request, DOJ/CRD's budget would have grown 85.9 percent in actual dollars and 52.9 percent after adjusting for inflation. Between FY 1994 and 2000, CRD's FTE level increased 31 percent, with all its sections, except for the Coordination and Review Section, receiving additional staff.
- Between FY 1994 and 2003, congressional appropriations for HHS/OCR increased 48.9 percent in actual dollars, although this resulted in a 24.8 percent increase after adjusting for inflation. Had the President's requests been met between FY 1994 and 2004, HHS/OCR's budget would have increased 54.4 percent in actual dollars and 26.5 percent in real dollars. OCR currently has fewer staff members (246 FTEs) than it had in FY 1994 (284 FTEs). The decrease in total staffing has reduced the number of staff available to process complaints.
- Of the federal agencies reviewed in this report, HUD/FHEO is the only agency that has experienced decreased funding over the past 10 years. Between FY 1994 and 2003, congressional appropriations for FHEO decreased 6.8 percent. After adjusting for inflation, FHEO realized a 22.1 decrease in its budget. Had Congress granted the President's request between FY 1994 and 2004, FHEO would still have received decreased funding but not of the same magnitude. The President's request would have amounted to a decrease in funding of only 0.2 percent, and after adjusting for inflation FHEO's spending power would have been reduced by 18 percent. The number of

FTEs continuously declined between FY 1994 and 2001. The total number of program compliance complaints as well as reviews increased between FY 1994 and 2003.

- Between FY 1994 and 2003, FHAP's budget increased 467.6 percent. In terms of real spending power, the budget has grown by 377.8 percent. For FY 2004, if Congress grants the President's request of \$31.0 million, FHAP's budget will increase by 21 percent.
- Unlike FHAP, between FY 1994 and 2003, FHIP's budget decreased 2.1 percent in actual dollars and 18.0 percent in real dollars. FHIP's spending power is now less than it was in FY 1994. At no time since FY 1996 has Congress granted FHIP the amount that the President requested. Had Congress granted the President's request between FY 1994 and 2004, FHIP's budget would have increased 18.3 percent in actual dollars, but in real spending power decreased 3.0 percent.

Chapter 1

Office for Civil Rights, U.S. Department of Education

The U.S. Department of Education's (DOEd) Office for Civil Rights (OCR) is responsible for enforcing the following statutes containing nondiscrimination provisions:

- Title VI of the Civil Rights Act of 1964
- Title IX of the Education Amendments of 1972
- Section 504 of the Rehabilitation Act of 1973
- Age Discrimination Act of 1975
- Title II of the Americans with Disabilities Act of 1990

These laws apply throughout the nation and coverage extends to nearly 15,000 school districts; more than 4,000 colleges and universities; about 5,000 proprietary organizations, such as training schools for truck drivers and cosmetologists; and thousands of libraries, museums, vocational rehabilitation agencies, and correctional facilities.¹

Budget Analysis

At his confirmation hearing on February 26, 2002, Assistant Secretary for Civil Rights Gerald A. Reynolds announced that he was eager to serve in the Office for Civil Rights because it protects the nation's students against the evils of invidious discrimination.² His primary mission, he said, would be to uphold the Constitution and enforce federal civil rights laws.³ But as Norma V. Cantú, the former Assistant Secretary for Civil Rights at the department, said, "There is a direct relationship between the level of funding and [OCR's] ability to serve customers and resolve real civil rights problems."⁴ Between FY 1994 and 1997, congressional appropriations decreased from \$56.5 million to \$54.9 million (see table 1.1). After adjusting for inflation, the congressional appropriation of \$54.9 million in FY 1997 was worth \$51.3 million (see table 1.1 and figure 1.1).

¹ U.S. Department of Education, Office for Civil Rights, *2000 Annual Report to Congress*, <<http://www.ed.gov/offices/OCR/AnnRpt2000/ensures.html>> (hereafter cited as DOEd, Office for Civil Rights, 2000 Annual Report).

² U.S. Department of Education, Opening Statement of Gerald A. Reynolds Before the Senate Committee on Health, Education, Labor & Pensions, <<http://www.ed.gov/speeches/02-2002/20020226.html>>.

³ Ibid.

⁴ U.S. Congress, House Subcommittee on the Departments of Labor, Health and Human Services, Education, and Related Agencies of the Committee on Appropriations, *Departments of Labor, Health and Human Services, Education and Related Agencies Appropriations for 1999*, Apr. 1, 1998, p. 648 (testimony of Norma V. Cantú, Assistant Secretary for Civil Rights).

Table 1.1—DOEd/OCR Funding History
(in actual dollars)

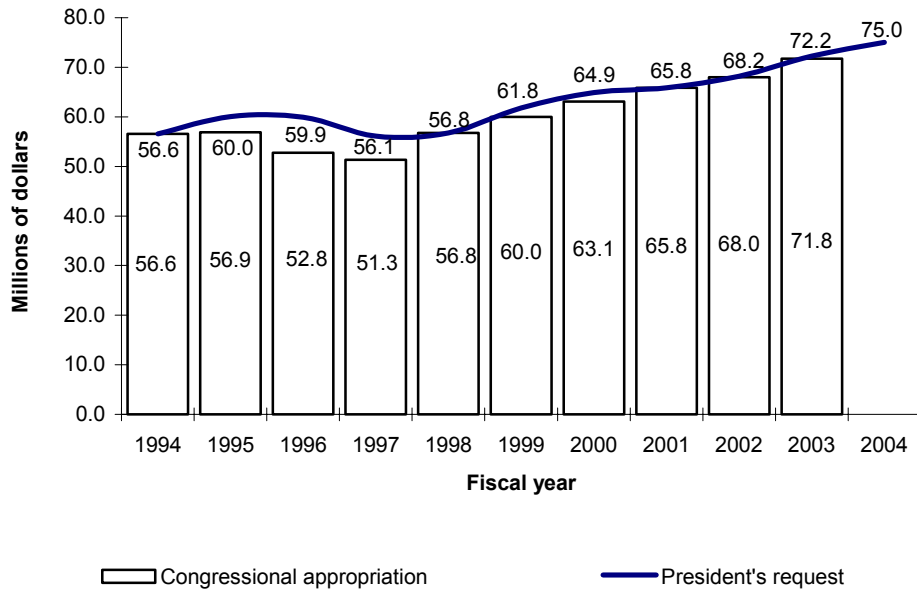
Fiscal year	President's request	Congressional appropriation
1994	\$56,570,000	\$56,570,000
1995	61,457,000	58,236,000
1996	62,784,000	55,277,000
1997	60,000,000	54,900,000
1998	61,500,000	61,500,000
1999	68,000,000	66,000,000
2000	73,262,000	71,200,000
2001	76,000,000	76,000,000
2002	79,934,000	79,660,000
2003	86,276,000	85,715,000
2004	91,275,000	

Source: U.S. Department of Education, Office for Civil Rights.

In FY 1998, congressional appropriations started to steadily increase, as did the amount of funding requested by the President. During FY 1998 and 2001, the amount of funding Congress granted OCR matched the President's request. Although OCR's funding increased, the amounts were not sufficient to keep pace with inflation. For example, in FY 2002, OCR received funding of \$79.6 million, but after adjusting for inflation, the amount of funding was worth \$68.0 million (see table 1.1 and figure 1.1).

Between FY 2002 and FY 2003, the President requested an increase in funding of \$6.3 million, but for FY 2003 Congress granted \$85.7 million, which was less than the \$86.2 million requested by the President (see table 1.1). After adjusting for inflation, the \$85.7 million was worth \$71.8 million. For FY 2004, the President is requesting \$91.2 million in funding, which is 5.8 percent more than what was requested for FY 2003. If Congress grants the President's request, after adjusting for inflation, OCR will receive \$75.0 million in funding (see table 1.1 and figure 1.1). Upon examination of the funding that Presidents have requested between FY 1994 and 2004, OCR's budget has increased \$34.7 million. But after adjusting for inflation, this increase has been reduced to \$18.4 million.

Figure 1.1—DOEd/OCR Funding History
(in constant 1994 dollars)



Source: Calculated from table 1.1.

Staffing and Workload Analysis

OCR's staff is its most important resource and approximately 80 percent of its annual budget is allocated for staffing. Between FY 1995 and 1998, as OCR's funding level continued to dwindle, it was unable to maintain the number of full-time staff that it had during FY 1994. Between FY 1995 and 1998, there was a 13 percent decrease in the number of full-time staff (see table 1.2).

Although staffing levels increased nearly 8 percent between FY 1998 and 1999, the increase in funding was not enough to sustain the staff level in subsequent years. Between FY 1999 and 2002, staffing levels decreased from 737 to 698. While this decrease may not be significant, OCR staff has declined by 15 percent since FY 1994 (see table 1.2).

As the number of staff continued to decline, OCR's responsibilities continued to increase. More than 90 percent of OCR's staff is engaged in responding to complaints, conducting compliance reviews and other proactive initiatives, monitoring resolution agreements, developing policy guidance, providing technical assistance, responding to customer inquiries, and performing other activities to ensure that civil rights considerations are included in all DOEd programs.⁵ Decreasing staff during the late 1990s may have caused OCR to not be able to resolve all its complaints within the fiscal year in which they were received. In FY 1997, when OCR's budget did not increase from the previous year and its staff had been cut by 8.5 percent, it resolved 4,981 of the 5,296 complaints it received (see table 1.3). In FY 1999 and

⁵ DOEd, Office for Civil Rights, 2000 Annual Report, p. 4.

2000, OCR was faced with the largest backlogs of complaints since FY 1994. In FY 1999, the backlog of complaints numbered 1,259, and in FY 2000 the backlog of complaints had grown to 1,467. In FY 2001, the backlog had dwindled to 206, a reduction of 86 percent. In FY 2002, OCR received 5,019 complaints of which 4,842 were resolved, leaving a backlog of 177 complaints (see table 1.3).

Table 1.2—DOEd/OCR Staffing History

Fiscal year	FTE level
1994	821
1995	788
1996	744
1997	681
1998	685
1999	737
2000	712
2001	696
2002	698

Source: U.S. Department of Education, Office for Civil Rights.

Table 1.3—DOEd/OCR Workload History

Fiscal year	Complaints received	Complaints resolved
1994	5,302	5,751
1995	4,981	5,559
1996	4,828	4,886
1997	5,296	4,981
1998	4,827	4,753
1999	6,628*	5,369
2000	4,897	6,364
2001	4,571	4,777
2002	5,019	4,842

*1,614 of these complaints were filed by a single complainant.

Source: U.S. Department of Education, Office for Civil Rights.

As OCR's backlog of complaints was increasing, the number of compliance reviews being initiated by OCR was decreasing.⁶ Between FY 1997 and 1998, the number of compliance reviews initiated fell by 33 percent. And although OCR has continuously received increased funding since FY 1998, the number of compliance reviews being initiated has not increased. For FY 2002, only 11 compliance reviews were initiated, which is a 48 percent decrease from FY 2001 and a 92 percent decrease from FY 1994 (see table 1.4).

⁶ A compliance review is a formal process conducted by civil rights agencies on their designees to determine whether an applicant's or recipient's program is consistent with antidiscrimination laws.

Table 1.4—DOEd/OCR Compliance Workload

Fiscal year	Compliance reviews initiated
1994	144
1995	96
1996	146
1997	152
1998	102
1999	76
2000	47
2001	21
2002	11

Source: U.S. Department of Education, Office for Civil Rights.

Summary

Except for in FY 1994 and 1998, the congressional appropriation was always below the President's request. In the 2000s, congressional appropriations were more in line with the President's request. For FY 2004, if the President's request of \$91.2 million is granted, after adjusting for inflation, OCR will receive \$75.0 million in funding.

Since 80 percent of OCR's annual budget is allocated for staffing, inadequate funding in some years resulted in decreased staffing. Decreased staffing levels may not have allowed OCR to resolve its complaints in the fiscal year in which they were received. OCR also was unable to initiate an adequate number of compliance reviews.

Chapter 2

U.S. Equal Employment Opportunity Commission

The Equal Employment Opportunity Commission (EEOC), established by Title VII of the Civil Rights Act of 1964, enforces the following federal statutes:

- Equal Pay Act of 1963
- Title VII of the civil Rights Act of 1964, as amended
- Age Discrimination in Employment Act of 1967
- Sections 501 and 505 of the Rehabilitation Act of 1973, as amended
- Titles I and V of the Americans with Disabilities Act of 1990
- Civil Rights Act of 1991

EEOC strives to eliminate illegal discrimination from the workplace. With its headquarters in Washington, D.C., and through the operations of 50 field offices nationwide, EEOC coordinates all federal equal employment opportunity regulations, practices, and policies. EEOC's responsibilities have continued to grow, but its budget has not always increased to accommodate its workload.

Budget Analysis

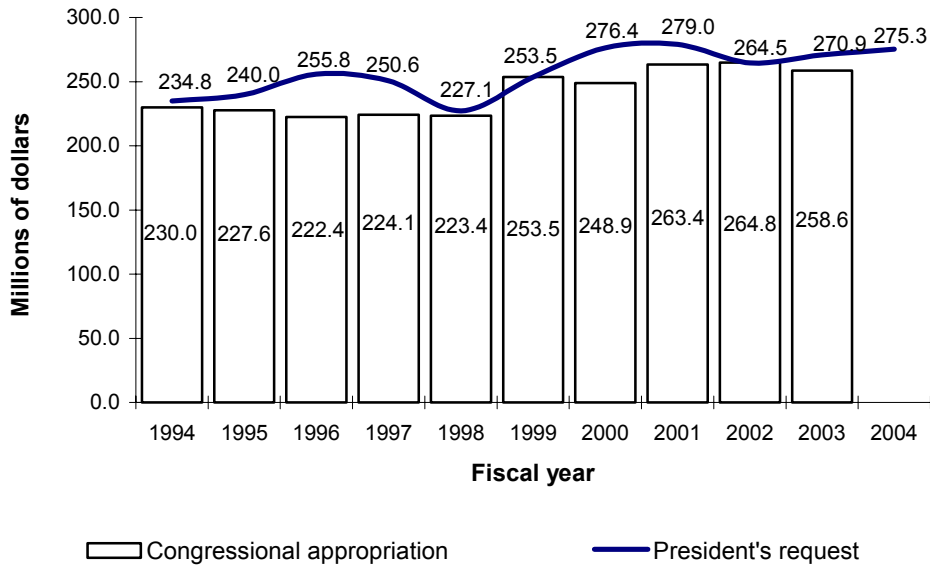
From FY 1994 to 1996, the President requested increases in funding for EEOC and although Congress granted increases, they were far less than the President's request. Between FY 1994 and 1997, EEOC's budget increased 4 percent, but after accounting for inflation, the budget actually decreased 2.6 percent. In FY 1998, the President requested \$246.0 million in funding, which was 8 percent below the funding level requested for FY 1997 (see table 2.1). After adjusting for inflation, the President's request would have been worth \$227.1 million, but the \$242.0 million congressional appropriation was worth even less—\$223.4 million—than the President's request (see figure 2.1).

Table 2.1—EEOC Funding History
(in actual dollars)

Fiscal year	President's request	Congressional appropriation
1994	\$234,845,000	\$230,000,000
1995	245,720,000	233,000,000
1996	268,000,000	233,000,000
1997	268,000,000	239,740,000
1998	246,000,000	242,000,000
1999	279,000,000	279,000,000
2000	312,000,000	280,900,000
2001	322,000,000	304,000,000
2002	310,000,000	310,406,000
2003	323,516,000	308,822,000
2004	335,000,000	

Source: Equal Employment Opportunity Commission.

Figure 2.1—EEOC Funding History
(in constant 1994 dollars)



Source: Calculated from table 2.1.

EEOC’s funding decreased 0.4 percent between FY 2002 and 2003. The combination of this decrease and the \$14.7 million difference between the President’s request and the congressional appropriation created a \$18.3 million budget shortfall that nearly forced the agency to furlough its 2,783 employees for 16 to 19 days.¹ Chairwoman Cari M. Dominguez traced the

¹ Stephen Barr, “Budget Shortfall Could Cause Furloughs for EEOC Employees,” *Washington Post*, Mar. 6, 2003, p. B2 (hereafter cited as Barr, “Furloughs for EEOC Employees”).

agency's budget problems to the September 11, 2001, terrorist attack that destroyed the EEOC New York District Office.² After the attack, the agency's costs spiked dramatically in New York partly because it had to replace destroyed files, furniture, supplies and equipment and also lease a more expensive office space. Before its spring break, Congress approved a \$15 million supplemental appropriation to avoid furloughs.³ For FY 2004, the President is requesting \$335 million in funding, but after adjusting for inflation this request is worth \$275.3 million (see table 2.1 and figure 2.1).

Staffing and Workload Analysis

About 80 percent of the EEOC budget goes for staff salaries and office rent.⁴ As a result of inadequate increases in funding and budget shortfalls, the number of FTEs has not kept up with increases in EEOC's responsibilities and workload. Between FY 1994 and 1998, EEOC's FTE level fell by 10 percent, from 2,832 to 2,544. At no time has EEOC been given the number of FTEs that it has requested. For example, during FY 1996 EEOC requested 3,219 FTEs, but the actual number of FTEs for that year was 2,676, which resulted in a 14 percent gap between the requested and actual staff (see table 2.2).

Table 2.2—EEOC Staffing History

Fiscal year	Requested	Actual
1994	3,000	2,832
1995	3,020	2,813
1996	3,219	2,676
1997	3,022	2,586
1998	2,680	2,544
1999	2,748	2,593
2000	2,946	2,852
2001	3,055	2,704
2002	3,055	2,783

Source: Equal Employment Opportunity Commission.

By FY 2000, EEOC's staff had increased to 2,852, returning it to its FY 1994 FTE level. But as EEOC received a minimum increase in its budget between FY 2001 and 2002 and a decrease between FY 2002 and 2003, EEOC was forced to either cut its staff or not replace employees as they left. Between FY 2000 and 2002, the number of FTEs decreased 2.4 percent (see table 2.2).

As a result of implementing the Priority Charge Handling Procedures (PCHP), EEOC has continued to resolve more complaints while also reducing its backlog. Under the PCHP system, incoming charges are prioritized into three categories based on the likelihood that discrimination occurred. Between FY 1994 and 1996, EEOC received 15 percent fewer private sector complaints, resolved 45 percent more complaints, and reduced its backlog by 20 percent. In FY 1997, EEOC resolved 106,312 complaints, which is the most since FY 1994 (see

² Ibid.

³ Stephen Barr, "No Furloughs at EEOC," *Washington Post*, Apr. 22, 2003, p. B2.

⁴ Barr, "Furloughs for EEOC Employees," p. B2.

table 2.3). Of the total complaints resolved in FY 1997, 61 percent were no cause decisions, 28 percent were administrative closures, and only 11 percent were merit resolutions (see table 2.4).

Table 2.3—EEOC Private Sector Enforcement

Fiscal year	Complaints received	Complaints resolved	Pending inventory
1994	91,189	71,563	86,547
1995	87,529	91,774	88,263
1996	77,990	103,467	69,142
1997	80,680	106,312	64,850
1998	79,591	101,470	51,561
1999	77,444	97,846	38,478
2000	79,896	93,672	34,297
2001	80,840	90,106	32,481
2002	84,442	95,222	30,245

Source: Equal Employment Opportunity Commission.

Between FY 1999 and 2001, as the number of resolutions continued to decrease, the number of merit resolutions increased and the number of no cause decisions continued to decrease. In FY 2002, EEOC resolved 95,222 cases of which 20 percent were merit resolutions, 59 percent were no cause decisions, and 21 percent were administrative closures (see table 2.4).

Table 2.4—EEOC Resolutions

Fiscal year	Total resolutions	Merit resolutions	No cause decisions	Administrative closures
1994	71,563	11,100 (15.5%)	34,451 (48.1%)	26,012 (36.3%)
1995	91,744	10,921 (11.9)	46,700 (50.9)	34,153 (37.2)
1996	103,467	9,430 (9.1)	63,216 (61.1)	30,821 (29.8)
1997	106,312	11,668 (11.0)	64,567 (60.7)	30,077 (28.3)
1998	101,470	12,558 (12.4)	61,794 (60.9)	27,118 (26.7)
1999	97,846	16,102 (16.5)	58,174 (59.5)	23,570 (24.1)
2000	93,672	19,938 (21.3)	54,578 (58.3)	19,156 (20.5)
2001	90,106	19,908 (21.1)	51,562 (57.2)	18,636 (20.7)
2002	95,222	19,075 (20.0)	56,514 (59.3)	19,633 (20.6)

Source: Equal Employment Opportunity Commission.

Workload demands continued to rise in the federal sector between FY 1994 and 2000. The number of hearing receipts increased 30 percent and appeal receipts increased 26 percent. Between FY 1994 and 1999, pending inventory increased dramatically each year until reaching a six-year high of 24,356 in FY 1999, resulting in an increase of 155 percent. In FY 2000, pending inventory decreased to 21,128. Between FY 2001 and 2002, both hearing and appeal receipts declined, as did pending inventory. Hearing receipts decreased 19 percent and appeal receipts decreased 30 percent. Pending inventory decreased 22 percent, from 19,195 in FY 2001 to 14,881 in FY 2002 (see table 2.5).

Table 2.5—EEOC Federal Sector Enforcement

Fiscal year	Hearing receipts	Appeal receipts	Total pending inventory
1994	10,712	7,141	9,540
1995	10,515	8,152	12,865
1996	10,677	8,001	16,651
1997	11,198	8,453	20,155
1998	12,218	8,480	23,193
1999	12,637	8,690	24,356
2000	13,942	8,986	21,128
2001	11,812	9,634	19,195
2002	9,617	6,725	14,881

Source: Equal Employment Opportunity Commission.

Summary

Despite increases in enforcement responsibilities, particularly during the 1990s, EEOC's congressional appropriation was always well below the President's request until FY 1999, when Congress granted exactly what the President requested. If Congress grants the President's request for FY 2004, after adjusting for inflation, EEOC will receive \$275.3 million in funding.

Over the past 10 years, EEOC has never received the number of FTEs that it has requested. The agency has 49 fewer FTEs than it did in FY 1994. As the number of staff declined and increased, EEOC's workload at times continued to increase. Nearly two-thirds of EEOC's resolutions continue to be no cause decisions, and only 20 percent are found to have merit. Throughout its periods of decreasing staff, EEOC has continued to reduce its pending inventory of private sector complaints. Beginning with the new decade, pending inventory of federal sector cases also continued to decline.

Chapter 3

Office of Federal Contract Compliance Programs, U.S. Department of Labor

Executive Order 11,246 directs federal agencies to include nondiscrimination and affirmative action requirements in all federal contracts. In the late 1970s, when the entire federal contract compliance program was consolidated into the Department of Labor (DOL), the compliance activities of 11 agencies transferred to the Office of Federal Contract Compliance Programs (OFCCP). The enforcement authority and responsibilities of OFCCP are encompassed in the following:

- Section 4212 of the Vietnam Era Veterans' Readjustment Assistance Act of 1972
- Section 503 of the Rehabilitation Act of 1973
- National Apprenticeship Act of 1937
- Immigration Reform and Control Act of 1986
- Title I of the Americans with Disabilities Act of 1990
- Family and Medical Leave Act of 1993

OFCCP asserts its authority through the following enforcement activities: (1) conducting compliance reviews and investigating complaints; (2) negotiating conciliation agreements and letters of commitment from contractors and subcontractors who are in violation of regulatory requirements; (3) monitoring contractor compliance and compliance reports; (4) forming links between contractors and DOL job-training programs; (5) providing technical assistance to aid contractor understanding of and compliance with federal nondiscrimination requirements; and (6) recommending enforcement actions to the solicitor of DOL, its chief legal officer.¹ OFCCP's jurisdiction covers approximately 26 million, or nearly 22 percent of the total civilian workforce.²

Budget Analysis

During 1994 to 2001, OFCCP pursued three major policy initiatives: breaking the glass ceiling, narrowing the pay gap between men and women, and removing the vestiges of systemic job discrimination.³ Although OFCCP took on additional work during this period, it did not always receive funding commensurate with its increased responsibilities. In most instances, Congress did not grant OFCCP the amount of funding requested by the President. Between 1994 and 2001, OFCCP was funded at the same level or slightly above the level requested by the President in FY 1994 and 2002 (see table 3.1).

¹ U.S. Commission on Civil Rights, *Funding Federal Civil Rights Enforcement: 2000 and Beyond*, February 2001.

² OFCCP, "What We Do," <<http://www.dol.gov/esa/ofccp/ofwedo.htm>>.

³ Nancy Kreiter, "Equal Employment Opportunity: EEOC and OFCCP," chap. 12 in the Citizens' Commission on Civil Rights report, *The Test of Our Progress Clinton Record on Civil Rights*, 1999, p. 157.

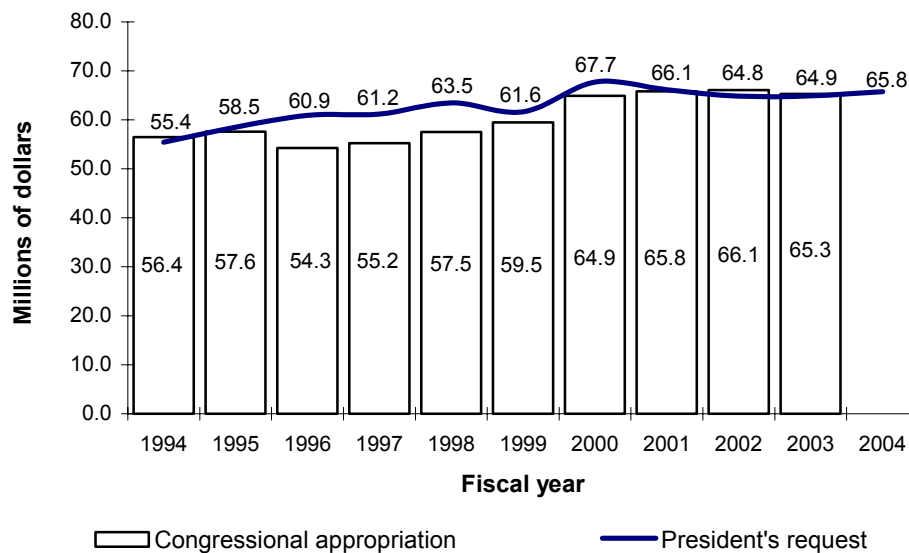
Between FY 1999 and 2000, OFCCP received its largest funding increase, 11.9 percent. OFCCP’s funding, which began increasing in the late 1990s, has continuously increased throughout the 2000s. Although the President requested a slight decrease of less than 1 percent in funding between FY 2001 and 2002, Congress actually appropriated OFCCP 2 percent more than the President’s request for FY 2002. OFCCP’s FY 2002 budget of \$77.7 million was worth \$66.1 million after adjusting for inflation (see table 3.1 and figure 3.1).

Table 3.1—OFCCP Funding History
(in actual dollars)

Fiscal year	President’s request	Congressional appropriation
1994	\$55,398,000	\$56,443,000
1995	59,902,000	58,928,000
1996	63,831,000	56,851,000
1997	65,460,000	59,058,000
1998	68,728,000	62,271,000
1999	67,836,000	65,461,000
2000	76,417,000	73,250,000
2001	76,308,000	76,000,000
2002	76,000,000	77,701,000
2003	77,500,000	78,000,033
2004	80,000,000	

Source: U.S. Department of Labor, OFCCP.

Figure 3.1—OFCCP Funding History
(in constant 1994 dollars)



Source: Calculated from table 3.1.

For FY 2004, the President is requesting \$80 million in funding for OFCCP (see table 3.1). If Congress grants the President’s request, after adjusting for inflation, OFCCP’s budget will be worth \$65.8 million (see figure 3.1).

Staffing and Workload Analysis

Between FY 1994 and 1997, OFCCP experienced roller coaster funding and was unable to retain its staff at the FY 1994 level. During this period, OFCCP’s FTE level decreased 9 percent, from 785 in FY 1994 to 712 in FY 1997. Although OFCCP was able to increase its staff 11.6 percent between FY 1999 and 2000, when it received its largest increase in funding, it was unable to maintain that level of staffing into the 2000s. Between FY 2000 and 2001, OFCCP’s staffing level decreased 4.3 percent, from 811 to 776 FTEs. By FY 2002, OFCCP’s FTE level had decreased again and stood at 718 staff members, a number that is approximately 9 percent lower than the FTE level in FY 1994 (see table 3.2).

Table 3.2—OFCCP Staffing History

Fiscal year	FTE level
1994	785
1995	775
1996	727
1997	712
1998	743
1999	727
2000	811
2001	776
2002	718

Source: U.S. Department of Labor, OFCCP.

As OFCCP’s staffing level continued to decline during FY 1994 to 1997, so did the number of resolved complaints and the number of compliance reviews. Between FY 1994 and 1997, the number of complaints resolved decreased from 802 to 372. During the same period, pending inventory also decreased and the number of compliance reviews performed decreased 10 percent (see table 3.3).

Between FY 1998 and 2001, the number of complaints that OFCCP resolved fluctuated between 294 and 313, but decreased to 279 in FY 2001. During this period, pending inventory declined 41 percent, from 350 to 207. Also during this period, OFCCP maintained excellent productivity with respect to its compliance program. Compliance reviews conducted by OFCCP rose 26 percent, from 5,707 to 7,175 (see table 3.3).

Table 3.3—OFCCP Workload History

Fiscal year	Complaints resolved	Pending inventory	Compliance reviews
1994	802	--	4,179
1995	566	368	3,991
1996	473	282	3,476
1997	372	265	3,750
1998	294	350	5,707
1999	313	284	5,875
2000	306	268	6,672
2001	279	207	7,175
2002	297	78	6,494

Source: U.S. Department of Labor, OFCCP.

In FY 2002, when OFCCP's budget increased only 2 percent and its FTE level decreased 7 percent, the number of conducted compliance reviews declined from 7,175 in FY 2001 to 6,494 in FY 2002, resulting in a 9 percent decrease (see table 3.3).

Inadequate funding and changes in OFCCP's FTE levels correlate with the number of persons receiving backpay and the amount of monetary benefits associated with those individuals over the past nine years. In FY 1994, OFCCP obtained \$14.4 million for 10,986 women, minorities, persons with disabilities, and veterans. By FY 1996, the number of recipients receiving backpay had fallen to 4,203, as did the amount of relief they were awarded (see table 3.4).

Table 3.4—OFCCP Financial Agreements

Fiscal year	Persons receiving backpay	Backpay monetary benefits
1994	10,986	\$14,400,000
1995	6,704	12,284,953
1996	4,203	8,216,187
1997	4,435	10,791,520
1998	6,306	10,524,000
1999	8,493	13,935,000
2000	7,639	15,568,000
2001	6,925	9,036,000
2002	8,878	9,048,515

Source: U.S. Department of Labor, OFCCP.

In FY 2000, OFCCP obtained a record \$15.6 million for 7,639 recipients. Since FY 2000, the amount of monetary benefits has decreased and the number of recipients receiving benefits has fluctuated and remains well below the FY 1994 level (see table 3.4).

Summary

Between FY 1994 and 2001, OFCCP's workload increased, but in most instances, Congress did not grant OFCCP the amount of funding requested by the President. In FY 2002 and 2003, congressional appropriations, although small, were greater than the President's request. For FY 2004, if Congress grants what the President is requesting, after adjusting for inflation, OFCCP's funding will be worth \$14.2 million less than the President's request.

The number of FTEs decreased throughout most of the late 1990s. The number of FTEs increased to a record 811 in FY 2000, but has since declined. Between FY 2000 and 2002 pending inventory declined, the number of resolved complaints declined and then increased, and the number of compliance reviews increased and then decreased.

Chapter 4

Civil Rights Division, U.S. Department of Justice

The Civil Rights Division's (CRD) initial responsibility was enforcing voting and criminal statutes. But with the passage of the Civil Rights Act of 1964 and more recent laws and executive orders, the authority of CRD has greatly expanded. CRD has 10 subject-matter sections: the Appellate Section, the Coordination and Review Section, the Civil Rights Prosecution Section, the Educational Opportunities Section, the Employment Litigation Section, the Housing and Civil Enforcement Section, the Special Litigation Section, the Disability Rights Section, the Voting Rights Section, and the Office of Special Counsel.

Budget Analysis

Between FY 1994 and 1996, CRD's budget increased nearly 8 percent, from \$59.9 million in FY 1994 to \$64.5 million in FY 1996. In FY 1997, its congressional appropriation decreased 3 percent from \$64.5 million to \$62.4 million. Since FY 1998, CRD's budget has continuously increased (see table 4.1).

Table 4.1—DOJ/CRD Funding History
(in actual dollars)

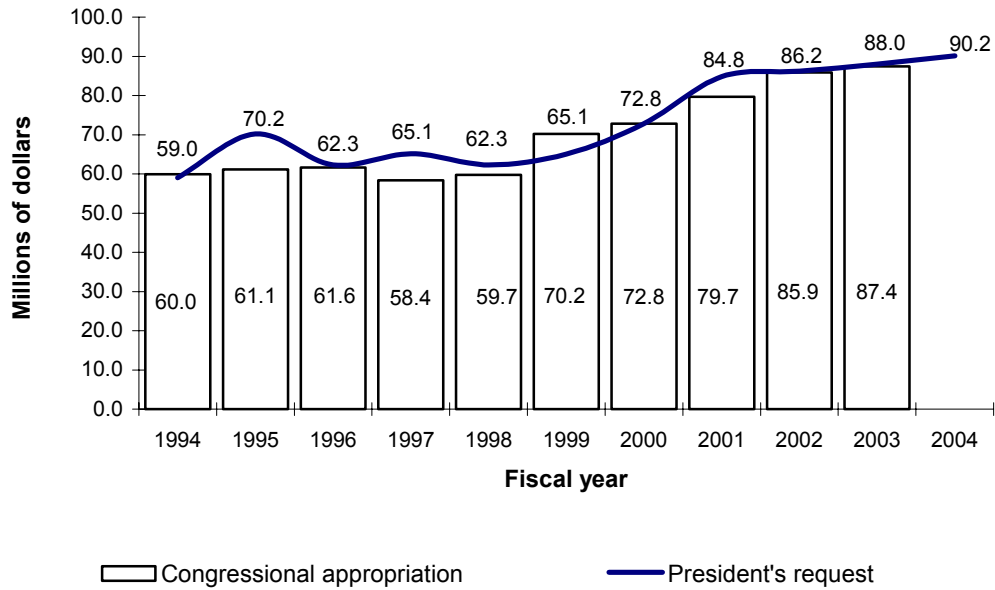
Fiscal year	President's request	Congressional appropriation
1994	\$59,000,000	\$59,956,000
1995	71,895,000	62,602,000
1996	65,304,000	64,546,000
1997	69,648,000	62,419,000
1998	67,477,000	64,689,000
1999	71,594,000	77,267,000
2000	82,200,000	82,150,000
2001	97,922,000	92,000,000
2002	101,000,000	100,642,000
2003	105,099,000	104,400,000
2004	109,700,000	

Source: U.S. Department of Justice, Civil Rights Division.

CRD received its largest increase in funding, 19 percent, between FY 1998 and 1999. Between FY 2000 and 2001, CRD received its second largest increase in funding, when its budget increased from \$82 million to \$92 million. After adjusting for inflation, CRD's budget increased 10 percent.

For FY 2003, although the President requested funding of \$105 million, Congress appropriated \$104 million. The FY 2003 appropriation, which was a 3 percent increase from the FY 2002 appropriation, is worth \$87 million after adjusting for inflation. The President is requesting \$109 million in funding for FY 2004. If Congress grants the President’s request, after adjusting for inflation, CRD’s budget will be worth \$90 million (see figure 4.1).

Figure 4.1—DOJ/CRD Funding History
(in constant 1994 dollars)



Source: Calculated from table 4.1.

Staffing and Workload Analysis

As congressional appropriations increased between FY 1994 and 1996, CRD’s staffing levels increased 2 percent. When its budget was reduced by 3 percent between FY 1996 and 1997, CRD’s staff also decreased 3 percent from 579 in FY 1996 to 573 in FY 1997. In FY 1999, CRD increased its FTEs to 589, and by FY 2000 the number of FTEs had increased 8 percent. Since FY 2000, CRD has continued to experience an increase in the number of FTEs, most significantly between FY 2000 and 2001 (see table 4.2).

Table 4.2—DOJ/CRD Staffing History

Fiscal year	FTE level
1994	568
1995	579
1996	579
1997	573
1998	573
1999	589
2000	639
2001	713
2002	744

Source: U.S. Department of Justice, Civil Rights Division.

Disability Rights Enforcement

The Disability Rights Section has enforcement responsibilities for Titles II and III of the Americans with Disabilities Act, which prohibit discrimination based on disability in state and local government employment, public accommodations, commercial facilities, and the programs and services of state and local governments. The section also has the responsibility to coordinate federal enforcement of statutes that prohibit discrimination on the basis of disability in programs that receive federal financial assistance. In FY 1995, when all disability-related coordination and enforcement responsibilities were transferred from the Coordination and Review Section, there were 66 FTEs handling the disability workload (see table 4.3). During that year, the Disability Rights Section initiated 2,444 investigations, which is the most since the creation of DRS. Only 863 investigations were pending, which is the fewest that DRS has had in the past nine years (see table 4.4). If all 66 FTEs were assigned to investigate complaints, there would have been 37 pending investigations per FTE.

Table 4.3—Disability Rights Section Staffing History

Fiscal year	FTE level
1994	48
1995	66
1996	69
1997	69
1998	69
1999	73
2000	81
2001	92
2002	97

Source: U.S. Department of Justice, Civil Rights Division.

Table 4.4—Disability Rights Section Workload History

Fiscal year	Cases filed	Cases pending	Investigations initiated	Investigations pending
1994	--	--	692	892
1995	12	12	2,444	863
1996	29	12	999	2,888
1997	28	22	805	3,017
1998	28	50	922	2,707
1999	35	66	928	2,046
2000	33	99	669*	3,105*
2001	37	95	882*	2,430*
2002	28	95	701*	2,317*

*Reflects only investigations pending in the Disability Rights Section. Substantial additional investigations are referred to other designated agencies.

Source: U.S. Department of Justice, Civil Rights Division.

Although the number of FTEs increased by three between FY 1995 and 1996, the number of FTEs remained stagnant at 69 until FY 1999 (see table 4.3). Between FY 1996 and 1997, when staff was stagnant, DRS' pending investigations rose to 3,017 (see table 4.4). By FY 2000, the FTE level increased to 81, the number of initiated investigations decreased to 669, and the number of pending investigations rose to 3,105 (see tables 4.3 and 4.4). Since FY 2001, the number of staff has increased, fewer investigations have been initiated, and the number of pending investigations has decreased. (DRS did not provide numbers for cases in its inventory that have been referred to other agencies.)

Coordination and Review

The Coordination and Review Section (CORS) coordinates the civil rights enforcement activities of other federal agencies. Among its many duties, the section develops and assists other agencies in developing guidelines and regulations for civil rights enforcement. Throughout the 1990s, FTE levels declined from 32 to 19 (see table 4.5). Back in 1996, the Commission concluded that CORS was "without the staff necessary to conduct an effective and comprehensive Title VI coordination and enforcement program."¹ In FY 2000, CORS had an FTE level of 20, and even now there are only 21 FTEs responsible for enforcing Title VI and Title IX of the Education Amendments Act of 1972. Between FY 1994 and 2002, CORS' FTE level declined 34 percent.

¹ U.S. Commission on Civil Rights, *Federal Title VI Enforcement to Ensure Nondiscrimination in Federally Assisted Programs*, June 1996, p. 139.

Table 4.5—Coordination and Review Section Staffing History

Fiscal year	FTE level
1994	32
1995	21
1996	22
1997	21
1998	19
1999	19
2000	20
2001	21
2002	21

Source: U.S. Department of Justice, Civil Rights Division.

Voting Rights Enforcement

The Voting Rights Section is responsible for bringing lawsuits to remedy discrimination in elections conducted in all jurisdictions and also has the authority to commence a civil action against any state or political subdivision that has imposed or applied a discriminatory device or procedure. Between FY 1994 and 1998, there were minimum decreases in the Voting Rights Section's FTE levels. In FY 2000, the FTE level increased to 92, and by FY 2002 there were 109 FTEs in the Voting Rights Section. Since FY 1994, the number of FTEs has increased 24 percent (see table 4.6).

Table 4.6—Voting Rights Section Staffing History

Fiscal year	FTE level
1994	88
1995	86
1996	86
1997	86
1998	85
1999	86
2000	92
2001	104
2002	109

Source: U.S. Department of Justice, Civil Rights Division.

Civil Rights Prosecution

The objective of the Civil Rights Prosecution Section is to reduce police and other official criminal misconduct and to eliminate or reduce violent activity by private citizens (including organized hate groups) against others because of their race, religion, national origin, or sex. To accomplish its objectives, the section prosecutes cases of national significance involving the deprivation of personal liberties, which either cannot be, or are not, sufficiently addressed by state or local authorities. Its jurisdiction includes acts of racial violence, misconduct by local, state, or federal law enforcement officials, violations of the peonage and involuntary

servitude statutes that protect migrant workers and others held in bondage, and violations of the Freedom of Access to Clinic Entrances Act. The section ensures that complaints are reviewed on a timely basis for investigation and potential prosecution.

In FY 1994, there were 49 FTEs assigned to the Civil Rights Prosecution Section. The number of FTEs decreased to 47 in FY 1995 and remained at that level through FY 1997. Since FY 1998, the number of FTEs has continuously increased, and as of FY 2002 there were 95 employees in the section. Since FY 1994, the Civil Rights Prosecution Section’s FTE level has increased 94 percent (see table 4.7).

As the number of FTEs was either decreasing or remaining stable, the section saw an increase in the number of complaints it received. Between FY 1994 and 1996, complaints increased 41 percent, from 8,342 to 11,721. During the same period, the number of matters investigated decreased and then increased, while the number of pending matters fluctuated (see table 4.8).

Beginning in FY 1998, when the number of FTEs increased, the number of complaints increased as the numbers of matters investigated fluctuated and the pending inventory increased from 2,617 to 2,719 in FY 2000. As of FY 2002, the section had received 9,161 complaints, investigated 1,659 matters, and had a pending inventory of 2,291 (see table 4.8). In FY 2002, if each FTE was responsible for handling complaints, the section received approximately 96 complaints per FTE (see tables 4.7 and 4.8).

Table 4.7—Civil Rights Prosecution Section Staffing History

Fiscal year	FTE level
1994	49
1995	47
1996	47
1997	47
1998	54
1999	61
2000	71
2001	85
2002	95

Source: U.S. Department of Justice, Civil Rights Division.

Table 4.8—Civil Rights Prosecution Section Workload History

Fiscal year	Complaints received	Matters investigated	Pending matters
1994	8,342	2,633	1,936
1995	8,864	2,370	1,806
1996	11,721	2,619	2,227
1997	10,891	2,753	2,613
1998	12,188	2,955	2,617
1999	12,132	2,547	2,680
2000	12,404	2,320	2,719
2001	12,438	2,261	2,269
2002	9,161	1,659	2,291

Note: Because all complaints do not rise to the level of investigation, the numbers of matters investigated and pending matters do not add up to the number of complaints received. In addition, pending matters includes backlogged complaints.

Source: U.S. Department of Justice, Civil Rights Division.

Fair Housing Enforcement

The Fair Housing Section enforces federal fair housing laws that proscribe discrimination in housing, the provision of credit, and in places of public accommodation. The section investigates complaints and litigates cases under Title VIII of the Civil Rights Act of 1968, Title II of the Civil Rights Act of 1964, and the Equal Credit Opportunity Act. In FY 1994, the Fair Housing Section had 89 FTEs dedicated to fighting housing discrimination. In FY 1995, the number of FTEs increased to 96, but beginning in FY 1997 the number of FTEs started decreasing, and by FY 1999 the section had 77 FTEs (see table 4.9).

Table 4.9—Fair Housing Section Staffing History

Fiscal year	FTE level
1994	89
1995	96
1996	95
1997	93
1998	86
1999	77
2000	90
2001	95
2002	95

Source: U.S. Department of Justice, Civil Rights Division.

Between FY 1999 and 2000, the Fair Housing Section's staff increased 17 percent, from 77 to 90. Since FY 2000, the number of FTEs increased and then remained level (see table 4.9), and as of FY 2002 the section had 95 FTEs. Increases in CRD's budget and increases in the section's FTE levels have allowed the fair housing testing program to continue. As of the end of FY 2001, the testing program had resulted in the filing of 69 pattern or practice cases, five of which were filed in FY 2001. Sixty-four of the 69 cases have been resolved, and the total monetary relief obtained in these cases is nearly \$9 million.

Summary

CRD has 10 subject-matter sections that enforce civil rights laws pertaining to education, employment, housing, voting rights, disabilities, and immigration. The amount of funding has not always reflected the division's authority and responsibilities. Within the past 10 years, the congressional appropriation has met or exceeded the President's request only twice. During this period, although CRD's overall FTE levels continued to increase, the FTE level in the Coordination and Review Section declined between FY 1994 and 1995, and has since remained somewhat stagnant. Between FY 1994 and 2003, the FTE level increased 102 percent in the Disability Rights Section, 23 percent in the Voting Rights Section, 106 percent in the Civil Rights Prosecution Section, and 7 percent in the Housing Section. Although CRD's subject-matter sections have experienced increased staffing, their workload has also increased.

If Congress grants the President's request for FY 2004, after adjusting for inflation, CRD will receive \$90.2 million in funding.

Chapter 5

Office for Civil Rights, U.S. Department of Health and Human Services

The Office for Civil Rights (OCR) at the Department of Health and Human Services (HHS) is responsible for administering numerous statutes that prohibit discrimination by providers of health care and social services. The civil rights statutes enforced by OCR include:

- Title VI of the Civil Rights Act of 1964
- Section 504 of the Rehabilitation Act of 1973
- Age Discrimination Act of 1975
- Title II of the Americans with Disabilities Act of 1990
- Community service requirements of Titles VI and XVI of the Public Health Service Act
- Provisions of the Omnibus Budget Reconciliation Act of 1981 relating to nondiscrimination in block grant programs

Approximately 230,000 group and institutional providers, including state agencies, are subject to the nondiscrimination laws enforced by OCR.¹

Budget Analysis

Civil rights protections must keep pace with the rapid changes in health and social services delivery systems to increase the public's confidence that individuals will be treated equitably and fairly. As a result, it is important that OCR has adequate funding that will allow it to effectively enforce civil rights laws in a timely manner. Between FY 1994 and 1998, both the amount of funding requested by the President and the amount of congressional funding appropriated to OCR were below the FY 1994 level. By FY 2000, OCR's funding had increased to \$22 million, which returned its funding to the FY 1994 level (see table 5.1). But after adjusting for inflation, the FY 2000 appropriation amounted to \$20 million (see table 5.1 and figure 5.1).

In FY 2001, the President requested a 22 percent increase in funding from FY 2000 and Congress appropriated OCR what the President requested, plus an additional \$1 million. The \$28 million is the largest amount of funding OCR has received in the past 10 years (see table 5.1). However, after adjusting for inflation, the funding amounted to \$24 million (see figure 5.1).

¹ U.S. Department of Health and Human Services, Office for Civil Rights, *Fiscal Year 2000 Budget Request*, p. 13 (hereafter cited as HHS/OCR, FY 2000 Budget Request).

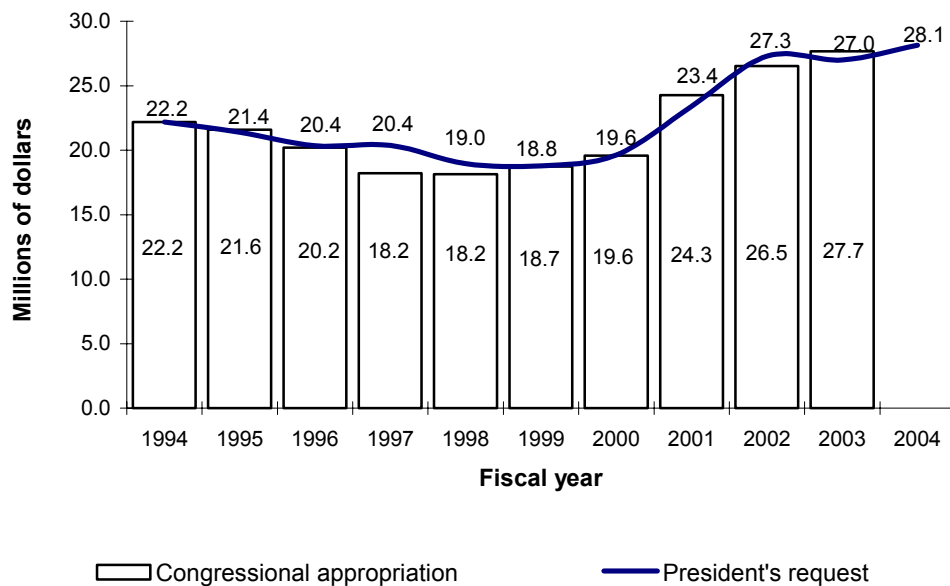
Between FY 2002 and 2003, the President requested an increase in funding of less than 1 percent, but the amount of funding Congress appropriated gave OCR a 6.2 percent increase. If Congress had appropriated the exact amount of the President's request, after adjusting for inflation, OCR would have realized a 1 percent decrease in its budget (see figure 5.1). For FY 2004, the President is requesting \$34 million funding, which is a 6 percent increase over the FY 2003 request (see table 5.1). After adjusting for inflation, the true value of this request is \$28 million.

Table 5.1—HHS/OCR Funding History
(in millions of actual dollars)

Fiscal year	President's request	Congressional appropriation
1994	\$22,182,000	\$22,195,000
1995	21,891,000	22,096,000
1996	21,330,000	21,160,000
1997	21,790,000	19,490,000
1998	20,530,000	19,659,000
1999	20,659,000	20,618,000
2000	22,159,000	22,088,000
2001	27,000,000	28,000,000
2002	32,000,000	31,095,000
2003	32,260,000	33,038,000
2004	34,250,000	

Source: U.S. Department of Health and Human Services, Office for Civil Rights.

Figure 5.1—HHS/OCR Funding History
(in constant 1994 dollars)



Source: Calculated from table 5.1.

Staffing and Workload Analysis

Throughout the latter half of the 1990s, OCR's staff decreased from 284 in FY 1994 to 210 in FY 1999, resulting in a 26 percent decrease in the number of employees available to perform complaint investigations, post-grant reviews and investigations, pre-grant reviews, monitoring and voluntary compliance reviews, and outreach. In FY 2000, OCR's staffing returned to its FY 1998 level and OCR again acquired additional staff in FY 2001 and 2002. Although OCR's staff had increased to 246 employees by FY 2002, this level of staffing was still 13 percent lower than the FY 1994 level. At no time during the past nine fiscal years has OCR received the staffing level that it requested (see table 5.2).²

Table 5.2—HHS/OCR Staffing History

Fiscal year	Requested staffing level	Actual staffing level
1994	297	284
1995	297	259
1996	276	242
1997	274	232
1998	242	216
1999	232	210
2000	225	215
2001	259	223
2002	273	246

Source: U.S. Department of Health and Human Services, Office for Civil Rights.

As the number of staff has declined and then increased, but never to the FY 1994 high, OCR has still been responsible for periodically reviewing the policies and practices of program recipients to assess compliance. Although both the Department of Justice and the Commission have urged OCR to increase its compliance review activities,³ it appears that OCR does not have enough staff to perform post-grant reviews and investigations without having to carry some of its workload over into the following fiscal year. The decrease in staff levels has dramatically affected OCR's workload history. For example, in FY 1994 OCR had 284 staff members and a pending inventory of 46 post-grant reviews and investigations. By FY 2000, OCR had 215 employees, but pending inventory stood at 276 (see table 5.3).

As OCR increased its staff in both FY 2000 and 2002, its pending inventory decreased each year, with the largest decrease between FY 2000 and 2001 (see tables 5.2 and 5.3) when pending inventory dropped by 9 percent. Pending inventory as a percentage of the total workload has increased from 18 percent in FY 1994 to 65 percent in FY 2002.

² The Commission notes that FTEs did not increase in proportion to funding; however, as stated earlier, qualitative evaluation that would account for spending decisions is not within the scope or purpose of this report.

³ HHS/OCR, FY 2000 Budget Request, p. 29.

Table 5.3—HHS/OCR Post-Grant Review and Investigation Workload History

Fiscal year	New starts	Total workload	Pending inventory
1994	203	256	46
1995	122	168	36
1996	181	217	60
1997	328	388	90
1998	301	391	164
1999	287	451	181
2000	317	498	276
2001	137	413	250
2002	140	390	254

Source: U.S. Department of Health and Human Services, Office for Civil Rights.

The decrease in total staffing is consistent with the decrease in the number of staff available to process complaints. Since FY 1994 the number of staff dedicated to complaint processing has decreased, and in FY 2002 only 90 were dedicated to processing complaints. Between FY 1994 and 2002, complaint processing staff as a percentage of total staff declined from 50 percent to 37 percent (see tables 5.2 and 5.4).

Table 5.4—HHS/OCR Complaint Processing Staff History

Fiscal year	Staffing level
1994	141
1995	145
1996	129
1997	84
1998	74
1999	79
2000	74
2001	83
2002	90

Source: U.S. Department of Health and Human Services, Office for Civil Rights.

As the number of staff dedicated to processing complaints has decreased, the number of complaint receipts has fluctuated considerably. For example, OCR received 2,222 complaints in FY 1994; 1,548 complaints in FY 1998; and 1,948 complaints in FY 2002 (see table 5.5). As a result, the workload per staff member has continued to increase. In FY 1994, each staff member dedicated to processing complaints was responsible for 16 complaints, and in FY 2002 each staff member was responsible for 22 complaints.

Table 5.5—HHS/OCR Complaint Workload History

Fiscal year	Complaints received
1994	2,222
1995	2,094
1996	1,827
1997	1,741
1998	1,548
1999	1,950
2000	2,185
2001	2,148
2002	1,948

Source: U.S. Department of Health and Human Services, Office for Civil Rights.

Summary

Between FY 1994 and 1996, both the President's request and the congressional appropriation for OCR continued to decline. Except for in FY 1995, the next time Congress appropriated funding that was above the President's request was in FY 2000. Since FY 2000, OCR has continuously received increased funding. But FTEs have not always increased in proportion to funding. During the past 10 years OCR has not received the number of requested staff. In FY 2002, its actual staff level was 13 percent lower than its FY 1994 level. Throughout the 10 years, OCR's decreasing staff dramatically affected OCR's workload. The number of new post-grant reviews and investigations is well below the FY 1994 level, and pending inventory is 452 percent higher than in FY 1994.

For FY 2004, the President is requesting \$34.2 million in funding, and if this amount is granted, after adjusting for inflation, OCR will receive \$28.1 million in funding.

Chapter 6

U.S. Department of Housing and Urban Development— Office of Fair Housing and Equal Opportunity (FHEO), Fair Housing Assistance Program (FHAP), and Fair Housing Initiatives Program (FHIP)

FHEO

Under the direction of the Assistant Secretary for Equal Opportunity, the Office of Fair Housing and Equal Opportunity (FHEO) administers federal laws and establishes national policies that ensure all Americans have equal access to housing. The following laws and executive orders extend fair housing enforcement powers to FHEO:

- President Kennedy’s Executive Order 11,063 relating to equal opportunity in federally financed housing
- Title VI of the Civil Rights Act of 1964
- Title VIII of the Civil Rights Act of 1968¹
- Section 3 of the Housing and Urban Development Act of 1968²
- Section 504 of the Rehabilitation Act of 1973
- Section 109 of Title I of the Housing and Community Development Act of 1974³
- Age Discrimination Act of 1975
- Housing and Community Development Act of 1987⁴
- Fair Housing Amendments Act of 1988⁵
- Title II of the Americans with Disabilities Act of 1990
- President Clinton’s Executive Order 12,892⁶

¹ Title VIII of the civil Rights Act of 1968 prohibits discrimination in the sale, rental, and financing of dwellings based on race, color, religion, sex, or national origin.

² Section 3 of the Housing and Urban Development Act of 1968 requires housing and community development recipients to direct jobs, training, and contracting opportunities to businesses owned by or employing low- and very low-income residents residing in targeted geographical areas in which HUD assistance takes place.

³ Section 109 of Title I of the Housing and Community Development Act of 1974 prohibits discrimination in Community Development Block Grant Programs on the basis of race, color, national origin, religion, or sex.

⁴ The Housing and Community Development Act of 1987 authorized the Public Housing Comprehensive Transition Demonstration, a program intended to move residents out of public housing and into their own homes.

⁵ Title VIII was amended in 1988 to expand the coverage of the Fair Housing Act to prohibit discrimination based on disability or on familial status.

⁶ Executive Order 12,892 requires HUD to coordinate certain fair housing efforts with executive departments and agencies.

Budget Analysis

During her confirmation hearing on October 3, 2002, Assistant Secretary for FHEO Carolyn Peoples pledged her commitment to (1) aggressively enforce civil rights and fair housing laws; (2) conduct timely investigations; (3) continue to reduce impediments to housing choice; (4) support new initiatives to build public awareness and understanding of federal fair housing laws; (5) develop close working partnerships with faith-based and grassroots organizations, local governments, and other agencies; (6) enforce departmental equal employment opportunity laws; and (7) ensure effective program monitoring and compliance and develop performance-based measures to ensure quality.⁷ To follow through on these commitments, appropriate funding, which has not always been forthcoming, is needed. At no time during the past 10 years has the congressional appropriation matched the President's request. In fact, congressional appropriation has been lower than the President's request by as much as 34 percent (see table 6.1).

Table 6.1—HUD/FHEO
(in actual dollars)

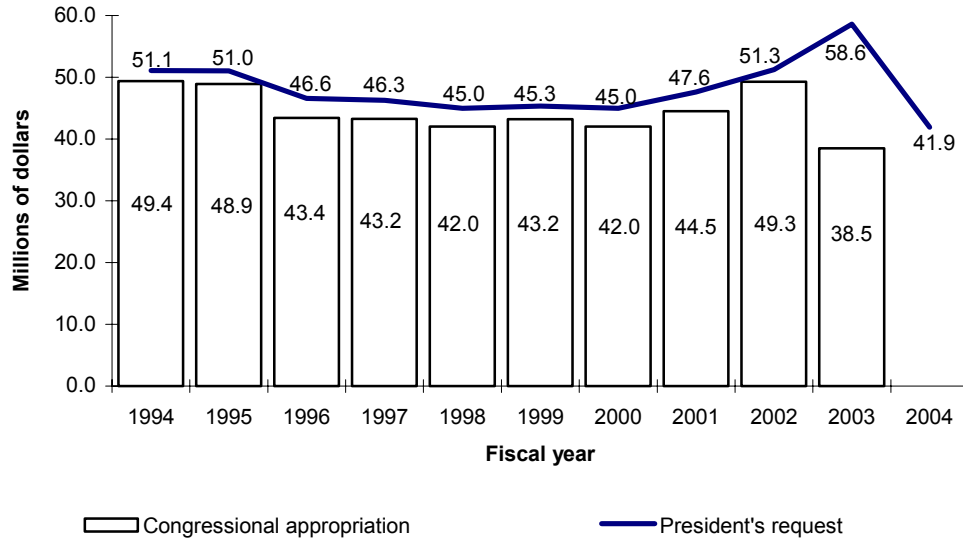
Fiscal year	President's request	Congressional appropriation
1994	\$51,080,000	\$49,380,000
1995	52,228,000	50,081,000
1996	48,790,000	45,500,000
1997	49,496,000	46,258,000
1998	48,695,000	45,510,000
1999	49,887,000	47,555,000
2000	50,776,000	47,455,000
2001	54,986,000	51,389,000
2002	60,081,000	57,771,000
2003	69,968,000	46,000,000
2004	51,000,000	

Source: U.S. Department of Housing and Urban Development, Budget and Administrative Support Division.

Between FY 2000 and 2003, the President consistently requested increased funding for FHEO (see table 6.1). In FY 2000, the President requested \$50.8 million in funding, but Congress granted only \$47.5 million, which was not enough to keep up with inflation. After adjusting for inflation, the FY 2000 appropriation was worth \$42 million (see figure 6.1). For FY 2003, the President requested nearly \$70 million in funding, but Congress appropriated only \$46 million, which was 20 percent less than the FY 2002 appropriation. After adjusting for inflation, the FY 2003 appropriation was worth \$38.5 million, resulting in the lowest amount of funding FHAP has received since before FY 1994 (see table 6.1 and figure 6.1).

⁷ Statement of Carolyn Y. Peoples, Assistant Secretary for Fair Housing and Equal Opportunity-Designate, U.S. Department of Housing and Urban Development, before the Senate Committee on Banking, Housing and Urban Affairs, Oct. 3, 2002.

Figure 6.1—HUD/FHEO Funding History
(in constant 1994 dollars)



Source: Calculated from table 6.1.

For FY 2004, the President is requesting \$51 million in funding, which is worth \$41.9 million once inflation is taken into account. The FY 2004 President’s request is 27 percent less than the FY 2003 request (see table 6.1).

Staffing and Workload Analysis

From FY 1994 to 2000, the number of FTEs decreased 22 percent. By FY 2001 the number of FTEs began increasing, and for FY 2003 the estimated FTE level stood at 758, resulting in a 25 percent increase between FY 2001 and 2003. For the first time in 10 years, the FY 2003 FTE level surpasses the 1994 level (see table 6.2).

As the number of staff decreased between FY 1994 and 2000, the number of Title VIII complaints received by FHEO climbed. Between FY 1997 and 2000, complaints increased 9.7 percent. In FY 2000, when FHEO’s FTE level was at its lowest of 587, the office received 11,218 complaints, the most complaints received between FY 1994 and 2002 (see tables 6.2 and 6.3). In FY 2000, each staff member was responsible for approximately 19 Title VIII complaints. During this same time, staff also had compliance complaints for which they were responsible. In FY 2001 and 2002, Title VIII complaints continued to decline, from 8,252 in FY 2001 to 7,557 in 2002. It is noteworthy that FHEO estimates that it will receive 10,000 Title VIII complaints for FY 2003, 25 percent more than the previous year (see table 6.3).

Table 6.2—HUD/FHEO Staffing History

Fiscal year	FTE level
1994	750
1995	727
1996	664
1997	643
1998	591
1999	592
2000	587
2001	608
2002	653
2003*	758

*Estimate.

Source: U.S. Department of Housing and Urban Development, Budget and Administrative Support Division.

Table 6.3—HUD/FHEO Title VIII Complaint History

Fiscal year	Complaints received
1994	9,524
1995	8,187
1996	10,945
1997	10,227
1998	10,266
1999	10,836
2000	11,218
2001	8,252
2002	7,557
2003*	10,000

*Estimate.

Source: U.S. Department of Housing and Urban Development, Budget and Administrative Support Division.

Between FY 1994 and 1995, as the number of Title VIII complaints received decreased, the total number of compliance complaints increased 4 percent. The increase in compliance complaints was a result of an increase in Section 504 complaints. Section 504 compliance complaints increased 33 percent, while Title VI compliance complaints decreased 15 percent, Section 109 complaints decreased 21 percent, and ADA complaints decreased 60 percent. Between FY 1996 and 2000, the number of compliance complaints has fluctuated dramatically (see table 6.4).

Table 6.4—HUD/FHEO Program Compliance Complaints

Fiscal year	Title VI	Section 109	Section 504	ADA	Total
1994	228	48	285	42	603
1995	193	38	380	17	628
1996	143	103	218	107	571
1997	175	175	250	150	700
1998	74	67	206	62	409
1999	144	21	225	64	454
2000	278	42	433	123	876
2001	266	85	451	146	948
2002	339	39	522	128	1,028
2003*	430	20	592	148	1,190

*Estimate.

Source: U.S. Department of Housing and Urban Development, Budget and Administrative Support Division.

Since FY 2001 the numbers of Title VI and Section 504 complaints have increased, and FHEO estimates it will receive 430 Title VI and 592 Section 504 complaints in FY 2003. Section 109 complaints have decreased dramatically, and FHEO estimates that it will receive only 20 complaints in FY 2003. ADA compliance complaints have also decreased, but for FY 2003, FHEO is predicting a 16 percent increase in total compliance complaints (see table 6.4).

As expected, between FY 1994 and 1995 as the number of compliance complaints increased under Section 504, the number of compliance reviews being conducted increased (see tables 6.4 and 6.5). During this period, FHEO did not conduct any compliance reviews under the ADA. The total number of compliance reviews conducted peaked in FY 1997 and 1998, when FHEO conducted 100 Title VI reviews, 30 Section 109 reviews, 150 Section 504 reviews, and 40 ADA reviews. In FY 1999, the number of compliance reviews conducted under all programs decreased from the previous year (see table 6.5).

In FY 2001, FHEO began conducting more compliance reviews under all programs except for Title VI and the ADA. For FY 2003, FHEO estimates that it will conduct 50 Title VI compliance reviews, 50 Section 109 reviews, 90 Section 504 reviews, and only four ADA reviews (see table 6.5).

Table 6.5—HUD/FHEO Program Compliance Reviews

Fiscal year	Title VI	Section 109	Section 504	ADA	Total
1994	21	2	34	0	57
1995	12	2	155	0	169
1996	51	6	121	10	188
1997	100	30	150	40	320
1998	100	30	150	40	320
1999	39	3	38	32	112
2000	45	0	47	28	120
2001	39	1	54	21	115
2002	56	5	84	6	151
2003*	50	50	90	4	194

*Estimate.

Source: U.S. Department of Housing and Urban Development, Budget and Administrative Support Division.

Over the past nine years, field offices have composed 74 to 81 percent of FHEO’s total staff. Between FY 1994 and 1995, when the total FTE level decreased from 750 to 727 (see table 6.2), the field offices lost 48 FTEs and headquarters gained 25 FTEs (see table 6.6). Between FY 1996 and 1997, the number of staff in the field continued to decline. Headquarters staff also declined during this period and reached its lowest peak in FY 1999. While the number of field staff has continued to increase since FY 2000, as of FY 2002 it still had not returned to its FY 1994 level (see table 6.6). Between FY 2000 and 2002, headquarters FTEs increased 28 percent.

Table 6.6—HUD/FHEO Staffing History

Fiscal year	Field FTE	Headquarters FTE
1994	603	147
1995	555	172
1996	497	167
1997	476	167
1998	455	136
1999	477	115
2000	461	126
2001	480	128
2002	492	161

Source: U.S. Department of Housing and Urban Development, Budget and Administrative Support Division.

Since FY 1995, the ratio of enforcement to compliance staff has hovered around five to one. Program compliance staff continuously declined between FY 1994 and 2000. During this period, program compliance staff decreased 39 percent and fair housing enforcement staff declined 21 percent. By FY 2003, both fair housing enforcement and program compliance staff had increased to 339 and 67, respectively (see table 6.7).

Table 6.7—HUD/FHEO Field FTE Staffing History

Fiscal year	Fair housing enforcement	Program compliance
1994	406	100
1995	356	78
1996	355	77
1997	351	74
1998	356	70
1999	328	66
2000	319	61
2001	333	63
2002	339	67

Source: U.S. Department of Housing and Urban Development, Budget and Administrative Support Division.

FHAP and FHIP

In addition to its enforcement responsibilities, FHEO administers two funding assistance programs: the Fair Housing Assistance Program (FHAP) and the Fair Housing Initiatives Program (FHIP). FHAP provides financial assistance to supplement the enforcement activities of state and local enforcement agencies that have been certified as providing rights, remedies, procedures, and the availability of judicial review that are substantially equivalent to that provided in the Fair Housing Act. Although organizationally part of FHEO, these programs have separate funding.

FHAP

Budget Analysis

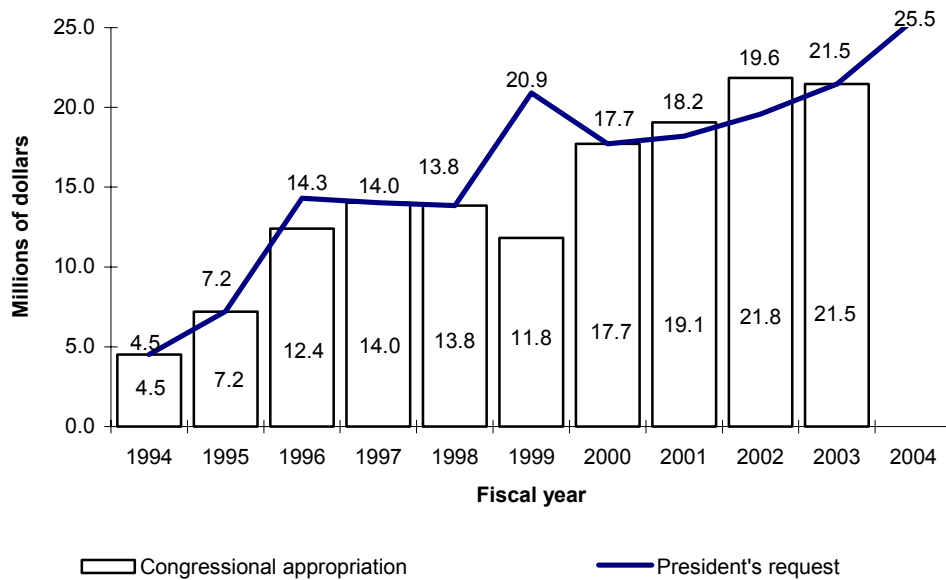
Between FY 1994 and 1997, Congress appropriated increased funding from the previous year for FHAP (see table 6.8). FHAP's funding level remained constant at \$15 million in both FY 1997 and 1998, but in FY 1999 the level of funding decreased 13 percent to \$13 million. After adjusting for inflation, the FY 1999 funding level was worth \$11.8 (see figure 6.2). Since FY 2000, FHAP has continued to receive increased funding; although the difference between the FY 2002 and 2003 level was not as great as the increase between FY 2001 and 2002, 0.2 percent and 16.4 percent, respectively. For FY 2003, the congressional appropriation of \$25.6 million matched the President's request (see table 6.8). For FY 2004, the President is requesting \$31.0 million. If Congress grants the President's request, FHAP will receive an increase in funding of 17 percent. After adjusting for inflation, the President's request is worth \$25.5 million (see figure 6.2).

Table 6.8—HUD/FHAP Funding History
(in actual dollars)

Fiscal year	President's request	Congressional appropriation
1994	\$4,519,000	\$4,519,000
1995	7,400,000	7,375,000
1996	15,000,000	13,000,000
1997	15,000,000	15,000,000
1998	15,000,000	15,000,000
1999	23,000,000	13,000,000
2000	20,000,000	20,000,000
2001	21,000,000	22,000,000
2002	22,950,000	25,600,000
2003	25,649,000	25,649,000
2004	31,000,000	

Source: U.S. Department of Housing and Urban Development, Budget and Administrative Support Division.

Figure 6.2—HUD/FHAP Funding History
(in constant 1994 dollars)



Source: Calculated from table 6.8.

FHIP

FHIP provides funding to grantees to assist them in providing assistance to individuals who believe they have been victims of housing discrimination. FHIP grantees help individuals identify government agencies that can help and conduct preliminary investigation of claims, including sending “testers” to properties suspected of practicing housing discrimination. FHIP also contains four programs that promote fair housing laws and equal housing opportunity awareness.

Budget Analysis

Over the past 10 years, FHIP has experienced erratic funding. Between FY 1994 and 1996, the President requested increased funding during each of these years, and for FY 1994 and 1995 Congress appropriated more than what the President requested. In FY 1996, Congress appropriated only \$17 million in funding, which was 43 percent less than the President’s request. In FY 1997, the President requested the same amount of funding that Congress had appropriated the year before, but again FHIP was funded 12 percent below the President’s request. Between FY 1999 and 2000, FHIP received increased funding, and in FY 2001 it was funded at the same level as in FY 2000 (see table 6.9). But after adjusting for inflation, FHIP’s \$24 million budget was worth \$20.8 million (see figure 6.3).

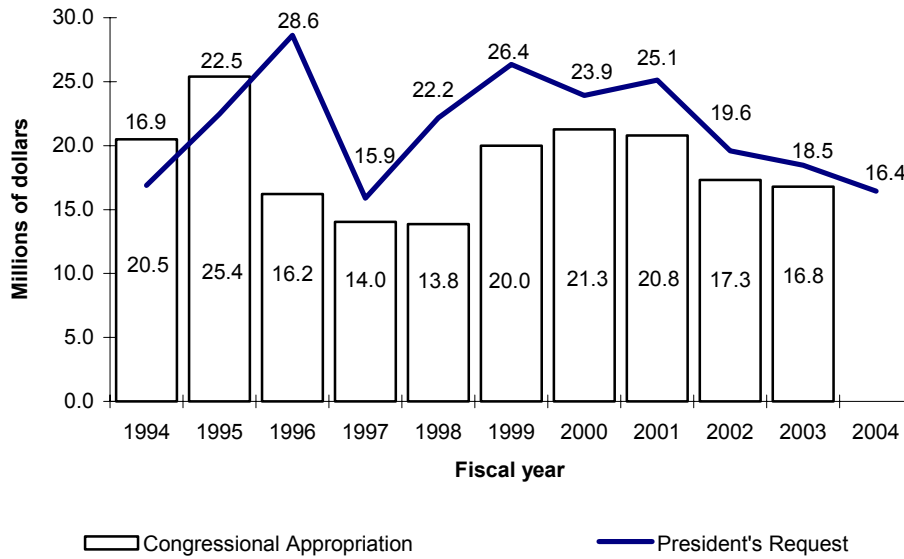
Table 6.9—HUD/FHIP Funding History
(in actual dollars)

Fiscal year	President’s request	Congressional appropriation
1994	\$16,900,000	\$20,481,000
1995	23,000,000	26,000,000
1996	30,000,000	17,000,000
1997	17,000,000	15,000,000
1998	24,000,000	15,000,000
1999	29,000,000	22,000,000
2000	27,000,000	24,000,000
2001	29,000,000	24,000,000
2002	22,949,000	20,300,000
2003	22,050,000	20,050,000
2004	20,000,000	

Source: U.S. Department of Housing and Urban Development, Budget and Administrative Support Division.

Since FY 2001, FHIP’s funding has continued to decline. Between FY 2002 and 2003, congressional appropriations decreased 1.2 percent, but after adjusting for inflation the budget actually decreased 2.9 percent. This decrease was far less than the decrease in funding that occurred between FY 2001 and 2002. For FY 2004, the President is requesting \$20.0 million in funding, but after adjusting for inflation the request is worth \$16.4 million.

Figure 6.3—HUD/FHIP Funding History
(in constant 1994 dollars)



Source: Calculated from table 6.9.

Summary

During the 2000s, Congress has never granted the President's request for FHEO. To illustrate this impact, between FY 2002 and 2003, appropriations decreased 20 percent. For FY 2003, FHEO requested an increase in its FTE level and estimated increases in Title VIII, Title VI, Section 504, and ADA complaints. FHEO is planning to increase its Sections 109 and 504 compliance reviews. Much of these activities were planned before the actual FY 2003 congressional appropriation was made, so it is not clear whether the Assistant Secretary for FHEO will be able to meet the expectations. For FY 2004, the President is requesting \$41.9 million. If Congress grants the President's request, after adjusting for inflation, FHEO will receive \$32.8 million.

Conclusion

This review updates and presents the President's requests, congressional appropriations, and staffing and workload levels of six principal civil rights agencies since FY 1994. It shows:

- Despite the President's request for an increase in funding for EEOC in 2003, Congress approved a decrease. EEOC has appreciably reduced its private sector backlog, but still carries a significant pending caseload. EEOC's federal sector backlog has declined since FY 2000, but still remains higher than in FY 1995.
- OFCCP's funding has been flat since 2000, both in requests and appropriations; staffing is lower now than in 1994.
- Even through HHS/OCR's budget has increased, staffing is 13 percent below the 1994 level.
- DOEd's budget has continuously increased since 1998, but its staffing is still 15 percent short of the 1994 level.
- Even though DOJ funding and staff have increased overall, staffing of the department's Coordination and Review Section has declined and is 34 percent lower than in 1994.
- During the 1990s, many of the agencies' FTE levels declined and as of FY 2003, most have not returned to pre-1995 levels. This has occurred as the agencies' enforcement responsibilities have increased or remained the same.

As stated by the Citizens' Commission on Civil Rights, "Civil rights issues, including regulation, enforcement, and programs designed to promote political, economic, and social equality and equal access, are intrinsically linked to the federal budget. The budget—who gets what resources—is where the pedal hits the metal in determining whether policies actually get implemented to make civil rights a reality. It is the true measure of our commitment as a nation to social justice."¹

The Commission was established in 1957 to monitor and report on the status of civil rights in the nation. As the federal government's conscience on matters of civil rights, it strives to keep the President, the Congress, and the public informed about civil rights issues that deserve concentrated attention, with the objective of continually reminding all Americans why

¹ Citizens' Commission on Civil Rights, "The Adverse Consequences of a New Federal Direction," chap. 12 in *Rights At Risk: Equality in an Age of Terrorism*, 2002.

vigorous civil rights enforcement is in the national interest. As evidenced by the Commission's many studies, serious gaps in employment opportunities, housing, education, access to political participation, and the administration of justice remain and separate minorities and protected groups from other Americans.

Taken together with its forerunners, this report continues to shed light on civil rights agency funding, a paramount component of effective enforcement because of its bearing on staffing and workload. By presenting and contrasting agency budgets and workloads, the Commission continues to provide a basis from which policymakers can recognize problems and undertake appropriate funding actions. After all, resources allocated by Congress and the President are tangible expressions of federal commitment to the promise of equal opportunity for all.

Statement of Chairperson Mary Frances Berry and Vice Chairperson Cruz Reynoso

This study serves as a valuable source of information for members of the public interested in tracking the civil rights budgets, staffing levels, and workloads of DOJ, EEOC, HHS, HUD, OFCCP, and USDA. Initially produced by the Commission in 1995 and updated each year since 2001, this study is a compilation of publicly available funding data that provide relevant annual comparisons for each agency. The study does not include any findings or recommendations on the performance of any agency. Because of the nature of the study our procedures do not require comments from the agencies on the data. The information contained in this study complements other work of the Commission and serves to fulfill our civil rights clearinghouse responsibilities.

Dissenting Statement of Commissioners Abigail Thernstrom and Jennifer C. Bracer

June 30, 2003

On June 20, 2003, we, the undersigned commissioners, voted against the above report for the following reasons:

The underlying premise of this document is that levels of federal funding—by themselves—provide relevant indicators of our nation’s commitment to civil rights enforcement. This premise is fundamentally flawed.

The report automatically equates increased federal funding with more effective law enforcement. Absent a proper context, however, raw financial data tells us nothing about the effectiveness of our civil rights enforcement agencies. Higher taxpayer expenditures and additional government employees do not necessarily result in increased output or efficiency.

In addition, this report equates the number of complaints processed each year by a federal agency with that agency’s effectiveness in protecting civil rights. Once again, without proper context, the level of complaints processed points nowhere. It may very well be that agencies that processed fewer complaints received fewer complaints—not that they were understaffed or underfunded. In some circumstances, the filing of fewer complaints may be the result of successful government efforts to prevent acts of discrimination in the first instance.

The Office of Federal Contract Compliance Programs at the Department of Labor has sent this Commission a detailed memorandum objecting to the methodology used in this report. We attach a copy of the OFCCP response herewith and incorporate by reference all of OFCCP’s objections.

In short, this report does not provide enough information from which to draw any meaningful conclusions, and it is, therefore, of almost no value.

Accordingly, we respectfully dissent.

Commissioner Abigail Thernstrom
Commissioner Jennifer C. Bracer

attachment

[Attachment]

**Office of Federal Contract Compliance Programs’
Comments on “Funding Federal Civil Rights Enforcement: 2004”**

Background:

The U.S. Commission on Civil Rights’ web site recently posted a draft report, entitled “Funding Federal Civil Rights Enforcement: 2004,” which contains a chapter on OFCCP funding and enforcement patterns. The draft report has not been approved by the Commission.

OFCCP was not provided an opportunity to comment on the draft report before it was posted on the Commission’s web site. Because there are significant inaccuracies in the report, OFCCP believes it is important to comment publicly at this time to ensure that the public understands the facts about the agency and its activities.

The Office of Federal Contract Compliance Programs (OFCCP) is an agency with the Department of Labor’s Employment Standards Administration. OFCCP’s mission is to enforce equal employment opportunity requirements that are contained in covered federal contracts. OFCCP protects 26 million workers who are employed by 16,000 federal contractors in 200,000 workplaces.

OFCCP vigorously enforces the equal employment opportunity (EEO) mandates within its jurisdiction. OFCCP enforces these EEO mandates through investigating complaints of discrimination, conducting compliance evaluations, providing compliance assistance so that contractors understand their obligations, and, through the Department’s Office of the Solicitor, litigating against contractors that do not live up to their obligations.

General Comments:

The draft report argues that OFCCP has not had enough funding to do its job. The draft report attempts to draw this conclusion by comparing OFCCP’s enforcement activities from fiscal year 1994 to the present with OFCCP’s budget for that same period. The draft report claims that when OFCCP’s funding increases, its enforcement activities increase.

Since fiscal year 1994, OFCCP’s funding has increased every year, except for fiscal year 1996. In fact, the draft report admits that OFCCP’s budget has increased fully 38% during this period, which equals a 16% increase after inflation is factored in. Nonetheless, the draft report argues that OFCCP’s funding has not risen fast enough in some years, hindering OFCCP’s ability to enforce the law.

Specific Clarifications:

The draft report describes a simplistic analysis of OFCCP’s enforcement patterns, which does not account for several significant facts. Because the draft report misses these facts, it arrives at inaccurate and misleading conclusions. We list below some of these inaccurate conclusions, as well as facts that were missed:

- **The draft report argues that the number of complaint investigations that OFCCP performs has decreased because of a lack of funding. In fact, the number of**

complaints OFCCP investigated decreased because OFCCP received fewer complaints.

OFCCP experienced a significant drop in the number of complaints that it received because of the passage of the Americans with Disabilities Act (ADA). A substantial portion of the complaints filed with OFCCP in the 1980's and early 1990s involved allegations of disability discrimination brought under Section 503 of the Rehabilitation Act of 1973. Prior to the passage of the ADA, Section 503 was the only law that prohibited disability discrimination in the workplace. EEOC began enforcing the ADA when the law became effective on July 26, 1992. Since that time, disability discrimination filings with the EEOC have been substantial: in fiscal year 1993, EEOC received 15,274 such filings; in fiscal year 1994, there were 18,859 filings; and in fiscal year 1995, there were 19,798 filings. At the same time, the number of complaints received under Section 503 of the Rehabilitation Act dropped significantly:

Fiscal Year	No. of Section 503 Complaints
1990	1686
1991	1477
1992	1506
1993	1194
1994	746
1995	634
1996	514
1997	364
1998	412
1999	354
2000	278
2001	297

Accordingly, since the ADA became effective in 1992, EEOC has investigated many complaints of disability discrimination that, prior to ADA, would have been filed with OFCCP.

OFCCP has also seen a significant decrease in the number of complaints under E.O. 11246 during the period fiscal year 1990 through fiscal year 2001. In fiscal year 1990, OFCCP received 920 complaints under E.O. 11246. By fiscal year 1996, this number dropped to 654, and in fiscal year 2000, the number was 472. This decline may be the result of the Civil Rights Act of 1991, which approved compensatory and punitive damages as remedies for unlawful employment discrimination under Title VII. Plaintiffs may be opting to file with the EEOC under Title VII to obtain such remedies.

- **The draft report argues that OFCCP took on “new responsibilities” of conducting Glass Ceiling reviews, auditing compensation practices, and focusing on systemic discrimination, for which it received no additional funding. In fact, these activities are not “new responsibilities” but different ways to accomplish OFCCP’s mission. OFCCP received ample resources to engage in these activities, in light of the reduction in complaint investigations.**

With the decline in complaints OFCCP received, the agency shifted its enforcement strategy. OFCCP has always performed compliance reviews that looked for workplace discrimination. However, OFCCP began focusing such reviews on systemic discrimination, which is discrimination that impacts a large number of workers. This focus on systemic discrimination has

resulted in OFCCP obtaining larger financial settlements. The trend of larger settlements is evidenced by the fact that, during the period from fiscal year 1991 through fiscal year 2000, financial remedies remained the same or increased, despite a significant drop in the number of financial agreements. For example, in fiscal year 1991, OFCCP obtained \$30.4 million in financial remedies based on 811 financial agreements. By contrast, in fiscal year 1999, OFCCP obtained \$41.6 million in financial remedies based on only 311 financial agreements.

OFCCP also embarked on a new way to look at employers' compensation practices and started looking at discriminatory barriers to advancement into the executive suite. These activities produced significant enforcement results for OFCCP.

OFCCP received adequate funding for these activities, as resources were no longer needed to perform complaint investigations due to the ADA. In fiscal year 1991, OFCCP performed 1278 complaint investigations, by fiscal year 1995, that number dropped in half, to 566 complaint investigations. By fiscal year 2000, OFCCP investigated 303 complaints.

- **The draft report argues that the financial remedies OFCCP obtains in any year are a result of the funding for that year. In fact, a significant portion of OFCCP's financial remedies are the result of investigations that span several years. Further, nearly 60% of OFCCP financial remedies come from hiring discrimination cases, which will fluctuate depending on economic circumstances.**

OFCCP's focus on systemic discrimination has produced large financial settlements of cases that involved OFCCP investigation activities over several years. For example, of the \$31 million in total settlements in fiscal year 1997, \$8.6 million, or 27% reflected settlement of just four large cases that involved multiple-year investigations. In fiscal year 1999, OFCCP had the highest total settlement value in its history, \$41.5 million. However, \$15.4 million of that amount, or 37%, came from settlement of 6 large cases that spanned several years.

The draft report concludes that OFCCP's funding increase in fiscal year 2000 caused the agency to obtain a record \$15.6 million in backpay during that fiscal year. However, in fiscal year 2000, OFCCP obtained settlements involving two companies – The Boeing Company (\$4.5 million) and Ford Motor Company (\$3.8 million) – that were based on compliance reviews that started before 1995.

The draft report also omits the fact that nearly 60% of OFCCP financial remedies come from hiring discrimination cases. Hiring discrimination obviously requires hiring. When the economy was in a downturn as it was in during late 2000 and 2001, employers were not hiring. So, OFCCP's enforcement trends are subject to economic trends which the draft report ignores.

- **The draft report argues that the number of OFCCP “compliance reviews” rose 26% between fiscal year 1998 and fiscal year 2001, due to funding increases in those years. In fact, the draft report mistakenly counts “compliance checks” as compliance reviews. The draft report also fails to note that OFCCP streamlined its compliance review process, which allowed the agency to perform more compliance reviews.**

The draft report mistakenly counts “compliance checks” as “compliance reviews.” OFCCP introduced “compliance checks” in fiscal year 1998. Compliance checks are relatively perfunctory reviews of whether a contractor has maintained certain records. OFCCP does not review the sufficiency or adequacy of the contractor's compliance nor does it evaluate whether

the contractor's employment practices are nondiscriminatory. OFCCP does not obtain any financial settlement as a result of a compliance check. Compliance checks typically last no more than one hour. OFCCP conducted 1933 compliance checks in fiscal year 1998, 2,050 in fiscal year 1999, and 2,510 in fiscal year 2000.

The number of compliance reviews, which are more detailed reviews of a contractor's compliance with OFCCP requirements, including evaluation of whether the contractor has engaged in employment discrimination, remained at about 3,700-3800 during fiscal years 1997-1999.

The number of compliance reviews completed increased during fiscal year 2000 to 4,162. However, this increase was largely the result of OFCCP's implementation of a "tiered review" process that stemmed from changes to OFCCP's regulations which became effective in 1997. Under the "tiered review" process, OFCCP compliance officers do not conduct a full-scale compliance review if there is no indication of a significant compliance problem. Instead, the compliance officer can stop at the "desk audit" stage of the compliance review, which involves a review of a documents submitted by the contractor. This innovation has resulted in more efficient use of OFCCP resources.

OFCCP has ample resources to accomplish its important mission. OFCCP's compliance strategy involves efficient use of taxpayers' dollars to maximize OFCCP's impact.

Historically, OFCCP reviews have indicated a substantial rate of noncompliance with technical requirements in OFCCP's regulations. From fiscal year 1990 through fiscal year 2001, OFCCP found about 60%-70% of contractors it reviewed to have some noncompliance with OFCCP's regulations.

At the same time, systemic discrimination findings have not been a significant portion of OFCCP's findings. From fiscal year 1998 through fiscal year 2001, OFCCP found discrimination in about 6-8% of its compliance reviews and only 14% of those discrimination findings involved systemic discrimination; that's only a little more than 1% of all of OFCCP's reviews for that four-year period.

OFCCP has implemented significant improvements that will help it find and remedy systemic discrimination. To address the significant and persistent rate of noncompliance with technical aspects of OFCCP's regulations, OFCCP is providing compliance assistance to help contractors understand how to comply with OFCCP requirements, through seminars, workshops, Industry Liaison Group meetings and one-on-one consultations.