

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

Volume III: An Evaluation of the Departments of Agriculture and  
the Interior, the Environmental Protection Agency,  
and the Small Business Administration

U.S. Commission on Civil Rights  
September 2003

## **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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Volume III: An Evaluation of the Departments of Agriculture and the Interior,  
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## Letter of Transmittal

The President  
The President of the Senate  
The Speaker of the House of Representatives

Sirs:

Pursuant to Public Law 103-419, the United States Commission on Civil Rights transmits this report, *Ten-Year Check-Up: Have Federal Agencies Responded to Civil Rights Recommendations? Volume III: An Evaluation of the Departments of Agriculture and the Interior, the Environmental Protection Agency, and the Small Business Administration*. This volume, the third in a series, evaluates the extent to which the Departments of Agriculture and the Interior, the Environmental Protection Agency, and the Small Business Administration have responded to Commission recommendations directed to them during the 1990s. The volume focuses on whether civil rights enforcement at the four agencies has improved or changed as a result of previous Commission findings and recommendations.

This study finds that the Environmental Protection Agency has shown improvement in civil rights enforcement and has model programs and practices, among which are its 1996 creation of an internal Title VI task force to evaluate and implement recommendations previously directed to it; another team created to eliminate the backlog of Title VI complaints; crucial guidance documents prepared to help grantees and the public better understand Title VI requirements; and an exemplary approach to outreach, education, and technical assistance. However, the Commission finds inadequate budgetary reporting in all the agencies studied for this report and that some agencies are not required to submit Civil Rights Implementation Plans to the Department of Justice (DOJ), which has a coordination role for all federal civil rights enforcement. Additionally, the following problems exist: serious flaws in all agencies' organizational structures, a lack of structured education and outreach programs, and civil rights training that does not go beyond courses on diversity and cultural sensitivity at the Departments of Agriculture and the Interior and the Small Business Administration.

As a result, the Commission recommends that DOJ require all agencies with Title VI programs and enforcement responsibilities to submit Civil Rights Implementation Plans every fiscal year and that DOJ provide written feedback on the quality of the plans. In addition, plans should serve as tools that enable agencies to evaluate outcomes. Agencies that delegate civil rights responsibilities also should have clearly defined roles of the civil rights offices and units to which duties are entrusted. Finally, Congress should provide sufficient funding to enable the Commission to regularly and routinely monitor civil rights enforcement at federal agencies.

For the Commissioners,

Mary Frances Berry  
*Chairperson*

## Acknowledgments

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## Executive Summary

Throughout its history, the U.S. Commission on Civil Rights has focused on ensuring equal protection of the laws under the Constitution regardless of race, color, religion, sex, age, disability, or national origin, or in the administration of justice in all areas of life. As we move into the 21st century, with the nation's population becoming increasingly diverse, the role and responsibility of federal agencies in enforcing civil rights take on added importance. The Commission is responsible for monitoring the civil rights activities at federal agencies. It is through monitoring that it can be assured that proper enforcement is taking place and the promise of civil rights is fulfilled. The Commission has strived to ensure equal rights by issuing reports that examine and suggest ways to improve the civil rights enforcement efforts of federal agencies. In its reports, the Commission has identified good practices as well as inadequacies and has made recommendations for improvement. In the past 10 years alone, more than a dozen reports have identified and described where federal agencies have succeeded or fallen short of their civil rights obligations. The Commission has not only made recommendations, but also, based on its research and experience, identified elements that affect the quality of civil rights enforcement.

This report, volume III in the series titled “Ten-Year Check-Up: Have Federal Agencies Responded to Civil Rights Recommendations?” evaluates the extent to which the Departments of Agriculture and the Interior, the Environmental Protection Agency, and the Small Business Administration have implemented the Commission's recommendations made in its 1996 report *Federal Title VI Enforcement to Ensure Nondiscrimination in Federally Assisted Programs*. Thousands of federal programs are under the jurisdiction of Title VI, which prohibits discrimination based on race, color, or national origin in federally funded programs and activities, and it is the responsibility of 27 federal agencies to enforce the law. Federal financial assistance extends into every area of national life, covering a broad range of activities, including programs for schools and schoolchildren, women, highways, environmental health, hospital construction, farmers and farming, shipping and airline subsidies, disaster relief, civilian defense, and public health. It is the responsibility of government agencies to provide equal access to federal programs and services and administer such programs to qualified beneficiaries and recipients without discrimination.

- **Department of Agriculture**

The Department of Agriculture (USDA) administers billions of dollars in federally assisted programs that reach almost every citizen in the United States. Civil rights offices and staff are situated throughout the department. This report examines the civil rights efforts of three of its agencies and its departmental Office of Civil Rights. The department has one of the most complex and decentralized civil rights structures in the federal government. USDA has done little to coordinate its civil rights responsibilities effectively. The department's agencies have undergone reorganizations, name changes, and realignments; however with inconsistent results. Overall, the department has not made significant strides to address the Commission's 1996 recommendations or improve civil rights enforcement.

- **Department of the Interior**

In 1996, the Commission concluded that the Department of the Interior (DOI) needed to restructure its civil rights office and functions for more effective enforcement. In this review, the Commission finds that the department's commitment to civil rights is imperiled due to in-

action since the Commission's last review. The department does not dedicate specific resources for civil rights enforcement, thus initiatives such as education and outreach have gone unsupported.

- **Environmental Protection Agency**

Since the Commission's earlier report, the Environmental Protection Agency (EPA) has instituted three initiatives that not only meet the Commission's recommendations, but also serve as models that can be emulated by other federal agencies in their civil rights efforts. The Commission is encouraged by and commends EPA's efforts to improve its civil rights program.

- **Small Business Administration**

The Small Business Administration (SBA) has not significantly improved its civil rights program since the Commission's 1996 study due in part to limited resources for enforcement and policy changes. However, the Commission finds that SBA issued revised civil rights compliance and enforcement procedures in 2003. On paper, the new procedures appear promising, but they have not been in place long enough to assess their effectiveness.

## **Model Programs**

The Commission found model programs and practices that should be emulated by other enforcement agencies with Title VI responsibilities. For example, in December 1996, after it received the Commission's report, EPA created an internal Title VI task force to, among other duties, evaluate and implement the Commission's recommendations. EPA also established a Title VI Implementation Advisory Committee in March 1998 to review and evaluate Title VI compliance techniques that EPA funding recipients could use to administer environmental-permitting programs. The agency sought and included for membership on the task force representatives from community groups, environmental justice groups, state and local governments, industry, and other interested stakeholders. Many of the committee's recommendations were incorporated when improvements were made to EPA's Title VI guidance documents. In May 2001, the administrator ordered the creation of another Title VI task force to resolve the backlog of complaints alleging violations of Title VI. The initiative became an agencywide priority. The Title VI task force consists of 13 full-time staff detailed from various EPA program offices, and two civil rights investigators who provide assistance on an as-needed basis. The task force has authority to draw on technical, legal, and policy expertise throughout EPA and is allotted funds for contract support.

EPA also prepared two crucial guidance documents, one investigative and one for recipients, to help grantees and the public better understand Title VI requirements. In developing the documents, EPA officials drew on their experiences and also listened to the suggestions and concerns of the agency's many constituencies. The investigative guidance includes a comprehensive description of the process for reviewing disparate impact complaints involving issuance of permits that allegedly violate environmental guidelines. The guidance for grant recipients provides a framework to help them plan to avoid situations that could potentially result in complaints alleging Title VI violations, and to improve programs and activities.

EPA's education, outreach, and technical assistance efforts are commendable. Officials engage the public in numerous ways, including public hearings and local and regional meetings. Useful and informative internal and external civil rights information has been posted on EPA's Web site. Title IV regulations and guidelines reach the public through distribution of press releases and information sent

to mailing lists. The agency also holds regularly scheduled meetings at which it interacts with the public. EPA periodically publishes documents on Title VI, such as the *Report of the Title VI Implementation Advisory Committee: Next Steps for EPA, State, and Local Environmental Justice Programs* issued in April 1999.

The other departments (USDA, DOI, and SBA) show strengths in some areas and weaknesses in others, and there are signs that enforcement will improve in the future. For example, USDA's Office of Civil Rights (OCR) is responsible for conducting Civil Rights Impact Analyses (CRIAs) of proposed agency actions before implementation to assess their impact on civil rights at the department. To ensure that departmental actions and initiatives do not have a negative impact on civil rights, OCR has authority to change agency-imposed regulatory provisions that safeguard against barriers to eligibility of recipients. The tool, which is being developed and tested for effectiveness, may have the potential to become a new element for civil rights enforcement at federal agencies. With respect to USDA and DOI, significant organizational changes and structured outreach and staff training are needed to strengthen enforcement.

The Commission holds fast to the view that ensuring civil rights is compatible with other national priorities. The nation needs to remain focused on its obligation to enforce and protect civil rights. The commitment of EPA to civil rights enforcement through its Title VI task forces, adequate resources, and effective leadership demonstrates the success that can be achieved. Thus, the Commission will remain vigilant in its civil rights monitoring and fact-finding roles.

## Chapter 1

# Introduction

*“As public servants, we cannot be effective without being fair. We cannot be responsive without being respectful. We cannot deliver programs and services without being sensitive to the human issues that are so much a part of our work.”<sup>1</sup>*

Ann M. Veneman  
Secretary, U.S. Department of Agriculture

Since the 1960s, numerous federal laws and policies have been passed to protect the civil rights of individuals denied equal protection because of their race, ethnicity, national origin, religion, sex, age, and disability. To protect civil rights in many areas, federal agencies were given authority and responsibility to enforce the laws.

During the previous decade, the U.S. Commission on Civil Rights issued 16 reports that evaluated 11 federal agencies and offered more than 1,100 recommendations for improving their civil rights operations. A series of reports addresses the question of whether or not the recommendations were implemented and, if so, with what results.

The present study is the third in this series. In 2002, the Commission issued *Ten-Year Check-Up: Have Federal Agencies Responded to Civil Rights Recommendations? Volume I: A Blueprint for Civil Rights Enforcement*, which catalogs and discusses elements for effective civil rights enforcement, including priorities, resources (funding and staffing), planning and policy guidance, and compliance reviews. That year, it also issued *Ten-Year Check-Up: Have Federal Agencies Responded to Civil Rights Recommendations? Volume II: An Evaluation of the Departments of Justice, Labor, and Transportation*, which evaluated the named departments’ performance with respect to the foregoing elements to determine how effectively they implemented past recommendations.

Have the Departments of Agriculture and the Interior, the Environmental Protection Agency, and the Small Business Administration responded to Commission recommendations and, if so, how effectively? These are the questions this study addresses. The study examines the agencies’ external and internal civil rights enforcement.

External matters pertain to Title VI of the Civil Rights Act of 1964, specifically government requirements to ensure nondiscrimination in programs that offer federal assistance.<sup>2</sup> Title VI prohibits discrimination in federally funded programs based on race, color, or national origin, and protects against a broad range of discrimination, including denial of services; differences in the quality, quantity, or manner of services; different standards for participation; and discrimination in an activity

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<sup>1</sup> Ann M. Veneman, Secretary, U.S. Department of Agriculture, “Civil Rights Policy Statement,” n.d., <<http://www.usda.gov/da/CRPolicy.htm>>.

<sup>2</sup> 42 U.S.C. § 2000d (1988).

conducted in a facility built with federal funds. Congress authorized government agencies to enforce Title VI to prevent recipients from using federal funds to support discrimination. The U.S. Department of Justice is responsible for coordinating federal Title VI enforcement.<sup>3</sup> Agencies in this study provide funding to recipients who offer an array of programs and services, including school lunches, business and farm loans, and safe environmental projects. The Commission last made recommendations to these agencies in 1996 based on their Title VI responsibilities, and this review focuses on the degree to which they have responded.

Internal matters pertain to employment discrimination. Title VII of the Civil Rights Act of 1964 prohibits such discrimination based on race, color, sex, religion, or national origin.<sup>4</sup> The law protects against discriminatory employment practices of private and public sector employers. Furthermore, federal agencies' equal employment programs, policies, and procedures must comply with Title VII. The lead federal agency in enforcing and coordinating the implementation of Title VII is the U.S. Equal Employment Opportunity Commission.

### **Department of Agriculture**

The U.S. Department of Agriculture (USDA) is one of the largest federal agencies with Title VI responsibilities. Its programs affect millions of people, from farmers, to pregnant women, to schoolchildren. It operates one of the most complex and decentralized civil rights structures in the federal government. The department has numerous offices and staff involved in civil rights enforcement, carrying out different responsibilities. Since the Commission's 1996 report, there is little evidence that the department has changed or improved what the Commission found to be a complicated civil rights enforcement program, nor has it addressed the Commission's recommendations significantly. The Commission finds a lack of clarity concerning civil rights authority and accountability, too many short-term civil rights officials, and too many officials involved in enforcement. Congress, through the signing of the 2002 farm bill, created the position of Assistant Secretary of Agriculture for Civil Rights. In March 2003, the first Assistant Secretary of Agriculture for Civil Rights was confirmed by the Senate, and in April he was officially sworn into office. Among that individual's many responsibilities will be focusing efforts on improving the coordination of civil rights activities throughout the department.

### **Department of the Interior**

The Office for Equal Opportunity (OEO) administers the U.S. Department of the Interior's (DOI) Title VI programs. In this review, the Commission finds that DOI has not implemented any of the recommendations that were made in 1996. For example, in 1996, it was recommended that DOI restructure its civil rights office and functions for more effective enforcement, but in this review, the Commission finds that it has not. Furthermore, DOI still needs a dedicated budget for civil rights enforcement, which it lacks because OEO is situated in another unrelated office. Initiatives such as education and outreach are not supported sufficiently because of undesignated funds for such activities. However, the Commission is encouraged that OEO has maintained separate external and internal

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<sup>3</sup> Executive Order 12,250 delegates responsibility to the U.S. Department of Justice to provide leadership and coordinate the Title VI implementation, compliance, and enforcement responsibilities of the federal agencies. Executive Order 12,250 §§ 1-101, 1-201, 3 C.F.R. § 298 (1981), *reprinted in* 42 U.S.C. § 2000d-1 (1988).

<sup>4</sup> Title VII of the Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (1964) (codified as amended at 42 U.S.C. §§ 2000e-2000e-17 (1994)).

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civil rights functions. Moreover, OEO received a steady increase in funding between 1998 and 2002, annually averaging \$1.3 million.

### **Environmental Protection Agency**

In 1996, the Commission directed numerous recommendations for improving civil rights enforcement to the U.S. Environmental Protection Agency (EPA). In this review, the Commission finds that the agency has addressed almost all the Commission's earlier recommendations and shows significant improvement in its civil rights program. One reason for EPA's progress may be its establishment of an internal Title VI task force, whose responsibilities included the implementation of the Commission's 1996 recommendations. The agency has undertaken initiatives such as a structured staff training program and a comprehensive complaint process that are models worthy of emulating by other agencies.

### **Small Business Administration**

In 1996, the Commission concluded that the U.S. Small Business Administration (SBA) needed to improve its civil rights enforcement. The Commission now finds improvements in some areas. For example, SBA published a listing of all SBA programs, implemented policies and guidelines clarifying the application of Title VI to its programs, and increased the number of compliance reviews conducted telephonically. However, the Commission still finds that there is a lack of resources for external civil rights enforcement and staff training. The agency also does not perform an adequate number of on-site compliance reviews.

### **The Commission's Review**

This review examines how all these agencies can build upon their efforts to address the Commission's concerns and, in effect, improve civil rights enforcement. Except for EPA and SBA, where the civil rights offices report directly to the department's administrator, the Commission finds serious flaws in the organizational structures at the departments. The Commission attributes, in significant measure, the weaknesses in civil rights authority and enforcement to the poor alignment of civil rights offices. In addition, all the agencies in this review have poor budgetary reporting practices. The Commission found a paucity of information on civil rights resources and expenditures and a lack of information on expenditures for different areas, such as training, travel, and technical assistance.

Congress and the Department of Justice (DOJ) play major roles in the enforcement of civil rights with respect to appropriations and oversight. This study demonstrates a need for increased resources to carry out the departments' civil rights mission, and a lack of communication and coordination with DOJ about the quality and adequacy of their federal Title VI programs. Congress should provide the necessary resources to enable federal agencies to carry out their civil rights responsibilities. Laws are of no value if agencies do not have the resources to enforce them. DOJ, as the oversight agency for federal Title VI enforcement, should provide updated regulations and policies; and guidance and feedback to the agencies, especially in developing and implementing their Civil Rights Implementation Plans.

## **Scope**

The review covers the Department of Agriculture's Office of Civil Rights, as well as the civil rights components in the Farm Service Agency; the Food, Nutrition, and Consumer Services; and the Natural Resources Conservation Service; the Department of the Interior's Office for Equal Opportunity; the Environmental Protection Agency's Office of Civil Rights; and the Small Business Administration's Equal Employment Opportunity and Civil Rights Compliance Office.

The study focuses on recommendations in the Commission's 1996 report, *Federal Title VI Enforcement to Ensure Nondiscrimination in Federally Assisted Programs*. The study analyzes the following elements that are relevant to each department:

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

## **Methodology**

In assessing whether the departments or their components have responded to the Commission's recommendations made in 1996, and whether civil rights enforcement has improved, the Commission prepared seven interrogatories that included questions which focused on 55 recommendations made to the Department of Agriculture; 24 made to the Department of the Interior; 29 made to the Environmental Protection Agency; and 17 made to the Small Business Administration. Each interrogatory was tailored to that particular agency and solicited the most current information on civil rights initiatives and directions within that agency.

In addition to reviewing interrogatory responses, the Commission reviewed relevant policy, planning, and budget documents, annual reports, and Civil Rights Implementation Plans; interviewed civil rights staff; and reviewed other relevant reports. Owing to the Commission's lack of resources, the work was performed exclusively in Washington, D.C.; thus the Commission could not examine field offices firsthand. The Commission received and is grateful for the cooperation of the agencies providing the requested information.

## **Summary**

The Commission concludes that very little has been done at USDA, DOI, and SBA to implement its previous recommendations. EPA has made strides to address the recommendations and has shown

improvement in civil rights enforcement. The purpose of this review is not to criticize, but through study, to help all agencies profit from reviewing their programs and the experiences of others.

It is through systematic monitoring, an important component of the Commission's work, that America can ensure proper enforcement and that the promise of civil rights is fulfilled. Because of limited resources, the Commission is no longer able to monitor federal civil rights programs on a routine basis. The Commission's monitoring activities previously consisted of constant follow-up on recommendations, frequent meetings with agency employees to anticipate problems and assess progress, and the issuance of regular evaluations. In the 1980s, the Commission was forced to reduce its monitoring program, which was supported by a \$1 million budget and a staff of 13 employees dedicated solely to that function. A separate Office of Research, with 26 employees, was responsible for report writing. Today, both functions are carried out by one office, which has only nine employees (see table 1.1). In 2002, the office had 11 employees, only six of whom are analysts who work solely on agency evaluations and writing reports. Monitoring now consists of reviews of material disseminated by and about federal agencies, augmented by occasional first-person contact with agency staffs.

**TABLE 1.1**  
**USCCR Monitoring and Research Employees,**  
**1984, 2002, and 2003**

<b>Fiscal year</b>	<b>Office of Research</b>	<b>Office of Federal Civil Rights Evaluation*</b>
1984	26	13
2002		11
2003		9

\*The Office of Federal Civil Rights Evaluation was the former monitoring office, now the Office of Civil Rights Evaluation.

Source: Budget of the United States Government, FY 1984, p. 109.

## Chapter 2

# Department of Agriculture

The U.S. Department of Agriculture (USDA), established in 1862 when 48 percent of the American people were farmers, was often referred to as the “people’s Department.” Its mission has since evolved beyond farming, and today USDA has eight mission areas that collectively affect the lives of all Americans, as well as millions abroad.<sup>1</sup> As a result, it is imperative that USDA commit itself to a culture of fair treatment, equality, and respect. To determine whether USDA is working in compliance with civil rights laws, this report evaluates civil rights enforcement at three departmental agencies: (1) the Farm Service Agency, which administers services for the farmers, ranchers, and businesses that produce more than 15 percent of the nation’s gross national product; (2) the Food, Nutrition, and Consumer Services, which provides nutrition assistance to make food available to people who need it; and (3) the Natural Resources Conservation Service, which helps protect nearly 75 percent of the nation’s land areas. Because of its coordination role and obligation to provide guidance to the foregoing agencies, the departmental Office of Civil Rights is also evaluated.

In its 1996 report, the Commission directed 55 recommendations to the Department of Agriculture, including 19 to the Office of Civil Rights,<sup>2</sup> 13 to the Farm Service Agency,<sup>3</sup> 12 to the Food, Nutrition, and Consumer Services,<sup>4</sup> and 11 to the Natural Resources Conservation Service.<sup>5</sup> Since the report, all have undergone reorganizations and name changes: the Office of Civil Rights (OCR) was previously the Office of Civil Rights Enforcement (OCRE); the Farm Service Agency (FSA) was the Farmers Home Administration (FmHA); the Food, Nutrition, and Consumer Services (FNCS) was the Food and Nutrition Service (FNS); and the Natural Resources Conservation Service (NRCS) was the Soil Conservation Service (SCS). The reorganization and name changes affected them differently.

## Office of Civil Rights

The Department of Agriculture first established a civil rights office in 1971 and charged it with the responsibility to formulate policy and oversee and monitor the decentralized civil rights program. Today, the office continues to be charged with providing leadership, coordination, and direction to the department’s civil rights programs. Its broadly stated mission is “to facilitate the fair and equita-

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<sup>1</sup> U.S. Department of Agriculture, *Civil Rights at the United States Department of Agriculture, One Year of Change*, March 1998, p. 5 (hereafter cited as USDA, *One Year of Change*).

<sup>2</sup> U.S. Commission on Civil Rights, *Federal Title VI Enforcement to Ensure Nondiscrimination in Federally Assisted Programs*, June 1996, pp. 267–72 (hereafter cited as USCCR, *Federal Title VI Enforcement*).

<sup>3</sup> USCCR, *Federal Title VI Enforcement*, pp. 305–08.

<sup>4</sup> *Ibid.*, pp. 288–91.

<sup>5</sup> *Ibid.*, pp. 321–24.

ble treatment of USDA customers and employees while ensuring the delivery and enforcement of civil rights programs and activities.”<sup>6</sup>

Since its formation in 1971, the civil rights office endured dismantling, reorganization, office name changes, and changed staff assignments and responsibilities in the early 1980s and the 1990s. In 1993, equal employment opportunity (EEO) complaints (i.e., Title VII of the Civil Rights Act) and program discrimination complaints (i.e., Title VI) became consolidated into one office, the Office of Advocacy and Enterprise. A year later, the agency reorganized and created the Office of Civil Rights Enforcement (OCRE).<sup>7</sup> Since then, concerns about discrimination in the Department of Agriculture’s programs have led to many studies of the effectiveness of its civil rights enforcement and efforts to improve. As a result of these studies, USDA again reorganized its civil rights functions, replacing OCRE with the Office of Civil Rights (OCR) in 1997; and in 2003 appointed an Assistant Secretary for Civil Rights to head the office, thereby removing OCR from its previous placement within the Department of Administration (see table 2.1 and figures 2.1 and 2.2).

**TABLE 2.1**  
**Timeline for Events Affecting USDA Organization and Civil Rights Enforcement**

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Oct. 13, 1994	Congress passed the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, authorizing the Secretary to reorganize the department to achieve greater efficiency, effectiveness, and economies in managing its programs and activities. The law called for the consolidation of headquarters offices and the combination of USDA agencies’ field offices to reduce personnel and duplicative overhead expenses.
Oct. 20, 1994	The USDA Secretary signed Secretary’s Memorandum No. 1010-1 abolishing previous positions, agencies, and offices, and establishing new ones. Among them, the Farmers Home Administration, the Food and Nutrition Service, and the Soil Conservation Service were abolished; the Farm Service Agency, the Food and Consumer Service, and the Natural Resources Conservation Service were established. The position of Assistant Secretary of Agriculture for Administration was established and assigned the responsibility, among others, of supervising all activities of a newly created Office of Civil Rights Enforcement (OCRE).
Oct. 1995	Within the Department of Administration, civil rights responsibilities were divided between two new offices. The Office of Operations assumed responsibility for complaints about USDA employment and program delivery among other functions ranging from procurement to security. The Policy Analysis and Coordination Center had all other civil rights responsibilities.
Nov. 8, 1995	The Secretary of Agriculture delegated authority to the department’s general officers in response to the 1994 reorganization. The Assistant Secretary of Agriculture for Administration delegated civil rights responsibilities to the director of the Office of Civil Rights Enforcement and ignored the structural change in civil rights that had occurred the previous month. OCRE director’s was to provide overall leadership, coordination, and direction for ensuring civil rights compliance in program delivery, coordinate Title VI matters with the Department of Justice, ensure the quality of program complaint investigations, and conduct investigations and compliance reviews.

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<sup>6</sup> See *ibid.*, pp. 256–57; Delegations of Authority by the Secretary of Agriculture and General Officers of the Department, 7 C.F.R. § 2 (2002); U.S. Department of Agriculture, “USDA’s Office of Civil Rights–Mission Statement,” July 10, 2002, <[www.usda.gov/da/cr/mission.htm](http://www.usda.gov/da/cr/mission.htm)>.

<sup>7</sup> USCCR, *Federal Title VI Enforcement*, pp. 256–57; U.S. Department of Agriculture, Civil Rights Action Team, “Civil Rights at the United States Department of Agriculture,” February 1997, p. 47 (hereafter cited as USDA, CRAT Report).

TABLE 2.1 (continued)

Jan. 1997	USDA's Office of Inspector General (OIG) began issuing reports in response to concerns of minority farmers and other socially disadvantaged program participants that little was being done to resolve discrimination in the award of program benefits. The first report examined civil rights issues in farm loan programs and the department's civil rights complaint system. Over the next four years, seven other reports followed. They provided nationwide and state-by-state data on minority participation in the Farm Service Agency's farm loan programs (Dec. 1997) and looked at efforts to reduce the backlog of program complaints (Sept. 1998) and implement civil rights settlements (March 1999). A March 2000 report found that the Office of Civil Rights had implemented only 13 of OIG's 54 past recommendations. Although OIG had recommended a transformation of complaint processing, OCR had made no significant changes in how complaints were processed.
Feb. 28, 1997	The Civil Rights Action Team (CRAT), a workgroup the Secretary formed in December 1996 to study civil rights issues, issued 92 recommendations asking for improvements in management's commitment to civil rights, program delivery and outreach, and the organizational structure of civil rights by March 2000. In 2003, OCR reports having addressed more than 145 OIG recommendations—all but four of them.
Mar. 1997	USDA consolidated civil rights functions (divided in 1995) under a new Office of Civil Rights (OCR). As before, OCR's director reported to the Assistant Secretary for Administration. A May 16, 1997, Secretary's memorandum clarified that the director was to supervise the performance of all USDA civil rights functions; to investigate, adjudicate, and resolve all complaints of discrimination from USDA programs; and to provide civil rights guidance and oversight to USDA agencies. The new office had complaint units for employment and program delivery and an increased enforcement budget.
Aug. 1997	USDA established (1) an Office of Outreach under the Assistant Secretary for Administration to provide leadership, coordination, and expertise to promote equal access to USDA programs and services among all constituents, particularly the underserved; and (2) a Civil Rights Division within the Office of General Counsel.
Mar. 1998	The Civil Rights Implementation Team, formed in March 1997 to guide the implementation of the CRAT's recommendations, issued a report stating that all but two of the 92 recommendations were being implemented. The remaining two recommendations involved settling the backlog of program discrimination complaints, including the class action black farmers had filed, and having Congress pass legislation to address problems of inequitable access to USDA programs and services. Because implementation of many recommendations was ongoing, an April 2000 USDA report indicated that approximately 60 percent of the recommendations were implemented; progress had been made on another approximately 30 percent; and 10 percent required congressional action.
Apr. 1999	USDA entered into a landmark class action settlement with African American farmers who were victims of racial discrimination through the department's farm lending and benefit programs.
Jan. 2000	USDA's Office of Civil Rights established an Intake Division for more timely and efficient processing of incoming program complaints. Newly developed operational procedures ensured that non-jurisdictional cases were not accepted or investigated. Additional staff was assigned to the unit and standardized letters were developed to expedite complaint processing. As a result, the backlog of cases in the intake stage was reduced.
Apr.–Oct. 2000	USDA's Office of Civil Rights, with input from agency directors and employees, developed and issued a plan for long-term improvement. The report found that the Office of Civil Rights' staff was insufficient in numbers and needed more civil rights training and increased knowledge of agency programs. It also found that systems and processes for handling complaints were inadequate and that the automated tracking system was inefficient. Although designed to improve all aspects of civil rights operations, the long-term improvement plan emphasized improvements that would ensure discrimination complaints were processed consistently, effectively, and in a timely manner.
Nov. 2001	USDA's Office of Civil Rights created agency civil rights evaluations to enhance the agencies' civil rights efforts and issued interim standard operating procedures, finalized in March 2003, for planning and conducting them. The evaluations focus on USDA agencies' civil rights program organization, allocation of resources, and operations to carry out their civil rights responsibilities.
May 13, 2002	Congress passed the Farm Security and Rural Investment Act of 2002 designating a position of Assistant Secretary for Civil Rights.
Sept. 2002	A General Accounting Office report found the Office of Civil Rights had made progress in reducing its untimely processing of discrimination complaints. To further improve timely processing, GAO found that OCR needed to (1) increase staff skills and reduce turnover; and (2) track complaint processing times through all phases of resolution, not just through the investigation phase.
Apr. 1, 2003	The Secretary swore in Vernon Parker to fill the new position of Assistant Secretary for Civil Rights.

Because of numerous structural and name changes that OCRE underwent, in 1996 the Commission recommended that OCRE focus on (1) rebuilding its Title VI enforcement program, (2) implementing any further organizational changes dictated by the needs of the Title VI enforcement program, and (3) managing any further restructuring in ways that avoid interruptions to OCRE's day-to-day Title VI enforcement activities.<sup>8</sup> The events reflected in table 2.1 show that USDA continued to restructure its civil rights functions in order to address recognized problems. As a result, enforcement efforts often suffered as the department struggled to come to an enforcement position acceptable to executives and managers throughout its component agencies. This struggle is still evident today.

### **Priority of Civil Rights**

#### *Office of Civil Rights' Line of Authority to the Departmental Secretary*

After USDA reorganizations during the mid-1990s, the director of OCRE reported to the Assistant Secretary for Administration. In 1996, the Commission expressed concern that this placement left several layers between the director and the Secretary and did not provide sufficient access to the Secretary to ensure that civil rights issues were integrated fully into USDA policy and resource decisions. The Commission concluded that based on the structure, civil rights enforcement was not a high priority and recommended that the OCRE's director report directly to the Secretary of Agriculture and not through the Office of Administration.<sup>9</sup>

USDA officials did not heed the Commission's recommendation; they disagreed that changing the reporting lines would result in improved civil rights enforcement.<sup>10</sup> Instead, the passage of the Farm Security and Rural Investment Act of 2002, on May 13, 2002, established a position of Assistant Secretary for Civil Rights reporting to the Secretary (see figure 2.2).<sup>11</sup> With the newly appointed Assistant Secretary for Civil Rights, the Office of Civil Rights now has direct access to the Secretary of Agriculture.<sup>12</sup>

#### *The Separation and Placement of Enforcement Functions*

In 1996, the Commission expressed concerns about whether Title VI enforcement would receive attention because of competing civil rights responsibilities. First, the reorganization assigned to OCRE responsibilities for discrimination complaints involving employment within the department (Title VII enforcement) in addition to complaints lodged against USDA program delivery (Title VI enforcement).<sup>13</sup> The Commission was concerned that USDA's Title VI enforcement would suffer as OCRE

<sup>8</sup> USCCR, *Federal Title VI Enforcement*, p. 268.

<sup>9</sup> *Ibid.*, pp. 254, 268.

<sup>10</sup> U.S. Department of Agriculture's Response to the U.S. Commission on Civil Rights' Interrogatory for Volume III of the Ten-Year Review of Civil Rights Enforcement, Department of Administration, Office of Civil Rights, Jan. 31, 2003, tab 2 (hereafter cited as USDA/OCR Interrogatory).

<sup>11</sup> Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, 116 Stat. 134, § 10704 (to be codified at 7 U.S.C. §§ 6918, 7014(b)).

<sup>12</sup> Frederick D. Isler, deputy director for programs, Office of Civil Rights, USDA, letter to Les Jin, staff director, USCCR, June 4, 2003, p. 1 (hereafter cited as Isler letter, 2003).

<sup>13</sup> Titles VI and VII enforcement are commonly distinguished as external and internal civil rights responsibilities, respectively. *See, e.g.*, USCCR, *Federal Title VI Enforcement*, pp. 253, 255, 311. However, because USDA agencies and their regional, state, and field offices administer program delivery in a decentralized structure, the Office of Civil Rights' Title VI oversight responsibilities entail an examination of this internal program delivery as well as of recipient organizations that typically comprise "external" civil rights enforcement. Because of the possible confusion, use of the terms "external" and "internal" have been avoided with the Office of Civil Rights and the Natural Resources Conservation Service in favor

worked on improving the previously ineffective Title VII enforcement. It recommended that USDA organize OCRE into two separate units having different supervisory staff devoted to civil rights enforcement of USDA employment and program delivery. The Commission said that in order to maximize effectiveness, each unit should have its own dedicated staff and that any functions related to USDA's Title VII responsibilities should be transferred out of the program unit, i.e., the division handling matters concerning discrimination against USDA customers or program beneficiaries.<sup>14</sup>

Today, an OCR official reports that 80 percent of OCR's activities are federally conducted programs. Federally assisted programs, covered by Title VI, are only 20 percent of the office's activities. Title VI covers only 10 to 20 percent of OCR's mission area. Thus, the Commission's examination of USDA's civil rights enforcement, as a follow-up to a 1996 study of Title VI enforcement at many federal agencies, is limited in scope. Nonetheless, the Commission is still concerned about whether Title VI receives the necessary attention, not because of the allocation of civil rights resources within the primary civil rights unit, but because other units that may not have civil rights expertise control aspects of program delivery that affect Title VI enforcement. The department struggles to maintain an organizational structure that consolidates all civil rights functions under civil rights leadership. For example, in October 1995, USDA divided civil rights responsibilities between two offices under the Assistant Secretary for Administration.<sup>15</sup> The functions were consolidated again in a 1997 reorganization that created other offices with civil rights functions that were not part of the newly consolidated civil rights unit (see figure 2.1). For example, new offices, also under the Assistant Secretary for Administration were to perform outreach and handle small and disadvantaged business utilization. Furthermore, because OCR had difficulty obtaining legal assistance on civil rights matters from the department's Office of General Counsel (OGC), the 1997 reorganization created a Civil Rights Division (OGC-CRD) within OGC.<sup>16</sup> OGC and its Civil Rights Division are housed within the Office of the Secretary rather than the Departmental Administration (see figure 2.2). Thus, USDA's civil rights functions continue to be spread among multiple offices, some of which have supervisors for whom civil rights is not a primary function. Similarly, there is no line of authority between OCR and OGC's Civil Rights Division other than the Secretary.

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of distinguishing Title VI and VII enforcement as concerning program delivery vs. employment (or equal employment opportunity (EEO)).

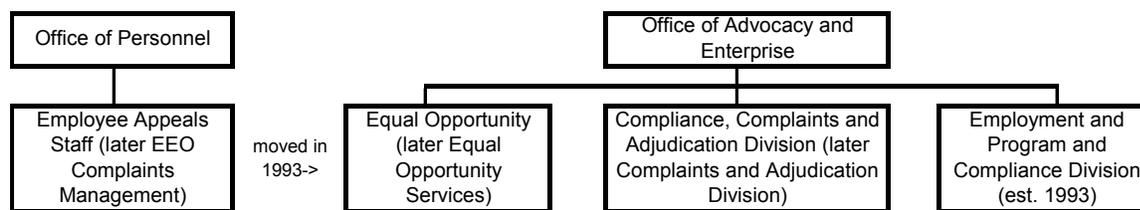
<sup>14</sup> USCCR, *Federal Title VI Enforcement*, pp. 255, 268.

<sup>15</sup> See USDA, CRAT Report, pp. 47-48; and USDA, *One Year of Change*, p. 17, which describe consolidation efforts in 1993, 1994, and 1997.

<sup>16</sup> USDA, *One Year of Change*, p. 17; Delegations of Authority by the Secretary of Agriculture and General Officers of the Department, 7 C.F.R. § 2 (2002).

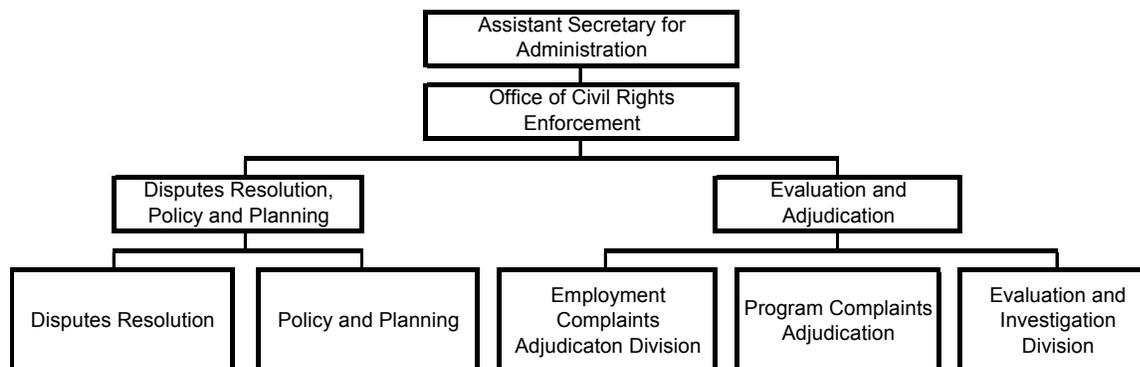
**FIGURE 2.1**  
**Past Locations and Organizational Structures of USDA's Headquarters Civil Rights Functions**

**Organizational Structures Before and During 1993**



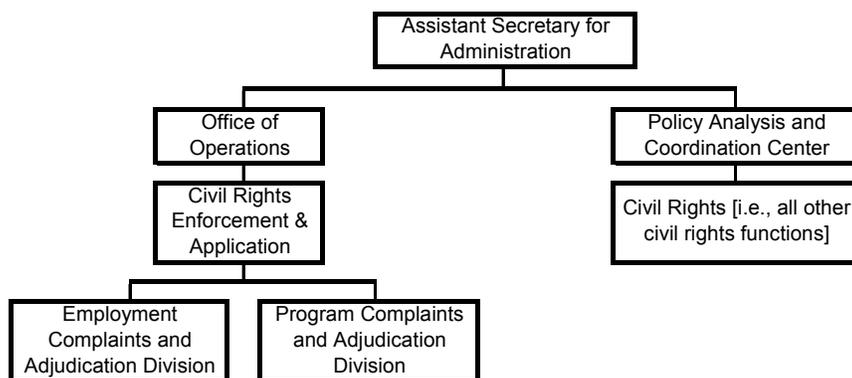
Source: USDA, Civil Rights Action Team, *Civil Rights at the United States Department of Agriculture: A Report by the Civil Rights Action Team*, February 1997, p. 47; U.S. Commission on Civil Rights, *Federal Title VI Enforcement to Ensure Nondiscrimination in Federally Assisted Programs*, June 1996, pp. 255–56.

**Location and Organizational Structure in 1994**



Source: USCCR, *Federal Title VI Enforcement*, pp. 254–56.

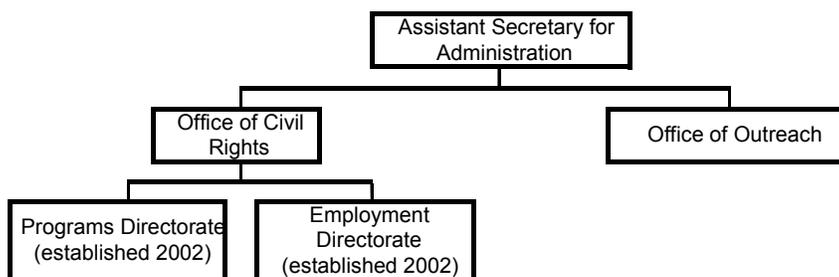
**Location and Organizational Structure from 1995 to 1997**



Source: U.S. Department of Agriculture, Civil Rights Action Team, *Civil Rights at the United States Department of Agriculture: A Report by the Civil Rights Action Team*, February 1997, pp. 48, 52.

FIGURE 2.1 (continued)

## Location and Organizational Structure from 1997 to March 2003



Source: U.S. Department of Agriculture, Office of the Secretary, "Restructuring of Departmental Administration," Secretary's Memorandum 1010-4, May 16, 1997; USDA, Civil Rights Implementation Team, *Civil Rights at the United States Department of Agriculture: One Year of Change*, March 1998.

OCR officials view both the Office of Outreach (discussed in a later section) and OGC-CRD as effective, even though they are not part of OCR. For example, OGC-CRD was established to overcome a perception that the Office of General Counsel was hostile to, and thus taking insensitive legal positions on, civil rights issues<sup>17</sup> and to provide attorneys who were dedicated full-time to civil rights.<sup>18</sup> Given that no office or staff members were dedicated to providing civil rights legal advice before the establishment of this unit, it is not surprising that OCR officials view the unit as greatly improving the service OGC provides OCR and USDA agencies on civil rights matters. With a staff of eight attorneys and two managers, OGC-CRD assists OCR in designing compliance reviews, provides advice on legal questions that arise in investigations, and reviews findings of discrimination and settlement agreements. It advises USDA agencies on program compliance and enforcement and trains managers, civil rights personnel, and OGC attorneys in regional offices on civil rights issues. Department officials do not expect any changes in the functions and organizational structure of OGC-CRD now that an Assistant Secretary for Civil Rights has been appointed.<sup>19</sup> However, because USDA recognizes that the organizational structure could result in a negative perception, in 2003, the Assistant Secretary for Civil Rights established a working group to develop standard operating procedures to address customers' misperceptions concerning the reporting structure.<sup>20</sup>

Through the Farm Security and Investment Act of 2002, Congress established the position of Assistant Secretary for Civil Rights to remedy USDA's problems with discrimination. Prior to being appointed, the nominee served as a USDA contractor, and during that time became oriented to USDA and its civil rights program. The nominee was confirmed by the U.S. Senate on March 27, 2003, and sworn in by the Secretary of Agriculture on April 1, 2003. As the Assistant Secretary of Agriculture for Civil Rights, he is expected to take on the task of handling the deluge of complaints charging bias in the department's loans practices and other farm programs that affect minorities and women.<sup>21</sup> For the reasons discussed in this chapter, the new Assistant Secretary for Civil Rights has an extraordinary challenge in front of him. To be effective in eradicating discrimination within USDA, he would benefit from drawing upon the expertise of others, within and outside the agency, who have extensive civil rights experience.

<sup>17</sup> USDA, CRAT Report, p. 55.

<sup>18</sup> USDA, *One Year of Change*, p. 19.

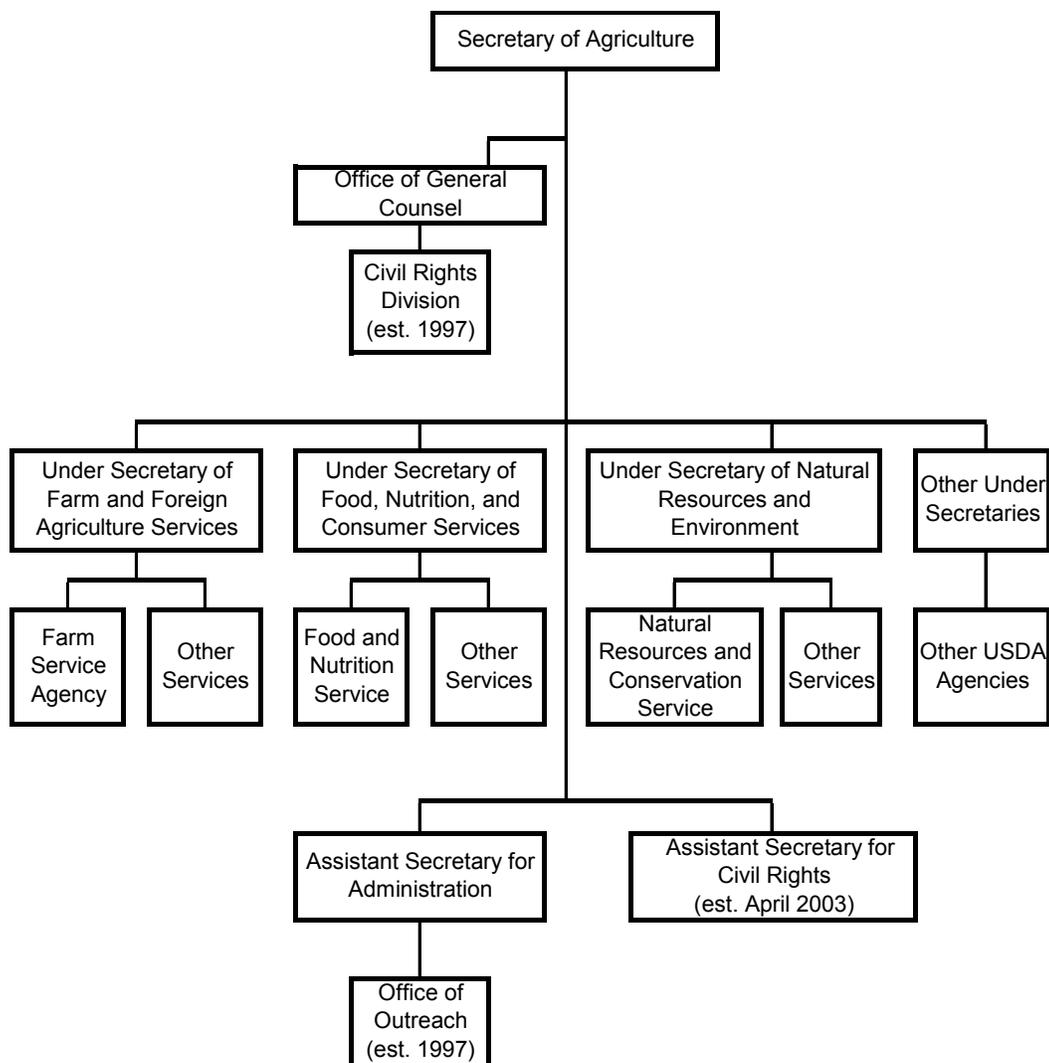
<sup>19</sup> USDA/OCR Interrogatory, tabs 4–7.

<sup>20</sup> Isler letter, 2003, p. 7.

<sup>21</sup> *Jet Magazine*, "Vernon Parker Picked for Civil Rights Post at Agriculture Department," Apr. 21, 2003, p. 32.

**FIGURE 2.2**  
**Organizational Structure of USDA Components with Civil Rights Responsibilities, 2003**

(Showing the relationship between headquarters offices and the USDA agencies according to the 1994 reorganization, except where offices are noted as established since then)



Source: USDA, "Headquarters Organization," <[www.usda.gov/agencies/agchart.htm](http://www.usda.gov/agencies/agchart.htm)> (updated April 2003); USDA, Civil Rights Implementation Team, *Civil Rights at the United States Department of Agriculture: One Year of Change*, March 1998, pp. 19, 32.

The 1997 reorganization addressed the Commission's concern about segmenting civil rights to ensure that each element of statutory authority receives attention. The reorganization established deputy director positions, one for equal employment and one for program delivery, with staffing under each reported separately since then.<sup>22</sup>

The Commission also expressed concern in 1996 that civil rights responsibilities of USDA programs extended beyond Title VI to other laws but resources were not dedicated to Title VI and thus it was neglected. Resources specifically allocated to budget and staffing for Title VI implementation and enforcement would avoid this neglect.<sup>23</sup> As of 2003, the Commission is still concerned that, because OCR establishes the amount set aside for Title VI enforcement, resources for Title VI can be readily transferred to Title VI or other civil rights enforcement. Furthermore, the department could not easily provide information on the agencies' civil rights budgets and staffing to ensure that it devotes sufficient resources to Title VI enforcement.<sup>24</sup>

### *Office of Civil Rights' Authority with Respect to USDA Agencies*

The arrangement of OCR within the Office of Administration rendered OCR's relationship to USDA agencies, such as the Food and Nutrition Service (FNS), the Farm Service Agency (FSA), and the Natural Resources Conservation Service (NRCS), unclear. The 1994 reorganization created an Assistant Secretary of Agriculture for Administration (ASA) to supervise OCR's activities, but the ASA delegated the authority for enforcing Title VI to OCR's director.<sup>25</sup> A 1997 Secretary's memorandum stipulates that OCR's director has the responsibility to provide oversight, guidance, and coordination for ensuring civil rights compliance of the department's program delivery, including oversight of USDA agencies' program delivery and civil rights enforcement activities.<sup>26</sup> A concern that OCR's assigned oversight of enforcement activities of the agencies lacked authority because the ASA did not participate in the performance appraisal process for agency heads was partly addressed in 1997,<sup>27</sup> when the Secretary gave the ASA full authority for ratings on their civil rights performance.<sup>28</sup> However, OCR's director had to appeal to his or her supervisor, the ASA, to influence the civil rights performance rating of any poorly performing agency head. USDA officials state that this issue has been adequately addressed through the appointment of an Assistant Secretary for Civil Rights.<sup>29</sup>

### *Civil Rights Responsibilities of USDA Agencies*

The Commission finds that OCR delegates civil rights responsibilities to USDA agencies in a departmental regulation. Issued in January 1998, the directive assigns responsibility to agency heads to establish a full-time civil rights director, and to allocate sufficient resources and trained, qualified staff to support civil rights obligations with respect to program delivery.<sup>30</sup> Other descriptions of

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<sup>22</sup> USDA, *One Year of Change*, p. 17; USDA/OCR Interrogatory, tab 8.

<sup>23</sup> USCCR, *Federal Title VI Enforcement*, pp. 263, 268–69.

<sup>24</sup> USDA/OCR Interrogatory, tab 8; Isler letter, 2003, p. 7.

<sup>25</sup> Delegations of Authority by the Secretary of Agriculture and General Officers of the Department, 7 C.F.R. § 2 (2002).

<sup>26</sup> U.S. Department of Agriculture, Secretary's Memorandum 1010-4, "Restructuring of Departmental Administration," May 16, 1997, pp. 2–3 (hereafter cited as USDA, SM 1010-4, 1997).

<sup>27</sup> USDA, CRAT Report, p. 11.

<sup>28</sup> USDA, SM 1010-4, 1997, p. 2. See also U.S. Department of Agriculture, Office of Civil Rights, "Agency Civil Rights Programs," Departmental Regulation 4300-005, Jan. 14, 1998 (hereafter cited as USDA/OCR, DR 4300-005, 1998).

<sup>29</sup> Isler letter, 2003, p. 8.

<sup>30</sup> USDA/OCR, DR 4300-005, 1998.

agencies' civil rights responsibilities are in USDA's Title VI regulations, departmental regulations, and OCRE's compliance review manual, discussed in more length later in this report.

### **Resources—Funding and Staffing**

In its 1996 report, the Commission found that the departmental budget did not designate a specific amount for OCRE's Title VI implementation. Furthermore, although external civil rights enforcement was primarily the function of the program agencies, USDA agencies did not have specific allocations for civil rights activities and were funding civil rights activities from their budgets for salaries and expenses. The Commission recommended that USDA's budget include a separate allocation for civil rights activities and designate an amount for Title VI enforcement. Without a specific designation, resources had been diverted to other functions (including EEO or other non-Title VI activities) without a formal decision to do so.<sup>31</sup>

The Commission found that OCRE's budget increases had been granted to accommodate the additional responsibilities of internal EEO matters and that the budget for civil rights activities related to program delivery, including Title VI enforcement, had declined. The Commission implied that OCR should achieve past staffing levels of 56 to 63 full-time-equivalent employees (FTEs) devoted to program compliance and recommended that OCRE study its Title VI resources and responsibilities to determine whether they were sufficient to fulfill its responsibilities. It asked OCRE to make a formal request for additional resources for enforcement if it could demonstrate that the existing resources were inadequate for enforcing Title VI.<sup>32</sup>

The Commission now finds that the department still does not have a budget line item for civil rights enforcement. Civil rights enforcement funding is subsumed in the Departmental Administration budget. Upon receiving its annual allocation, OCR establishes a staffing plan and budget, allocating separate amounts for enforcement related to EEO and program delivery. The Commission furthermore finds that information about the civil rights funding and staffing at USDA agencies is not readily available, indicating the lack of appropriate allocations in the agencies' budgets. USDA could not distinguish the budget for Title VI from that of other enforcement to achieve equitable program delivery (e.g., enforcement under Section 504 of the Rehabilitation Act).<sup>33</sup> OCR officials state that tracking of Title VI resources will be improved in the future because efforts are underway to enhance the civil rights complaint tracking systems and financial management databases to allow additional resource information to be captured, secured, maintained, and retrieved. In addition, the newly created office of the Assistant Secretary for Civil Rights will have its own budget beginning in FY 2004, and tracking for specific expenditures will improve. A specific budget is designated for Title VI and civil rights program enforcement.<sup>34</sup>

From FY 1997 to 1999, OCR's budget increased from \$10.7 million to \$13.3 million and gradually since then, reaching \$13.8 million in FY 2002 (see figure 2.3). USDA asked Congress for additional funding in FY 2000 and OCR asked the department for increases in funding and staffing to support Title VI and EEO compliance in FY 2002, but these requests were not honored. USDA's FY 2003 request to Congress included \$3.5 million additional funding and 17 additional staff for OCR.<sup>35</sup> In-

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<sup>31</sup> USCCR, *Federal Title VI Enforcement*, pp. 256–57, 268.

<sup>32</sup> *Ibid.*, pp. 257–58, 269.

<sup>33</sup> USDA/OCR Interrogatory, tabs 8, 10.

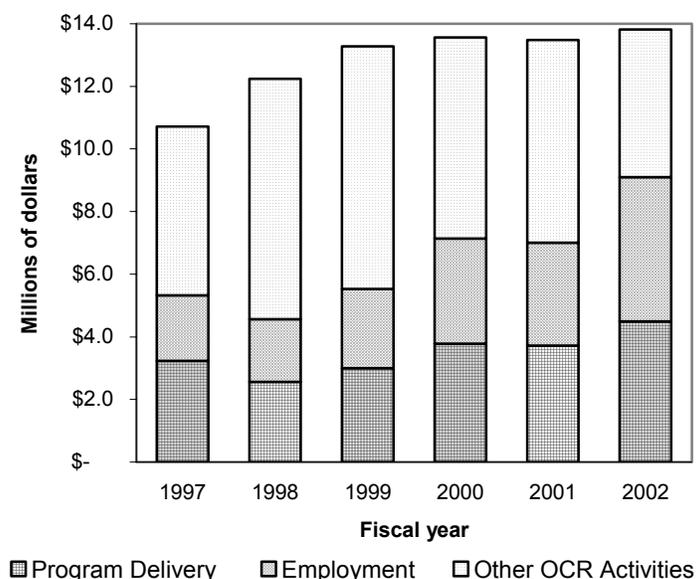
<sup>34</sup> *Ibid.*, tab 10; Isler letter, 2003, pp. 1, 8.

<sup>35</sup> USDA/OCR Interrogatory, tabs 1b, 8–10, 12.

stead, OCR received funding similar to its FY 2002 level and a few more staff members than in FY 2002—\$13.2 million and 152 full-time-equivalent staff.<sup>36</sup>

OCR's resources are distributed among five functions: employment enforcement; program enforcement; policy, analysis, research, and evaluation; record keeping; and resource management. Figure 2.3 shows the distribution for (1) employment enforcement (e.g., EEO complaints); (2) program enforcement (e.g., compliance reviews and complaints about program delivery); and (3) the remaining functions (e.g., policy analysis). Program enforcement is between a fifth and a third of OCR's budget. It ranged from a low of \$2.6 million in FY 1998 (lower than in FY 1997) to \$4.5 million in FY 2002. In each fiscal year, the amount was greater than the employment enforcement's budget, except for FY 2002 when the employment division's budget was slightly larger at \$4.6 million.<sup>37</sup> The full cost of Title VI enforcement, however, is not captured in the allotment for program enforcement. Enforcement of both Title VI and VII requires support in the form of policy, analysis, record keeping, and other functions that are labeled in figure 2.3 as "Other OCR activities." Thus, the figure demonstrates OCR's inability to fully track resources for Title VI separately from those for Title VII.

**FIGURE 2.3**  
**USDA Office of Civil Rights Budget, 1997–2002**

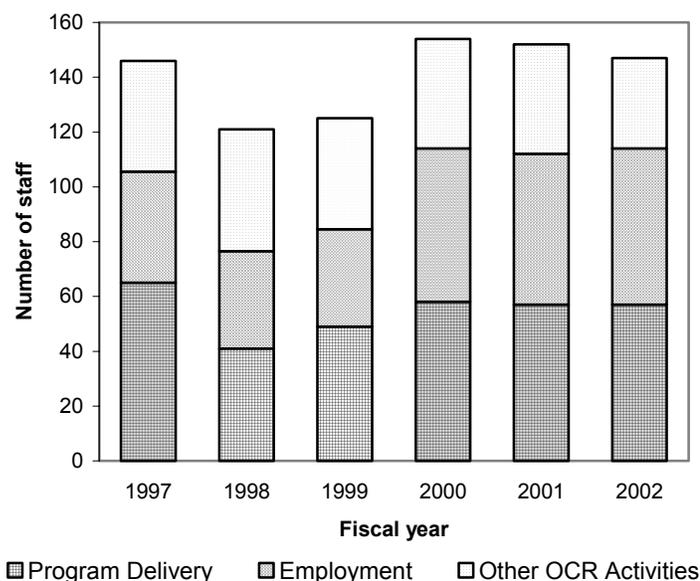


Source: USDA/OCR Interrogatory, tabs 8, 10.

<sup>36</sup> Iris Roseboro, budget analyst, USDA, Office of Civil Rights Resource Management Staff, e-mail to Eileen E. Rudert, social scientist, USCCR, May 12, 2003 (hereafter cited as Roseboro e-mail).

<sup>37</sup> USDA/OCR Interrogatory, tabs 8–10.

**FIGURE 2.4**  
**USDA Office of Civil Rights Staffing, 1997–2002**



Source: USDA/OCR Interrogatory, tabs 8, 10.

OCR had 146 full-time employees in FY 1997, which dropped to 121 and 125 in FY 1998 and 1999, rose to 154 and 152 in FY 2000 and 2001, decreased slightly to 147 in FY 2002 (see figure 2.4), and rose again to 152 in FY 2003.<sup>38</sup> More than a third of the staff is assigned to the program division: 65 in FY 1997, 41 in FY 1998, 49 in FY 1999, and between 57 and 59 in FY 2000 to 2002.<sup>39</sup> Thus, USDA has tried to maintain its program compliance staff nearer to the levels that resulted in more effective enforcement in the past. Furthermore, the Commission recognizes that since the 1997 reorganization, the total staff engaged in civil rights enforcement, including those from the Office of Outreach, the Office of General Counsel’s Civil Rights Division, and OCR, has been even higher. Nonetheless, the staff has been cut since 2001.

In 2000, OCR conducted a study of the number of staff needed to carry out the office’s enforcement responsibilities. It compared its staffing levels with the U.S. Treasury, which has a similar-sized workforce and receives a similar number of employment complaints. The study concluded that USDA had insufficient staff levels for employment and program complaint processing.<sup>40</sup> USDA’s FY 2003 budget request was based on the benchmarks of this report, proposing 17 additional OCR staff, the first of 49 additional positions that OCR planned to seek in FY 2003 and future budget requests. Nine of the 17 staff were designated for the program division.<sup>41</sup> Congress did not honor the

<sup>38</sup> USDA/OCR Interrogatory, tabs 8–10; Roseboro e-mail.

<sup>39</sup> USDA/OCR Interrogatory, tabs 8–10.

<sup>40</sup> U.S. Department of Agriculture, Office of Civil Rights, *Long Term Improvement Plan for the Office of Civil Rights*, October 2000, pp. 1-3–1-4 (hereafter cited as USDA/OCR, LTIP for OCR).

<sup>41</sup> See USDA/OCR Interrogatory, tab 9; U.S. Department of Agriculture, Office of Civil Rights, “Long Term Improvement Plan, Overview and Accomplishments,” slide presentation, n.d., p. 23 (hereafter cited as USDA/OCR, LTIP slide presentation).

carefully justified FY 2003 request.<sup>42</sup> Thus, the deputy director for OCR's program division states that USDA continues to have insufficient staff levels for program civil rights functions.<sup>43</sup>

### **Planning**

In 1996, the Commission recommended that the Office of Civil Rights implement an information management system to track resources and expenditures separately for Title VI and each of its civil rights activities and that USDA use the tracking system to support and develop the annual civil rights enforcement plan.<sup>44</sup>

The Commission now finds that OCR has two tracking systems—one that allows financial tracking (by outreach, policy, complaint processing, compliance reviews, and other civil rights activities) and the other which records actions of stages of complaint processing (e.g., intake, investigation, and adjudication). Even with dual tracking, the statutory authorities for complaints and other civil rights activities are not recorded. Thus, expenditures for Title VI still are not distinguished from enforcement conducted under other statutes. An effort is underway to enhance both systems to allow the maintenance and retrieval of additional information.<sup>45</sup>

According to OCR officials, the office has established concrete civil rights goals and uses the tracking systems to monitor progress toward them. Nonetheless, the office has continued to struggle both in planning reasonable goals and in reaching them. OCR's strategic plan for FY 1999–2003 includes goals to treat customers fairly and equitably and to provide timely and equitable resolution of complaints about program delivery.<sup>46</sup> The office established goals of reviewing the major USDA agencies' civil rights programs every five years (in essence three reviews each year), and of reducing the average processing time of complaints. However, the FY 2000 performance report reveals that OCR had not reviewed any USDA agency's civil rights programs.<sup>47</sup> Furthermore, despite reductions in the department's length of investigations in both FY 2000 and 2001, the program division's average processing time for complaints still exceeded a target of 180 days.<sup>48</sup> The October 2000 Long Term Improvement Plan established a benchmark of accomplishments linked to resources, identified needs

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<sup>42</sup> Roseboro e-mail.

<sup>43</sup> Isler letter, 2003, p. 8.

<sup>44</sup> USCCR, *Federal Title VI Enforcement*, pp. 268–69.

<sup>45</sup> USDA/OCR Interrogatory, tabs 10, 13.

<sup>46</sup> *Ibid.*, tab 14.

<sup>47</sup> U.S. Department of Agriculture, Departmental Administration, "FY 2000 Annual Program Performance Report, Office of Civil Rights," pp. 3,6 (hereafter cited as USDA/DA, FY 2000 APPR, OCR). OCR's deputy director for programs explains that the goal for reviewing USDA agencies' civil rights programs was for the agencies to review their own programs and was not the responsibility of OCR. Isler letter, 2003, p. 13. Regardless, none of these reviews was completed. Apparently, the agencies' accountability for conducting the reviews was lacking.

<sup>48</sup> USDA/DA, FY 2000 APPR, OCR; U.S. Department of Agriculture, Office of Civil Rights, "Fiscal Year 2001 Annual Accomplishment Report," p. 1 (hereafter cited as USDA/OCR, FY 2001 AAR); U.S. Department of Agriculture, Office of Civil Rights, "Fiscal Year 2002 Annual Accomplishment Report: Ensure Fair and Equitable Service to Customers and Uphold the Civil Rights of Employees," (hereafter cited as USDA/OCR, FY 2002 AAR); U.S. General Accounting Office, *Department of Agriculture: Improvements in the Operations of the Civil Rights Program Would Benefit Hispanic and Other Minority Farmers*, GAO-02-942, Sept. 20, 2002, p. 3 (hereafter cited as GAO, *USDA: Improvements*). Note that Objective 2.2.1 of OCR's strategic plan for FY 1999 to 2003 is to "Resolve all program discrimination complaints in a fair and equitable manner within 180 days." USDA/OCR, "Office of Civil Rights Strategic Plan, FY 1999–2003," June 16, 1999, p. 4. The deputy director for programs states, however, that 180 days "does not accurately reflect the goals set forth in the CR Strategic Plan, which called for a 5% reduction each year." Isler letter, 2003, p. 8. He further states that in FY 2002, the reduction was 27 percent. Isler letter, 2003, p. 13.

for additional staffing, and recommended reengineering the processes of intake, investigation, and adjudication of complaints. OCR streamlined its complaint-handling procedures in 2002 and announced more favorable accomplishments.<sup>49</sup> Thus, with streamlined procedures now in place, and a guideline of work accomplishments linked to resource expenditures, OCR may be able to plan reasonable goals for the first time.

### **Policy Guidance**

A wide range of documents offer policy guidance concerning civil rights. In 1996, the Commission reviewed USDA's major instruments for implementing Title VI enforcement. They were the departmentwide Title VI regulations that the Department of Justice requires all federal agencies with funding recipients to develop and tailor to their programs;<sup>50</sup> a departmental regulation establishing compliance review procedures and providing USDA agencies with guidance on them,<sup>51</sup> and a departmental regulation requiring USDA agencies to identify and address the civil rights implications of proposed agency actions before the agencies implement them.<sup>52</sup>

### **Departmentwide Title VI Regulations**

In 1996, all USDA agencies, including OCRE, had instructions and procedures based on the departmentwide Title VI regulations.<sup>53</sup> The Title VI regulations identified each USDA agency's assistance programs (e.g., FNS' Food Stamp Program) and specified the statutory authority for administering the programs. However, the list of federally assisted programs and activities was not up to date as is required in the Department of Justice's coordination regulations.<sup>54</sup> USDA also had not updated its regulations to reflect the Civil Rights Restoration Act of 1987,<sup>55</sup> which clarified the coverage provision of Title VI through its definition of "programs and activities."<sup>56</sup> The Commission recommended that USDA update and revise its Title VI regulations to reflect the definition of "programs and activities" presented in the Civil Rights Restoration Act and publish a revised list of its assistance programs in the *Federal Register*.<sup>57</sup>

The Commission now finds that USDA published an updated list of each agency's assistance programs in the *Federal Register* in 1999. The list has been published annually in the *Catalog of Fed-*

<sup>49</sup> USDA/OCR, LTIP for OCR, pp. 1-2-1-4; U.S. Department of Agriculture, Office of Civil Rights, "Long Term Improvement Plan Initiative for the Office of Civil Rights: Re-engineered Program Complaints Intake Process," n.d.; U.S. Department of Agriculture, Office of Civil Rights, "Long Term Improvement Plan Initiative for the Office of Civil Rights: Re-engineered Program Investigation's Process," n.d.; U.S. Department of Agriculture, Office of Civil Rights, "Long Term Improvement Plan Initiative for the Office of Civil Rights: Re-engineered Program Complaints Adjudication Process," n.d.; U.S. Department of Agriculture, Office of Civil Rights, "Functional Long Term Improvement Plan for Program Division," Aug. 5, 2002, p. 3; USDA/OCR, LTIP slide presentation, p. 14.

<sup>50</sup> 7 C.F.R. § 15 (1994).

<sup>51</sup> U.S. Department of Agriculture, Office of Advocacy and Enterprise, "Departmental Policy for Program Compliance Reviews," Departmental Regulation 4330-1, June 27, 1986.

<sup>52</sup> U.S. Department of Agriculture, Office of Civil Rights Enforcement, "Civil Rights Impact Analysis," Departmental Regulation 4300-4, Sept. 22, 1993.

<sup>53</sup> USCCR, *Federal Title VI Enforcement*, p. 251.

<sup>54</sup> *Ibid.*, referencing the Department of Justice's coordination regulations at 28 C.F.R. § 42.403(d) (1993).

<sup>55</sup> Civil Rights Restoration Act of 1987, Pub. L. No. 100-259, 102 Stat. 28 (codified as amended in scattered sections of U.S.C.).

<sup>56</sup> USCCR, *Federal Title VI Enforcement*, p. 252.

<sup>57</sup> *Ibid.*, p. 268.

*eral Domestic Assistance* (CFDA) and is available on the CFDA Web site. OCR plans to update the list of programs and activities again during FY 2003 and publish it in the *Federal Register* in FY 2004.<sup>58</sup> The Department of Justice led an effort not only of USDA, but also 21 other federal departments or agencies, to jointly update regulations for consistency with the definition of “programs and activities” given in the Civil Rights Restoration Act, thereby clarifying the coverage of the nondiscrimination provisions of civil rights statutes. The proposed rules were published in the *Federal Register* on December 6, 2000, and, more than two years later at the time of this report, the Department of Justice anticipated that publication of the final rule was “imminent.”<sup>59</sup>

### *Guidance on Compliance Reviews*

In 1996, the Commission examined and found confusing USDA compliance review procedures and guidance (Departmental Regulation 4330-1), especially regarding when and how to conduct compliance reviews of recipients and OCR’s oversight responsibility for state and field offices. The Commission recommended that the regulation be revised to clarify the differences.<sup>60</sup>

On March 3, 1999, this regulation was replaced with two departmental regulations, 4330-002 and 4330-003, addressing federally assisted and conducted programs, respectively.<sup>61</sup> The guidance explains that the civil rights responsibilities of USDA-conducted programs and activities require reviews of USDA agencies and the responsibilities of federally assisted programs require reviews of the organizations (or their subcomponents) receiving USDA funding. A compliance review is a routine evaluation of policies and procedures for compliance with civil rights statutes, regulations, and policies. The types of compliance reviews include a more focused examination of a particular program or activity of an agency, organization, or a subcomponent (i.e., a “program review”), or a broad investigation of an agency or organization, its subcomponents, and programs and activities (i.e., an “agency review”) in the case of federally conducted programs, and a “pre-” or “post-award recipient review” for federally assisted organizations or entities.<sup>62</sup> An OCR official clarified that, except for the entity reviewed, the definition of a compliance review is essentially the same for both federally conducted and assisted programs.<sup>63</sup>

In response to a March 2000 internal audit report, OCR has begun conducting agency civil rights evaluations. Agency civil rights evaluations are the process through which OCR assesses and monitors USDA agencies’ efforts to meet their internal and external civil rights obligations in assisted and conducted programs. The evaluations are restricted to an assessment of the agency’s civil rights program, not its conducted or federally assisted programs. Three such evaluations were conducted in FY 2002.<sup>64</sup>

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<sup>58</sup> USDA/OCR Interrogatory, tab 17.

<sup>59</sup> *Ibid.*, tab 16.

<sup>60</sup> USCCR, *Federal Title VI Enforcement*, pp. 258–59, 269.

<sup>61</sup> USDA/OCR Interrogatory, tab 18; U.S. Department of Agriculture, Office of Civil Rights, “Nondiscrimination in Programs and Activities Receiving Federal Financial Assistance from USDA,” Departmental Regulation 4330-002, Mar. 3, 1999 (hereafter cited as USDA/OCR, DR 4330-002, 1999); U.S. Department of Agriculture, Office of Civil Rights, “Nondiscrimination in USDA-Conducted Programs and Activities,” Departmental Regulation 4330-003, Mar. 3, 1999 (hereafter cited as USDA/OCR, DR 4330-003, 1999).

<sup>62</sup> USDA/OCR, DR 4330-002, 1999; USDA/OCR, DR 4330-003, 1999.

<sup>63</sup> Isler letter, 2003, p. 9.

<sup>64</sup> *Ibid.*, p. 10.

In 2001, OCR issued standard operating procedures for the agency civil rights evaluations it conducts, distinguishing “agency” and “headquarters” evaluations.<sup>65</sup> Standard operating procedures issued for “program” compliance reviews in 2002 declared “headquarters” and “agency” reviews were functionally the same, but contrasted them to a program review, which is focused on a particular program or activity.<sup>66</sup> Thus, OCR has not succeeded in clarifying the types of compliance reviews or agency civil rights evaluations, particularly in distinguishing the ambiguous meanings of the word “program” that may refer either to a particular program, such as the Food Stamp Program, or to program delivery generally.

OCR has a proposed departmental manual that, according to the deputy director of programs, describes compliance reviews and clearly distinguishes OCR and USDA responsibilities.<sup>67</sup> It redefines compliance reviews to conform to Department of Justice guidance issued in 1998. The manual was issued in draft form in June 2001 and was not yet through final clearance in June 2003.<sup>68</sup>

### *Civil Rights Impact Analyses*

When the Commission reviewed OCR in 1996, USDA had newly issued a departmental regulation requiring OCR to identify and address the civil rights implications of proposed policy actions before those actions are approved and implemented, a procedure known as a Civil Rights Impact Analysis (CRIA). The Commission asked USDA’s civil rights office to ensure that thorough CRIAs fulfill the promise of this regulation and that programs with harmful civil rights effects be abandoned or modified.<sup>69</sup>

In 2003, the Commission finds that OCR reported the completion of 265 CRIAs during FY 1999 to 2001. Of these, six analyses represented proposed actions involving OCR (e.g., its civil rights training and training modules); 18 concerned the Departmental Administration of which OCR is a part; 20 the Food and Nutrition Service; 71 the Farm Service Agency; and eight the Natural Resources Conservation Service.<sup>70</sup>

Notably, an analysis of the civil rights implications of the 2002 farm bill was not yet available.<sup>71</sup> OCR has assigned civil rights specialists to specific USDA agencies to assist in completing CRIAs

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<sup>65</sup> U.S. Department of Agriculture, Office of Civil Rights Programs, Program Compliance Division, *Agency Civil Rights Evaluations, Interim*, Nov. 2, 2001, p. 4.

<sup>66</sup> U.S. Department of Agriculture, Office of Civil Rights, Program Compliance Division, *FY 2002 Standard Operating Procedures for Civil Rights Program Compliance Reviews*, May 1, 2002, p. 4.

<sup>67</sup> U.S. Department of Agriculture, Departmental Manual 4330-002, “Procedures for Processing Administrative Discrimination Complaints and Conducting Compliance Reviews in USDA Financially Assisted Programs and Activities,” June 22, 2001 (hereafter cited as USDA, DM 4330-002).

<sup>68</sup> USDA/OCR Interrogatory, tab 18; Isler letter, 2003, pp. 9–10.

<sup>69</sup> USCCR, *Federal Title VI Enforcement*, p. 259.

<sup>70</sup> Numbers compiled from USDA/OCR, “Semiannual Tracking Report of Agency Civil Rights Impact Analysis (CRIA) for FY 1999–2001,” Dec. 2, 2002.

<sup>71</sup> U.S. Department of Agriculture’s Response to the U.S. Commission on Civil Rights’ Document Request for Volume III of the Ten-Year Review of Civil Rights Enforcement, Department of Administration, Office of Civil Rights, Jan. 31, 2003, tab 6.

on the effects of the 2002 farm bill. Thus, through this process, the specialists should have identified and alleviated any of the new legislation's negative consequences for civil rights.<sup>72</sup>

OCR can exercise authority to change negative civil rights impacts in two ways. First, if agency-imposed regulatory provisions or eligibility criteria create barriers or restrict access to programs and activities for racial or ethnic groups without a legitimate nondiscriminatory reason, OCR will withhold its approval of rules published in the *Federal Register*, effectively blocking issuance until agencies take actions to eliminate or alleviate the negative impacts. Second, if OCR's program compliance division finds civil rights deficiencies in an agency's programs and activities, it can require the agency and funding recipients to submit corrective action plans to achieve compliance and can monitor the implementation of such plans until compliance is achieved. Compliance reviews conducted from FY 1998 to 2000 resulted in 16 corrective action plans, half of which were closed and the other half of which were in various stages of implementation in December 2002.<sup>73</sup>

OCR last provided technical training to agency civil rights professionals and program experts responsible for preparing CRIAs in FY 1999. More recently, OCR assigned civil rights specialists to assist USDA agencies in completing CRIAs related to the new farm bill as a form of technical assistance and in an effort to increase the effectiveness of impact analyses. In addition, OCR is revising the departmental regulation on CRIAs to clarify the requirements, streamline the process, and more clearly define the roles of OCR, the agencies, and the Assistant Secretary for Administration for conducting them.<sup>74</sup>

#### *Other Policy Guidance*

In its 1996 report, the Commission also recommended that USDA's civil rights office develop more policies and issue further guidelines to ensure consistent enforcement throughout the agency. Specifically, it asked for policy guidance on the implications of the Civil Rights Restoration Act for its Title VI enforcement, on how Title VI enforcement is affected by block grant programs, and on the USDA agencies' obligations for continuing state programs. The Commission said that guidance on continuing state programs should spell out the roles of USDA agencies and states for ensuring Title VI compliance, indicate that agencies must require states to submit methods of administration and submit annual self-assessments on their Title VI compliance programs, and require the USDA agencies to conduct periodic reviews of states' Title VI compliance programs. The Commission also asked OCR to add information to the compliance review manual on timeframes for completing tasks, the frequency and cyclical nature of compliance reviews, the legal standards for discrimination under Title VI, and the different kinds of compliance reviews. The Commission was concerned that the agencies had too much latitude in determining how often to conduct reviews of their state and field offices.<sup>75</sup>

The Commission finds that as of 2003, OCR has not addressed the foregoing policy guidance recommendations. OCR officials stated that they have not yet secured approval of draft documents for implementing some of the recommendations. Other recommendations cannot be implemented with-

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<sup>72</sup> USDA/OCR Interrogatory, tab 21. The deputy director for OCR's program division states that the proactive approach of working directly with USDA agencies is a more constructive approach to reviewing the farm bill's program regulations than conducting civil rights impact analyses. Isler letter, 2003, p. 11.

<sup>73</sup> USDA/OCR Interrogatory, tab 22.

<sup>74</sup> *Ibid.*, tab 21.

<sup>75</sup> USCCR, *Federal Title VI Enforcement*, pp. 259, 264–66, 269–70.

out action from the Department of Justice. Title VI regulations have been revised in a joint common rule with other federal agencies, but the Department of Justice has not obtained clearances from all the involved agencies and therefore has not issued the final rule.<sup>76</sup> USDA cannot issue guidance to USDA agencies without the joint rule. Therefore, OCR has disseminated DOJ's policy guidance, rather than agency-specific guidance, for example, on enforcement of Title VI in block grant programs. In another instance, USDA's departmental manual, with guidance on Title VI enforcement procedures, remains in draft form awaiting approval; the draft includes timeframes, legal standards, and other information that the Commission recommended.<sup>77</sup>

### **Technical Assistance**

In 1996, the Commission reported that the civil rights office's technical assistance had diminished considerably compared with earlier years. OCRE still provided technical assistance both to agency heads and to USDA program recipients; however, the desk officer positions, through which OCR offered much of the earlier technical assistance, were discontinued. Furthermore, technical assistance was not offered on a schedule, but primarily on request. The recent technical assistance that OCRE had offered focused on the Americans with Disabilities Act, not Title VI. The Commission recommended that the position of desk officer, one assigned to each USDA agency, be reinstated so that OCR could provide regular technical assistance to the USDA agencies.<sup>78</sup>

OCR now provides technical assistance during compliance reviews of agencies, complaint investigations, and civil rights training. However, the office still does not have the resources to fully address the role and responsibilities of desk officers as the Commission recommended. In a Long Term Improvement Plan, issued in 2000, OCR has requested a substantial increase in the number of positions allocated to its program compliance division. Some new positions were approved and filled in FY 2001; others are anticipated in FY 2003. In the meantime, OCR has assigned a compliance officer to serve as a liaison to each agency with Title VI enforcement responsibilities. For FY 2002, the six liaisons each served from one to five agencies. They were expected to participate in the agency's civil rights and program training, spend at least two weeks at the agency soon after receiving their assignments, and interact with the agency's civil rights staff in all matters pertaining to program compliance reviews, evaluations, and monitoring corrective action plans and settlement agreements.<sup>79</sup>

### **Education and Outreach**

In 1996, OCRE's education and outreach activities were limited mostly to the dissemination of a civil rights poster, which stated a nondiscrimination policy and explained where to file a complaint, and occasional contacts with civil rights and community groups. Otherwise, OCRE left Title VI education and outreach to USDA agencies. The Commission viewed this as inadequate and recommended that OCR spearhead a departmentwide campaign to educate USDA recipients, program participants, intended beneficiaries, and the general public about their rights and responsibilities under

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<sup>76</sup> USDA/OCR Interrogatory, tab 16.

<sup>77</sup> See *ibid.*, tabs 16, 23–25; USDA, DM 4330-002.

<sup>78</sup> USCCR, *Federal Title VI Enforcement*, pp. 262, 271.

<sup>79</sup> USDA/OCR Interrogatory, tabs 29, 44; Frederick D. Isler, for David Winningham, acting director, Office of Civil Rights, U.S. Department of Agriculture, memorandum to Agency Civil Rights Directors, re: Designation of Program Compliance Division Agency Liaisons, Aug. 31, 2001.

Title VI. The Commission said the effort should fashion a strategy with OCR and the USDA agencies having clearly delineated responsibilities.<sup>80</sup>

In 2003, the Commission finds that USDA's Title VI education and outreach programs remain decentralized. USDA officials stated they had determined that the USDA agencies' structures, with state and county offices throughout the nation, could best serve the range of different customer bases. Nevertheless, along with the agency education and outreach program offices, USDA created an Office of Outreach to develop a departmental strategy.<sup>81</sup>

The Office of Outreach was established in August 1997 and is under the Assistant Secretary for Administration. It provides leadership, coordination, facilitation, and expertise to ensure that all USDA constituents, particularly the underserved, have equal access to USDA programs and services. The office has formed internal and external advisory committees to further the intent of Title VI legislation. It sponsors conferences and forums, and holds meetings with stakeholders to brief them on new initiatives and funding sources and to learn their concerns about program delivery.<sup>82</sup> USDA provided outreach and assistance to more than 107,000 socially disadvantaged farmers and ranchers over a five-year period.<sup>83</sup>

The Office of Civil Rights, not the Office of Outreach, however, has responsibility for USDA's response to the recent Department of Justice guidance to reduce language barriers that preclude equal access of persons with limited English proficiency (LEP) to programs and benefits. Thus, from August 2001 to January 2003, OCR had been implementing the LEP requirements set forth in Executive Order 13,166 and DOJ guidance.<sup>84</sup> For example, OCR published guidance explaining the obligations of USDA recipients of funding and briefed agency civil rights directors on the subject.<sup>85</sup>

### **Complaint Processing**

In 1996, the Commission found that OCRE was conducting all investigations of complaints of discrimination and issuing determination of violations or compliance. It only had a formal memorandum of understanding delegating certain complaint processing activities to the Food and Nutrition Service, although some other USDA agencies performed preliminary activities, too. The Commission recommended that the civil rights office enter into formal memoranda of understanding with all USDA agencies performing Title VI complaint processing.<sup>86</sup>

The Commission now finds that a 1997 Secretary's memorandum clarified that (1) the OCR director has full responsibility for investigation, adjudication, and resolution of complaints of discrimination arising out of USDA's programs; and (2) OCR can delegate the conduct of preliminary investigations of program discrimination complaints to the heads of USDA agencies and offices, but OCR's director will make final determinations as to whether discrimination occurred and how such cases will be adjudicated and resolved.<sup>87</sup> As of 2003, two of the three agencies studied here—FNS and NRCS—

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<sup>80</sup> USCCR, *Federal Title VI Enforcement*, pp. 261, 271.

<sup>81</sup> USDA/OCR Interrogatory, tab 43.

<sup>82</sup> *Ibid.*

<sup>83</sup> U.S. Department of Agriculture, *Assisting America's Small Farmers and Ranchers in the 21st Century*, n.d., p. 43.

<sup>84</sup> Exec. Order No. 13,166, 3 C.F.R. § 289 (2001), *reprinted in* 42 U.S.C.S. § 2000d-1 (Law. Co-op. 2003).

<sup>85</sup> USDA/OCR Interrogatory, tab 43.

<sup>86</sup> USCCR, *Federal Title VI Enforcement*, pp. 261, 271.

<sup>87</sup> USDA, SM 1010-4, 1997, p. 2.

had formal agreements about their and OCR's roles in processing complaints. The memoranda assigned the two agencies the responsibility of logging in complaints, determining their jurisdiction, conducting investigations, maintaining records of complaint processing activities, and training all staff members who have been delegated complaint processing authority or responsibility. OCR retained the authority to initiate and complete investigations in certain cases. For example, for FNS, OCR retained this authority for class complaints; those raising systemic issues or concerning politically sensitive matters; instances of multiple complaints filed against a particular program or political subdivision; and challenges or appeals to the agency's findings or decisions.<sup>88</sup> In practice, however, FNS writes preliminary decisions on all complaints and submits them to OCR for review and approval. OCR either affirms the decisions or returns the cases to FNS for further investigation.<sup>89</sup>

In the past, OCR delegated responsibility for conducting preliminary inquiries into complaints filed against the Farm Service Agency's (FSA) program delivery. Because of concerns about discrimination in program delivery that arose in the *Pigford v. Veneman* consent decree,<sup>90</sup> OCR terminated the FSA's authority in such matters. Now, OCR's program investigation division or outside contractors conduct all investigations of FSA's civil rights complaints.<sup>91</sup>

By retaining the authority to make determinations on program delivery complaints, OCR can ensure the USDA agencies' quality and consistency of complaint handling. However, some reports have suggested that OCR's processing of complaints is poor. A March 2000 report of USDA's Office of Inspector General (OIG) raised concerns about the consistency with which cases were processed and the accuracy of information maintained on them.<sup>92</sup>

Figures 2.5 and 2.6 show USDA's program delivery complaint inventory and processing time from 1996 to 2002. (Recall that OCR cannot separate the Title VI complaints.) The number of new program delivery complaints filed each year was increasing until FY 1999, when it reached 1,224. This number decreased to 637 in FY 2000, but increased thereafter, returning to its former high level in FY 2002 (see figure 2.5).<sup>93</sup> Figure 2.5 also shows a tremendous increase in the number of complaints processed—from 477 in FY 1998 to 1,500 in FY 1999. However, processing waned thereafter, ending at 1,126 complaints processed in FY 2002. OCR officials estimate that about 20 percent of its caseload concerns Title VI enforcement. This amounts to 250 of the complaints received, or 300 of those processed in FY 1999.<sup>94</sup>

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<sup>88</sup> USDA/OCR, FNS, "Memorandum of Understanding between the Food and Nutrition Service and the Office of Civil Rights, Apr. 3, 1998; U.S. Department of Agriculture, Office of Civil Rights, Natural Resources Conservation Service, "Memorandum of Understanding between the Natural Resources Conservation Service and the U.S. Department of Agriculture, Office of Civil Rights," Jan. 31, 2001.

<sup>89</sup> USDA/OCR Interrogatory, tab 35.

<sup>90</sup> *Pigford v. Veneman*, 292 F.3d 918 (D.C. Cir. 2002). *Pigford* is a class action lawsuit brought by African American farmers alleging USDA racially discriminated in the administration of federally funded credit and benefit programs. The terms of the consent decree remain in litigation.

<sup>91</sup> USDA/OCR Interrogatory, tab 34.

<sup>92</sup> U.S. Department of Agriculture, Office of Inspector General, *Office of Civil Rights Status of the Implementation of Recommendations Made in Prior Evaluations of Program Complaints*, Audit Report No. 60801-4-Hq, March 2000, pp. i-vii. See also GAO, *USDA: Improvements*.

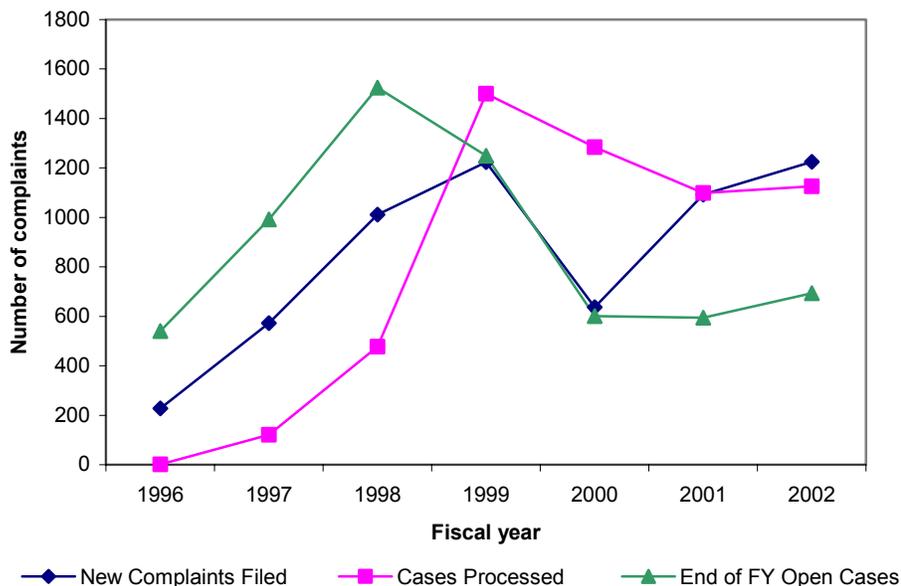
<sup>93</sup> USDA/OCR Interrogatory, tab 39.

<sup>94</sup> *Ibid.*, tab 36.

OCR has reduced the backlog of open complaint cases in recent years. Although more than 1,500 cases were open at the end of FY 1998, the number has decreased to about 600 in FY 2000 and 2001, and was just under 700 in FY 2002 (see figure 2.5).<sup>95</sup>

OCR reports that staff reduced the average number of days for processing program delivery cases from 576 in FY 1998 to 195 in 2002 (see figure 2.6). It was 434 in FY 2000 and 240 in FY 2001.<sup>96</sup> However, at least in the past, OCR has only tracked the processing time for complaints through the investigation phase.<sup>97</sup> A General Accounting Office report concluded that in FY 2000 and 2001, OCR took an average of 365 and 315 days to complete just the investigation phase. The average processing time when all stages of complaint resolution are accounted for were 772 and 676 days for FY 2000 and 2001.<sup>98</sup> The deputy director of OCR's program division clarified that the average processing times depicted in figure 2.6 include all stages of processing and noted his division's continued improvement in reducing the length, regardless of how processing time is calculated.<sup>99</sup>

**FIGURE 2.5**  
**USDA Civil Rights Complaint Inventory for Program Delivery, All USDA Agencies, 1996–2002**



Source: USDA/OCR Interrogatory, tab 36.

<sup>95</sup> Ibid., tab 37.

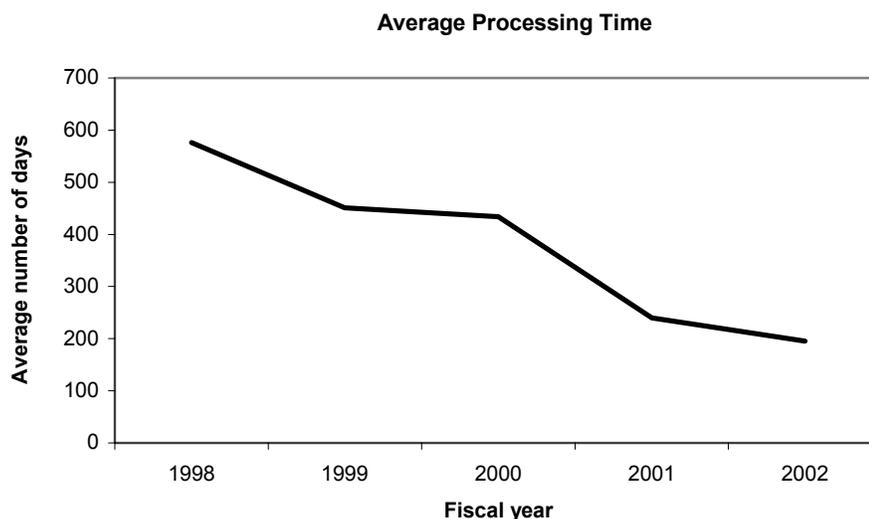
<sup>96</sup> Ibid.

<sup>97</sup> See USDA/OCR, FY 2001 AAR, p. 1, and USDA/OCR, FY 2002 AAR, p. 1, both of which state that processing times were recorded based on the dates of case filing and report of investigation; and GAO, *USDA: Improvements*, pp. 3–4.

<sup>98</sup> GAO, *USDA: Improvements*, pp. 3–4.

<sup>99</sup> Isler letter, 2003, p. 11.

**FIGURE 2.6**  
**USDA Civil Rights Complaint Inventory for Program Delivery, All USDA Agencies, 1998–2002**



Source: USDA/OCR Interrogatory, tab 37; Isler letter, 2003, p. 11.

OCR officials reported trying to improve complaint processing and reduce the backlog in FY 2000. First, staff processed more complaints than were received. Second, the office streamlined the pre-investigation process. For example, staff no longer investigated non-jurisdictional complaints. Third, OCR implemented a new complaint tracking system and established an Intake Division and Customer Service Unit. OCR credits the intake unit with reducing the average number of days to determine jurisdiction on a complaint from 300 in FY 2000 to 130 in FY 2001.<sup>100</sup>

OCR developed a proposal to further reduce the backlog of discrimination complaints in 2003. The plan calls for obtaining additional staff and using a triage method for handling investigations.<sup>101</sup> At the same time, OIG has continued to monitor OCR's complaint-handling operations and urged OCR to implement further changes. For example, in November 2002, OIG asked OCR to survey all USDA programs to determine whether civil rights complaint processing and compliance review procedures adhere to OCR's established standards and are consistently applied by staff trained and experienced in civil rights laws and regulations. In 2003, OCR was evaluating the agencies and revising standard operating procedures based on the results.<sup>102</sup>

<sup>100</sup> USDA/OCR Interrogatory, tabs 39, 42; U.S. Department of Agriculture, Office of Civil Rights, Programs Directorate, "Fiscal Year 2000 Program Accomplishments, October 1, 1999 through September 20, 2000," Oct. 10, 2000, pp. 1–2. OCR reports other measures of this accomplishment: (1) the number of claims to review in the program complaint tracking system was reduced from 800 in November 1999 to 137 in December 2002; (2) the intake backlog was reduced from 472 in FY 2001 to 124 in FY 2002; and (3) 1,192 claims were processed in FY 2002 alone. USDA/OCR Interrogatory, tab 42; Isler letter, 2003, pp. 3–5.

<sup>101</sup> U.S. Department of Agriculture, Office of Civil Rights, Programs Directorate, "Proposal to Eliminate the Backlog of Statute of Limitations and Administrative Program Discrimination Complaints," circa August 2002, p. 4.

<sup>102</sup> Richard D. Long, assistant inspector general for audit, Office of Inspector General, U.S. Department of Agriculture, memorandum to David Winningham, director, Office of Civil Rights, re: Office of Civil Rights Status of the Implementation of Recommendations Made in Evaluations of Program Complaints, Nov. 14, 2002.

## Compliance Reviews

Title VI and departmental regulations require USDA agencies to conduct compliance reviews to ensure that their programs and funding recipients comply with Title VI requirements of nondiscrimination. In turn, the department's Office of Civil Rights conducts reviews of the USDA agencies to ascertain that, among other things, the agencies have appropriate data collection and reporting procedures in place to determine whether the programs comply with nondiscrimination requirements.

In 1996, the Commission found that OCRE's reviews of USDA agencies evaluated the delivery of program benefits, eligibility criteria, and participation rates. These compliance reviews included an examination of the USDA agencies' data collection and analysis system to ensure that data were collected and analyzed, and met regulations. However, OCRE did not require the USDA agencies to submit an annual data report. The Commission recommended that the departmental civil rights office require each USDA agency to submit an annual report on its Title VI enforcement to OCRE and suggested the content of the report and appropriate analyses of program participants.<sup>103</sup>

USDA has had a spotty history of conducting compliance reviews of USDA agencies since the Commission's last study of the department. Officials reported conducting no compliance reviews in 1995 and 1996 and 2000 and 2001 because of budgetary constraints, limited travel funds, and organizational and staffing changes. In 1997 and 1998, OCR performed four reviews of USDA agencies in the Virgin Islands and 15 reviews of various agencies' programs (including FSA, NRCS, and FNS) in eight states. In 1999, it conducted four focused compliance reviews addressing specific areas of concern in southern states (two involving FSA programs); and three special reviews of FSA civil rights compliance to respond to a 1997 Office of Inspector General report. In 2002, it conducted three evaluations of enforcement at headquarters offices of USDA agencies.<sup>104</sup>

These compliance reviews resulted in some findings of noncompliance. For example, with regard to FSA, OCR found that virtually all states reviewed in 1998 and 1999 were lacking or had not implemented outreach plans, particularly ones targeted to Native Americans; were not collecting and maintaining program eligibility and participation data by race, ethnicity, and gender; and had staff in need of training on civil rights laws, program delivery, and procedures such as how complaints are filed.<sup>105</sup>

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<sup>103</sup> USCCR, *Federal Title VI Enforcement*, pp. 263, 272.

<sup>104</sup> USDA/OCR Interrogatory, tab 27.

<sup>105</sup> U.S. Department of Agriculture, Office of Civil Rights, "Civil Rights Compliance Review Report of the Farm Service Agency in Oklahoma," 1998, pp. 1–2 (hereafter cited as USDA/OCR, FSA Compliance Review in Oklahoma); U.S. Department of Agriculture, Office of Civil Rights, "Civil Rights Compliance Review Report of the Farm Service Agency in Mississippi," 1998, p. 1 (hereafter cited as USDA/OCR, FSA Compliance Review in Mississippi); U.S. Department of Agriculture, Office of Civil Rights, "Civil Rights Compliance Review Report of the Farm Service Agency in South Dakota," 1998, p. 1; U.S. Department of Agriculture, Office of Civil Rights, "Civil Rights Compliance Review Report of the Farm Service Agency in Arkansas," 1999, pp. i–ii (hereafter cited as USDA/OCR, FSA Compliance Review in Arkansas); U.S. Department of Agriculture, Office of Civil Rights, "Civil Rights Compliance Review Report of the Farm Service Agency in Georgia," 1999, pp. i–ii. In addition, the compliance reviews found incidents suggesting a pattern of actions denying services to the citizens of the Virgin Islands in 1997; a location in Georgia where there were concerns about sensitivity and diversity issues, customer service, and low rates of loans to minorities, and disparities in the processing time of minority loan applicants compared with nonminority applicants in 1999; and states needing to update compliance review procedures or develop a system for conducting periodic civil rights compliance reviews; and the FSA not conducting Civil Rights Impact Analyses of all programs in a state.

U.S. Department of Agriculture, Office of Civil Rights, "Executive Summary Civil Rights Compliance Review, U.S. Virgin Islands, October 19–29, 1997," pp. 2–3; Rosalind D. Gray, director, Office of Civil Rights, memorandum to Keith Kelly, administrator, Farm Service Agency, re: "Compliance Reviews, Phillips County[,]Arkansas, Dawson[,] Georgia,

Many of OCR's oversight reviews of FSA and other agencies examined systems of collecting program participation and eligibility statistics and found that field offices' data were unreliable or not systematically collected.<sup>106</sup> In 2001, OCR issued newly developed standard operating procedures for conducting civil rights evaluations of agencies. The procedures instruct staff to evaluate the collection and maintenance of civil rights statistical and demographic data, but do not ask the agencies to require annual reports of the information.<sup>107</sup> The passage of the farm bill in May 2002 requires the Secretary to report on program participation rates of farmers and ranchers by race, ethnicity, and gender.<sup>108</sup> Thus, USDA is drafting a new civil rights data collection policy to clarify roles and responsibilities of agencies and recipients. The draft guidance requires USDA agencies to analyze such data; however, officials still do not plan to require reports. The officials claimed that the Department of Justice's annual Civil Rights Implementation Plan contains sufficient information about agencies' data collections.<sup>109</sup> The Commission disagrees. Civil Rights Implementation Plans do not contain any information on the race, color, ethnicity, national origin, or gender of program participants or beneficiaries.

### **Staff Training**

In 1996, the Commission reported that OCRE adequately trained employees in its civil rights units and regional offices on all civil rights statutes. Although OCRE was also responsible for providing training to USDA agencies and for overseeing the USDA agencies in providing training to recipients and subrecipients, the office did not have an active or systematic program to do so. The Commission recommended that OCRE ensure that all USDA civil rights and program staff members have training on Title VI; develop a comprehensive Title VI training manual to assist USDA agencies in training their civil rights staff, and training materials to explain Title VI requirements to agencies' program staff; monitor the agencies' training programs; and provide annual Title VI training to agency compliance staff.<sup>110</sup>

In 2003, USDA's departmental regulation requiring annual civil rights training continues to exist and was in the process of being updated. But, although all the training offered to fulfill this regulation is related to civil rights, none of it directly addresses Title VI rather than more general topics such as cultural diversity or program delivery. Title VI was not identified as the focus of any training offered or planned from 1997 to 2006.<sup>111</sup> Furthermore, OCR's and the USDA agencies' training materials contained almost no content on Title VI enforcement. For example, FY 2001 training programs for

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[and] North Carolina," Dec. 9, 1999; USDA/OCR, FSA Compliance Review in Oklahoma, pp. 1–2; USDA/OCR, FSA Compliance Review in Mississippi, p. 1; USDA/OCR, FSA Compliance Review in Arkansas, pp. i–ii.

<sup>106</sup> In addition to those cited above, *see, e.g.*, U.S. Department of Agriculture, Office of Civil Rights, "Office of Civil Rights Compliance Review Report, Natural Resources Conservation Service, Oklahoma," 1998, p. 2; U.S. Department of Agriculture, Office of Civil Rights, "Civil Rights Compliance Review Report of the Natural Resources Conservation Service in Virginia," 1998, p. 5; U.S. Department of Agriculture, Office of Civil Rights, "Civil Rights Compliance Review Report of the Natural Resources Conservation Service in Mississippi," 1998, p. 2.

<sup>107</sup> U.S. Department of Agriculture, *Standard Operating Procedures, Office of Civil Rights Programs, Program Compliance Division, Agency Civil Rights Evaluations, Interim*, Nov. 2, 2001.

<sup>108</sup> Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, 116 Stat. 134, § 10708 (to be codified at 7 U.S.C. § 2279).

<sup>109</sup> USDA/OCR Interrogatory, tab 51.

<sup>110</sup> USCCR, *Federal Title VI Enforcement*, pp. 262–63, 272.

<sup>111</sup> USDA/OCR Interrogatory, tab 45; U.S. Department of Agriculture, "Note to Reviewers on Proposed Update of Department Regulation (DR) 4120-1," June 26, 2002.

FSA and FNS merely discussed programs targeted to Indian tribes or reservations and socially disadvantaged groups such as African Americans.<sup>112</sup>

OCR often writes the training modules and reviews any materials agencies use for training. Furthermore, the department delayed FY 2002 civil rights training of all employees to allow the Office of General Counsel to review its training modules. Once reviewed, the training modules will be posted on OCR's Web site and will be available to agencies through that means. FY 2003 training based on the reviewed modules will begin in April 2003; all the modules will be available on the Web site by September 2003.<sup>113</sup>

### ***Oversight and Quality Assurance***

In 1996 and still today, OCR has the responsibility for oversight, coordination, and monitoring of the USDA agencies' Title VI enforcement programs. OCR should conduct regular, systematic inspections and evaluations of USDA agencies' programs to ensure that the agencies are fulfilling their civil rights responsibilities. Oversight involves not only field assessment reviews of agencies, but also desk audits (i.e., reviews of documents) of civil rights activity at all levels of agency operations.<sup>114</sup>

In 1996, the Commission found that USDA lacked the resources to conduct reviews and had not conducted compliance reviews of most USDA agencies in the previous two years. The department's enforcement office no longer had desk officers assigned to each USDA agency to conduct ongoing assessments of enforcement. The office staff was able to provide very little technical assistance to the agencies, had no regular contact with recipients of USDA assistance, and had limited knowledge of the USDA programs. The Commission urged USDA to request the necessary resources to have sufficient desk officers who could monitor and oversee the USDA agencies' Title VI programs.<sup>115</sup>

In 2003, conducting compliance reviews and agency civil rights evaluations remains a way to provide oversight and ensure quality in USDA's civil rights program. The discussion of compliance reviews, above, indicates that OCR is completing only a small number of oversight reviews of its agencies and federally conducted or assisted programs. OCR attributes the small number of reviews to the lack of staff, and following an FY 2002 increase in staff in its programs division, the office conducted one compliance review of a federally assisted program.<sup>116</sup>

To further enhance the quality of agency civil rights efforts, OCR created agency civil rights evaluations and developed standard operating procedures for planning and conducting them. Interim procedures were issued in November 2001 and finalized in March 2003. Agency civil rights evaluations focus on the USDA agencies' civil rights program organization, allocation of resources, and operations to carry out their civil rights responsibilities. During FY 2002, OCR conducted three agency civil rights evaluations at the agencies' headquarters.<sup>117</sup>

In addition, the department has completed a Long-Term Improvement Plan to obtain more staffing for program compliance functions. The resulting staff increases allowed OCR to assign seven com-

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<sup>112</sup> USDA/OCR Interrogatory, tab 41. Note that another USDA agency, Rural Development, had a training module on Title VI and one on compliance reviews, in addition to covering other civil rights statutes. *Ibid.*

<sup>113</sup> USDA/OCR Interrogatory, tabs 45, 49, 50.

<sup>114</sup> USCCR, *Federal Title VI Enforcement*, pp. 260–61, 270.

<sup>115</sup> *Ibid.*

<sup>116</sup> Isler letter, 2003, p. 12.

<sup>117</sup> *Ibid.*

pliance officers to serve as agency liaisons, who were instructed to attend the agency's civil rights and program training to expand their knowledge of the program.<sup>118</sup>

During its 2003 review, the Commission finds that contact between OCR and agency staff is much more frequent than it was in 1996. First, to carry out its oversight responsibilities, OCR has monthly meetings with each agency regarding its civil rights compliance, open complaints of discrimination, and pending complaint settlements. In addition, OCR hosts monthly discussion forums on civil rights topics for three coalitions of agency staff—the civil rights directors of the USDA agencies, the Civil Rights Leadership Council, and the Departmental Civil Rights Training Committee. OCR also attends agencies' annual training conferences to update agency staff on new civil rights initiatives, reporting requirements, and legislative changes; and provides advice and technical assistance on resolving complaints of discrimination, conducting compliance reviews, and training and education. For example, OCR provides technical assistance to FSA an average of four times per month. OCR provides technical assistance on the resolution of complaints to FSA regional offices and meets with FSA staff to identify and resolve any problem areas in state and county offices.<sup>119</sup>

### **Conclusion**

Since 1996, civil rights enforcement has undergone numerous changes at the U.S. Department of Agriculture. However, many aspects, ranging from the organizational structure to the staffing and resources, indicate that the priority placed on civil rights is not high. The Farm Security and Rural Investment Act of 2002, known as the 2002 farm bill, established a position of Assistant Secretary for Civil Rights. The new Assistant Secretary for Civil Rights was only sworn into office on April 1, 2003. Some civil rights functions, such as outreach and legal guidance, are scattered in offices outside the Office of Civil Rights. At the same time, the Office of Civil Rights' responsibilities and activities are not budgeted or tracked separately to ensure that each and every responsibility, including enforcement under Title VI, the Americans with Disabilities Act, and other statutes, is fulfilled.

USDA does not have a budget line item for civil rights enforcement for the Office of Civil Rights or USDA agencies, nor does it designate resources for Title VI enforcement. Furthermore, USDA could not distinguish its Title VI workload or expenditures from those of the activities that other civil rights statutes required. OCR could not plan reasonable goals for Title VI enforcement without knowing what resources would be available. Although shortages of staff for conducting compliance reviews and providing technical assistance were evident, OCR could not justify its request for additional Title VI resources without knowing how its workload was changing and how expenditures relate to accomplishments.

Although OCR has issued a wide range of recent policy documents, some key documents are not yet final. Notably, at the time of this report, USDA's Title VI regulations were still in draft form in a joint common rule that the Department of Justice had coordinated with 22 federal agencies. In addition, OCR's guidance is still confusing in its distinctions between the types of compliance reviews that OCR or USDA agencies conduct of USDA agency components (such as state and field offices) and funding recipients. Finally, OCR has an important new instrument for enforcing civil rights—a requirement that USDA agencies conduct analyses of the civil rights implications of any new agency actions and eliminate any adverse effects before the actions are implemented. The office was still

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<sup>118</sup> USDA/OCR Interrogatory, tab 27; Isler letter, 2003, p. 12.

<sup>119</sup> USDA/OCR Interrogatory, tabs 30–32; see also U.S. Department of Agriculture, *Standard Operating Procedures, Office of Civil Rights, Program Operations, Monthly Agency Reconciliation Meetings*, Dec. 15, 1999.

clarifying the roles of OCR and the agencies in conducting these analyses and training staff to complete them.

Other aspects of USDA's headquarters enforcement still need improvement or require monitoring to ensure effectiveness. First, the Office of Outreach would likely be more effective if it were located within the Office of Civil Rights. Second, while ensuring consistency in complaint processing, OCR must reduce the backlog and shorten and accurately track the average processing time. Third, OCR has had a spotty history of conducting compliance reviews of USDA agencies. It must establish a regular, systematic schedule of conducting such reviews. Furthermore, OCR should require agencies to report for OCR review (1) program participation rates by race, ethnicity, and gender, and (2) analyses of them. Fourth, USDA's civil rights training must explain Title VI enforcement, including the agencies' tools to monitor and elicit compliance, for example, policy guidance, outreach, complaint processing, compliance reviews, and adverse impact analyses. Fifth, OCR must continue regularly scheduled meetings and forums with agency staff to resolve enforcement issues, fulfill its oversight responsibility, and deepen knowledge and understanding of enforcement throughout the department and its agencies.

### **Farm Service Agency**

The Farm Service Agency (FSA) was established during USDA's reorganization in 1994 as the Consolidated Farm Service Agency and was later renamed the Farm Service Agency.<sup>120</sup> It incorporated programs from several agencies, including the Agricultural Stabilization and Conservation Service (ASCS), the Federal Crop Insurance Corporation (FCIC), and the Farmer's Home Administration (FmHA). This reorganization, which was part of the Clinton administration's reinvention of government initiative, was done to streamline and reduce the number of government offices and USDA employees.<sup>121</sup> The intent was to centralize farm service government entities so that farm participants would be able to go to one location for farm commodities and farm credit services. This one-stop shopping theory was adopted to provide efficient and effective servicing to farmers, eliminating their need to travel to various locations to obtain increments of farm services. One-stop shopping would also assist government services with organized and collected control of files and other materials. Combining FmHA's farm credit services, ASCS' farm commodity subsidies, and FCIC's mission allows for a system of checks and balances.<sup>122</sup>

The agency's relationship with farmers goes back to the 1930s. Today, FSA continues to provide assistance to eligible individuals and families through supervised credit, outreach, and technical assistance in becoming successful farmers and ranchers. The Consolidated Farm and Rural Development Act, as amended, authorizes most farm loan programs administered by FSA.<sup>123</sup> Subtitle A of this act authorizes farm ownership, recreation, and soil and water loans. Subtitle B authorizes direct and guaranteed operating loans.<sup>124</sup> Farmers and ranchers who are temporarily unable to obtain sufficient credit elsewhere may obtain credit assistance through FSA to finance their needs at reasonable rates

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<sup>120</sup> U.S. Department of Agriculture's Response to the U.S. Commission on Civil Rights' Interrogatory for Volume III of the Ten-Year Review of Civil Rights Enforcement, Farm Service Agency, Office of Civil Rights, Dec. 13, 2002, p. 1 (hereafter cited as FSA Interrogatory).

<sup>121</sup> FSA Interrogatory, p. 2.

<sup>122</sup> *Ibid.*

<sup>123</sup> Consolidated Farm and Rural Development Act, Pub. L. No. 87-128, 75 Stat. 307 (codified as amended in scattered sections of U.S.C.).

<sup>124</sup> *Id.*

and terms. Some are beginning farmers or minority farmers who have suffered financial setbacks from natural disasters, or who have limited resources with which to establish and maintain profitable farming operations. Thus, the farm loan program provides a safety net to family farmers and ranchers who otherwise would be unable to contribute to the farm sector.<sup>125</sup>

The Office of Civil Rights (OCR) is the office within FSA responsible for the overall leadership and direction in the development and implementation of civil rights policies and programs. The FSA/OCR is responsible for developing, implementing, and coordinating agency policies and procedures to ensure compliance with nondiscrimination laws in program delivery.<sup>126</sup> Its mission also includes processing informal and formal complaints expeditiously.

In 1996, the Commission found that many of the state civil rights directors were not full-time equal opportunity specialists; there was insufficient funding to enforce Title VI and other civil rights statutes effectively; instructions, policies, and guidelines had critical deficiencies; FmHA funds were distributed without adequate safeguards to ensure that recipients were in compliance with Title VI; post-award desk-audit reviews of FmHA recipients were not conducted; and FmHA recipients were not required to conduct education and outreach beyond displaying a nondiscrimination poster.

In 2003, the Commission finds that FSA has even fewer state civil rights coordinators who are full-time equal opportunity specialists than in 1996; FSA does not have the ability to submit and control its own budget; the agency is not required to submit annual Civil Rights Implementation Plans, the agency has been slow to issue needed policy guidance; FSA does not process its own complaints without the approval or authority from USDA/OCR; and FSA is lacking in providing oversight to state and district offices.

### ***Priority of Civil Rights***

Before FmHA was reorganized into FSA, the director of the Equal Opportunity Staff reported to the administrator who was the head of FmHA. Today, that reporting structure is still in place.

In its 1996 report, the Commission found that the office of Equal Opportunity Staff (EOS) did not have adequate control over all FmHA staff performing Title VI enforcement activities. Although staff in FmHA state offices carried out enforcement activities on a daily basis, they did not report to the director of EOS.<sup>127</sup> As a result, the Commission recommended that all staff engaged in Title VI enforcement activities, including those in FmHA state offices, report to the director of EOS.

During its 2003 review, the Commission finds that staff who carry out Title VI enforcement activities in the Compliance Program and Analysis Branch and the Program Complaints Inquiry Branch of the FSA/OCR still do not report to the director, but report directly to their respective branch chiefs.<sup>128</sup> The branch chiefs report to the director of FSA/OCR, who directs, coordinates, and implements Title VI enforcement activities (see figure 2.7). The director of the FSA/OCR reports to the administrator through the assistant administrator of operations management.

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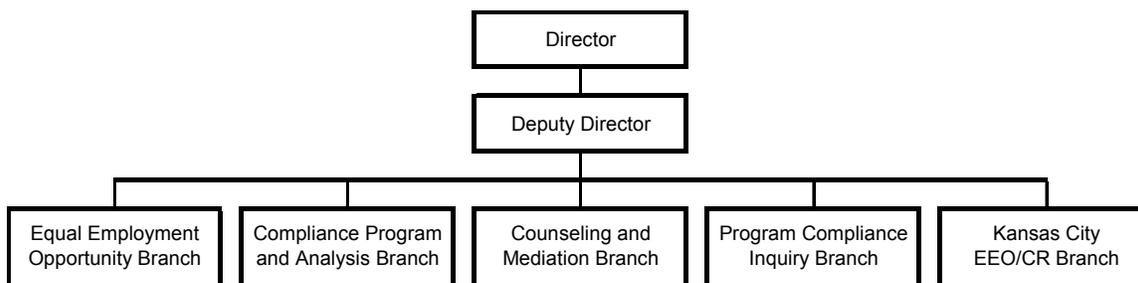
<sup>125</sup> Farm Service Agency, *Fiscal Year 2003 Annual Performance Plan*, p. 4.

<sup>126</sup> Farm Service Agency, Civil Rights & Small Business Utilization Staff, *Fiscal Year 2002 Strategic & Operational Plan*, p. 3 (hereafter cited as FSA/OCR, *FY 2002 Strategic & Operational Plan*).

<sup>127</sup> USCCR, *Federal Title VI Enforcement*, p. 305.

<sup>128</sup> FSA Interrogatory, p. 5.

**FIGURE 2.7**  
**FSA/OCR Organizational Structure, 2002**



Source: U.S. Department of Agriculture, Office of Civil Rights Organizational Chart, Nov. 14, 2002.

In its 1996 report, the Commission recommended that FmHA require that each state office civil rights director be a full-time equal opportunity specialist because many of the FmHA state office staff conducting day-to-day Title VI enforcement functions for the agency performed these functions as a collateral duty.<sup>129</sup>

As of 2003, there still is no requirement that the state office civil rights coordinator be a full-time equal opportunity specialist. According to FSA, each state office civil rights coordinator is fully trained in the applicable laws, regulations, policies, and procedures relative to Title VI enforcement and each has comprehensive knowledge of agency programs.<sup>130</sup> In addition, this combination of knowledge, skills, and abilities enables the state office civil rights coordinators to be highly effective in supporting the local, state and national office with Title VI enforcement activities. As of October 16, 2002, a state office civil rights coordinator spends, on average, 10 to 20 percent of his or her time performing civil rights functions. The remainder of the time is devoted to duties associated with the respective positions (e.g., farm loan specialists, district directors, farm program specialists, administrative officers).<sup>131</sup> Although the collateral civil rights assignments and accomplishments are made and evaluated by the state executive director, when performing their respective positions, state civil rights coordinators receive supervision from their immediate supervisors.<sup>132</sup> As of October 16, 2002, Indiana was the only state office with a full-time civil rights director who devoted 100 percent to civil rights duties.<sup>133</sup> However, it is only through full-time duty that civil rights coordinators develop knowledge and experience sufficient to carry out compliance duties.

<sup>129</sup> USCCR, *Federal Title VI Enforcement*, pp. 305–06.

<sup>130</sup> FSA Interrogatory, p. 5.

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

<sup>132</sup> *Ibid.*

<sup>133</sup> *Ibid.*, p. 6.

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### **Resources—Funding and Staffing**

During the 1996 review of FmHA, the Commission found that it had the capability to track its Title VI expenditures separately from other civil rights expenditures, but it was not making use of this capability. The Commission recommended that FmHA track its Title VI expenditures separately to develop an annual Title VI enforcement plan.<sup>134</sup>

In its 2003 review, the Commission finds that FSA tracks its Title VI expenditures separately from its expenditures on other civil rights activities by working closely with the Financial Management Division, Human Resources, and the department's Office of Civil Rights.<sup>135</sup> According to FSA/OCR, it is able to monitor all Title VI expenditures, and a weekly report is provided to the director for review.<sup>136</sup> The ability to examine all expenditures has enabled the Compliance Program and Analysis Branch to monitor its attainment of goals and objectives and to make modifications based on timely data, the results of which are provided as part of the annual program performance report's management initiatives.<sup>137</sup>

When the Commission's 1996 report was published, funding for the Equal Opportunity Staff (EOS) had fallen sharply in FY 1994, but its civil rights workload continued to grow. The Commission recommended that EOS use its information system to demonstrate that its budget was not sufficient for FmHA to enforce Title VI and other civil rights statutes effectively.<sup>138</sup>

In its 2003 review, the Commission finds that FSA/OCR's budget is monitored and tracked by the Financial Management/Budget and Human Resources Divisions.<sup>139</sup> Data provided by FSA/OCR show that between FY 1999 and 2000, its budget increased 5 percent from \$3.9 million to \$4.2 million (see figure 2.8). In FY 2001, the budget decreased slightly, but increased again FY 2002 to \$4.5 million. During FY 1999 to 2002, the proportion of FSA/OCR's budget consumed by travel has continuously increased from 6.7 percent in FY 1999 to 9.7 percent in FY 2002. The proportion of the budget used for training has remained constant, at 1 percent, over the past four years. Although there has not been an increase in the training budget, all training requests have been approved.

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<sup>134</sup> USCCR, *Federal Title VI Enforcement*, p. 305.

<sup>135</sup> FSA Interrogatory, p. 4.

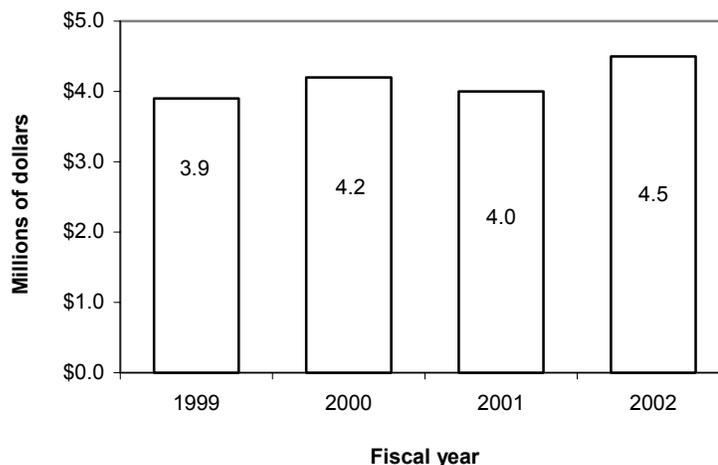
<sup>136</sup> *Ibid.*

<sup>137</sup> *Ibid.*

<sup>138</sup> USCCR, *Federal Title VI Enforcement*, p. 306.

<sup>139</sup> FSA Interrogatory, p. 4.

**FIGURE 2.8**  
**FSA/OCR Budget, 1999–2002**



Source: FSA Interrogatory, p. 26.

In 2003, the Commission finds that the number of full-time equivalents (FTEs) in FSA/OCR continued to increase between FY 1996 and 1999 (see figure 2.9). The largest increases in civil rights staff occurred between FY 1996–1997 and 1997–1998. The 50 percent increase in staff between 1997 and 1998 was a result of implementation of recommendations made by the Civil Rights Action Team.<sup>140</sup> The number of staff decreased slightly in FY 2000 and 2002.

According to FSA/OCR, it has a fully staffed Program Complaint Inquiry Branch (PCIB), and it along with the Compliance Program and Analysis Branch provide FSA with adequate staffing to ensure effective Title VI enforcement.<sup>141</sup> The PCIB of the FSA/OCR, located in Montgomery, Alabama, was initially established to conduct fact-finding inquiries on the backlog of discrimination cases in FSA.<sup>142</sup> Since its expansion, the PCIB conducts investigations on current program complaints, personnel misconduct, OIG hot line complaints, and equal employment opportunity/civil rights management reviews. The Compliance Program and Analysis Branch staff provides direct assistance on the enforcement of Title VI by supporting PCIB with well-trained and knowledgeable investigators able to handle program complaints, management reviews, OIG complaints, and misconduct investigations.<sup>143</sup>

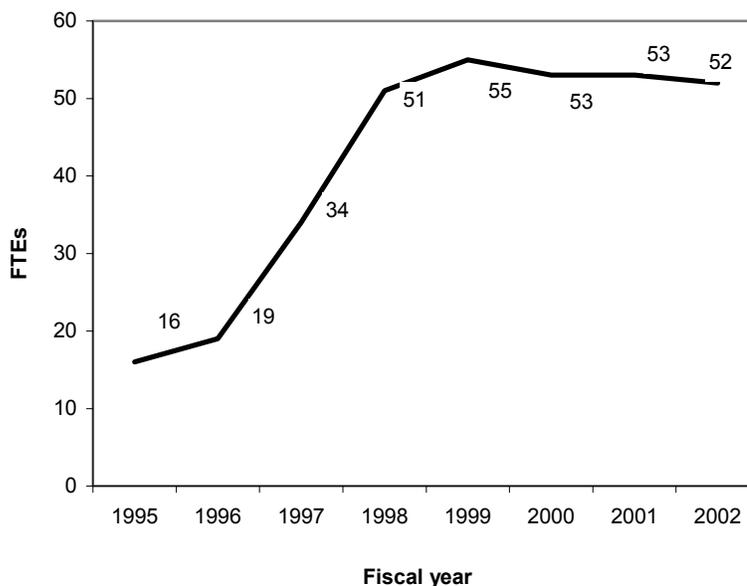
<sup>140</sup> FSA Interrogatory, p. 4; FSA/OCR Staffing Levels attachment; USDA, CRAT Report.

<sup>141</sup> FSA Interrogatory, p. 4.

<sup>142</sup> Ibid.

<sup>143</sup> Ibid.

**FIGURE 2.9**  
**FSA/OCR Staffing, 1995–2002**



Source: FSA Interrogatory, p. 4.

### **Planning**

The Department of Justice (DOJ) sets the requirements for Civil Rights Implementation Plans in its “Guideline for Agency Implementation Plans” as required by Executive Order 12,250.<sup>144</sup> In its 1996 review, the Commission found that FmHA’s Civil Rights Implementation Plans (CRIPs) did not meet DOJ’s requirements. The Commission recommended that FmHA develop implementation plans that describe its Title VI enforcement program, including its scope, organization, budget and staffing, and the extent to which it conducts civil rights activities.<sup>145</sup> Because the Department of Justice mandates that the plans be used as a management tool, the Commission recommended that FmHA plans provide precise goals and objectives, have specific timeframes for accomplishing them, and be based on a realistic assessment of budget and staff resources available for civil rights enforcement.<sup>146</sup>

In 2003, the Commission finds that FSA is exempt from USDA CRIP submissions. Because FSA provides little if any significant federal financial assistance to recipients, conducts few if any pre-award and post-award reviews, and has no record of legal and administrative enforcement activity, the Department of Justice recommended that FSA be excluded from USDA submissions unless new or special circumstances arose.<sup>147</sup>

However, in FY 2002, FSA/OCR developed a strategic and operational plan that includes FSA/OCR goals, work requirements and objectives, and an operational plan.<sup>148</sup> FSA/OCR reviews the plan

<sup>144</sup> Exec. Order No. 12,250 §§ 1-101, 1-2-1, 3 C.F.R. § 298 (1981), reprinted in 42 U.S.C. § 2000d-1 (1994).

<sup>145</sup> USCCR, *Federal Title VI Enforcement*, p. 308.

<sup>146</sup> *Ibid.*

<sup>147</sup> Merrily A. Friedlander, letter to Rosalind D. Gray, Nov. 15, 1999. p. 2.

<sup>148</sup> FSA/OCR, *FY 2002 Strategic & Operational Plan*.

quarterly to ensure that implementation and enforcement goals are met or surpassed.<sup>149</sup> According to FSA, the plan conforms to the department's guidelines and is an essential tool in the accomplishment of Title VI responsibilities.<sup>150</sup>

### **Policy Guidance**

In 1996, the Commission found several deficiencies in FmHA's Instruction 1901-E titled "Civil Rights Compliance Requirements." The instruction did not require pre-award reviews of recipients, did not address standards for determining compliance with Title VI, and did not require recipients to collect and report data on the population eligible for their programs. At that time, draft Instruction 1940-D, intended to correct these deficiencies, was undergoing review by USDA. As a result, the Commission recommended that FmHA move expeditiously to adopt draft Instruction 1940-D and issue policy guidance clarifying standards for compliance with Title VI as it applies to FmHA-funded programs.<sup>151</sup>

During its 2003 review, the Commission learned that draft Instruction 1940-D still has not been adopted, and is currently scheduled for public comment.<sup>152</sup> The Notice of Proposed Ruling began in February 2003 and will end in April 2003. Instruction 1940-D, if adopted, will provide detailed guidelines to field offices for improved enforcement and compliance with civil rights laws. In addition, it will provide mechanisms for monitoring compliance by field offices and recipients of federal financial assistance at all levels.

According to FSA, prior to the reorganization, Rural Development, Farmers Home Administration, and the Agricultural Soil Conservation Service all used the same civil rights compliance instructions. Once the reorganization occurred, the portion of the Farmers Home Administration and the Agricultural Soil Conservation Service that became FSA, developed and utilized 18-AO and 19PM as its guidance for conducting civil rights compliance reviews for Title VI and Title VII.<sup>153</sup> Rural Development retained Instruction 1940-D. Therefore, FSA does not recognize Instruction 1940-D as a portion of its compliance regulatory policy.<sup>154</sup>

While FSA has not adopted Instruction 1940-D, it implemented the Departmental Regulation 4300-005, which requires that (1) a full-time civil rights director be established within each agency; (2) each agency have a single civil rights office in Washington, D.C.; and (3) agency heads allocate sufficient resources and assign trained qualified staff in sufficient numbers to support the agency's obligation for developing and implementing a comprehensive civil rights program.<sup>155</sup> A full-time civil rights director was established and that person reports to the agency head. Resources and trained staff have been allocated to support the agency's obligation for developing and implementing a comprehensive civil rights program.

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<sup>149</sup> FSA Interrogatory, p. 8.

<sup>150</sup> Ibid.

<sup>151</sup> USCCR, *Federal Title VI Enforcement*, p. 306.

<sup>152</sup> FSA Interrogatory, p. 12.

<sup>153</sup> Sharon Lynn Holmes, director, Office of Civil Rights, FSA, letter to Margaret Butler, civil rights analyst, USCCR, June 3, 2003, p. 2 (hereafter cited as Holmes letter).

<sup>154</sup> Holmes letter, p. 2.

<sup>155</sup> U.S. Department of Agriculture, Office of Civil Rights, "Agency Civil Rights Programs," Departmental Regulation 4300-005, Jan. 14, 1999, p. 1.

The Compliance Program and Analysis Branch and Program Complaints Inquiry Branch are responsible for statistical evaluation and reporting in order to measure program participation and determine the extent of participation and receipt of benefits by minorities, women, and persons with disabilities. According to FSA, the Compliance Program and Analysis Branch also has trained state civil rights coordinators to assist the branch in establishing and maintaining effective information, notification and public outreach policies, programs and procedures as well as establishing goals and objectives designed to increase participation of underrepresented groups in agency programs.<sup>156</sup>

### ***Education and Outreach***

In its 1996 review, the Commission found that FmHA did not require its recipients to conduct education and outreach beyond displaying the OCRE nondiscrimination poster, “And Justice for All,” at its facilities and/or office if it financed the facilities with an FmHA loan or grant and are subject to Title VI. Although FmHA staff engages in some education and outreach, such activities are not part of a systematic program. The Commission recommended that in addition to displaying a nondiscrimination poster, FmHA should require recipients to make available informational brochures on their programs and Title VI.<sup>157</sup>

The Commission now finds that Instruction 1901 discusses the responsibilities of recipients to provide adequate outreach education on their programs and on Title VI as it relates to the program.<sup>158</sup> According to FSA, after finalization, Instruction 1940-D will provide detailed guidelines to field offices for improved enforcement and compliance with civil rights laws, and provide mechanisms for monitoring compliance by field offices and recipients of federal financial assistance at all levels.<sup>159</sup>

FSA indicated that recipients use several methods in addition to posters to provide information on their programs and Title VI. Methods used to inform underserved populations include use of minority media to advertise employment opportunities, issuing publications, forming partnerships with organizations serving the underrepresented groups, and holding public meetings.<sup>160</sup>

FSA provides posters in a variety of languages via the USDA Web site.<sup>161</sup> Employees working out of Service Centers, which are centralized locations where FSA, NRCS, and the Rural Development services are available, can download posters in languages of their respective clientele, including, but not limited to, Spanish, French, German, and Vietnamese. In addition, forms and other publications, as well as translation services, are available to FSA as a result of the Limited English Proficiency Initiative.<sup>162</sup> As a result of this initiative, FSA has trained staff members on LEP policies and procedures,

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<sup>156</sup> FSA Interrogatory, p. 13.

<sup>157</sup> USCCR, *Federal Title VI Enforcement*, p. 307.

<sup>158</sup> Section 1901.202 specifies that the nondiscrimination poster be prominently displayed at the facilities and/or office of any borrower or grantee if the facilities have been financed by FSA and are subject to Title VI of the Civil Rights Act of 1964; Section 1901.203(C)(2)(vi) states that recipients must undertake efforts to publicize the availability of housing opportunities to minority persons through the type of media customarily used by the applicant or participant, including minority publications and other minority outlets available in the housing area; and Section 1901.204 states that the compliance reviewer should be aware of the borrower’s method of advertising the facility to the public, including how well these methods reach the minority community.

<sup>159</sup> FSA Interrogatory, p. 10.

<sup>160</sup> *Ibid.*

<sup>161</sup> *Ibid.*

<sup>162</sup> *Ibid.* On August 11, 2000, then-President Bill Clinton issued Executive Order 13,166, which was aimed at improving access to federally conducted and federally assisted programs and activities for persons who, as a result of national origin,

encouraged the use of the LEP Web site, and provided interpretive services to persons with limited English proficiency.<sup>163</sup>

Additionally, FSA uses the following types of organizations and groups to provide outreach, technical assistance, employment opportunities, and solicitations for bids to provide services:

- minority groups on state and county committee boards;
- minority members on FSA boards;
- 1890 Colleges and Universities,<sup>164</sup>
- local and state minority groups;
- ethnic newspaper and magazines;
- local minority churches; and
- local and state television and radio stations.<sup>165</sup>

### **Technical Assistance**

In its 1996 review, the Commission found that FmHA provided only limited technical assistance to its recipients. As a result, the Commission recommended that FmHA offer technical assistance proactively, whenever pre- or post-award desk-audit reviews reveal compliance problems, and during on-site compliance reviews, whether conducted by state program personnel or by state civil rights directors.<sup>166</sup>

In 2003, FSA/OCR indicated that it strives to provide recipients with the tools and support needed to enable them to come into and maintain compliance.<sup>167</sup> According to FSA/OCR, recipients are evaluated for compliance in several areas of program delivery. Evaluations of recipients' public awareness efforts, data collection, accessibility, and federally assisted programs are completed to assess their adherence to civil rights laws, rules, and regulations. Assistance is given to recipients by linking them with minority media and organizations that can help them meet their public awareness needs.

### **Complaint Processing**

In its 1996 review of FSA, the Commission found that EOS staff performed complaint investigations, although OCRE made the final determinations of compliance or noncompliance.<sup>168</sup> In addition, the Commission found that although FSA used a computerized tracking system to monitor the status of

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are limited in their English proficiency. See Exec. Order No. 13,166, 3 C.F.R. § 289 (2001), *reprinted in* 42 U.S.C.S. § 2000d-1 (Law. Co-op. 2003).

<sup>163</sup> FSA Interrogatory, pp. 10–11.

<sup>164</sup> 1890 Colleges and Universities, established under the 1862 Morrill Act, were to teach agriculture, military tactics, mechanical arts, home economics, and other traditional studies to working-class citizens. Today, there are 18 Colleges and Universities in the United States, including the District of Columbia and the Virgin Islands, all of which are historically black land grant institutions.

<sup>165</sup> FSA Interrogatory, p. 11.

<sup>166</sup> USCCR, *Federal Title VI Enforcement*, p. 307.

<sup>167</sup> FSA Interrogatory, p. 8.

<sup>168</sup> USCCR, *Federal Title VI Enforcement*, p. 302.

discrimination complaints daily, the influx of new complaints made it difficult for the tracking system to remain current for any length of time.<sup>169</sup>

In its 2003 review, the Commission finds that USDA's Office of Civil Rights (USDA/OCR) continues to make the final determination on all complaints. Whether a complaint is submitted orally or in writing, the director of FSA/OCR must forward it to USDA/OCR for review. If the complaint is accepted as complete at the departmental level, FSA/OCR is so informed and directed to conduct a limited investigation.<sup>170</sup> After the investigation is completed by FSA/OCR, an agency position statement, along with the investigation findings, is forwarded to USDA/OCR within 24 days after receiving the assignment for final determination.<sup>171</sup>

The Commission also finds that as the number of complaints received in FSA/OCR increased, the office did not process its complaints within the 24-day period as required. Between FY 1996 and 1997, FSA/OCR's complaint workload increased from 41 to 293, resulting in a backlog of 105 cases in FY 1997.<sup>172</sup> Since FY 1997, FSA has continued to maintain a backlog, although the total has never exceeded the 1997 high of more than 100 cases. In FY 2001, FSA closed 71 percent of the complaints that it opened and ended the year with a backlog of 30 complaints (see table 2.2). It is not clear whether FSA/OCR or USDA/OCR is responsible for the FSA backlog of complaints because FSA/OCR does not have the authority to close a complaint without consent from USDA/OCR.<sup>173</sup> According to USDA/OCR, it holds monthly meetings with FSA to reconcile complaint information.<sup>174</sup> The backlog of FSA/OCR complaints could ultimately result from USDA/OCR's inability to complete its portion of the processing phase in a timely manner. USDA does not have a processing time requirement for all phases of complaint resolution.<sup>175</sup> For FY 2001, when all stages of complaint resolution were accounted for, average processing time was 676 days.<sup>176</sup>

**TABLE 2.2**  
**FSA/OCR Workload, 1994–2001**

Fiscal year	Open cases	Closed cases	Backlog
1994	42	40	2
1995	38	37	1
1996	22	19	3
1997	199	94	105
1998	191	102	89
1999	119	46	73
2000	113	86	27
2001	71	41	30

Source: FSA Interrogatory, p. 21.

<sup>169</sup> Ibid., p. 302.

<sup>170</sup> FSA Interrogatory, pp. 20–21.

<sup>171</sup> Ibid., p. 21.

<sup>172</sup> Ibid.

<sup>173</sup> U.S. Department of Agriculture, "Nondiscrimination in Programs and Activities Receiving Federal Financial Assistance From USDA," Departmental Regulation 4330-002, Mar. 3, 1999.

<sup>174</sup> GAO, *USDA: Improvements*, p. 28.

<sup>175</sup> Ibid., p. 12.

<sup>176</sup> Ibid.

### **Compliance Reviews**

The purpose of a pre-award review is to evaluate the compliance of an applicant for USDA assistance before the approval of a grant or assistance. In 1996, the Commission found that most FmHA funds were distributed without adequate safeguards to ensure that recipients were in compliance with Title VI. As a result, the Commission recommended that FmHA conduct pre-award desk-audit reviews of all its applicants, and on-site reviews for large or complex projects or where desk-audit reviews suggest that on-site investigation is warranted. In addition, the Commission recommended that state office civil rights directors conduct these reviews, and that EOS staff review and evaluate their pre-award review programs regularly.<sup>177</sup>

In its 2003 review, the Commission finds that state office civil rights coordinators still do not conduct pre-award compliance reviews. The Price Support Division, the Deputy Administrator for Commodity Operations, and the Tobacco and Peanut Division conduct pre-award compliance reviews for all of FSA's federally funded programs when associations, cooperatives, warehouses, and respective subcontractors provide program delivery.<sup>178</sup> FSA conducts a written evaluation of the applicant's compliance based on, but not limited to, the submission of an assurance of compliance. Pre-award reviews can be accomplished by reviewing information in the contract and by performing on-site visits. If the review determines that the organization is unable to comply with civil rights requirements, the contract will not be approved.<sup>179</sup>

Also in 1996, it was discovered that FmHA did not conduct post-award desk-audit reviews of its recipients. In response, the Commission recommended that FmHA institute post-award desk-audit reviews of all recipients, to be supplemented with on-site reviews. The Commission said that EOS should develop procedures for such reviews, and that state office civil rights personnel should conduct the reviews.<sup>180</sup>

In its 2003 review, the Commission finds that the Conservation and Environmental Program Division and the Production Emergencies and Compliance Division of FSA are responsible for performing post-award reviews on organizations providing program delivery.<sup>181</sup> Post-award reviews, which are normally conducted on site to determine whether organizations are administering programs according to EEO and civil rights provisions in its contracts, are performed on all organizations at least every two years.<sup>182</sup> Specific areas reviewed during post-award audits include whether there have been any complaints filed by employees and/or producers based on protected group status; whether the need for bilingual employees or translators has been assessed in areas where producers have no or limited-English-speaking proficiency; and whether policies for admitting producers to membership are administered in a nondiscriminatory manner.<sup>183</sup> Additionally, methods for computing charges or collecting fees are reviewed to ensure that they are administered in a nondiscriminatory manner and loan contracts are reviewed to determine whether the EEO, Equal Credit Opportunity Act, and civil rights

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<sup>177</sup> USCCR, *Federal Title VI Enforcement*, p. 306.

<sup>178</sup> FSA Interrogatory, p. 14.

<sup>179</sup> *Ibid.*

<sup>180</sup> USCCR, *Federal Title VI Enforcement*, p. 306.

<sup>181</sup> FSA Interrogatory, p. 15.

<sup>182</sup> *Ibid.*

<sup>183</sup> *Ibid.*

nondiscrimination clauses are included.<sup>184</sup> Corrective actions are submitted to the director of FSA/OCR within 30 calendar days after each civil rights review.

In the past, FmHA conducted a large number of on-site compliance reviews each year, but the reviews were conducted by state office program personnel and not the state civil rights coordinators. As a result, in 1996, the Commission recommended that the state civil rights coordinators monitor the quality of the post-award reviews conducted by state program staff.<sup>185</sup> It was also recommended that the state's civil rights coordinator provide regular training to state program staff about what to look for in a Title VI compliance review.

While performing its 2003 review, the Commission learned that state civil rights coordinators do monitor the quality of the post-award reviews. In addition, the coordinators also receive a copy of the corrective actions report, which is submitted to the director of FSA/OCR, within 30 calendar days after each civil rights review.<sup>186</sup>

One of the responsibilities of FSA/OCR is to provide training to the state civil rights coordinators to ensure that coordinators can in turn train the state program staff on conducting Title VI compliance reviews.<sup>187</sup> The most recent training session was held July 23–25, 2002, in Atlanta, Georgia.<sup>188</sup> In addition to this required 40 hours of FSA on-site training, the civil rights coordinators complete 32 hours of self-study training, which, FSA states, allows them to become effective coordinators for the respective states.<sup>189</sup>

### **Staff Training**

In the past, FmHA has provided regular civil rights training to its civil rights staff, including the state office civil rights coordinators. However, FmHA did not provide civil rights training to state office program staff performing post-award reviews of recipients. As a result, in 1996 the Commission recommended that FmHA expand its existing civil rights training program to offer periodic civil rights training, including training on Title VI, to state office program personnel who perform post-award compliance reviews of FmHA recipients.<sup>190</sup>

In the 2003 review, FSA indicates that periodic civil rights training on Title VI to state offices is provided through the state civil rights coordinator.<sup>191</sup> Coordinators also provide training to field staff with guidance and support from the Compliance Program and Analysis Branch of FSA/OCR. FSA indicated that annual training is provided to civil rights coordinators, district directors, and managers in the following areas:

- the update of civil rights laws and regulations;
- the state civil rights coordinator's role and responsibilities;

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<sup>184</sup> Ibid.

<sup>185</sup> USCCR, *Federal Title VI Enforcement*, p. 306.

<sup>186</sup> FSA Interrogatory, p. 15.

<sup>187</sup> Ibid., pp. 15–16.

<sup>188</sup> Ibid.

<sup>189</sup> Ibid.; see also U.S. Department of Agriculture, Office of Civil Rights, "State Civil Rights Coordinators Training Manual Fiscal Year 2002."

<sup>190</sup> USCCR, *Federal Title VI Enforcement*, p. 308.

<sup>191</sup> FSA Interrogatory, p. 22.

- communication skills;
- department and agency policies on Title VI program delivery; and
- evaluation and analysis techniques.<sup>192</sup>

According to FSA, training in civil rights compliance is required for all employees.<sup>193</sup> In an effort to provide training to all employees, FSA has developed an updated handbook that provides compliance policies and procedures for civil rights, identifies those officials for achieving the objectives, and provides procedures for developing, implementing, and coordinating the civil rights program within FSA.<sup>194</sup>

### ***Oversight and Quality Assurance***

In 1996, the Commission found that FmHA lacked an adequate system for collecting and analyzing data from its recipients. The Commission recommended that when the draft Instruction 1940-D became final, EOS should begin to implement its data collection requirements.<sup>195</sup>

FSA has implemented its data collection requirements, which will allow it to meet its goal of increasing manager and employee awareness of equal opportunity and civil rights and fulfill its responsibility for achieving equal opportunity and civil rights objectives to improve program delivery. The FSA/OCR has developed a data management and information system that enables the director to determine how well FSA programs are serving protected groups and whether members of protected groups face barriers that prevent them from accessing FSA programs.<sup>196</sup> According to FSA, the multipronged system includes computerized data collection on complaints and complaint status, a streamlined Fact Finding Inquiry process to provide accelerated responses to the departmental civil rights office, tracking of the disposition of hot line OIG complaints, review of proposed interim and final regulations to determine civil rights impact, and regular reviews of states' civil rights and outreach compliance posture.<sup>197</sup>

In 2003, the computerized information component provides FSA/OCR with up-to-date status reports on complaints. Data on complaints include, but are not limited to, name, race, bases, issues, location, the number of days open, and disposition (if applicable). The data are entered into an Access database for easy manipulation and retrieval. Data queries enable the FSA/OCR to analyze complaints to identify systemic problems or trends in an effort to proactively manage civil rights responsibilities in program delivery around the country.<sup>198</sup>

FSA/OCR carries out its responsibility for providing oversight to state and district offices by giving direction and assistance. FSA/OCR is also mandated to conduct a certain number of management/compliance reviews per year.<sup>199</sup> Staff participates in 10 state management reviews per year and performs follow-up activities relative to the findings of these reviews. The Compliance Program and

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<sup>192</sup> Ibid.

<sup>193</sup> Ibid.

<sup>194</sup> U.S. Department of Agriculture, Farm Service Agency, "FSA Handbook—Civil Rights Compliance for FSA Programs," revision 2, Dec. 17, 2001.

<sup>195</sup> USCCR, *Federal Title VI Enforcement*, p. 308.

<sup>196</sup> FSA Interrogatory, p. 17.

<sup>197</sup> Ibid.

<sup>198</sup> Ibid.

<sup>199</sup> Holmes letter, p. 2.

Analysis Branch of FSA/OCR develops and conducts civil rights compliance training; and then develops and recommends policies and procedures for a comprehensive nondiscrimination program in all aspects of program delivery. According to FSA, through its FY 2002 Strategic and Operational Plan, FSA/OCR is committed to providing the best customer service possible; and to developing, establishing, and recommending agency EEO/civil rights policies. FSA/OCR is also committed to monitoring, evaluating, and providing oversight of agency compliance with EEO/civil rights policies, rules, and regulations, processing informal and formal complaints in a timely manner, and providing leadership and assistance in enhancing diversity in order to facilitate full implementation of all laws, legislation, and regulations on equal employment opportunity and civil rights in FSA.<sup>200</sup>

### *Minority Farmers*

FSA provides funding to farmers who are unable to obtain loans from conventional institutions. To this end, many minority farmers use FSA as a source for obtaining loans. In 1997, as a result of inadequate oversight of state offices and other factors, black farmers filed a class action lawsuit against USDA alleging that the agency discriminated against them by denying them loans in its farm credit and non-credit benefit programs, based on their race.<sup>201</sup>

This plight of minority farmers is not a new one. The Commission has written several reports highlighting inequity problems surrounding black farmers and made recommendations to remedy those problems. In 1965, the Commission conducted a study of USDA's efforts to help black farmers endure as landowners and to continue to participate in the business of agriculture.<sup>202</sup> In this study, the Commission documented specific findings of discrimination in USDA's Farmers Home Administration, Cooperative Extension Service, Soil Conservation Service, and Agricultural Stabilization and Conservation Service. For example, an analysis of FmHA data from 13 southern counties revealed that in terms of the size of loans, purposes for which loans were to be used, and technical assistance, FmHA did not provide services to black farmers comparable to those provided to similarly situated whites.<sup>203</sup> In 1968, the Commission provided a series of detailed recommendations aimed at correcting extensive deficiencies found in USDA's enforcement of Title VI of the Civil Rights Act of 1964.<sup>204</sup> Commission reports issued in 1971, 1973, and 1975 also revealed continued procrastination in this area.<sup>205</sup>

<sup>200</sup> FSA Interrogatory, p. 18.

<sup>201</sup> *Pigford v. Glickman*, 185 F.R.D. 82 D.D.C. (1999). On April 14, 1999, a consent decree resolving the *Pigford* case was approved. Under the consent decree, a claimant could choose to proceed under one of two tracks—Track A or Track B. Track A is an expedited track under which claimants simply fill out a claim form under oath, with a lowered evidentiary standard applied, and certain relief is provided to those who prevail. Those claimants who believe that they have the evidence to prove a larger amount of relief can choose Track B, which has a higher evidentiary standard that entitles the claimant to a one-day arbitration hearing before an independent arbitrator who may award any proven relief. Independent adjudicators, mostly retired state and federal judges, make determinations on the claims. An independent monitor oversees implementation of the consent decree and reports to the court.

<sup>202</sup> U.S. Commission on Civil Rights, *Equal Opportunity in Farm Programs*, 1965, p. 8.

<sup>203</sup> *Ibid.*, pp. 57–82.

<sup>204</sup> U.S. Commission on Civil Rights, *The Mechanism for Implementing and Enforcing Title VI of the Civil Rights Act of 1964: U.S. Department of Agriculture*, 1968, reprinted in 115 Cong. Rec. 13456–65 (1969).

<sup>205</sup> U.S. Commission on Civil Rights, *The Federal Civil Rights Enforcement Effort: One Year Later*, 1971, pp. 124–31; *The Federal Civil Rights Enforcement Effort—A Reassessment*, 1973, pp. 72–82; *The Federal Civil Rights Enforcement Effort—1974, 1975*, vol. VI, chap. 2.

In 1982, the Commission issued another report with numerous findings, including that USDA and FmHA had failed to integrate civil rights goals into program objectives and to use enforcement mechanisms to ensure that black farmers were provided equal opportunities in farm credit programs.<sup>206</sup> As in other reports, the Commission recommended (1) that Congress hold hearings to examine the administration of limited resource loans to determine if these loans were being made for the purposes for which and to whom they were intended; (2) that the Secretary of Agriculture provide for the development and implementation of a coordinated departmentwide program designed to assist minority farmers; (3) that FmHA ensure that county committees are representative of the population of the county which they serve; and (4) that the director of USDA's Office of Equal Opportunity establish timeframes for initiation and completion of complaint investigations and compliance reviews and establish procedures for follow-up on findings of noncompliance in complaint investigations and compliance reviews. The Commission has continued to monitor whether USDA and its Office of Civil Rights have improved its civil rights enforcement record. Recently, the Commission directed specific questions to OCR to determine whether past recommendations have been implemented and to ascertain the status of developments in the *Pigford* lawsuit.

In 1996, to address USDA's longstanding civil rights problems, then-Secretary Dan Glickman appointed a team of USDA leaders to examine the issues and make recommendations for change.<sup>207</sup> The Civil Rights Action Team found several factors that contributed to the allegations of discrimination against black farmers, which included lack of management commitment to civil rights,<sup>208</sup> inadequate resources and funding for civil rights,<sup>209</sup> lack of accountability within the Farm and Foreign Agricultural Services and Rural Development mission areas,<sup>210</sup> lack of diversity among county committees and county office employees, and a cumbersome complaint process.<sup>211</sup>

As a result of the Civil Rights Action Team report, plans of action have been developed and implemented to try to ensure that what happened to black and other minority farmers will not happen again. For example, FSA implemented Regulation 4300-005 as of January 14, 1998, which required that a full-time civil rights director be established within FSA. On paper, it shows promise as an effective civil rights program with sufficient staff support. In addition, FSA has allocated resources and trained staff to support the agency's obligation for developing and implementing a comprehensive civil rights program. State employees found to have discriminated against black farmers were provided sensitivity training and letters of reprimand, or terminated. According to a statement by the Assistant Secretary for Administration, between January 1, 1998, and June 30, 2002, USDA has taken 203 disciplinary actions based on findings of discrimination or settlements.<sup>212</sup> Nineteen of the actions, including four removals, occurred within FSA.<sup>213</sup> Thus, farmers still access USDA services through many of the same career USDA employees who were in place when the discrimination oc-

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<sup>206</sup> U.S. Commission on Civil Rights, *The Decline of Black Farmers in America*, February 1982, p. iv.

<sup>207</sup> USDA, CRAT Report, p. 3.

<sup>208</sup> *Ibid.*, pp. 6–8.

<sup>209</sup> *Ibid.*, p. 12.

<sup>210</sup> *Ibid.*, pp. 16–20.

<sup>211</sup> FSA Interrogatory, p. 23. *See also* USDA, CRAT Report.

<sup>212</sup> Lou Gallegos, assistant secretary for administration, U.S. Department of Agriculture, Statement to the House Committee on Agriculture, Subcommittee on Department Operations, Oversight, Nutrition, and Forestry, Sept. 25, 2002, p. 23 (hereafter cited as Lou Gallegos statement).

<sup>213</sup> Lou Gallegos statement, p. 23.

curred.<sup>214</sup> FSA states that actions taken were directly related to the nature and severity of the findings of disparate treatment.<sup>215</sup>

Action plans include the streamlining of complaints and field staff training on how to handle complaints. Data on complaints have been computerized to enable effective tracking and efficient handling of complaints and inquiries. Finally, FSA/OCR has conducted seven compliance reviews relative to the *Pigford* consent decree to evaluate the effectiveness of reforms put in place, as a result of the decree.<sup>216</sup>

Other class actions pending against the Department of Agriculture, which involve Latino, Native American, and female farmers, include *Keepseagle v. Veneman*,<sup>217</sup> *Garcia v. Veneman*,<sup>218</sup> and *Love v. Veneman*.<sup>219</sup> Like *Pigford*, each of these class actions alleges discrimination by USDA in regard to its farm loan and benefit programs, as well as alleging that USDA did not process the administrative complaints of class members. The *Keepseagle* class action was certified in September 2001. As of August 2003, *Garcia* was pending class certification.<sup>220</sup> As of May 2003, the *Love* case was pending class certification.

The Office of Minority and Socially Disadvantaged Farmers Assistance Program (OMSDFAP), operating under FSA opened September 10, 2002. The office, created to help minority and socially disadvantaged farmers apply for federal farm loans will operate a toll-free help line to answer queries on USDA loans and programs (866-538-2610 or 202-720-1584 locally). The functions of OMSDFAP and FSA/OCR are not the same. The OMSDFAP is designed to support Title VI programs only, while the FSA/OCR has both Title VI and Title VII responsibilities for FSA.<sup>221</sup>

### **Coordination**

USDA/OCR is tasked with providing leadership, guidance, and oversight to USDA agencies and recipients.<sup>222</sup> As a result, FSA indicated that constant contact is “required” between USDA/OCR and FSA/OCR in order for both entities to fulfill their mission goals and objectives.<sup>223</sup> The need to communicate regarding the ongoing status of complaints, to coordinate compliance visits and the completion of corrective action plans, as well as the requests for, formation of, and delivery of agency posi-

<sup>214</sup> Allen G. Breed, “Black Farmers’ Hopes Remain Forlorn Dream,” *Washington Times*, Sept. 1, 2002, p. A5.

<sup>215</sup> FSA Interrogatory, p. 23.

<sup>216</sup> *Ibid.*

<sup>217</sup> *Keepseagle v. Veneman*, 194 F.R.D. 1 (D.D.C. 2000).

<sup>218</sup> *Garcia v. Veneman*, 211 F.R.D. 15 (D.D.C. 2002).

<sup>219</sup> *Love v. Veneman*, No. 00-2502 (D.D.C. filed Oct. 19, 2000).

<sup>220</sup> According to Stephen S. Hill, one of the attorneys representing the Hispanic farmers and ranchers, class certification was denied on December 2, 2002. During the December 18, 2002, status conference, after recognizing that he had not allowed discovery to which the plaintiffs were entitled, Judge Robertson ruled that plaintiffs would be able to renew their motion for class certification. As of August 14, 2003, plaintiffs were engaged in class discovery, and planned to renew their motion for class certification upon completion of class discovery. Stephen S. Hill, Howrey, Simon, Arnold & White, letter to Terri Dickerson, assistant staff director, USCCR, Aug. 4, 2003, p. 1.

<sup>221</sup> FSA Interrogatory, p. 24.

<sup>222</sup> U.S. Department of Agriculture, Office of Civil Rights, “Nondiscrimination in USDA Conducted Programs and Activities,” Departmental Regulation 4330-3, Mar. 3, 1999, p. 6.

<sup>223</sup> FSA Interrogatory, p. 3.

tion statements all necessitate constant contact and communication between USDA/OCR and FSA/OCR.<sup>224</sup>

The director of USDA/OCR holds monthly meetings that all civil rights directors attend. Meetings between USDA/OCR and FSA/OCR are held monthly to discuss the status of program complaints, to coordinate compliance visits, and to exchange information necessary to achieve both FSA and USDA/OCR mission goals and objectives.<sup>225</sup> Aside from these monthly meetings, USDA/OCR requires FSA/OCR to provide an annual report of its Title VI enforcement programs. This report includes the number of closed cases, the number of open, ongoing cases, and the results of training provided to FSA field employees.<sup>226</sup> During the Commission's 2003 review, FSA/OCR indicated that the interaction between the two entities is adequate.<sup>227</sup> But, according to an EEOC report, lines of communication are badly mangled between USDA/OCR and the more than two dozen agencies that make up USDA.<sup>228</sup>

### **Conclusion**

FSA has not made many improvements or changes since the Commission evaluated what was the FmHA in 1996. In 1996, the agency had several state civil rights directors who were full-time equal opportunity specialists, but today there is only one. FSA/OCR does not have the ability to submit and control its own budget, and for the 2003 study the office could not provide budget documents or figures depicting the tracking of Title VI funding. In 1996, the agency submitted Civil Rights Implementation Plans to DOJ, but today the agency is not required to submit plans because it conducts few if any pre-award and post-award reviews and has no record of legal and administrative enforcement activity. In addition, during its current review the Commission finds that FSA has not adopted Instruction 1940-D because the document is not recognized as part of FSA's guidance. FSA/OCR does not process its own complaints without approval from USDA/OCR, and FSA/OCR was negligent in providing oversight to state and district offices.

### **Food, Nutrition, and Consumer Services**

The Commission's 1996 review assessed civil rights enforcement at the Food and Nutrition Service (FNS), an agency within USDA, headed by an administrator.<sup>229</sup> In 1994, USDA underwent a reorganization and merged the Food and Nutrition Service with the Office of Consumer Advisor to create

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<sup>224</sup> Ibid.

<sup>225</sup> Ibid.

<sup>226</sup> Ibid.

<sup>227</sup> Ibid.

<sup>228</sup> Christopher Lee, "Review Finds USDA Mishandles Complaints—Delays in Discrimination Cases Criticized," *Washington Post*, Mar. 10, 2003, p. A9.

<sup>229</sup> USCCR, *Federal Title VI Enforcement*, pp. 273–75. In 1996, the FNS' Title VI programs included the Food Stamp Program; the Nutrition Assistance Program for Puerto Rico; the Food Distribution (food donation to soup kitchens and food banks) Program; the Food Distribution Program to American Indian Reservations; the National School Lunch Program; the Special Milk Program; the School Breakfast Program; the Summer Food Service Program for Children; the Child and Adult Care Food Program; the Nutrition and Education and Training Program; the Special Supplemental Food Program for Women, Infants and Children (WIC); the Commodity Supplemental Food Program, the Temporary Emergency Food Assistance Program, the State Administrative Expenses for Child Nutrition Program, and the Nutrition Assistance Program for the North Mariana Islands.

the Food, Nutrition, and Consumer Services (FNCS).<sup>230</sup> FNCS became an agency headed by an undersecretary, and FNS became a component of FNCS, still headed by an administrator who reports to the undersecretary.

The mission of FNCS is to ensure access to nutritious, healthful diets for all Americans. Through food assistance and nutrition education, FNCS encourages consumers to make healthful food choices. FNCS also works to empower consumers with knowledge about diet and health, providing guidance based on research.<sup>231</sup>

FNS administers FNCS' Title VI programs, which includes the Food Stamp Program, the National School Lunch and Breakfast programs, and the Special Supplemental Nutrition Program for Women, Infants and Children (WIC).<sup>232</sup> In FY 2002, FNS had a budget of \$38 billion and a staff of approximately 1,600 nationwide.<sup>233</sup> The Civil Rights Division (CRD), located in FNS, has primary responsibility for enforcing Title VI and other relevant civil rights laws at the agency.

Under the 1994 reorganization, USDA planned to transform CRD into an office of civil rights.<sup>234</sup> How the reorganization would affect the agency's ability to enforce Title VI was still uncertain in 1996 because the agency had yet to implement it.

Despite the departmental reorganization, name changes (from civil rights division to civil rights office, back to a division), and realignments of civil rights authority since the Commission's 1996 report, civil rights enforcement at FNCS has remained essentially the same. CRD maintains that the realignments and name changes have had no impact on the duties and responsibilities of the staff, nor on the enforcement of civil rights laws, rules, regulations, or policies. That assertion is verified with this study.

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<sup>230</sup> The two major components within the FNCS are the Food and Nutrition Service (FNS), which administers the domestic food and nutrition programs, and the Center for Nutrition Policy and Promotion (CNPP), which develops and promotes nutrition research and science-based dietary guidance and economic information to consumers and professionals. *See* "Food, Nutrition and Consumer Services," <<http://www.fns.usda.gov/fncs/>> (Sept. 18, 2002); USDA, "Food, Nutrition, and Consumer Services (FNCS) Mission Area," <<http://www.usda.gov/mission/fncs.htm>> (Oct. 11, 2002); "FNS Welcomes New Administrator," <<http://www.fns.usda.gov/fns/menu/avoutfns.htm>> (Sept. 26, 2002); U.S. Department of Agriculture's Response to the U.S. Commission on Civil Rights' Interrogatory for Volume III of the Ten-Year Review of Civil Rights Enforcement, Food, Nutrition and Consumer Services, the Food and Nutrition Service, Civil Rights Division, Dec. 13, 2002, p. 2 (hereafter cited as FNCS/FNS Interrogatory). For this study, the discussion focuses on the FNS and the Civil Rights Division.

<sup>231</sup> U.S. Department of Agriculture, Food, Nutrition, and Consumer Services, "Welcome!" <<http://www.fns.usda.gov/fncs/>>.

<sup>232</sup> FNS' largest program is the Food Stamp Program. It serves nearly 18 million low-income people. The Child Nutrition Program (lunch and breakfast programs) serves about 27 million children. WIC addresses the special needs of high-risk, low income pregnant and breastfeeding women, and infants and children up to 5 years of age, providing over 7 million participants annually with supplemental food packages. U.S. Department of Agriculture, Food and Nutrition Service (FNS), *Strategic Plan 2000 to 2005*, Sept. 30, 2000, p. 2 (hereafter cited as USDA/FNS 2000–05 Strategic Plan).

<sup>233</sup> U.S. Department of Agriculture, Food and Nutrition Service, "FNS Welcomes New Administrator," <<http://www.fns.usda.gov/fns/menu/aboutfns.htm>>.

<sup>234</sup> The rationale for establishing an Office of Civil Rights was threefold: (1) there would be a separation of responsibility whereby a deputy administrator would be responsible for resource allocation and administrative services to and accountability for a proactive civil rights program, and the director of the civil rights office would have the authority to deal with the agency administrators on all other civil rights matters; (2) civil rights oversight would remain a line management function rather than a staff function which would reinforce the responsibility of program managers to make civil rights oversight an "integral part" of program delivery; and (3) there would be a "team approach" in carrying out internal and external civil rights responsibilities. USCCR, *Federal Title VI Enforcement*, p. 277.

Although the Commission's 1996 report did not find major problems with the enforcement of Title VI, the agency has not made any significant efforts to address the concerns or recommendations it was given. One important reason for the lack of change or improvement in civil rights enforcement at the agency is CRD's history of vacancies in the director position. Since the Commission's study, the division has had three directors. For nearly a year, the director's position has been vacant, and three staff rotate as the acting director every four weeks to cover the duties.

### ***Priority of Civil Rights***

Before the reorganization, CRD was headed by a director who reported to the Deputy Administrator for Management who in turn reported to the FNS administrator. In June 1994, three FTEs were assigned to CRD for Title VI enforcement, including a program manager and two equal opportunity specialists. In addition to headquarters civil rights staff, there were seven regional civil rights directors, one in each regional office, responsible for civil rights enforcement (see figure 2.10). The regional civil rights directors spent 75 to 80 percent of their time on external civil rights activities, and the remainder on internal civil rights matters. Although the regional civil rights directors' policies, guidelines, and instructions came from CRD, they reported to the seven regional administrators.<sup>235</sup> The regional civil rights directors were responsible for monitoring and evaluating the civil rights activities of the state agencies receiving funds, providing technical assistance and civil rights training to regional, state and local officials, and conducting pre-award, post-award, and on-site compliance reviews.<sup>236</sup> CRD held the regional civil rights directors responsible for implementing its instructions and directives, but did not supervise them, set goals for them, or evaluate their performance. CRD had to track civil rights actions in the regions through the regional administrators to ensure compliance.<sup>237</sup>

In its 1996 study, the Commission found the organizational structure for civil rights enforcement at FNS inadequate and recommended the civil rights function be restructured.<sup>238</sup> The Commission recommended that the civil rights director report directly to the agency's administrator. In addition, the Commission recommended that CRD have separate staff assigned to internal and external civil rights functions, and that separate regional staff be assigned to external and internal civil rights responsibilities. It also recommended that regional civil rights staff report to the director of CRD and not to the regional administrators.<sup>239</sup> In 2003, CRD is responsible for providing leadership and guidance to the regional civil rights staff, but still has no supervisory responsibility over them.<sup>240</sup>

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<sup>235</sup> USCCR, *Federal Title VI Enforcement*, p. 277.

<sup>236</sup> *Ibid.*, p. 276.

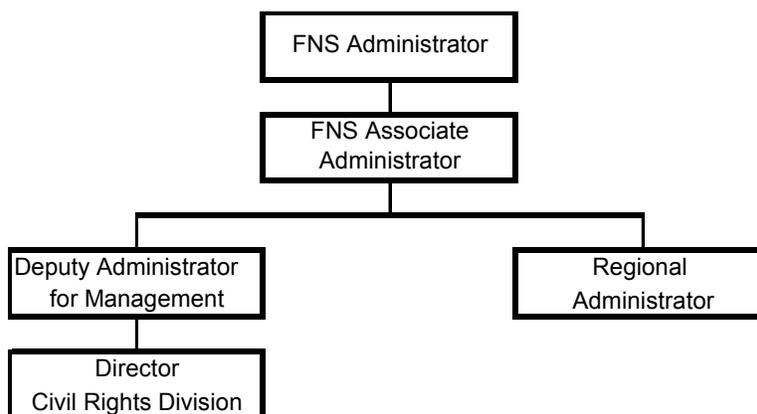
<sup>237</sup> *Ibid.*, p. 277.

<sup>238</sup> *Ibid.*, p. 288. The reorganization proposed to reassign 12 FNS positions to the USDA's then Office of Civil Rights Evaluation in an attempt to "centralize" the civil rights program at the department. However, there was not strong support for the idea because of the diversity of programs and activities at the USDA, which would make it difficult for one office to enforce civil rights effectively. *Ibid.*, p. 278.

<sup>239</sup> USCCR, *Federal Title VI Enforcement*, p. 288.

<sup>240</sup> FNCS/FNS Interrogatory, p. 8.

**FIGURE 2.10**  
**FNS and the Civil Rights Division Organizational Structure, 1996**



Source: USCCR, *Federal Title VI Enforcement*, p. 278.

The Commission now finds that since its last report, CRD has changed from a division to an office, and back to a division.<sup>241</sup> Although the 1994 departmental reorganization would transform CRD into an office, it was not until 1998 that CRD became the Office of Civil Rights. As an office, it was realigned directly under the FNS administrator to strengthen civil rights accountability.<sup>242</sup> In 2002, the office was renamed the Civil Rights Division, and is currently assigned under the Deputy Administrator for Management. CRD contends that the realignments and name changes have not had any impact on the duties and responsibilities assigned to the office/division, nor on its enforcement of civil rights laws, rules, and regulations.<sup>243</sup> According to CRD, the changes were in name only and did not affect any guidelines, policies, or staff responsibilities.<sup>244</sup> Although FNS moved from an agency to a component within the agency, CRD has never been assigned to the undersecretary's office or reported to an FNCS official. If CRD is placed in the undersecretary's office, FNCS would provide a civil rights presence and elevate its authority.

However, a civil rights director, not the undersecretary, should provide the civil rights leadership and authority at the agency. The director is required to provide direction and leadership in formulating and reviewing civil rights and EEO policies within FNCS; plan, organize, and evaluate the managerial advisory program to meet FNCS' responsibilities;<sup>245</sup> advise the administrator, Deputy Administrator for Management, and other agency managers about their civil rights responsibilities; conduct studies, reviews, and workforce analyses to identify and address systemic problems; negotiate resolution of complaints; and assign work to staff based on priorities.<sup>246</sup>

<sup>241</sup> *Ibid.*, p. 19.

<sup>242</sup> FNCS/FNS Interrogatory, p. 5.

<sup>243</sup> *Ibid.*, p. 3.

<sup>244</sup> *Ibid.*, p. 19.

<sup>245</sup> *Ibid.*, p. 7.

<sup>246</sup> *Ibid.*

Since 1996, CRD has had three directors.<sup>247</sup> For eight months, CRD has been without one.<sup>248</sup> During the vacancy, three senior staff members rotate as acting directors every four weeks.<sup>249</sup> As acting directors, the staff cannot formulate or implement new ideas, policies, regulations, or programs in civil rights. Thus, under the acting directors, there has been very little continuity or consistency in the division's leadership and direction, as well as a lack of new civil rights initiatives and policies. One of the acting directors states that the rotation process has only maintained the "status quo."<sup>250</sup> CRD reports that once the civil rights director's position has been filled, it will determine the direction the division will take in the future with respect to civil rights goals, objectives, and policies.<sup>251</sup> Although CRD maintains that the division is functioning as usual,<sup>252</sup> the Commission finds that the short-term tenure of the directors and the current void in the director's position have resulted in a long period of inaction with respect to new initiatives and as such affects civil rights authority and enforcement.

### **Resources—Funding and Staffing**

For the Commission's 1996 study, the agency did not provide sufficient budget information. In addition, FNS did not maintain separate budgets for internal and external civil rights activities. Thus, the Commission could not determine whether civil rights resources were adequate to enhance Title VI enforcement performance.<sup>253</sup> One of the problems highlighted in the Commission's 1996 report was the insufficiency of the agency's information management system, which could not track expenditures on civil rights, including Title VI activities. Consequently, Title VI enforcement suffered because civil rights resources remained flat even though the workload increased.<sup>254</sup> The Commission recommended that CRD have in place an information management system that would permit it to track its expenditures on civil rights activities. The Commission recommended that CRD use such a system to analyze its expenditures and resource assignments in relation to its workload, and furthermore should use the information in developing an annual civil rights enforcement plan.<sup>255</sup> The Commission also recommended that the civil rights office use the information management system to ana-

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<sup>247</sup> There was an acting director from February 1996 to December 1997, and at least one acting director served during periods in 2000 and 2002. During the latest vacancy, three senior staff serve as acting director. The reasons for the directors' departures include the retirement of one (immediately after the Commission's 1996 report was completed) and different job opportunities for the others. Gloria McColl, equal opportunity specialist, Civil Rights Division, telephone interview, Jan. 23, 2003, pp. 7–8 (hereafter cited as FNS/CRD, McColl telephone interview, Jan. 23, 2003). Ms. McColl is the FNCS liaison for this study. Since the Commission's 1996 report, she has served as at least one of the acting directors during the periods of the vacancies.

<sup>248</sup> The division has been without a director since September 2002. In April 2003, CRD informed the Commission that a director has been selected and is scheduled to report in May. Numerous candidates applied for the position. After interviews, a panel made recommendations for a director to FNS' associate administrator for management who was the selection official. Gloria McColl, equal opportunity specialist, Civil Rights Division, telephone interview, Apr. 15, 2003.

<sup>249</sup> This study evaluates FNCS' civil rights enforcement efforts during the rotation process. The rotation process will continue until the director is on board.

<sup>250</sup> McColl telephone interview, Jan. 23, 2003, pp. 7–10, 51. Ms. McColl states that currently the three acting directors have different roles and responsibilities within CRD. For example, Ms. McColl's focus, as a staff person, is on program-related matters, while another acting director is the ADR program manager. She considers the major drawback for her as an acting director to be her inability to implement her ideas or initiate new policies and initiatives.

<sup>251</sup> FNCS/FNS Interrogatory, p. 15.

<sup>252</sup> See McColl telephone interview, Jan. 23, 2003, pp. 8, 10–11.

<sup>253</sup> USCCR, *Federal Title VI Enforcement*, p. 278.

<sup>254</sup> *Ibid.*, p. 288.

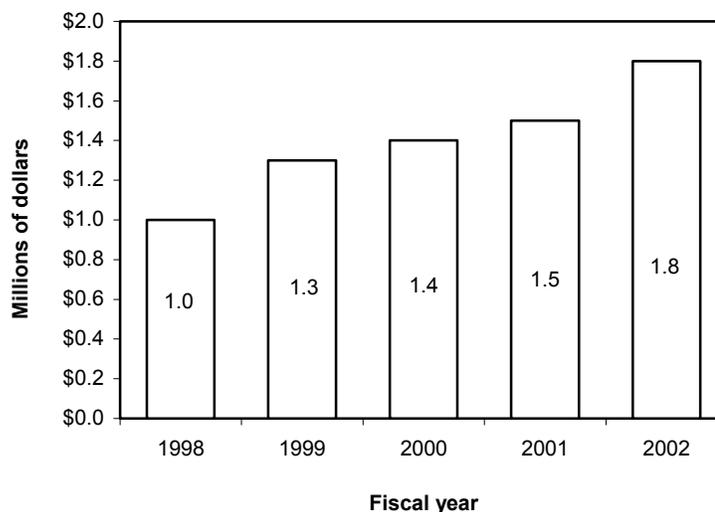
<sup>255</sup> *Ibid.*

lyze trends in its civil rights expenditures and workload across different civil rights activities and demonstrate the need for increased resources for Title VI enforcement.<sup>256</sup>

One of the primary tasks in FNS' FY 2001 strategic plan was that FNS program, regional, and staff offices with civil rights responsibilities assess and evaluate human and fiscal resources to determine if resources were sufficient to meet civil rights program objectives.<sup>257</sup> It was planned that the components with civil rights functions would reach agreement with the FNS' Office of the Administrator on recommendations made in reports during mid-year reviews. However, reporting was not made mandatory or enforced. The last reporting period disclosed that several components had not submitted reports. Several of the regional reports failed to include resource deficiencies and plans to address them. According to CRD, there was "reluctance and, in one instance, refusal to provide the information requested."<sup>258</sup> The reasons for failing to provide complete data and information varied.<sup>259</sup> In 2003, CRD informed the Commission that in future plans this initiative would be deleted as a separate task.<sup>260</sup>

In 2003, the Commission finds that the total civil rights budget increased from \$977,525 in FY 1998 to \$1.5 million in FY 2000. In FY 2002, funding for civil rights activities totaled \$1.8 million (see figure 2.11).<sup>261</sup> Resources increased steadily during the period between 1998 and 2002, when CRD was the Office of Civil Rights. Increases occurred at headquarters and in some regional offices under the administrator.

**FIGURE 2.11**  
**FNCS Civil Rights Budget, 1998–2002**



Source: FNCS/FNS, Civil Rights Division Interrogatory, p. 10.

<sup>256</sup> Ibid., p. 289.

<sup>257</sup> FNCS/FNS Interrogatory, p. 12.

<sup>258</sup> Ibid.

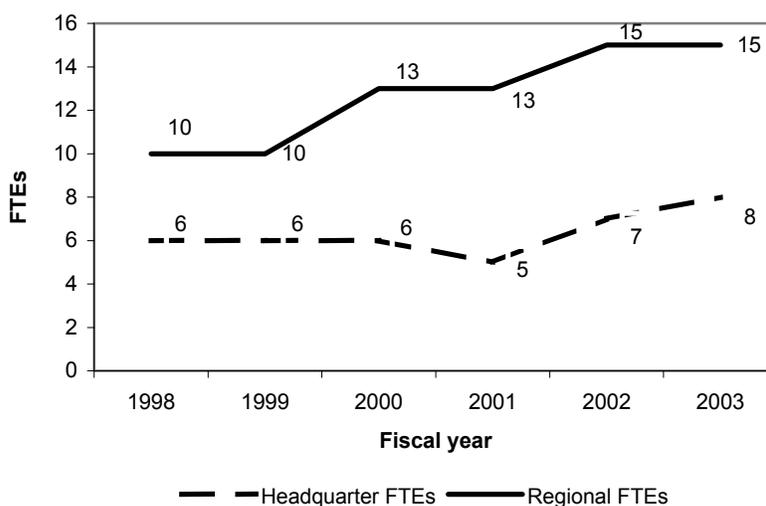
<sup>259</sup> Ibid.

<sup>260</sup> Ibid.

<sup>261</sup> Ibid., p. 10. The funding includes headquarters and regional civil rights offices. It excludes costs of Title VII (EEO) investigations.

In 1994, the Commission stated that civil rights responsibilities at the agency would increase as a result of the enactment of the Americans with Disabilities Act and other internal civil rights requirements. It concluded that the staffing would not be adequate to meet the new responsibilities, and that enforcement of Title VI would be affected.<sup>262</sup> Since the Commission's 1996 review, there have been small increases of both headquarters and regional staff. Since 1998, the number of CRD staff increased from six to nine. In the regions, the number of regional civil rights staff increased from the seven civil rights directors to 15 staff, with four of the regions adding equal opportunity specialists (see figure 2.12).<sup>263</sup>

**FIGURE 2.12**  
**FNCS Civil Rights Staffing, 1998–2003**



Source: U.S. Department of Agriculture, Food and Nutrition Service, Civil Rights Staff, 1998–2002.

The funding and staffing increases had nothing to do with CRD's status as an "office" during this period, but were based on headquarters and some of the regional offices demonstrating the need for increased civil rights resources.<sup>264</sup> As in the Commission's 1996 study, it is difficult in this review to determine whether the civil rights resources are adequate to fulfill enforcement responsibilities.

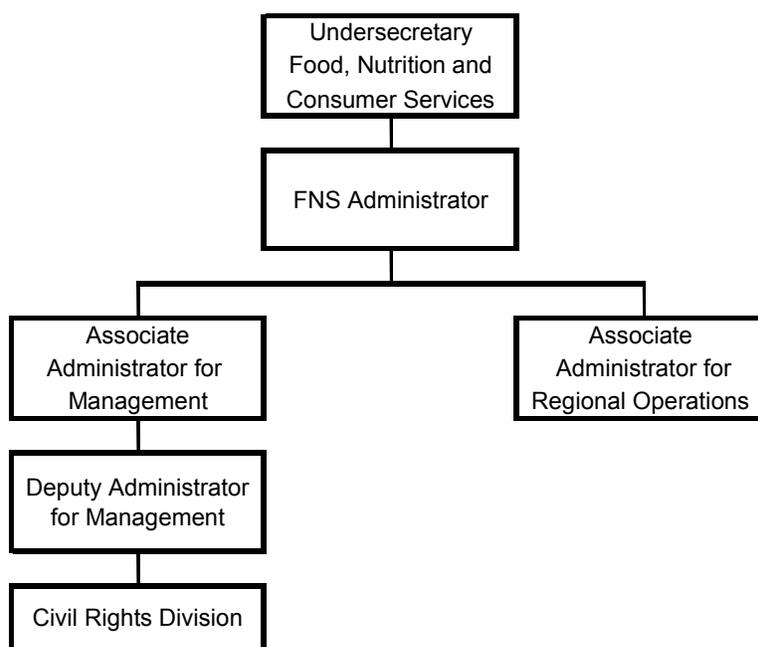
<sup>262</sup> USCCR, *Federal Title VI Enforcement*, p. 278.

<sup>263</sup> FNS, "Regional Civil Rights Offices," <<http://www.fns.usda.gov/cr/RO%20directors.htm>>. The regional civil rights offices are located in Boston, MA, Robbinsville, NY, Atlanta, GA, Chicago, IL, Dallas, TX, Denver, CO, and San Francisco, CA. The specialists are in the Atlanta, Dallas, Denver, and San Francisco regional offices.

<sup>264</sup> McColl telephone interview, Jan. 23, 2003, pp. 22–24. The Commission made numerous requests for specific budget and staffing information for the past five years. Information regarding CRD's budget and how funds are allocated has not been made available. In January 2003, Ms. McColl acknowledged in a telephone interview that she is not the person with the budget information and she would try to secure the information for the study. McColl telephone interview, Jan. 23, 2003, p. 4.

During the study, there were eight staff members in CRD, including five equal opportunity specialists,<sup>265</sup> a management analyst, an equal opportunity assistant, and a secretary.<sup>266</sup> Under the rotation process, three of the five equal opportunity specialists serve as acting directors at different intervals. When a new director is hired there will be nine positions in CRD (see figure 2.13). Since the Commission's report, civil rights staff performed in specialized areas, with some staff members having responsibility for external civil rights and others having responsibility for internal civil rights enforcement. However, due to limited resources and small staff increases over the years, areas of expertise have become more generalized, and some staff members have responsibility for both internal and external civil rights.<sup>267</sup>

**FIGURE 2.13**  
**FNS and the Civil Rights Division Organizational Structure, 2002**



Source: U.S. Department of Agriculture, Food and Nutrition Service, Civil Rights Staff, 1998–2002; FNCS/FNS, Civil Rights Division Interrogatory, p. 7; FNS Organizational Chart, Dec. 13, 2002.

### **Planning**

In 1996, the Commission concluded that the FNS' 1991, 1992, and 1993 Civil Rights Implementation Plans (CRIPs) did not conform to Department of Justice guidelines. The guidelines require agencies to provide details on their civil rights strategies. The CRIPs did not provide sufficient details on FNS' approach to civil rights enforcement. In addition, the plans' goals and objectives did not indi-

<sup>265</sup> Not all the equal opportunity specialists are assigned to program statutes. For example, one of the equal opportunity specialists is the alternative dispute resolution (ADR) or mediation program manager. FNS has used ADR as an alternative approach to resolving disputes in the workplace. However, the ADR process has not been used for resolving Title VI complaints. FNCS/FNS Interrogatory, pp. 23, 32.

<sup>266</sup> FNCS/FNS Interrogatory, pp. 7, 10. These are long-term staff, with 22.7 staff years in 2002.

<sup>267</sup> FNCS/FNS Interrogatory, p. 8.

cate ways of measuring accomplishments or establish timeframes for completion, as required by DOJ.<sup>268</sup> The Commission recommended that future CRIPs provide a broad outline of the agency's Title VI enforcement program, including its scope, organization, budget and staffing, and the extent to which it conducts specific civil rights activities. Furthermore, the Commission urged that the CRIPs include a goals and objectives section and a progress report section in accordance with DOJ's requirements.<sup>269</sup>

In 2003, Commission finds that there have been no changes in how the CRIPs are prepared or in the information they include. The 1998, 1999, 2000, 2001, and 2002 CRIPs were reviewed for this study. Except for the 1998 plan, which did not include performance and workload data, all the CRIPs referenced general information on objectives, accountability, funding and staffing, workload and performance data, and complaint activities.<sup>270</sup> CRD maintains that it prepares its CRIPs in accordance with the guidelines established by the Department of Justice.<sup>271</sup> CRD has not received any feedback from DOJ or the departmental OCR about the content of its CRIPs or its Title VI enforcement program.<sup>272</sup>

### **Policy Guidance**

FNS issues a Civil Rights Policy document annually to all agency employees. The document prescribes the civil rights policy for the FNS and the Center for Nutrition Policy and Promotion. It reinforces the implementation of the department's civil rights and equal employment opportunity policy statement.<sup>273</sup> The Civil Rights Policy document is available on the FNS Web site.<sup>274</sup>

Since the Commission's 1996 study, CRD has developed new guidance, which has been issued to the regional programs staff.<sup>275</sup> In 2002, FNCS issued three policy guidance documents: the "WIC Policy Memorandum for Fiscal Year 2002–06 on WIC Racial/Ethnic Data Collection",<sup>276</sup> the "Food and Nutrition Service (FNS)—101 Racial/Ethnic Data Collection" memorandum,<sup>277</sup> and the "Updates to

<sup>268</sup> USCCR, *Federal Title VI Enforcement*, p. 288.

<sup>269</sup> *Ibid.*, p. 291.

<sup>270</sup> FNCS/FNS Interrogatory, p. 42.

<sup>271</sup> *Ibid.*

<sup>272</sup> *Ibid.*

<sup>273</sup> U.S. Department of Agriculture, Food and Nutrition Service Notice, *FNS and CNPP Civil Rights Policy*, April 25–Dec. 31, 2002. The department's civil rights policy statement states USDA's commitment to ensuring compliance with civil rights and equal employment opportunity for everyone regardless of race, color, national origin, gender, religion, age disability, sexual orientation, marital or family status, political beliefs, parental status or protected genetic orientation. U.S. Department of Agriculture, Office of the Secretary, *Civil Rights Policy Statement*, Jan. 29, 2003, <<http://www.usda.gov/da/CRPolicy.htm>>.

<sup>274</sup> See FNS and CNPP, "Civil Rights Policy," <[http://www.fns.usda.gov/cr/Policy/civil\\_rights\\_policy.htm](http://www.fns.usda.gov/cr/Policy/civil_rights_policy.htm)>.

<sup>275</sup> FNCS/FNS Interrogatory, p. 41.

<sup>276</sup> Final WIC Policy Memorandum Fiscal Year 2002–06, WIC Racial/Ethnic Data Collection to Regional Directors, Supplemental Food Programs, Sept. 19, 2002. The memorandum provides guidance to state and local agencies on the WIC racial/ethnic data collection. It addresses the new standards issued by the Office of Management and Budget (OMB) developed in order to monitor enforcement of civil rights laws for populations that historically experienced discrimination and differential treatment in housing, education, employment, and other areas because of their race or ethnicity. Under the new standards, OMB requires data collection on ethnicity as well as racial categories. The two ethnic categories required by OMB are "Hispanic or Latino" and "Not Hispanic or Latino." Only one category can be selected. No later than April 1, 2005, state agencies must begin collecting racial and ethnic data using the new OMB categories.

<sup>277</sup> Food and Nutrition Service (FNS), 101 Racial Ethnic Data Collection memorandum to Regional Directors, Food Stamp Program, Oct. 11, 2002. The purpose of the guidance is to provide instruction on OMB's new racial and ethnic data collection requirements. State agencies are using the current FNS-101 form to report racial and ethnic information. FNS has

the Food, Nutrition, and Consumer Service Alternative Dispute Resolution Program, Standard Operating Procedures.”<sup>278</sup> Recipients are notified of new guidelines and policies through policy memoranda, Web sites, and regional offices.<sup>279</sup>

In the Commission’s 1996 report, CRD acknowledged that disseminating information to persons with limited English proficiency (LEP) was a problem. The Commission concurred and recommended that CRD improve its outreach strategies to members of this group.<sup>280</sup> However, CRD has not since developed a plan to comply with DOJ’s guidance to implement Executive Order 13,166, “Improving Access to Services for Persons with Limited English Proficiency.”<sup>281</sup> CRD is waiting for the finalization of OCR’s implementing guidance to prepare its plan. In the meantime, recipients are still required to provide services to program beneficiaries in appropriate languages, in accordance with Title VI.<sup>282</sup> The importance of CRD’s guidance for the implementation of the executive order cannot be overstated since the agency’s programs reach millions of persons nationwide who may be eligible and yet are not fully aware of the benefits and services available to them because of language barriers.<sup>283</sup>

At the time of the Commission’s 1996 report, FNS operated under USDA Title VI regulations, the Departmental Regulation 4330-1, and its own instructions. The agency’s principal civil rights instruction is titled “Civil Rights Compliance and Enforcement” (Civil Rights Instruction 113). Civil Rights Instruction 113 outlines general civil rights enforcement procedures and the responsibilities of different FNS components. All federally assisted programs are covered by the instruction.<sup>284</sup>

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revised the FNS-101 to meet OMB’s data collection requirements. It plans to publish the proposed rule and notice in the *Federal Register*.

<sup>278</sup> “Updates to Food, Nutrition and Consumer Service Alternative Dispute Resolution Program, Standard Operating Procedures,” memorandum to Civil Rights Directors and Alternative Dispute Resolution Program Coordinators, May 14, 2002. FNCS reports that some regions have been using alternative dispute resolution (ADR) to resolve some program disputes, but not for Title VI complaints. In addition, while it reports a significant number of ADR resolutions, FNCS states that it has not maintained any data on the number of program complaints resolved through ADR, or evaluated the effectiveness of ADR in resolving discrimination complaints. FNCS/FNS Interrogatory, p. 32.

<sup>279</sup> FNCS/FNS Interrogatory, p. 19.

<sup>280</sup> See USCCR, *Federal Title VI Enforcement*, p. 284.

<sup>281</sup> Exec. Order No. 13,166, 3 C.F.R. § 289 (2001), *reprinted in* 42 U.S.C.S. § 2000d-1 (Law. Co-op. 2003). The purpose of the executive order is to eliminate limited English proficiency (LEP) as a barrier to full and meaningful participation in all federally assisted and federally conducted programs. The executive order requires federal agencies to examine the services that they provide, identify any need for services, and develop and implement a system to provide services to persons with limited English proficiency. The executive order requires agencies to develop and begin to implement plans to carry out the order within 120 days of the date of the order (Aug. 11, 2000). As of January 2003, FNS’ plan to implement the order had not been completed. FNCS/FNS Interrogatory, p. 22.

<sup>282</sup> FNCS/FNS Interrogatory, p. 22.

<sup>283</sup> To illustrate the problem, in FY 2001, CRD reported a letter of finding that the Utah Department of Workforce Services failed to provide non-English services to LEP persons when they applied for participation in the Food Stamp Program. LEP clients faced barriers to program services and benefits that English-proficient clients did not. FNCS/USDA, Title VI Civil Rights Implementation Plan, FY 2002, p. 5. CRD found that the department instituted policies that did not conform to established regulations. CRD is still working with the Utah department to gain compliance. The regional civil rights staff still provide ongoing technical assistance and guidance to the Utah department on how to provide information in various languages and use proper forms in order to resolve the problem. McColl telephone interview, Jan. 23, 2003, pp. 46–47.

<sup>284</sup> USCCR, *Federal Title VI Enforcement*, p. 279. U.S. Department of Agriculture, Food and Nutrition Service, *Civil Rights Compliance and Enforcement*, Civil Rights Instruction 113 (1982). Issued in May 1982, Civil Rights Instruction 113 established a nondiscrimination policy and delegates specific responsibilities to ensure compliance with civil rights laws and regulations. FNCS/FNS Interrogatory, p. 21.

In its 1996 report, the Commission commended the agency on Civil Rights Instruction 113, concluding that the instruction clearly spelled out FNS' enforcement procedures and the relative responsibilities of FNS components. Furthermore, the instruction satisfied DOJ's requirement for separate Title VI guidelines for each federally assisted program.<sup>285</sup> The Commission wrote in 1996 that Civil Rights Instruction 113 served as a "comprehensive and sound basis" for its Title VI enforcement program, and recommended that other USDA agencies consider issuing similar instructions for federally assisted programs.<sup>286</sup>

During the 2003 review, the Commission learned that CRD is updating Civil Rights Instruction 113 to reflect policy and procedural changes in enforcement.<sup>287</sup> Headquarters and selected regional civil rights staff are responsible for revising the instruction.<sup>288</sup> A draft is pending clearance by the Department of Justice, and no date is specified for its implementation.<sup>289</sup> Since the draft is not finalized and cleared, for this review, the Commission cannot determine the quality of the document.

CRD also reports that FNS is developing a compliance review manual. The project was initiated by one of the regional civil rights directors during FY 2000. However, the project is still in the "infancy stage" and no one is assigned full time to the project, nor have any tasks or milestones been established for its completion.<sup>290</sup>

### **Education and Outreach**

When the Commission conducted its 1996 study, FNS publicized most of its programs and nondiscrimination information to its recipients through posters and brochures. Materials were provided in English, Spanish, Chinese, Japanese, and Vietnamese. However, FNS acknowledged that it needed to perform more outreach and education on its programs and Title VI to communities with large non-English-speaking populations.<sup>291</sup> The Commission concurred that the agency did not conduct sufficient outreach and education on Title VI, particularly to meet the needs of limited-English-proficient persons, and recommended that CRD provide leadership to regional offices and state recipients on outreach and education. The Commission recommended that CRD develop a strategic plan for informing the recipients, participants, beneficiaries, and the general public about Title VI and other civil rights statutes. In addition, it suggested that FNS develop other ways to provide information about Title VI, such as through conferences and other forums attended by program recipients, participants, and intended beneficiaries.<sup>292</sup>

In 2003, program and public affairs staff carry out most FNCS outreach activities. Regional offices provide outreach and education about programs to recipients through meetings and conferences, and training and technical assistance sessions, as well as work with local community organizations during compliance reviews.<sup>293</sup> With respect to Title VI, the nondiscrimination statement is required by law on all printed material disseminated to the public about FNCS' federally assisted programs. Recipi-

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<sup>285</sup> USCCR, *Federal Title VI Enforcement*, p. 289.

<sup>286</sup> *Ibid.*

<sup>287</sup> McColl telephone interview, Jan. 23, 2003, p. 39.

<sup>288</sup> FNCS/FNS Interrogatory, p. 20.

<sup>289</sup> *Ibid.*

<sup>290</sup> *Ibid.*, p. 23.

<sup>291</sup> USCCR, *Federal Title VI Enforcement*, p. 284.

<sup>292</sup> *Ibid.*, p. 290.

<sup>293</sup> FNCS/FNS Interrogatory, p. 33.

ents are required to display in a prominent location the poster, “And Justice for All,” which lists Title VI rights and responsibilities. The posters and statements are available in English and Spanish at FNS and in other languages on USDA’s Web site.<sup>294</sup> Evaluations of the public notification requirements are conducted during compliance reviews.<sup>295</sup> No strategic plan or task force for education and outreach has been prepared. The Commission finds in this review that outreach and education to persons with limited English proficiency need to be improved and concludes that the matter has not been addressed sufficiently.

### **Complaint Processing**

In 1996, although the Commission found no major problems with complaint processing at the agency, it made some recommendations for improvement. At the time of the Commission’s report, FNS integrated different components into the process, each responsible for separate tasks. The states conducted pre- and post-award reviews of the recipients, the regional civil rights directors reviewed the compliance activities of the states through reports, and CRD reviewed the regional civil rights directors’ evaluations.<sup>296</sup> In 2003, CRD still implements the decentralized approach to complaint processing, and the duties and responsibilities of the different components have not changed.<sup>297</sup>

Even with the absence of a director, compliance activities have been carried out. The 1998–2002 CRIPs show that compliance activities such as on-site visits and desk audits were performed, complaints were resolved, and the backlog of complaints was cleared. The CRIPs show that less than 15 percent of the complaints received fall under Title VI programs (see table 2.3). One of the acting directors states that many of the complaints received are not really discrimination issues, but relate to program issues, usually the way regulations are applied or interpreted.<sup>298</sup>

**TABLE 2.3**  
**FNS Civil Rights Division Complaint Workload, 1997–2001**

<b>Fiscal year</b>	<b>Total complaints received</b>	<b>Title VI complaints</b>	<b>Unresolved complaints</b>
1997	671	0	68
1998	n/a	n/a	n/a
1999	262	61	79
2000	376	55	141
2001	503	0	153

Note: CRD did not report workload data in the 1998 CRIP.  
Source: FNCS/USDA, Title VI Civil Rights Implementation Plans, FY 1998–2002, Civil Rights Workload and Performance Data.

<sup>294</sup> Ibid., p. 35.

<sup>295</sup> Ibid., p. 34.

<sup>296</sup> USCCR, *Federal Title VI Enforcement*, p. 281.

<sup>297</sup> The decentralized approach also applies to other activities. For example, different staff are also given technical assistance responsibilities. Usually, CRD will provide technical assistance to the regional staff, who in turn provide technical assistance to the state agencies. In some cases, CRD will accompany regional staff to assist in providing assistance and guidance to recipients about laws and responsibilities. Technical assistance is usually given on request or during compliance reviews of state agencies. See McColl telephone interview, Jan. 23, 2003, pp. 41–43.

<sup>298</sup> McColl telephone interview, Jan. 23, 2003, pp. 45–46. The “program-related complaints” are usually assigned to FNS’ program division staff.

### **Compliance Reviews**

In 1996, because the regional civil rights directors did not have the resources to conduct pre- or post-award reviews, CRD relied primarily on states to conduct compliance reviews. In 2003, states still conduct pre-award reviews and are required to conduct a pre-award review for each new entity that submits an application to participate in a FNS assisted program.<sup>299</sup> However, the Commission's 1996 recommendations to improve the process, particularly the reporting and monitoring of compliance reviews, have not been addressed.<sup>300</sup>

### **Pre-award Reviews**

In 1996, the Commission found that CRD did not require routine reporting of the states' performance of their pre-award review obligations. For instance, states were not required to submit information on their pre-award reviews in quarterly reports.<sup>301</sup> The Commission recommended that CRD extend its reporting requirements of states to ensure that the quarterly reports submitted to the FNS regional civil rights directors included:

- whether the state conducted a pre-award review;
- a summary of the information considered in the review;
- a copy of the state's letter of finding; and
- information about any corrective actions required and whether the applicant agreed to implement them.<sup>302</sup>

The Commission also recommended that, as part of their responsibilities, regional civil rights directors review the information on pre-award reviews included in the states' quarterly reports to (1) determine whether the states were fulfilling their responsibility of conducting reviews of each applicant before awarding funds; (2) assess the quality of the states' pre-award reviews; and (3) provide the states with technical assistance where necessary. In addition, the Commission recommended that FNS assign additional civil rights staff to the regional offices to permit them to perform these duties effectively.<sup>303</sup>

In this review, the Commission finds that the pre-award review process continues (see table 2.4), and has remained the same since 1996.<sup>304</sup> There is no requirement that the states submit quarterly reports on the reviews. Pre-award information is verified during post-award reviews.<sup>305</sup> There is no additional staff assigned to the task.

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<sup>299</sup> FNCS/FNS Interrogatory, p. 25.

<sup>300</sup> In 2003, states are the leads in conducting pre-award reviews. The regional civil rights staff conducts post-award reviews at the state level, while the states conduct post-award reviews of their local offices. Michael G. Watts, director, Civil Rights Division, Food and Nutrition Service, memorandum to Frederick Isler, deputy director for programs, Office of Civil Rights, Response to U.S. Department of Agriculture, U.S. Commission on Civil Rights Ten-Year Check-Up, June 3, 2003, p. 6 (hereafter cited as Watts, FNS/CRD Response).

<sup>301</sup> USCCR, *Federal Title VI Enforcement*, p. 289.

<sup>302</sup> *Ibid.*

<sup>303</sup> *Ibid.*

<sup>304</sup> FNCS/FNS Interrogatory, p. 24.

<sup>305</sup> *Ibid.*, pp. 24–25.

**TABLE 2.4**  
**FNS Civil Rights Division Pre-award Review Workload, 1997–2001**

Fiscal year	Pre-award reviews	On-site reviews	Desk audits only	Desk audits resulting in noncompliance
1997	114	20	94	0
1998	n/a	n/a	n/a	n/a
1999	599	525	150	0
2000	701	494	207	0
2001	145	226	119	0

Note: CRD did not report workload data in the FY 1998 CRIP.

Source: FNCS/USDA, Title VI Civil Rights Implementation Plans, FY 1998–2002.

### **Post-award Reviews**

In its 1996 report, the Commission found FNS had an active post-award review program and detailed procedures. However, the Commission found that virtually all the reviews were done by state agencies, and that CRD did not monitor how well the states performed these tasks. CRD did not ensure that the compliance reviews were of “sufficient quality to uncover and resolve instances of noncompliance with Title VI.”<sup>306</sup> The Commission recommended that, as with the pre-award reviews, CRD extend its reporting requirements of states to incorporate additional information on their compliance reviews in their quarterly report, specifically:

- whether the recipient underwent a post-award review;
- whether the review was done on site or by desk audit;
- a summary of the information considered in the review;
- a copy of the letter of finding; and
- information about any corrective action required or taken.<sup>307</sup>

In addition, the Commission recommended that the regional civil rights directors review the information in the states’ quarterly reports, assess the quality of the states’ post-award reviews, and offer technical assistance where necessary. The Commission also recommended that the directors conduct post-award reviews jointly with states to learn more about the process.<sup>308</sup>

In this review, the Commission finds that the post-award review process continues (see table 2.5), and has remained the same since 1996.<sup>309</sup> In 2003, states conduct post-award reviews, and the regional civil rights, program, and field staff still conduct reviews of state agencies. The Commission’s recommendations have not been addressed. There is no requirement for quarterly reports, as regional staff assess the quality of the states’ post-award reviews “periodically.”<sup>310</sup> Regional civil rights staff conduct these reviews with state staff, and no additional staff is assigned to this task.

<sup>306</sup> USCCR, *Federal Title VI Enforcement*, p. 289.

<sup>307</sup> *Ibid.*

<sup>308</sup> *Ibid.*, p. 290.

<sup>309</sup> FNCS/FNS Interrogatory, p. 29.

<sup>310</sup> *Ibid.*

**TABLE 2.5**  
**FNS Civil Rights Division Post-award Review Workload, 1997–2001**

Fiscal year	Post-award reviews	On-site reviews	Desk audits only	Desk audits resulting in noncompliance
1997	819	808	11	37
1998	n/a	n/a	n/a	n/a
1999	3,361	559	2,801	17
2000	3,466	815	2,651	91
2001	814	814	0	71

Note: CRD did not report workload data in the FY 1999 CRIP.

Source: FNCS/USDA, Title VI Civil Rights Implementation Plans, FY 1998–2002.

### **Staff Training**

In 1996, the Commission found that CRD did not provide formal Title VI training to the civil rights staff. CRD provided general civil rights training on statutes, and data collection and complaint processing requirements to new regional office staff. However, CRD indicated that there was a need for formal and “refresher” civil rights training for civil rights staff, particularly on Title VI.<sup>311</sup> The Commission recommended that in addition to providing civil rights training to new regional civil rights staff, FNS should provide formal Title VI training to all its civil rights staff at regular intervals.<sup>312</sup>

Now, all FNCS employees receive civil rights training. The headquarters civil rights staff conduct the training, which includes Title VI. FNS provides mandatory training and on request.<sup>313</sup> If possible, training is provided annually, which indicates that FNS falls short of providing training at regular intervals or annually.<sup>314</sup> Since many FNCS staff members have civil rights responsibilities, it is imperative that civil rights training is updated and provided at regular intervals within designated time-frames.

### **Oversight and Quality Assurance**

As stated earlier, FNS delegates much of its complaint processing authority to the states. In 1996, although FNS prepared complaint processing instructions for the states, it did not have sufficient resources to monitor the quality of the states’ compliance activities.<sup>315</sup> FNS conducted periodic reviews. The Commission recommended that FNS assign sufficient civil rights staff to the regional offices so they could monitor the quality of the states’ complaint investigation activities routinely.<sup>316</sup> The Commission recommended that regional civil rights staff conduct periodic, in-depth monitoring reviews of the states’ Title VI compliance programs. It suggested that monitoring begin with a review of all quarterly and annual reports submitted by the states. The Commission also recommended

<sup>311</sup> USCCR, *Federal Title VI Enforcement*, p. 285.

<sup>312</sup> *Ibid.*, p. 290.

<sup>313</sup> FNCS/FNS Interrogatory, p. 36.

<sup>314</sup> Civil rights training for all FNS employees has not occurred in 2003, and plans are not firm at this time to conduct such training. Watts, FNS/CRD Response, p. 7.

<sup>315</sup> USCCR, *Federal Title VI Enforcement*, p. 290.

<sup>316</sup> *Ibid.*

that the monitoring include on-site visits during which regional civil rights staff would interview state civil rights staff, recipients, program participants, community groups, and civil rights groups.<sup>317</sup>

In 2003, the Commission finds that periodic reviews of states' compliance activities are still conducted and are considered "monitoring." The monitoring includes review of reports and complaint investigation files, on-site visits, and interviews with state officials and staff by regional staff.<sup>318</sup> The Commission further finds that the agency is still using the same process that it used in 1996 to review states' activities, and does not have a formal monitoring program.

When the Commission's 1996 report was prepared, FNS maintained a national database that allowed it to collect and analyze racial/ethnic data on participants in each FNS-assisted program, but not on eligible participants (or potential participants). The Commission noted that FNS' data collection and analysis system had not improved since 1975, when DOJ criticized FNS' failure to obtain and evaluate racial and ethnic participation and eligibility data in the Food Stamp Program.<sup>319</sup> The Commission recommended that CRD develop and implement an adequate data collection and analysis system, specifying what information states should collect and analyze from their subrecipients by race and ethnicity. The Commission said the system should be able to run routine comparisons of the eligible population with program applicants and participants by race and ethnicity. The Commission recommended that FNS use the information to determine whether protected groups are underrepresented in FNS-funded programs, and, if so whether they face barriers to participation in the programs.<sup>320</sup>

CRD reports that FNCS has a data collection and analysis system in place that is used to (1) determine how effectively FNCS programs are reaching minorities, (2) assist staff in determining the locations for compliance reviews, and (3) prepare evaluation reports. The system provides data on program participants by state, project area, and number of households by race and national origin.<sup>321</sup> However, CRD does not specify how the data affect the quality of enforcement. The Commission concludes that while there have been efforts to expand its racial and ethnic information since 1996, CRD has not evaluated its data collection and analysis system to maximize the effectiveness of enforcement or evaluate outcomes.

### **Coordination**

When the Commission studied the agency in 1996, there was a memorandum of understanding (MOU) between FNS and the department's Office of Civil Rights (OCR) to share responsibilities for complaint activities.<sup>322</sup> In 1996, the Commission did not make recommendations for changes in the MOU agreement.

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<sup>317</sup> Ibid., p. 291.

<sup>318</sup> FNCS/FNS Interrogatory, pp. 37–38.

<sup>319</sup> USCCR, *Federal Title VI Enforcement*, pp. 286–87.

<sup>320</sup> Ibid., p. 291.

<sup>321</sup> FNCS/FNS Interrogatory, p. 39.

<sup>322</sup> Since FY 1985, the agency has had a written memorandum of understanding (MOU) with USDA's Office of Civil Rights. The original purpose of the MOU was to establish parameters for a pilot project under which FNS would have responsibility for processing discrimination complaints under Title VI and other statutes. The MOU was the official beginning of the decentralization of civil rights activities at USDA. Before the memorandum, all USDA agencies' complaints went to USDA/OCR for processing. In 1996, FNS processed civil rights complaints for its federally assisted programs. It received all complaints and determined whether or not they were civil rights complaints. If it could not achieve voluntary compliance, FNS referred the complaints to USDA/OCR, with a recommendation for corrective action. USCCR, *Federal Title VI Enforcement*, pp. 282–83. See FNCS/FNS Interrogatory, p. 44.

In the 2003 review, the Commission finds that FNCS continues to process Title VI complaint cases under the MOU with OCR.<sup>323</sup> OCR authorizes FNCS to process complaints (intake, investigate, and make determinations) under the MOU. OCR retains oversight authority and responsibility for all complaints processed by CRD, which includes the authority to require additional processing or an independent investigation, if necessary.<sup>324</sup> In accordance with the MOU, cases containing findings of noncompliance are referred to OCR for review and concurrence.<sup>325</sup> The agency and OCR, which have operated under the MOU for more than 15 years, are pleased with the results. They believe that the current coordination of complaint processing is effective.<sup>326</sup> The Commission finds that the MOU has appropriate checks and balances, and that it protects the rights of beneficiaries. USDA/OCR has several MOUs with USDA agencies in the enforcement process.

### **Conclusion**

In 1994, USDA planned a departmentwide reorganization that would affect the Food and Nutrition Service as an agency and, consequently, affect civil rights enforcement at the agency. The reorganization transformed the Food and Nutrition Service from an agency to a component within the new agency, the Food, Nutrition, and Consumer Services. The reorganization, however, had no impact on civil rights enforcement. The Civil Rights Division remained in FNS, underwent name changes, and realigned under different FNS authorities. These actions did not influence the civil rights duties, responsibilities, or policies at the agency.

Since the 1996 study, many of the Commission's 1996 recommendations have not been addressed, and enforcement activities have been stagnant at the agency. The foremost reason for the lack of change or improvement in CRD's activities is leadership instability. The Civil Rights Division has had three directors since 1996 and the position has been vacant for nearly a year. During the vacancy, the position is covered by four-week rotations of three staff who have other responsibilities. Under the rotation process and during the vacancies, the acting directors have not implemented new initiatives or policies because their authority does not extend beyond meeting enforcement requirements. As a result, there has been a lack of authority, consistency, continuity, and growth in the division. New initiatives undertaken have not been completed. CRD has maintained the status quo with regard to complaint processing and compliance activities. For enforcement to improve, FNCS must reinforce its commitment to civil rights by realigning CRD in the undersecretary's office, delegating it with more authority over all staff with civil rights responsibilities, and hiring a civil rights director who makes a long-term commitment to enforcement at the agency. These initiatives may require another reorganization at FNCS and a reevaluation of the director's position.

### **Natural Resources Conservation Service**

When the Commission studied the Soil Conservation Service (SCS) in 1996, it was administering seven major federally assisted programs concerned with national soil and water conservation amounting to \$800 million in financial assistance given annually to approximately 4,000 recipi-

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<sup>323</sup> The MOU was revised and signed on April 3, 1998. USDA, Memorandum of Understanding between the Food, Nutrition and Consumer Service and the (USDA) Office of Civil Rights (1998 revision) (hereafter cited as FNS/OCR Memorandum of Understanding); FNCS/FNS Interrogatory, p. 45.

<sup>324</sup> FNCS/OCR Memorandum of Understanding, p. 1; FNCS/FNS Interrogatory, p. 45.

<sup>325</sup> FNCS/FNS Interrogatory, p. 45.

<sup>326</sup> *Ibid.*, pp. 44–45.

ents.<sup>327</sup> The Natural Resources Conservation Service (NRCS), which replaced the SCS after the 1994 reorganization, has a broader mission: to conserve, maintain, and improve the nation's natural resources and environment.<sup>328</sup> In 2002, the agency was administering 16 programs related to conservation of water, soil, forests, plants, wildlife, and the environment,<sup>329</sup> serving between 5 million and 6 million participants through more than 3,000 recipient groups (e.g., local soil and water conservation districts).<sup>330</sup> Nine of the programs were providing direct payments for specified uses; one provided grants. The remaining programs provided advisory and counseling assistance, specialized services, or dissemination of technical assistance. Programs benefit mostly landowners, landlords, tenants, or operators, but also state and local governments and community or nonprofit organizations with control of land or watershed areas, planners, environmentalists, engineers, and tax assessors.<sup>331</sup> Because so many of NRCS' programs provide direct payments, rather than block grants that a recipient redistributes to subrecipients, much of NRCS' enforcement of Title VI involves analyses of its own programs.

### **Priority of Civil Rights**

In its 1996 study, the Commission raised a number of concerns about whether the SCS organizational structure gave civil rights, with respect to program delivery, sufficient priority. At that time, SCS' primary civil rights office for Title VI enforcement was the Civil Rights and Program Compliance Division (CR&PCD). Prior to 1994, CR&PCD had responsibility for program compliance (Title VI) enforcement, but not equal employment opportunity (EEO or Title VII). The 1994 reorganization gave CR&PCD Title VII responsibility, but whether the final organizational structure would include separate entities devoted to EEO and program civil rights was uncertain. The Commission urged that the agency transfer EEO responsibilities to CR&PCD without having a negative effect on Title VI enforcement; that it retain at least the same number of staff working on program compliance; and that it structure CR&PCD with separate units and separate supervisors for EEO and program compliance.<sup>332</sup>

In 2003, the Commission finds that NRCS has not achieved a stable, adequately staffed, separate environment for Title VI enforcement. Table 2.6 shows a timeline for events that have affected civil rights enforcement at NRCS. NRCS had separate units for Titles VI and VII civil rights activities only briefly in early 1997. Since then the civil rights unit has undergone several name, staffing, or organizational changes, most or all of which appeared to place greater emphasis on internal employment discrimination than on equitable program delivery—that is, ensuring that all races and ethnicities benefit from NRCS programs.<sup>333</sup> NRCS underwent reorganization in FY 2000 to align its en-

<sup>327</sup> USCCR, *Federal Title VI Enforcement*, p. 309.

<sup>328</sup> U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS), "Mission Statement," <www.nrcs.usda.gov>. Additional programs the NRCS assumed responsibility for as a result of the 1994 reorganization included the Wetlands Reserve Program, the Colorado River Basin Salinity Control Program, the Water Bank Program, the Forestry Incentives Program, and the Farmers for the Future Program. See USDA/NRCS, *Natural Resources Conservation Service Reorganization/Reinvention*, Nov. 9, 1994, p. 1.

<sup>329</sup> General Services Administration, *The Catalog of Federal Domestic Assistance*, Department of Agriculture, Natural Resources Conservation Service, see <www.cfda.gov/public/browse\_by\_subagency.asp> (hereafter cited as GSA, *CFDA*, USDA/NRCS).

<sup>330</sup> NRCS, "FY 2001 Information and Reporting Requirements for Agencies Covered by Executive Order 12,250, October 1, 2000–September 30, 2001," Mar. 30, 2001, p. 1 (hereafter cited as NRCS, CRIP 2001); and NRCS, "FY 2001 Information and Reporting Requirements for Agencies Covered by Executive Order 12,250, October 1, 2001–September 30, 2002," Mar. 13, 2002, p. 1 (hereafter cited as NRCS, CRIP 2002).

<sup>331</sup> GSA, *CFDA*, USDA/NRCS.

<sup>332</sup> USCCR, *Federal Title VI Enforcement*, pp. 310, 312–13, 322.

<sup>333</sup> NRCS Staffing Plans, Sept. 29, 1995, to July 3, 2002.

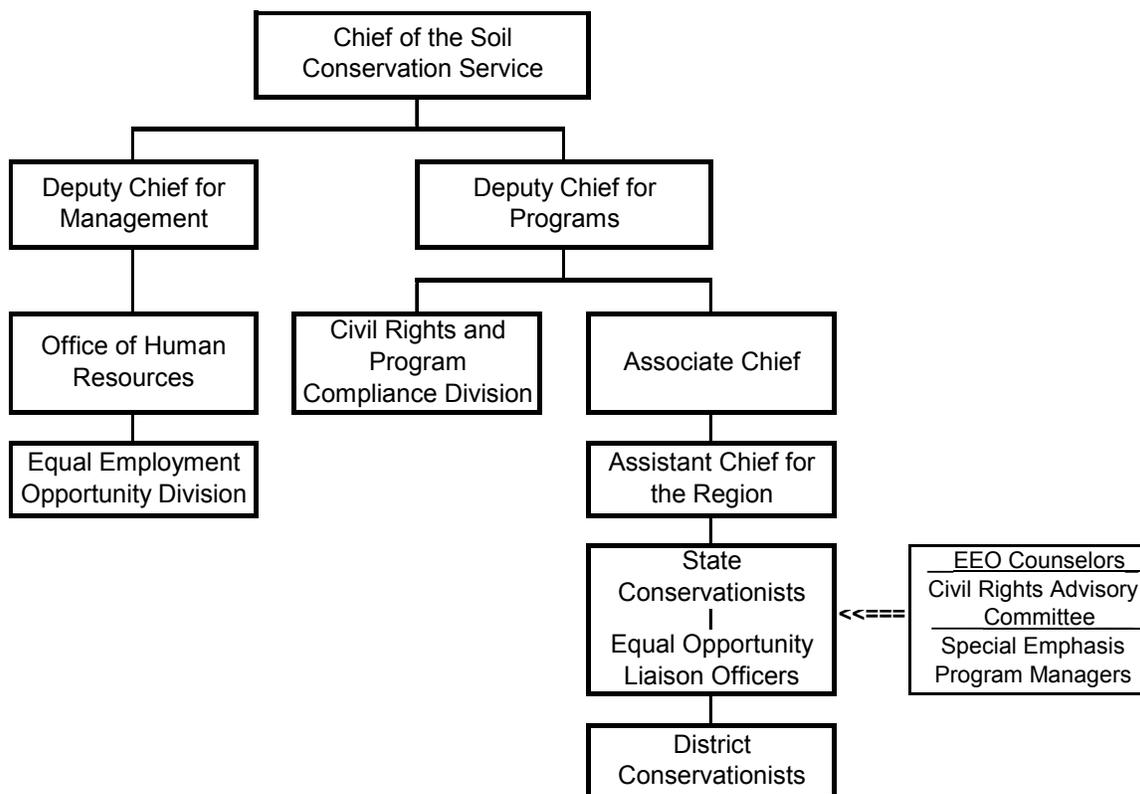
forcement unit, now the Civil Rights Staff (CRS), under the office of the NRCS chief. CRS has a Special Emphasis Program, a Complaints Branch, a Policy Branch, and civil rights managers to oversee regional and state operations.<sup>334</sup> The new branches did not separate Title VI and Title VII civil rights responsibilities, as will become evident when the staffing patterns are discussed below.

**TABLE 2.6**  
**Timeline for NRCS Reorganizations and Events Affecting Civil Rights Enforcement**

Oct. 13, 1994	Congress passed the Department of Agriculture Reorganization Act of 1994 authorizing the Secretary of Agriculture to streamline and reorganize the department to achieve greater efficiency, effectiveness, and economies and calling for the consolidation of headquarters and field offices to reduce personnel and duplicative overhead expenses.
Oct. 20, 1994	The USDA Secretary's implementing memorandum abolished the Soil Conservation Service and established the Natural Resources Conservation Service. Furthermore, NRCS (1) assumed responsibility for all its previously administered programs and five addition ones; (2) consolidated administrative functions with the Forest Service; and (3) reduced personnel, particularly at headquarters, thereby increasing the proportion of staff at the field level.
Apr. 27 1995	In response to the Secretary's implementing memorandum, NRCS issued its plan to establish six regional offices, headed by regional conservationists, and reduce state office staff.
Oct. 1996	Having appraised the effects of the 1994/1995 reorganizations over a six-month period, NRCS recommended establishing a Civil Rights Employment Division to provide leadership on Title VII of the Civil Rights Act and achieve greater agencywide efficiency.
Jan. 1997	NRCS national headquarters briefly had separate units for Title VI and Title VII civil rights responsibilities.
Sept. 1997	The only headquarters unit with civil rights responsibilities was the Civil Rights Employment Division; the Title VI civil rights enforcement unit no longer existed.
Sept. 11, 1998	NRCS reorganized national headquarters and established a program outreach division under the Deputy Chief for Management.
Dec. 1998	NRCS renamed the headquarters civil rights unit more generally as the "Civil Rights Staff" and established vacancies for three to four civil rights compliance staff. However, at least two of these positions, including the director of compliance, remained vacant over the next year and a half.
FY 2000	NRCS restructured the Civil Rights Compliance and Employment Staff into a new Civil Rights Division aligned under the Office of the Chief. The new division had a Special Emphasis Program, a Complaints Branch, a Policy Branch, and five civil rights managers who were to oversee regional and state operations.
FY 2001	NRCS reduced the number of civil rights managers overseeing the six regional offices from six to five, and one or more positions have been vacant since then.
May 2003	NRCS issued amended civil rights policy guidance ( <i>General Manual 230</i> —"Part 405 Civil Rights Compliance in Program Delivery") with a section addressing pre- and post-award reviews.

<sup>334</sup> NRCS, CRIP 2002, pp. 3–4; Andrew Johnson, Jr., director, Civil Rights Staff, NRCS, letter to Les Jin, staff director, USCCR, June 2, 2003, p. 4 (hereafter cited as Johnson letter).

**FIGURE 2.14**  
**Organizational Structure of the Soil Conservation Service’s Civil Rights Components, Including**  
**Regional and State Offices, Before the 1994 Departmental Reorganization**



Source: USCCR, *Federal Title VI Enforcement*, pp. 310–12.

Until July 1994, the director of CR&PCD, who was responsible for developing and coordinating civil rights policy for SCS, reported to the Deputy Chief for Programs who reported to the chief of SCS, a line of authority that was effective depending upon the people filling the positions and the importance of civil rights to the chief (see figure 2.14). The 1994 reorganization resulted in the director of CR&PCD reporting to the Deputy Chief for Management, rather than the Deputy Chief for Programs, but did not create a more direct line of authority to the chief of SCS. The Commission concluded that CR&PCD did not have sufficiently high status within SCS to ensure that its director could influence critical agency decisions about budgets.<sup>335</sup> In accordance with the Commission’s recommendation,<sup>336</sup> the 2000 reorganization moved the Civil Rights Staff so that the division’s head reported directly to the chief of the now Natural Resources Conservation Service (see figure 2.15).<sup>337</sup> Because the director of CRS now advises and counsels the NRCS chief and other senior staff on nondiscrimination in conservation program delivery,<sup>338</sup> the Commission concludes that civil rights enforcement receives more attention.

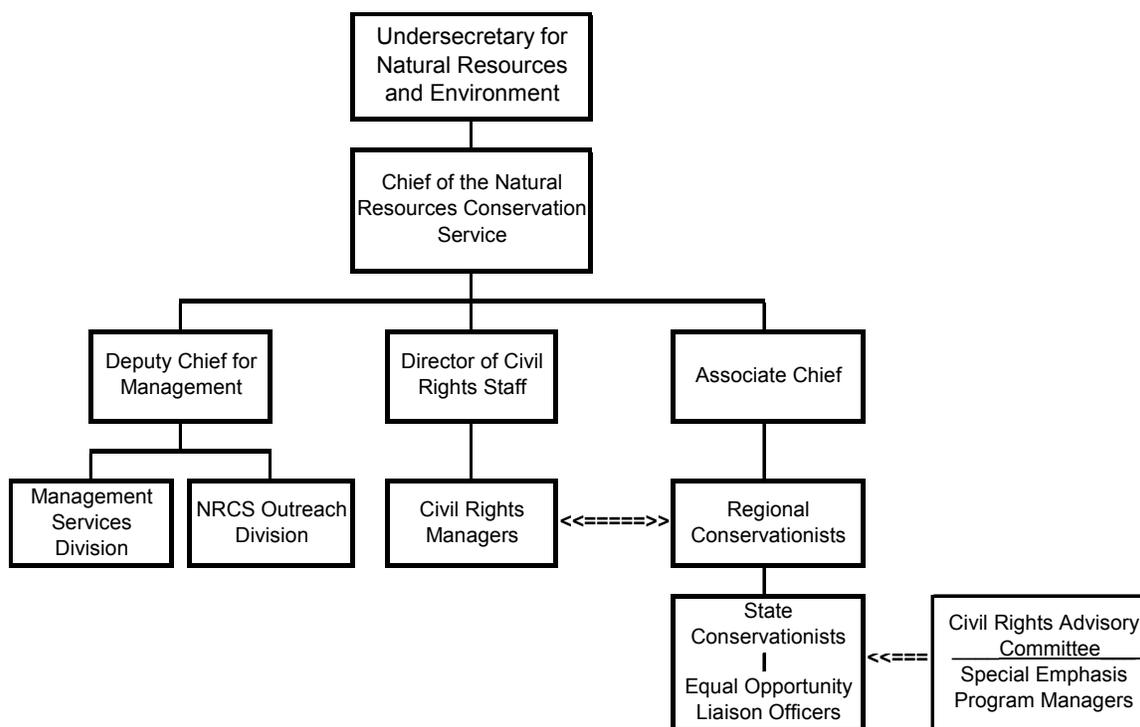
<sup>335</sup> USCCR, *Federal Title VI Enforcement*, pp. 310–12.

<sup>336</sup> *Ibid.*, pp. 321–22.

<sup>337</sup> USDA, NRCS, “Organization Chart,” <[www.nrcs.usda.gov/about/organization](http://www.nrcs.usda.gov/about/organization)> (Sept. 19, 2002).

<sup>338</sup> U.S. Department of Agriculture’s Response to the U.S. Commission on Civil Rights’ Interrogatory for Volume III of the Ten-Year Review of Civil Rights Enforcement, Natural Resources and Conservation Service, Civil Rights Staff, Dec. 10, 2002, tab 3 (hereafter cited as NRCS Interrogatory).

**FIGURE 2.15**  
**Organizational Structure of the NRCS' Civil Rights Components, Including Regional and State Offices, 2000–2002**



Source: USCCR, *Federal Title VI Enforcement*, pp. 310–12.

Other aspects of the organizational structure have changed, but not necessarily according to the Commission's recommendations. State offices carry out most compliance activities. A state conservationist heads each state office and a collateral-duty equal opportunity liaison officer, who reports to the state conservationist, carries out the civil rights activities. In 1994, the Commission was concerned that the state conservationists did not report to CR&PCD. Under SCS, the state conservationists reported to the assistant chief of their respective regional offices, who in turn reported to an associate chief of SCS, with the associate chief reporting to the chief of SCS. The Commission was concerned that without supervisory authority over the state staff who conduct civil rights activities, the director of CR&PCD could not assure that civil rights enforcement was consistently conducted throughout the agency or that the civil rights office could make crucial enforcement decisions.<sup>339</sup>

Much of the structure remains the same since the six NRCS regional offices were established in 1994. State conservationists report to regional conservationists, and the NRCS Civil Rights Staff still lacks supervisory authority over civil rights personnel in NRCS state offices (see figure 2.15).<sup>340</sup> However, each regional office now has a civil rights manager to advise the regional conservationist and coordinate and implement civil rights policy. The civil rights managers are located in the regional offices but since October 2000 are supervised by the director of CRS. The director of CRS

<sup>339</sup> USCCR, *Federal Title VI Enforcement*, pp. 311, 321–22.

<sup>340</sup> See USDA, NRCS, "Organization Chart"; NRCS Interrogatory, tab 4.

advises and provides guidance to all regional and state conservationists through the civil rights managers.<sup>341</sup> Thus, direct civil rights supervisory authority is still lacking, although coordination of civil rights activities and responsibilities may have improved.

In 1996, the Commission was further concerned that the collateral-duty civil rights personnel in the state offices were not trained civil rights specialists and had other duties, and as such were unlikely to have the expertise necessary to enforce Title VI. The Commission asked that all state office personnel performing civil rights functions be full-time, trained civil rights specialists.<sup>342</sup> In 2003, the Commission finds that state staff consists of 12 to 22 employees per state who are members of a Civil Rights Advisory Committee that meets two or three times a year to discuss civil rights activities and make recommendations on emerging issues to the state conservationist and special emphasis program managers who devote up to 20 percent of their time to both Title VI and Title VII activities.<sup>343</sup>

### **Resources—Funding and Staffing**

SCS' overall civil rights funding was \$377,000 in FY 1994.<sup>344</sup> Between 1994 and 2001, even after the reorganization, the agency did not have a separate budget allotment for CR&PCD (or, later, CRS), or an amount designated for Title VI enforcement.<sup>345</sup> During that time, the agency's civil rights functions were budgeted and maintained under the Deputy Chief for Management. The NRCS budget has had a line item for civil rights enforcement since FY 2001; however, it includes enforcement for both EEO and equitable program delivery. This amount was \$1.27 million in FY 2001 and \$1.86 million in FY 2002.<sup>346</sup> These are enormous increases. Even accounting for inflation, the FY 2001 budget is nearly three times, and the FY 2002 more than four times, the FY 1994 amount.<sup>347</sup> NRCS officials view the funding as sufficient to perform effective Title VI enforcement.<sup>348</sup>

From 1983 to 1994, CR&PCD never had more than six staff members. It had 10 staff members after the 1994 reorganization, but the increase accommodated the additional responsibilities of the Title VII/EEO program and did not augment the Title VI enforcement staff. CR&PCD staff found the heavy workload to be difficult and at times frustrating.<sup>349</sup>

Staffing plans since the 1994 reorganization reveal that with the many office changes and reorganizations, NRCS headquarters staff has fluctuated in size and included few if any employees in a job series related to Title VI enforcement. Figure 2.16 shows both positions, some of which were never filled, and staff. In mid-1997, the priority of Title VI enforcement diminished, with NRCS headquarters often having no staff or only one person in civil rights program compliance until the beginning of

<sup>341</sup> NRCS Interrogatory, tab 4.

<sup>342</sup> USCCR, *Federal Title VI Enforcement*, p. 322.

<sup>343</sup> NRCS Interrogatory, tab 12; Johnson letter, pp. 2–3.

<sup>344</sup> USCCR, *Federal Title VI Enforcement*, p. 312.

<sup>345</sup> *Ibid.*, p. 312; NRCS Interrogatory, tab 8.

<sup>346</sup> NRCS Interrogatory, tab 8.

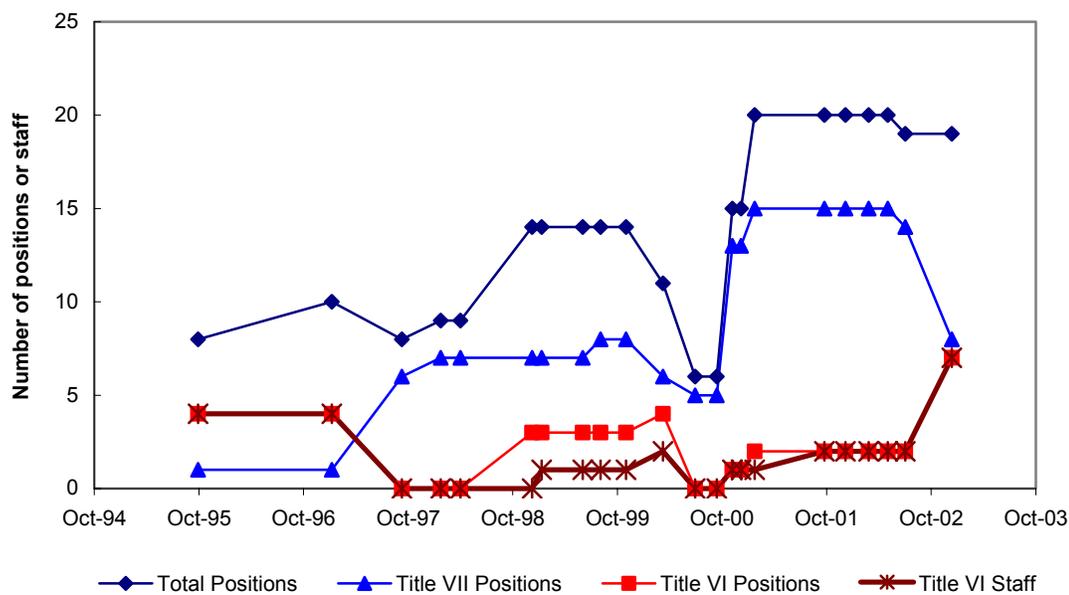
<sup>347</sup> To make comparisons, the allotments for FY 2001 and 2002 were deflated to 1994 dollars, using values (0.8664 and 0.8532) the Commission has applied elsewhere. See USCCR, *Funding Federal Civil Rights Enforcement 2000–2003*, April 2003.

<sup>348</sup> NRCS Interrogatory, tab 9.

<sup>349</sup> USCCR, *Federal Title VI Enforcement*, pp. 311–13.

FY 2002, at which point there were two.<sup>350</sup> Program compliance staff increased to seven by December 2002. NRCS officials explain, however, that all CRS staff are cross-trained and can therefore be used to accomplish both Title VI and Title VII enforcement requirements. Furthermore, CRS can draw upon EEO specialists detailed from elsewhere or on managers of special-emphasis programs (for African Americans, Hispanics, or persons with disabilities) to accomplish its workload.<sup>351</sup> NRCS officials reported that staffing for civil rights was sufficient, partly because NRCS leadership granted CRS additional resources, that is, employees on detail. For example, in the past two years, the chief of NRCS detailed 10 field and headquarters staff to assist CRS in carrying out its mission. The detailed assignments ranged from two weeks to one year in duration.<sup>352</sup>

**FIGURE 2.16**  
NRCS Headquarters Civil Rights Staffing, 1995–2002



Source: Compiled from NRCS, Civil Rights Staffing Plans, Sept. 29, 1995, to July 3, 2002.

<sup>350</sup> NRCS Staffing Plans, Sept. 29, 1995, to July 3, 2002. The staffing plans reveal the erratic effects of organizational changes on the staff. The number of full-time-equivalent positions (FTEs) reported for civil rights each fiscal year shows a more stable increasing trend over time (from nine in 1994 to 26 in 2003) and appears to include five or six more staff (who may be field staff) during 1996–1999 than are shown in the staffing plans presented above. *See* NRCS Interrogatory, tab 8. However, the FTEs do not show the distribution of positions between Title VI and Title VII functions. Apart from support staff, the job titles appearing in the staffing plans fell in the GS-360, “Equal Opportunity Compliance,” GS-361, “Equal Opportunity Assistance,” GS-260, “Equal Employment Opportunity,” and GS-343, “Management and Program Analysis,” series. Title VI enforcement falls within the GS-360 and GS-361 series, while GS-260 concerns Title VII and GS-343 involves budget analysis that is not necessarily related to civil rights. For the definitions of these positions, *see* U.S. Office of Personnel Management, “Position-Classification Standards for Equal Opportunity Compliance Series GS-360”; “Position-Classification Standards for Equal Opportunity Assistance Series GS-361”; “Position-Classification Standards for Equal Employment Opportunity GS-260,” TS-49, November 1980; and “Position-Classification Standards for Management and Program Analysis Series GS-343,” TS-98, August 1990.

<sup>351</sup> NRCS Interrogatory, tab 7.

<sup>352</sup> *Ibid.*, tabs 10, 11.

CR&PCD did not have regional civil rights offices or staff before the 1994 organization. Within each state, civil rights staffing consisted of the state conservationist, responsible for civil rights enforcement, and the collateral-duty equal opportunity liaison officer, assigned to civil rights compliance activities.<sup>353</sup> From 1995 through 2003, staffing levels had improved only slightly. Regional offices now have civil rights managers to coordinate between the conservationists and CRS. There are six regional offices, but since FY 2001 only four have civil rights managers.<sup>354</sup> There are still no full-time civil rights specialists assigned to state offices. All civil rights personnel in state and other administrative units have other duty assignments.<sup>355</sup>

Three to five nationally trained Title VI CRS staff members, the civil rights managers, conduct all external civil rights compliance reviews.<sup>356</sup> The compliance review schedule for FY 2002 planned 11 weeklong compliance reviews, each in a different state. The FY 2003 schedule plans a similar number.<sup>357</sup>

In 2003, the Commission finds that NRCS staffing resources may not be sufficient to enforce Title VI. First, it questions whether the agency has staff with appropriate knowledge and skills in Title VI enforcement to ensure compliance under this title. From 1994 until late 2002, the headquarters civil rights unit has had almost no civil rights compliance staff. Second, if cross-trained staff jointly conduct Titles VI and VII compliance reviews, staff can be diverted away from focusing on Title VI enforcement. Third, it is doubtful that staff detailed to CRS from elsewhere in the agency would have the in-depth knowledge and skills to carry out civil rights enforcement, particularly because all field staff have collateral duties.

### **Planning**

SCS prepared annual Civil Rights Implementation Plans, which were submitted to the department's Office of Civil Rights and then to the Department of Justice. In its review of these plans for FY 1990–1994, the Commission found that the 1990 plan contained long-range goals and objectives that addressed the elements of enforcement according to the Department of Justice's requirements.<sup>358</sup> The Commission has urged that all federal agencies develop planning documents, including strategic plans with civil rights objectives, comprehensive civil rights enforcement plans covering the full complement of responsibilities, Title VI implementation plans, and work plans for civil rights enforcement. The Title VI plans should include measurable goals and objectives with timeframes for accomplishing them and be based on realistic assessments of resources available for enforcement. They should serve as a management tool to acquire additional resources when the workload increases.<sup>359</sup>

<sup>353</sup> USCCR, *Federal Title VI Enforcement*, pp. 311–12. In 1993, there were 52 state conservationists and 56 liaison officers. Ibid.

<sup>354</sup> NRCS Interrogatory, tabs 2, 5; NRCS, CRIP 2001, p. 4.

<sup>355</sup> NRCS Interrogatory, tabs 12, 27.

<sup>356</sup> Ibid., tabs 5, 11.

<sup>357</sup> NRCS, "Civil Rights Title VI and Title VII Compliance Review Schedule, Fiscal Year 2002," (hereafter cited as NRCS, "Compliance Review Schedule, FY 2002"); NRCS, "Fiscal Year 2003 NRCS Civil Rights Compliance Review Schedule," Dec. 10, 2002.

<sup>358</sup> USCCR, *Federal Title VI Enforcement*, pp. 320–21.

<sup>359</sup> U.S. Commission on Civil Rights, *Ten-Year Check-Up: Have Federal Agencies Responded to Civil Rights Recommendations? Volume I: A Blueprint for Civil Rights Enforcement*, September 2002, pp. 20–24.

The NRCS strategic plan for FY 2000–2005 has an objective of delivering services fairly and equitably. In FY 1999, NRCS programs served 54,800 minority, underserved, and nontraditional customers. The NRCS target for 2005 is to serve 100,000 members of minority, underserved, and nontraditional groups. The means for achieving this target include, for example, strengthening ties with minority-serving academic institutions and community-based organizations; and working with tribal governments to establish offices and assistance in program delivery.<sup>360</sup> In addition, NRCS compiles reports listing its civil rights accomplishments, including for example, the number of compliance reviews conducted, contacts or activities with minority-serving academic institutions and community-based organizations, and newly established offices serving Indian reservations.<sup>361</sup>

In 1996, because of the lack of a budget allotment for civil rights, the Commission concluded that the agency was hampered in engaging in managing or planning its civil rights enforcement activities and should develop and implement an information management system to track its expenditures, use this system in developing an annual civil rights enforcement plan showing the activities it will conduct and the resources it needs for each activity, and track expenditures, resources, and workload over time to demonstrate the need for additional resources to address a growing workload.<sup>362</sup>

Since then, NRCS has implemented a tracking system that measures program results in terms of the equity of services and beneficiaries among racial or ethnic groups.<sup>363</sup> It also has a system for recording civil rights accomplishments, for example, that states developed outreach plans to improve service delivery to underserved groups, or that the agency conducted 12 civil rights compliance reviews in FY 2002.<sup>364</sup> However, this system does not enable NRCS to identify the resources expended on different civil rights activities, such as conducting outreach or performing compliance reviews, so that the information can be used to justify the need for and costs of further civil rights activities during program planning. Furthermore, accomplishments and expenditures related to Title VI and Title VII are not distinguished within the system. Because information on accomplishments is not organized according to statutory authority, one cannot easily determine whether NRCS allotted appropriate levels of resources to Title VI or other civil rights statutes, let alone justify any need for additional resources.

### **Policy Guidance**

SCS was supplementing USDA regulations and Departmental Regulation 4300-1 with its *General Manual 230*, Part 405, which had been issued and revised several times between 1987 and 1996. The Commission in its 1996 review found that the manual addressed most aspects of SCS' Title VI compliance and enforcement program, but asked that it include sections requiring pre-award reviews of recipients before funds are released to them, and provide procedures for conducting such reviews.<sup>365</sup> A draft revision of the manual, dated May 2003, provides guidance on pre- and post-award re-

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<sup>360</sup> USDA/NRCS, *Natural Resources Conservation Service Strategic Plan, 2000–2005*, September 2000, p. 41.

<sup>361</sup> See, e.g., NRCS, *Civil Rights Performance Report, Fiscal Year 2001* (hereafter cited as NRCS, *CR Performance Report, FY 2001*); NRCS, *Civil Rights Performance Report, Fiscal Year 2002* (hereafter cited as NRCS, *CR Performance Report, FY 2002*).

<sup>362</sup> USCCR, *Federal Title VI Enforcement*, p. 322.

<sup>363</sup> See NRCS Interrogatory, tab 14; and, for example, NRCS, *PRMS [Performance & Results Measurement System] Reports, Parity Report, FY 2003 National, All Programs* (hereafter cited as NRCS, *PRMS Parity Report, FY 2003*).

<sup>364</sup> See, e.g., NRCS, *CR Performance Report, FY 2002*.

<sup>365</sup> USCCR, *Federal Title VI Enforcement*, pp. 313, 322–23.

views.<sup>366</sup> In FY 2003, directors of CRS and the Management Services Division will be cooperating to ensure that NRCS staff and funding recipients adhere to this guideline.<sup>367</sup>

### **Technical Assistance**

In 1996, the Commission found that CR&PCD was providing technical assistance to state and local agency staff both on request and at its own initiative. But technical assistance was provided to recipients only on request, usually once or twice a year. In 1993, it had provided technical assistance and civil rights training in six states. The technical assistance included two training seminars for recipients on their role in ensuring equity in program delivery.<sup>368</sup> From 1995 through 2003, civil rights managers were providing technical assistance continually, including training, interpreting policy, and responding to complaint inquiries and concerns about civil rights issues.<sup>369</sup>

### **Education and Outreach**

In 1996, the SCS general manual had detailed instructions for notifying constituent groups of the agency's and USDA's policy of nondiscrimination and of the procedures for filing a complaint. SCS publicized the nondiscrimination policy in public service announcements, news releases, educational materials, publications, and slide presentations. CR&PCD disseminated information in non-English languages and responded to the state conservationists' requests for publication in different languages. Despite the substantial steps to inform the public about civil rights under Title VI, the Commission was concerned that education and outreach activity was insufficient because SCS received almost no Title VI complaints. It recommended that CR&PCD conduct a study of education and outreach activities to identify areas of weakness and populations that are not being served adequately and develop and implement a strategic education and outreach plan to ensure that all recipients, participants, beneficiaries, and the public are aware of SCS' programs and of their rights and responsibilities under Title VI.<sup>370</sup>

Along with NRCS' national headquarters reorganization in 1998 and as a response to a recommendation of USDA's Civil Rights Action Team, an Outreach Division was established under the Deputy Chief for Management. Thus, the outreach function was removed from the responsibility of the Civil Rights Staff.<sup>371</sup>

Among the Outreach Division's functions are providing national coordination of all agency outreach activities and initiatives and developing management strategies and plans for outreach and collaborative endeavors with various entities.<sup>372</sup> It continues to inform actual and potential customers about NRCS programs and farm bill initiatives through videos, Web sites, regional brochures, local multi-agency field days; and workshops, seminars, and conferences. The division organized special sessions about the farm bill for American Indian tribes and for limited-resource farmers. It published and disseminated all farm bill documents in Spanish and produced educational videos and other

<sup>366</sup> NRCS, *General Manual 230—Part 405*, "Civil Rights Compliance in Program Delivery," amended May 2003, Sec. 405.9.

<sup>367</sup> Johnson letter, p. 5.

<sup>368</sup> USCCR, *Federal Title VI Enforcement*, p. 317.

<sup>369</sup> NRCS Interrogatory, tab 39; Johnson letter, p. 5.

<sup>370</sup> USCCR, *Federal Title VI Enforcement*, pp. 315–16, 323.

<sup>371</sup> NRCS, CRIP 2001, pp. 2, 4; NRCS, CRIP 2002, p. 1; NRCS Interrogatory, tab 34.

<sup>372</sup> NRCS Interrogatory, tab 34.

communications on the farm bill documents in Asian languages.<sup>373</sup> Furthermore, NRCS has begun to review the effectiveness of its outreach in several states and has obtained input from tribal liaisons, state conservationists, and program coordinators, all of whom have met or worked with Native American tribes. Its FY 2003 budget requests resources for more outreach reviews and feasibility studies concerned with limited English proficiency and other issues.<sup>374</sup>

Even though the Outreach Division and the Civil Rights Staff are distinct units, considerable interaction occurs between them. The staffs of CRS and the Outreach Division meet each month, and more often if needed. Furthermore, the Outreach Division's regional outreach coordinators, the regional civil rights managers, and local outreach coordinators collaborate on field activities concerned with program delivery. Perhaps most important, the Outreach Division examines CRS' compliance review reports to identify where outreach is most needed. NRCS officials are satisfied with the location and organizational structure of its Outreach Division, claiming that it is effective, efficient, and productive.<sup>375</sup>

With each state developing outreach plans, the agency's outreach efforts take many forms, such as workshops to educate landowners and producers about NRCS programs. Approximately 360 minority landowners participated in workshops held in conjunction with annual farm and land development conferences in Arkansas.<sup>376</sup>

### **Complaint Processing**

In its 1996 report, the Commission found that CR&PCD investigated all complaints pertaining to SCS-funded programs, but in 1993 had received only one Title VI complaint. The Commission concluded that the lack of Title VI complaints indicated that SCS' education and outreach on Title VI were inadequate.<sup>377</sup> In 2002, investigation of program complaints was the responsibility of the Department of Agriculture's Office of Civil Rights, not of NRCS' Civil Rights Staff, and responsibility for outreach was assigned to an Outreach Division under NRCS' Deputy Chief for Management.<sup>378</sup> The number of program complaints has increased. Between FY 1996 and 2002, the number of complaints was typically between 10 and 15 (see figure 2.17).<sup>379</sup> NRCS officials view this number of complaints as low relative to the number of program beneficiaries and attribute the increase to efforts

<sup>373</sup> Ibid., tab 35.

<sup>374</sup> Ibid., tabs 35, 36.

<sup>375</sup> Ibid., tab 34.

<sup>376</sup> NRCS, *CR Performance Report, FY 2002*, pp. 1, 16.

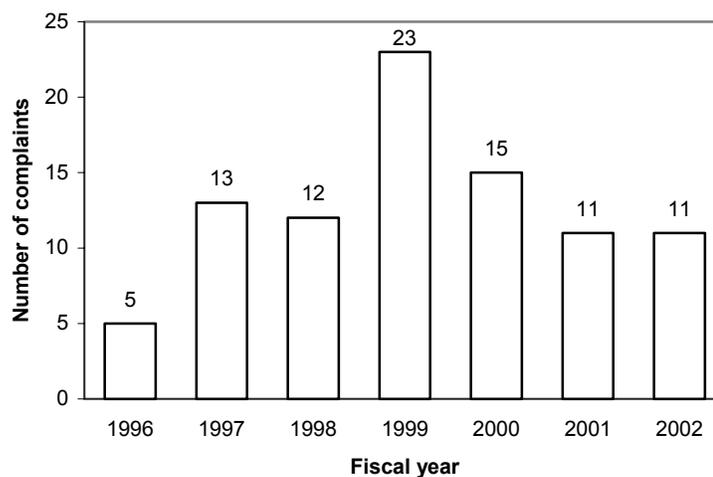
<sup>377</sup> USCCR, *Federal Title VI Enforcement*, pp. 315, 323.

<sup>378</sup> NRCS, CRIP 2001, pp. 2, 4; NRCS, CRIP 2002, pp. 1–2; NRCS Interrogatory, tab 32. A memorandum of understanding spells out the responsibilities of USDA's Office of Civil Rights (OCR) and NRCS, including OCR's oversight authority and obligation to inform NRCS of the complaint, and NRCS' responsibility to determine the jurisdiction, to forward appropriate complaints to OCR, and to maintain accurate and up-to-date records in a complaint tracking system accessible to OCR. USDA/OCR, NRCS, "Memorandum of Understanding between the Natural Resources Conservation Service and the U.S. Department of Agriculture, Office of Civil Rights," Jan. 31, 2001.

<sup>379</sup> NRCS Interrogatory, tab 30; Frederick D. Isler, deputy director for programs, Office of Civil Rights, U.S. Department of Agriculture, memorandum to Andrew Johnson, Jr., director, Civil Rights Staff, NRCS, re: Response to "Ten-Year-Check-Up: Have Federal Agencies Responded to Civil Rights Recommendations?" Nov. 26, 2002. Note that elsewhere the number of Title VI complaints is given as 19 in FY 2001 and, in FY 2002, an additional 11 complaints are indicated as concerned with Title VI and other program issues. See NRCS, CRIP 2001, p. 6; NRCS, CRIP 2002, p. 6.

toward educating program participants.<sup>380</sup> In short, outreach is more successful now than in the past in making program recipients and beneficiaries aware of their civil rights, but the low number of complaints suggests that still more effort is needed.

**FIGURE 2.17**  
**NRCS Title VI Complaints Received, 1996–2002**



Source: NRCS Interrogatory, tab 30.

According to the Commission's 1996 report, if CR&PCD finds noncompliance while investigating a complaint, it will ask the recipient to develop a corrective action plan. However, such a case had not arisen because most problems are resolved before the complaint processing is completed.<sup>381</sup> No complaints investigated in FY 2001 and 2002 resulted in findings of noncompliance.<sup>382</sup> But again, the small number of complaints filed and processed may suggest that program beneficiaries are not aware of their civil rights rather than that NRCS programs are not discriminatory.

### **Compliance Reviews**

Previously, the state conservationists and their equal opportunity liaison officers, in conjunction with district conservationists (who oversee state subdivisions), were responsible for all Title VI field activities, including pre- and post-award reviews. CR&PCD was charged with monitoring the state conservationists to ensure that they were carrying out these responsibilities. In the Commission's 1996 study, district conservationists performed 3,000 pre-award reviews annually and reported the results to the state conservationists and CR&PCD. Because of the absence of pre-award instructions in the SCS general manual and the large number of pre-award reviews completed each year, the Commission was concerned that the reviews were cursory rather than comprehensive. It urged that the reviews go beyond ensuring that applicants have submitted an assurance of Title VI compliance and further include analyzing information the applicant submits on the funded programs or projects,

<sup>380</sup> NRCS Interrogatory, tab 31. CRS staff further suggested that complaints are low because in the past most NRCS programs have provided technical assistance and not any monetary benefits. Johnson letter, pp. 5–6.

<sup>381</sup> USCCR, *Federal Title VI Enforcement*, p. 315.

<sup>382</sup> NRCS, CRIP 2001, p. 7; NRCS, CRIP 2002, p. 7.

the populations served or negatively affected, the applicant's policies and procedures, any discrimination complaints lodged against the applicant, and any previous findings of compliance or noncompliance relating to the applicant.<sup>383</sup>

As mentioned above, NRCS expects departmental guidance on pre- and post-award reviews during FY 2003. In the absence of this guidance, NRCS officials did not explain what roles state conservationists, equal opportunity liaison officers, district conservationists, and CRS have had in conducting or monitoring pre- and post-award reviews, indicating that this information would be included in the revised general manual. Nor did the officials explain what a pre-award review has entailed in the past, what assurances of nondiscrimination were required, what types of analyses of policies, procedures, and program beneficiaries have been performed, or under what circumstances on-site reviews were conducted.<sup>384</sup> Yet, NRCS continued to conduct a large number of pre-award reviews with very few staff through FY 2001. Workload data reported to the Department of Justice for FY 2001 show NRCS conducted 1,725 pre-award reviews, 1,150 of them on site, using three work years.<sup>385</sup> In FY 2002, data show NRCS performed only 45 pre-award reviews, 21 of them on site, using three work years.<sup>386</sup> NRCS officials did not explain what changes resulted in the much smaller number of pre-award reviews reported for FY 2002 or how the reviews might have changed.<sup>387</sup>

In 1996, the Commission found that the SCS had an active post-award review program, but was concerned that collateral-duty personnel conducted the reviews, not trained civil rights specialists. It recommended that each state have at least one full-time civil rights specialist to conduct civil rights reviews.<sup>388</sup> As indicated earlier, this situation has improved somewhat. Although states still do not have full-time civil rights specialists to conduct reviews, four regional civil rights managers now conduct compliance reviews.

In a report to the Department of Justice, NRCS reported devoting 15 work years to completing 594 post-award reviews and initiating another 1,311 reviews on covered recipients in FY 2001. In FY 2002, with the same number of resources, NRCS completed 338 reviews on an estimated 524 covered recipients. None of these reviews produced findings of noncompliance.<sup>389</sup> Elsewhere, the agency indicates that it completed approximately 440 program compliance reviews in FY 2001 and 400 in FY 2002. It found deficiencies and inadequacies, including disparities in minority participation, and demanded corrective actions.<sup>390</sup> NRCS also reported that it completed 12 "national compliance reviews" concerning Title VI. These were oversight reviews of states.<sup>391</sup> The Commission now finds that NRCS must accurately count the number of completed compliance reviews and distinguish between different types of reviews. A thorough analysis of the effectiveness of a compliance review process requires clarity about whether headquarters, regional, state, or district staff conducted the reviews; whether state, district, field office or external operations were reviewed; and whether Title VI or other civil rights issues were covered.

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<sup>383</sup> USCCR, *Federal Title VI Enforcement*, pp. 314–15, 323.

<sup>384</sup> NRCS Interrogatory, tabs 22, 24, 25.

<sup>385</sup> NRCS, CRIP 2001, p. 9.

<sup>386</sup> NRCS, CRIP 2002, p. 9.

<sup>387</sup> *Ibid.*; NRCS Interrogatory, tabs 23–25.

<sup>388</sup> USCCR, *Federal Title VI Enforcement*, pp. 315, 323.

<sup>389</sup> NRCS, CRIP 2001, p. 10; NRCS, CRIP 2002, p. 10.

<sup>390</sup> See NRCS, *CR Performance Report, FY 2002*, pp. 26, 29–30; NRCS, *CR Performance Report, FY 2001*, p. 17.

<sup>391</sup> NRCS, *CR Performance Report, FY 2002*, p. 26; see also NRCS, "Compliance Review Schedule, FY 2002," which listed 11 states scheduled to receive compliance reviews.

The Commission noted that SCS' general manual included a section on data collection and reporting requiring each SCS program office to collect and report racial, ethnic, and gender for program participants and eligible program beneficiaries. CR&PCD analyzes the data each year to determine disparities and identify areas for outreach efforts. The Commission recommended that SCS continue collecting and analyzing these data to support Title VI enforcement.<sup>392</sup>

In 2002, NRCS was still expanding its data collection system to better represent program delivery activities for each of its programs based on race, gender, national origin, and disability. For example, information on disability was added to the information system in FY 2002. NRCS staff can monitor progress in customer service by race, gender, ethnicity, and now disability using standard reports compiled by such factors as location, conservation program, and customer type. Analyses typically compare the parity of NRCS service beneficiaries with population statistics (e.g., agricultural landowners or operators on the bases of race, gender, and ethnicity) from the National Census of Agriculture.<sup>393</sup>

### **Staff Training**

The SCS general manual requires that all employees with program delivery responsibilities receive civil rights compliance training within six months of assuming such responsibilities and delineates topics that should be covered in the training. When the Commission reviewed SCS in 1996, all new employees with civil rights/EEO responsibilities were receiving civil rights training. CR&PCD had developed a training guide with six modules on Title VI and was conducting semiannual training seminars for state and local agency staff. The Commission asked that the agency continue to provide comprehensive civil rights training, including Title VI, to all staff engaged in Title VI enforcement.<sup>394</sup>

In 2002, NRCS reported that new employees receive training within six months of their hire and that civil rights training is conducted annually for all employees. The orientation for new employees, however, does not have any Title VI content. The annual civil rights training had little obvious Title VI content on program delivery in the years from 1997 to 2002.<sup>395</sup> NRCS' training center, the National Employee Development Center, conducted 11 training sessions on civil rights compliance in program delivery during FY 2001, reaching only about 375 NRCS managers and supervisors.<sup>396</sup> Thus, in recent years NRCS' civil rights training for employees has been less frequent and less focused on Title VI compliance than when the Commission last studied this USDA component.

<sup>392</sup> USCCR, *Federal Title VI Enforcement*, pp. 319–20, 324.

<sup>393</sup> NRCS Interrogatory, tabs 45, 46, 47. See, e.g., NRCS, *PRMS Parity Report FY 2003*.

<sup>394</sup> USCCR, *Federal Title VI Enforcement*, pp. 319, 324.

<sup>395</sup> During this period, a 2000 program included training on civil rights program delivery. NRCS Interrogatory, tab 44. See also NRCS, "Orientation for New Employees," Washington, D.C., May 21–25, 2001, agenda. Elsewhere, a performance report notes that FY 2001 included training for all staff that addressed "aspects of Civil Rights issues pertaining to program delivery." See NRCS, *CR Performance Report, FY 2001*, p. 22. A 2002 training conference for special emphasis program managers had sessions on the use of statistical data and census data on race and ethnicity and on outreach. See NRCS, "Special Emphasis Program Managers Training Conference, Special Emphasis Programs: [agenda], Saint Louis, Missouri, August 27–29, 2002." Some improvement was occurring in 2003 with a training session on compliance in program delivery conducted in Missouri in April, and others scheduled for South Carolina and North Dakota in June and September. See NRCS, National Employee Development Center, "NEDC Course Schedule for 2003," <[www.nedc.nrcs.gov/catalog/schedule.html](http://www.nedc.nrcs.gov/catalog/schedule.html)> (May 30, 2003).

<sup>396</sup> NRCS, *CR Performance Report, FY 2001*, p. 22.

### ***Oversight and Quality Assurance***

CR&PCD did not have supervisory authority over the state conservationists, as indicated earlier. According to the Commission's 1996 report, CR&PCD had contact with them through (1) telephone calls and letters initiated by the state conservationists, (2) the annual reports the state conservationists submitted on state activities and the resolution of any problems in them, and (3) post-award on-site compliance reviews. Through these contacts, the director of CR&PCD reported having personal contact with approximately 15 state conservationists a year.<sup>397</sup> Although the director of the Civil Rights Staff still does not have supervisory authority over the state conservationists, the higher placement of the CRS director in the agency's structure and the assignment of civil rights managers to regional offices increased the contact between CRS and the state conservationists.

Under CR&PCD, civil rights managers were conducting oversight reviews of states on a five-year cycle, and states were conducting reviews of field offices on a three- to five-year cycle, or roughly 10 reviews each year. CR&PCD staff reviewed extensive information and documents in preparing for a state compliance review and determining which field offices states would review. They spent approximately three to four months interviewing field staff and representatives of recipient groups to ensure that they knew their responsibilities in conducting compliance reviews.<sup>398</sup> In 2002, the frequency of CRS reviews of states and of state reviews of field offices remained the same.<sup>399</sup>

In 1996, the Commission concluded that with the assistance of state conservationists to conduct day-to-day enforcement activities, CR&PCD had an effective system for monitoring Title VI enforcement throughout the agency's programs. The Commission was concerned, however, that CR&PCD did not have much contact with state conservationists except during these reviews. It urged the division to expand its technical assistance activities so that state office civil rights personnel have frequent contact with CR&PCD.<sup>400</sup>

In 2003, the Commission finds that the civil rights managers in the regional offices, who report to the director of CRS but provide assistance to the region and states, have, at least to some extent, filled the need for further coordination. These managers coordinate and conduct civil rights compliance reviews and discuss the findings of these reviews with the state conservationists.<sup>401</sup>

### ***Coordination***

In its 1996 report, the Commission found minimal interaction between SCS and the Department of Agriculture's Office of Civil Rights Enforcement (OCRE). The two offices reportedly interacted when an SCS complaint could not be resolved voluntarily. OCRE controlled the interaction, communicating its directives to CR&PCD, but was not responsive to CR&PCD's requests, for example, for guidance or clarification on civil rights issues.<sup>402</sup>

In 2003, the Commission finds that NRCS interacts much more frequently with departmental staff and offices. The agency reported coordination and interaction with the department's Office of Civil Rights in reviewing information on policy development, the status of program complaints, compli-

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<sup>397</sup> USCCR, *Federal Title VI Enforcement*, p. 317.

<sup>398</sup> *Ibid.*, pp. 317–18.

<sup>399</sup> NRCS Interrogatory, tabs 40, 43.

<sup>400</sup> USCCR, *Federal Title VI Enforcement*, pp. 323–24.

<sup>401</sup> NRCS Interrogatory, tab 5.

<sup>402</sup> USCCR, *Federal Title VI Enforcement*, p. 314.

ance and noncompliance of settlement agreements, compliance reviews, reporting requirements, Civil Rights Impact Analyses, and other civil rights functions and activities.<sup>403</sup> NRCS had communicated regularly with OCR to ensure that NRCS complaints were processed and reconciled. The NRCS Civil Rights Staff (CRS) were providing information and assistance to OCR to facilitate case processing.<sup>404</sup> Furthermore, in FY 2002, CRS provided training to NRCS program staff on how to conduct Civil Rights Impact Analyses of the effects of program changes. Training on Civil Rights Impact Analyses had last been provided in 1999.<sup>405</sup>

NRCS also has contact with other departmental headquarters offices such as the Office of Outreach and Office of General Counsel. The USDA Office of Outreach holds monthly meetings with USDA agencies' staff, including the NRCS Outreach Division staff. Through these meetings the NRCS Outreach Division has conducted, assisted with, or participated in departmentwide forums and conferences, some of which concerned the 2002 farm bill. In addition, CRS consults with the department's Office of General Counsel, Civil Rights Division, regarding any legal issues or concerns that involve civil rights matters.<sup>406</sup> Thus, NRCS coordination and contact with USDA offices concerning civil rights issues have improved.

### **Community Involvement**

In 1993, CR&PCD had identified grassroots organizations that could enable it to strengthen its program outreach and initiatives; however, the Commission concluded that its education and outreach activity was insufficient for ensuring nondiscrimination.<sup>407</sup> Perhaps because of the establishment of the Office of Outreach and states' development and implementation of outreach plans, NRCS has developed much stronger relationships with community-based organizations. NRCS has formed Employee Advisory Councils representing Asian American/Pacific Islanders, Hispanics, and American Indian and Alaskan Natives to advise the agency on how to target diverse groups and on the effects of the 2002 farm bill. In FY 2000 and 2001, NRCS worked with local food and agriculture councils, and resource conservation and development councils and associations, which sponsor many projects. NRCS has also worked with the National Black Mayors Incorporation, the National Organization of Black County Officials, and Native American tribes.<sup>408</sup>

### **Conclusion**

In the years since the Commission studied the Soil Conservation Service, the agency has been reorganized to become the Natural Resources Conservation Service. Organizational changes have resulted in some advances in civil rights enforcement to ensure nondiscriminatory program delivery, and some backward sliding. The Civil Rights Staff has risen to a more prominent location in the organizational structure, giving a higher priority to civil rights. NRCS established an Office of Outreach to give additional attention to this function, although the office is located under management removed from the Civil Rights Staff. Staff continues to be responsible for civil rights functions related to both equal employment and program delivery. Funding and staffing have been increased, the

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<sup>403</sup> NRCS Interrogatory, tab 16.

<sup>404</sup> NRCS, *CR Performance Report, FY 2002*.

<sup>405</sup> NRCS Interrogatory, tab 18.

<sup>406</sup> *Ibid.*, tabs 16, 37.

<sup>407</sup> USCCR, *Federal Title VI Enforcement*, pp. 316–17, 323.

<sup>408</sup> NRCS, *CR Performance Report, FY 2001*, pp. 2, 24–37, 43–44; NRCS, *CR Performance Report, FY 2002*, pp. 1–3.

latter very recently, but planning mechanisms are still unable to determine the amount of resources devoted to Title VI enforcement rather than other civil rights functions. Thus, NRCS is impaired in linking the amount of additional resources it needs to the statutory authority for those needs in its funding requests.

The Civil Rights Staff of NRCS is still in the process of developing policy guidance to address concerns the Commission raised in 1996, for example, on conducting pre- and post-award reviews. At the same time, its civil rights training, offered annually, has far too little content on Title VI enforcement. Although a recently formed Office of Outreach has increased the number of program complaints, the low number of complaints suggests that more outreach is needed. Finally, wide variation in the numbers of compliance reviews conducted each year suggests some reviews are more in-depth than others and that NRCS needs more guidance on different types of reviews and how to conduct them.

## Chapter 3

# Department of the Interior

As the nation's principal conservation agency, the Department of the Interior (DOI) has responsibility for most of America's public lands and natural resources. This responsibility entails fostering sound use of the nation's land and water resources; protecting its fish, wildlife, and biological diversity; preserving the environmental and cultural values of its national parks and historical places; and providing for the enjoyment of life through outdoor recreation. DOI assesses the country's energy and mineral resources and works to ensure that their development is in the best interests of all American people by encouraging stewardship and citizen participation in their care. DOI also has a major responsibility for American Indian reservation communities and for people who live in island territories under U.S. administration.<sup>1</sup>

### Overview

The Commission last reviewed the Department of the Interior's civil rights enforcement program in 1996. At that time, the only bureaus with active Title VI programs were the National Park Service (NPS), the Fish and Wildlife Service (FWS), and the Bureau of Reclamation (WBR). In 1991, the Office for Equal Opportunity (OEO) had assumed new responsibility for coordinating and developing civil rights policy at DOI.<sup>2</sup> OEO's duties entailed the "overall direction, policy development, and oversight of bureaus' Title VI enforcement efforts."<sup>3</sup> Its new role not only increased bureau accountability, but also allowed OEO to assign more personnel to civil rights enforcement work.<sup>4</sup>

A year before the Commission's review, as OEO reorganized its federal financial assistance programs and federal employment staffs, DOI was participating in the National Performance Review Reinvention Laboratory. Both DOI and OEO sought to streamline and improve civil rights performance. OEO hoped to accomplish this by assembling the external civil rights Federal Financial Assistance Programs staff and internal equal employment opportunity Federal Employment Programs staff into a team structure.<sup>5</sup> Staff supervisors, possessing no civil rights enforcement training, would also

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<sup>1</sup> U.S. Department of the Interior, Minerals Management Service, "20 Years of Service to America, MMS, Minerals Management Service, 1982–2002."

<sup>2</sup> U.S. Commission on Civil Rights, *Federal Title VI Enforcement to Ensure Nondiscrimination in Federally Assisted Programs*, June 1996, p. 388 (hereafter cited as USCCR, *Federal Title VI Enforcement*). When the Commission reviewed OEO in 1996, it established that OEO had decentralized its civil rights program in 1991. Prior to 1991, the civil rights program had been centralized. In 1996, OEO stated that decentralization had improved its civil rights performance efforts. Currently, OEO is planning to centralize its civil rights program. If centralization is approved, the scheduled effective date for full implementation is October 1, 2003. The director believes that centralization will dramatically improve OEO's civil rights compliance and enforcement efforts. See E. Melodee Stith, interview in Washington, D.C., Jan. 15, 2003 (hereafter cited as Stith interview).

<sup>3</sup> USCCR, *Federal Title VI Enforcement*, p. 388.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

be replaced with process managers, who would receive civil rights enforcement training.<sup>6</sup> Before the reorganization, personnel did not work as closely and were less familiar with the programs they administered and program recipients. Because of these factors, they were not held accountable for the administration of these programs. After reorganization, process managers and staff would be held directly accountable for the programs they administered.<sup>7</sup> DOI focused on ensuring that existing regulations and operational procedures allowed efficient and effective enforcement of civil rights laws.<sup>8</sup>

### Priority of Civil Rights

In 1996, the OEO director reported to the Deputy Assistant Secretary for Human Resources, not the Secretary of the Interior, from whom the director was several levels removed.<sup>9</sup> The lack of immediate access to the Secretary likely hindered OEO's efforts to enforce Title VI in all of DOI's federally assisted programs and activities. This arrangement may have also hindered the enforcement of other civil rights laws at DOI and the department's equal employment opportunity program, which OEO administered.<sup>10</sup> The director stated that she had "ready access to both the Assistant Secretary for Policy, Budget, and Administration and the Deputy Assistant Secretary for Human Resources," participated in weekly meetings with these officials, and met with all office directors bimonthly.<sup>11</sup> The Commission noted that OEO's enforcement efforts would benefit if the director reported to the Secretary, thus giving civil rights the same priority as other DOI responsibilities.<sup>12</sup>

The Commission's 2003 review finds that the director is still several levels removed from the Secretary. According to OEO, the reporting hierarchy has not changed during the past 10 years: the director still reports to the Deputy Assistant Secretary for Human Resources and Workforce Diversity (DASHRWD), who reports to the Assistant Secretary for Policy, Management and Budget (ASPMB).<sup>13</sup> Despite having direct access to the DASHRWD and ASPMB, the director's comments reach the Secretary through one or two supervisors. OEO still maintains that this does not negatively affect the civil rights program because the Office of Policy, Management and Budget (PMB) makes

<sup>6</sup> *Ibid.*, pp. 388–89.

<sup>7</sup> USCCR, *Federal Title VI Enforcement*, p. 388. In 1996, the Commission was unable to evaluate the likelihood that OEO would meet its goal because OEO did not provide the Commission with much information on its reorganization.

<sup>8</sup> USCCR, *Federal Title VI Enforcement*, pp. 388–89.

<sup>9</sup> E. Melodee Stith has been director of the Office for Equal Opportunity during the Commission's 1996 review and the present one. See Stith interview.

<sup>10</sup> In addition to Title VI of the Civil Rights Act of 1964, OEO is responsible for enforcing the following civil rights laws, executive orders, and DOI regulations: Title VII of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972, as amended; Title II of the Americans with Disabilities Act; Section 504 of the Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 357 (codified as amended at 29 U.S.C. § 701 (1994)); Age Discrimination Act of 1975, Pub. L. No. 94-175, 89 Stat. 728 (codified as amended at 42 U.S.C. § 6101 (1994)); Exec. Order 12,898, 59 Fed. Reg. 7,629 (1994); Exec. Order 13,160 66 Fed. Reg. 5,398 (2001); Exec. Order 13,166, 3 C.F.R. § 289 (2001), *reprinted in* 42 U.S.C.S. § 2000d-1 (Law. Co-op. 2003); Nondiscrimination in Activities Conducted Under Permits, Rights-of-Way, Public Land Orders and Other Federal Authorizations Granted or Issued Under Title II of Public Law 93-153, 43 C.F.R. § 27 (2002); Requirements for Equal Opportunity During Construction and Operation of the Alaska Natural Gas Transportation System, 43 C.F.R. § 34 (2002). OEO provided this information. See U.S. Department of the Interior's Response to the U.S. Commission on Civil Rights' Interrogatory for Volume III of the Ten-Year Review of Civil Rights Enforcement, Office for Equal Opportunity, Jan. 29, 2003, pp. 2–4 (hereafter cited as DOI Interrogatory).

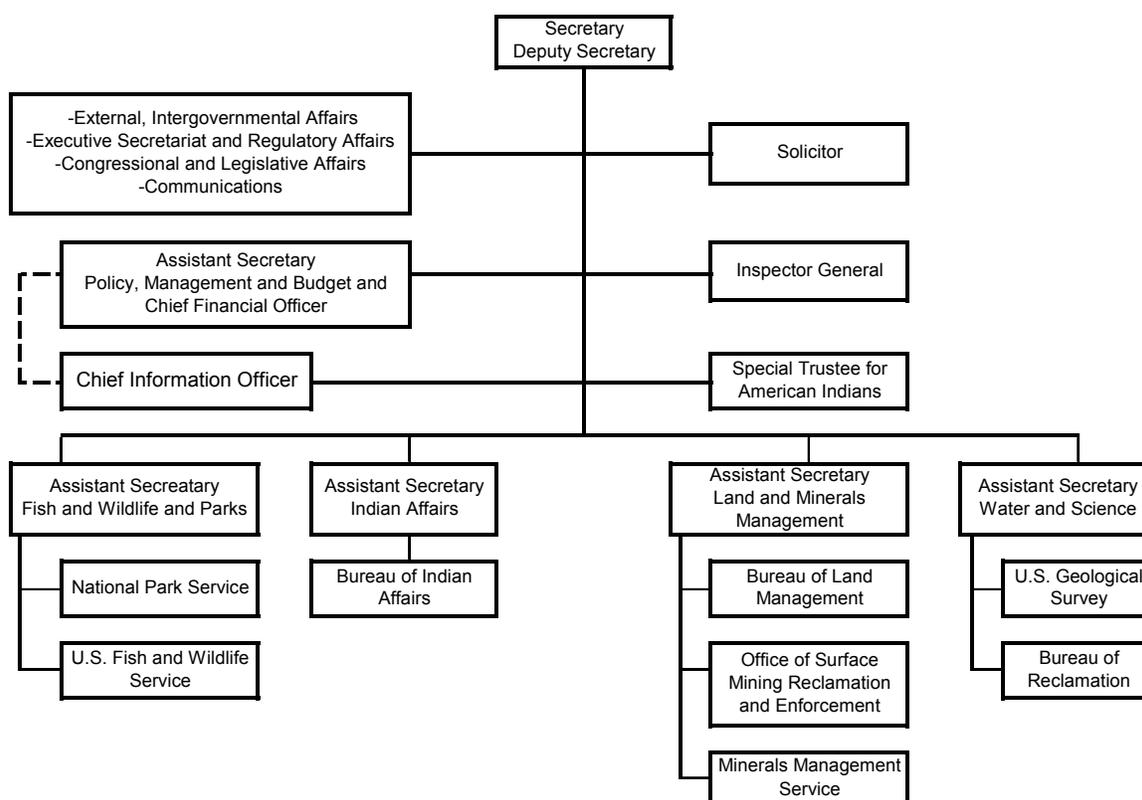
<sup>11</sup> USCCR, *Federal Title VI Enforcement*, p. 387.

<sup>12</sup> *Ibid.*, p. 405.

<sup>13</sup> DOI Interrogatory, pp. 1, 4.

administrative decisions for OEO. Furthermore, the director continues to “participate in all important executive meetings concerning budget, staffing, and policy issues affecting those programs for which she is responsible. . . .”<sup>14</sup> Reporting to the DASHRWD in no way ensures that OEO’s concerns reach the Secretary because other concerns can overshadow these civil rights matters in PMB. The director is satisfied, however, that she has direct access to the Secretary when needed. Nevertheless, the director’s weekly report to the Secretary merely includes an account of Title VI activities, instead of detailed information on what OEO requires to prioritize Title VI enforcement at DOI (see figure 3.1).<sup>15</sup>

**FIGURE 3.1**  
**Department of the Interior Organizational Structure, 2003**



Source: U.S. Department of the Interior, Organization Chart, Mar. 24, 2003.

In 1996, the Federal Financial Assistance Programs staff handled Title VI enforcement at OEO and reported directly to the director. The Federal Employment Programs staff addressed Title VII, or equal employment opportunity (internal civil rights), and also reported to the director.<sup>16</sup> The separation of external and internal civil rights enforcement prevented Title VI resources from being redi-

<sup>14</sup> Ibid., p. 1; U.S. Department of the Interior, “Organization Chart,” n.d., <<http://www.doi.gov/org.htm>> (hereafter cited as DOI Organization Chart). Examples of executive meetings provided by OEO on the interrogatory are Management Initiatives Team, Human Capital Management Team, and Workforce Planning Work Group.

<sup>15</sup> Stith interview.

<sup>16</sup> In 2003, OEO maintains three staffs: Complaints Processing and Adjudication, Diversity and Program Evaluation, and Civil Rights Program. See DOI Interrogatory, p. 5.

rected to internal civil rights obligations. Despite this, OEO was not sufficiently prioritizing Title VI enforcement because it did not have a legal structure to do so. The office relied instead on DOI's Office of the Solicitor to keep Title VI regulations current and draft Title VI procedures and guidelines.<sup>17</sup>

As of 2003, Title VI civil rights compliance and enforcement at OEO are managed by the Civil Rights Program Staff (CRPS), with the Diversity and Program Evaluation Staff (DPES) and Complaints Processing and Adjudication Staff (CPA) addressing internal civil rights functions.<sup>18</sup> Since OEO has maintained separate external and internal units, Title VI resources continue to be used solely for external efforts.<sup>19</sup> OEO has no dedicated legal staff and continues to rely on DOI's Office of the Solicitor to provide legal instruction on Title VI matters.<sup>20</sup> OEO's reliance on the Solicitor for these services emphasizes DOI's failure to prioritize external enforcement (see figures 3.2 and 3.3).

In 1996, the failure of DOI's Title VI enforcement program prompted the Commission to recommend the separation of OEO from offices responsible for developing projects required to meet external or internal civil rights laws. To accomplish this, the Commission envisioned OEO serving as a watchdog for the other offices to ensure that every initiative, plan, program, and activity originating at DOI met agency civil rights enforcement goals.<sup>21</sup> This is a critical issue because OEO is responsible for enforcing and ensuring compliance with all federal civil rights laws and executive orders for which the department has responsibility.<sup>22</sup> OEO has authority to conduct these duties under Title VI and to ensure that they are fully enforced.<sup>23</sup>

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<sup>17</sup> USCCR, *Federal Title VI Enforcement*, pp. 387–88.

<sup>18</sup> U.S. Department of the Interior, "Departmental Manual," Oct. 6, 1998, <<http://elips.doi.gov/elips/release/3225.htm>>; DOI, Organization Chart. These units were previously called the Federal Financial Assistance Programs Staff and Federal Employment Programs Staff, respectively. (See USCCR, *Federal Title VI Enforcement*, pp. 387–88; U.S. Department of the Interior, *FY 1994 Civil Rights Implementation Plans and Supporting Workload and Performance Data*, p. 3). Specifically, DPES develops policy and designs, manages, and directs enhancement programs to promote full diversity within the department, which include affirmative action planning and implementation. CPA is responsible for issuing final agency decisions on all complaints of discrimination filed against the department on the basis of race, color, sex, national origin, religion, age, disability, or sexual orientation.

<sup>19</sup> DOI Interrogatory, p. 11.

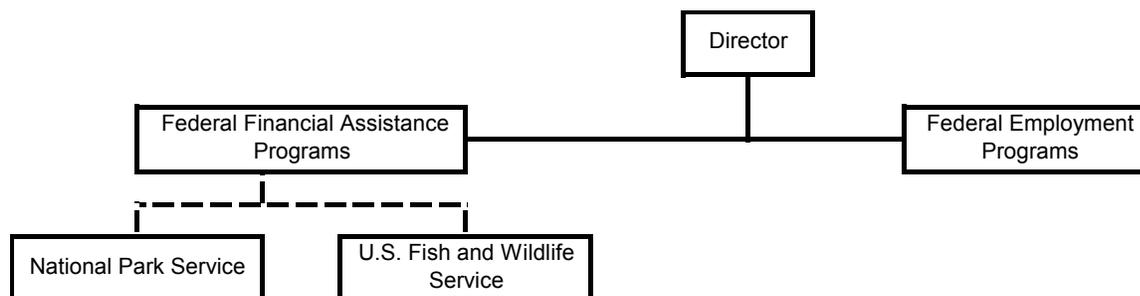
<sup>20</sup> U.S. Department of the Interior, *FY 2002 Information and Reporting Requirements for Agencies Covered by Executive Order 12,250* (Oct. 1, 2001–Sept. 30, 2002), p. 3 (hereafter cited as DOI, *FY 2002 Information and Reporting Requirements*); Stith interview.

<sup>21</sup> USCCR, *Federal Title VI Enforcement*, p. 405.

<sup>22</sup> DOI Interrogatory, p. 4.

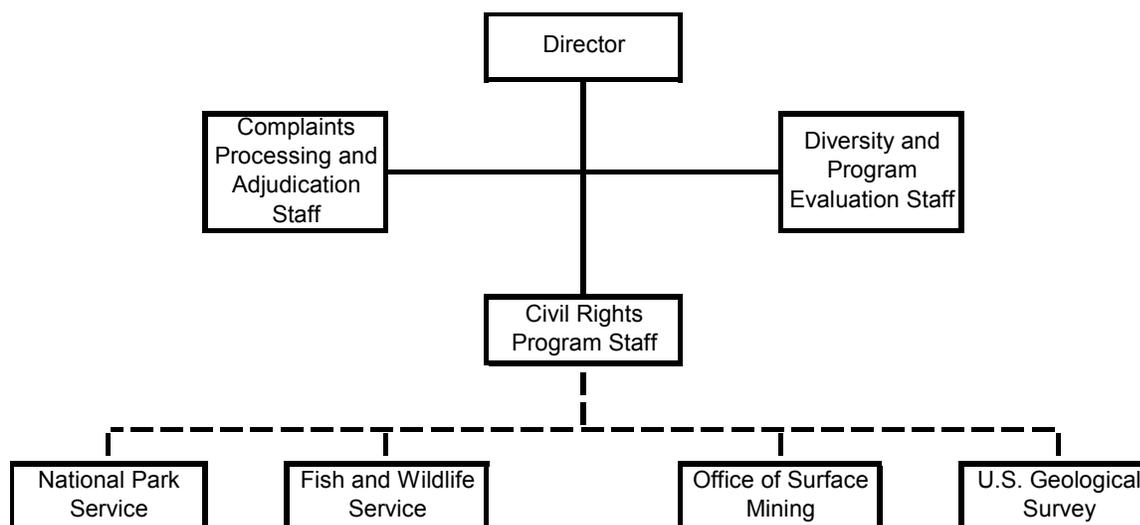
<sup>23</sup> U.S. Department of the Interior, "Departmental Manual," Feb. 3, 1996, <<http://elips.doi.gov/elips/release/3051.html>> (hereafter cited as DOI, "Departmental Manual," Feb. 3, 1996).

**FIGURE 3.2**  
**DOI Office for Equal Opportunity Organizational Structure, 1991 to October 5, 1998**



Source: USCCR, *Federal Title VI Enforcement*, pp. 387–92.

**FIGURE 3.3**  
**DOI Office for Equal Opportunity Organizational Structure, Effective October 6, 1998**



Source: U.S. Department of the Interior, Office for Equal Opportunity Organization chart, Jan. 31, 2003.

In 2003, OEO's Title VI compliance and enforcement efforts continue to be hindered by its placement with PMB.<sup>24</sup> Specifically, OEO is included in PMB and, within that, subsumed under the DASHRWD. OEO's subordinate position within PMB may negate its ability to ensure that PMB projects required to adhere to laws enforced by OEO do so.<sup>25</sup> Included among the many duties of ASPMB, for example, are special-emphasis programs such as equal opportunity, small and minority business utilization, and minority educational institutions, programs subject to civil rights compli-

<sup>24</sup> U.S. Department of the Interior, Office of Policy, Management and Budget, "PMB Offices," n.d., <<http://www.doi.gov/policy-management-budget.html>> (hereafter cited as DOI, "PMB Offices"); see USCCR, *Federal Title VI Enforcement*, pp. 387, 405.

<sup>25</sup> DOI, *FY 2002 Information and Reporting Requirements*, p. 1; DOI, "PMB Offices."

ance.<sup>26</sup> This deficiency is especially stark because among OEO's objectives is providing "department-wide oversight . . . for the various Interior . . . civil rights compliance programs."<sup>27</sup>

## Resources—Funding and Staffing

The Commission's 1996 evaluation found that DOI annually distributed approximately \$900 million in federal financial assistance. Between 1964 and 1994, DOI provided 12,414 recipients more than \$22 billion in financial assistance through 62 programs. Although DOI's bureaus operated all of its federally assisted programs, only NPS, FWS, and WBR had responsibility for implementing and enforcing Title VI in the federal financial assistance programs they administered.<sup>28</sup> At that time, DOI's other bureaus did not have active Title VI programs but operated federally assisted programs.<sup>29</sup> Despite the responsibilities assigned to NPS, FWS, and WBR, OEO was ultimately responsible for enforcing Title VI in all DOI's federally assisted programs and activities.<sup>30</sup> Specifically, OEO oversees and offers policy direction, guidance, training, and support to bureaus in Title VI activities. Moreover, OEO is charged with reporting noncompliance and enforcement actions against recipients to other federal agencies, including termination of funding.<sup>31</sup> In FY 1993, DOI's total civil rights budget was \$5.2 million.<sup>32</sup> Of this amount, OEO was allocated \$1.6 million, which also sustained its oversight of the equal employment opportunity program within the department.<sup>33</sup>

In 2003, the Commission finds that OEO received a steady increase in funding between FY 1998 and 2002. OEO's average annual funding was \$1.3 million from FY 1996 through the FY 2002 budget request.<sup>34</sup>

<sup>26</sup> U.S. Department of the Interior, "Office of Policy, Management and Budget," n.d., <<http://www.doi.gov/policy-management-budget.htm>>.

<sup>27</sup> U.S. Department of the Interior, Office for Equal Opportunity, *FY 2002 Budget Submission and Appropriation, Justification of Program and Performance*, p. DM-95 (hereafter cited as OEO, *FY 2002 Budget Submission and Appropriation*).

<sup>28</sup> USCCR, *Federal Title VI Enforcement*, pp. 385, 389.

<sup>29</sup> *Ibid.*, pp. 388, 390. In addition to the National Park Service, the Fish and Wildlife Service, and the Bureau of Reclamation, in 1996 the bureaus were the Bureau of Indian Affairs, Bureau of Land Management, Office of Surface Mining Reclamation and Enforcement, Minerals Management Service, U.S. Geological Survey, and U.S. Bureau of Mines.

<sup>30</sup> USCCR, *Federal Title VI Enforcement*, p. 387.

<sup>31</sup> DOI, "Departmental Manual," Feb. 3, 1996.

<sup>32</sup> USCCR, *Federal Title VI Enforcement*, pp. 385, 391. This amount also included expenditures; U.S. Department of the Interior, *FY 1994 Civil Rights Implementation Plans and Supporting Workload and Performance Data*, p. 4 (hereafter cited as DOI, *FY 1994 Civil Rights Information*).

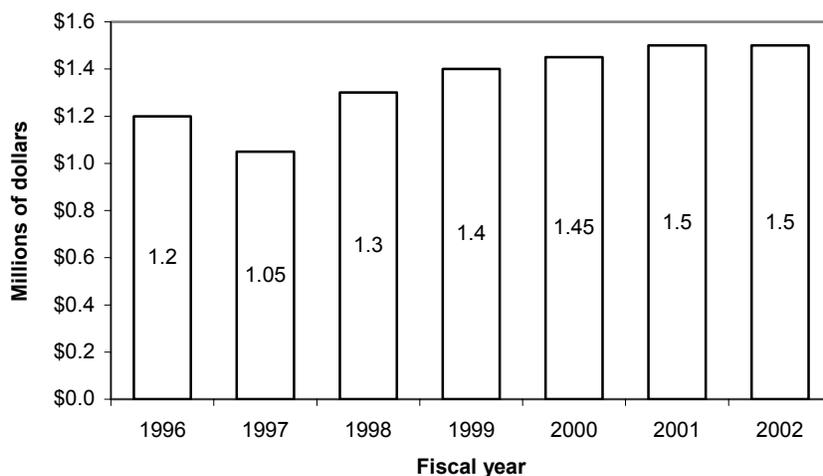
<sup>33</sup> U.S. Department of the Interior, Office for Equal Opportunity, *FY 1994 Budget Submission and Appropriation, Justification of Program and Performance*, p. SEC-26; USCCR, *Federal Title VI Enforcement*, p. 387.

<sup>34</sup> U.S. Department of the Interior, Office for Equal Opportunity, *FY 1997 Budget Submission and Appropriation, Justification of Program and Performance*, p. DM-61 (hereafter cited as OEO, *FY 1997 Budget Submission and Appropriation*); U.S. Department of the Interior, Office for Equal Opportunity, *FY 1998 Budget Submission and Appropriation, Justification of Program and Performance*, p. DM-54 (hereafter cited as OEO, *FY 1998 Budget Submission and Appropriation*); U.S. Department of the Interior, Office for Equal Opportunity, *FY 1999 Budget Submission and Appropriation, Justification of Program and Performance*, p. DM-58; U.S. Department of the Interior, Office for Equal Opportunity, *FY 2000 Budget Submission and Appropriation, Justification of Program and Performance*, p. DM-99; U.S. Department of the Interior, Office for Equal Opportunity, *FY 2001 Budget Submission and Appropriation, Justification of Program and Performance*, p. DM-98; OEO, *FY 2002 Budget Submission and Appropriation*, p. DM-95. The FY 2002 figure is based on OEO's budget request for that fiscal year.

The only decrease during this period occurred in FY 1997, when funding was \$150,000 below the previous year (see figure 3.4).<sup>35</sup>

In 1996, OEO had neglected to develop a mechanism for managing, allocating, or tracking Title VI funds and expenditures. In fact, no formal tracking system existed for any of its external civil rights activities. Because OEO did not know how its Title VI expenditures compared with its other program areas, its ability to systematically plan its Title VI activities was impeded.<sup>36</sup> Moreover, failing to monitor external civil rights expenditures may have caused the reductions in OEO's budget, staffing, and resources that occurred at that time.<sup>37</sup> The Commission recommended that OEO develop an information management system that would permit it to isolate Title VI outlays from those for all other civil rights activities. The Commission said both OEO's and the bureaus' expenditures should be tracked in order to accurately account for costs.<sup>38</sup> In 1996, the Commission also found that DOI's budget did not designate funds for OEO.<sup>39</sup>

**FIGURE 3.4**  
**DOI Office for Equal Opportunity Budget, 1996–2002**



Source: U.S. Department of the Interior, Office for Equal Opportunity, FY 1996–2002 Budget Submissions and Appropriations.

The forgoing has not changed in 2003. Funding for OEO is contained in the Departmental Management portion of DOI's budget, thus, funds are still not being designated for OEO. Consequently, the director is responsible for obtaining funds from the department and distributing them to each civil rights functional area.<sup>40</sup> Matters are further clouded by OEO's continued failure to institute an infor-

<sup>35</sup> OEO, *FY 1997 Budget Submission and Appropriation*, p. DM-61; OEO, *FY 1998 Budget Submission and Appropriation*, p. DM-54.

<sup>36</sup> USCCR, *Federal Title VI Enforcement*, p. 408.

<sup>37</sup> *Ibid.*, p. 391.

<sup>38</sup> *Ibid.*, p. 408.

<sup>39</sup> *Ibid.*, p. 391.

<sup>40</sup> DOI Interrogatory, p. 11.

mation management system for tracking civil rights expenditures.<sup>41</sup> The situation is especially troublesome since more than five years ago, DOI spent in excess of \$1.5 million and expended staff to further develop the Accessibility Data Management System.<sup>42</sup> The system would have allowed the review, reporting, monitoring, and tracking of DOI's civil rights compliance and enforcement.<sup>43</sup> Failing to implement such a system has likely prevented OEO from assessing the impact of funding on Title VI enforcement. Lack of funding also has negatively affected DOI's systematic planning for Title VI activities.

In 1996, the Commission found that OEO's work was further compromised by the lack of a dedicated unit for policy development and programmatic guidance.<sup>44</sup> At that time OEO devoted only five staff members to external civil rights activities. However, only one employee performed work for OEO because FWS used three staff while NPS used one.<sup>45</sup> Still, increasing the number of staff was only half the battle, as OEO had to adequately train, monitor, and guide them.<sup>46</sup>

The 2003 study reveals that OEO staff is responsible for policy development and programmatic guidance, dissemination of guidance to bureaus, and monitoring and overseeing bureaus' civil rights enforcement.<sup>47</sup> Consequently, OEO is still lacking a unit dedicated to policy development and programmatic guidance. Furthermore, since OEO only dedicates five civil rights program staff to external activities, including the four assigned to individual bureaus, staff members are still greatly overburdened despite being periodically supplemented by personnel temporarily detailed to Title VI activities from other OEO sections (see figure 3.5).<sup>48</sup>

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<sup>41</sup> Ibid.

<sup>42</sup> U.S. Department of the Interior, *FY 1997 Civil Rights Information and Reporting Requirements*, p. 8 (hereafter cited as DOI, *FY 1997 Civil Rights Information*).

<sup>43</sup> DOI, *FY 1997 Civil Rights Information*, p. 8.

<sup>44</sup> USCCR, *Federal Title VI Enforcement*, p. 406.

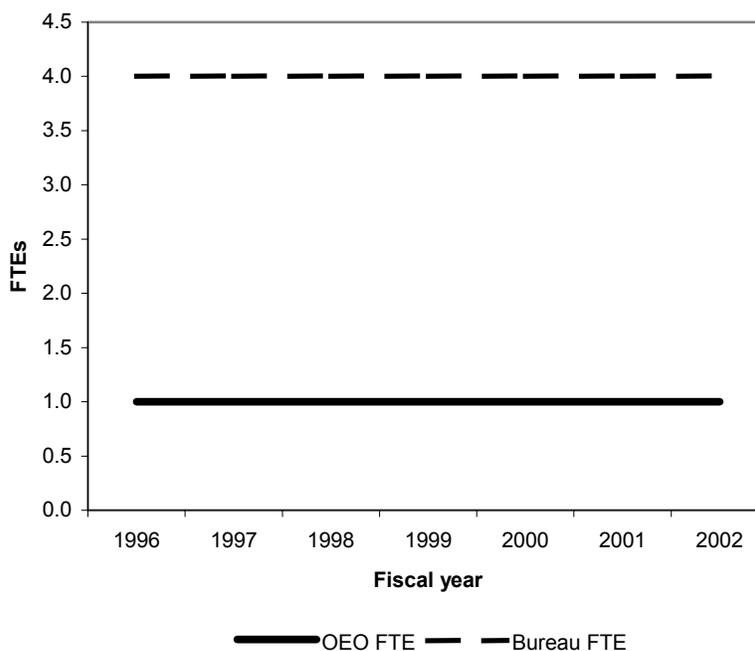
<sup>45</sup> Ibid., p. 408.

<sup>46</sup> Ibid., p. 409.

<sup>47</sup> DOI Interrogatory, p. 5.

<sup>48</sup> Ibid., pp. 12, 16; Stith interview, p. 5. The four CRPS not working directly for OEO are assigned to the National Park Service, Fish and Wildlife Service, Office of Surface Mining, and U.S. Geological Survey.

**FIGURE 3.5**  
**DOI Office for Equal Opportunity and Bureau Title VI Staffing, 1996–2002**



Source: U.S. Department of the Interior, Office for Equal Opportunity, FY 1994–2002 Civil Rights Implementation Plans and Supporting Workload and Performance Data.

Bureau civil rights staff work in dedicated internal and external enforcement units with the director overseeing staffing levels. But the director does not have authority to influence the number of staff members dedicated to external duties. Although all bureaus have an equal opportunity office, civil rights enforcement specialists are only in NPS, FWS, Office of Surface Mining (OSM), and the U.S. Geological Survey (USGS). Bureaus without civil rights enforcement specialists are the Bureau of Land Management (BLM); Bureau of Indian Affairs (BIA); WBR; and the Minerals Management Service (MMS).<sup>49</sup> Finally, bureaus with civil rights program management staff may or may not assign civil rights specialists to Title VI duties, and the director has no authority to instruct them to do so.<sup>50</sup>

## Planning

According to the Commission's 1996 report, OEO's Civil Rights Implementation Plans (CRIPs) failed to meet the Department of Justice's (DOJ) requirements. OEO was not providing enough information to permit DOJ to assess the program's quality. OEO's CRIPs also failed to provide the public with an understanding of DOI's federally funded programs. Moreover, since the goals and objectives of the plans were not specific and lacked timetables and standards for accomplishment, as prescribed by DOJ, the Commission found that they did not serve as a management tool.<sup>51</sup> Because the plans were not meeting DOJ's standards, the Commission recommended that OEO develop plans

<sup>49</sup> U.S. Department of the Interior, "Workforce Diversity," May 30, 2002, <[http://www.doi.gov/diversity/8doi\\_eeo.html](http://www.doi.gov/diversity/8doi_eeo.html)>.

<sup>50</sup> DOI Interrogatory, pp. 9–10, 16.

<sup>51</sup> USCCR, *Federal Title VI Enforcement*, p. 414. In 1996, the Department of Justice included specific objectives for Civil Rights Implementation Plans in its "Guidelines for Agency Implementation Plans Required by Executive Order 12,250, Leadership and Coordination of Nondiscrimination Laws."

that fulfilled DOJ's specified objectives. It also recommended that the plans clearly explain DOI's Title VI enforcement program and be readily available to the public. Because these plans needed to be used as a management tool, OEO had to present its "methods for selecting recipients for compliance reviews."<sup>52</sup> Furthermore, complaint-handling procedures and the provisions for providing education and outreach, training, and technical assistance also had to be included in the plans. OEO's Civil Rights Implementation Plans also had to include a description of DOI's Title VI quality assurance programs and specific long-range and short-term goals and objectives, with timeframes for accomplishing them.<sup>53</sup> To ensure that goals and objectives were met, OEO had to develop them by accounting for available staff and resources as well as directing enough of both to that end.<sup>54</sup>

During the Commission's 2003 study, OEO indicated that the CRIP has always been developed with the Department of Justice's guidance.<sup>55</sup> According to OEO, it has been developing these plans since 1972. OEO further states that DOJ has never provided any feedback on the sufficiency of the implementation plans, and the DOI interpreted DOJ's silence as approval.<sup>56</sup>

The lack of DOJ feedback may persist because OEO's implementation plans continue to provide inadequate information and, thus, do not permit DOJ to evaluate their sufficiency.<sup>57</sup> During the Commission's 2003 review, the goals and objectives, for example, presented in implementation plans for FY 1998 through FY 2002 continue to be overly general and lack dates for completion and established standards.<sup>58</sup> Moreover, the plans still fail to provide the public with a clear understanding of DOI's Title VI enforcement program and, even then, are not readily available to the public.<sup>59</sup> For individuals to obtain OEO's CRIP, they must go through the process of requesting them from OEO. DOI does not use one of today's most readily accessible formats, the Internet, to allow public access to OEO's *Annual Civil Rights Implementation and Accomplishment Report*. As of May 2003, the link to the plan, although present, is not activated on OEO's Web page.<sup>60</sup> Simply stated, the implementation plans written since the Commission's 1996 review do not incorporate any of the Commission's recommendations.

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<sup>52</sup> USCCR, *Federal Title VI Enforcement*, p. 414.

<sup>53</sup> *Ibid.*

<sup>54</sup> *Ibid.*

<sup>55</sup> DOI Interrogatory, p. 6.

<sup>56</sup> *Ibid.*

<sup>57</sup> This analysis commences with the FY 1998 implementation plan because FY 1994, 1995, 1996, and 1997 implementation plans are presented in one report with no distinction made between fiscal years.

<sup>58</sup> DOI, *FY 1997 Civil Rights Information*, pp. 1–5; U.S. Department of the Interior, *FY 1998 Information and Reporting Requirements Covered by Executive Order 12,250*, pp. 1–7 (hereafter cited as DOI, *FY 1998 Information and Reporting Requirements*); U.S. Department of the Interior, *FY 1999 Civil Rights Information and Reporting Requirements for Federally Assisted Program Subject to Executive Order 12,250*, pp. 1–8, 11–12 (hereafter cited as DOI, *FY 1999 Civil Rights Information*); U.S. Department of the Interior, *FY 2000 Information and Reporting Requirements for Agencies Covered by Executive Order 12,250*, pp. 1–5 (hereafter cited as DOI, *FY 2000 Information and Reporting Requirements*); U.S. Department of the Interior, *FY 2002 Information and Reporting Requirements*, pp. 1–3.

<sup>59</sup> DOI, *FY 1997 Civil Rights Information*; DOI, *FY 1998 Information and Reporting Requirements*; DOI, *FY 1999 Civil Rights Information*; DOI, *FY 2000 Information and Reporting Requirements*; DOI, *FY 2002 Information and Reporting Requirements*; DOI Interrogatory, pp. 17–18.

<sup>60</sup> See U.S. Department of the Interior, Office for Equal Opportunity, "U.S. Department of the Interior, Workforce Diversity," *Redress for People Outside DOI*, Sept. 9, 2001, <<http://www.doi.gov/diversity/5civil.htm>>. It must be noted that the Internet is not equally "readily accessible" to all segments of society. See Dari Haddix, "Surge in Internet Use by Underserved Kids," *United Press International*, Mar. 19, 2003.

## Policy Guidance

The Commission's 1996 review revealed that DOI had neglected to revise, or even modify, the Title VI model regulations it had received from DOEd. That is, DOI was applying model Title VI regulations developed for educational funding recipients to its recipients. Hence, numerous references in the regulations were wholly inappropriate to DOI's programs and activities since they applied to DOEd's civil rights program. Adding to this crisis was DOI's failure to keep the regulations current. In fact, DOI did not incorporate the clarifications to Title VI's coverage and funding termination provisions included in the Civil Rights Restoration Act of 1987, despite the passage of numerous years.<sup>61</sup> As a result, the Commission recommended an immediate revision and update of DOI's Title VI regulations. The Commission further asked DOI to publish annually an updated list of its federally assisted programs in the *Federal Register*.<sup>62</sup>

In 2003, the Commission finds that DOI last modified its Title VI regulations in FY 2002.<sup>63</sup> Although the regulations were updated to include the Civil Rights Restoration Act's definition of a covered "program" and "program or activity," it neglected to incorporate the act's clarifications to Title VI's coverage and funding termination provisions.<sup>64</sup> Furthermore, DOI failed to provide appropriate model regulations or examples, instead choosing to maintain those developed by DOEd.<sup>65</sup> Finally, DOI has not published an annual list of its federally assisted programs in the *Federal Register*.<sup>66</sup>

In 1996, the Commission also found that DOI's Title VI guidelines were outdated. Once more, the Commission asked DOI to immediately remedy the situation since existing regulations did not accurately reflect the agency's current Title VI enforcement structure and process. Perhaps more disturbing was DOI's failure to issue guidelines for its other federally assisted programs.<sup>67</sup>

The Commission recommended that DOI clearly outline the "relative responsibilities of OEO, the bureaus, civil rights offices, the bureaus' program offices, and recipients [in] ensuring Title VI compliance in the areas of pre-award and post-award compliance reviews; complaint processing; data collection, reporting, and analysis; technical assistance; and outreach and education" in the guidelines.<sup>68</sup> Guidelines also needed to clearly describe the specific types of data that recipients were required to collect and provide to OEO, and supply clear and relevant examples of the actions that violated Title VI.<sup>69</sup>

The Commission also recommended that guidelines provide state recipients receiving funding under continuing programs with an explicit understanding of Title VI compliance responsibilities. It was

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<sup>61</sup> USCCR, *Federal Title VI Enforcement*, p. 409.

<sup>62</sup> Ibid.

<sup>63</sup> DOI Interrogatory, p. 6.

<sup>64</sup> DOI, *FY 2002 Information and Reporting Requirements*, p. 7; U.S. Department of Justice, "Joint NPRM Incorporating the CRRA," Dec. 6, 2000, <<http://www.usdoj.gov:80/crt/cor/byagency/crranprm.htm>> (hereafter cited as DOJ, "Joint NPRM").

<sup>65</sup> DOI, *FY 2002 Information and Reporting Requirements*, p. 7; DOJ, "Joint NPRM."

<sup>66</sup> An exhaustive search of the *Federal Register* at <[http://www.access.gpo.gov/su\\_docs/aces/aces140.html](http://www.access.gpo.gov/su_docs/aces/aces140.html)> on February 11, 2003, provided no such listing.

<sup>67</sup> USCCR, *Federal Title VI Enforcement*, p. 409.

<sup>68</sup> Ibid.

<sup>69</sup> Ibid.

also recommended that guidelines require states to seek DOI approval for their methods of administration and to submit regular self-assessments and compliance plans to DOI.<sup>70</sup>

The 2003 study finds that OEO develops guidelines “on an as need basis” and when DOJ provides new Title VI standards.<sup>71</sup> Although OEO proposed revising DOI civil rights guidelines in FY 1998, this was for Title IX (education) not Title VI (grants).<sup>72</sup> The Title VI guidelines used by OEO in 2003 continue to be badly outdated as they do not even incorporate the Civil Rights Restoration Act. One set of guidelines is included as part of the *Land and Water Conservation Fund Grants Manual* and is very general. Although it incorporates some of the areas mentioned by the Commission, it neglects just as many. Moreover, it is only directed at the NPS and its recipients, and thus is of little if any use to other DOI bureaus.<sup>73</sup> The other set of guidelines is developed by the FWS and is equally vague and covers the same general areas as the manual.<sup>74</sup>

The Commission found in its 1996 review that DOI’s Title VI enforcement procedures were also in need of immediate updating and revision. The Commission noted that the existing Title VI enforcement manual made no mention of OEO’s current Title VI enforcement procedures. Instead, the manual described an outdated Title VI enforcement structure.<sup>75</sup> To correct the situation, the Commission recommended that the manual be updated and revised to explain (1) every civil rights implementation and enforcement procedure; (2) how to conduct pre-award and post-award compliance reviews; (3) how to process and investigate complaints correctly; (4) how to perform community outreach, public education, and technical assistance; and (5) how to negotiate and monitor compliance agreements.<sup>76</sup>

To strengthen OEO’s reviews and investigations, the Commission also recommended that OEO provide staff with detailed instructions and elaborate on the types of information to be considered during reviews and investigations. In addition, the manual should provide examples of whom staff should contact for information throughout compliance reviews and complaint investigations.<sup>77</sup> A final recommendation was the inclusion of a Title VI compliance analysis outline for the staff’s erudition.<sup>78</sup>

The Commission finds that in 2003, OEO has no Title VI enforcement manual. According to OEO, it issues equal opportunity memoranda to distribute enforcement procedures.<sup>79</sup> However, the Commission received no documentation supporting the assertion that DOI was fulfilling this requirement.<sup>80</sup>

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<sup>70</sup> USCCR, *Federal Title VI Enforcement*, p. 409.

<sup>71</sup> DOI Interrogatory, p. 7.

<sup>72</sup> DOI, *FY 1998 Information and Reporting Requirements*, p. 4.

<sup>73</sup> U.S. Department of the Interior, Office for Equal Opportunity, *Land & Water Conservation Fund Grants Manual*, n.d., pp. 1–11; DOI, *FY 1997 Civil Rights Information*, p. 12.

<sup>74</sup> U.S. Fish and Wildlife Service, *Federal Aid Toolkit*, 2002.

<sup>75</sup> USCCR, *Federal Title VI Enforcement*, p. 410.

<sup>76</sup> *Ibid.*

<sup>77</sup> *Ibid.*

<sup>78</sup> *Ibid.*

<sup>79</sup> DOI Interrogatory, pp. 6, 23.

<sup>80</sup> Because OEO did not provide any memorandums to the Commission, as many as could be found on the Internet were obtained.

## Technical Assistance

DOI's bureaus depended on technical assistance from OEO for effective Title VI enforcement. OEO's mandate to coordinate and oversee the bureaus' Title VI efforts also required it to provide bureaus with this assistance. OEO's ability to provide technical assistance, however, was a function of staff.<sup>81</sup> When the Commission reviewed OEO in 1996, external enforcement staff consisted of only six full-time-equivalent positions (FTEs).<sup>82</sup> The Commission concluded that the number was insufficient to handle the workload.

Because of insufficient staffing, the Commission recommended that OEO maximize its resources by providing technical assistance during its regular on-site monitoring reviews of bureaus' programs. Delivery of technical assistance could also be improved by developing a regular and systematic program for those bureau staff performing Title VI enforcement procedures. In addition to assisting bureau staff, OEO needed to begin providing periodic assistance to all its recipients via the bureaus. To avoid taxing resources, bureaus could accomplish this over the telephone and through written communications or civil rights conferences and other appropriate forums. Before delegating this responsibility, however, OEO had to provide comprehensive training to bureau staff on external civil rights enforcement. The quality of this and other civil rights work had to be supervised by OEO to avoid the shortfalls of the previous effort.<sup>83</sup>

In 2003, the Commission finds that OEO and the bureaus provide recipients with technical assistance on request and during compliance reviews and complaint investigations.<sup>84</sup> Recipients, as well as public entities, routinely receive expert technical assistance from DOI bureaus and offices aimed at resolving noncompliance.<sup>85</sup> However, FY 2000 was the last time OEO provided recipients with technical assistance.<sup>86</sup> OEO, NPS, FWS, OSM, and USGS each have one full-time staff member to perform all Title VI enforcement duties, including technical assistance. The BIA provides technical assistance to Native American and Alaska Native communities concerning limited-English-proficiency (LEP) and race discrimination issues despite not having an established Title VI compliance review program.<sup>87</sup>

The Commission also finds that OEO annually reviews bureaus to assess their plans and accomplishments in enforcing the provisions of Title VI, including the effectiveness of the technical assistance they provide.<sup>88</sup> However, OEO has not provided technical assistance to bureaus having compliance and enforcement responsibilities since FY 1999.<sup>89</sup> Training for DOI's equal opportunity personnel at the NPS, FWS, WBR, and OSM on providing effective technical assistance was last provided in FY 2000.<sup>90</sup>

OEO further states that when subrecipients receive federal funds, primary recipients are responsible for providing them with technical assistance. Although DOI requires primary recipients to have con-

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<sup>81</sup> USCCR, *Federal Title VI Enforcement*, pp. 412–13.

<sup>82</sup> *Ibid.*, p. 385.

<sup>83</sup> *Ibid.*, p. 413.

<sup>84</sup> DOI Interrogatory, p. 19.

<sup>85</sup> DOI, *FY 2000 Information and Reporting Requirements*, p. 5.

<sup>86</sup> *Ibid.*

<sup>87</sup> DOI Interrogatory, pp. 16, 19–20.

<sup>88</sup> *Ibid.*, p. 19.

<sup>89</sup> DOI, *FY 1999 Civil Rights Information*, p. 5.

<sup>90</sup> DOI, *FY 2000 Information and Reporting Requirements*, p. 2.

tinuing technical assistance programs, the quality of these programs is not monitored nor are recipients required to submit self-evaluation reports on their program.<sup>91</sup> However, the last time OEO acknowledges training primary recipients was in FY 1997. Even then, only primary recipients receiving funds through the NPS, FWS, and WBR received technical assistance.<sup>92</sup>

## Education and Outreach

The Commission's 1996 evaluation revealed that education and outreach efforts were essentially limited to the development and distribution of a multilingual civil rights poster and several brochures. Apart from these publications, neither OEO nor the bureaus provided meaningful education and outreach. In fact, although three bureaus had active Title VI enforcement programs, only FWS did more than display the poster.<sup>93</sup> The Commission recommended that DOI immediately develop a comprehensive Title VI community outreach and public education program under the direction of OEO.<sup>94</sup>

In 2003, the Commission finds that OEO continues to rely on civil rights posters as the primary means of informing the public of DOI's Title VI civil rights obligations. Recipients are required to place a reasonable number of these posters in prominent locations throughout all areas of their operations. The posters explain the procedures for filing complaints with DOI, and are supplemented with pamphlets that describe DOI's civil rights policies and procedures. These pamphlets are made available to all public entities.<sup>95</sup> Recipients are further obligated to notify the public of their nondiscrimination policies in publications describing program availability.<sup>96</sup> Additionally, bureau civil rights staff regularly participate in natural-resources-related conferences at both the state and local levels and hold training and discussion workshops that cover Title VI policies. DOI has five FTEs overseeing education and outreach, the same ones charged with all other civil rights duties.<sup>97</sup>

## Complaint Processing

In 1996, the failings of DOI's Title VI enforcement program were also evident in OEO's methods for conducting complaint investigations. Generally, OEO's Title VI complaint investigations did not detect discrimination, leading the Commission to conclude that perhaps they were not sufficiently comprehensive. There was no question they were rudimentary because neither OEO nor the bureaus had developed or implemented procedures for conducting them. Moreover, investigations were not reviewed to verify their thoroughness.<sup>98</sup>

To remedy this lack of investigative vigor, in 1996 the Commission recommended that OEO and the bureaus develop and implement clear and comprehensive complaint investigation procedures. The Commission also recommended that a quality assurance review process be established to certify the thoroughness of investigations before providing complainants and recipients with decisions.<sup>99</sup>

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<sup>91</sup> DOI Interrogatory, p. 19.

<sup>92</sup> DOI, *FY 1994 Civil Rights Information*, p. 17.

<sup>93</sup> USCCR, *Federal Title VI Enforcement*, p. 412.

<sup>94</sup> *Ibid.*

<sup>95</sup> DOI Interrogatory, p. 17. OEO did not provide pamphlets for the Commission to review.

<sup>96</sup> DOI Interrogatory, p. 17.

<sup>97</sup> *Ibid.*, pp. 16–18.

<sup>98</sup> USCCR, *Federal Title VI Enforcement*, p. 412.

<sup>99</sup> *Ibid.*

OEO's internal Title VI complaint investigation procedures are currently found in DOI's Equal Opportunity Directive No. 1998-13, "Internal Civil Rights Complaints Processing Procedures," September 30, 1998.<sup>100</sup> The procedures outlined in this directive are generally clear and detailed in explaining OEO's and the bureaus' responsibilities in investigating and processing Title VI complaints. Unfortunately, these procedures do not provide steps for verifying the thoroughness of a complaint investigation.<sup>101</sup> Furthermore, external procedures are nonexistent except for requiring recipients to report any complaints or lawsuits against them that allege they discriminated because of race, color, or national origin.<sup>102</sup> OEO, and specifically the director, is charged with overseeing and monitoring the entire complaint process, including resolution.<sup>103</sup> Complaint investigations are still conducted by the five aforementioned civil rights FTEs.<sup>104</sup>

The Commission's 2003 study further finds that DOI's complaint process may also continue to be hindered by its relatively weak education and outreach efforts since, on average, it annually received a mere eight Title VI violation complaints from FY 1996 through FY 2001.<sup>105</sup> DOI informed the Commission, however, that the small number of Title VI complaints might be due to the effectiveness of its external civil rights program.<sup>106</sup> Although OEO does not specify the annual number of Title VI complaints left unresolved, over this same period it had approximately 175 unresolved civil rights complaints (see figures 3.6 and 3.7).<sup>107</sup> DOI's complaint investigation procedures are vague on bureau time limits for processing complaints. Specifically, the procedures state that the "most egregious complaints should be reported to the Departmental Office for Equal Opportunity within five (5) days [of] receipt."<sup>108</sup> Complaints other than the most egregious are to be reported to OEO at the established monthly intervals with the resolution of "all complaints of alleged discrimination [to be resolved] promptly and appropriately whenever possible."<sup>109</sup>

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<sup>100</sup> DOI Interrogatory, p. 15.

<sup>101</sup> U.S. Department of the Interior, Office for Equal Opportunity, "Equal Opportunity Directive No. 1998-13, Internal Civil Rights Complaints Processing Procedures," Sept. 30 1998, <[http://www.doi.gov/diversity/doc/eod98\\_13.htm](http://www.doi.gov/diversity/doc/eod98_13.htm)> (hereafter cited as DOI, Directive No. 1998-13).

<sup>102</sup> DOI Interrogatory, p. 15.

<sup>103</sup> *Ibid.*, p. 14; DOI, Directive No. 1998-13.

<sup>104</sup> DOI Interrogatory, p. 16; Stith interview.

<sup>105</sup> U.S. Department of the Interior, *FY 1996 Civil Rights Workload and Performance Data*, p. 15 (hereafter cited as DOI, *1996 Civil Rights Data*); U.S. Department of the Interior, *FY 1997 Civil Rights Workload and Performance Data*, p. 13 (hereafter cited as DOI, *1997 Civil Rights Data*); U.S. Department of the Interior, *FY 1998 Civil Rights Workload and Performance Data*, p. 15 (hereafter cited as DOI, *1998 Civil Rights Data*); U.S. Department of the Interior, *FY 1999 Civil Rights Workload and Performance Data*, p. 12 (hereafter cited as DOI, *1999 Civil Rights Data*); U.S. Department of the Interior, *FY 2000 Civil Rights Workload and Performance Data*, p. 19 (hereafter cited as DOI, *2000 Civil Rights Data*); U.S. Department of the Interior, *FY 2001 Civil Rights Workload and Performance Data*, p. 15 (hereafter cited as DOI, *2001 Civil Rights Data*).

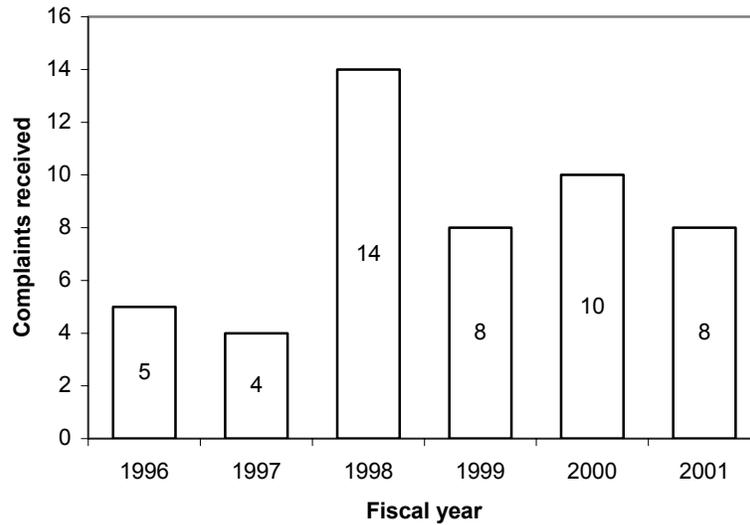
<sup>106</sup> J. Michael Trujillo, deputy assistant secretary, human resources and workforce diversity, Office of the Secretary, DOI, letter to Les Jin, staff director, USCCR, Aug. 6, 2003, pp. 3-4.

<sup>107</sup> DOI, *1996 Civil Rights Data*, p. 15; DOI, *1997 Civil Rights Data*, p. 13; DOI, *1998 Civil Rights Data*, p. 15; DOI, *1999 Civil Rights Data*, p. 12; DOI, *2000 Civil Rights Data*, p. 19; DOI, *2001 Civil Rights Data*, p. 15.

<sup>108</sup> DOI, Directive No. 1998-13.

<sup>109</sup> *Ibid.*

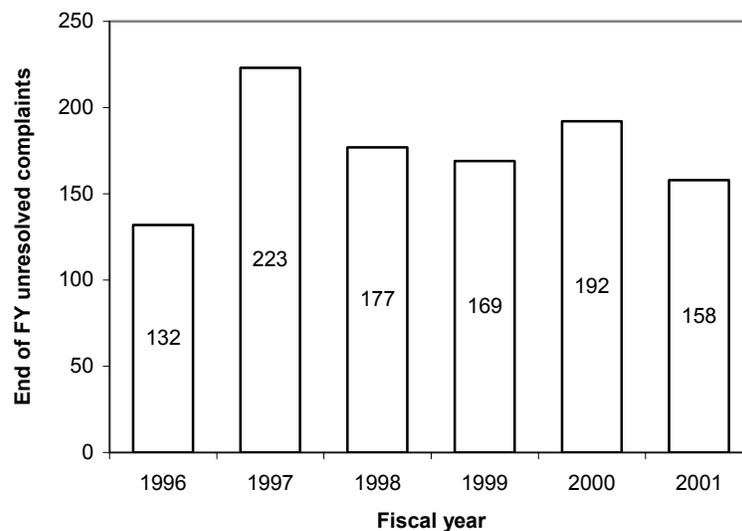
**FIGURE 3.6**  
**Department of the Interior Title VI Complaints, 1996–2001**



Source: U.S. Department of the Interior, Office for Equal Opportunity, FY 1996–2001 Civil Rights Workload and Performance Data.

Unfortunately, the procedures rely on individual interpretations of what “most egregious” means. While a complaint may strike one equal opportunity officer as not egregious enough to warrant immediate action, another staff member may view it as egregious and worthy of immediate processing. Moreover, procedures for resolving complaints promptly and appropriately whenever possible are imprecise and do not specify how and on what timeframe duties must be accomplished.

**FIGURE 3.7**  
**Department of the Interior Unresolved Civil Rights Complaints, 1996–2001**



Source: U.S. Department of the Interior, Office for Equal Opportunity, FY 1996–2001 Civil Rights Workload and Performance Data.

## Compliance Reviews

During the Commission's 1996 review of OEO, it was discovered that no uniform policy existed requiring pre-award reviews of all applicants before deciding whether to approve federal funding. In fact, at that time only the NPS and FWS were conducting pre-award reviews. Even this, however, was questionable as these bureaus were merely administering a Title VI checklist, not conducting "comprehensive assessments" of Title VI compliance.<sup>110</sup>

OEO's failings prompted the Commission to recommend that it implement pre-award reviews in "each of its major federally assisted programs" that carefully evaluate "program data and other information supplied by applicants" before authorizing federal funding.<sup>111</sup> Only if applicants were in compliance with Title VI and DOI's Title VI regulations would federal funding be furnished.<sup>112</sup>

The Commission's 2003 study finds that OEO still only conducts cursory pre-award reviews of an applicant's program and takes a passive posture, assuming compliance will prevail upon a recipient's signature on a civil rights assurance form.<sup>113</sup> Pre-award reviews are not guided by uniform policies and thus differ between bureaus with the result that some conduct less comprehensive ones. Responsibility for conducting reviews belongs to bureau program specialists and not civil rights personnel. DOI believes that limited pre-award reviews focusing on the applicant's operations and requiring them to sign a civil rights assurance form are more efficient because grants are awarded more quickly and do not overburden the grant-making process with protracted and unnecessary delays. Consequently, DOI collects no additional program data during pre-award reviews and some bureaus may conduct more lenient reviews. DOI identifies and resolves civil rights problems through a fall-back process. If noncompliance is found during an applicant's pre-award review, the director is notified and an investigation is initiated.<sup>114</sup> DOI should be proactive and conduct expanded pre-award reviews, as resources permit, and thus address a problem before it becomes a violation.

Despite the shortcomings of OEO's pre-award reviews, both NPS and FWS had implemented them by 1996. Conversely, OEO had never implemented a system of post-award desk-audit reviews. Such a failure indicated a waste of resources, both staff and monetary, since desk audits permit agencies to evaluate more recipients with fewer staff members and resources than on-site reviews.<sup>115</sup> To address this problem, in 1996 the Commission recommended that OEO develop and implement procedures that would allow it to make post-award desk-audit reviews an integral part of its enforcement process. The process was to include the regular collection of enough relevant information to perform adequate reviews of recipients. Relevant information included data on individuals participating in the program and those eligible to participate by race, color, national origin, and ethnic group membership.<sup>116</sup>

DOI now relies extensively on post-award desk-audit reviews because costs are low compared with on-site reviews. Furthermore, OEO has established procedures for conducting reviews at numerous DOI programs, including park and recreation programs and historic preservation activities.<sup>117</sup> These

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<sup>110</sup> USCCR, *Federal Title VI Enforcement*, p. 411.

<sup>111</sup> *Ibid.*

<sup>112</sup> *Ibid.*

<sup>113</sup> DOI Interrogatory, p. 13.

<sup>114</sup> *Ibid.*, pp. 12–13. OEO states that pre-award reviews are part of the federal financial assistance process.

<sup>115</sup> USCCR, *Federal Title VI Enforcement*, p. 411.

<sup>116</sup> *Ibid.*

<sup>117</sup> DOI Interrogatory, p. 14.

procedures were established in FY 1998, according to documents.<sup>118</sup> In FY 2001, OEO conducted 1,503 post-award reviews of a total 13,256 estimated covered recipients, slightly more than 11 percent of recipients. Of the 1,503, only three recipients were found to be in noncompliance, slightly less than 0.2 percent, and only two were reviewed with more than desk audits. All three cases of non-compliance were resolved through corrective action commitments by the recipients.<sup>119</sup>

Although DOI's bureaus conducted on-site compliance reviews at the time of the Commission's 1996 review, they fell far short of the comprehensive reviews required by DOJ. Their lack of investigative depth was rooted in OEO's failure to assign civil rights staff to conduct them. Regrettably, program management staff, lacking understanding of Title VI requirements and the experience to uncover discrimination, was conducting on-site reviews. Reviews were further hindered by being limited to readily identifiable forms of discrimination, examples of which could be easily marked off on a civil rights checklist.<sup>120</sup> OEO's on-site reviews also focused on specific projects and not the entire system, thus not adhering to a Title VI requirement under the Civil Rights Restoration Act of 1987.<sup>121</sup>

In its 1996 report, the Commission concluded that OEO needed to develop and implement specific procedures for reviewing the civil rights compliance status of DOI's federal funding recipients. These external reviews needed to be comprehensive and geared toward both Title VI and other civil rights statutes. Furthermore, these reviews had to complement the monitoring performed during civil rights project reviews, not replace it.<sup>122</sup>

As a result, the Commission recommended that such reviews include a liberal examination of a recipient's programs and practices and not be limited to those funded directly by DOI. Information was to be gathered from a "recipient's staff, program participants, affected parties, and interested community groups" via extensive interviews.<sup>123</sup> Data collected by the recipient and obtained by OEO were to be thoroughly analyzed. Reviews were to be performed by trained civil rights personnel from DOI's bureaus or OEO, and not by program management staff lacking the training or knowledge for such work.<sup>124</sup>

In 2003, while on-site compliance reviews are comprehensive in nature, the majority still focus on isolated problems and practices due to limited civil rights staff. Both OEO and the bureaus now assign civil rights staff to conduct on-site compliance reviews.<sup>125</sup> Documents and interviews, however, do not reveal an expanded review process. One document, the *Federal Aid Toolkit*, is limited to the FWS and simply lists a number of documents to be examined during an FWS on-site compliance review. No interviews of recipients or beneficiaries are mandated, and recipients may not even be required to submit all the documents.<sup>126</sup>

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<sup>118</sup> DOI, *1998 Civil Rights Data*, p. 1.

<sup>119</sup> DOI, *2001 Civil Rights Data*, p. 19.

<sup>120</sup> USCCR, *Federal Title VI Enforcement*, pp. 411–12.

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

<sup>122</sup> *Ibid.*, p. 412.

<sup>123</sup> *Ibid.*

<sup>124</sup> *Ibid.*

<sup>125</sup> DOI Interrogatory, p. 14.

<sup>126</sup> U.S. Fish and Wildlife Service, *Federal Aid Toolkit*, 2002.

The second document, *Civil Rights Post-Award Review Checklist*, continues to be limited to readily identifiable forms of discrimination and is predominantly aimed at recipients, thus addressing very few of the Commission's 1996 recommendations. Although community representatives and program beneficiaries are to be interviewed, the instructions designate people with hearing impairments as the target group. Consequently, the document is limited to programs geared toward or in which hearing-impaired individuals participate. Yet, if it is a limited scope review, community representatives and program beneficiaries may not be interviewed.<sup>127</sup> In sum, program participants, affected parties, and interested community groups may be excluded from participating in the review process even if involved in the program under review.

## Staff Training

The Commission's 1996 evaluation found a lack of staff training. Perhaps the most prominent example was the bureaus' administration staff, which was frequently assigned Title VI enforcement responsibilities despite having little if any training in this area. The intrinsic nature of this moribund condition led the Commission to declare that "OEO's Title VI enforcement activities are generally performed by poorly trained staff at the expense of the quality of its Title VI enforcement program."<sup>128</sup>

In 2003, the Commission finds that funding for staff training has not increased and remains inadequate.<sup>129</sup> Despite the funding freeze, OEO states that all equal opportunity staff are provided adequate training and that no staff members have been "denied the opportunity for work-related training. . . ."<sup>130</sup> Moreover, training is regularly provided across all program areas, with Title VI training periodically conducted during each fiscal year. OEO was in the process of planning Title VI training for mid-2003. Training is accomplished both at OEO and the bureaus, with bureau-level training directed at regional civil rights staff, federal grants personnel, and recipient officials.<sup>131</sup>

Despite OEO's assertion that Title VI training is periodically conducted during each fiscal year, the Commission finds that the last time Title VI training was provided was in FY 2000. No documentation for subsequent fiscal years reports Title VI training under activities accomplished for that year.<sup>132</sup> Title VI training should be an ongoing process. Initial and follow-up training is crucial for external civil rights staff to grasp and effectively conduct their assigned duties.

## Delegation

In 1996, the Commission found that OEO had failed to implement active Title VI programs at each of the bureaus providing federal financial assistance. Since bureau civil rights staff members dealt directly with concerned parties, enforcement would have been improved if they were entrusted with primary responsibility for complaint investigations, compliance reviews, technical assistance, and public education and outreach. The Commission noted that by judiciously delegating Title VI re-

<sup>127</sup> U.S. Department of the Interior, *Civil Rights Post-Award Review Checklist*, n.d.

<sup>128</sup> USCCR, *Federal Title VI Enforcement*, p. 413.

<sup>129</sup> DOI Interrogatory, p. 26.

<sup>130</sup> *Ibid.*, p. 20.

<sup>131</sup> *Ibid.*, pp. 20–21.

<sup>132</sup> DOI, *FY 2000 Information and Reporting Requirements*, p. 2; DOI, *FY 2002 Information and Reporting Requirements*.

sponsibilities to bureaus, OEO could enhance DOI's civil rights enforcement work. The foundation for this was already laid as OEO had existing arrangements with the NPS, FWS, and WBR.<sup>133</sup>

The Commission's 2003 study reveals that DOI currently has one equal opportunity office in each bureau in addition to the main OEO. According to OEO, bureau offices serve as focal points for effectuating Title VI compliance among each bureau's respective recipients.<sup>134</sup> OEO further states that bureaus were authorized to perform Title VI functions starting in February 1996. Currently, however, only the NPS and FWS have active Title VI programs, with OSM, USGS, and WBR having marginal programs, according to OEO.<sup>135</sup>

OEO justifies DOI's bureau enforcement system by stating that (1) creating an active program at the Bureau of Land Management would waste resources because it has the same types of programs and funds the same recipients as NPS; (2) those BLM programs not shared with NPS are covered by Title VI enforcement programs at other federal agencies; (3) the DOI views the BIA as dealing with sovereign entities, namely Native American nations and Native Alaska villages, who when federally recognized are not generally bound by the provisions of Title VI; and (4) the "abstract nature" of the programs and activities administered by the Minerals Management Service "do not sufficiently lend themselves to Title VI coverage."<sup>136</sup>

### **Oversight and Quality Assurance**

In 1996, the Commission found that despite being ultimately responsible for ensuring DOI's external civil rights enforcement, OEO had not implemented a "systematic oversight and monitoring program of Title VI enforcement work" the bureaus performed.<sup>137</sup> The lack of such activity, the Commission noted, further eroded OEO's ability to ensure DOI met its civil rights enforcement obligations. The Commission recommended the creation of a unit that would be responsible for the "operational planning and overall development of fiscal year goals and objectives for DOI's civil rights enforcement efforts."<sup>138</sup> This unit would regularly and thoroughly evaluate bureau civil rights staff performance. The close monitoring of staff would reveal defects in Title VI implementation and enforcement procedures at the bureaus and provide the opportunity to assess how efficiently and effectively the bureaus were meeting the fiscal year goals and objectives.<sup>139</sup>

### **Bureaus**

Because of a decentralized civil rights enforcement structure, in 1996 the Commission recommended that OEO develop a system to oversee and monitor the bureaus' Title VI enforcement activities.<sup>140</sup> The Commission concluded that the effectiveness of OEO's oversight and monitoring would be greatly enhanced if periodic on-site reviews of the bureaus' efforts were undertaken. During these assessments it was suggested that OEO evaluate a bureau's complaint and compliance review files

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<sup>133</sup> USCCR, *Federal Title VI Enforcement*, pp. 407–08.

<sup>134</sup> DOI Interrogatory, p. 8.

<sup>135</sup> *Ibid.*, p. 9.

<sup>136</sup> *Ibid.*

<sup>137</sup> USCCR, *Federal Title VI Enforcement*, p. 406.

<sup>138</sup> *Ibid.*

<sup>139</sup> *Ibid.*

<sup>140</sup> DOI decentralized OEO in 1991 and redirected its focus toward coordination and policy development.

along with appraising a bureau's data collection efforts. It was also suggested that OEO take this opportunity to interview program staff and recipients concerning pertinent issues and "issue a report with findings and recommendations for improvement."<sup>141</sup>

In addition to these periodic reviews, the Commission further recommended that OEO "conduct annual reviews of Title VI self-assessments provided by the bureaus."<sup>142</sup> To remedy any deficiencies, it was requested that OEO provide bureaus with regular Title VI staff training and technical assistance.<sup>143</sup>

The Commission now finds that DOI's program is decentralized, thus bureau EEO officers supervise Title VI work. OEO provides policy guidance to bureaus on Title VI enforcement, oversight and evaluation of bureaus' programs, staff training, and programmatic direction to ensure uniform enforcement.<sup>144</sup> However, OEO lacks any authority to determine the number of bureau personnel who perform Title VI duties.<sup>145</sup>

Clearly, this is not an effective way to ensure Title VI compliance among recipients. Simply stated, bureaus may not assign enough personnel to Title VI duties thus not permitting proactive monitoring of recipient's programs or adequate pre-award review of an applicant's program. Regardless of whether it is a pre- or post-award review, the director must be given the resources and authority to ascertain and ensure that bureaus assign sufficient personnel to Title VI duties.

### ***Continuing State Programs***

In 1996, DOI conducted very limited oversight of continuing state programs. Its efforts consisted of Title VI regulations requiring state recipients to submit their methods of administration for maintaining compliance with Title VI and DOI's Title VI regulations. Guidelines for the Land and Water Conservation Fund provided somewhat more detailed state requirements.<sup>146</sup> However, apart from this program, the guidelines included no Title VI responsibilities for state recipients. Furthermore, OEO had no active monitoring program of states' Title VI compliance and thus did not know whether states were complying. This was a major lapse at DOI because most of its funds were distributed via continuing state programs.<sup>147</sup>

The Commission's 1996 evaluation revealed that OEO and the bureaus could remedy this situation by reviewing and approving, or not, a state's methods of administration. To accomplish this, states operating continuing state programs would be required to submit such data along with "annual Title VI self-assessments reporting on their compliance with Title VI."<sup>148</sup> The Commission also recommended that trained bureau staff review data, thus limiting the possibility that noncompliance would be overlooked.

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<sup>141</sup> USCCR, *Federal Title VI Enforcement*, p. 411.

<sup>142</sup> *Ibid.*

<sup>143</sup> *Ibid.*

<sup>144</sup> DOI Interrogatory, pp. 8–10.

<sup>145</sup> *Ibid.*, p. 9.

<sup>146</sup> The National Park Service administers the Land and Water Conservation Fund. See <<http://www.nps.gov/programs/lwcf>>.

<sup>147</sup> USCCR, *Federal Title VI Enforcement*, p. 413.

<sup>148</sup> *Ibid.*

To further reduce noncompliance, the Commission asked OEO to monitor and evaluate the work of bureau staff. Conditions also warranted periodic on-site compliance reviews of continuing state programs by bureau civil rights staff. Noncompliance could be further reduced and resources maximized if technical assistance were provided during on-site reviews along with a report appraising Title VI compliance status and suggestions for eliminating any deficiencies.<sup>149</sup>

In 2003, the Commission finds that OEO continues to falter in its oversight of continuing state programs due to DOI's organizational structure. OEO states that DOI is not structured to hold states accountable for their Title VI enforcement programs. As such, there are no adequate resources to require states to perform annual self-assessment reports.<sup>150</sup>

## Conclusion

Despite minor improvements to Title VI enforcement in DOI's federal financial assistance programs, these efforts are negligible in the face of a Title VI program that has not met its obligations since the early 1980s, if ever.<sup>151</sup> The department and OEO must make a determined effort to drastically improve their Title VI enforcement program by increasing funding, assigning more staff, and dedicating themselves to, generally, raising its stature within DOI. Simply put, Title VI must be prioritized at DOI if recipients and beneficiaries are ever to receive the commitment they deserve and, more importantly, is their right.

The department and OEO can take a first step on this road by committing themselves to ensuring that the nine key elements and six strategies presented in the Commission's *Ten-Year Check-Up: Have Federal Agencies Responded to Civil Rights Recommendations? Volume I: A Blueprint for Civil Rights Enforcement* report (September 2002) are promptly incorporated into DOI's civil rights enforcement program. Specifically, the nine key elements are:

- a high priority for civil rights enforcement, established through sufficient resources consisting of funding and staffing;
- an organizational structure that expresses the priority of civil rights, for example, by having the top civil rights official reporting directly to the agency head;
- planned civil rights goals and activities, such as a strategic plan for which and how many enforcement activities are needed to fulfill the agency's civil rights obligations and what resources will be allocated to accomplish them;
- clear and pertinent policy guidance, including internal procedures, external policy, and current regulations;
- technical assistance, such as helping employers and service providers establish policies and procedures that comply with antidiscrimination laws;
- education and outreach, such as helping victims of discrimination and the public understand their civil rights and how to obtain assistance if discrimination occurs;
- effective complaint processing systems to ensure that those who believe they have been discriminated against have a means of resolution;

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<sup>149</sup> USCCR, *Federal Title VI Enforcement*, p. 413.

<sup>150</sup> DOI Interrogatory, p. 20.

<sup>151</sup> Stith interview.

- systems to review all federal funding recipients' compliance with antidiscrimination laws both before and after awards are made and to correct deficiencies; and
- regular staff training on civil rights statutes and enforcement policies and procedures.<sup>152</sup>
- The six strategies are:
- integrating civil rights enforcement throughout every part of the agency, including all its agency components, programs, and field offices, and in every program that receives federal funding;
- delegating enforcement activities, such as responsibility for reviewing civil rights compliance, from agency headquarters to agency components, field offices, contracting organizations, and recipients with subrecipients;
- implementing oversight and quality assurance procedures to ensure that delegated responsibilities are carried out properly and consistently;
- coordinating civil rights enforcement activities with other federal agencies;
- streamlining enforcement procedures to ensure that they are conducted effectively and efficiently with the fewest resources; and
- involving advocacy groups and community organizations in designing civil rights enforcement activities.<sup>153</sup>

If DOI and OEO incorporate these elements and strategies into their Title VI enforcement program, they will have taken a critical step toward making civil rights an integral part of the department and meeting their Title VI enforcement obligations.

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<sup>152</sup> U.S. Commission on Civil Rights, *Ten-Year Check-Up: Have Federal Agencies Responded to Civil Rights Recommendations? Volume I: A Blueprint for Civil Rights Enforcement*, September 2002, pp. x–xii.

<sup>153</sup> *Ibid.*, pp. xii–xiii.

## Chapter 4

# Environmental Protection Agency

The U.S. Environmental Protection Agency (EPA) was established in the executive branch as an independent agency created to permit coordinated and effective governmental action on the environment.<sup>1</sup> There are 13 major offices in EPA: (1) the Administrator; (2) Administration and Resources Management; (3) Air and Radiation; (4) the Chief Financial Officer; (5) General Counsel; (6) Enforcement and Compliance Assurance; (7) Environmental Information; (8) Inspector General; (9) International Affairs; (10) Prevention, Pesticides, and Toxic Substances; (11) Research and Development; (12) Solid Waste and Emergency Response; and (13) Water. Additionally, 10 regional offices and 17 laboratories are located throughout the country.<sup>2</sup>

EPA's mission is to protect human health and to safeguard the natural environment, air, water, and land, upon which life depends. EPA provides leadership in the nation's environmental science, research, education, and assessment efforts and works closely with other federal agencies, state and local governments, and Indian tribes to develop and enforce regulations under existing environmental laws. EPA is responsible for researching and setting national standards for several environmental programs and delegates to states and tribes the responsibility for issuing permits, and monitoring and enforcing compliance. Where national standards are not met, EPA can issue sanctions and take other steps to help states and tribes reach the desired levels of environmental quality. The agency also works with industries and all levels of government in a wide variety of voluntary pollution prevention programs and energy conservation efforts.

The Commission reviewed EPA in 1996 and assessed the agency's effectiveness in fulfilling its Title VI civil rights enforcement responsibilities. In its report, the Commission made 29 recommendations to EPA aimed at improving Title VI enforcement.<sup>3</sup> The Office of Civil Rights (OCR), more specifically, its External Compliance program, has exclusive responsibility for enforcing Title VI at EPA, including investigating complaints.<sup>4</sup>

The statutes for which EPA has external civil rights responsibilities include (1) Title VI of the Civil Rights Act of 1964, (2) Section 504 of the Rehabilitation Act of 1973, (3) Section 13 of the Federal Water Pollution Control Act Amendments of 1972, (4) Title VIII of the Civil Rights Act of 1968, (5)

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<sup>1</sup> Pursuant to Reorganization Plan #3 of 1970, effective December 2, 1970. See U.S. Environmental Protection Agency, "Agency Overview," 2002, <<http://www.epa.gov/history/org/origins/overview.htm>>.

<sup>2</sup> U.S. Environmental Protection Agency, "EPA Organizational Structure," 2002, <<http://www.epa.gov/epahome/organization.htm>>; U.S. Environmental Protection Agency, "Who We Are," 2002, <<http://www.epa.gov/epahome/aboutepa.htm>>.

<sup>3</sup> U.S. Commission on Civil Rights, *Federal Title VI Enforcement to Ensure Nondiscrimination in Federally Assisted Programs*, June 1996 (hereafter cited as USCCR, *Federal Title VI Enforcement*).

<sup>4</sup> U.S. Environmental Protection Agency's Response to the U.S. Commission on Civil Rights' Interrogatory for Volume III of the Ten-Year Review of Civil Rights Enforcement, Office of Civil Rights, Nov. 27, 2002, p. 10 (hereafter cited as EPA Interrogatory).

Title IX of the Education Act Amendments of 1972, and (6) Age Discrimination Act of 1975.<sup>5</sup> The Commission's 2003 report focuses on OCR and its enforcement of Title VI.

## Overview

In 1996, the Commission found that EPA had several deficiencies that impeded Title VI implementation and enforcement. OCR was not appropriately organized to advance external civil rights; the OCR director, for example, did not report directly to the administrator. The office was also lacking important planning information as a result of not having an electronic system for simultaneously tracking, by statute, external civil rights expenditures and staff assignments. Furthermore, OCR's Civil Rights Implementation Plans (CRIPs) were too general, and pre-award and complaint investigation procedures had not been updated since 1984. Education, outreach, and technical assistance were inadequate, as was staff training. In the midst of these inadequacies, the Commission was somewhat heartened to find that EPA was developing investigative plans for case investigation.

In 2003, the Commission finds that EPA shows considerable improvement in civil rights since the 1996 review. EPA established an internal Title VI task force in December 1996 to help implement the Commission's 1996 recommendations. Organizationally, OCR is better set up for Title VI, now that the director reports exclusively to the administrator, and has weekly meetings with the deputy chief of staff to discuss routine civil rights matters.<sup>6</sup> EPA is developing and updating Title VI procedures. Its approach to education, outreach, and technical assistance has model aspects well worth adopting by other federal agencies. EPA has also developed a comprehensive complaint process that is now being field tested.

The Commission's study, however, reveals that OCR still does not track electronically and maintain external civil rights expenditures and staff assignments in the same database. Furthermore, the External Compliance program is understaffed, and an adequate document for planning and management has to be developed. Moreover, EPA did not conduct any pre-award or post-award compliance reviews in FY 2002. Thus, there is room for improvement.

## Priority of Civil Rights

During the Commission's 1996 review, EPA's OCR director formally reported to the administrator, but on routine civil rights matters, to the deputy chief of staff. While this arrangement was sufficient for day-to-day concerns, the Commission advised that the OCR director should report to the administrator on policy, budget, and resource decisions affecting civil rights programs.<sup>7</sup> The Commission recommended that EPA hold area directors accountable for regional staff's external civil rights efforts to ensure that civil rights concerns and directions of headquarters OCR were correctly commu-

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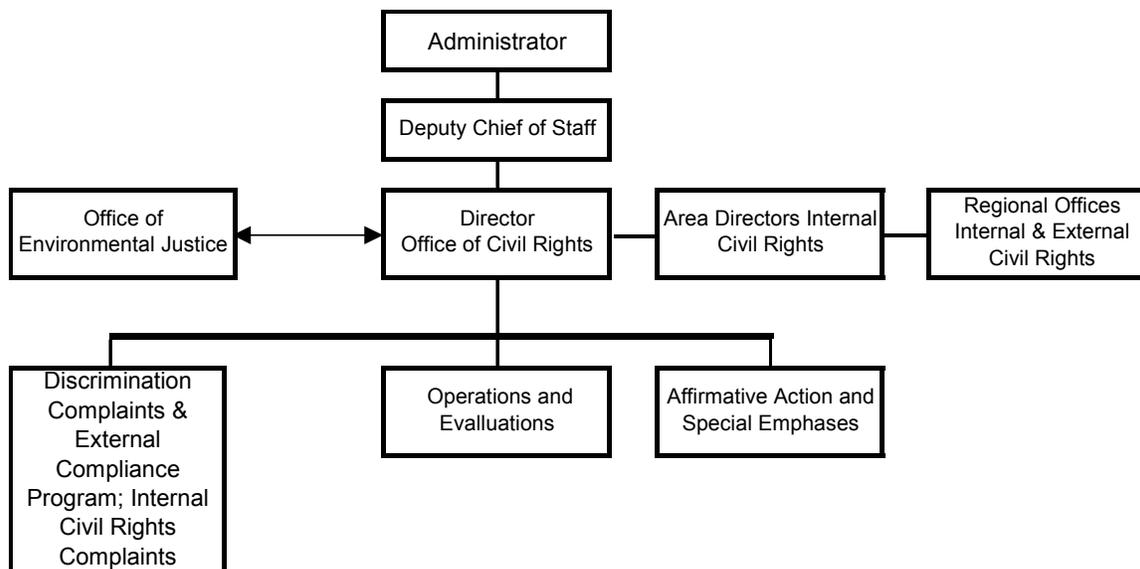
<sup>5</sup> U.S. Environmental Protection Agency, "External Complaints and Compliance Program," 2002 <<http://www.epa.gov/ocrpage1/extcom.htm>>; USCCR, *Federal Title VI Enforcement*, pp. 416, 419; Federal Water Pollution Control Act Amendments of 1972, Pub. L. No. 92-500, 86 Stat. 816 (codified as amended at 33 U.S.C. § 1251 (1994)); Title VIII of the Civil Rights Act of 1968, Pub. L. No. 90-284, 82 Stat. 81 (codified as amended at 42 U.S.C. §§ 3601–3639 (1994)).

<sup>6</sup> Karen D. Higginbotham, director of civil rights, EPA, letter to Les Jin, staff director, USCCR, June 4, 2003, p. 1 (hereafter cited as Higginbotham letter).

<sup>7</sup> USCCR, *Federal Title VI Enforcement*, pp. 419–420, 439.

nicated and followed.<sup>8</sup> Figures 4.1 and 4.2 summarize OCR's basic organizational structure in 1994 and 2003.

**FIGURE 4.1**  
**EPA Office of Civil Rights Organizational Structure, 1994**



Source: USCCR, *Federal Title VI Enforcement*, pp. 419–20.

In 2003, the OCR director reports to the EPA administrator and also meets with the deputy chief of staff weekly on routine civil rights concerns.<sup>9</sup> The Commission initially found that the director was serving in an acting capacity,<sup>10</sup> but later learned that the acting director was made a full director in December 2002.<sup>11</sup> The director regularly participates in executive meetings where budget, staffing, and policy decisions are discussed and advocates for resources to implement EPA's civil rights programs. Through resource allocations and statements, it is evident that the administrator strongly supports the director's advocacy and has publicly and repeatedly expressed support for EPA's civil rights programs.<sup>12</sup> OCR no longer has Title VI area/regional directors or Title VI regional civil rights staff. The staff at headquarters administers the external nondiscrimination program and has direct responsibility for enforcement in the regions. Each EPA program and regional office now has a Title VI contact whose main responsibility is to implement EPA's national Title VI program.<sup>13</sup>

In 1996, internal and external civil rights functions were consolidated at headquarters and in the regional offices. The Commission found that there had been an encroachment on external civil rights

<sup>8</sup> *Ibid.*, p. 439.

<sup>9</sup> EPA Interrogatory, p. 4.

<sup>10</sup> EPA/OCRE entrance meeting, Oct. 23, 2002.

<sup>11</sup> Yasmin Yorker, team leader Title VI, U.S. Environmental Protection Agency, Office of Civil Rights, telephone interview, Jan. 27, 2003 (hereafter cited as Yorker telephone interview, Jan. 27, 2003).

<sup>12</sup> EPA Interrogatory, p. 4.

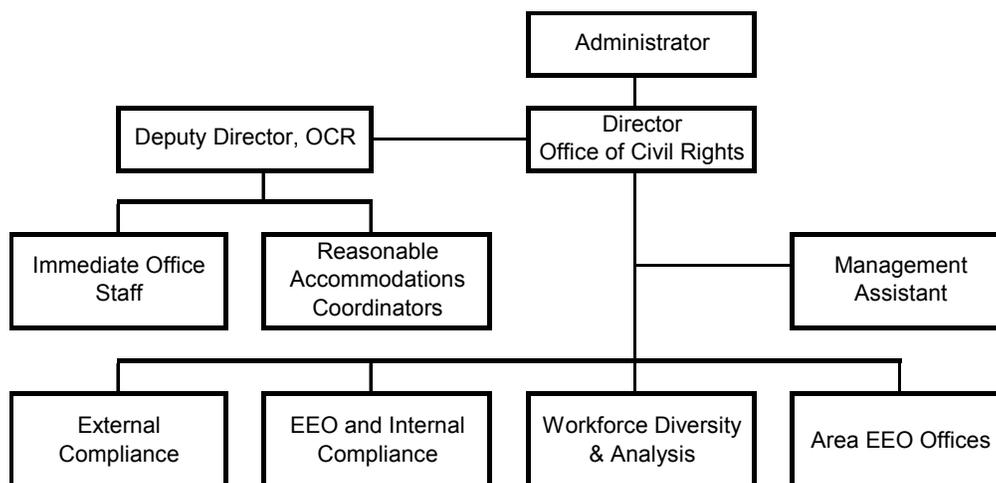
<sup>13</sup> *Ibid.*, p. 5.

enforcement resources because of an increase in internal complaints. It recommended that EPA separate internal and external civil rights functions at headquarters and in the regional offices to safeguard resources for external enforcement.<sup>14</sup>

During its 2003 study, the Commission finds that EPA has restructured external and internal civil rights functions into two distinct units, External Compliance and Equal Employment Opportunity Internal Compliance, respectively, although both still reside in OCR. Each concentrates on its assigned area of enforcement.<sup>15</sup> The third area under OCR's purview is Workforce Diversity and Analysis.<sup>16</sup>

The Commission also finds that EPA established an internal Title VI task force in December 1996, whose responsibility among others was to implement the Commission's 1996 recommendations. The December 1996 task force was disbanded in 1997.<sup>17</sup> This, along with the structural changes described above, indicates that EPA has made serious efforts to give priority to civil rights.

**FIGURE 4.2**  
**EPA Office of Civil Rights Organizational Structure, 2003**



Source: U.S. Environmental Protection Agency's Response to the U.S. Commission on Civil Rights' Interrogatory for Volume III of the Ten-Year Review of Civil Rights Enforcement, Office of Civil Rights, Nov. 27, 2002, p. 6; Yasmin Yorker, Title VI team leader, U.S. Environmental Protection Agency, e-mail to Sock-Foon MacDougall, social scientist, USCCR, Mar. 25, 2003; Yasmin Yorker, Title VI team leader, U.S. Environmental Protection Agency, e-mail to Sock-Foon MacDougall, social scientist, USCCR, Mar. 26, 2003; Karen D. Higginbotham, director of civil rights, EPA, letter to Les Jin, staff director, USCCR, June 4, 2003, p. 2.

<sup>14</sup> USCCR, *Federal Title VI Enforcement*, pp. 439–40.

<sup>15</sup> EPA Interrogatory, p. 5; U.S. Environmental Protection Agency, "About the Office of Civil Rights," August 2002, <<http://www.epa.gov/ocrpage1.aboutocr.htm>>.

<sup>16</sup> U.S. Environmental Protection Agency, "Workforce Diversity and Analysis (WDA) Team," August 2002, <<http://epa.gov/ocrpage1/summ.htm>>.

<sup>17</sup> Higginbotham letter, p. 1.

## Resources—Funding and Staffing

The Commission noted in 1996 that OCR did not track expenditures for external civil rights activities by statute, an insufficiency that likely impeded OCR's long-range planning and goals. The Commission recommended that OCR develop a database for tracking expenditures and staff assignments on all external compliance and enforcement activities, in particular those related to Title VI.<sup>18</sup>

The 2003 review finds that OCR still does not have an electronic database for tracking external civil rights expenditures and staffing assignments by statute. The Title VI team leader tracks staff assignments and conducts workload analyses manually on handwritten sheets. OCR, however, maintains information on expenditures in an electronic database. According to EPA, this approach to oversight of expenditures and staffing needs serves its purpose.<sup>19</sup> In a subsequent communication with the Commission, EPA states that beginning in FY 2004, each OCR team will submit a budget request to the office director. Based on these requests, OCR's budget will be divided among the teams. Each supervisory team leader will have overall responsibility for developing an operating plan against the budget. EPA believes this process will address the Commission's recommendation to track expenditures for external civil rights activities.<sup>20</sup>

During the 2003 review, the Commission finds that OCR funding has been maintained even though EPA's overall budget has undergone cuts. OCR maintains that it has adequate resources to address all Title VI issues, including new complaint and compliance reviews.<sup>21</sup> However, programmatic needs dictate the dispersal of funds among OCR's programs, and the External Compliance program does not have its own budget.<sup>22</sup> The Commission is concerned that this setup does not necessarily safeguard funds for the External Compliance program. OCR's budget almost always grew annually between FY 1993 and 2003, from \$1.8 million in FY 1993 to \$6.5 million in FY 2003. Most notable is the large absolute and percentage increase in funding in FY 2001, 95.2 percent, or \$3.2 million higher than FY 2000 (see figure 4.3).<sup>23</sup>

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<sup>18</sup> USCCR, *Federal Title VI Enforcement*, p. 440.

<sup>19</sup> EPA Interrogatory, p. 6.

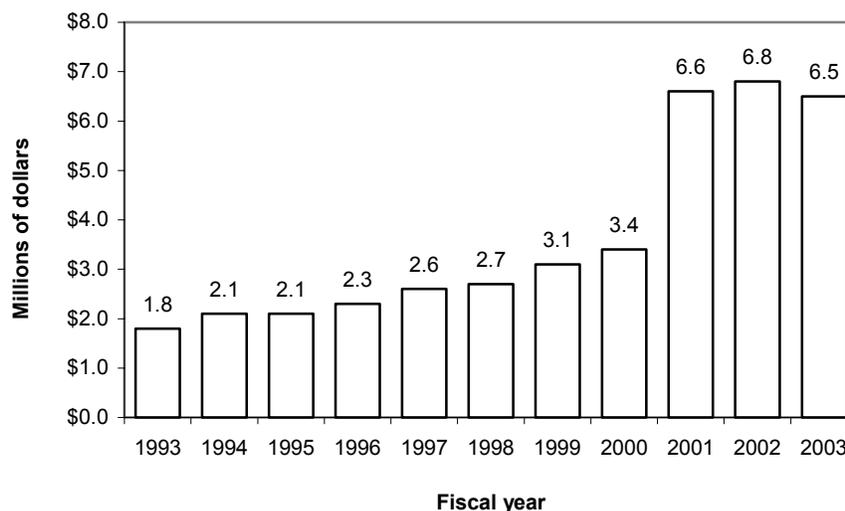
<sup>20</sup> Higginbotham letter, p. 2.

<sup>21</sup> EPA Interrogatory, p. 7.

<sup>22</sup> Yorker telephone interview, Jan. 27, 2003.

<sup>23</sup> EPA/OCR, "EPA's Office of Civil Rights Budget, Fiscal Years 1993–2002." EPA's chief financial officer has not re-programmed final FY 2003 funds for OCR. Yasmin Yorker, Title VI team leader, U.S. Environmental Protection Agency, e-mail to Sock-Foon MacDougall, social scientist, USCCR, Mar. 25, 2003 (hereafter cited as Yorker e-mail, Mar. 25, 2003).

**FIGURE 4.3**  
**EPA Office of Civil Rights Budget, 1993–2003**



Source: U.S. Environmental Protection Agency, Office of Civil Rights, "EPA's Office of Civil Rights Budget."

The 1996 study found that OCR had been assigned four attorneys and thus had the ability to conduct legal analyses and draft and develop EPA's civil rights regulations and policies. As a result, the Commission recommended that OCR attorneys function as the primary legal experts on civil rights laws affecting EPA. In addition, the Commission said that the Office of General Counsel should remain the primary legal advisor to the administrator.<sup>24</sup> Furthermore, OCR should assess its external civil rights program and identify the areas that need more staff.<sup>25</sup>

In 2003, the Commission finds that in 1998, EPA established and still maintains a Civil Rights Law Office within the Office of General Counsel (OGC). The Civil Rights Law Office performs legal functions previously assigned to OCR's attorneys and advises OCR on other aspects of EPA's External Compliance program, such as limited-English-proficiency (LEP) issues. OCR's current staff includes persons with law degrees, but they do not serve as attorneys per se. The Title VI team leader, for example, is a lawyer by training, but works in an administrative capacity. EPA officials maintain that this structure best serves OCR and is consistent with the fact that OGC is the primary legal advisor to the administrator and agency.<sup>26</sup>

The Commission also finds that full-time-equivalent (FTE) staff in OCR has grown over time, from 22.6 in FY 1993 to 42.5 in 2003 (see figure 4.4).<sup>27</sup> However, between 1993 and 1999, the growth was uneven, although the year-to-year FTE change between 1995 and 1999 is generally small. The largest change occurred in FY 2000, an increase of eight FTEs over FY 1999.

OCR assesses resource and programmatic needs annually. According to OCR, the External Compliance program is adequately staffed, having five staff members, two of whom are detailed temporarily

<sup>24</sup> USCCR, *Federal Title VI Enforcement*, p. 440.

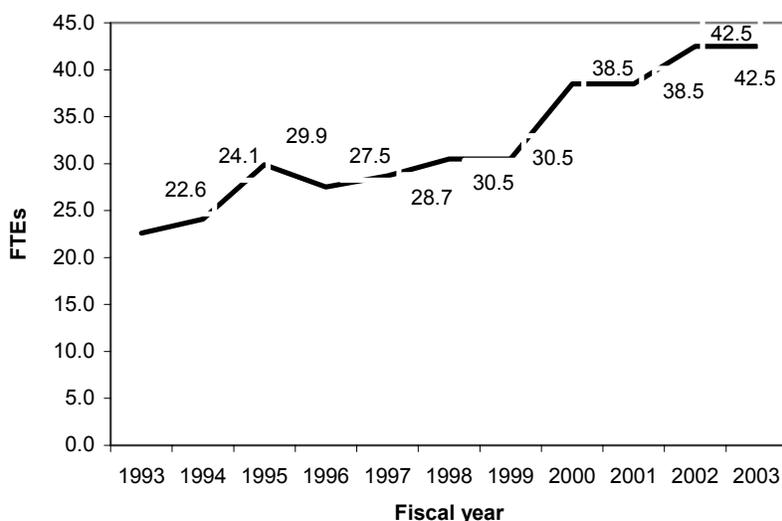
<sup>25</sup> *Ibid.*, p. 441.

<sup>26</sup> EPA Interrogatory, pp. 5–6.

<sup>27</sup> FTEs are rounded.

to a Title VI task force, which the administrator formed in May 2001, one full time and the other part time.<sup>28</sup> The Commission finds, however, that EPA has recently given the External Compliance program a new full-time position, which will be filled during 2003.<sup>29</sup> Still, the External Compliance program has been operating with 3.5 core staff since FY 2001. To counter staffing insufficiency, OCR augments the External Compliance program's small staff by leveraging resources from other EPA program offices, and supporting detail opportunities for additional staff members with appropriate experience and knowledge. OCR plans to determine if additional compliance staff are necessary after EPA has finished developing its post-award compliance review program,<sup>30</sup> which will be drafted by the end of calendar year 2003.<sup>31</sup> Additional compliance staff may be realized through leveraging existing agency resources. Furthermore, when the Title VI task force's work is completed, OCR will evaluate staffing needs for complaint investigations, most likely in the fall.

**FIGURE 4.4**  
**EPA Office of Civil Rights Staffing, 1993–2003**



Source: U.S. Environmental Protection Agency, Office of Civil Rights.

The Commission is heartened that beginning with FY 2004, funding for external civil rights will be protected from encroachment through separate civil rights budgets. The Commission maintains that an electronic database for tracking external civil rights expenditures and staffing assignments by statute facilitates workload analysis and comparative assessment of the enforcement of the different external statutes. Meanwhile, the External Compliance program is understaffed, since in addition to Title VI, it is responsible for five other federal nondiscrimination statutes.<sup>32</sup> Detailing staff from

<sup>28</sup> EPA Interrogatory, p. 6. The Title VI task force was formed to assist in eliminating a backlog of Title VI complaints and is discussed in greater detail later.

<sup>29</sup> Yorker telephone interview, Jan. 27, 2003; Higginbotham letter, p. 3.

<sup>30</sup> EPA Interrogatory, pp. 6–7.

<sup>31</sup> Yorker e-mail, Mar. 25, 2003.

<sup>32</sup> These are Section 504 of the Rehabilitation Act of 1973, Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Title VIII of the Civil Rights Act of 1968, Title IX of the Education Act amendments of 1972, and

other EPA programs does not advance civil rights enforcement because detailed staff are not civil rights specialists.

## Planning

In the 1996 review, the Commission concluded that EPA's Civil Rights Implementation Plans (CRIPs) were inadequate as informational, planning, or reporting tools. For example, the goals were too general and overly ambitious in light of OCR's limited budget and staffing. The Commission said that EPA should (1) engage in a serious planning effort on its civil rights enforcement programs; (2) submit a Title VI implementation plan to DOJ to meet coordination regulations; (3) assess current Title VI activities; (4) ensure that enforcement programs provide a clear understanding of Title VI compliance and enforcement processes; (5) include in the Title VI enforcement programs strategies to meet the long-range goals of each type of civil rights activity; and (6) conduct an annual assessment of achievement of these goals and objectives, as well as a reevaluation of its Title VI enforcement programs.<sup>33</sup>

In 2003, OCR's most recent planning concentrated on the development of the *Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Draft Recipient Guidance)*, which was published for public comment in the *Federal Register* in June 2000 and will be finalized in FY 2003.<sup>34</sup> *Draft Recipient Guidance* helps recipients address situations that may otherwise result in administrative complaints alleging violations of Title VI and EPA Title VI regulations. OCR is also developing and applying complaint investigative processes and techniques.<sup>35</sup>

EPA annually submits Civil Rights Implementation Plans to DOJ.<sup>36</sup> CRIPs inform DOJ of agency plans, activities, and accomplishments, or lack of, on all federally assisted programs subject to Executive Order 12,250, "Leadership and Coordination of Nondiscrimination Laws." OCR also uses this report to assess progress made in civil rights implementation and enforcement in the previous year and to set internal goals and activities for the current year.<sup>37</sup> The FY 2002 report, the most current, was submitted in April 2002 and DOJ approved it with comments in November 2002. The FY 2002 report consists of responses to DOJ questions on (1) EPA's FY 2002 objectives and activities to enforce Title VI and other nondiscrimination statutes; (2) activities accomplished or not completed; (3) whether new regulations, policies, or procedures have been developed that are subject to DOJ review under Executive Order 12,250; and (4) EPA's "Civil Rights Workload and Performance Data" for different external civil rights programs.<sup>38</sup>

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Age Discrimination Act of 1975. See U.S. Environmental Protection Agency, "External Complaints and Compliance Program," 2002, <<http://www.epa.gov/ocrpage/extcom.htm>>.

<sup>33</sup> USCCR, *Federal Title VI Enforcement*, pp. 451–52.

<sup>34</sup> EPA Interrogatory, pp. 2, 23; Yasmin Yorker, team leader Title VI, U.S. Environmental Protection Agency, Office of Civil Rights, telephone interview, Mar. 25, 2003 (hereafter cited as Yorker telephone interview, Mar. 25, 2003).

<sup>35</sup> EPA Interrogatory, pp. 2, 23.

<sup>36</sup> *Ibid.*, p. 24. President Jimmy Carter, through Executive Order 12,250, directed the attorney general to provide leadership and coordinate the implementation, compliance, and enforcement responsibilities of the federal agencies with respect to Title VI. See USCCR, *Federal Title VI Enforcement*, p. 1.

<sup>37</sup> Yasmin Yorker, team leader Title VI, Office of Civil Rights, Patrick Chang, attorney, Civil Rights Law Office, Seth Meiner, attorney, Office of General Counsel, U.S. Environmental Protection Agency, telephone interview, Feb. 3, 2003 (hereafter cited as Yorker, Chang, and Meiner telephone interview, Feb. 3, 2003).

<sup>38</sup> Karen D. Higginbotham, director of civil rights, EPA, letter to U.S. Department of Justice, Feb. 26, 2002.

The Commission further finds in its 2003 study that EPA reviewed its Title VI programs and responsibilities. As a result, OCR was given sole responsibility for Title VI implementation and enforcement, and Executive Order 12,898 compliance functions were transferred to the Office of Environmental Justice.<sup>39</sup> EPA's most recent assessment of Title VI activities took place early in 2001, when agency officials decided that the resolution of backlog complaints alleging violations of Title VI was an agencywide priority.<sup>40</sup> The administrator ordered the establishment of a second Title VI task force, which is staffed by 13 full-time persons detailed from various EPA offices and two civil rights investigators who provide assistance on an as-needed basis. The task force has authority to draw on technical, legal, and policy expertise throughout EPA and is allotted funds for contract support. When the task force was formed, 66 complaints were pending, with 45 classified as "under review" and 21 accepted for investigation. The agency was limited in dealing with the complaints because of a 1998 congressional rider on EPA's appropriation act. In place from 1999 through 2001, the rider forbids EPA to use appropriated funds to implement *Interim Guidance for Investigating Title VI Administrative Complaints Challenging Permits* until the document was finalized. The rider affected about half of the "under review" complaints. By FY 2002, the rider was lifted.<sup>41</sup> Half of the backlog has now been resolved and the remainder will be completed by summer 2003, at which time EPA plans to evaluate its Title VI activities again.<sup>42</sup> Some investigations may continue because EPA is awaiting results of informal resolution and concurrent litigation. In addition, there are a few complaints with highly complex technical issues, which EPA continues to vigorously investigate.<sup>43</sup>

## Policy Guidance

The Commission found in 1996 that EPA's Title VI regulations were combined with other nondiscrimination regulations for federally assisted programs. The Commission said unified regulations may be adequate if they include all the necessary elements for an effective Title VI program. Thus, the Commission said that EPA should (1) review the regulations to ensure that they have the essential elements; (2) add the meaning of "program or activity" as clarified by the Civil Rights Restoration Act of 1987; (3) clarify which of the requirements for applicants and recipients, and for compliance procedures applied to Title VI; (4) include comprehensive guidelines and procedures to address Title VI requirements for applicants and recipients and compliance procedures; and (5) add specific prohibitions proscribing discrimination in activities conducted in facilities built with federal funds.<sup>44</sup>

The Commission now finds that EPA reviews its unified nondiscrimination regulations, and that the regulations contain all the elements necessary for an effective Title VI program.<sup>45</sup> Moreover, EPA regularly consults with DOJ and participates in all DOJ interagency meetings on Title VI and other

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<sup>39</sup> President Clinton issued Executive Order 12,898, titled "Federal Actions to Address Environmental Justice in Minority and Low-Income Populations," in February 1994. See USCCR, *Federal Title VI Enforcement*, p. 416.

<sup>40</sup> EPA Interrogatory, p. 24.

<sup>41</sup> *Ibid.*, p. 3.

<sup>42</sup> *Ibid.*, pp. 6–7, 24.

<sup>43</sup> Higginbotham letter, p. 3.

<sup>44</sup> USCCR, *Federal Title VI Enforcement*, pp. 441–42.

<sup>45</sup> Nondiscrimination in Programs Receiving Federal Assistance from the Environmental Protection Agency, 40 C.F.R. § 7 (2002). There are five subparts: (1) General; (2) Discrimination Prohibited on the Basis of Race, Color, National Origin or Sex; (3) Discrimination Prohibited on the Basis of Handicap; (4) Requirements for Applicants and Recipients; and (5) Agency Compliance Procedures.

regulations.<sup>46</sup> Regulations clearly state the Title VI requirements for applicants and recipients and for compliance procedures. Applicants and recipients have access to trained staff in OCR and EPA grant programs should they have questions.<sup>47</sup> The definition of “program or activity,” as clarified by the Civil Rights Restoration Act of 1987, is being added to the definitional section. As far as EPA knows, DOJ has drafted a joint final rule, and informed all federal agencies on August 27, 2002, that the result “was in the final stages of approval process and is almost ready for publication.”<sup>48</sup> OCR has not added specific prohibitions proscribing discrimination in activities conducted in a facility built with federal funds because the prohibition is covered in EPA’s nondiscrimination regulations.<sup>49</sup> In addition, all applicants and recipients must complete Form 4700-4, “Pre-award Compliance Review Report for All Applicants Requesting Federal Financial Assistance” (Pre-Award Form 4700-4), which lists the nondiscrimination obligations of applicants and recipients.<sup>50</sup>

According to EPA, the comprehensive *Draft Recipient Guidance* and *Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits (Draft Revised Investigative Guidance)* address Title VI-specific requirements for applicants and recipients. The *Draft Recipient Guidance* shows applicants and recipients ways to improve their Title VI programs. The *Draft Revised Investigation Guidance* describes EPA’s approach to investigating Title VI complaints alleging discriminatory effects from the issuance of pollution control permits by recipients.<sup>51</sup> The May 2001 Title VI task force is field testing *Draft Revised Investigative Guidance*. Once finalized, it will replace *Interim Guidance for Investigating Title VI Administrative Complaints Challenging Permits (Interim Guidance)*.<sup>52</sup> At this point, however, EPA is unable to say when *Draft Revised Investigation Guidance* will be ready for release.<sup>53</sup>

The Commission’s 1996 report found that EPA regulations included an appendix listing the federally assisted programs to which the regulations apply. However, the appendix had not been updated since 1984. Furthermore, the list did not distinguish state continuing programs from other programs.<sup>54</sup> The Commission recommended that EPA update its appendix, or publish its list of programs in some other format—such as a catalog—that is regularly updated, and distinguish state continuing programs from others.<sup>55</sup>

The Commission now finds that EPA has not implemented any of the above recommendations because such information is available on the Internet as well as in the General Services Administra-

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<sup>46</sup> For example, EPA co-chairs an interagency committee on implementation of the executive order on limited English proficiency. See EPA Interrogatory, p. 7.

<sup>47</sup> EPA Interrogatory, pp. 7–8.

<sup>48</sup> *Ibid.*, p. 8. The Civil Rights Restoration Act of 1987 clarifies that discrimination is prohibited throughout an entire agency or institution if any part of that agency or institution received federal financial assistance. See USCCR, *Federal Title VI Enforcement*, pp. 36–37.

<sup>49</sup> 40 C.F.R. §§ 7.25, 7.30, 7.35 (2002); EPA’s nondiscrimination regulations extend to all grants and prohibit recipients and subrecipients of financial assistance from discriminating on the basis of race, color, or national origin. See also EPA Interrogatory, p. 9.

<sup>50</sup> EPA Interrogatory, p. 9.

<sup>51</sup> *Ibid.*, p. 8; 65 Fed. Reg. 39,650 (2000).

<sup>52</sup> EPA Interrogatory, p. 8; 65 Fed. Reg. 39,650 (2000).

<sup>53</sup> Yorker telephone interview, Mar. 25, 2003.

<sup>54</sup> Distinguishing state continuing programs from other programs is helpful, for example, in identifying the state recipient or local agency responsible for enforcing Title VI with respect to recipients or subrecipients. See USCCR, *Federal Title VI Enforcement*, p. 427.

<sup>55</sup> USCCR, *Federal Title VI Enforcement*, p. 442.

tion's *Catalog of Federal Domestic Assistance* (CFDA), which EPA updates annually,<sup>56</sup> but the CFDA Web site lists only continuing grants. Information for all of EPA's federally assisted programs, continuing and one-time, can only be found in the Grants Information and Control System, a public database. EPA says that a user need only enter a key word, such as the name of a grant recipient, to obtain detailed information.<sup>57</sup> The Commission finds that this method of obtaining information on federally assisted grant programs is only useful to persons already familiar with EPA grant recipients. It does not help members of the public who know little about EPA grants and are trying to obtain information on them. EPA maintains that since the database is searchable by the recipient's name, any member of the public concerned about discrimination is likely to be familiar with the name of the recipient involved and therefore would be able to use the database.<sup>58</sup>

The Commission's 1996 study also found that EPA had not issued guidelines explaining the implications of the Civil Rights Restoration Act of 1987 on Title VI for each type of EPA financial assistance program. The Commission said that EPA should issue, for each type of federal financial program, guidelines that (1) show that Title VI's prohibition of discrimination applies to the entire state or local agency or public or private institution; (2) offer examples of program-specific prohibited practices; and (3) include the nature of requirements with regard to data collection, complaints, and public information. Furthermore, EPA should (4) provide guidance on the types of remedial actions available in response to Title VI violations or findings of noncompliance; and (5) issue program-specific guidance on methods of enforcement.<sup>59</sup>

In 2003, the Commission finds that EPA has not issued guidelines for each of its financial assistance programs because the programs change from year to year.<sup>60</sup> EPA's *Draft Recipient Guidance* offers suggestions on the types of actions that recipients or subrecipients may take to reduce Title VI concerns in environmental-permitting programs. *Draft Recipient Guidance* applies to all environmental-permitting programs regardless of the type of financial assistance program involved.<sup>61</sup>

Since an overwhelming majority of the Title VI complaints filed with EPA allege discrimination in the issuance of environmental permits and discriminatory effects rather than discriminatory intent, EPA's Title VI guidances speak to discriminatory effects in all environmental-permitting programs regardless of the financial assistance programs. The agency plans to issue guidances on other activities as appropriate.<sup>62</sup> The Commission believes a suitable time for EPA to decide if and when guidances on other EPA activities need to be issued would be after the May 2001 task

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<sup>56</sup> General Services Administration, "The Catalog of Federal Domestic Assistance," <<http://www.cfda.gov>>; EPA Interrogatory, p. 9.

<sup>57</sup> Yorker, Chang, and Meinero telephone interview, Feb. 3, 2003.

<sup>58</sup> Higginbotham letter, p. 4.

<sup>59</sup> USCCR, *Federal Title VI Enforcement*, p. 443. DOJ's coordination regulations require an agency to publish Title VI guidelines for each type of federal assistance programs under its jurisdiction. See USCCR, *Federal Title VI Enforcement*, p. 443.

<sup>60</sup> EPA Interrogatory, p. 10.

<sup>61</sup> Ibid.

<sup>62</sup> Ibid. See also U.S. Environmental Protection Agency, "EPA's Program to Implement Title VI of the Civil Rights Act of 1964": "The Supreme Court has ruled that Title VI authorizes federal agencies, including EPA, to adopt implementing regulations that prohibit discriminatory effects as well as intentional discrimination. Frequently, discrimination results from policies and practices that are neutral on their face, but have the *effect* of discriminating. Facially neutral policies or practices that result in discriminatory effects violate EPA's Title VI regulations unless it is shown that they are justified and that there is no less discriminatory alternative," August 2002, <<http://www.epa.gov/ocrpage1/t6home.htm>>.

force has completed its work, since the agency has already planned to revisit its Title VI activities at that time.

EPA has also prepared a draft LEP guidance, *Draft Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, that DOJ recently approved.<sup>63</sup> The LEP guidance will be published in the *Federal Register* for public comment in FY 2004.<sup>64</sup>

The Commission further finds that EPA has taken a number of steps to ensure that Title VI enforcement programs provide a clear understanding of the compliance and enforcement processes. For example, the agency met with stakeholders as it was developing *Draft Revised Investigation Guidance* and *Draft Recipient Guidance*. EPA clearly stated that these guidances were released to clarify for agencies and citizens the compliance requirements of Title VI.<sup>65</sup> The two documents and public comments were also posted on OCR's Web site in order to reach a wide audience. Enforcement programs are described in plain English to facilitate public understanding.<sup>66</sup>

In 1996, EPA's policies on Title VI were nonexistent or outdated. The Commission recommended that OCR and OGC identify areas in Title VI enforcement that needed clarification and issue policy statements for illumination.<sup>67</sup>

The Commission now finds that, in an effort to identify weaknesses in policy, OCR has implemented a robust public participation process that includes dialogues with stakeholders,<sup>68</sup> written comments from the public, and public hearings.<sup>69</sup> As a result, it has created new policies and clarified existing ones. For example, groups and individuals who reviewed *Interim Guidance* asked the agency to prepare guidance for recipients to facilitate compliance. Thus, EPA developed *Draft Recipient Guidance* and published it in the *Federal Register* in June 2000 for comments.<sup>70</sup> This comprehensive draft document offers recipients ways to address potential Title VI problems. Suggestions include (1) developing new public participation procedures or modifying existing ones to better incorporate and address the public's concerns; (2) creating an approach to identify areas in which adverse impacts disparately affect people on the basis of race, color, or national origin, and reducing those impacts over time; and (3) performing additional Title VI-related analyses and actions in some permitting decisions to address Title VI concerns.<sup>71</sup>

In its 1996 review, the Commission found that EPA's pre-award review and complaint investigation procedures had not been updated since 1984 and may not reflect recent EPA programs. As a result, it was recommended that EPA develop a comprehensive procedures manual that provides step-by-step guidance on (1) performing compliance reviews, (2) conducting complaint investigations, (3) resolv-

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<sup>63</sup> EPA Interrogatory, p. 3.

<sup>64</sup> Yorker telephone interview, Mar. 25, 2003.

<sup>65</sup> 65 Fed. Reg. 39,650 (2000).

<sup>66</sup> EPA Interrogatory, p. 24.

<sup>67</sup> USCCR, *Federal Title VI Enforcement*, pp. 444-45.

<sup>68</sup> Stakeholders include environmental justice groups, communities, industry, and state and local governments. See EPA Interrogatory, p. 1.

<sup>69</sup> EPA describes these public hearings as "listening sessions" since EPA officials literally listen to the views of the public and stakeholders. Yorker telephone interview, Jan. 27, 2003.

<sup>70</sup> EPA Interrogatory, p. 12; 65 Fed. Reg. 39,650 (2000).

<sup>71</sup> EPA Interrogatory, p. 12.

ing complaints or noncompliance, (4) instituting administrative or judicial proceedings, (5) affording remedies, (6) collecting and analyzing data; and providing (7) staff training, (8) outreach and education, and (9) technical assistance.<sup>72</sup> Furthermore, the procedures should make a distinction between OCR's compliance and enforcement activities, *and* its oversight, monitoring, and performance efforts on state agencies with Title VI programs.<sup>73</sup> The Commission also recommended that instructions on compliance reviews and complaint investigations specify the types of persons to contact and kinds of data to collect. Finally, the procedures manual should identify factors that should be considered in assessing noncompliance and discrimination under Title VI.<sup>74</sup>

In 2003, the Commission finds that EPA is developing procedures to address most of the nine topics.<sup>75</sup> EPA does not have a definitive procedures manual that provides step-by-step guidance for Title VI enforcement. Rather, procedures and guidances are located in several documents. For example, *Draft Revised Investigative Guidance* addresses conducting complaint investigations, resolving complaints or noncompliance, and collecting and analyzing data.<sup>76</sup> *Draft Recipient Guidance* offers suggestions on technical assistance. In addition, EPA relies on DOJ's *Title VI Investigation Procedures Manual*, *Title VI Legal Manual*, internal Title VI regulations, and other relevant materials for staff training. EPA is developing a post-award compliance review program and updating existing compliance review manuals and policies.<sup>77</sup> The post-award compliance review program will include standard operating procedures for both internal and external stakeholders, desk audits, and on-site reviews.<sup>78</sup> With regard to education and outreach, EPA's efforts have included "consultation with recipient agencies, publishing documents in the *Federal Register*, and establishment of an advisory committee."<sup>79</sup>

According to EPA, procedures manuals that exist do not distinguish between OCR's compliance and enforcement activities *and* its oversight, monitoring, and performance efforts on state agencies that have Title VI enforcement programs. EPA's post-award compliance review program, to be drafted in calendar year 2003, will encompass both activities.<sup>80</sup>

EPA also states that it relies on DOJ's *Title VI Investigation Procedures Manual* to identify interviewees and types of information to be collected. Specifically, persons to be interviewed should include the complainant and the recipient's staff with first- and secondhand knowledge of the situation,

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<sup>72</sup> USCCR, *Federal Title VI Enforcement*, p. 445.

<sup>73</sup> *Ibid.*

<sup>74</sup> *Ibid.*

<sup>75</sup> EPA Interrogatory, p. 13.

<sup>76</sup> *Ibid.* The relevant sections are II, "Framework for Processing Complaints"; III, "Accepting or Rejecting Complaints"; IV, "Resolving Complaints"; V, "Investigative Procedures"; VI, "Adverse Disparate Analysis"; and VII, "Determining Whether a Finding of Noncompliance is Warranted." 65 Fed. Reg. 39,670–84 (2000). It is noted that collection and analysis of data are not addressed per se in *Draft Revised Investigative Guidance*, but implied in EPA's framework for complaint processing. To illustrate, "[i]n response to allegations or during the course of an investigation, recipients as well as complainants may submit evidence such as data and analyses to support their position that an adverse disparate impact does or does not exist." See 65 Fed. Reg. 39,675 (2000).

<sup>77</sup> EPA officials say this endeavor is informed by the best practices of offices of civil rights in other federal agencies and will be led by an experienced individual who developed similar programs at the state level. See EPA Interrogatory, p. 17.

<sup>78</sup> EPA Interrogatory, p. 17.

<sup>79</sup> *Ibid.*, p. 13.

<sup>80</sup> *Ibid.*, p. 14.

while information should include what happened and why.<sup>81</sup> *Title VI Investigation Procedures Manual* also specifies that in determining noncompliance and discrimination under Title VI, the factors to be considered include appropriate legal theories, types of evidence, and the elements of a prima facie case.<sup>82</sup> Finally, EPA's *Draft Revised Investigation Guidance* details the process for determining if discriminatory effects exist in a recipient's environmental-permitting programs.<sup>83</sup>

## Education, Outreach, and Technical Assistance

Civil rights education, outreach, and technical assistance efforts are essential to keeping individuals informed of their rights and responsibilities under Title VI. The 1996 report found that EPA's efforts in these areas were minimal. The Commission said that EPA should (1) strengthen education, outreach, and technical assistance using the environmental justice program as a model; (2) make available Title VI regulations and guidelines to the public; (3) require display of posters publicizing recipients' nondiscrimination policy and compliance with Title VI; (4) disseminate information in Spanish or other languages, as appropriate; and (5) require OCR to interact actively with recipients, state and local agency staff, community groups, businesses, and the public to facilitate outreach, education, and technical assistance.<sup>84</sup>

EPA now augments its Title VI outreach, education, and technical assistance by making agency documents available for public review. For example, the agency published *Draft Revised Investigation Guidance* and *Draft Recipient Guidance* in the *Federal Register* in June 2000 for public comment. EPA also held five public meetings at which EPA and OCR staff met with stakeholders.<sup>85</sup> Additionally, the agency makes use of its excellent Web site to strengthen outreach, education, and technical assistance with useful links and information on civil rights and responsibilities.<sup>86</sup> A recipient may, for example, readily access DOJ's *Title VI Legal Manual* and *Investigation Procedures for the Investigation of and Resolution of Complaints Alleging Violations of Title VI and Other Nondiscrimination Statutes*. To enhance its usefulness, OCR plans to present the materials on its Web site in Spanish.<sup>87</sup>

EPA also publicizes Title VI regulations and guidelines through press releases and by distributing them to mailing lists and during agency meetings with the public and stakeholders. The agency also periodically publishes documents on Title VI, such as the *Report of the Title VI Implementation Advisory Committee: Next Steps for EPA, State, and Local Environmental Justice Programs*, which was released in April 1999.<sup>88</sup>

<sup>81</sup> Staff with firsthand knowledge include persons who are directly involved in the situation, while staff with secondhand knowledge include persons who make decisions that are relevant to the issues under investigation. See EPA Interrogatory, p. 14.

<sup>82</sup> The applicable theories may include intentional discrimination/disparate treatment, disparate impact/effects, and retaliation while evidence may be direct, circumstantial, comparative, and statistical. See EPA Interrogatory, p. 14.

<sup>83</sup> EPA Interrogatory, p. 14. See *Draft Revised Investigation Guidance*, sections II–VII.

<sup>84</sup> USCCR, *Federal Title VI Enforcement*, pp. 443, 449.

<sup>85</sup> EPA Interrogatory, p. 19.

<sup>86</sup> *Ibid.*, pp. 3, 19.

<sup>87</sup> *Ibid.*

<sup>88</sup> The Title VI Implementation Advisory Committee was established in March 1998 to “review and evaluate techniques that EPA funding recipients could use to administer environmental permitting programs in compliance with Title VI.” The committee members include representatives from communities, environmental justice groups, state and local governments,

Nondiscrimination regulations require recipients to provide ongoing notice that their programs do not discriminate based on race, color, or national origin. Furthermore, the methods of notice must meet the needs of visually and hearing-impaired populations, and may include publication in newspapers and magazines and placement of notices in recipients' internal publications or letterheads. The notices have to be available in a language other than English as appropriate, have to be posted in prominent places, and must identify the individuals responsible for coordinating the recipients' Title VI compliance and enforcement.<sup>89</sup>

OCR staff members interact with external stakeholders through public meetings and meetings with EPA's Title VI Implementation Advisory Committee, and submission of written comments from the public. In the context of complaint investigations, interaction involves OCR's carrying out telephone interviews, generating written correspondence, and conducting on-site visits.<sup>90</sup> This chapter's section on Complaint Processing below discusses complaint investigation in detail.

### Complaint Processing

In 1996, OCR staff was developing investigative plans for use in conciliation conferences and case investigations. The Commission supported this effort and, with reference to state continuing programs, recommended that EPA require state agencies to submit a written report on each complaint and its investigation. This would facilitate OCR's oversight and monitoring of states' compliance and enforcement.<sup>91</sup>

In 2003, the Commission finds that EPA has developed a comprehensive complaint process. *Draft Revised Investigation Guidance* proposes processes for reviewing disparate impact complaints involving issuance of permits that allegedly violates specified environmental guidelines. The 12 parts of the complaint investigation process are (1) acknowledging the complaint; (2) accepting, rejecting, or referring the complaint; (3) resolving complaints informally; (4) determining if an adverse disparate impact analysis is applicable; (5) defining the scope of the investigation; (6) conducting an impact assessment; (7) making an adverse impact decision; (8) characterizing populations and conducting comparisons; (9) making an adverse disparate impact decision; (10) determining whether a finding of noncompliance is warranted; (11) evaluating the recipient's justification for the disparate impact; and (12) determining whether there are any less discriminatory alternatives. OCR plans to develop processes for reviewing non-permitting complaints after *Draft Revised Investigation Guidance* is finalized.<sup>92</sup> EPA says its nondiscrimination regulations require each state and non-state recipient to collect, maintain, and on request of OCR, provide a detailed log of discrimination complaints.<sup>93</sup>

The Commission also finds that EPA's Web link, "Title VI Complaints," gives the public access to information on filing a Title VI complaint, EPA's Title VI investigative approaches, recent EPA Title VI decisions, and summary information on Title VI complaints filed with the agency.<sup>94</sup>

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industry, and other interested stakeholders. Many of the recommendations that the committee made had been incorporated into Title VI guidance documents. See EPA Interrogatory, p. 1.

<sup>89</sup> EPA Interrogatory, p. 20; 40 C.F.R. § 7.95 (2002).

<sup>90</sup> EPA Interrogatory, p. 20.

<sup>91</sup> In state continuing programs, state agencies receive and investigate complaints about subrecipients. See USCCR, *Federal Title VI Enforcement*, p. 447; 40 C.F.R. § 7.85(a)(3) (2002).

<sup>92</sup> EPA Interrogatory, pp. 17–18.

<sup>93</sup> *Ibid.*, p. 18; Yorker telephone interview, Mar. 25, 2003.

<sup>94</sup> U.S. Environmental Protection Agency, "Title VI Complaints," August 2002, <<http://www.epa.gov/ocrpage1/t6complnt.htm>>.

In 1996, EPA usually resolved the few instances of noncompliance with Title VI through voluntary compliance efforts. The Commission recommended that OCR consider administrative avenues such as temporary withholding a permit in the case of recalcitrant recipients and, if necessary, refer the cases to the administrator for suspension, denial, deferral, or termination of federal funding.<sup>95</sup>

In 2003, the Commission finds that all administrative complaints filed with EPA are investigated according to Title VI regulations.<sup>96</sup> EPA Title VI regulations provide that the administrator is involved in the complaint process when a recipient appeals a finding of violation to the administrator.<sup>97</sup> This circumstance has not arisen.<sup>98</sup>

## Compliance Reviews

In its 1996 review, the Commission found that OCR conducted pre-award desk-audit reviews for the state revolving fund program only, with the number of reviews decreasing substantially over time. As a result, the Commission recommended that OCR ensure that all EPA applicants and recipients of federal funds provide assurances of Title VI compliance before receiving any funds and that they be subjected to pre-award desk-audit reviews.<sup>99</sup>

In addition, the Commission recommended that EPA's Pre-award Form 4700-4 be revised to collect information necessary for assessing each type of EPA-funded program. The information, the Commission said, should be used to target applicants and recipients for technical assistance or compliance reviews.<sup>100</sup>

In 2003, the Commission finds that pre-award desk-audit compliance reviews are required of all EPA applicants. To ensure Title VI compliance before receiving any funds, Pre-award Form 4700-4 spells out applicant obligations and subsequently becomes part of a recipient's grant agreement. Grant applicants must also certify in EPA Standard Form 424B that they will comply with all nondiscrimination federal statutes, including Title VI. EPA's future post-award compliance program will ensure post-award enforcement of these statutes.<sup>101</sup> However, OCR did not conduct any pre-award on-site compliance reviews in FY 2002.<sup>102</sup> EPA had 2,925 recipients in FY 2002.<sup>103</sup>

The Commission also finds that EPA collects the same type of pre-award information for each EPA-funded program. But OCR has not used the information to target applicants and recipients for technical assistance or on-site compliance reviews,<sup>104</sup> primarily because Pre-award Form 4700-4 currently

<sup>95</sup> USCCR, *Federal Title VI Enforcement*, pp. 447–48.

<sup>96</sup> Title VI at 40 C.F.R. § 7 (2002).

<sup>97</sup> EPA Interrogatory, p. 18.

<sup>98</sup> Higginbotham letter, p. 4.

<sup>99</sup> USCCR, *Federal Title VI Enforcement*, p. 446.

<sup>100</sup> *Ibid.*

<sup>101</sup> EPA Interrogatory, p. 15. The Commission was cognizant that pre-award reviews of all applicants and recipients in light of OCR's budget and staffing limitations would delay program benefits to beneficiaries. Thus it suggested that OCR develop some alternative strategies that would promote a meaningful and efficient pre-award review process of as many applicants and recipients as possible. The Commission's 2003 report found that OCR does not anticipate any reduction in current staff and budget and thus has not developed alternative strategies. See USCCR, *Federal Title VI Enforcement*, pp. 446–47; EPA Interrogatory, p. 15.

<sup>102</sup> Yorker telephone interview, Mar. 25, 2003.

<sup>103</sup> Karen D. Higginbotham, acting director of civil rights, EPA, letter to U.S. Department of Justice, Feb. 26, 2002, p. 9.

<sup>104</sup> EPA Interrogatory, p. 16.

does not collect suitable information for this purpose.<sup>105</sup> Pre-award Form 4700-4 is being updated and will include information to address the Title VI issues that EPA now faces, thereby making it a more effective enforcement and compliance instrument.<sup>106</sup> A draft of the revised Pre-award Form 4700-4 is expected at the end of calendar year 2003.<sup>107</sup>

In 1996, OCR had not performed any post-award desk-audit reviews or post-award on-site compliance reviews for several years. As a result, the Commission recommended that OCR require recipients to submit compliance reports and, where appropriate, periodically conduct on-site compliance reviews of a representative number of major recipients. Furthermore, the Commission said on-site compliance reviews should serve as a means of delivering education and technical assistance to recipients. OCR should consider collaborating with other program offices to finance post-award reviews in the event of budget constraints.<sup>108</sup>

In 2003, the Commission finds that recipients are required by EPA regulations to submit program data and information when OCR suspects that discrimination may exist in a recipient's program or activity, *or* when OCR is investigating a complaint alleging discrimination. Moreover, recipients must collect and maintain, and on request of OCR, provide requisite information to show compliance. Such information must include (1) a brief description of any lawsuits pending against the recipient that allege discrimination; (2) racial/ethnic, national origin, sex, and disability data; (3) a log of discrimination complaints; and (4) reports of any compliance reviews conducted by any other agency.<sup>109</sup>

The Commission also finds that OCR did not conduct any post-award compliance reviews in FY 2002.<sup>110</sup> EPA expects to regularly conduct post-award on-site compliance reviews with a representative number of major recipients once the post-award compliance review program has been developed. Since the draft post-award compliance review program is being developed this calendar year, it is probable that post-award compliance reviews could take place, at the earliest, in calendar year 2004. The Commission finds this status worrisome. The agency acknowledges that post-award on-site compliance reviews are an integral part of a comprehensive Title VI program.<sup>111</sup>

## Staff Training

Comprehensive staff training contributes to an effective civil rights enforcement program. The Commission's 1996 report found that OCR did not have an adequate staff training program for Title VI compliance and enforcement and that regional training had not been conducted since 1991. The Commission recommended that EPA institute a comprehensive staff training program for Title VI enforcement.<sup>112</sup>

The Commission now finds that EPA periodically asks DOJ to provide legal, investigative, and update training for OCR personnel. In February 2003, the Civil Rights Law Office offered formal Title

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<sup>105</sup> Yorker, Chang, and Meinero telephone interview, Feb. 3, 2003.

<sup>106</sup> EPA Interrogatory, p. 16.

<sup>107</sup> Yorker telephone interview, Mar. 25, 2003.

<sup>108</sup> USCCR, *Federal Title VI Enforcement*, p. 447.

<sup>109</sup> EPA Interrogatory, pp. 16-7; 40 C.F.R. § 7.85(a) (2002).

<sup>110</sup> Yorker telephone interview, Mar. 25, 2003.

<sup>111</sup> EPA Interrogatory, p. 17.

<sup>112</sup> USCCR, *Federal Title VI Enforcement*, p. 450.

VI training to its attorneys involved in Title VI and OCR's Title VI team.<sup>113</sup> Additionally, experienced OCR and Civil Rights Law Office staff offer additional instruction and guidance to new employees informally.<sup>114</sup> Staff members in these two offices are required to be familiar with DOJ's *Investigation Procedures Manual* and *Title VI Legal Manual*.<sup>115</sup> In addition, EPA's adverse impact analysis model in *Draft Revised Investigation Guidance* provides comprehensive and detailed instructions to EPA staff, recipients, and affected communities on how to conduct adverse disparate impact analyses. EPA has made an important advance in Title VI enforcement with the development of this model.<sup>116</sup>

## Oversight and Quality Assurance

According to the Commission's 1996 study, OCR only used Pre-award Form 4700-4 to collect data on Title VI. As a result, the Commission recommended that OCR also collect information on applicants' prior compliance records, pending discrimination complaints, and compliance reviews performed on them by other federal agencies.<sup>117</sup> The Commission also recommended that data collection for post-award reviews include information on and assessment of the racial, ethnic, or national origin of planning or advisory board members that supervise the construction process, contractors' workforces that build the facilities, and workforces that run the facilities. Furthermore, there should be an assessment of the affected communities, and of whether literature on the programs was made available to all demographic groups in appropriate languages.

In addition, the Commission recommended that all pre-award and post-award information be maintained in a database to allow easy access to recipients' past and present compliance records. In fact, OCR should develop a sound civil rights enforcement data collection and analysis program modeled after that of EPA's Office of Environmental Justice.<sup>118</sup>

In 2003, the Commission finds that OCR's Pre-award Form 4700-4 collects from all applicants information on (1) any civil rights lawsuits or complaints pending against the applicant or recipient, including the deposition of each complaint; (2) civil rights compliance reviews conducted of the applicant or recipient by any federal agency for the two years immediately before the application for EPA assistance (including the status of each review); (3) other federal financial assistance being applied for, including a description of the associated work and the dollar amount of the assistance; and (4) whether an entire community under the applicant's jurisdiction is not served under the existing facilities or services, or will not be served under the proposed plan, including the reason for this. EPA's regulations require this information of all applicants and recipients. The information is maintained in the agency's grant files and reviewed during pre-award reviews.<sup>119</sup>

The Commission also finds that EPA does not routinely require recipients to provide information on the demographic composition of planning/advisory groups, workforces involved in building facili-

<sup>113</sup> Yorker telephone interview, Mar. 25, 2003.

<sup>114</sup> EPA Interrogatory, p. 21; Yorker telephone interview, Jan. 27, 2003. Ms. Yorker stated that most federal agencies rely on DOJ for Title VI training.

<sup>115</sup> Job requirements for the positions these staff members occupy include a general knowledge of Title VI regulations.

<sup>116</sup> EPA Interrogatory, pp. 21–22; *Draft Revised Investigation Guidance*, VI, "Adverse Disparate Impact Analyses," pp. 39676–82.

<sup>117</sup> USCCR, *Federal Title VI Enforcement*, p. 450.

<sup>118</sup> *Ibid.*, pp. 450–51.

<sup>119</sup> EPA Interrogatory, p. 22.

ties, or employees working in the built facilities. Similarly, the agency does not require information on affected persons and communities; whether program literature is available to all racial, ethnic, and national origin groups; and if this literature is available in languages other than English. Such information would be collected in the event of a complaint, and the compliance program now being developed may incorporate these elements if deemed necessary.<sup>120</sup>

OCR has not developed a civil rights enforcement data collection and analysis system because it has ready access to all EPA databases and systems. EPA has retained contractor support in the use of these and other databases and systems for carrying out disparate impact analyses.<sup>121</sup>

According to the 1996 report, EPA was considering a national assessment of the overall aggregate effects posed by environmental pollution. EPA indicated that this assessment might enable determination of whether there are disparate effects of pollution loadings on different populations. As a result, the Commission recommended that EPA proceed with this study.<sup>122</sup>

In its 2003 review, the Commission finds that OCR did not have any involvement in the national assessment project.<sup>123</sup> The Office of Policy initiated the Cumulative Exposure Project in 1994 to (1) examine how much toxic contamination Americans are exposed to cumulatively through air, food, and drinking water; (2) estimate exposure levels for different communities and demographic groups nationwide; (3) help identify important pollutant sources; and (4) identify the types of communities and demographic groups that appear to have the highest exposure levels. OCR states that this study has been completed and summary findings are posted on EPA's Web site.<sup>124</sup>

## Conclusion

The Commission identified some room for improvement in EPA's Title VI program. The Commission is concerned that the External Compliance program is understaffed. The absence of an electronic system for tracking external civil rights expenditures and staffing assignments by statute hinders planning and assessment. The External Compliance program also needs a well-structured plan to serve as a management and informational tool. Furthermore, Title VI enforcement will be better served with the creation of a database dedicated to civil rights and a comprehensive procedures manual. Moreover, the Commission has concerns that EPA did not conduct any on-site pre-award or post-award compliance reviews in FY 2002.

On the whole, EPA has shown considerable improvement in Title VI enforcement since the issuance of the 1996 report. The agency adopted a number of the Commission's 1996 recommendations, for example, internal and external civil rights are now two distinct units. EPA has developed comprehensive draft guidances for administering environmental-permitting programs and investigating Title VI administrative complaints challenging permits. A draft post-award compliance review program and a revised draft of the pre-award review form are expected to be ready at the end of this calendar year. The Commission agrees that the elimination of a backlog of complaints is an agencywide priority and views favorably the creation of a well-resourced task force that has strong administrator backing.

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<sup>120</sup> Ibid., p. 23.

<sup>121</sup> Ibid.

<sup>122</sup> USCCR, *Federal Title VI Enforcement*, p. 446.

<sup>123</sup> Yorker, Chang, and Meinero telephone interview, Feb. 3, 2003.

<sup>124</sup> EPA Interrogatory, p. 25. The Internet link is <<http://www.epa.gov/cumulativeexposure>>. CEP is also conducting a community-specific study in the Greenpoint/Williamsberg area of Brooklyn in New York. See EPA Interrogatory, p. 25.

## Chapter 5

# Small Business Administration

In 1953, Congress established the Small Business Administration (SBA) to “aid, counsel, assist and protect, insofar as is possible, the interests of small business concerns,” and to ensure that small businesses obtain a “fair proportion” of government contracts and sales of surplus property.<sup>1</sup> Five decades after its founding, SBA’s mission has evolved to maintaining and strengthening the nation’s economy by aiding, counseling, assisting, and protecting the interests of small businesses and by helping families and businesses recover from natural disasters.<sup>2</sup>

One of the ways SBA accomplishes its mission is by providing loans to small businesses. In 2001, SBA’s business loan portfolio had approximately 219,000 loans worth more than \$45 billion, making SBA the largest single financial backer of U.S. businesses. During FY 1991–2001, SBA provided almost 435,000 small businesses with more than \$94.6 billion in loans. SBA services include financial and federal contract procurement assistance, management assistance, and specialized outreach to women, minorities, and veterans. The agency also provides loans to victims of natural disasters and specialized advice and assistance in international trade.<sup>3</sup>

### Overview

The SBA office responsible for enforcing Title VI of the Civil Rights Act is the Equal Employment Opportunity and Civil Rights Compliance Office (EEO&CRC). It is the only unit within SBA that has civil rights enforcement authority over financial assistance programs. It is the responsibility of EEO&CRC to ensure that its recipients comply with all federal laws, regulations, and executive orders requiring equal opportunity. EEO&CRC also processes SBA employee complaints and issues corrective actions. The office also provides leadership for internal efforts to achieve diversity in the agency’s workforce by directing SBA’s affirmative employment program, which ensures equal opportunity for employees.<sup>4</sup>

In 1996, the Commission found that EEO&CRC needed improvement in these areas: organizational structure, resources and staffing, training of staff, updating of policies and regulations, procedures for compliance reviews, education and outreach to the public and businesses, implementation of delegation plans with other agencies, and quality assurance practices. For example, the Commission found

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<sup>1</sup> U.S. Small Business Administration, *47 Years of Service to America’s Small Business: The U.S. Small Business Administration, 1953–2000*, Mar. 5, 2001, <<http://www.sba.gov>>.

<sup>2</sup> U.S. Small Business Administration, *FY 2001–2006 Small Business Administration Strategic Plan*, p. 3, <<http://www.sba.gov>>.

<sup>3</sup> U.S. Small Business Administration, *47 Years of Service to America’s Small Business*.

<sup>4</sup> U.S. Small Business Administration, “Learn About SBA—Profile,” p. 25, <<http://www.sba.gov/aboutsba/indexprofile.html>>; Small Business Administration, “Equal Employment Opportunity Program,” SOP 37 13 2, July 25, 2001, p. 10.

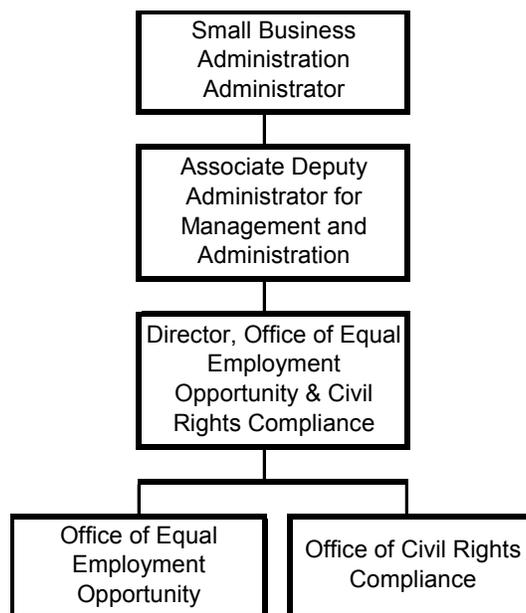
that SBA did not conduct pre-award reviews and only performed post-award reviews for loan recipients with 15 or more employees.

The Commission now finds that SBA has improved in some areas but is still weak in others. Most recommendations made in 1996 were not implemented for various reasons, including lack of funding and staff, and inadequate communication between offices.

### Priority of Civil Rights

Prior to 1994, the EEO&CRC director reported to the Associate Deputy Administrator for Management and Administration (see figure 5.1). That structure did not ensure integration and emphasis of civil rights enforcement throughout SBA program operations or administrative matters.<sup>5</sup> SBA reorganized in 1994, at which time the director of EEO&CRC's title changed to assistant administrator, reporting directly to the SBA administrator (see figure 5.2). The internal structure of EEO&CRC remained the same, with the office divided into two units, the Office of Equal Employment Opportunity (OEEO) and the Office of Civil Rights Compliance (OCRC). The OEEO is responsible for internal Title VII enforcement and the OCRC for enforcing external SBA nondiscrimination rules and regulations, including Title VI.<sup>6</sup>

**FIGURE 5.1**  
**EEO&CRC Organizational Structure, 1994**

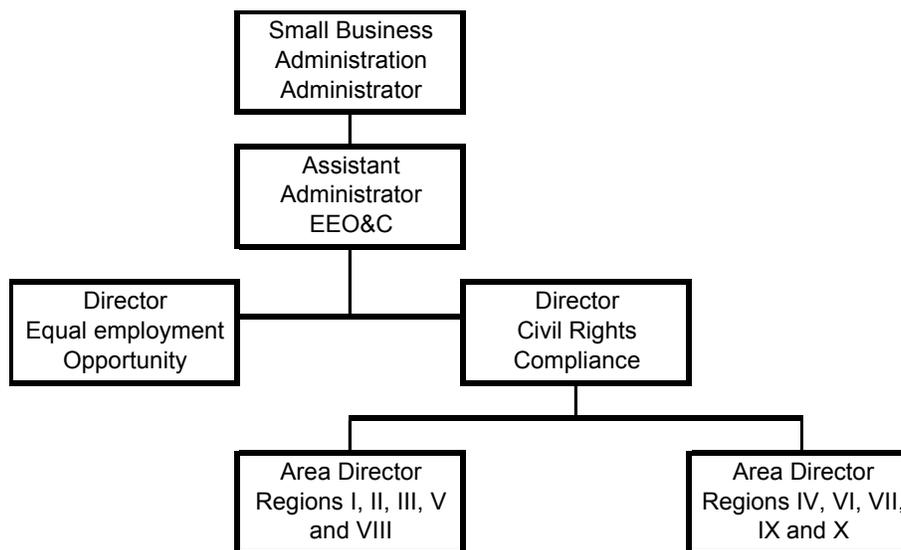


Source: USCCR, *Federal Title VI Enforcement*, p. 453.

<sup>5</sup> U.S. Commission on Civil Rights, *Federal Title VI Enforcement to Ensure Nondiscrimination in Federally Assisted Programs*, June 1996, p. 453 (hereafter cited as USCCR, *Federal Title VI Enforcement*).

<sup>6</sup> USCCR, *Federal Title VI Enforcement*, pp. 453–54. SBA nondiscrimination laws cover Title VI of the Civil Rights Act of 1964, Age Discrimination Act of 1975, effectuation of policies of federal government and SBA administrators, and Title IX in education programs or activities receiving federal financial assistance.

**FIGURE 5.2**  
**EEO&CRC Organizational Structure, 2003**



Source: U.S. Small Business Administration, EEO&CRC Organizational Chart, 2003.

In 1996, the organizational structure of the EEO&CRC was conducive to effective Title VI enforcement, but OCRC lacked crucial elements such as the ability to develop and maintain policies, regulations, and guidelines, procedures for Title VI enforcement, and sufficient program planning. The Commission recommended that SBA create within OCRC a section specifically expert in policy and legal support to work on Title VI and program planning. The legal support and policy section would review enforcement cases, develop guidance materials, serve as a liaison to the Office of General Law, and work with program staff in developing policies.<sup>7</sup>

In 2003, the Commission finds that the assistant administrator of EEO&CRC continues to report directly to the SBA administrator. This office is still structured in two sections, OEEO and OCRC, with responsibilities divided as before. OCRC still has responsibility for SBA external civil rights enforcement of SBA nondiscrimination regulations, including Title VI.<sup>8</sup> SBA nondiscrimination regulations cover the vast majority of SBA recipients whose federal assistance from SBA is in the form of a loan guaranty.

The Commission also finds that SBA has not created a position or unit within EEO&CRC to provide legal support on Title VI. EEO&CRC relies on the Office of General Counsel to provide legal support, such as representing the agency in any legal action filed against SBA and reviewing regulations, operating procedures, guidelines, and policy statements for legal sufficiency.<sup>9</sup> In addition, the agency has not assigned a liaison from the Office of General Counsel to work specifically with OCRC in developing or revising operating procedures, guidelines, and policies in a timely manner.

<sup>7</sup> USCCR, *Federal Title VI Enforcement*, p. 470.

<sup>8</sup> U.S. Small Business Administration's Response to the U.S. Commission on Civil Rights' Interrogatory for Volume III of the Ten-Year Review of the Civil Rights Enforcement, Office of Civil Rights, Dec. 23, 2002, pp. 1–2 (hereafter cited as SBA Interrogatory), p. 1; SBA Nondiscrimination Regulations are located in 13 C.F.R. §§ 112, 113, 117, 136 (2002).

<sup>9</sup> SBA Interrogatory, pp. 1–2.

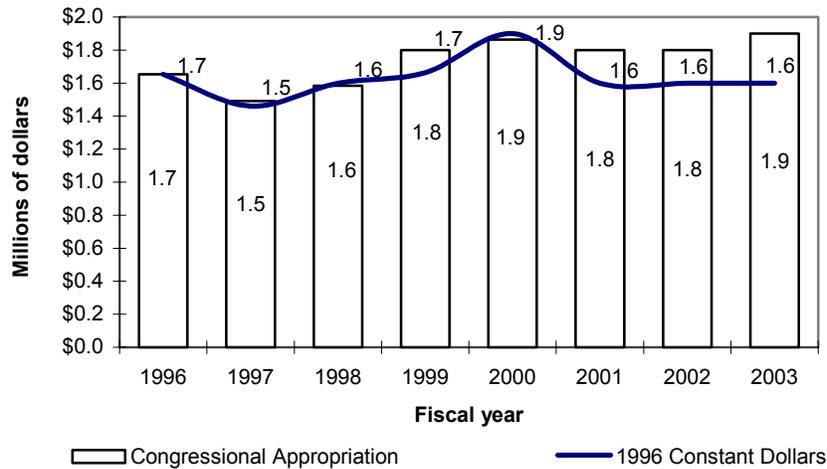
## Resources—Funding and Staffing

In its 1996 study, the Commission found that SBA's civil rights budget and staff had decreased while its workload had increased. Furthermore, SBA congressional appropriation did not include a separate designation for external civil rights enforcement. The Commission recommended that EEO&CRC develop an information management system that would allow it to track expenditures to help guide its resource allocation among civil rights activities. The information would be used to demonstrate to the agency's offices of budget and planning the importance of increased resources for Title VI enforcement.<sup>10</sup>

OCRC now has a system that tracks expenditures and time devoted to external civil rights activities. The system tracks the cost of on-site compliance reviews and includes a variety of data elements relative to on-site and telephonic compliance reviews conducted nationwide.<sup>11</sup> The system is used internally by the EEO&CRC assistant administrator as a basis for requesting future funding and resources for Title VI and external civil rights enforcement.<sup>12</sup>

EEO&CRC's budget has averaged approximately \$1.7 million over the past eight years. Calculating appropriations in 1996 constant dollars reveals that EEO&CRC has not experienced any significant increases since FY 1996, and in fact the FY 2003 appropriation is lower than the FY 1996 appropriation (see figure 5.3).

**FIGURE 5.3**  
EEO&CRC Budget, 1996–2003



Source: U.S. Small Business Administration, Office of Civil Rights Compliance, FY 1996–2002 Congressional Budget Submissions.

<sup>10</sup> USCCR, *Federal Title VI Enforcement*, p. 470.

<sup>11</sup> SBA Interrogatory, p. 2. The tracking system does not track support costs for office equipment, telephone service, or rent because they are centrally funded and not specific items in the EEO&CRC operating budget. *Ibid.*

<sup>12</sup> Carol Walker, director, Office of Civil Rights Compliance, SBA, letter to Les Jin, staff director, USCCR, June 2, 2003, p. 1 (hereafter cited as Walker letter).

The budget allocation is divided between internal and external enforcement with the majority allocated for internal enforcement. Most of the EEO&CRC budget is used to cover the expenses of internal OEEEO investigations, hearings, any final agency decisions that are contracted out, and other OEEEO-related activities. The assistant administrator for EEO&CRC makes the budget determination for the amount allocated to external civil rights enforcement. Although the office's productivity is budget driven, it still must complete a set number of compliance reviews each year. OCRC is assigned a specific number of reviews based on staff performance expectations. The director of OCRC is held responsible by the assistant administrator of EEO&CRC and a higher level reviewing official for meeting that goal during the rating period.<sup>13</sup>

In 1996, OCRC had staff at headquarters and in six central office duty stations in New York, Philadelphia, Atlanta, Chicago, Dallas, and San Francisco. OCRC did not, however, assign any staff solely to Title VI enforcement; rather, each staff member implemented, monitored, and enforced all external civil rights policies and laws, including Title VI.<sup>14</sup> The Commission recommended that EEO&CRC reassign existing staff to OCRC headquarters to work on Title VI and external civil rights enforcement.<sup>15</sup>

As of 2003, OCRC has staff in five regional cities: Atlanta, Philadelphia, Chicago, Dallas, and San Francisco. The Philadelphia office has only one civil rights employee, and in the Chicago and San Francisco offices one of the EEO&CRC employees has other duties as area director. The regional employee in Philadelphia reports to the Chicago area director, and the employees in the Atlanta and Dallas offices report to the San Francisco area director.<sup>16</sup>

In 1994, OCRC had 25 full-time employees, six of whom were support staff and 19 were professionals.<sup>17</sup> Since FY 1996, EEO&CRC staffing levels have decreased further due to budget constraints and attrition (see figure 5.4). FY 2003 staff consists of 10 full-time permanent employees, two of whom continue to be stationed at headquarters, and nine in the field. The staff levels do not include the assistant administrator (FY 1996–2003) and deputy assistant administrator (FY 1997–2002) positions since the incumbents have officewide responsibilities; however, their salaries are included in the EEO&CRC budget.<sup>18</sup>

OCRC is responsible for using its staff and resources to ensure all agency recipients comply with nondiscrimination requirements in providing employment opportunities and customer service. Currently, OCRC has 295,000 recipients but only 10 staff members, compared with 18 in FY 1996, to carryout its mission.

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<sup>13</sup> Carol Walker, director, Office of Civil Rights Compliance, Grant Hornston, area civil rights director, Chicago, IL, and Burt Greenspan, area civil rights director, San Francisco, CA, telephone interview, Mar. 3, 2003 (hereafter cited as Walker, Hornston, and Greenspan telephone interview, Mar. 3, 2003).

<sup>14</sup> USCCR, *Federal Title VI Enforcement*, p. 454.

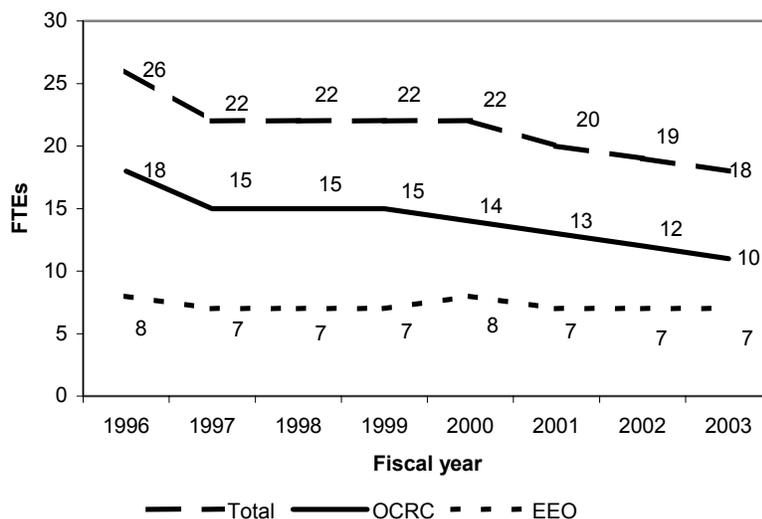
<sup>15</sup> *Ibid.*, p. 471.

<sup>16</sup> SBA Interrogatory, p. 2; EEO&CRC staff stationed at central office duty stations only work on internal or external civil rights enforcement; they do not share duties with other SBA program offices. Carol Walker, director, Office of Civil Rights Compliance, Grant Hornston, area civil rights director, Chicago, IL, and Burt Greenspan, area civil rights director, San Francisco, CA, telephone interview, Mar. 27, 2003 (hereafter cited as Walker, Hornston, and Greenspan telephone interview, Mar. 27, 2003).

<sup>17</sup> USCCR, *Federal Title VI Enforcement*, p. 471.

<sup>18</sup> Walker, Hornston, and Greenspan telephone interview, Mar. 3, 2003.

**FIGURE 5.4**  
**EEO&CRC Staffing, 1996–2003**



Source: U.S. Small Business Administration, "Employee Roster for Fiscal Years 1996–2003."

## Planning

In its 1996 review, the Commission concluded that SBA's Civil Rights Implementation Plans (CRIPs) did not conform to the objectives specified by the Department of Justice (DOJ) guidelines. Although SBA's CRIPs provided a detailed description of the agency's Title VI enforcement program, the plans did not function as DOJ requires, as a planning tool. Progress reports claimed that SBA achieved its goals, but provided little substantiation for this claim. The Commission recommended that SBA use the CRIP as a management tool as required by DOJ's CRIP guidance. SBA needed to develop goals and objectives with timetables and specific standards for achievement, and use the plan's progress report to indicate the agency's success, or lack thereof, toward achieving goals.<sup>19</sup>

Currently, SBA submits its CRIP to DOJ annually and in accordance with DOJ guidelines.<sup>20</sup> However, OCRC does not use the CRIP as a management tool but as a reporting document to list its accomplishments for the previous fiscal year.<sup>21</sup> Furthermore, OCRC does not indicate whether it met established goals for recipient reviews. Since OCRC is budget driven it is difficult to set goals in the CRIP; instead OCRC developed goals and objectives that have timetables and standards for achievement in the performance plans of its staff. In addition, the standard operating procedures and other guidelines impose timeframe requirements on other work OCRC is responsible for performing.<sup>22</sup>

<sup>19</sup> USCCR, *Federal Title VI Enforcement*, pp. 476–77.

<sup>20</sup> SBA Interrogatory, p. 13.

<sup>21</sup> *Ibid.*; DOJ has not raised as a deficiency any issue concerning OCRC's or SBA's use of the CRIP as a "planning tool." See Walker letter, p. 2.

<sup>22</sup> SBA Interrogatory, p. 13.

## Policy Guidance

In its 1996 review, the Commission found that SBA's Title VI enforcement guidelines, regulations, policies, and procedures were deficient. The Commission also found that SBA's Title VI regulations had not been updated to reflect the Civil Rights Restoration Act of 1987, which clarified Title VI coverage and fund termination provisions, and that the appendix listing SBA federally funded programs covered by Title VI had not been updated for at least a decade. The Commission recommended that SBA update and revise its Title VI regulations to incorporate the Civil Rights Restoration Act of 1987, while retaining its language for employment discrimination.<sup>23</sup>

In 2003, the Commission finds that SBA incorporated the Civil Rights Restoration Act of 1987 into its regulations after adopting a final joint rule with DOJ.<sup>24</sup> The final joint rule, which is in clearance at DOJ, incorporated the act by expanding the definition of a covered program or activity into the civil rights regulations.<sup>25</sup> In January 2001, SBA revised its regulations to implement the expanded definition of a "program or activity."<sup>26</sup>

In 1996, the Commission also recommended that SBA publish a revised appendix of its federally assisted programs in the *Federal Register* each year, or in the alternative, publish a catalog or brochure listing all federally assisted programs covered under Title VI and reference the catalog or brochure in its regulations.<sup>27</sup>

Today, SBA still does not publish an annual list of its federally assisted programs in the *Federal Register*; however, the agency includes an appendix of SBA programs in the *Code of Federal Regulations*.<sup>28</sup> Additionally, SBA provides a publication titled "Profile: Who We Are and What We Do," which describes SBA programs and services, including those subject to Title VI, as alternatively recommended by the Commission. The agency distributes this publication to the public in order to foster economic development and promote agency programs and services. The publication is also available on the Internet.<sup>29</sup> The 2003 Commission review finds that the brochure sufficiently describes SBA programs and recommends that SBA continue circulating it.

In 1996, the Commission found that SBA had failed to issue policy statements clarifying the meaning and implications of Title VI for its federally assisted programs and that this failure prevented EEO&CRC from fulfilling its role of providing leadership on Title VI. The Commission recommended that SBA develop Title VI guidelines and policies clarifying how to apply Title VI to its programs.<sup>30</sup>

The Commission now finds that SBA has issued policies and guidelines that clarify the application of Title VI to its programs through subsection 112.9 of SBA's nondiscrimination regulations and Form 793, "Notice to New SBA Borrowers." The guidelines make it clear that SBA has the authority to take actions when finding recipients in noncompliance with nondiscrimination regulations. In addition, nondiscriminatory guidelines exist in SBA's standard operating procedures. OCRC staff is

<sup>23</sup> USCCR, *Federal Title VI Enforcement*, p. 471.

<sup>24</sup> Department of Justice's Proposed Joint Rule, 65 Fed. Reg. 76,460 (2000).

<sup>25</sup> SBA Interrogatory, p. 4.

<sup>26</sup> *Ibid.*; 13 C.F.R. § 112.2.

<sup>27</sup> USCCR, *Federal Title VI Enforcement*, pp. 471–73.

<sup>28</sup> SBA Interrogatory, p. 3; 13 C.F.R. § 112 (2002).

<sup>29</sup> SBA Interrogatory, p. 3.

<sup>30</sup> USCCR, *Federal Title VI Enforcement*, p. 472.

made aware of how Title VI applies to SBA programs and recipients, as well as how other civil rights requirements apply, through informal staff training.<sup>31</sup> OCRC continuously communicates to its staff how Title VI and other civil rights requirements apply to programs and recipients through notices, staff guidance, and ongoing revisions to OCRC operating procedures. Overall, the Commission finds that the policies and guidelines sufficiently clarify the application of Title VI to SBA programs, but that the lack of formal training hampers OCRC staff in its enforcement of the regulations.

In its earlier review, the Commission found that SBA had attempted to draft and issue revised procedures, but that the process had been hampered by poor communication between the Office of General Counsel and EEO&CRC. The draft revised procedures expanded data collection requirements, which would have permitted SBA to conduct pre-award and post-award desk-audit reviews. The Commission recommended that SBA finalize its revised civil rights compliance and enforcement procedures.<sup>32</sup>

SBA has issued revised civil rights compliance and enforcement procedures.<sup>33</sup> The new civil rights and compliance standard operating procedures became effective on February 24, 2003.<sup>34</sup>

### **Technical Assistance**

In 1996, SBA's technical assistance program was active, but the bulk of it focused on issues unrelated to Title VI. The Commission recommended that SBA provide its recipients the same level of technical assistance on Title VI that it offered on other civil rights issues, and that technical assistance on Title VI be provided during compliance reviews and meetings, and over the telephone.<sup>35</sup>

In 2003, the Commission finds that SBA provides technical assistance during all compliance reviews, meetings, and telephone conversations, and via its Web site.<sup>36</sup> Furthermore, technical assistance now includes Title VI to the same extent as other civil rights compliance issues. SBA provides recipients extensive technical assistance during telephonic and on-site compliance reviews through recommendations made during and at the conclusion of the meetings and through brochures and pamphlets provided during reviews.

In addition, OCRC has taken some cost-effective approaches to providing civil rights technical assistance to recipients. One approach involves conducting civil rights seminars for recipients and for the small-business community at large. This includes participating in Technical Assistance Program Seminars (TAPS) sponsored by the Equal Employment Opportunity Commission.<sup>37</sup> Staff members in the regional area where EEOC is sponsoring a TAPS program attend and participate in the seminar. OCRC participation in TAPS is a cost-effective approach to outreach because it reaches a captive audience of 50 to 100 employers. Within a one-week period, one OCRC staff member can generally conduct no more than 10 to 15 on-site reviews.

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<sup>31</sup> SBA Interrogatory, p. 3.

<sup>32</sup> USCCR, *Federal Title VI Enforcement*, pp. 472–73.

<sup>33</sup> SBA Interrogatory, p. 3; SBA, Standards of Operating Procedures 90 30.

<sup>34</sup> SBA, Follow-up Interview, Mar. 3, 2003.

<sup>35</sup> USCCR, *Federal Title VI Enforcement*, p. 475.

<sup>36</sup> SBA Interrogatory, p. 9.

<sup>37</sup> *Ibid.*, p. 8.

## Education and Outreach

In 1996, SBA did not provide sufficient outreach and education on Title VI and other civil rights statutes. SBA had not made it a priority to develop comprehensive Title VI education and outreach programs that included other means of communicating with the public such as workshops and conferences. The Commission recommended that SBA emphasize education and outreach by developing an action plan for informing persons affected by its programs of their rights and responsibilities under Title VI and other civil rights statutes by using the media, sponsoring workshops at conferences, and developing brochures or pamphlets for distribution.<sup>38</sup>

SBA now provides information to its recipients and persons affected by its programs about their rights and responsibilities via the SBA Form 793, “Notice to New SBA Borrowers,” and SBA Form 722, “Equal Opportunity Poster.” Recipients are required to maintain these items in an area visible to employees, customers, and the general public. These forms are also available to view on the SBA Web site. The public may also download “An Equal Opportunity Guide for Small Business Employers,” which includes information on Title VI compliance requirements.<sup>39</sup> SBA’s education and outreach, however, do not reach the public through workshops and use of the media.

## Complaint Processing

In its 1996 review, the Commission found that although SBA’s complaint processing procedures were comprehensive, the agency received only a few Title VI complaints each year. The Commission concluded that SBA did not conduct sufficient outreach and education on Title VI such that individuals understood their rights. Therefore, the Commission recommended that SBA concentrate its efforts on improving outreach and education on Title VI to ensure that individuals affected by federally assisted programs understand their rights and know how to file claims of discrimination.<sup>40</sup>

As of 2003, SBA has not modified its complaint processing procedures. Since FY 1996, the number of complaints received by OCRC has been minimal (see table 5.1).<sup>41</sup> Fewer complaints were received in FY 2000 and 2001 than in previous years, which may indicate a lack of communication between the public and SBA and a need for SBA to conduct more education and outreach to ensure individuals know their rights and know whom to contact to file complaints against SBA recipients to prevent discriminatory practices.

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<sup>38</sup> USCCR, *Federal Title VI Enforcement*, p. 475.

<sup>39</sup> SBA Interrogatory, p. 8.

<sup>40</sup> USCCR, *Federal Title VI Enforcement*, p. 474.

<sup>41</sup> SBA Interrogatory, p. 6. The unresolved complaints pending at the end of each fiscal year were subsequently resolved. See Walker letter, p. 2.

**TABLE 5.1**  
**Complaints received by the Office of Civil Rights Compliance,**  
**1996–2002**

Fiscal year	Complaints received	Complaints unresolved
1996	13	2
1997	20	3
1998	14	0
1999	17	0
2000	9	4
2001	9	2
2002	10	0

Source: U.S. Small Business Administration, Civil Rights Implementation Plans FY 1996–2003.

### Compliance Reviews

Pre-award reviews, post-award reviews, and on-site compliance reviews are essential to an effective Title VI enforcement program. In 1996, SBA did not conduct pre-award reviews to ensure that recipients were in compliance with Title VI before granting financial assistance. SBA's Title VI program relied solely on on-site post-award reviews of recipients with 15 or more employees. SBA compliance reviews focused primarily on recipients' employment practices rather than other forms of discrimination under Title VI. Furthermore, SBA did not conduct pre-award or post-award desk-audit reviews because of a lack of resources, and the mistaken perception that conducting desk-audit reviews violated the Paper Work Reduction Act.<sup>42</sup>

In its earlier report, the Commission recommended that SBA focus on conducting post-award reviews, but advised SBA to consult its files, the EEOC, and the Office of Federal Contract Compliance Programs (OFCCP) to determine whether applicants had undergone previous compliance reviews or had pending civil rights complaints. If recipients were in noncompliance or if investigations were still pending, the Commission recommended that SBA conduct pre-award reviews before releasing funds. In addition, the Commission said that SBA should ensure all new recipients were fully informed about their Title VI responsibilities and other civil rights laws through Title VI assurance forms, brochures, and/or examples of compliance and noncompliance.<sup>43</sup>

In 2003, OCRC still does not perform pre-award reviews. Before granting assistance, OCRC does not review grantee files or consult with EEOC or OFCCP to determine the applicant's record of civil rights complaints. However, if the potential grantee refuses to execute a mandatory assurance of civil rights compliance, SBA does not continue to process an application or award a grant.<sup>44</sup> SBA provides recipients with Form 793, "Notice to New SBA Borrowers," which provides a checklist of Title VI and other nondiscriminatory regulation requirements. Also prior to compliance reviews, recipients receive SBA nondiscriminatory regulations for their review to help them to better understand Title VI requirements.

<sup>42</sup> USCCR, *Federal Title VI Enforcement*, pp. 473–74.

<sup>43</sup> *Ibid.*

<sup>44</sup> SBA Interrogatory, p. 5.

While all recipients are subject to SBA nondiscrimination laws and review by OCRC, it is impossible for OCRC to review all its recipients because its staff is too small to handle the large number of recipients (see table 5.2). Consequently, OCRC uses two methods for compliance reviews, on-site and telephonic. Prior to these reviews, OCRC sends a letter of appointment that includes a document request, and a copy of the SBA nondiscrimination regulations (including Title VI) and SBA Form 793, “SBA Notice to New Borrowers.” Compliance review covers all aspects of the recipient’s employment practices. Each compliance review is customized to the company being reviewed. OCRC staff reviews the same information from its recipients for telephonic and on-site reviews.<sup>45</sup>

OCRC has performed telephonic reviews since 1997 as a way to increase reviews, even without travel funds.<sup>46</sup> Although telephonic reviews are intended to be as thorough as on-site compliance reviews, OCRC does not believe that telephonic reviews should completely displace on-site reviews.<sup>47</sup> Some of the advantages of telephonic reviews are they allow more objective selection and prioritization of reviews since geography is not a factor; they allow OCRC’s productivity, in terms of the number of recipients reviewed, to increase because of time not spent traveling; and they reserve travel funds for cases with potential noncompliance problems.<sup>48</sup>

**TABLE 5.2**  
**Compliance Reviews Conducted by the Office of Civil Rights Compliance, 1996–2002**

Fiscal year	Estimated # of recipients	Total reviews conducted	On-site reviews	Telephone reviews
1996	185,000	243	220	23
1997	200,000	282	146	136
1998	295,000	413	165	248
1999	295,000	433	351	82
2000	295,000	424	302	122
2001	295,000	420	309	111
2002	295,000	378	272	106

Source: U.S. Small Business Administration, Civil Rights Implementation Plans FY 1996–2003.

In FY 1998, OCRC placed an emphasis on the number of telephone reviews conducted, and doubled that number the previous year. During FY 1999, however, OCRC increased the number of on-site investigations, to conduct more in-depth evaluations of recipients’ policies, procedures, and records. On-site reviews represented 81 percent of all reviews conducted during FY 1999, but only 40 percent in FY 1998. In 2000, OCRC conducted slightly fewer overall reviews, 49 fewer on-sites and 40 more telephonic reviews, than in FY 1999. During FY 2002, 272 on-site compliance reviews and 106 telephonic reviews were conducted (see table 5.2).<sup>49</sup> Staff currently reviews less than half of a percent of recipients each year. Many recipients will not be reviewed for several years due to the lack of staff.

<sup>45</sup> Walker, Hornston, and Greenspan telephone interview, Mar. 27, 2003.

<sup>46</sup> In FY 1996, SBA conducted a telephonic compliance review pilot program before implementing the program in FY 1997.

<sup>47</sup> SBA Interrogatory, p. 5; SBA, Civil Rights Implementation Plan, FY 1997–2002.

<sup>48</sup> SBA, Civil Rights Implementation Plan, FY 1997–2002.

<sup>49</sup> Ibid.

## Deficiencies, Remedies, and Sanctions

Since SBA was created it has been authorized to guarantee loans and to make direct loans available to targeted programs that SBA and Congress deem appropriate. Direct loans are limited to businesses owned by an individual with veterans, minority, or disability status. Currently, there is no funding for these types of loans. The only funding available under direct loans is for the Disaster Loan Program, which is a separate entity under direct loans. Disaster loans are used to help individuals' recover from economic losses in a designated federal disaster area. SBA-guaranteed loans are not federal loans but loans in which the federal government guarantees a certain percentage of the loan for repayment.<sup>50</sup>

In 1996, the Commission concluded that SBA's power to accelerate loan repayment schedules of recipients found in noncompliance with Title VI was an effective inducement to encourage swift corrective action. The Commission recommended that SBA continue this practice.<sup>51</sup>

Today, SBA federal financial assistance can be terminated at the discretion of the SBA administrator if it is determined after a due process procedure that voluntary compliance with civil rights requirements cannot be achieved. The SBA rules and regulations under 13 C.F.R. Part 112, "Nondiscrimination in Federally Assisted Programs," explain remedies and sanctions.

In most cases, the recipients reviewed have private loans through banks and financial institutions guaranteed by SBA. The potential sanction most often available to obtain voluntary compliance is the withdrawal of SBA's guaranty on a loan. The loss of a government guaranty threatens the recipient because a lender could call for immediate payment of the loan upon its loss of the SBA guaranty.<sup>52</sup> The Commission finds this sanction continues to serve as an effective deterrent to Title VI violations and as a tool to achieve voluntary compliance.<sup>53</sup> With the exception of a few recipients who repaid loans to avoid SBA enforcement actions and the potential withdrawal of SBA assistance, OCRC has succeeded in ensuring most recipients voluntarily comply.<sup>54</sup>

## Staff Training

In 1996, OCRC's staff was poorly trained on Title VI because there was a lack of funds for formal civil rights training. The lack of training impaired the quality of SBA's Title VI enforcement program. The Commission recommended that SBA allocate resources to train its civil rights staff on Title VI and other civil rights statutes. It was also recommended that the training include information on SBA's procedures for enforcing Title VI and provide OCRC staff with a thorough understanding of SBA's responsibilities relative to federally assisted programs.<sup>55</sup>

The Commission in 2003 finds that because of budget constraints OCRC still does not routinely hold training for its staff or recipients on civil rights statutes, Title VI enforcement, or compliance.<sup>56</sup> New staff members mainly receive informal, on-the-job training because public sector training entities seldom offer civil rights compliance training. OCRC staff participate in Title VI and Title IX DOJ-

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<sup>50</sup> Walker, Hornston, and Greenspan telephone interview, Mar. 27, 2003. The loan amount guaranteed is established by Congress.

<sup>51</sup> USCCR, *Federal Title VI Enforcement*, p. 474.

<sup>52</sup> SBA Interrogatory, p. 7.

<sup>53</sup> *Ibid.*

<sup>54</sup> *Ibid.*

<sup>55</sup> USCCR, *Federal Title VI Enforcement*, pp. 475–76.

<sup>56</sup> SBA Interrogatory, pp. 8–9.

sponsored training when slots are available. In 1998, three of OCRC's staff members attended DOJ Title VI training. Those employees later disseminated training materials and information to the entire OCRC staff. OCRC staff also viewed DOJ's training video, "Understanding and Abiding by Title VI of the Civil Rights Act of 1964."

In addition to training offered by DOJ, EEO&CRC has sponsored its employees in several training courses offered by the Department of Agriculture's Graduate School and private trainers.<sup>57</sup> In 2000, the entire staff attended a training conference on SBA's alternative dispute resolution process.<sup>58</sup> Despite these activities, training for SBA remains insufficient. Additional resources are necessary to provide civil rights training at least annually.

## Delegation

In 1996, the Commission found that although SBA proposed delegation agreements with the Departments of Education (DOEd) and Health and Human Services (HHS) that would give these departments the responsibility for monitoring SBA-funded colleges, universities, and nursing homes, SBA had not yet implemented these agreements. The Commission concluded that until the delegation plans were implemented, SBA was not monitoring the compliance status of recipients covered under these agreements adequately. As a result, the Commission recommended that SBA consult with the Department of Justice to determine the adequacy of the DOEd and HHS Title VI programs and whether the programs met the requirements of the Department of Justice's coordination regulations that contain key elements to ensure compliance with Title VI. The Commission recommended that after establishing the adequacy of the DOEd and HHS Title VI programs, SBA should finalize and implement the delegation agreements with the agencies.<sup>59</sup>

Currently, SBA does not plan to initiate further actions to implement the delegation agreements, nor has SBA implemented new enforcement delegation agreements with DOEd and HHS. However, SBA works cooperatively and offers any requested support to other federal agencies taking a Title VI enforcement action against an entity that is also an SBA recipient. Similarly, if SBA were to initiate Title VI enforcement action against an entity that SBA knew also had financial assistance from another federal agency, it would request and expect cooperation from that agency in order to ensure voluntary Title VI compliance.<sup>60</sup> In the past, this form of cooperation between agencies has been useful when taking an enforcement action against recipients found in noncompliance. SBA has worked with EEOC, the Department of Labor, and the Maryland Commission on Human Relations in taking corrective actions against recipients who were found in noncompliance. In January 2003, SBA representatives met with the Department of Justice's Coordination and Review Section to discuss an interagency delegation project and discussed the development of a new interagency delegation agreement for Title VI and Title IX complaint investigations.<sup>61</sup>

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<sup>57</sup> Ibid., p. 10.

<sup>58</sup> Ibid., pp. 9–10.

<sup>59</sup> USCCR, *Federal Title VI Enforcement*, pp. 474–75.

<sup>60</sup> SBA Interrogatory, pp. 7–8.

<sup>61</sup> Ibid.; Carol Walker, director, Office of Civil Rights Compliance, fax to Monique Dennis-Elmore, civil rights analyst, USCCR, Jan. 27, 2003.

## Oversight and Quality Assurance

In 1996, SBA did not have an information management system to track expenditures on civil rights enforcement programs or facilitate management planning. The Commission recommended that EEO&CRC develop an information management system that tracked expenditures for various civil rights activities and use the system as a guide when developing program planning.<sup>62</sup> In addition, the Commission found that SBA had neglected its responsibility to collect and analyze data as part of its Title VI compliance program. SBA's failure to require recipients to report information needed to conduct civil rights analyses weakened its Title VI enforcement. The Commission recommended that SBA collect data from its recipients in order to conduct analyses of the recipients' compliance with Title VI and SBA federally funded programs. It was also recommended that SBA's direct loan program use the data to ascertain whether SBA funding decisions had an adverse impact on minority communities.<sup>63</sup> SBA was to use the data collected for post-award desk-audit reviews, as well as for pre-award reviews, specifically to assess whether the recipients provided loans on an equal opportunity basis and to businesses operating in all segments of the community. At that time, the Commission also recommended that SBA's direct loan program use the data to ascertain whether SBA funding decisions had an adverse impact on minority communities.

In 2003, the Commission finds that SBA still has not required program offices to collect and analyze data to enforce nondiscrimination requirements.<sup>64</sup> In many instances, however, demographic information on race, gender, national origin, and disability has been obtained from standardized forms completed by applicants or recipients of SBA services, lending partners, or other SBA service provider partners. Occasionally, program offices use and evaluate these data for their own purposes (e.g., determining whether agency programs and services are reaching targeted populations, and whether economic development goals are being met in disadvantaged communities). However, neither program offices nor SBA partners analyze these data to make any determinations regarding Title VI compliance, and EEO&CRC is not directly involved in the data collection or analysis. The program offices provide EEO&CRC this information when it is needed for official purposes.<sup>65</sup>

OCRC utilizes SBA regulation 13 C.F.R. Part 112, which requires recipients to provide necessary data for OCRC to make a determination of whether a recipient is complying with Title VI requirements. Recipients' failure to provide data to SBA is handled as a violation of the recipients' civil rights requirements under Title VI and the SBA regulations.<sup>66</sup> With the exception of companies that undergo compliance reviews by OCRC, SBA does not require direct loan recipients to provide data on their business ownership and workforce by race, color, or national origin, or by demographic composition of surrounding neighborhoods. Nor does SBA routinely require small-business investment companies to provide data on ownership, race, color, or national origin, or demographic composition of the neighborhood of the business to which they make business loans. However, when a compliance review of covered investment companies is conducted, this information must be provided to make a compliance determination. During compliance reviews, SBA requires small-business investment companies to submit data on the demographic composition of their decision-making boards and committees, on their employment practices, and on their loan application procedures and poli-

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<sup>62</sup> USCCR, *Federal Title VI Enforcement*, pp. 470–71.

<sup>63</sup> *Ibid.*, p. 476.

<sup>64</sup> SBA Interrogatory, p. 10.

<sup>65</sup> *Ibid.*, pp. 10–11.

<sup>66</sup> *Ibid.*

cies.<sup>67</sup> SBA uses the data to ascertain the compliance status of recipients through post-award desk-audit reviews.

In addition, EEO&CRC does not use data collected from the agency's direct loan program to ascertain whether SBA's funding decisions have an adverse impact on minority communities.<sup>68</sup> However, SBA has established "minority" target goals in many of its lending programs in an effort to have a positive impact on minority communities through job creation and economic development. EEO&CRC has not undertaken a programwide approach to conducting reviews of SBA federally assisted Title VI covered programs. Instead, OCRC conducts compliance reviews of individual federally assisted entities to ensure the programs and services they provide are available on a nondiscriminatory basis.<sup>69</sup> SBA also administers specific financial assistance programs designed to benefit economically depressed areas regardless of whether the recipient operating a business in that designated area is a minority.<sup>70</sup> Overall, the lack of data reduces the effectiveness of SBA's Title VI enforcement process by preventing SBA from using two effective Title VI enforcement mechanisms, pre-award and post-award desk audits.

## Conclusion

OCRC has made vast improvements in areas pertaining to compliance reviews, publications, and technical assistance based on previous recommendations. However, EEO&CRC still lacks in areas of staff training, education and outreach, delegation agreements, planning and quality assurance, and resources. OCRC strives to enforce Title VI and SBA nondiscrimination regulations, but the office is hampered by the lack of resources and staff. Currently, OCRC conducts compliance reviews for less than 1 percent of its recipients covered by Title VI and other nondiscrimination regulations. Staff needs to receive more formalized training in civil rights. OCRC needs to perform more education and outreach to inform more citizens about their rights, which may increase the number of complaints OCRC receives. For OCRC to accomplish its mission it needs more resources and staff to allow it to increase the number of compliance reviews, and improve its education and outreach, training, planning, and quality assurance activities. In order to establish goals and objectives to effectively enforce Title VI and other nondiscrimination regulations, OCR needs its own budget allocation.

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<sup>67</sup> Ibid., p. 11.

<sup>68</sup> SBA no longer makes direct loans except in the Disaster Assistance Loan Program.

<sup>69</sup> SBA Interrogatory, pp. 11–12.

<sup>70</sup> Ibid., p. 12.

## Chapter 6

# Findings and Recommendations

### 1. INTRODUCTION

#### Department of Justice

**Finding 1.1:** In 1996, many agencies' Title VI regulations were outdated because the definition of "programs and activities" predated the implementation of the Civil Rights Restoration Act of 1987. The Department of Justice had, along with 21 other federal departments, including the U.S. Department of Agriculture (USDA), the Department of the Interior (DOI), the Environmental Protection Agency (EPA), and the Small Business Administration (SBA), begun to amend its regulations with the broader Title VI coverage of programs and activities. Proposed rules were published in December 2000, and final rules, although "imminent," were still not in effect more than two years later.

**Recommendation 1.1:** The Department of Justice (DOJ) should obtain the necessary approval of federal agencies for the joint rule on Title VI regulations and publish the document as final. The Commission recommends that DOJ accomplish this by March 2004.

**Finding 1.2:** DOJ is responsible for coordinating and monitoring federal Title VI enforcement. DOJ issued guidelines to help affected federal agencies formulate plans for implementing their Title VI responsibilities, and by 1996, the Civil Rights Implementation Plans (CRIPs) emerged as the principal DOJ document used for evaluating the performance of affected agencies. Many agencies are required to submit a CRIP every fiscal year. In this review, the Commission finds that at least one of the agencies, USDA's Farm Service Agency, with Title VI programs is not required to prepare or submit CRIPs.

**Recommendation 1.2:** DOJ should require all agencies with Title VI programs and enforcement responsibility to submit a CRIP every fiscal year, following DOJ guidelines and requirements for information.

**Finding 1.3:** In 1996, 2002, and 2003, the Commission concluded that some of the agencies' CRIPs did not meet DOJ's requirements and needed improvement. DOJ is supposed to review CRIPs and provide feedback on the content of the plans. If deficiencies are found, DOJ must communicate its concerns to the agency and make recommendations for improvement. The findings are to be reported approximately three to six months after the CRIP is received. The Commission finds that DOJ is not providing feedback to the agencies about the content of their plans, and this is being interpreted to mean that the CRIPs are adequate or meeting DOJ's requirements.

**Recommendation 1.3:** In 1996, the Commission recommended that DOJ develop guidelines for improving CRIPs, and that the documents become planning and management tools that could be used to measure compliance activities. The Commission renews this recommendation; thus, DOJ should give agencies written feedback on the quality of their CRIPs, even if they meet DOJ guidelines. DOJ

should provide written comments and guidance on how to improve and better use plans for Title VI enforcement.

## Congress

**Finding 1.4:** Prior to 1986, the U.S. Commission on Civil Rights had a separate office with a \$1 million budget and more than 20 staff members who monitored and evaluated the federal civil rights enforcement effort. Because of budget reductions, the monitoring office was abolished and the Commission's monitoring efforts declined significantly. During some years, the function was eliminated completely because of competition for scarce resources.

**Recommendation 1.4:** Congress should appropriate sufficient resources to enable the Commission to regularly and adequately monitor federal agencies and carry out this important component of its work.

## Federal Title VI Agencies

**Finding 1.5:** EPA established an internal Title VI task force in December 1996 whose responsibility, among others, was to implement the Commission's 1996 recommendations. Establishing the task force suggests that EPA has made serious efforts to give a higher priority to civil rights.

**Recommendation 1.5:** The Commission commends EPA for establishing an internal Title VI task force to implement its recommendations. The Commission recommends that the Departments of Agriculture and the Interior and the Small Business Administration create internal Title VI task forces to implement the Commission's recommendations. This task force initiative should be considered by all federal agencies that administer Title VI programs.

## 2. DEPARTMENT OF AGRICULTURE

**Finding 2.1:** The Commission finds that USDA has one of the most complex and decentralized civil rights programs in the federal government. There are numerous civil rights components and staff throughout the department, each with different responsibilities. The result has been delegation of roles, duties, and responsibilities of civil rights enforcement, but not effective coordination of these tasks. Reorganizations and staff turnover have also contributed instability to the roles, duties, and responsibilities of enforcement. In April 2003, an Assistant Secretary of Agriculture for Civil Rights was sworn into office to oversee and coordinate activities.

**Recommendation 2.1:** The Commission commends its 1996 report, as well as *Ten-Year Check-Up: Have Federal Agencies Responded to Civil Rights Recommendations? Volume I: A Blueprint for Civil Rights Enforcement* and *Volume II: An Evaluation of the Departments of Justice, Labor, and Transportation*, to new enforcement officials and staff. These reports provide an in-depth discussion of and suggestions for effective civil rights enforcement along with guidance in coordinating activities and fulfilling responsibilities. The officials should establish ongoing liaisons and foster open dialog with the Commission concerning its findings and recommendations for improvement.

**Finding 2.2:** In numerous reorganizations since 1994, the Department of Agriculture has struggled to consolidate civil rights functions into one office. In 1997, the department established offices for outreach and small and disadvantaged business utilization under the Assistant Secretary for Administration, and created a Civil Rights Division (OGC-CRD) in the department's Office of General Counsel

to provide legal assistance on civil rights issues. Office of Civil Rights (OCR) officials view the Office of Outreach and OGC-CRD as effective, despite their remote locations. Yet, with this structure, USDA's responsibility for civil rights functions continues to be spread among multiple offices, sometimes without civil rights leadership, and as such raises concerns about the arrangement's effectiveness.

**Recommendation 2.2:** As the organization of civil rights is rearranged to accommodate the new position of Assistant Secretary for Civil Rights, USDA should determine which other offices or divisions would function more effectively under the Assistant Secretary for Civil Rights. To accomplish this, the department should study over the next four months the function and responsibilities of the Office of Outreach, the Office of Small and Disadvantaged Business Utilization, and the Civil Rights Division of the Office of General Counsel to determine how functions can be enhanced. USDA should develop a concrete plan with dates and milestones to implement any resulting changes within a six-month period.

**Finding 2.3:** With each reorganization, the department needed to clarify the relationship of the Office of Civil Rights to USDA agencies, such as the Food and Nutrition Service (FNS), the Farm Service Agency (FSA), and Natural Resources Conservation Service (NRCS). Since 1994, the Secretary delegated authority for enforcing Title VI of the Civil Rights Act to the director of the Office of Civil Rights. The director has had responsibility to provide leadership, coordination, and direction, which includes giving civil rights guidance and oversight to USDA agencies. Yet, until 1997 OCR's oversight for civil rights enforcement lacked authority because the office was not involved in the performance appraisal process for agency heads. In 1997, the Secretary gave the Assistant Secretary for Administration full authority for rating the heads of USDA agencies and offices on their performance of civil rights functions, but now there is an Assistant Secretary for Civil Rights.

**Recommendation 2.3:** As the functions of the Office of Civil Rights are aligned under an Assistant Secretary for Civil Rights, the department should reissue delegations of authority clarifying OCR's oversight role with respect to the civil rights activities and responsibilities of USDA agencies. The Secretary should transfer authority to rate the heads of USDA agencies and offices on their performance of civil rights functions to the newly appointed Assistant Secretary for Civil Rights.

**Finding 2.4:** In 1996, the Commission found that the USDA budget did not designate a specific amount for OCR's Title VI implementation and recommended that USDA's budget include a separate allocation for civil rights activities and designate an amount for Title VI enforcement so that resources could not be diverted to other functions without a formal decision to do so. Furthermore, the USDA agencies did not have allotments for civil rights activities and were allocating funding from salaries and expenses allotments. USDA officials now report that the department still does not have a budget line item for civil rights enforcement. Funds for civil rights enforcement are subsumed in the Departmental Administration budget, although the department designates separate amounts for equal employment opportunity (EEO) and equitable program delivery. The budget for Title VI is not distinguishable from that for enforcement of other civil rights statutes. Beginning in 2004, the newly created Office of the Assistant Secretary for Civil Rights will have its own budget.

**Recommendation 2.4:** USDA should establish budget line items and account separately for headquarters and agency resources for civil rights enforcement. Furthermore, the department should implement a new or improved system that tracks resources, activities, and expenditures separately for Title VI and other civil rights statutes. The Assistant Secretary for Civil Rights should use these mechanisms to ensure that enforcement of Title VI is ongoing and that Title VI resources are not redirected to Title VII or other civil rights statutes.

**Finding 2.5:** USDA's civil rights agencies have a deluge of problems ranging from leadership instability, stagnant enforcement activities, poor lines of communication, and the lack of coordination between the departmental Office of Civil Rights and other USDA civil rights components, and the inability to follow through to ensure that draft policy becomes final.

**Recommendation 2.5:** USDA should request an independent auditor, whether from the private sector or another government entity, to conduct a full review of all its agencies that have civil rights offices. Once the audit has been completed, the department should take necessary steps to ensure that all findings of deficiencies are addressed.

## Office of Civil Rights

### *Resources—Funding and Staffing*

**Finding 2.6:** In accordance with the Commission's 1996 recommendation, OCR studied the number of staff it needed. The study compared staffing levels with those in another similarly sized and situated department and concluded that USDA had insufficient staff levels for employment and program complaint processing. OCR used the study to justify requests, both internal and to Congress, for additional staff and funding, including in FY 2003 and thereafter.

**Recommendation 2.6:** The Commission commends OCR's documentation of staff and other resources it needs. It recommends that OCR conduct such studies annually and use the results to monitor and make others aware of its resource needs.

**Finding 2.7:** OCR's budget gradually increased from FY 1997 to 2002, reaching \$13.8 million. Except in FY 1998 and 1999, the number of program compliance staff has approximated the levels that resulted in more effective enforcement. In addition, the formation of the Office of Outreach and the Office of General Counsel's Civil Rights Division have further augmented the staffing levels for enforcing Title VI. OCR's requests for even larger funding and staffing increases for FY 2000 to 2003 were not met.

**Recommendation 2.7:** USDA should meet OCR's requests for additional budget and staffing resources when OCR demonstrates the inadequacy of resources for its workload. Similarly, Congress should meet USDA requests for additional civil rights resources when inadequacies are demonstrated.

### *Planning*

**Finding 2.8:** The Commission asked OCR to undertake more planning using annual Civil Rights Implementation Plans with resources and expenditures separated for Title VI and other activities. In 2002, OCR had a system to record civil rights expenditures by type of activity and another one to track the stages of complaint processing. However, Title VI activities could not be distinguished from those for other program delivery activities. OCR plans to upgrade the complaint tracking and financial management databases.

**Recommendation 2.8:** OCR should upgrade its management information system to enable it to track expenditures for Title VI enforcement separately from other program delivery activities. To ensure that OCR's Title VI planning is improved as soon as possible, the Commission recommends that OCR commit to accomplishing this management information upgrade before March 2004.

**Finding 2.9:** OCR has concrete civil rights goals and uses tracking systems to monitor progress, such as reducing complaint processing time. However, the office struggles in planning and reaching goals. In 2000, OCR linked expenditures to accomplishments and identified needs for additional staffing. In 2002, it streamlined complaint-handling procedures and reported more productivity. With streamlined procedures now in place, and a guideline of work accomplishments linked to resource expenditures, OCR is better positioned to plan reasonable goals.

**Recommendation 2.9:** OCR should establish realistic goals and timelines for accomplishing Title VI enforcement activities, such as issuing policy guidance, conducting oversight compliance reviews, processing complaints, reducing the complaint backlog, and reducing the complaint processing time. It should use its tracking system to strengthen the relationship between expenditures and accomplishments under the new streamlined procedures for complaint handling. It should continue to review enforcement procedures, including those for conducting oversight compliance reviews, to further streamline work so that goals can be achieved with maximum efficiency.

### ***Policy Guidance***

**Finding 2.10:** In 1996, USDA's compliance review procedures and guidance were confusing regarding the types of reviews it conducted. A 1999 revision distinguished compliance reviews of federally assisted programs (those that provide grants that are then redistributed to subrecipients) from federally conducted programs (those that involve direct payments to beneficiaries). However, standard operating procedures issued in 2001 and 2002 for agency civil rights evaluations and compliance reviews offered definitions that furthered the confusion. Thus, OCR's struggle to clarify the different types of reviews and evaluations continues.

**Recommendation 2.10:** OCR needs to establish a workgroup with representatives from all USDA agencies with civil rights responsibilities. The workgroup's objective would be to clearly define the agency's compliance reviews and agency civil rights evaluations and distinguish reviews that are required for oversight of the agency (e.g., regional, state, district, and field offices) from those conducted of external organizations or funding recipients. Tracking the types of reviews would help OCR ensure that oversight covers Title VI program delivery comprehensively and aid in estimating the relative costs of different types of reviews or evaluations to improve comprehensive coverage and efficiency. The workgroup should develop language to:

- clarify the purpose and nature of civil rights enforcement for federally conducted and federally assisted programs;
- establish the purpose, standards, and parameters for the following types of compliance reviews:
  - oversight reviews that OCR conducts of USDA agencies,
  - oversight reviews that USDA agencies conduct of their own organizational units at various levels within the agency (e.g., regional, state, district, or field offices), and
  - oversight reviews that USDA agencies conduct of program recipients; and
- clarify the meaning of "program" reviews, specifically the difference between general reviews of program delivery and reviews that have a narrow focus on a single program.

The workgroup should establish and develop guidance that specifies the requirements of each type of review. For example, federally assisted program guidelines should specify minimum requirements for completed compliance reviews such as (a) a desk audit or a site visit; (b) a review of the recipi-

ent's written civil rights policies, analyses of program participation data or rejection rates by race and ethnicity, and history of being the subject of civil rights complaints; and/or (c) interviews of recipients, beneficiaries, and affected community groups. Furthermore, when OCR conducts an oversight review of an USDA agency, it should specify whether it reviews or analyzes the agency's compliance review files. The workgroup should consult the Commission's report *Ten-Year Check-Up: Have Federal Agencies Responded to Civil Rights Recommendations? Volume I: A Blueprint for Civil Rights Enforcement*, and the Department of Justice's Title VI regulations to identify essential elements of compliance reviews.

The workgroup should establish which type of compliance review is appropriately reported to the Department of Justice in the required annual Civil Rights Implementation Plan (CRIP) and issue this guidance to all affected offices. When annually submitting the CRIP, agencies should indicate the type and depth of the reviews in the plan.

USDA's management information system should be upgraded to capture the distinctions in reviews, the component that was reviewed (i.e., whether a regional, state, or field office, or a recipient), and the responsible office. In compiling its annual accomplishments, OCR should tally the number of reviews that have been conducted of its regional, state, and field offices.

**Finding 2.11:** In 1993, USDA developed a promising new tool for civil rights enforcement, Civil Rights Impact Analyses (CRIAs). A departmental regulation required OCR to conduct such analyses of proposed agency actions before implementation, so that programs with harmful effects could be abandoned or modified. OCR reported completing 265 CRIAs from FY 1999 to 2001, including 71 involving the Farm Service Agency, and has staff assigned to USDA agencies to conduct analyses of the civil rights implications of the 2002 farm bill. OCR is still refining and streamlining the requirements and roles of OCR and the USDA agencies in conducting CRIAs. OCR has developed an understanding of mechanisms it can employ to make USDA agencies change any negative civil rights impacts, for example, the rule-making process or corrective action plans.

**Recommendation 2.11:** USDA should continue to use Civil Rights Impact Analyses to identify program impacts. OCR should revise the departmental regulation to reflect current roles of the Assistant Secretary for Civil Rights, OCR, and the USDA agencies in conducting such analyses. OCR should conduct training for USDA agencies' and headquarters' civil rights staff on when and how to perform CRIAs once guidance on the procedure is complete. Although USDA only requires CRIAs for program changes, OCR should consider expanding the regulation to ongoing, cyclical impact analyses that would identify discriminatory aspects of program design that only would be evident after a program has been implemented.

**Finding 2.12:** In the 1996 report, the Commission recommended that USDA's civil rights office develop Title VI policy guidance on the implications of the Civil Rights Restoration Act and on block grant and continuing state programs. It also asked OCR to revise the compliance review manual, adding timeframes for completing tasks, legal standards for discrimination under Title VI, and the types of compliance reviews. As of 2003, these changes were not yet implemented. Some of the changes are in draft form, such as the joint Title VI regulations that DOJ is reviewing but has not approved. In some instances, OCR did not have its own specific guidance and disseminated DOJ's policy guidance. In other cases, draft guidance has been stalled while undergoing the USDA clearance process.

**Recommendation 2.12:** During FY 2004, OCR should secure approval of its departmental manual, which would provide guidance on Title VI procedures, including timeframes, legal standards, and other information the Commission requested in 1996. Within the first 30 days of FY 2004, OCR

should actively work with the clearance offices to resolve problems associated with approving draft guidance that has been stalled.

### ***Technical Assistance***

**Finding 2.13:** In 1996, the department's civil rights office provided considerably less technical assistance than in earlier years when each agency was assigned a desk officer. In 2003, OCR still does not have the resources to reinstate desk officers to carry out technical assistance as the Commission recommended. OCR anticipated that it would receive its requested FY 2003 increases in positions allocated to the Program Compliance Division, but its staff was only increased by a few members. In the meantime, OCR assigned compliance officers to agencies with Title VI responsibilities, although some officers serve as many as five agencies.

**Recommendation 2.13:** USDA should allocate additional staff such that each USDA agency has a full-time desk officer providing technical assistance. Title VI technical assistance should be provided regularly, not just when the agencies request it.

### ***Education and Outreach***

**Finding 2.14:** In 1996, the Commission viewed USDA's outreach effort as inadequate and asked that OCR spearhead a departmentwide campaign to educate recipients, beneficiaries, and the public about civil rights and responsibilities under Title VI. It said that OCR's outreach plan should delineate responsibilities for OCR and the USDA agencies. An Office of Outreach, established in 1997, not the Office of Civil Rights, develops the department's strategy for education and outreach and sponsors numerous education and outreach activities. Under this structure, OCR is still responsible for some initiatives, such as overcoming language barriers that preclude equal access of persons with limited English proficiency to USDA programs and benefits.

**Recommendation 2.14:** Establishing an Office of Outreach has resulted in more public education. The Office of Outreach should further develop its role. In addition to education and outreach, it should develop a strategy to identify programs, geographic areas, or populations where education and outreach are inadequate and assist USDA agencies and their state and county offices in reaching them. Low program participation rates of minorities and women often indicate inadequate outreach. OCR should coordinate with the Office of Outreach to identify opportunities and routinely monitor information for possible collaborative initiatives. The Office of Outreach should also ensure that information on where and how to file a discrimination complaint is currently provided through its activities, and available at USDA offices serving recipients or beneficiaries.

### ***Complaint Processing***

**Finding 2.15:** The Commission identified numerous problems with OCR's complaint processing. First, OCR cannot determine the number of Title VI complaints it receives or processes. Officials can only estimate that about 20 percent (or 250 to 300) of program complaints concerned Title VI enforcement in FY 1999. Second, complaint processing procedures have been poor. In 2000, a report of USDA's Office of Inspector General (OIG) raised concerns about the consistency with which cases are processed and the accuracy of information OCR maintains on them. Third, OCR has a backlog of open complaint cases and takes too long to process them. Furthermore, a 2002 General Accounting Office study reported that OCR's average processing times do not include the full length of processing complaints, but only the investigation phase.

OCR has tried to improve complaint processing. In FY 2000, it streamlined the pre-investigation process, implemented a new complaint tracking system, and established an Intake Division and a Customer Service Unit. In 2002, OCR was evaluating agencies and revising standard operating procedures to ensure that complaint processing followed OCR's regulations. In 2003, OCR proposed obtaining additional staff, who were not allocated, and using a prioritization method for handling investigations to reduce its backlog.

**Recommendation 2.15:** OCR should first improve its complaint tracking system to identify Title VI complaints. The adequacy of Title VI enforcement cannot be assessed without the ability to track the status and outcomes of Title VI complaints. Second, OCR should establish complaint procedures that ensure quick, consistent, and appropriate processing, and that backlogs do not reach unacceptable levels. OCR should put appropriate procedures and standards in place, staff adequately, train, and have personnel who have civil rights enforcement experience. OCR should track the average processing time from the initial contact with the complainant to the time the matter is resolved. A tracking system should accurately capture and report the full complaint processing time. Finally, OIG should continue to monitor OCR's processing of complaints to ensure that they are resolved timely, completely, and consistently.

### **Compliance Reviews**

**Finding 2.16:** USDA has had a spotty history of conducting compliance reviews of its agencies since the Commission's last study. Several years passed without OCR conducting any compliance reviews.

**Recommendation 2.16:** OCR should conduct regular and systematic oversight reviews of USDA agencies and their civil rights compliance programs. OCR should select the agencies, programs, or locations it reviews both strategically through analyses that suggest potential discrimination, and systematically to ensure comprehensive, periodic coverage of all agencies and programs.

**Finding 2.17:** In 1996, the Commission was concerned that USDA agencies were not reporting information on their Title VI enforcement programs, including program participation rates by race and ethnicity. Since then, compliance reviews of USDA agencies revealed that participation and eligibility statistics were neither systematically collected nor reliable. OCR issued newly developed standard operating procedures for evaluating agencies, including their collection and maintenance of civil rights data, in 2001. Finally, although the 2002 farm bill requires the Secretary to report program participation rates by race, ethnicity, and gender, USDA officials will require agencies to analyze the data rather than to provide them to OCR.

**Recommendation 2.17:** Analyses of program participation rates are a key element to determining equal access to programs. The Department of Justice's Title VI regulations require that all federal agencies perform such analyses when conducting compliance reviews. USDA should first ensure that its agencies reliably and systematically collect program participation rates by race, color, and national origin. Next, it should ensure that the agencies perform analyses on these data to compare program participants with the relevant applicant pools and eligible populations, as well as any populations the federal programs adversely affect, by race, color, and national origin. The Commission restates its recommendation that USDA require the agencies to report the data and analyses, and other information on their civil rights organization and structure, budget and staffing, complaints received, compliance reviews conducted, staff training, and outreach, education, and technical assistance activities to OCR in an annual report. Furthermore, to fulfill its oversight responsibilities, OCR should analyze and act on the information.

### **Staff Training**

**Finding 2.18:** In 2003, USDA continues to offer annual civil rights training as its departmental regulations require. However, the training USDA offered or plans from 1997 to 2006 is limited to general topics such as cultural diversity or program accessibility more than Title VI. Furthermore, OCR's and the USDA agencies' training materials, which OCR either writes or reviews, had almost no content on Title VI enforcement.

**Recommendation 2.18:** Title VI staff training should go beyond cultural sensitivity and diversity and should teach staff to recognize barriers that prevent equal access to programs and identify solutions that may help overcome these barriers. It should also teach them about civil rights enforcement, including all the implementation tools available. Training should cover, for example, the enforcement roles of outreach, policy guidance, complaint processing, compliance reviews, data collection and analyses of program recipients and beneficiaries, and the involvement of affected communities in planning programs and outreach. USDA's unique tool—Civil Rights Impact Analyses—should also be presented, studied, and discussed in enforcement training. OCR may find the Commission's recent report—*Ten-Year Check-Up: Have Federal Agencies Responded to Civil Rights Recommendations? Volume I: A Blueprint for Civil Rights Enforcement*—helpful in identifying goals, objectives, and modules for training.

### **Oversight and Quality Assurance**

**Finding 2.19:** OCR has the responsibility for oversight, coordination, and monitoring of the USDA agencies' Title VI enforcement programs. In 1996, USDA lacked resources and had not conducted oversight reviews of most USDA agencies. OCR staff provided very little technical assistance to the agencies, had no regular contact with recipients of USDA assistance, and had limited knowledge of the USDA programs.

The Commission finds that OCR is still completing only a small number of oversight reviews or evaluations of USDA agencies. However, compliance officers are assigned to each agency to serve as civil rights liaisons and expand OCR's knowledge of USDA programs. Furthermore, the department completed a study to justify a full-time desk officer assigned to each agency and requested more staff based on its results. In addition, contact between OCR and agency staff is more frequent in 2003 than in 1996, through regular meetings and participation in annual training conferences.

**Recommendation 2.19:** Because of its oversight role, OCR should review USDA agencies to ensure that they are fulfilling their civil rights responsibilities by making regular, systematic inspections and evaluating their civil rights programs. Although the Commission commends OCR for its increased contact with and knowledge of the agencies and their programs, oversight requires much more. OCR should require USDA agencies to report information annually on their civil rights organization and structure, budget and staffing, complaints received, compliance reviews conducted, staff training, outreach, education, and technical assistance activities, and data and analyses on program participation rates by race, color, and national origin. To fulfill its oversight responsibilities, OCR should, at a minimum, analyze this information and take action where deficiencies are found.

### **Coordination**

**Finding 2.20:** In 1996, OCR was conducting all complaint investigations and issuing determinations of violations or compliance. It had a formal memorandum of understanding (MOU) with only one USDA agency, delegating it certain complaint processing activities. The Commission recommended

that the civil rights office enter into MOUs with all USDA agencies performing Title VI complaint functions. Since then, a 1997 Secretary's memorandum clarified the roles and responsibilities of the OCR director and the USDA agencies in handling discrimination complaints. As of 2003, OCR had formal agreements specifying roles and responsibilities with two USDA agencies—FNS and NRCS. For example, under the MOU with FNS, the agency investigates complaints, writes preliminary decisions on them, and submits them to OCR for review and approval. (Because of concerns about discrimination in program delivery that arose with the Farm Service Agency (FSA) in the *Pigford v. Veneman* consent decree, OCR terminated the authority FSA once had to conduct preliminary inquiries into civil rights complaints about program delivery.)

**Recommendation 2.20:** The Commission recommends that OCR continue to use relationships established through memoranda of understanding to expand its complaint processing capability. All agencies that handle complaints should have a formal agreement stating the agencies' responsibilities. The Commission commends OCR for retaining the authority to make determinations on program complaints, thus ensuring the quality and consistency of complaint handling among USDA agencies, and for terminating the authority of an agency to conduct preliminary inquiries into complaints when that agency's civil rights compliance needed improvement. In the same way, OCR should consider reinstating an MOU with an agency once concerns about noncompliance are resolved, in order to maximize its complaint processing resources.

## Farm Service Agency

### *Priority of Civil Rights*

**Finding 2.21:** In 1996, the Commission recommended that each state civil rights director be devoted 100 percent to civil rights duties. At that time, 12 states had full-time civil rights managers. In 2003, the Commission finds that there is still no requirement that state civil rights directors serve as full-time equal opportunity specialists. As of 2002, out of 51 directors, only one had full-time civil rights duties.

**Recommendation 2.21:** The Farm Service Agency (FSA) should require that each of the 51 state civil rights directors be a full-time equal opportunity specialist.

### *Resources—Funding and Staffing*

**Finding 2.22:** FSA tracks its Title VI expenditures separately from its expenditures on other civil rights activities by working closely with the Financial Management Division, Human Resources, and the department's Office of Civil Rights (OCR). According to FSA, the Office of Civil Rights (OCR) has the ability to monitor all Title VI expenditures, and a weekly report is provided to the director for review.

**Recommendation 2.22:** FSA/OCR should use its capability to track Title VI expenditures without relying on other FSA offices and the department's Office of Civil Rights.

**Finding 2.23:** FSA/OCR's budget is monitored and tracked by the Financial Management/Budget and Human Resources Divisions. FSA/OCR could only provide the Commission with four years of funding data, which did not include information on statutory expenditure. Funding amounts consisted of salaries, travel, training, and miscellaneous.

**Recommendation 2.23:** FSA/OCR should have the authority to submit its own budget and receive funding earmarked for its enforcement programs. At any point upon request, FSA/OCR should be able to provide sufficient budget information to determine Title VI and other statutory expenditures and not just those expenditures related to salaries, travel, and training.

### ***Planning***

**Finding 2.24:** FSA is exempt from USDA Civil Rights Implementation Plan (CRIP) submissions. Because FSA provides little if any significant federal financial assistance to recipients, conducts few if any pre-award and post-award reviews, and has no record of legal and administrative enforcement activity, the Department of Justice recommended that FSA be excluded from USDA submissions unless new or special circumstances arose.

**Recommendation 2.24:** FSA should submit CRIPs along with other USDA agencies to DOJ. The submission of the CRIPs would allow FSA to be evaluated on its Title VI enforcement program, including its scope, its organization, its budget and staffing, and the extent to which it conducts various civil rights activities. In addition, FSA needs to be held accountable for providing precise goals and objectives and having specific timeframes for completing them. FSA's progress also needs to be documented.

### ***Policy Guidance***

**Finding 2.25:** In 1996, USDA began reviewing FSA's draft Instruction 1940-D. If adopted, Instruction 1940-D will provide detailed guidelines to field offices for improved enforcement and compliance with civil rights laws. In addition, it will provide mechanisms for monitoring compliance by field offices and recipients of federal financial assistance at all levels. As of 2003, it still has not been adopted, but the Notice of Proposed Ruling began in February 2003 and will end in April 2003. FSA has replaced draft Instruction 1940-D with Handbook 18-AO (revision 2).

**Recommendation 2.25:** In the future, FSA should finalize and adopt instructions, policies, procedures, and guidelines within nine months. As a general rule, the process from draft to implementation should be completed in six to nine months, depending on complexity. FSA should in each instance develop schedules, tables, and timelines to keep such actions on track. In addition, FSA should provide technical assistance in the interim, between times when guidance is actually being worked on and when it is approved, to assist field offices in improving enforcement and compliance with civil rights laws.

**Finding 2.26:** FSA has not adopted Instruction 1940-D because it does not recognize the document as a portion of its compliance regulatory policy. FSA has implemented Departmental Regulation 4300-005, which requires that it establish a full-time civil rights director, have a single civil rights office located in Washington, D.C., and that agency heads allocate sufficient resources and assign trained qualified staff to support the agency's obligation and for developing and implementing a comprehensive civil rights program.

**Recommendation 2.26:** The Commission commends FSA for implementing the departmental regulation, but the agency administrator should seek approval for and be granted the authority to develop and control FSA's civil rights budget.

### ***Complaint Processing***

**Finding 2.27:** In 1996 when OCR received a complaint involving FSA, OCR forwarded the complaint to FSA for investigation. Upon completion, however, OCR made the final determination of compliance or noncompliance. Today, OCR continues to make the final determination on all complaints and FSA can only perform a limited scope investigation when asked to do so by OCR. FSA does not have the authority to close a complaint without consent from OCR. Furthermore, FSA often does not receive information on the status of complaints.

**Recommendation 2.27:** To increase the timeliness of complaint investigation and resolution, FSA/OCR should have the responsibility of investigating and addressing its own complaints. USDA/OCR's role with respect to FSA/OCR complaints should be to provide monitoring and guidance. FSA/OCR and USDA/OCR should reconcile their complaint database so that one entity does not consider a complaint closed while the other considers it backlogged. In addition, USDA/OCR should establish firm processing time requirements for all phases of complaint resolution. These requirements should be reflected in performance standards for all staff who handle complaints.

### ***Staff Training***

**Finding 2.28:** Periodic civil rights training on Title VI to state offices is provided through the state civil rights coordinator. Coordinators also provide training to field staff with guidance and support from the Compliance Program and Analysis Branch of FSA/OCR. Annual training is provided to civil rights coordinators, district directors, and managers to keep them abreast of updates on civil rights laws and regulations; the state civil rights coordinator's role and responsibilities; acceptable communication skills; department and agency policies on Title VI program delivery; and evaluation and analysis techniques.

**Recommendation 2.28:** FSA should continue its practice of requiring that all employees receive training at least annually in civil rights compliance. FSA should update and redistribute its handbook annually to ensure that it is an accurate reference source.

### ***Oversight and Quality Assurance***

**Finding 2.29:** FSA/OCR has developed a data management and information system that enables the director to determine how well FSA programs are serving protected groups and whether such groups face barriers that prevent them from having equal access to FSA programs. The multipronged system includes computerized data collection on complaints and complaint status, a streamlined Fact Finding Inquiry process to provide accelerated responses to the departmental civil rights office, tracking of the disposition of hot line OIG complaints, reviews of proposed interim and final regulations to determine civil rights impact, and regular reviews of states' civil rights and outreach compliance posture.

**Recommendation 2.29:** FSA should develop and offer training to state civil rights coordinators and state program personnel on the nature of the data requirements from recipients and on how to make use of the data to determine recipients' Title VI compliance status during pre-award and post-award reviews of recipients.

### ***Minority Farmers***

**Finding 2.30:** As a result of inadequate oversight of state offices, lack of management commitment to civil rights, inadequate resources and funding for civil rights, lack of accountability within the

Farm and Foreign Agricultural Services and Rural Development mission areas, lack of diversity among county committees and county office employees, and a cumbersome complaint process, black and other minority farmers alleged that FSA discriminated against them in its loan program. USDA has taken 203 disciplinary actions based on findings of discrimination or settlements. Nineteen of the actions, including four removals, occurred within FSA. Thus, farmers still access USDA services through many of the same career USDA employees who were in place when the discrimination occurred. FSA states that actions taken were directly related to the nature and severity of the findings of disparate treatment.

**Recommendation 2.30:** All FSA employees in field offices who have responsibilities for grantees should have a performance element based on Title VI activities that will hold them accountable for their actions. They should be evaluated on this element and should receive a predetermined level of acceptance in order to retain their position. If FSA employees do not meet the level of acceptance they should be reassigned to another position, demoted, or removed.

### ***Coordination***

**Finding 2.31:** USDA/OCR is tasked with providing leadership, guidance, and oversight to USDA agencies and recipients. FSA indicated that the interaction it has with USDA/OCR is adequate. USDA/OCR requires FSA to provide an annual report of its Title VI enforcement programs, including the number of closed cases, the number of pending and ongoing cases, and the results of training provided to FSA field employees. According to a 2003 report by the Equal Employment Opportunity Commission (EEOC), lines of communication are badly mangled between USDA/OCR and the more than two dozen agencies that make up USDA.

**Recommendation 2.31:** FSA/OCR and USDA/OCR need to develop an MOU modeled after the one that USDA/OCR has with the Food, Nutrition, and Consumer Services. The MOU should clearly delegate authority and responsibility in complaint processing. Under the MOU, FSA/OCR should have the authority to process its own complaints from beginning to end, except for when complaints involve FSA employees. Only then should USDA/OCR have the authority to process FSA/OCR complaints.

## **Food, Nutrition, and Consumer Services**

### ***Priority of Civil Rights***

**Finding 2.32:** Prior to 1994, the Civil Rights Division (CRD) reported to the Office of Management in the Food and Nutrition Service (FNS). The USDA reorganization created the Food, Nutrition, and Consumer Services (FNCS) and FNS became a component within the agency. However, CRD remained in FNS, and currently reports to an associate administrator to the FNS administrator. CRD has never reported to FNCS.

**Recommendation 2.32:** In its 1996 report, the Commission recommended that the Civil Rights Division report directly to the agency's administrator, who is now an undersecretary. CRD should be realigned in the undersecretary's office to reflect the high priority of civil rights at FNCS. If CRD is placed in the undersecretary's office, FNCS would provide a civil rights presence and elevate its authority.

**Finding 2.33:** Under the 1994 reorganization, USDA planned to transform CRD into an office of civil rights. From 1998 until 2002, the division was designated as an office, which should have given

it more authority. However, changing from a division to an office was, in effect, a name change only and thus did not have the desired impact of elevating the office.

**Recommendation 2.33:** CRD should be designated as an office, with the power and authority necessary to elevate civil rights as was intended in the 1994 reorganization plan.

**Finding 2.34:** Although the Commission's 1996 review did not find major problems with civil rights enforcement, the agency has not made any significant efforts to address the Commission's recommendations for improvement. In addition, there is little evidence that the enforcement process has changed since the Commission's earlier report. The foremost reason for the lack of improvement is CRD's leadership instability. Since the Commission's 1996 study, CRD has had three directors and the position has been vacant for nearly a year. During the vacancy, the position is covered by four-week rotations of three staff. The acting directors cannot formulate or implement new ideas, policies, regulations, or programs because their authority does not extend beyond meeting enforcement requirements. As a result, there has been a lack of consistency, continuity, and growth in the division. The rotation process has only maintained the status quo.

**Recommendation 2.34:** The Commission commends its 1996 report, as well as *Ten-Year Check-Up: Have Federal Agencies Responded to Civil Rights Recommendations? Volume I: A Blueprint for Civil Rights Enforcement* and *Volume II: An Evaluation of the Departments of Justice, Labor, and Transportation*, to the new director. These reports provide guidance and information in carrying out civil rights roles and responsibilities. The director should foster dialog with the Commission concerning its findings and recommendations for improvement.

### **Resources—Funding and Staffing**

**Finding 2.35:** Neither in 1996 nor now could CRD provide sufficient budget information on how civil rights funds are allocated or how resources are determined. Beginning in FY 2001, program, regional, and civil rights staff were directed to assess and evaluate human and fiscal resources supporting civil rights functions to determine whether resources were sufficient to support civil rights objectives. They were directed to make reports during mid-year reviews. However, the Commission finds that these initiatives have not been carried out and that reporting has not been made mandatory. The Commission finds that funding and staffing are adequate for maintaining the status quo, but since the office has been stagnant, the Commission cannot determine whether resources are adequate to take enforcement to a higher level.

**Recommendation 2.35:** During FY 2004, FNCS should make reporting and assessment of civil rights resources mandatory and tied to performance plans and reviews for all civil rights staff. FNCS should continue to require that relevant staff report and evaluate their resources as a part of strategic planning. All FNCS staff with civil rights responsibilities should be required to submit detailed reports on their current and projected expenditures. More importantly, the undersecretary should enforce the requirement. The reports should include how funds were allocated in the previous year, justification for requests, and what resources are necessary to implement changed initiatives and meet workload levels that result from revised laws and regulations. In addition, CRD should have in place an information management system that would permit it to track civil rights expenditures.

### ***Policy Guidance***

**Finding 2.36:** Since the Commission's 1996 study, CRD has issued new policy guidance in some areas. However, it has not finalized the revision of its Civil Rights Instruction 113, which outlines general civil rights enforcement procedures and responsibilities of different FNCS staff, its compliance review manual, or its guidance to implement Executive Order 13,166, which covers benefits and services for persons with limited English Proficiency (LEP).

**Recommendation 2.36:** CRD should complete revising the above policy guidance. Timetables and milestones should be set for the completion of these activities during the beginning of FY 2004, and information should be disseminated throughout FNCS and state agencies.

### ***Education and Outreach***

**Finding 2.37:** When the Commission conducted its 1996 study, the agency publicized many of its programs through posters and brochures. CRD acknowledged that it needed to perform more outreach and education on its programs to communities with large non-English-speaking populations and that reaching the many persons with limited English proficiency was a problem. The Commission recommended that CRD develop strategies for informing all recipients, participants, beneficiaries, and the general public about the programs, Title VI requirements, as well as other civil rights protections. The Commission now finds that program staff conduct most outreach activities at FNCS and that most posters and statements are only available at FNCS in Spanish and English, and not in other languages, such as Chinese and Arabic, which are becoming ever prominent.

**Recommendation 2.37:** By 2004, FNCS should have available information on its programs in Chinese and other languages appropriate to recipients.

### ***Staff Training***

**Finding 2.38:** In 1996, the Commission found that FNS did not have a structured, formal civil rights training program. In 2003, all FNCS employees receive civil rights training, but not at regular intervals. If possible, training is provided annually.

**Recommendation 2.38:** Many staff at FNCS have civil rights responsibilities. Therefore, formal, structured civil rights training should be conducted at least annually for all employees. Basic training should be given to new employees, and refresher training for veterans.

### ***Oversight and Quality Assurance***

**Finding 2.39:** In 1996, FNS did not have sufficient resources to monitor the quality of the states' complaint investigations or their pre-award and post-award reviews. The Commission now finds that FNS considers periodic reviews of states' compliance reports as "monitoring."

**Recommendation 2.39:** FNCS should establish a formal monitoring program to evaluate states' compliance activities, including investigations and reviews. Headquarters and regional civil rights staff should conduct in-depth reviews of the states' Title VI compliance programs. Monitoring should begin with a review of all quarterly and annual state reports and go further to include on-site visits, and interviews with state civil rights staff, recipients, participants, and civil rights groups. The results of the reviews should be analyzed and acted on within 30–60 days. Technical assistance and

guidance should be factored into the monitoring process, particularly when problems are found, and should be provided within 10 days after the analysis of the results.

### **Coordination**

**Finding 2.40:** The departmental OCR has MOUs with several USDA agencies for complaint processing. For more than 15 years, FNS/FNCS and the departmental OCR have operated under an MOU that delegates authority and responsibility for FNCS complaint activities. In 1996, the Commission did not make recommendations to modify the MOU. The MOU is adequate and has improved complaint processing at FNCS. The Commission finds that the MOU has made complaint processing more effective for both entities, has appropriate checks and balances, and is useful in protecting the rights of beneficiaries.

**Recommendation 2.40:** In 2003, the Commission recommends that OCR consider FNCS' MOU as a model document and adapt it to OCR and other USDA agencies that process complaints.

## **Natural Resources Conservation Service**

### **Priority of Civil Rights**

**Finding 2.41:** In its 1996 study, the Commission was concerned about whether civil rights received sufficient priority within the Soil Conservation Service's (SCS) organizational structure. The 1994 reorganization gave the Civil Rights and Program Compliance Division (CR&PCD) the responsibility for enforcing equal employment opportunities (EEO or Title VII) in addition to equitable program delivery (Title VI). The Commission recommended that the division create separate units and supervisors for EEO and program delivery and retain at least the same number of staff working on program delivery. However, the Natural Resources Conservation Service (NRCS) had separate units for Titles VI and VII civil rights activities only fleetingly in early 1997. Since then the civil rights unit has undergone several name, staffing, or organizational changes, most or all of which appeared to place greater emphasis on equal employment opportunity than on equitable program and service delivery. An NRCS reorganization in FY 2000 restructured civil rights as the Civil Rights Staff (CRS), but did not separate Title VI and Title VII civil rights responsibilities.

**Recommendation 2.41:** The Commission recommends that NRCS establish separate units with separate supervisors for civil rights enforcement related to employment and program delivery. The separate units will enable staff to specialize and ensure that resources are not diverted away from enforcing equitable program delivery without a decision to do so.

**Finding 2.42:** In 1994, state conservationists (and the collateral-duty equal opportunity liaison officers under them), who reported to the assistant chiefs of their respective regional offices, carried out compliance activities. The Commission was concerned that the director of CR&PCD did not have supervisory authority over these state staff and could not guarantee the consistency of enforcement throughout the agency. With the 1994 reorganization, the NRCS civil rights staff still lacks supervisory authority over civil rights personnel in NRCS state and field offices. However, now there are regional offices, each with a civil rights manager to consult with the regional conservationist and coordinate and implement civil rights policy. The civil rights managers are located in the regional offices but report to the director of CRS. Supervisory authority of state staff is still lacking, although coordination of civil rights activities and responsibilities has improved.

**Recommendation 2.42:** NRCS should conduct a study of the effectiveness of civil rights managers in ensuring the consistency of enforcement throughout the agency. The study should examine the extent to which state and field office staff conduct Title VI enforcement activities, the roles of regional conservationists and civil rights managers in supervising them, and the cooperation between regional conservationists and civil rights managers. It should research the feasibility and effectiveness of other approaches to improving the supervision of Title VI enforcement in state and field offices. It could compare, for example, the current system and any alternative structures by which civil rights personnel in state offices would report to CRS.

### ***Resources—Funding and Staffing***

**Finding 2.43:** In 1994, SCS did not have a separate budget allotment for CR&PCD, or a separate amount designated for Title VI enforcement. This situation continued for many years even with the reorganization that established NRCS. Beginning in FY 2001, NRCS provided CRS a budget line item for civil rights enforcement, but the amount covered both EEO and program compliance.

**Recommendation 2.43:** The Commission recommends that NRCS' budget allot funds for Title VI enforcement separate from the allocations for Title VII and other statutory authorities.

**Finding 2.44:** Since the 1994 reorganization, NRCS' many office changes and reorganizations have resulted in the headquarters' staff fluctuating in size and including few if any employees in a job series related to Title VI enforcement. CRS staff are cross-trained and enforce both Titles VI and VII. Furthermore, CRS can draw on EEO specialists who are detailed from elsewhere to accomplish its workload. With program compliance staff increased to seven in December 2002 and additional employees on detail, NRCS officials view staffing for civil rights as sufficient.

The Commission is less confident that NRCS staffing resources are sufficient to enforce Title VI. First, it questions whether the agency has staff with appropriate knowledge and skills in Title VI to ensure compliance. Second, if cross-trained staff jointly conduct Titles VI and VII compliance reviews, staff can be diverted away from focusing on Title VI. Third, it seems doubtful that staff detailed to CRS from elsewhere in the agency would have the in-depth knowledge and skills to engage in Title VI enforcement, particularly because all field staff have collateral duties.

**Recommendation 2.44:** Although NRCS has developed staff expertise in Title VII enforcement, it has done so to the exclusion of Title VI expertise. NRCS should collect data to demonstrate the number of staff members it needs to carry out Title VI enforcement, and use it to justify requests for staff with Title VI experience. NRCS should not rely on EEO specialists to conduct Title VI enforcement without providing such staff comprehensive training.

**Finding 2.45:** CR&PCD did not have regional civil rights offices or staff before the 1994 reorganization. Within each state, the conservationist (who, as the state's head of all USDA operations, is accountable for civil rights enforcement) and the collateral-duty equal opportunity liaison officer were the only staff involved in civil rights. The Commission characterizes this as only marginal improvement because the number of full-time civil rights staff is far fewer than one per state and even fewer than one per region. There are six regional offices, but only four civil rights managers. There are still no full-time civil rights specialists assigned to state offices. All civil rights personnel in state and other administrative units continue to have other duty assignments. Furthermore, NRCS officials report that the civil rights managers conduct all compliance reviews. Eleven such reviews were conducted in FY 2002, each in a different state, and a similar number are planned in FY 2003. Too few

reviews are being conducted annually. At the rate of 11 per year, it would take five years to cycle through all the states.

**Recommendation 2.45:** NRCS should increase the number of civil rights managers so that one is in each region. The civil rights managers should ensure that enforcement is consistent across the country; they should continue to conduct oversight reviews toward this end. State conservationists and their collateral-duty equal opportunity liaison officers should also continue enforcement, with guidance from the civil rights managers. NRCS should continue efforts to expand civil rights staff to include a full-time civil rights specialist assigned to each state.

### ***Planning***

**Finding 2.46:** NRCS develops planning documents for civil rights enforcement, including Civil Rights Implementation Plans and strategic plans. In 1996, the Commission concluded that NRCS was hampered in managing or planning its enforcement activities because it lacked an information management system to track expenditures on various activities. Since then, NRCS has implemented two tracking systems that (1) record civil rights accomplishments, such as conducting compliance reviews; and (2) measure the equity of program participation and beneficiaries among racial or ethnic groups. Neither system, however, enables NRCS to identify the resources expended on different civil rights activities so that the information can be used to justify the need for and costs of further civil rights activities during program planning. Furthermore, accomplishments and expenditures related to Titles VI and VII are not distinguished within the system. Because information on accomplishments is not organized according to statutory authority, one cannot determine whether Title VI (or other statutes) receives appropriate resources, or justify a need for additional resources for enforcing a particular statute.

**Recommendation 2.46:** NRCS should refine its tracking systems to identify resources expended on different civil rights activities such as issuing policy guidance, conducting compliance reviews, and processing complaints. The information management system should also distinguish enforcement activities performed under different statutory authorities, such as Title VI. Once such a system is in place, NRCS should use the information to track expenditures, resources, and workload, and the relationships among them. The agency should use this information to develop annual enforcement plans. Title VI enforcement plans should then include measurable goals and objectives with timeframes for accomplishing them based on realistic assessments of resources. This information can also be used to demonstrate the need for additional resources to address a growing workload.

### ***Policy Guidance***

**Finding 2.47:** In 1996, the Commission recommended that NRCS' general manual for civil rights enforcement include sections requiring pre-award reviews of recipients before funds are released to them, and provide procedures for conducting such reviews. A coordinated effort of CRS and other NRCS staff to develop a section on pre- and post-award reviews was underway during FY 2003.

**Recommendation 2.47:** NRCS should finalize and disseminate guidance on conducting pre-award reviews of recipients within the next six months.

### **Technical Assistance**

**Finding 2.48:** In 1996, the Commission found that CR&PCD was providing technical assistance to state and local agency staff both on request and at its own initiative. It was providing it to funding recipients only on request, usually once or twice a year. CRS is now providing technical assistance continually, including conducting training, interpreting policy, and responding to complaint inquiries and concerns about civil rights issues.

**Recommendation 2.48:** CRS should formalize its technical assistance to state and local agency staff and recipients. It should track its technical assistance activities to ensure comprehensive, nationwide coverage and target activities toward areas or programs that have not requested or recently received technical assistance.

### **Education and Outreach**

**Finding 2.49:** In 1996, the Commission was concerned that the agency's education and outreach were insufficient because SCS received almost no Title VI complaints. It recommended that CR&PCD conduct a study of education and outreach activities to identify populations that were not adequately served and develop and implement a strategic education and outreach plan to reach them. The Commission now finds that NRCS' 1998 reorganization created an Outreach Division under the Deputy Chief for Management. Thus, the outreach function is no longer the responsibility of the Civil Rights Staff. The Outreach Division is conducting extensive programs in different formats and languages. It is requiring each state to develop an outreach plan and is beginning to conduct reviews of the effectiveness of states' outreach. Furthermore, despite the organizational separation between the Outreach Division and the NRCS Civil Rights Staff, considerable interaction and communication are occurring between the two agency components, including, for example, CRS' sharing of compliance reviews to inform outreach efforts.

**Recommendation 2.49:** NRCS should study whether the agency should place the Outreach Division under the Deputy Chief for Management or the director of the Civil Rights Staff and make any appropriate changes. Regardless of the placement, however, the Outreach Division should continue requiring states to develop outreach plans and conducting reviews of the effectiveness of states' outreach. If the Outreach Division remains separate from CRS, it should further strengthen coordination with CRS to share information (e.g., complaints filed and program participation rates) indicating whether minority groups know their rights with respect to, and are served by, NRCS programs.

### **Complaint Processing**

**Finding 2.50:** In 1996, CR&PCD was investigating all complaints pertaining to SCS-funded programs, but received almost none. In 2003, investigation of complaints is the responsibility of the departmental Office of Civil Rights, not of NRCS' Civil Rights Staff. The number of complaints increased slightly to about 10 to 15 each fiscal year. NRCS officials attributed the increase in complaints to the Outreach Division's efforts toward educating program participants about their civil rights. However, CRS staff still viewed the number of complaints as low relative to the number of program beneficiaries. There were no complaints investigated in recent years that resulted in findings of noncompliance.

**Recommendation 2.50:** On an ongoing basis, CRS should coordinate with the Outreach Division to identify areas or programs where low numbers of complaints or program participation rates for minority groups suggest that more outreach is needed.

## **Compliance Reviews**

**Finding 2.51:** In 1996, district conservationists (who oversee state subdivisions) were reported to perform 3,000 pre-award reviews annually, but the Commission was concerned that the reviews were cursory rather than comprehensive because SCS did not have any pre-award instructions in its civil rights procedures manual. Guidance on pre- and post-award reviews was issued in FY 2003. In the absence of this guidance, NRCS continued to conduct a large number of pre-award reviews with very few staff until FY 2002, when only 45 pre-award reviews were completed, compared with 1,725 in FY 2001. NRCS reports did not explain any changes that resulted in many fewer pre-award reviews reported for FY 2002 than in past years.

**Recommendation 2.51:** The Commission recommends that pre-award reviews extend beyond ensuring that applicants have submitted an assurance of Title VI compliance. These reviews should consist of analyzing information the applicant submits on the proposed programs or projects, the populations served, populations the projects adversely affect, the applicant's policies and procedures, any discrimination complaints lodged against the applicant, and any previous findings of compliance or noncompliance relating to the applicant. NRCS should indicate the nature and content of the pre-award reviews that are reported in the annual Civil Rights Implementation Plan submitted to the Department of Justice. It should accompany any large year-to-year changes in the number of reviews completed with an explanation of the cause for the differences (i.e., whether there are changes in the programs, recipients, and beneficiaries; the resources devoted to conducting compliance reviews; or the definitions, procedures for, or content of compliance reviews).

**Finding 2.52:** In 1996, the Commission found that the SCS had collateral-duty personnel conducting post-award reviews, not trained civil rights specialists. It recommended that each state have at least one full-time civil rights specialist to conduct reviews. In 2003, this situation is changed. Although states still do not have full-time civil rights specialists to conduct reviews, four regional civil rights managers now conduct compliance reviews. Yet, four regional civil rights managers are far less than the 50 state civil rights specialists that the Commission recommended in 1996. Furthermore, the numbers and depth of compliance reviews the civil rights managers perform differ from those the collateral-duty personnel conducted previously.

**Recommendation 2.52:** NRCS is to be commended for having full-time civil rights specialists conduct compliance reviews. However, NRCS should document the differences in the numbers, depth, and geographical coverage of compliance reviews performed by civil rights managers and collateral-duty personnel. This information should be used to justify the need, if found, for additional full-time civil rights specialists, whether assigned to regional or state offices, and to plan future compliance reviews that result in systematic coverage of NRCS programs.

**Finding 2.53:** NRCS produces documents, including the Civil Rights Implementation Plan submitted to the Department of Justice, that show different types of compliance reviews. NRCS does not accurately count or distinguish types of completed reviews, such as post-award, program, or national reviews. A thorough analysis of the effectiveness of a compliance review process requires clarity about whether headquarters, regional, state, or district staff conducted the reviews; whether staff reviewed state, district, field office, or external operations; whether the reviews covered Title VI or other civil rights issues; and what elements of enforcement the reviews examined (e.g., policy guidance, data collection and reporting, complaint processing, and compliance reviews).

**Recommendation 2.53:** NRCS should develop a thorough understanding of the different types of civil rights reviews that the agency and USDA/OCR conduct as oversight of agency components

(e.g., regional, state, district, and field offices) and external organizations or funding recipients. This clarification could help ensure that compliance reviews meet Title VI requirements, that all recipients are systematically reviewed, and that scarce resources are spent on the most effective and efficient types of reviews. NRCS staff should work with OCR and other USDA agencies to develop common language to:

(a) clarify the differences in the purpose and nature of civil rights enforcement activities when an agency has programs that are direct payments to end recipients or beneficiaries (i.e., federally conducted programs) and programs that provide grants to recipients that are then redistributed to subrecipients (i.e., federally assisted programs);

(b) distinguish the following:

- reviews that OCR conducts of NRCS and other USDA agencies;
- reviews that NRCS and other USDA agencies conduct of their own organizational units at various levels within the agency (e.g., regional, state, district, or field offices);
- reviews that NRCS and other USDA agencies conduct of recipients;
- reviews of the discriminatory effects of program delivery generally, and those with a narrow focus on a single program; and
- reviews that comprehensively examine all the elements of civil rights enforcement from those that focus on only a select few such as outreach and data collection.

Any reports that NRCS generates on compliance reviews, including the Civil Rights Implementation Plan submitted to the Department of Justice, should define the type of compliance review that is reported, identifying the reviewers in terms of their position within the agency or department and the entities reviewed. The agency's list of accomplishments should include a summary of all types of compliance reviews that have been completed indicating the differences among the types of reviews, the reviewers, and the entities reviewed.

**Finding 2.54:** NRCS is still expanding its data collection system to better represent program delivery activities for each of its programs based on race, gender, national origin, and disability. Standard reports that permit authorized persons to monitor progress in NRCS customer service by race, gender, national origin, and disability are available and can be compiled by factors such as location, conservation program, and customer type. Analyses typically compare NRCS beneficiary data with census data to determine parity.

**Recommendation 2.54:** The Commission commends NRCS for its efforts to collect comprehensive civil rights data on recipients and beneficiaries. As in 1996, the Commission recommends that NRCS continue to collect and analyze data in support of its Title VI compliance and enforcement program.

### ***Staff Training***

**Finding 2.55:** In 2003, NRCS reports that new employees receive training within six months of their hire and that civil rights training is conducted annually for all employees. However, the new-employee orientation and the annual civil rights training have little Title VI content.

**Recommendation 2.55:** As the Commission indicated in its recommendation to the department's Office of Civil Rights, Title VI staff training should cover more than just cultural sensitivity and diversity. It should assist staff in recognizing barriers to program access and identifying ways to over-

come them. It should teach civil rights enforcement, including all the tools available to implement it. For example, training should cover the enforcement roles of outreach, policy guidance, complaint processing, compliance reviews, data collection and analyses of program beneficiaries, and the involvement of affected communities in planning programs and outreach. It should also discuss USDA's unique enforcement tool—the Civil Rights Impact Analyses. The Commission's recent report—*Ten-Year Check-Up: Have Federal Agencies Responded to Civil Rights Recommendations? Volume I: A Blueprint for Civil Rights Enforcement*—may be helpful in identifying training goals, objectives, and materials.

### **Oversight and Quality Assurance**

**Finding 2.56:** In 1996, CR&PCD had no supervisory authority over state conservationists and only minimal contact with them through annual reports and compliance reviews conducted on a five-year cycle. In 2003, the director of the Civil Rights Staff still does not have supervisory authority over the state conservationists. The infrequency of NRCS/CRS' compliance reviews of states remains the same, too. However, the higher placement of the CRS director in the agency's structure and the assignment of civil rights managers to regional offices have increased the contact between CRS and the state conservationists.

**Recommendation 2.56:** NRCS should monitor whether quality assurance of civil rights enforcement is achieved through the civil rights managers' serving in an advisory capacity to regional conservationists. It should examine the amount of contact between state office's civil rights personnel and CRS and, in particular, whether the current number of civil rights managers—four—spread between six regional offices is sufficient. NRCS should justify and seek additional staff needed for quality assurance.

### **Coordination**

**Finding 2.57:** In its 1996 report, the Commission found minimal interaction between SCS and the department's civil rights office. In 2003, NRCS reports much more interaction with departmental staff and offices. The agency reports coordination and interaction with the department's Office of Civil Rights related to policy development, complaint processing, compliance reviews, Civil Rights Impact Analyses, civil rights training, and other civil rights functions and activities. NRCS also has contact with the departmental Office of Outreach and Office of General Counsel. Thus, coordination and contact with USDA offices concerning civil rights issues are improved.

**Recommendation 2.57:** OCR and NRCS should continue routine contacts to broaden both headquarters' and the agency's staff knowledge of Title VI enforcement as it applies to USDA programs, to increase the consistency of enforcement throughout the department, and to reduce or combine efforts in developing policy guidance and enforcement strategies.

### **Community Involvement**

**Finding 2.58:** In 1993, CR&PCD had identified grassroots organizations to strengthen its outreach, however, the Commission concluded that its education and outreach activity was insufficient for ensuring nondiscrimination. Perhaps because of the establishment of NRCS' Outreach Division and states' development and implementation of outreach plans, by 2003, NRCS is developing much stronger relationships with community-based organizations.

**Recommendation 2.58:** NRCS should continue its efforts to develop strong relationships with community-based organizations. It should use these relationships to disseminate information on potential sources of program discrimination and to plan and design conservation programs and education and outreach that include members of minority groups.

### 3. DEPARTMENT OF THE INTERIOR

#### Priority of Civil Rights

**Finding 3.1:** Because the director is still several levels removed from the Secretary, the Department of the Interior's (DOI) civil rights compliance and enforcement program is not on an equal footing with other priority programs. Despite maintaining separate internal and external civil rights programs, the lack of a dedicated legal staff hinders the Office for Equal Opportunity's (OEO) compliance and enforcement efforts and is one example of the secondary status DOI places on its civil rights program and, by extension, OEO. A second example of this status is OEO's inclusion in the Office of Policy, Management and Budget (PMB), an office that should be under OEO's oversight because of the several civil rights programs administered by the Assistant Secretary for Policy, Management and Budget (ASPMB).

**Recommendation 3.1:** The Secretary should strive to elevate OEO's status in DOI to a point that civil rights compliance and enforcement are a foremost component of DOI's mission. Raising OEO's status to a level equal with all other DOI offices, while simultaneously providing the director direct access to the Secretary, is paramount in this effort. Because priority has never been given to Title VI enforcement and compliance at DOI, the Secretary should ensure that a culture where Title VI is among the paramount duties of DOI is established, reflected in a substantial increase of OEO's budget and staffing level, rapidly propagated throughout the department, and clearly and fully supported by the Secretary. DOI can commence this new and productive era in its civil rights compliance and enforcement program by providing OEO with the legal staff it has never had.

#### Resources—Funding and Staffing

**Finding 3.2:** Failing to allocate separate funds for OEO has encumbered the director with constantly justifying the office's needs. OEO has weakened its position by its continual failure to develop an information management system for tracking civil rights funds and expenditures. OEO has failed to collect data assessing the impact of changes in funding and cost levels on its Title VI program; therefore, the agency does not designate funds to it.

**Recommendation 3.2:** OEO should immediately develop and implement an information management system for separately tracking Title VI and other civil rights funds and expenditures. Although DOI should use these data to allocate funding amounts for its civil rights program, DOI should immediately allocate funds for civil rights even without data but adjust them based on the data.

**Finding 3.3:** OEO and bureau external civil rights units continue to be understaffed and overburdened. DOI has a total of five external civil rights specialists located at OEO, National Park Service (NPS), Fish and Wildlife Service (FWS), Office of Surface Mining (OSM), and U.S. Geological Survey (USGS), which are occasionally supplemented by temporary personnel. OEO's one full-time external civil rights specialist performs all related duties, including monitoring and overseeing bureau civil rights enforcement. Although the director oversees bureau civil rights staffing levels, she lacks authority to influence the number assigned to Title VI.

**Recommendation 3.3:** OEO and all bureaus responsible for Title VI compliance and enforcement should supplement external civil rights units with properly trained staff within six months. The director should have the authority to assign the necessary number of external civil rights staff at bureaus.

### Planning

**Finding 3.4:** Since it first developed Civil Rights Implementation Plans (CRIPs) in 1972, OEO has always developed them according to DOJ guidelines. However, since their inception, DOJ has never commented on OEO's CRIP. A review of the implementation plans for FY 1998 through FY 2002 reveals that this may be due to DOI's lack of specificity and failure to include critical project completion dates and established standards, both required by DOJ. The CRIPs also neglect to provide the public with a clear understanding of DOI's Title VI program.

**Recommendation 3.4:** OEO should begin immediately developing CRIPs that strictly adhere to all DOJ guidelines and clearly detail and explain DOI's Title VI program for all interested parties.

### Policy Guidance

**Finding 3.5:** Despite last modifying its Title VI regulations in FY 2002 to include the Civil Rights Restoration Act's definition of a covered "program" and "program and activity," OEO again failed to incorporate the act's clarifications to Title VI's coverage and funding termination provisions. DOI has neglected to develop suitable model regulations or examples for its programs. Instead, DOI has adopted regulations of the Department of Education without tailoring them to its own requirements. It has further failed to annually publish a list of its federally assisted programs in the *Federal Register*. OEO has similarly failed to incorporate the Civil Rights Restoration Act into its Title VI guidelines, which it develops "on an as needed basis" and when DOJ provides new Title VI standards, thus currently applying badly outdated ones. The situation is made more dire because available guidelines are ambiguous and only developed by NPS and FWS.

This entire situation is made worse by the lack of a comprehensive Title VI enforcement manual, since OEO prefers to distribute civil rights enforcement procedures via equal opportunity memoranda. However, no memorandum obtained by the Commission relates to Title VI enforcement procedures.

**Recommendation 3.5:** OEO should modify Title VI regulations to incorporate the Civil Rights Restoration Act's revisions and model regulations pertinent to DOI's civil rights programs within the first three months of FY 2004. OEO and the bureaus should finalize and develop clear and specific Title VI guidelines on the responsibilities of all concerned parties and the Civil Rights Restoration Act. OEO should further ensure that within the next six months it begins to issue equal opportunity memoranda on Title VI enforcement procedures and develops and issues a comprehensive Title VI enforcement manual that it updates at least annually. Lastly, DOI should annually publish a list of its federally assisted programs in the *Federal Register*.

### Technical Assistance

**Finding 3.6:** DOI's recipients receive technical assistance on request and during compliance reviews and complaint investigations. OEO records indicate that recipients last received technical assistance in FY 2000. Primary recipients are charged with providing subrecipients technical assistance. FY 1997 was the last time OEO trained primary recipients of the NPS, FWS, and Bureau of Reclamation

(WBR) to offer technical assistance to subrecipients. Technical assistance to bureaus having compliance and enforcement activities was last provided in FY 1999.

**Recommendation 3.6:** OEO should ensure that primary recipients receive biannual notification of the availability of technical assistance on request. Furthermore, OEO should provide recipients technical assistance once a year, thus avoiding long intervals during which no technical assistance is provided. Bureau external civil rights staff should be provided technical assistance at least once a year, similarly avoiding substantial periods with no technical assistance for bureaus. Lastly, OEO should ensure that primary recipients meet their obligation to provide technical assistance to subrecipients. A maximum interval for subrecipients to receive technical assistance should be once every two years.

### **Education and Outreach**

**Finding 3.7:** OEO continues to provide less than satisfactory education and outreach, simply making informative pamphlets available to public entities and relying on recipients to prominently post sufficient numbers of civil rights posters in all areas of their operations. OEO believes these pamphlets, posters, and attendance by limited bureau Title VI enforcement staff at natural resources conferences are sufficient to inform the public of DOI's civil rights policies and procedures.

**Recommendation 3.7:** DOI and OEO should ensure that a comprehensive and proactive Title VI community outreach and public education program is finally developed and instituted at DOI. Posters and pamphlets should be complimentary to concerted education and outreach efforts, not the primary means of providing these services. Initiating contact with local organizations and providing them with information and resources on DOI's civil rights policies and procedures should enhance pamphlets, posters, and presentations at natural resources conferences. Furthermore, in addition to natural resources conferences, OEO and bureau civil rights staff should attend other conferences and gatherings relevant to DOI's civil rights programs. For example, education and outreach efforts should include participation in civic events and presentations for community groups, areas where existing and future beneficiaries are present. Finally, OEO should be proactive in its efforts, initiating contact with targeted groups and not relying on chance to alert these groups to DOI's Title VI programs and obligations.

### **Complaint Processing**

**Finding 3.8:** Although OEO's Title VI complaint investigation procedures are generally clear and detailed in explaining OEO's and the bureaus' responsibilities in investigating and processing Title VI complaints, it fails to require verification of the thoroughness of a complaint investigation. Moreover, OEO requires recipients to do no more than report any complaints or lawsuits against them that claim they discriminated because of race, color, or national origin. These failures may allow valid complaints to be dismissed and violators to remain concealed.

From FY 1996 through FY 2001, DOI annually averaged a mere eight Title VI violation complaints despite providing federal funds through 62 programs. Over this same period, it annually averaged 175 unresolved civil rights complaints. This latter instance may be due to vague bureau time limits for resolving complaints, with all complaints of alleged discrimination to be resolved promptly and appropriately whenever possible.

**Recommendation 3.8:** During the first three months of FY 2004, OEO should modify its Title VI complaint investigation procedures to require review of the thoroughness of a complaint investiga-

tion and annual civil rights self-assessment reports by recipients. Procedures should also be modified to include strict time limits for the completion of the various phases of an investigation or, when circumstances warrant, legitimate reasons for delaying the investigative process.

### Compliance Reviews

**Finding 3.9:** OEO persists in conducting cursory pre-award reviews of an applicant's program, assuming that compliance will prevail owing to a recipient's signature on a civil rights assurance form. The problem is exacerbated by the lack of uniform policies for pre-award reviews, leading some bureaus to conduct rudimentary reviews. DOI's failure to assign civil rights personnel to conduct reviews, opting instead for bureau program specialists, further detracts from the process because bureau program specialists do not have the proper training for this duty. These factors impede DOI's pre-award review process despite its good efforts in requiring all applicants for federal financial assistance to undergo pre-award reviews and when noncompliance is found, initiating an investigation.

**Recommendation 3.9:** OEO should immediately begin conducting in-depth pre-award reviews that include interviews with applicants and benefactors if an applicant is receiving federal funding via another DOI program or federal agency. Uniform policies with the flexibility to account for bureau and recipient differences should also be developed promptly. DOI should begin assigning civil rights personnel to conduct pre-award reviews or provide the proper training to bureau program specialists.

**Finding 3.10:** DOI is optimizing fiscal resources by relying heavily on post-award desk-audit civil rights reviews. Efficiency has been enhanced further because OEO provided procedures for conducting post-award desk-audit reviews in numerous DOI programs in FY 1998. Yet, the latest information available from OEO reveals that annually recipients have very little chance of being reviewed because reviews are conducted on roughly 11 percent of recipients.

**Recommendation 3.10:** DOI should ensure that every recipient undergoes a post-award review at least every two fiscal years, thus raising the number of recipients annually reviewed to 50 percent. It should institute this process by initially reviewing recipients either never reviewed or reviewed at the earlier stages of its current process. OEO should contribute to this effort by providing all DOI programs with written procedures for conducting post-award desk-audit civil rights reviews within a three-month period.

**Finding 3.11:** Because of a limited civil rights staff, OEO continues to conduct on-site compliance reviews that are not comprehensive in nature. The process is limited to a review of documents and a checklist focusing on readily identifiable forms of discrimination. DOI's on-site compliance reviews also neglect to solicit information from program participants, affected parties, and interested community groups, rendering the entire process less than inclusive.

**Recommendation 3.11:** OEO should promptly institute on-site compliance reviews that examine a recipient's entire operation and apply clear and detailed procedures during the entire review process. Procedures should establish that along with a documents review, civil rights staff are to conduct comprehensive interviews with the recipient's staff, program participants, affected parties, and interested community groups and thoroughly analyze data provided by the recipient on its program.

## Staff Training

**Finding 3.12:** DOI continues to provide insufficient funds for staff training, with Title VI training last taking place in FY 2000. Still, OEO informed the Commission that all equal opportunity staff received adequate training and that work-related training has never been denied to staff.

**Recommendation 3.12:** OEO should immediately designate sufficient funds to provide Title VI compliance and enforcement training to its civil rights staff at least annually.

## Delegation

**Finding 3.13:** DOI's current civil rights structure consists of one equal opportunity office in each bureau in addition to the main OEO. Although bureau offices are designated as the focal point for ensuring compliance among DOI's recipients, active Title VI programs are limited to NPS and FWS, with marginal programs found at the Office of Surface Mining (OSM), the U.S. Geological Survey (USGS), and the Bureau of Reclamation (WBR). OEO states that the current structure is appropriate because (1) resources are not wasted since compliance and enforcement overlap between bureaus is avoided; (2) Title VI does not generally bind Native American nations and Native Alaska villages, thus the Bureau of Indian Affairs (BIA) has no need for a Title VI program; and (3) the Minerals Management Service (MMS) administers programs and activities not conducive to Title VI coverage.

**Recommendation 3.13:** DOI should implement fully active Title VI programs at OSM, USGS, and WBR immediately because these bureaus provide substantial federal funding subject to the requirements of Title VI. OEO should undertake a study, if it has never done so or not done so recently, of the MMS federal financial assistance programs to determine if any structural changes demand implementation of Title VI compliance and enforcement procedures.

## Oversight and Quality Assurance

### *Bureaus*

**Finding 3.14:** DOI currently has a decentralized Title VI enforcement program that requires each respective bureau's equal opportunity officer to direct Title VI efforts. DOI, specifically OEO, provides policy guidance and oversight of bureaus' Title VI activities to ensure adequate performance. OEO also evaluates bureaus' programs, provides staff training, and issues programmatic directives to ensure that bureaus adhere to established civil rights policies and procedures. OEO has no authority to determine how many employees bureaus dedicate to Title VI duties.

**Recommendation 3.14:** DOI should promptly provide OEO with the authority to determine the number of civil rights staff bureaus dedicate to Title VI duties to ensure that bureaus are able to adequately perform Title VI compliance and enforcement activities. This action will enhance the ability of OSM, USGS, and WBR to implement fully active Title VI programs immediately.

### *Continuing State Programs*

**Finding 3.15:** OEO states that DOI's existing organizational structure is not conducive to the oversight of continuing state programs and, subsequently, does not provide funds for OEO to require states to provide annual self-assessment reports on their Title VI activities.

**Recommendation 3.15:** DOI should immediately provide OEO with sufficient funds to require states to perform and submit annual self-assessment reports on their Title VI activities.

## 4. ENVIRONMENTAL PROTECTION AGENCY

### Priority of Civil Rights

**Finding 4.1:** In 1996, the Commission found that the director of the Environmental Protection Agency's (EPA) Office of Civil Rights (OCR) reported to the deputy chief of staff. Although the reporting line for routine civil rights enforcement concerns was found conducive to efficient management and operation, there was concern that this reporting structure could prevent participation of the director in important executive meetings that discuss budget, staffing, and policy decisions. Today, EPA's director of OCR appropriately reports the administrator. External and internal functions have been appropriately separated.

**Recommendation 4.1:** The Commission commends EPA for elevating the stature and accountability of its civil rights office to an appropriate position in the agency.

### Resources—Funding and Staffing

**Finding 4.2:** In addition to Title VI, the External Compliance program has responsibilities for five other federal nondiscrimination statutes, although most its work is with the former. The External Compliance program has been operating with 3.5 staff since 2001, because one and a half full-time-equivalent staff have been temporarily detailed to a Title VI task force. OCR augments the small External Compliance program staff by detailing employees from other EPA offices. Recently, EPA assigned the External Compliance program a new full-time position, and OCR had begun the process of filling it. OCR plans to determine in calendar year 2003 if the External Compliance program needs additional compliance and complaint investigation staff.

**Recommendation 4.2:** The use of detailed staff should be a temporary measure because Title VI enforcement is better served when staff are trained civil rights specialists. OCR should ensure that detailed staff are given appropriate training in external civil rights laws and issues. EPA should also find ways to give OCR the staff it needs should the office determine that additional persons are needed for compliance reviews and complaint investigations.

**Finding 4.3:** OCR still does not have an electronic database for tracking external civil rights expenditures and staffing assignments by statute. The Title VI team leader tracks staff assignments and conducts workload analyses manually on handwritten sheets, although expenditure information is maintained in an electronic database. Furthermore, OCR's programmatic needs dictate the dispersal of funds among its programs, and the External Compliance program does not have its own budget. This set up does not necessarily safeguard funds for the External Compliance program. However, beginning in FY 2004 the OCR budget will be divided among the OCR teams.

**Recommendation 4.3:** The Commission reiterates its recommendation made in 1996, that OCR develop a database system for tracking expenditures and staff assignments by statute for all external compliance and enforcement activities. Such a database is essential for maintaining an accurate accounting of civil rights enforcement with respect to each civil rights law, workload analysis, and budget and staff estimation. EPA should ensure that the separate OCR budgets are adequate for civil rights enforcement.

**Finding 4.4:** EPA created the Civil Rights Law Office in 1998. Located in the Office of General Counsel (OGC), this office performs legal functions previously carried out by OCR's attorneys.

**Recommendation 4.4:** EPA should ensure that the Civil Rights Law Office works closely with OCR, in particular with the External Compliance program when developing external civil rights regulations and policies, and conducting legal analysis on external civil rights issues. Furthermore, since the External Compliance program is not the Civil Rights Law Office's exclusive client, EPA should ensure that the former receives appropriate attention.

## Planning

**Finding 4.5:** EPA has begun to engage in Title VI planning and assessment. The agency decided that clearing a large backlog of complaints is an agencywide priority, and the administrator ordered the creation of a well-resourced Title VI Task force for this purpose. The agency also has developed several key draft guidances. The External Compliance program's main planning document is the CRIP, which consists of OCR's annual responses to Department of Justice (DOJ) questions on different aspects of the external civil rights, including objectives and activities to enforce Title VI and other statutes, and accomplishments of the past year. OCR uses this report to set goals for the coming year.

**Recommendation 4.5:** The CRIP is an important report. To maximize its value as a planning and management tool, OCR should establish measurable criteria for evaluating accomplishments, as well as timelines for meeting the key objectives of external civil rights statutes, including Title VI. Measurable criteria for judging accomplishment and timelines would show whether objectives were met at the set level, and if they were met in a timely manner. An opportune time to develop the measurable criteria and timelines would be during the beginning of FY 2004, after the backlog of complaints has been cleared, since EPA has already planned to reevaluate its Title VI activities then.

## Policy Guidance

**Finding 4.6:** EPA states that the appendix listing EPA's federally assisted programs has not been updated because such information is readily available on the Internet, as well as in the General Services Administration's *Catalog of Federal Domestic Assistance* (CFDA), which the agency says it updates annually. But the Commission finds that the CFDA Web site lists only continuing grants. EPA also does not distinguish state continuing programs from other programs.

**Recommendation 4.6:** EPA should list continuing and non-continuing grants in the General Services Administration's *Catalog of Federal Domestic Assistance* and update them annually. The Commission reiterates its 1996 recommendation, that EPA distinguish state continuing programs from other programs.

**Finding 4.7:** An overwhelming majority of Title VI complaints filed with EPA allege discrimination in the issuance of environmental permits and discriminatory effects rather than discriminatory intent. As a result, EPA's two major Title VI guidances, *Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Draft Recipient Guidance)* and *Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits (Draft Revised Investigative Guidance)*, speak to discriminatory effects in all environmental-permitting programs, regardless of the financial assistance programs. EPA states that it will issue guidance on other activities as appropriate, in the future.

**Recommendation 4.7:** EPA should evaluate complaints pertaining to activities or areas other than environmental permitting. It should examine such complaints over several years to gain a more accurate picture of their nature. EPA should be guided by the findings of the examination in deciding whether or not to issue guidance on nonenvironmental-permitting activities.

**Finding 4.8:** EPA has taken steps to ensure that Title VI enforcement programs provide a clear understanding of the compliance and enforcement processes. The agency meets with stakeholders and holds public hearings when it is developing guidances, which are then published in the *Federal Register* for public comment. The guidances and public comments are also posted on OCR's Web site in order to reach a wide audience.

**Recommendation 4.8:** EPA's approach to providing a clear understanding of the compliance and enforcement processes is exemplary. Other federal agencies should consider adopting its approach.

**Finding 4.9:** EPA identifies Title VI issues, and areas in need of clarification through a public participation process, such as dialogues with stakeholders, written comments from the public, and public meetings. Policies are then created to address the issues and areas.

**Recommendation 4.9:** EPA's approach to identifying Title VI issues and areas in need of clarification is exemplary. Other federal agencies should consider adopting the approach.

**Finding 4.10:** EPA does not have a comprehensive procedures manual that provides step-by-step guidance in implementing and enforcing Title VI. It uses procedures and guidances located in several internal and external documents. *Draft Revised Investigative Guidance* provides help in conducting complaint investigations, resolving complaints or noncompliance, and collecting and analyzing data. DOJ's *Title VI Investigation Procedures Manual*, *Title VI Legal Manual*, internal Title VI regulations, and other relevant materials are used for staff training. EPA is currently developing internal procedures for performing compliance reviews and administrative or judicial proceedings in findings of noncompliance.

**Recommendation 4.10:** The Commission reiterates its 1996 recommendation, that EPA develop a comprehensive and detailed procedures manual that provides step-by-step guidance in all areas of Title VI. The post-award compliance review program that EPA proposes to develop should be incorporated into this manual. Furthermore, EPA should provide OCR with resources targeted for this purpose, and require the office to establish concrete plans to develop the comprehensive manual. OCR should establish goals and timetables to support completion of the document in calendar year 2003.

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

**Finding 4.11:** EPA has strengthened Title VI outreach, education, and technical assistance. It makes available agency documents for public review, meets with stakeholders, periodically publishes documents on Title VI, publicizes Title VI regulations and guidelines through press releases and other means, and requires recipients' methods of notice of nondiscrimination to meet the needs of the visually and hearing-impaired populations. Additionally, the agency's excellent Web site provides a substantial amount of internal and external civil rights information and is linked to useful sites, such as DOJ's. OCR also plans to translate the materials on its Web site into Spanish.

**Recommendation 4.11:** The Commission commends EPA on its approach to outreach, education, and technical assistance, which are exemplary. Other federal agencies should consider adopting its approach.

### Complaint Processing

**Finding 4.12:** EPA has developed a comprehensive complaint process involving Title VI complaints alleging discriminatory effects as a result of recipients' issuance of pollution control permits. Titled *Draft Revised Investigation Guidance*, the document proposes processes for reviewing disparate impact complaints. This guidance is being refined and field tested. EPA's Web link, "Title VI Complaints," provides useful information on different facets of complaints and complaint processing. EPA says it does not require state agencies to submit a written report on each complaint and its investigation because agency nondiscrimination regulations require state and non-state recipients to collect, maintain, and on request of OCR, provide a detailed log of discrimination complaints.

**Recommendation 4.12:** EPA's Web link is outstanding and well worth adopting by other federal agencies. Also, the Commission reiterates its 1996 recommendation, that EPA require state agencies to submit a written report on each complaint and its investigation. In 2003, the Commission additionally recommends that EPA require non-state recipients to do the same. This would facilitate OCR's oversight and monitoring of state and non-state recipients' compliance and enforcement efforts.

### Compliance Reviews

**Finding 4.13:** EPA collects the same type of pre-award information for each EPA-funded program. But OCR has not used the information to target applicants and recipients for technical assistance or on-site compliance reviews primarily because Form 4700-4, "Pre-award Compliance Review Report for All Applicants Requesting Federal Financial Assistance," currently does not collect the kind of information that is suitable for this purpose. Revised Pre-award Form 4700-4 will be drafted in calendar year 2003.

**Recommendation 4.13:** OCR should make plans and establish deadlines such that it will have a final version of a revised Pre-award Form 4700-4 in calendar year 2003. EPA should then use the information collected on the revised the form to regularly target applicants and recipients for technical assistance or on-site compliance reviews.

**Finding 4.14:** OCR still does not require recipients to submit compliance reports. Instead, recipients are required by EPA regulations to submit program data and information only when OCR suspects that discrimination may exist in a recipient's program or activity, *or* when OCR is investigating a complaint alleging discrimination. Recipients must collect and maintain, and on request of OCR, provide requisite information to show compliance.

**Recommendation 4.14:** The Commission reiterates its 1996 recommendation, that OCR require recipients to submit compliance reports. Furthermore, where appropriate OCR should provide feedback to recipients.

**Finding 4.15:** As soon as the EPA post-award compliance program's operating procedures are developed, the agency expects to regularly conduct post-award on-site compliance reviews on a representative number of major recipients, a 1996 recommendation.

**Recommendation 4.15:** Post-award compliance review is a central component of Title VI enforcement. EPA is strongly urged to ensure that post-award compliance reviews are carried out routinely as soon as feasible. Furthermore, the Commission reiterates two other 1996 recommendations, that OCR consider collaborating with other program offices to finance post-award reviews in the event of budget constraints; and that EPA officials take advantage of on-site compliance reviews to provide outreach, education, and technical assistance to recipients.

### **Oversight and Quality Assurance**

**Finding 4.16:** EPA does not routinely require recipients to provide information on the demographic composition of planning/advisory groups and workforces involved in building the facilities or working in the built facilities. Similarly, the agency does not require information on affected persons and communities, whether program literature is available to all racial, ethnic, or national origin groups, and if this literature is available in languages other than English. OCR indicates that such information would be collected in the event of a complaint.

**Recommendation 4.16:** OCR should require such information of all recipients and regularly analyze the collected data. From the demographic data, OCR will know if minority groups are adequately represented in the different workgroups. Data on affected persons and communities will indicate to OCR if minority communities are more likely than nonminority communities to be adversely affected by recipient programs and activities. Information on program literature availability to different groups, and the languages and formats in which they are presented, allow OCR to evaluate recipients' education and outreach programs, including sensitivity to persons with limited English proficiency. The information, along with other appropriate materials, should be used in post-award compliance reviews.

**Finding 4.17:** OCR's Pre-award Form 4700-4 currently collects from all applicants information on (1) any civil rights lawsuits or complaints pending against the applicant or recipient, including the deposition of each complaint; (2) civil rights compliance reviews conducted of the applicant or recipient by any federal agency for the two years immediately before the application for EPA assistance (including the status of each review); (3) other federal financial assistance being applied for, including a description of the associated work and the dollar amount of the assistance; and (4) whether an entire community under the applicant's jurisdiction is not served under the existing facilities or services, or will not be served under the proposed plan, including the reason for this. The information is maintained in the agency's grant files and reviewed during pre-award reviews.

**Recommendation 4.17:** The Commission reiterates its 1996 recommendation that EPA develop a civil rights enforcement data collection program to store all pre-award and post-award information that the agency collects. This civil rights database would give EPA the ability to readily access information on recipients' past and present compliance records. This tool would help EPA decision making, such as whether to award a grant, sanction, or to target recipients for on-site compliance review.

## 5. SMALL BUSINESS ADMINISTRATION

### Resources—Funding and Staffing

**Finding 5.1:** Within the Small Business Administration (SBA) budget, the administrator does not designate an allotment for external civil rights enforcement. Internally, SBA has a system for tracking its expenditures on Title VI enforcement, and is able to provide estimates of enforcement expenditures. The system is used by the assistant administrator/OEEO&CRC to determine if the Office of Civil Rights Compliance (OCRC) has adequate resources for Title VI enforcement. However, the agency does not use the tracking system for management planning, such as workload analysis. This is a serious shortcoming because, in 1996 constant dollars, the Equal Employment Opportunity and Civil Rights Compliance Office (EEO&CRC)—within which OCRC is located—has not experienced any significant funding increases since FY 1996. In fact, in 1996 constant dollars, the FY 2003 appropriation is lower than that of FY 1996.

**Recommendation 5.1:** The assistant administrator for EEO&CRC should analyze expenditures on external civil rights activities and submit justification documents to support a Title VI budget increase. Staffing and resource levels should be evaluated to determine the extent to which additional staff and resources are needed to implement a comprehensive Title VI enforcement program. In developing its budget request, the assistant administrator should require OCRC to provide documents supporting additional funding. The documents should outline the full range of civil rights enforcement activities OCRC is obligated to perform, including conducting pre- and post-award reviews of all funding recipients and providing technical assistance, outreach, and education.

**Finding 5.2:** Although the EEO&CRC budget allocation for Titles VI and VII is combined, duties are not split evenly between the two offices. The assistant administrator for EEO&CRC allocates the monies between the two offices with a greater emphasis on internal enforcement. Currently, there is only a limited focus on external civil rights responsibilities. As a result, the number of external civil rights compliance reviews and complaints investigated is proportionate to the amount of funding allocated to the external program.

**Recommendation 5.2:** SBA should separate budget allocations for internal and external civil rights functions to ensure appropriate funding to SBA's external civil rights enforcement responsibilities. The assistant administrator for civil rights should make external civil rights enforcement a priority for OCRC and allocate sufficient funding to it. External civil rights responsibilities should not be budget driven but goal oriented. OCRC should use the funds to conduct more investigations and compliance reviews.

### Planning

**Finding 5.3:** OCRC does not use the Civil Rights Implementation Plan (CRIP) as a management tool. Although SBA follows the outline prescribed by Department of Justice, there is no evidence that SBA uses the CRIP in its planning. The plan's goals and objectives sections and the corresponding progress reports are particularly inadequate. Most goals and objectives are extremely vague and do not have timetables or standards against which to measure staff accomplishments. The plan's progress reports are thorough and often claim that SBA has achieved its goals, although little substantiation is offered. However, EEO&CRC establishes development goals and objectives with timetables in the performance plans of its staff.

**Recommendation 5.3:** OCRC's CRIP should be updated every six months and allow for changes due to fluctuations in actual compliance activities and responsibilities and new or developing civil rights enforcement issues. The implementation plan should be used as a management tool for civil rights activities. As such, the CRIP should establish goals and objectives that have timetables and specific standards of achievement for the staff and regional offices.

## Policy Guidance

**Finding 5.4:** As recommended by the Commission in 1996, SBA now provides a brochure that lists and describes SBA programs and services called "Profile: Who We Are and What We Do." It is intended to assist customers and constituencies. Additionally, the agency also publishes an abridged version as part of its outreach to small businesses.

**Recommendation 5.4:** SBA should continue to publish "Profile: Who We Are and What We Do" as part of its outreach to small businesses. The Commission recommends that SBA additionally publish a revised list of its federally assisted programs in the *Federal Register* each year and post this information on its Web site.

**Finding 5.5:** Consistent with the Commission's 1996 recommendation, SBA has finalized its draft revised procedures. The new civil rights and compliance standard operating procedures became effective on February 24, 2003. SBA now has procedures to conduct pre-award and post-award desk-audit reviews.

**Recommendation 5.5:** SBA should ensure that updated civil rights compliance and enforcement procedures are circulated and put in use immediately.

## Technical Assistance

**Finding 5.6:** OCRC provides technical assistance on Title VI during compliance reviews and meetings, and over the telephone. OCRC also participates in Technical Assistance Programs Seminars sponsored by the Equal Employment Opportunity Commission.

**Recommendation 5.6:** OCRC should continue with its present technical assistance efforts. Additionally, it should include resources expended for technical assistance in its budget request to enhance the technical assistance program and to provide a more accurate account of Title VI expenditures.

## Education and Outreach

**Finding 5.7:** Through various forms on its Web site, SBA provides information to its recipients and persons affected by its programs about their rights and responsibilities. The Web site includes a pamphlet titled "Notice to New SBA Borrowers," which includes information on Title VI compliance requirements. However, SBA does not use other formats to provide outreach, such as via media or by sponsoring workshops at conferences.

**Recommendation 5.7:** SBA should expand education and outreach on Title VI for individuals enabling them to understand their rights by sponsoring public workshops and by using media outlets. The agency should advertise its public workshops via its Web site. Brochures should be updated to reflect changes in regulations or policies pertaining to recipients.

## Complaint Processing

**Finding 5.8:** OCRC has the authority to handle only those complaints pertaining to discrimination on the basis of disability in SBA conducted programs or activities.

**Recommendation 5.8:** SBA should clarify and expand OCRC's role and enforcement authority relating to Title VI. OCRC should work with program offices to ensure that Title VI and SBA's other nondiscrimination laws are properly enforced and monitored.

## Compliance Reviews

**Finding 5.9:** OCRC still does not perform pre-award reviews, nor does it consult with the Equal Employment Opportunity Commission or the Office of Federal Contract Compliance Programs (OFCCP) to determine an applicant's record of civil rights complaints. However, SBA requires recipients to execute a mandatory assurance of civil rights compliance. Refusal results in discontinuation of the application process.

**Recommendation 5.9:** Before approving applicants, SBA should consult its own files and also with the EEOC and OFCCP to determine whether applicants have undergone previous compliance reviews. To effect the latter, SBA should meet with EEOC, and OFCCP to jointly develop a process to facilitate review of applicants' prior civil rights compliance history by FY 2004.

**Findings 5.10:** Because of budgetary constraints OCRC does not conduct post-award desk audits. However, OCRC conducts telephone and on-site post-award compliance reviews.

**Recommendation 5.10:** SBA should reallocate its resources to increase its travel budget and the number of post-award on-site reviews.

**Finding 5.11:** Compliance reviews embrace the totality of the practices of the recipients, as covered under Title VI and other nondiscrimination laws. After the review, OCRC provides written results with findings and recommendations for achieving compliance for the entity that was reviewed. Because of limited resources since FY 2001, OCRC established telephone compliance reviews as an alternative to on-site reviews. Telephone reviews allow OCRC to select recipients for review regardless of their geographic location, increase the number reviewed, and reserve funding for on-site reviews of recipients suspected to be in violation of Title VI. Although the telephone reviews are a cost effective way of performing compliance reviews, they cannot substitute for on-site reviews.

**Recommendation 5.11:** OCRC should continue to perform telephone reviews but only because they allow staff to evaluate a higher number of recipients regardless of geographic location. The results of the telephone reviews should be analyzed and serve as a basis for conducting on-site reviews when recipients seem not to be in compliance.

## Deficiencies, Remedies, and Sanctions

**Finding 5.12:** Other than in the Disaster Program, SBA has discontinued its use of loan acceleration as a sanction for noncompliance with Title VI. In all other programs, the SBA administrator has the discretion to terminate federal financial assistance if it is determined that voluntary compliance with civil rights cannot be achieved.

**Recommendation 5.12:** SBA should immediately renew its use of terminating federal financial assistance as a sanction for noncompliance with Title VI and other nondiscrimination policies. This was a powerful tool because the loss of a government guaranty forces the recipient to voluntarily comply with Title VI since the lender may ask for full repayment of the loan upon loss of government guaranty.

### Staff Training

**Finding 5.13:** OCRC does not routinely provide its staff or recipients with formal training.

**Recommendation 5.13:** SBA should devote resources to training for civil rights staff on Title VI. Basic and refresher training should be conducted for all employees at least annually.

### Delegation

**Finding 5.14:** SBA proposed agreements that would delegate the responsibility for monitoring SBA-funded colleges, universities, and nursing homes to the Department of Health and Human Services and the Department of Education were not implemented. Instead, SBA has participated in discussions with the Department of Justice in its initiative to create an interagency delegation agreement for Title VI and Title IX complaint investigations.

**Recommendation 5.14:** SBA should continue to participate in the Department of Justice's interagency delegation agreement efforts for Title VI and Title IX complaint investigations and work toward solutions that would effectively monitor federally assisted colleges, universities, and nursing homes.

### Oversight and Quality Assurance

**Finding 5.15:** SBA still has not required program offices to collect appropriate data and conduct the necessary analyses to enforce nondiscrimination requirements, thus neglecting an important oversight and quality assurance responsibility. Program offices retrieve demographic and disability information from standardized forms that applicants and recipients complete, and collect programmatic information, such as whether agency programs and services are reaching targeted communities. However, such information is used for programmatic purposes, and has not been analyzed from the standpoint of enforcing Title VI compliance. SBA's failure to require its recipients to report the information needed to conduct meaningful civil rights analyses has reduced the effectiveness of the SBA's Title VI enforcement process. For instance, the lack of data prevents SBA from making use of two effective Title VI enforcement mechanisms, pre-award and post-award desk-audit reviews.

**Recommendation 5.15:** SBA should establish procedures within the next six months to better use the data it collects, especially in support of compliance determinations. Furthermore, OCRC should immediately identify the additional data necessary for a thorough compliance review. SBA should require program offices to routinely collect the data from recipients. SBA should maintain all civil-rights-related information in a database to facilitate easy retrieval for analysis. OCRC staff should be given the necessary training on analyzing data for compliance.

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## **Dissenting Statement of Commissioners Abigail Thernstrom, Jennifer C. Braceras, and Peter N. Kirsanow**

On July 18, 2003, we, the undersigned Commissioners, voted against *Ten-Year Check-Up: Have Federal Agencies Responded to Civil Rights Recommendations? Volume III* for the following reasons:

Although this report examines only the implementation of Commission recommendations for enforcing Title VI, it nevertheless uses this limited set of data to draw sweeping conclusions about each agency's commitment to civil rights generally. By ignoring the civil rights responsibilities of these agencies under other antidiscrimination statutes, and by failing to recognize that different federal agencies might have different, yet equally legitimate, civil rights priorities, this volume provides an incomplete and inaccurate picture of the civil rights commitment within the examined agencies.

In addition, we object to the focus of this report on “inputs”—that is, the amount of money and number of staff positions dedicated to civil rights enforcement. We believe that reliance upon these benchmarks is often misleading. As we have stated before, higher taxpayer expenditures and additional government employees do not necessarily result in increased output or efficiency. In an environment of limited budgets, civil rights personnel are using new technologies, new management practices, and improved training to address civil rights issues in ways not documented in this report. The Commission would provide a greater public service if it focused on studying agency “outputs”—that is, proactive antidiscrimination measures, the efficiency and effectiveness of agency civil rights divisions, and agency culture—rather than on inputs, which, when taken out of context, can provide a distorted picture of civil rights enforcement.

Because we disagree with the scope of this report and the methodology used to produce this report, we respectfully dissent.

Commissioner Abigail Thernstrom  
Commissioner Jennifer C. Braceras  
Commissioner Peter N. Kirsanow

July 28, 2003

## **Statement of Commissioner Russell G. Redenbaugh**

I voted to accept this report with many of the same reservations as my colleagues, Commissioners Thernstrom, Braceras, and Kirsanow. I believe the problem is in the design not the implementation.

Commissioner Russell G. Redenbaugh

July 25, 2003