

CR 10/21/95/COOK

# FUNDING FEDERAL CIVIL RIGHTS ENFORCEMENT

A Report of the United States Commission on Civil Rights  
June 1995

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

The U.S. Commission on Civil Rights is an independent, bipartisan agency first established by Congress in 1957 and reestablished in 1983. It is directed to:

- Investigate complaints 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.

## **Members of the Commission**

Mary Frances Berry, *Chairperson*

Cruz Reynoso, *Vice Chairperson*

Carl A. Anderson

Arthur A. Fletcher

Robert P. George

Constance Horner

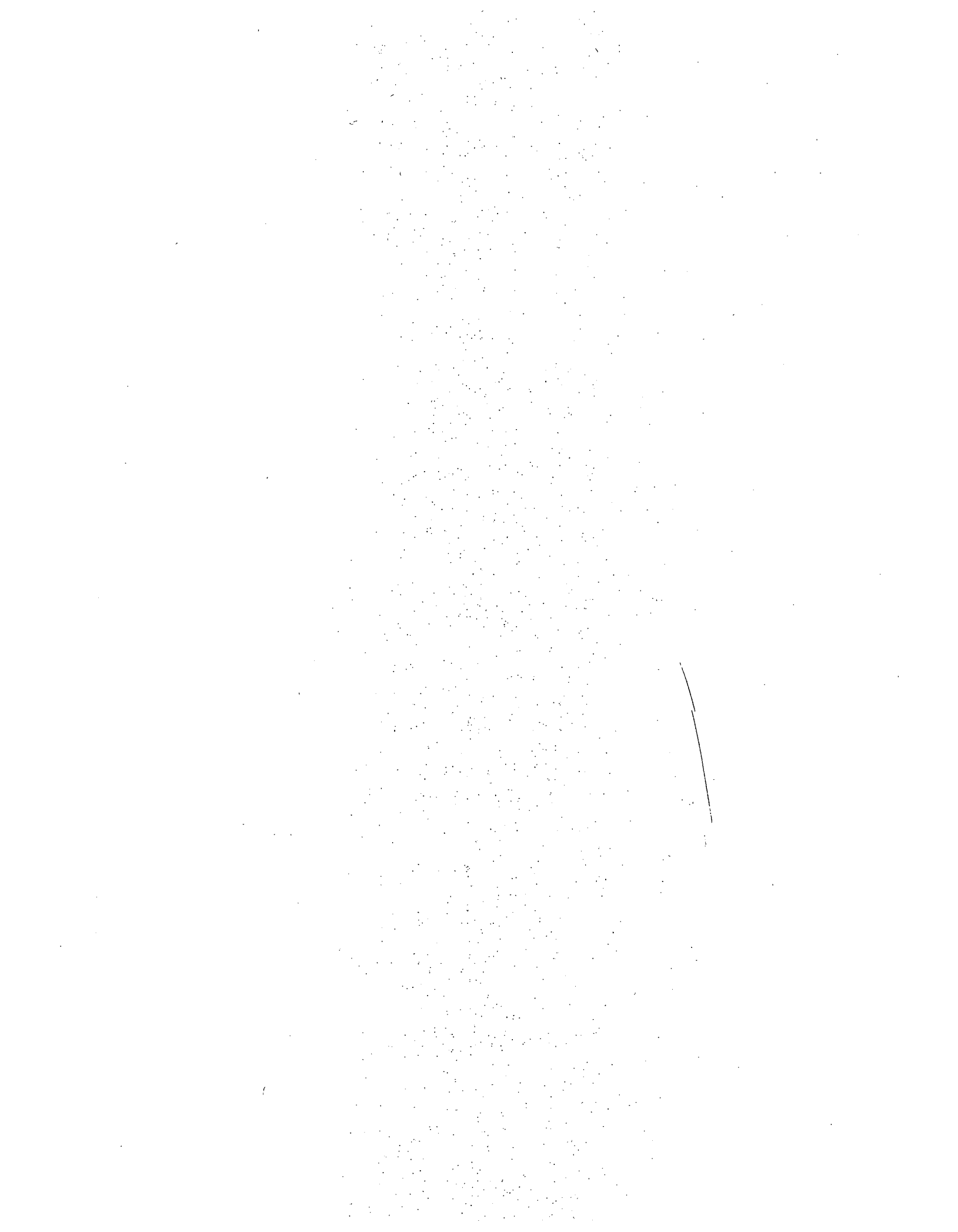
Russell G. Redenbaugh

Charles Pei Wang

Mary K. Mathews, *Staff Director*

# **FUNDING FEDERAL CIVIL RIGHTS ENFORCEMENT**

**A Report of the United States Commission on Civil Rights  
June 1995**



## Letter of Transmittal

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

Sirs:

Enforcement of the civil rights laws of the United States by the Federal Government is integral to the effort to assure equality in access to jobs, housing, education, and services as well as in the administration of justice. While constant evaluation of policy and efficient deployment of available resources are necessary, adequate funding is essential to civil rights enforcement.


This study begins with the analyses in the last Commission report on this subject published in 1983, and shows that resources provided for civil rights enforcement lag behind the workload of the civil rights enforcement agencies, a workload that has increased owing to enactment of new civil rights laws. In this sense, civil rights legislation could be termed, partly, "unfunded mandates." Some of the figures are stark:

- Staffing at the Office for Civil Rights of the Department of Health and Human Services in fiscal year 1996 will be half the level of fiscal year 1981. But complaints are projected to be 44 percent higher in fiscal 1996 than in fiscal 1981.
- At the Department of Education's Office for Civil Rights complaints are expected to be 120 percent higher in fiscal year 1996 than in fiscal year 1981. Staffing planned for that office, however, will be 25 percent lower in fiscal 1996 than in fiscal 1981.
- The Equal Employment Opportunity Commission is expected to have 76 percent more complaints in fiscal year 1996 than in fiscal year 1981. The projected staffing level for fiscal 1996 is still lower than the staffing of fiscal 1981.

These figures alone do not tell the whole story, which includes compliance reviews forgone, less than comprehensive investigation, and less litigation. Although, overall, resource availability has improved, the bottom line is that persons entitled to the protection of the Federal Government cannot be sure of receiving it, particularly on a timely basis. We urge you, through provision of adequate resources, to ensure that the Federal civil rights enforcement agencies can fill the mandate you have given them for full and effective enforcement of the Nation's civil rights laws.

Respectfully,

For the Commissioners,



MARY FRANCES BERRY  
Chairperson

## **Acknowledgments**

This report was prepared by Conner Ball, Special Assistant to the Staff Director. Other staff members contributing to the report were Carol-Lee Hurley and Ben Dixon.\* Legal review was provided by Mark K. Spencer. Editorial review was provided by James S. Cunningham, Gloria Hong Izumi and Charles Rivera.

\* No longer with the Commission.

## Contents

<b>Introduction</b> . . . . .	1
Overview of Enforcement Authority . . . . .	2
Overview of Budget Analysis . . . . .	4
<b>Office for Civil Rights, Department of Education</b> . . . . .	5
Enforcement Authority . . . . .	5
Enforcement Procedures . . . . .	6
Budget Analysis . . . . .	6
<b>Office for Civil Rights, Department of Health and Human Services</b> . . . . .	14
Enforcement Authority . . . . .	14
Enforcement Procedures . . . . .	15
Budget Analysis . . . . .	15
<b>Civil Rights Division, Department of Justice</b> . . . . .	23
Enforcement Authority . . . . .	23
Coordination Responsibilities . . . . .	26
Budget Analysis . . . . .	26
<b>Equal Employment Opportunity Commission</b> . . . . .	36
Enforcement Authority . . . . .	36
Enforcement Procedures . . . . .	37
Budget Analysis . . . . .	38
<b>Office of Fair Housing and Equal Opportunity, Department of</b> <b>Housing and Urban Development</b> . . . . .	47
Enforcement Authority . . . . .	47
Enforcement Procedures . . . . .	49
FHIP and FHAP . . . . .	49
Budget Analysis . . . . .	50
<b>Office of Federal Contract Compliance Programs, Department of Labor</b> . . . . .	61
Enforcement Authority . . . . .	61
Enforcement Procedures . . . . .	62
Other Activity . . . . .	63
Budget Analysis . . . . .	63
<b>Conclusion</b> . . . . .	71
<b>Statement of Mary Frances Berry, Chairperson and Cruz Reynoso, Vice</b> <b>Chairperson</b> . . . . .	73
<b>Statement of Commissioner Constance Horner</b> . . . . .	76
<b>Statement of Commissioner Carl Anderson</b> . . . . .	77

## Tables

1.	DOE/OCR Funding History . . . . .	7
2.	DOE/OCR Funding History (constant dollars) . . . . .	7
3.	DOE/OCR Staffing History . . . . .	9
4.	DOE/OCR Workflow History . . . . .	10
5.	HHS/OCR Funding History . . . . .	17
6.	HHS/OCR Funding History (constant dollars) . . . . .	18
7.	HHS/OCR Staffing History . . . . .	18
8.	HHS/OCR Office of General Counsel Staffing 1981-1989 . . . . .	19
9.	HHS/OCR Complaints Received 1987-1994 . . . . .	21
10.	DOJ/CRD Funding History . . . . .	28
11.	DOJ/CRD Funding History (constant dollars) . . . . .	28
12.	DOJ/CRD Staffing History . . . . .	29
13.	DOJ/CRD Fair Housing Cases 1988-1996 . . . . .	31
14.	DOJ/CRD Staffing, Fair Housing Section 1988-1996 . . . . .	31
15.	DOJ/CRD Staffing, Civil Rights Prosecution Section 1988-1996 . . . . .	33
16.	DOJ/CRD Staffing, Coordination and Review Section 1988-1996 . . . . .	34
17.	DOJ/CRD Staffing, Disability Rights Section 1992-1996 . . . . .	34
18.	EEOC Funding History . . . . .	40
19.	EEOC Funding History (constant dollars) . . . . .	40
20.	EEOC Staffing History . . . . .	41
21.	EEOC Private Sector Enforcement . . . . .	41
22.	EEOC Resolutions 1981-1989 . . . . .	42
23.	EEOC Federal Sector Enforcement 1990-1996 . . . . .	45
24.	EEOC Resolutions per Investigator 1989-1994 . . . . .	45
25.	HUD/FHEO Funding History - Salaries and Expenses . . . . .	52
26.	HUD/FHEO Funding History - Salaries and Expenses (constant dollars) . . . . .	53
27.	HUD/FHEO Staffing History . . . . .	53
28.	HUD/FHEO Title VIII Complaint History . . . . .	54
29.	HUD/FHEO Field and Headquarter Staffing 1988-1994 . . . . .	55
30.	HUD/FHEO Program Compliance: Complaints 1987-1996 . . . . .	55
31.	HUD/FHEO Field Staffing 1988-1994 . . . . .	57
32.	HUD/FHEO Program Compliance Reviews 1987-1996 . . . . .	57
33.	HUD/FHEO FHAP Funding History . . . . .	58
34.	HUD/FHEO FHAP Funding History (constant dollars) . . . . .	59
35.	HUD/FHEO FHIP Funding History . . . . .	60
36.	HUD/FHEO FHIP Funding History (constant dollars) . . . . .	60
37.	OFCCP Funding History . . . . .	65
38.	OFCCP Funding History (constant dollars) . . . . .	65
39.	OFCCP Staffing History . . . . .	66
40.	OFCCP Workload History . . . . .	66



41. OFCCP Backpay Recovered 1981-1995 . . . . .	67
42. OFCCP Referrals to Solicitor 1981-1994 . . . . .	68

**Figures**

1. DOC/OCR Funding History, 1981-1996, in 1987 Dollars . . . . .	8
2. DOE/OCR, Full-Time Equivalent Summary, 1981-1996 . . . . .	8
3. DOE/OCR, Staffing versus Complaints Received and Closed and Compliance Reviews Initiated, 1981-1994 . . . . .	12
4. HHS/OCR Funding History, 1981-1996, in 1987 Dollars . . . . .	16
5. HHS/OCR Full-Time Equivalent Summary, 1981-1996 . . . . .	16
6. HHS/OCR Staffing versus Complaints Received, 1987-1994 . . . . .	20
7. DOJ/CRD Funding History, 1981-1996, in 1987 Dollars . . . . .	27
8. DOJ/CRD Full-Time Equivalent Summary, 1981-1996 . . . . .	27
9. EEOC Funding History, 1981-1996, in 1987 Dollars . . . . .	39
10. EEOC Full-Time Equivalent Summary, 1981-1996 . . . . .	39
11. EEOC, Staffing versus Complaints Received, Resolved, and Backlogged, 1981-1994 . . . . .	43
12. HUD/FHEO Funding History, 1981-1996, in 1987 Dollars . . . . .	51
13. HUD/FHEO Full-Time Equivalent Summary, 1981-1996 . . . . .	51
14. HUD/FHEO Staffing versus Complaints Processed and Compliance Reviews Completed, 1988-1994 . . . . .	56
15. HUD/FHEO, Distribution of Field Office FTEs by Program, 1988-1994 . .	56
16. DOL/OFCCP Funding History, 1981-1996, in 1987 Dollars . . . . .	64
17. DOL/OFCCP Full-Time Equivalent Summary, 1981-1996 . . . . .	64
18. DOL/OFCCP Staffing versus Complaints Resolved and Compliance Reviews, 1981-1994 . . . . .	69

## INTRODUCTION

In 1983, the U.S. Commission on Civil Rights noted that the "civil rights laws create a unique and basic obligation in the Federal Government to protect and enhance legal rights. In the Commission's view, this special responsibility includes an obligation to provide adequate budget and staff resources to enforce these laws."<sup>1</sup> This report concluded, along with reports in the two preceding years, that budget reductions in the resources allocated for civil rights enforcement were threatening the effective enforcement of Federal civil rights legislation.<sup>2</sup> The Commission warned that these reductions would "limit actual enforcement, undercut the deterrent effect of such enforcement by diminishing the credibility of potential Federal action, reduce the motivation and assistance for those who would voluntarily comply with civil rights obligations, and weaken State and local efforts to ensure equal opportunities."<sup>3</sup>

This current study is the first comprehensive assessment of the Federal civil rights enforcement budget since 1983. The study first examines the jurisdiction and enforcement authority of six principal agencies of the Federal government charged with civil rights enforcement: (1) the Office for Civil Rights of the Department of Education; (2) the Office for Civil Rights of the Department of Health and Human Services; (3) the Civil Rights Division of the Department of Justice; (4) the Equal Employment Opportunity Commission; (5) the Office of Fair Housing and Equal Opportunity of the Department of Housing and Urban Development; and (6) the Office of Federal Contract Compliance Programs of the Department of Labor. These agencies represent the majority of the Federal civil rights enforcement resources.

In exploring the jurisdiction of the six civil rights agencies, the impact of new civil rights legislation and executive orders on workload levels and staff demands is examined by this study. The budget analysis covers the first and last years for which budgets were submitted for the Carter, Reagan, and Bush administrations and the FY 1995 and FY 1996 budget requests of the Clinton administration. The first budget for each administration was the one developed by the administration's own appointees. The last budget for each administration was the last one that the administration saw through the congressional process. The report examines the resources requested by the administration and funding actually appropriated by Congress for civil rights enforcement.<sup>4</sup>

---

<sup>1</sup> U.S. Commission on Civil Rights, *Federal Civil Rights Commitments: An Assessment of Enforcement Resources and Performance*, pp. 2-3 (November 1983) (hereafter cited as 1983 Budget Report).

<sup>2</sup> *Ibid.*; see also U.S. Commission on Civil Rights, *The Federal Civil Rights Enforcement Budget: Fiscal Year 1983* (June 1982) (hereafter cited as 1982 Budget Report); U.S. Commission on Civil Rights, *Civil Rights: A National, Not a Special Interest* (June 1981) (hereafter cited as 1981 Budget Report).

<sup>3</sup> *1981 Budget Report*, p. 122.

<sup>4</sup> The data is taken from Office of Management and Budget (OMB) and agency budget documents and may not reflect final pay raises, transfers and/or supplements. This information should be accounted for in the actual obligations for each year.

This study is not an enforcement report and does not evaluate qualitative measures such as the efficiency of the workforce or the nature of discrimination. The report does include examination of many measures of enforcement output and outcomes that help to demonstrate the real impact of funding levels. The information in this report, unless otherwise indicated, was drawn from OMB and agency budget documents for FY 1979 through FY 1996. All references to real funding are expressed in constant 1987 dollars.<sup>5</sup> The deflators used are the same as used by OMB in the Historical Tables that accompanied the FY 1996 Budget.<sup>6</sup>

## Overview of Enforcement Authority

Prior to the Civil Rights Act of 1957,<sup>7</sup> the Federal civil rights effort was limited to the enforcement of a few post-Civil War criminal statutes by the Civil Rights Section of the Criminal Division of the United States Department of Justice. Since 1957, Congress and the President have expanded greatly the Federal civil rights effort through the creation of additional substantive rights and additional enforcement agencies.

The major congressional and presidential landmarks affecting civil rights enforcement are: (1) the Equal Pay Act of 1963;<sup>8</sup> (2) the Civil Rights Act of 1964;<sup>9</sup> (3) the Voting Rights Act of 1965;<sup>10</sup> (4) President Johnson's Executive Order 11246 in 1965;<sup>11</sup> (5) the Age Discrimination in Employment Act of 1967;<sup>12</sup> (6) Title VIII of the Civil Rights Act of 1968;<sup>13</sup> (7) Title IX of the Education Amendments of 1972;<sup>14</sup> (8) the Equal Employment Opportunity Act of 1972;<sup>15</sup> (9) the Rehabilitation Act of 1973;<sup>16</sup> (10) the Voting Rights Act Amendments of 1975;<sup>17</sup> (11) the Age Discrimination Act of 1975;<sup>18</sup> (12) President Carter's Reorganization Plan No. 1<sup>19</sup> and executive orders<sup>20</sup> relating to

---

<sup>5</sup> Expression in constant dollars accounts for inflationary trends, and more accurately reflects the actual purchasing power of the funds received. These adjusted values are referred to throughout the report as real funding or real spending power.

<sup>6</sup> U.S. Office of Management and Budget, *Budget of the United States: Historical Tables, Fiscal Year 1996*, Table 1.3, p. 17 (Washington, D.C.: Government Printing Office, 1995).

<sup>7</sup> Pub. L. No. 85-315, 71 Stat. 634 (1957).

<sup>8</sup> Pub. L. No. 88-38, 77 Stat. 56 (codified at 29 U.S.C. § 206 (1988)).

<sup>9</sup> Pub. L. No. 88-352, 78 Stat. 241 (codified as amended at 42 U.S.C. §§ 2000a et seq. (1988 & Supp. 1994)).

<sup>10</sup> Pub. L. No. 89-110, 79 Stat. 445 (codified at 42 U.S.C. §§ 1973-1973bb-1 (1988)).

<sup>11</sup> Exec. Order No. 11246, 3 C.F.R. § 339 (1964-65), *reprinted in* 42 U.S.C. § 2000e note (1988).

<sup>12</sup> Pub. L. No. 90-202, 81 Stat. 602 (codified at 29 U.S.C. §§ 621-634 (1988)).

<sup>13</sup> Pub. L. No. 90-284, 82 Stat. 81 (codified at 42 U.S.C. §§ 3601-3619 (1988)).

<sup>14</sup> Pub. L. No. 92-318, 86 Stat. 373 (codified as amended at 20 U.S.C. §§ 1681-1688 (1988)).

<sup>15</sup> Pub. L. No. 92-261, 86 Stat. 103 (codified at 42 U.S.C. §§ 2000e-16 (1988)).

<sup>16</sup> Pub. L. No. 93-112, 87 Stat. 394 (codified at 29 U.S.C. §§ 791 et seq. (1988)).

<sup>17</sup> Pub. L. No. 94-73, 89 Stat. 400 (codified at 42 U.S.C. §§ 1973-1973bb-1 (1988)).

<sup>18</sup> Pub. L. No. 94-135, 89 Stat. 728 (codified as amended at 42 U.S.C. §§ 6101-6107 (1988)).

<sup>19</sup> 3 C.F.R. § 321 (1978), *reprinted in* 42 U.S.C. § 2000e-4 note (1988).

<sup>20</sup> E.g., Exec. Order No. 12067, 43 Fed. Reg. 28967 (1978); Exec. Order No. 12250, 3 C.F.R. § 298 (1981), *reprinted in* 42 U.S.C. § 2000d-1 note (1988).

equal opportunity in 1978-1979; (13) the Voting Rights Amendments of 1982;<sup>21</sup> (14) the Civil Rights for Institutionalized Persons Act of 1986;<sup>22</sup> (15) the Housing and Community Development Act of 1987;<sup>23</sup> (16) the Civil Rights Restoration Act of 1987;<sup>24</sup> (17) the Civil Liberties Act of 1988;<sup>25</sup> (18) the Fair Housing Amendments Act of 1988;<sup>26</sup> (19) the Americans with Disabilities Act of 1990;<sup>27</sup> (20) the Civil Rights Act of 1991;<sup>28</sup> and (21) the Voting Rights Language Assistance Act of 1992.<sup>29</sup>

Several statutes, of those mentioned above, have affected significantly the workloads of all the agencies studied. Beginning in 1978, the Reorganization Plan No. 1 restructured the Federal equal employment opportunity enforcement program. The Plan transferred to the EEOC enforcement authority under the Equal Pay Act of 1963 and the Age Discrimination in Employment Act of 1967, and responsibility for duties regarding equal employment enforcement in the Federal government. The Reorganization Plan also consolidated Federal contract compliance enforcement in the Department of Labor, transferring the contract compliance activities of 11 agencies to the Office of Federal Contract Compliance Programs.

The Civil Rights Restoration Act of 1987 also significantly increased the workloads of agencies, such as the Offices for Civil Rights at the Departments of Education and Health and Human Services, and the Office of Fair Housing and Equal Opportunity at the Department of Housing and Urban Development, that enforce Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. These statutes prohibit discrimination based on race, color, national origin, gender, disability and age by any "program or activity" that receives Federal financial assistance. In response to a Supreme Court decision that narrowly construed the definition of "program or activity,"<sup>30</sup> Congress passed the Civil Rights Restoration Act of 1987, which restored the definition to include all the operations of a recipient, so long as any part of the recipient's operations receives Federal funds. This restoration had a major impact on the number of complaints received and processed by the enforcement agencies.

A third major augmentation of enforcement responsibilities occurred with passage of the Fair Housing Amendments Act of 1988, which substantially increased the authority of the Office of Fair Housing and Equal Opportunity at the Department of Housing and

---

<sup>21</sup> Pub. L. No. 97-205, 96 Stat. 131 (1982).

<sup>22</sup> Pub. L. No. 96-247, 94 Stat. 349 (codified at 42 U.S.C. §§ 1997-1997j (1988)).

<sup>23</sup> Pub. L. No. 100-242, 101 Stat. 1815 (codified at scattered sections of U.S.C.).

<sup>24</sup> Pub. L. No. 100-259, 102 Stat. 28 (codified at scattered sections of U.S.C.).

<sup>25</sup> Pub. L. No. 100-383, 102 Stat. 904 (codified at 50 U.S.C. §§ 1989b-1989b-8 (1993)).

<sup>26</sup> Pub. L. No. 100-430, 102 Stat. 1619 (codified as amended at 42 U.S.C. §§ 3601-3619, 3631 (1988)).

<sup>27</sup> Pub. L. No. 101-336, 104 Stat. 327 (codified at 42 U.S.C. §§ 12101-12213 (Supp. 1994)).

<sup>28</sup> Pub. L. No. 102-166, 105 Stat. 1071 (codified at scattered sections of 2 U.S.C. and 42 U.S.C.).

<sup>29</sup> Pub. L. No. 102-344, 106 Stat. 921 (1992).

<sup>30</sup> See *Grove City College v. Bell*, 465 U.S. 555 (1984) (holding that "program or activity" applies only to the particular program or activity to which the Federal funds are directed).

Urban Development and the Civil Rights Division at the Department of Justice, by adding two new prohibited bases for discrimination and enlarging and strengthening the administrative enforcement scheme.

Most recently, civil rights enforcement responsibilities were expanded significantly with the passage of the Americans with Disabilities Act of 1990, and the Civil Rights Act of 1991. The Americans with Disabilities Act prohibits discrimination against qualified individuals with disabilities and provides coverage to some 43,000,000 Americans. Its passage increased the duties of all six agencies studied, but had the most impact on the operations of the Equal Employment Opportunity Commission and the Civil Rights Division at the Department of Justice. The workloads of these two agencies also were increased by passage of the Civil Rights Act of 1991, which expanded the coverage of, and remedies available under, Title VII of the Civil Rights Act of 1964.

### **Overview of Budget Analysis**

This study shows that, as the Commission warned, funding and staffing provided for civil rights enforcement have diminished over the last 15 years. After a period of severe cuts, ground was regained after FY 1989, and enforcement spending continues to be revived. Although resources have increased since FY 1989, the enforcement responsibilities of these agencies also have grown enormously, and the reductions in funding and staff continue to undermine our national enforcement of civil rights.