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The Federal Civil Rights Enforcement Effort

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Summary

Clearinghouse Publication No. 31

of a
report of
the United
States
Commission
on Civil
Rights
1971

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U.S. COMMISSION ON CIVIL RIGHTS

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

Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, or national origin or by reason of fraudulent practices;

Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution;

Appraise Federal laws and policies with respect to equal protection of the laws;

Serve as a national clearinghouse for information in respect to denials of equal protection of the laws; and

Submit reports, findings, and recommendations to the President and the Congress.

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Acknowledgments

The Commission is indebted to the following staff members and former staff members who participated in the preparation of this report under Project Director Jeffrey M. Miller, now Chief, Federal Evaluation Division, Office of Civil Rights Program and Policy:

Geneva E. Adkins, Klaire V. Adkins, Ann E. Allen, Mary V. Avant, Maribeth Bibb, Linda F. Blumenfeld, Lucille L. Boston, Claudette C. Brown, Joyce M. Butler, Margaret A. Carter, Robert H. Cohen, Janice L. Comer, Ruby T. Daniels, Cynthia A. Freeman, Richard A. Gladstone, Wallace Greene, Treola J. Grooms, Gabriel Guerra-Mondragon, Jr., Sandra E. Hall, Lorraine W. Johnson, Karen J. Krueger, Frank E. Leslie, William S. Lipkin, Moses Lukaczer, Bruce E. Newman, William C. Payne, Rodgers Priester, Anita Prout, Everett J. Santos, Diana J. Siegfried, Barry W. Strejcek, Richard L. Waters, Brenda Watts, Sheila P. Wilson.

The Commission also is grateful to the following consultants who provided guidance and editorial assistance throughout the course of the study: Walter W. Giesey, Frederick B. Routh, Allen Schick, and William L. Taylor.

The report was prepared under the overall supervision of Martin E. Sloane, Assistant Staff Director, Office of Civil Rights Program and Policy.

PREFACE

Dramatic changes have occurred in civil rights over the last decade. When the 1960's began only one of the three branches of the Federal Government—the judiciary—had been actively engaged in the fight to protect the rights of minority citizens. Through such cases as *Shelley v. Kraemer*, the United States Supreme Court helped awaken government—Federal, State, and local—to its responsibility to assure equal protection of the laws for all persons. And through *Brown v. Board of Education of Topeka*, the Court made it clear that equality could not be achieved constitutionally under a system of apartheid.

The executive and legislative branches had only begun to stir themselves to action. Presidential Executive orders, issued during the 1940's and 1950's, desegregated the Armed Forces and began an attack on employment discrimination. Congress, in 1957, passed the first civil rights law since post-civil war years, which was, however, extremely limited in scope.

But during the 1960's, civil rights, in a sense, came of age. For the first time all three branches of the Federal Government acted with vigor to secure basic legal rights for the country's minorities. The courts continued to define the civil rights responsibility of government and brought new life and substance to constitutional and statutory protections in such key areas as education, employment, housing, and voting. The executive branch, through additional Presidential Executive orders, strengthened its attack against employment discrimination and moved also to end housing discrimination. And Congress enacted four major civil rights laws covering such areas as education, employment, housing, public accommodations, public facilities, and voting. In short, by the end of the 1960's, there existed a significant array of Federal laws and policies to protect basic rights of minorities.

What also changed dramatically in the course of that decade was the attitude and perspective

of the American people and their leaders toward civil rights problems—a change from optimistic hope that they could be resolved quickly and simply to sober realization that the problems were so deep seated and complex that they could not yield readily to easy solutions. They involve not only denials of basic legal rights but social and economic injustices which have been allowed to grow and ferment for many years. The civil rights laws attack only the first aspect of the problem—denials of basic rights. As for the second, as a Nation, America has barely begun to deal with them.

Measured by a realistic standard of results, progress in ending inequity has been disappointing. Even in securing basic rights—by far the easier part of the problem—success has been spotty and moot. In many areas in which civil rights laws afford pervasive legal protection—education, employment, housing—discrimination persists and the goal of equal opportunity is far from achievement. The plain fact is that some of these laws are not working well. The Federal civil rights effort has been inadequate to redeem in full the promise of true “equal protection of the laws” for all Americans. As a result, many minority group members are losing faith in the Federal Government's will and capacity to protect their rights. Some also are losing faith that equality can be achieved through law. It is important that their faith be restored and that the promise of the hard fought battle for civil rights laws be redeemed.

From its establishment in 1957, this Commission, through hearings, investigations, and reports, has documented the need for many of the civil rights laws and participated in the effort to enact them. The civil rights struggle now has shifted in large part from legislating to administering and enforcement. In recent years, the Commission closely examined the civil rights enforcement operation of various Federal departments and agencies. It has investigated the role of

agencies charged with responsibility for assuring against employment discrimination by Federal or federally assisted contractors. It also has looked into policies and practices of agencies with civil rights responsibilities in housing and home finance. It has paid particular attention to Title VI of the Civil Rights Act of 1964, which prohibits discrimination in programs or activities receiving Federal assistance, and has studied the structure and mechanism by which enforcement of that important law is carried out. The Commission has issued reports based on these studies concerning such diverse agencies as the Department of Agriculture, the Civil Aeronautics Board, the Department of the Interior, and, most recently, the Department of Health, Education, and Welfare.

To some extent, the problems and inadequacies in the civil rights structure and mechanism of Federal agencies can be considered unique and attributable to the special qualities of their programs. Many problems and inadequacies, however, are shared by all the examined agencies and cut across program lines. By the same token, the wide disparities in the effectiveness of civil rights enforcement efforts can be attributed, partly but not totally, to program differences.

The Commission's experience in its investigations of contract compliance, housing, and Title VI persuaded it of the utility of conducting an across-the-board investigation of the Federal civil rights enforcement effort—of discovering, for one given period of time, where various Federal departments and agencies with significant civil rights responsibilities stand in terms of effectiveness.

This study represents one of the Commission's most ambitious undertakings. An effort was made to review the civil rights operation of some agencies not widely recognized as having significant civil rights responsibilities such as the Department of Commerce, the Department of the Interior, and those regulating particular industries, such as radio and television broadcasting, rail, air, and motor transportation, and gas and electric power—as well as those whose importance has been generally recognized, such as the Department of Health, Education, and Welfare (HEW); the Department of Housing and Urban Development (HUD); and the Department of Agriculture. In addition, inquiry was made into areas which have not received widespread public

attention in civil rights discussions, such as programs of assistance flowing directly from the Federal Government to individual beneficiaries, as well as programs of insurance and guaranty. Not neglected, however, were those activities which have been in the eye of the civil rights storm, such as federally assisted loan and grant programs, covered by Title VI of the Civil Rights Act of 1964.

Nonetheless, this study is not an exhaustive one. Limits necessarily have been placed upon it, in terms of the laws, agencies, and programs covered. For example, the Voting Rights Act of 1965, which has been treated in previous Commission reports, is not covered. Further, in the sections dealing with various Federal programs, it was impossible to treat more than a representative sample. In addition, considerable variation in the depth of treatment of the included programs and agencies was inevitable, due to restrictions of time and staff resources.

Since it was not possible to investigate first-hand the field civil rights operation, the study has involved work almost exclusively in Washington, D.C. However, information on field activities, as well as central office operations, was obtained through examination of central offices' files, interviews with agency personnel, and agency responses to questionnaires. The Commission received excellent cooperation throughout its work and is grateful to department and agency personnel who provided the requested information.

To assure the accuracy of the report, the Commission forwarded copies of it in draft form to departments and agencies whose activities are discussed in detail and requested their comments and suggestions. Their responses invariably were helpful, serving to correct factual inaccuracies, clarify points which may not have been sufficiently clear, and provide updated information on activities undertaken subsequent to the time of Commission staff investigations. These comments have been incorporated in the report. In some instances, agencies expressed disagreement with Commission interpretations of fact or with the views of the Commission on the desirability of particular enforcement or compliance activities, and in such cases their point of view, as well as that of the Commission, has been noted. In their comments, agencies sometimes provided new information not made available to

Commission staff during the course of its interviews and investigations. Sometimes, the information was inconsistent with the information provided earlier. Although it was not always possible to evaluate this new information fully or to reconcile it with what was provided earlier, in the interest of assuring that agency compliance and enforcement activities are reported as comprehensively as possible, the new material has been noted in the report.

This report does not deal primarily with the substantive impact of civil rights laws. The Commission has not attempted here to measure precise gains made by minority group members as a result of civil rights actions of the Federal Government. This will be the subject of future Commission studies. Rather, it has attempted to determine how well the Federal Government is doing its civil rights enforcement job—to pinpoint for one period of time (March-June 1970)

the posture of a number of Federal agencies with key civil rights responsibilities.

The purpose is not to criticize particular departments and agencies, but to analyze on a comparative basis the effectiveness of the overall enforcement effort. Through a comparative study, the Commission believes all agencies can profit from the experience of others, particularly those whose activities clearly call for improvement.

Finally, while the report deals primarily with the current civil rights posture of the Federal Government, it should be understood that the inadequacies described have roots that lie deep in the past. They did not originate in the current Administration, nor was there any substantial period in the past when civil rights enforcement uniformly was at a high level of effectiveness. Rather, the inadequacies are systemic to the Federal bureaucracy and it is only through systemic changes that the great promise the civil rights laws hold will be realized.

THE FEDERAL CIVIL RIGHTS ARSENAL

Chapter 1

I. INTRODUCTION

Over the past three decades, the Federal Government has demonstrated a growing concern for the rights of minorities, after nearly three-quarters of a century of governmental indifference. The courts have led the way, providing substantive civil rights meaning to the broad constitutional mandates of the equal protection clause of the 14th amendment and the due process clause of the fifth amendment. The executive branch followed, through a series of Executive orders by the last six Presidents, directing Federal departments and agencies to assure against discrimination in their own activities and in the practices of those with whom they deal. Congress was the last of the three branches to act. Since 1957, Congress has enacted five civil rights laws, including the landmark Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Fair Housing Law of 1968.

The various laws, Executive orders, and judicial decisions constitute a formidable array of civil rights guarantees. They provide broad protections against discrimination in virtually every aspect of life—in education, employment, housing, voting, administration of justice, access to places of public accommodation, and participation in the benefits of federally assisted programs. Further, while some of the remedies require the aggrieved individual to take the initiative in securing his own rights, in most cases responsibility is also placed on Federal departments and agencies to act affirmatively in support of the guaranteed rights.

In short, there exists today a powerful Federal arsenal of weapons available to cope with racial and ethnic discrimination. Set forth in the following sections is a brief discussion of the breadth of protection afforded and the scope of Federal responsibility.

II. CIVIL RIGHTS PROTECTIONS

A. Employment

Equal opportunity in employment is mandated by a host of Federal enactments—statutes, judicial decisions interpreting the Constitution, and Executive orders and regulations. Taken together, they constitute a comprehensive ban on job discrimination, covering all Federal, State, and local jobs and nearly all private employment. Almost any act of discrimination by a government or private employer violates some aspect of Federal law. The remedies available to redress such discrimination, however, vary widely in their scope and efficacy.

1. FEDERAL EMPLOYMENT

The most complete Federal policy of equal job opportunity is that dealing with Federal employment. On August 8, 1969, President Nixon issued Executive Order 11478, the most recent Presidential directive dealing with this subject. The order, which superseded and strengthened previous Presidential orders, reaffirms governmental policy both to assure equal opportunity in Federal employment to all persons regardless of race, color, religion, sex, or national origin and “to promote the full realization of equal employment opportunity through a continuing affirmative program in each executive department and agency.”

2. STATE AND LOCAL GOVERNMENT EMPLOYMENT

In a very general sense, it may be said that Federal law is as comprehensive in prohibiting discrimination in State and local government as it is in barring discrimination in Federal jobs. For the courts have held that discrimination by State and local governments—including job discrimination—violates the 14th amendment. But

as a practical matter, protection against discrimination by State and local governments is not nearly as complete, because, with certain exceptions, there is no Federal administrative machinery to assist the victim of discrimination. In most cases, a private lawsuit is the only route available to him to secure his constitutional right.

The exceptions pertain to certain areas where Congress and the executive branch have acted to provide an administrative remedy because the Federal and State governments participate jointly in furnishing the government service. For example, an administrative remedy is provided by the Federal Merit Standards, which apply to a variety of federally funded programs and cover approximately 250,000 State employees. The merit standards require that State employees administering these programs be selected, promoted, and compensated according to a federally approved, State-administered merit system which prohibits discrimination on the basis of race or national origin.

The major programs covered by the merit standards provision are: Aid to Families with Dependent Children; Old Age Assistance; other federally aided public assistance programs; and certain State health programs financed by the Department of Health, Education, and Welfare; State employment services and unemployment insurance systems, which are funded by the Department of Labor; and civil defense activities supported by the Department of Defense.

In addition to protection against State employment discrimination provided by Federal merit standards, such discrimination also is prohibited by contractual requirements of the Department of Housing and Urban Development in two important programs it administers, Urban Renewal and Public Housing.

Title VI of the Civil Rights Act of 1964, which prohibits discrimination in programs and activities receiving Federal financial assistance, also forbids employment discrimination by States or localities in programs and activities such as apprenticeship training, work-study, or economic development programs where a primary purpose of the assistance is to provide employment. Under Title VI, discriminatory employment practices also may be prohibited where they would tend to result in discriminatory or unequal treatment for intended beneficiaries of the program or activity.

3. PRIVATE EMPLOYMENT

a. EMPLOYMENT BY PRIVATE GOVERNMENT CONTRACTORS

The last six Presidents, over a period of nearly 30 years, have used the Federal contracting power to require nondiscrimination in employment by Government contractors. Executive Order 11246, issued in 1965, prohibits employment discrimination by Government contractors or federally assisted construction contractors, and requires them to take affirmative action to remedy the effects of past discrimination. In addition, banks which are depositories of Federal funds or which handle Federal savings bonds are subject to the same requirements.

b. PRIVATE NON-FEDERALLY RELATED EMPLOYMENT

(1) Title VII of the Civil Rights Act of 1964 prohibits employment discrimination by all employers with 25 or more employees, labor unions with 25 or more members or those which operate a hiring hall, and employment agencies which regularly obtain employees for an employer covered by the title.

It also created the Equal Employment Opportunity Commission (EEOC) with responsibility to administer the title and conciliate and negotiate differences between aggrieved individuals and the accused parties. The EEOC also may make studies, provide technical assistance, and carry on other activities designed to stimulate employers, unions, and employment agencies to develop effective equal employment opportunity policies. The EEOC is granted no power to require a discriminatory party to cease engaging in prohibited activities. Lawsuits, however, may be brought by private parties or by the Department of Justice.

(2) Section 1 of the Civil Rights Act of 1866 provides that all persons shall have the same right to make and enforce contracts as white citizens of the United States. A 1968 Supreme Court decision held that a similar provision of the 1866 law prohibits racial discrimination in housing. Similarly, lower court decisions have ruled that this law prohibits employment discrimination. Thus, despite limitations in coverage of other equal employment opportunity provisions, any individual who believes he has been discriminated against in employment because

of his race may bring a Federal suit for relief under the 1866 Act.

(3) The National Labor Relations Act (NLRA) and related laws regulate the conduct of employers and unions. Although not specifically designed to provide relief for employment discrimination, the NLRA has a significant impact on the Federal effort to end such discrimination. The act creates an obligation on the part of all unions representing employees under the act to do so fairly, impartially, and without discrimination. A union failing to comply with this obligation would be in violation of its duty of fair representation. In addition, a union's discriminatory membership policy constitutes an unfair labor practice under the act. With respect to employers, a recent U.S. Court of Appeals opinion indicated that discrimination by an employer in his employment practices can constitute an unfair labor practice.

B. Housing

Like employment, equal opportunity in housing is a broadly protected Federal right. Almost all housing, federally assisted or not, must be made available without discrimination.

1. FEDERALLY ASSISTED HOUSING

a. Executive Order 11063, issued in November 1962, constituted the first significant Federal requirement on nondiscrimination in housing. Discrimination is prohibited in the sale or leasing of all federally assisted housing provided after the order was issued, including housing owned by the Government, housing purchased in whole or in part with Government loans (such as low-rent public housing), housing provided through loans insured or guaranteed by the Government (such as FHA and VA housing) and housing provided through slum clearance or urban renewal programs. The prohibition also extends to lending practices insofar as those practices relate to loans insured or guaranteed by the Federal Government.

b. Title VI of the Civil Rights Act of 1964 covers all federally assisted housing except in instances in which the assistance provided is solely in the form of contracts of insurance or guarantee. Title VI applies to such varied housing programs as urban renewal, housing rehabilitation, college housing, low-rent public housing, and code enforcement programs.

2. PRIVATE, NON-FEDERALLY ASSISTED HOUSING

a. Title VIII of the Civil Rights Act of 1968 [the Federal fair housing law] covers not only federally assisted housing, but most private housing as well. The only significant exceptions from coverage are rental housing with fewer than five units one of which is owner occupied, and single family houses owned by a private individual and sold without the use of a real estate broker. In addition to prohibiting discrimination in the sale or rental of housing, Title VIII requires all Federal departments and agencies with functions relating to housing to further the purposes of fair housing.

b. A provision of the 1866 Civil Rights Act, which grants to Negro citizens the same rights as white citizens to rent or purchase property was construed by the Supreme Court in 1968 in *Jones v. Mayer and Co.* to prohibit racial discrimination in all housing, private as well as public. The means of enforcement, however, appear to be limited to privately instituted litigation.

C. Federally Assisted Programs

Title VI of the Civil Rights Act of 1964 is one of the most significant provisions in that landmark legislation. It is designed to insure equal treatment in the operation of all federally assisted loan and grant programs. More than 400 programs administered by 23 Federal departments and agencies are covered.

D. Direct Federal Assistance

The programs covered by Title VI are those in which there is an intermediary between the Federal Government and the ultimate beneficiary of its assistance programs. It is through these intermediaries, called recipients, that the Federal aid flows. In many Federal programs and activities, however, the relationship between the Federal Government and the ultimate beneficiary is a direct one. Programs such as those concerned with retirement and disability payments, hospital and supplemental medical insurance payments, veterans insurance and benefit payments, and unemployment benefit payments, are among those involving such a direct relationship. In addition, the Federal Government operates a number of direct loan programs, such as those involving

loans for housing and small businesses, which also run directly to beneficiaries.

Many of these programs are outside the scope of Title VI. To the extent that discrimination is practiced in direct assistance programs, however, it is the Federal Government itself that is discriminating. Such discrimination clearly is in violation of the fifth amendment of the Constitution.

E. Programs of Insurance and Guarantee

Some Federal aid programs do not involve financial assistance in the form of loans or grants, either through intermediaries or directly to beneficiaries. Rather, they rely on Government insurance and guarantees to induce private lenders to provide funds for specific purposes. In these programs the Federal Government's role is that of underwriter, while the funds are made available through ordinary private credit channels. FHA and VA housing programs, for example, use the vehicles of insurance and guarantee to stimulate private credit for housing.

Such insurance and guarantee programs are specifically exempt from coverage under Title VI. Because of the substantial governmental involvement in these programs, however, discrimination is prohibited under the due process clause of the fifth amendment. Moreover, insurance and guarantee programs in the housing area also are covered by Executive Order 11063.

F. Other Federal Protections

1. PUBLIC ACCOMMODATIONS AND PUBLIC FACILITIES

The Civil Rights Act of 1964, in addition to creating the statutory rights of equal employment opportunity and equal access to the benefits of federally assisted programs, also prohibited discrimination in places of public accommodations, such as hotels, restaurants, and theaters, and in public facilities such as publicly owned or sponsored parks, beaches, swimming pools, and golf courses.

2. EDUCATION

The Civil Rights Act of 1964 attacked the problem of discrimination and segregation in edu-

cation in two ways. The first was through the leverage of Federal financial assistance. Under Title VI, schools and colleges must end discriminatory practices as a condition to receiving such financial assistance. The second was through litigation by the Department of Justice. Under Title IV of the act, the Attorney General is authorized to bring lawsuits to eliminate unconstitutional discrimination by public schools and colleges. Thus, even if schools are willing to forego Federal education funds as the price of continuing discriminatory practices, they face the prospect of litigation by the Department of Justice to require an end to discrimination.

3. VOTING

The Voting Rights Act of 1965 assured the right to vote by suspending literacy tests and other discriminatory qualifications for voting in six States and 40 counties in another State. Under the Voting Rights Act, the Attorney General has authority to appoint voting examiners to register individuals in cases where it does not appear that local officials are willing to do so. The Attorney General also has the duty to review and approve proposed changes in voting qualifications or procedures of any State or subdivision covered by the act.

4. REGULATED INDUSTRIES

Under the Constitution and specific statutory authority granted by Congress to a number of Federal agencies to license and regulate particular industries, the practices of a large number of business corporations are subject to nondiscrimination requirements. For example, railroads and bus companies are licensed and regulated by the Interstate Commerce Commission (ICC); radio and television stations are licensed and regulated by the Federal Communications Commission (FCC); hydroelectric plants, natural gas companies, are licensed by the Federal Power Commission (FPC); and many electric power companies are regulated by the FPC as well; and airlines are regulated by the Civil Aeronautics Board (CAB). These agencies have constitutional responsibility to assure that the companies they regulate do not practice racial or ethnic discrimination in employment or in the provision of services or facilities.

III. MECHANISMS FOR COORDINATING CIVIL RIGHTS ENFORCEMENT*

The various civil rights laws and Executive orders cover many subject areas and involve a large number of Federal departments and agencies. The ultimate responsibility for assuring that these laws and orders are carried out with maximum effectiveness rests with the President, in whom the Constitution places the Government's executive power. A number of agencies and mechanisms have been used or are capable of use to assist the President in coordinating, evaluating, and directing the civil rights efforts of Federal departments and agencies.

A. White House Staff

The President is assisted most closely in carrying out civil rights responsibilities by his own staff of White House assistants. Their chief function is to provide him, on an informal basis, with information needed to make civil rights policy decisions and determine the most appropriate courses of action to meet existing problems.

B. Bureau of the Budget **

The Bureau of the Budget is part of the Executive Office of the President and, like the White House staff, provides direct staff assistance to the President. The Bureau's two most important civil rights related functions consist of its role in reviewing agency budgetary submissions for civil rights activities and its role in planning and evaluating Federal programs.

*The U.S. Commission on Civil Rights has statutory responsibility for appraising Federal civil rights laws and policies, and reporting its findings and recommendations to the President and the Congress. The Commission has no authority for enforcing civil rights laws or requiring changes in agency civil rights policies or practices. In carrying out its appraisal function, the Commission, in addition to reporting publicly on its findings and recommendations, works informally with departments and agencies that have civil rights responsibilities and with those who provide staff assistance to the President. An evaluation of the Commission's role is outside the scope of this study.

** Effective July 1, 1970, the Bureau of the Budget was incorporated into a new Office of Management and Budget.

C. Department of Justice

The Department of Justice, as the Government's chief litigator, plays a central role in the Federal Government's civil rights effort. It is, in effect, the agency of last resort where noncompliance is found and sanctions either are unavailable to the Federal agencies or the sanctions available are deemed less appropriate than bringing a lawsuit. In addition, the Department of Justice passes on the legality of significant new civil rights policies proposed by all other Federal departments and agencies.

In addition to its litigative and other legal responsibilities, the Department, through its Community Relations Service (CRS), also serves as an information bridge between the minority community and the Federal establishment, for the principal purpose of promoting peaceful race relations.

D. Specific Coordination Responsibilities

The White House, the Bureau of the Budget, and the Department of Justice have broad responsibilities for assisting the President and overseeing civil rights enforcement and administration. Their concerns extend to all civil rights laws and policies. In some areas, however, Federal agencies have coordination responsibilities for specific subjects.

For example, under Title VIII of the Civil Rights Act of 1968, the Department of Housing and Urban Development (HUD) has responsibility for coordinating the activities of all other Federal departments and agencies to promote the purposes of fair housing.

In the employment area, the Office of Federal Contract Compliance (OFCC), the Equal Employment Opportunity Commission (EEOC), and the Department of Justice share responsibility for coordinating the Government's efforts. In the area of Federal employment, the Civil Service Commission is responsible for establishing policy and coordinating activities of all Government agencies in assuring equal employment opportunity in the Federal Government.

The Department of Justice, in addition to its broad mandate to help determine the direction of the entire Federal civil rights effort, has specific responsibility, under Executive Order 11247, for coordinating activities under Title VI of the Civil Rights Act of 1964.

The Cabinet Committee on Opportunity for the Spanish-Speaking is another Federal agency with specific coordinating responsibilities. Composed of the heads of various executive departments and agencies, it is concerned with ascertaining if Federal agencies discriminate in employment of Mexican Americans, Puerto Ricans, Cubans, and Latin Americans, and whether substantive Federal programs are so designed and administered that Spanish surnamed Americans receive an equitable share of the benefits.

The Federal Executive Boards and the Federal Regional Councils are organizations composed of top Federal agency officials located in certain metropolitan areas. They are designed to assist in the implementation of governmentwide policy, to improve Federal service and management, and act as a coordinating mechanism with regard to the Government's efforts to deal with urban problems.

IV. IMPACT OF CIVIL RIGHTS LAWS AND POLICIES

The civil rights laws and policies discussed above provide the Federal Government with significant authority to assure equal opportunity in such fields as employment, housing, education, voting, and in all Federal programs. There are few aspects of life unaffected by Federal non-discrimination laws.

This is not to say that all necessary laws have been adopted. In some areas already covered, serious gaps in coverage are evident. For example, effective Federal requirements for equal opportunity in State and local government employment are largely limited to the Federal Merit Standards and HUD contractual requirements, which affect less than 5 percent of all State and local government employees. Title VII of the Civil Rights Act of 1964 exempts State and local government from coverage.

Enforcement mechanisms provided under some civil rights laws are weak. Under these laws, while minority group members are assured of their legal right to equal opportunity, the means of securing this right in fact are frequently lacking. In the important fields of employment and housing, for example, enforcement is limited largely to efforts at voluntary compliance, with recourse to litigation only if those efforts should fail.

Despite these gaps and weaknesses, the laws already on the books represent an impressive

array of protections. Most have been in force for 5 years or more and they have brought about salutary change. There is evidence, however, that discrimination persists even where it is prohibited by Federal law or regulation.

A. Progress in Ending Discrimination

Civil rights laws and policies by the Federal Government can be of value even when they do not contain strong enforcement mechanisms. The fact that Government speaks out in favor of principles of equal opportunity frequently brings about substantial changes in attitudes and behavior. In some cases, the mere enactment of a civil rights law has brought about a dramatic and almost immediate end to discrimination. In other cases, the laws, accompanied by effective enforcement, have brought about a similar end to discriminatory practices.

1. PUBLIC ACCOMMODATIONS

One of the best examples of the dramatic impact that a civil rights law can have is found in the field of public accommodations. A decade ago, segregation of restaurants, motels, hotels, and theaters was the rule throughout the South and parts of the North. In 1964, Title II of the Civil Rights Act of 1964 was passed outlawing racial discrimination in most places of public accommodation. While the law has not brought a complete end to discrimination, thousands of hotels, motels, restaurants, and theaters have abandoned their discriminatory policies.

2. VOTING

The Voting Rights Act of 1965 has also resulted in dramatic, statistically measurable progress. Before its passage, registration of black citizens of voting age in the six Southern States affected by the law was less than 31 percent. By the spring of 1969, approximately 57 percent of eligible blacks in these States were registered. To be sure, the Voting Rights Act has not resulted in full use of the franchise. Means other than disqualification, such as exploitation of continuing economic dependence of rural Negroes in the South, still constitute deterrents to the exercise of the right to vote.

3. EDUCATION

In school desegregation as well, progress has resulted directly from the enactment of civil

rights laws. Ten years after the decision in *Brown v. Board of Education of Topeka*, holding that legally compelled school segregation was unconstitutional, only 3 percent of the black school children in the South were attending public schools with white children. By the 1968-69 school year, however, 5 years after enactment of the Civil Rights Act of 1964, more than 20 percent of the black school children attended desegregated schools in the region.

B. PERSISTENCE OF DISCRIMINATION

Despite the progress made possible by recently adopted civil rights laws and policies, there is still substantial evidence that discrimination persists in many areas. Generally civil rights laws have been most successful in dealing with practices that do not require complex institutional change. Thus desegregation of public facilities, places of public accommodation, and hospitals and other health facilities, required basic, but simple changes in conduct, and was accomplished without violent opposition or massive Federal enforcement efforts.

In the area of voting, progress may be attributed primarily to the fact that the Federal Government—by suspending literacy tests and authorizing the appointment of Federal examiners to register citizens—intervened more directly to protect the rights of citizens than it has in other civil rights areas.

In fields where complex institutional change is required and the Federal Government has not intervened as directly, progress has come slowly and, in some cases, at a pace which can barely be discerned. In the employment field, elimination of discriminatory practices to facilitate full participation of minority group members in the Nation's economic mainstream has proved to be a complex process. Where the degree of Federal control is absolute, as in the area of Federal employment, minority group representation has increased substantially. Nonetheless, Negro and Spanish surnamed Americans still are grossly underrepresented in the higher salary brackets. In the private employment area, progress has been considerably slower. Despite the fact that there have been requirements of equal employment opportunity imposed on private Government contractors since the 1940's and that, since 1964, Title VII has extended that requirement

to most other private employers, the evidence indicates that employment discrimination in the private sector is still prevalent throughout the country.

The denial of equal opportunity in housing also remains a severe and persistent problem. A 1967 national FHA survey of minority group occupancy in subdivisions built after the date of the Executive order and subject to its nondiscrimination provisions, found that of the more than 400,000 units surveyed, only 3.3 percent were reported as sold to black families. In public housing, the pattern of all-white or all-black projects has remained the rule, even after laws and Executive orders have prohibited segregation. Another major HUD program, Urban Renewal, has been charged with having the effect of uprooting black families living in suburban areas and forcing them into the center city, thus further intensifying the pattern of racially segregated neighborhoods throughout the metropolitan area.

Despite progress in Southern school desegregation occurring over the past 5 years, a substantial majority of black school children in the South still attend segregated schools and most schools in urban areas across the Nation are segregated on the basis of race or ethnicity. Nor has discrimination been eliminated in the treatment received by black students and other minorities at colleges and universities.

Discrimination has also continued in many Federal programs. For example, gross discrimination and inequity in a number of Department of Agriculture programs, particularly the Cooperative Extension Service, have been documented; and a wide variety of discriminatory practices in State employment security agencies, funded by the Department of Labor, has been disclosed. Furthermore, despite progress in opening public accommodations and public facilities, incidents of discrimination are still found.

Thus, a national pattern of continuing abridgment of the rights of minority citizens persists. While progress has been made in eliminating discriminatory practices, many of the problems which existed before civil rights laws were passed, before various Executive orders were issued, and before key court decisions were rendered, continue to exist. The adoption of these civil rights laws and policies has given hope to minority group citizens that they would be freed of the second-class status to which they had been confined for

generations and could assume an equal role as members of American society. Their expectations of equal status have been reasonable; in many cases they have been frustrated.

It is clear that the full potential of civil rights laws and policies has not been realized. The promise of equal protection of the law for all citizens has not been redeemed.

The persistence of discrimination raises serious questions about the way Federal departments and agencies charged with civil rights responsibilities have carried them out. Have these agencies established adequate goals and priorities? Are the mechanisms and procedures adopted to secure compliance adequate to the task? Have the officials responsible for enforcement pursued their duties with sufficient vigor and commitment?

In the chapters that follow, these questions will be discussed with respect to the activities of a number of Federal departments and agencies holding key responsibilities for civil rights enforcement.

Chapter 2

Equal employment opportunity is an unquestioned right of every American, protected by actions of the three branches of the Federal Government. Executive orders require nondiscrimination in employment by the Federal Government itself, and by those who contract with the Federal Government. Judicial decisions have interpreted post-Civil War civil rights laws and the National Labor Relations Act to require nondiscrimination in private employment. And Congress, through Title VII of the Civil Rights Act of 1964, has established as organic law equal employment opportunity in private employment.

Although the *legal* right to equal employment opportunity is broadly protected, one of the major means of securing it *in fact*, through enforcement, is frequently lacking. Indeed, the mechanisms established by Federal agencies charged with responsibility for administering and enforcing fair employment laws have been patently neglected.

Federal Employment

In many respects, the Federal Government, as the largest employer in the Nation, serves as the standard bearer in the employment field for the entire country. History shows that in the past

the Government has been seriously remiss in safeguarding each citizen's right to equal employment opportunity. In recent years, however, a variety of actions has been initiated to improve employment and promotional opportunities for minority groups and eliminate discrimination within the Federal service.

Less than 50 years ago, Federal Government policy sanctioned racial segregation and exclusion in its own employment. Less than a generation ago, that policy changed and some of the more overt manifestations of racial and ethnic prejudice were abolished, although many discriminatory practices persisted. But only within the past decade have solid efforts been made to open opportunities in the Federal service to all persons on an equal basis. Executive orders promulgated in 1961 and 1965 called upon the Civil Service Commission to "supervise and provide leadership" in the conduct of equal employment opportunity programs of all executive departments and agencies. Until recently, however, CSC's role has been characterized by passivity and progress lagged. A November 1967 census of minority group employment in the Federal service, for example, revealed striking inequities. All agencies had disproportionately low minority group representation at middle and upper grade levels. And in some regions of the country, nonwhite employment at all grade levels ran substantially below the proportion of nonwhites within the region.

Taking cognizance of the persisting problems, President Nixon issued Executive Order 11478 in August 1969, which extended and enlarged the policy set forth in previous Executive orders. CSC responded by centralizing, elevating, and otherwise reorganizing its equal employment opportunity program. Internal coordination was facilitated and CSC's effectiveness vis-à-vis other Federal agencies was enhanced.

CSC's revitalized operation has not only continued to encourage a variety of equal employment opportunity activities inaugurated before promulgation of Executive Order 11478 but has also moved vigorously in several new directions.

Efforts to recruit blacks, Spanish-speaking Americans, and members of other minority groups have been intensified.

The testing process has been brought under close scrutiny to eliminate cultural bias and develop examinations which actually assess a person's potential for job performance, rather than

measure "general intelligence" or other abilities of little relevance to job performance.

A variety of innovative programs, designed to recruit, train, and employ thousands of disadvantaged youth, has been initiated in recent years.

Efforts to eliminate discrimination in promotion practices were furthered by a revised Federal merit promotion policy in August 1968.

Closely related to promotion policy has been increased emphasis on upward mobility, the searching out of underutilized employees, as part of a governmentwide program of maximum utilization of skills and training.

All first-line supervisors are now required to take training designed to improve their supervisory abilities and heighten their awareness of equal opportunity problems.

Agencies are being encouraged to make wider use of CSC training and non-Government resources to improve the skills of disadvantaged employees.

In its supervisory role, CSC has increased its attention to the equal employment opportunity aspects of agency programs under periodic review by CSC's Bureau of Inspections. A comprehensive set of guidelines, developed by CSC to help agencies formulate equal opportunity plans of action, was issued in December 1969, emphasizing results and suggesting various affirmative actions. They stop short, however, of requiring specific numerical or percentage goals for minority employment.

Revisions in procedures for processing complaints of discrimination in Federal employment went into effect in July 1969. Utilizing agency "counselors", they encourage informal resolution of grievances wherever possible. Although indications are that the number of formal discrimination complaints has declined in recent months, no evaluation of the new system in terms of the basic goal of eliminating discrimination in Federal employment has been undertaken. Remedies, in cases where allegations of discrimination have been substantiated, have generally been inadequate.

Efforts to identify sources of problems or even to measure the equal employment opportunity status of Federal agencies at any given point in time have been handicapped by lack of adequate data. Addressing itself to some shortcomings in this area, CSC has authorized agencies to institute automated data procedures designed, among

other things, to provide current information on a variety of Federal employment practices. The new procedures were installed by a number of Federal agencies in conjunction with the November 1969 census of minority group employment in the Federal Government.

CSC has made greater efforts within the past few years to exercise its leadership role with respect to other Federal agencies, as envisioned by the 1965 and 1969 Executive orders. By such means as an Interagency Advisory Group, Federal Personnel Manual, letters, meetings, and seminars with Federal officials, private groups, and individuals, CSC has sought to disseminate its own policies widely and facilitate communication with Federal agencies as well as private groups trying to improve equal employment opportunity in the Federal Government.

Measures which have been undertaken by CSC in recent years have gone far toward attaining equal opportunity within the concept of a merit system of Federal employment. However, in the context of a society which has for generations systematically discriminated against millions of its citizens and has produced a large class of disadvantaged Americans, even an optimally functioning merit system will inevitably reflect these inequities. Therefore, it is doubtful whether continued efforts to eliminate inequity within the confines of the merit system can be entirely successful. Ultimately, it may well be necessary to specifically shape the Federal effort to attainment of equitable representation of minority groups in all agencies and at every level of Federal employment.

Contract Compliance

A 29-year-old history of unrewarding efforts to eliminate discrimination from the employment practices of Federal contractors lies behind the relative impotence of Executive Order 11246. The failure of this most recent of operative Executive orders on the subject, is directly related to inadequate executive leadership by the Office of Federal Contract Compliance, which is charged with responsibility for coordinating and overseeing the entire Federal contract compliance program.

Until lately, OFCC had failed to adopt and implement policies and procedures that would produce vigorous compliance programs in the Federal agencies immediately responsible for con-

tract compliance. Recent actions taken in meeting OFCC's three current priorities—defining the affirmative action requirement of the order, monitoring compliance programs of the agencies, and building a governmentwide construction compliance program—give promise of leading to a more effective effort. Their implementation, however, lies in the future.

The importance of explaining in detail the meaning of affirmative action to contractors and compliance agencies has been clearly recognized and earlier this year OFCC took the significant step of expanding its regulations to deal specifically with the nature of the affirmative action requirement. The extent to which these expanded regulations will be implemented by compliance agencies depends upon OFCC capabilities and determination. Until recently, its own activities did not offer encouragement. For example, it was unable to succeed in requiring adequate enforcement of similar affirmative action requirements.

Monitoring of agency Executive order enforcement is a key ingredient in an effective Federal contract compliance program. Establishment of uniform policies and the assurance that those policies are carried out are the chief responsibilities of OFCC. In the past OFCC monitoring has been haphazard—a series of *ad hoc* efforts that did not appear to have lasting effect. A recent OFCC reorganization, the new development of an industry target selection system and the redistribution of compliance agency contractor responsibilities, seems to have improved OFCC's monitoring capability but no procedures for monitoring have been developed. The value of these structural changes is totally dependent upon actions yet to be taken.

After several false starts, OFCC has finally established the firm basis for a governmentwide construction compliance program and has adopted a strategy for its application. The Philadelphia Plan approach of requiring minority group percentage employment goals for specific construction trades provides the basic standard of construction compliance. OFCC has indicated that it is prepared to impose Philadelphia-type plans in 91 additional cities unless those cities devise plans of their own to increase minority utilization in the construction trades. These community-developed plans, or "hometown solutions", however, have been forthcoming in only a few cities and their viability has not yet been established,

nor has provision been made for their enforcement.

Of the 15 departments and agencies assigned compliance responsibility, the Department of Defense (DoD), which, in terms of dollar amount, is responsible for more than half of Federal contracting, is the most important. The Department's performance has been disappointing. For example, in two recent contract compliance matters involving southern textile mills and a large aircraft manufacturer in St. Louis, DoD initially failed to follow its own procedures. Although some changes have been made to prevent recurrence of these failures, the compliance program of the Department still has serious structural defects. In addition, its staff is too small and its compliance review efforts have proved inadequate.

The 14 other agencies responsible for contract compliance in some important industries have failed to assign sufficiently high priority to this responsibility. These agencies have limped along with inadequate staffs and cumbersome administrative structures which have produced a variety of inadequate compliance efforts.

The use of sanctions and the collection of significant racial and ethnic data by OFCC and the compliance agencies are two essentials of a successful contract compliance program that have been missing to date. The use of sanctions is necessary to make the enforcement program credible. Yet no contract has ever been terminated nor any company debarred for Executive order violation. Rarely have any hearings been held concerning noncompliance.

The collection of data would permit compliance agencies and OFCC to adequately evaluate their efforts and the total effect of the entire program. Currently, however, few data are collected and what exist are inadequate to inform the agencies of the extent of progress in minority employment, or indeed, whether any progress is being made. Plans for extensive data collection and analysis are only in their initial stages.

Equal Employment Opportunity Commission

At the close of Fiscal Year 1970, the Equal Employment Opportunity Commission, which has responsibility for administering Title VII of the Civil Rights Act of 1964, will have been in operation for 5 years. It is not much closer to the goal of the elimination of employment discrimination than it was at its inception.

Many factors account for EEOC's inability to substantially reduce employment discrimination. Foremost among them have been lack of enforcement power and grossly inadequate staff and budget resources. Unless Congress rectifies these deficiencies, the Commission will remain what one observer has called it: a "poor, enfeebled thing":

EEOC has also been crippled in its formative years by organizational and personnel problems which have resulted in an absence of continuity and direction at all levels of Commission operation. Particularly damaging have been the inordinately rapid turnover of Chairmen, Commissioners, and key supervisory personnel; long vacancies in major operational posts; an exceedingly high rate of attrition among field compliance personnel; inadequate training programs, especially for investigative and conciliation staff; insufficient coordination among the various central offices and between headquarters and the field; and failure to establish clear lines of direction for supervision of the field and for liaison with other Federal agencies.

The Commission's operations have also been hampered by haphazard programming, which is frequently on an *ad hoc* basis. Means of making maximum use of the agency's limited resources have not been devised and methods to measure its overall effectiveness have not been instituted.

As a result, the Commission has assumed a primarily passive role in the implementation of Title VII of the Civil Rights Act of 1964. Priority has been placed on the case-by-case or reactive approach to employment discrimination and emphasis has been placed on processing individual complaints of job bias.

EEOC has not adopted an initiatory posture, either through broader development of enforcement mechanisms (*e.g.*, development of class complaints, assignment of priority to cases involving patterns of discrimination), or greater use of affirmative action programs, (*e.g.*, hearings or technical assistance).

As a consequence of these numerous deleterious factors, both enforcement and affirmative action under Title VI have been retarded. Among the more significant implementation failures are the following:

Complaint processing: the major mechanism relied upon by the Commission to combat job discrimination now takes 2 years to conclude a case and in more than 50 percent of the com-

plaints in which the Commission finds "reasonable cause", it is not able to secure relief for the aggrieved party.

The Commissioner charge has not been utilized to secure compliance in instances of pattern or industrywide discrimination. A private lawsuit under section 706 has never been filed as a result of unsuccessful conciliation of a Commissioner charge.

Despite the increased emphasis placed by EEOC on the 706 suit as a means of implementing Title VII, sufficient legal assistance has been unavailable to charging parties in bringing such actions.

The program to improve operations of State and local antidiscrimination agencies has not resulted in a decrease in the 86 percent of cases that EEOC must process *de novo*. Nor has the Commission entered into agreements with any State agencies, whereby it waives its right to reassume jurisdiction, in any class of cases.

Finally, the potential effectiveness of public hearings has been greatly diluted by failure to conduct those hearings jointly with an enforcement agency—OFCC, the predominant interest agency, or the Department of Justice—or follow them up in any meaningful way.

Department of Justice

The Department of Justice, through its litigation function, plays a key role in enforcing Title VII and the Executive order on contract compliance. The Department's impact so far, however, has been limited. The Employment Section of the Civil Rights Division, which carries out this Justice responsibility, is handicapped by its small size. Its 32 authorized attorney positions are not sufficient to have a significant effect upon discriminatory employment practices. Even if the Employment Section were doubled, however, the widespread reform needed in the employment area cannot realistically be expected through the current practice of piecemeal litigation.

In addition, the Division has limited its activities to cases involving discrimination against Negroes. It has brought no cases in which American Indians, Spanish surnamed Americans, or women are the major victims of employment discrimination. The Division, to date, has sought to bring lawsuits involving different types of businesses, geographic locations, and forms of the

discrimination. It has not done so, however, with regard to the victims of discrimination.

Finally, the Justice Department has not recognized the importance of cooperating with EEOC and OFCC so that its litigation becomes part of a coordinated total Government effort to eliminate employment discrimination. The Division has failed to devote sufficient staff resources to this important matter. The Division concedes that it can litigate only a handful of the potential employment cases each year and has devoted serious consideration to make the most effective use of its meager resources. It has done this, however, almost entirely within the context of litigation and has accorded low priority to developing a coordinated Government effort.

It is important that the Civil Rights Division give equal attention to defining its role as an element of the entire Federal equal employment opportunity effort. Rather than focusing solely on internal procedures and resources, the Division must analyze the way the power to sue can be most insightfully used in conjunction with the EEOC's conciliation power and OFCC's sanction of contract termination or debarment. It should attempt to determine the specific circumstances under which each enforcement method is most appropriate and to create methods by which the three agencies can supplement each other's enforcement activities.

Coordination

Despite overlapping legal jurisdiction, EEOC, OFCC (and the 15 contract compliance agencies), and the Department of Justice have not yet begun to coordinate their efforts effectively. Each has independently developed its own goals, policies, and procedures. Until recently, no systematic attempts were made to share data or complaint investigation and compliance review findings. Joint reviews or conciliations have rarely been conducted and, when attempted, have not proved successful examples of coordinated action. Employers occasionally have been reviewed by two or three different Federal agencies and inconsistent demands have been made upon the firms.

As a result, the entire Federal effort to end employment discrimination in the private sector has suffered. This failure of coordination is particularly unfortunate since each of the participat-

ing agencies is grossly understaffed for compliance functions.

In July 1969, an Interagency Staff Coordinating Committee was formed to develop mechanisms to cope with these problems. The results of the Committee's weekly deliberations have thus far been disappointing. Although it has issued an agreement which attempts to make maximum use of the investigative findings of EEOC by involving OFCC in the enforcement stage, it has not completed action on any of the other matters referred to it. Among the reasons for the Committee's lack of success are the low priority accorded to coordination by the three agencies involved, the fact that the agencies are not represented at Committee meetings by officials on a policymaking level, and the fact that the Committee operates without deadlines.

Formation of the Committee is salutary, but only as a stopgap measure. Until EEOC, OFCC, and the Department of Justice fully recognize the need for close cooperation and until an effective procedure is developed to assure that they act in coordination, progress in achieving the goal of equal employment opportunity will continue to be impeded.

Chapter 3

Fair housing is the law of the land. All three branches of the Federal Government have acted to assure that housing is open to all without discrimination. The executive branch acted first, through issuance of the Executive order on equal opportunity in housing in November 1962, to prohibit discrimination in federally assisted housing. Congress, in 1964, added the support of the legislative branch by enacting Title VI of the Civil Rights Act of 1964, proscribing discrimination in programs of activities receiving Federal financial assistance. Four years later, Congress passed the Civil Rights Act of 1968, including a Federal fair housing law (Title VIII), which prohibits discrimination in most of the Nation's housing. And later that year, the Supreme Court of the United States, in *Jones v. Mayer and Co.*, relying on an 1866 civil rights law enacted under the authority of the 13th amendment, ruled that racial discrimination is prohibited in *all* housing, private as well as public.

Under Title VIII and the *Jones* decision equal housing opportunity is a broadly protected legal

right. Fair housing, however, like other legal civil rights, is not self-enforcing. In an area where for decades racial discrimination has been standard industry practice and where residential segregation has become firmly entrenched, vigorous enforcement and creative administration of fair housing laws are necessary if the rights that are legally secured are to be achieved in fact. Under Title VIII and *Jones* the tools provided for enforcement leave much to be desired. Primary reliance is on litigation, with the principal burden for instituting it placed on the person discriminated against. In addition, the Department of Justice may bring lawsuits under Title VIII in cases of patterns or practices of discrimination. The Department of Housing and Urban Development (HUD) is given primary responsibility for enforcement and administration of the fair housing law, but the only enforcement weapons specifically placed at its command are "informal methods of conference, conciliation, and persuasion". HUD is not authorized to issue cease and desist orders, nor may it institute litigation itself.

Despite the relative weakness of the enforcement machinery specifically provided under Title VIII, other mechanisms are available to assist in assuring compliance. Title VI and the Executive order on equal opportunity in housing, for example, both authorize use of the substantial leverage provided by Federal assistance to housing as a means of achieving an open housing market. In addition, Title VIII, itself, specifically directs HUD and all other executive departments and agencies to administer their programs and activities relating to housing and urban development in a manner which affirmatively furthers the purpose of fair housing. Title VIII also authorizes HUD to use techniques in addition to those strictly concerned with enforcement to promote the goals of fair housing.

On the basis of the Commission's examination of the activities of HUD and other agencies which can play a key role in the effort to achieve an open housing market, the results after 2 years of experience under Title VIII are disappointing. Few agencies have undertaken the kind of affirmative program necessary to carry out their fair housing responsibilities effectively. Most have not even fully recognized what their responsibilities are. Their activities have been characterized by a

narrow view of the goals of fair housing and a failure to attune their programs to achieve them.

Department of Housing and Urban Development

HUD is the key Federal agency in the fair housing effort. Title VIII places principal enforcement responsibility in HUD and the agency has the major fair housing responsibility under Title VI and the Executive order on equal opportunity in housing.

The Department's performance in carrying out its responsibilities under the various Federal fair housing laws has not been such as to fulfill their potential. To some extent, its failure can be attributed to impediments inherent in the laws themselves, such as the lack of enforcement powers just discussed. HUD also suffers from restrictions in financial and staff resources for civil rights common to nearly all agencies.

The Department, however, has not made maximum use of the enforcement tools at its command nor has it made the best disposition of the available resources. Its activities have reflected a narrow approach toward achieving fair housing goals. Under Title VIII, the Department has emphasized complaint processing almost to the exclusion of other, potentially more effective means of furthering the cause of fair housing. Under Title VI and the Executive order, there has been almost no activity at all. As of April 1970, the Department had not yet even taken the basic step of establishing complaint procedures.

Although the Department has begun to assume a leadership position in attempting to focus the entire Federal housing effort toward promoting equal housing opportunity, it has been less vigorous in shaping its own programs to that end. Decisions in such key areas as site selection and tenant selection have not yet been made. It was not until April of this year that the decision to collect data on racial and ethnic participation in HUD programs was made and as of August 1970, data had not yet been collected. Confusion still exists as to the assignment of responsibility for Title VI among the various units of the Department and there is little coordination between Equal Opportunity staff and staff which administer the Department's substantive programs.

A number of the problems have been recognized by the Assistant Secretary for Equal Opportunity and efforts are being made to correct many of

the deficiencies. In view of the fact that more than 2 years have elapsed since the Federal fair housing law was enacted, however, the fact that these deficiencies persist is a cause of major concern.

Department of Justice

The Department of Justice is one of the few Federal agencies with fair housing responsibilities that has attempted to carry them out vigorously and aggressively. Under Title VIII, the Department of Justice has the authority to bring lawsuits in cases involving a "pattern or practice" of Title VIII violations. This responsibility is carried out by the Housing Section of the Civil Rights Division.

Despite staff restrictions, the Housing Section has undertaken an aggressive program of litigation under Title VIII. It has instituted sensible priorities to govern its activities and has attempted to bring wide publicity to the lawsuits it institutes to inform as many people as possible of their rights under Title VIII and to make it known that the law is being enforced. The section also has been conscientiously seeking to establish a close working relationship with HUD to assure effective coordination of the activities of the two Departments.

Unless the size of its staff is substantially increased, however, it will be unable to maintain the current pace of activities. The section has filed a number of cases. Soon, many of these will be coming up for trial and the lawyers will be required to devote their time to them. It then will be impossible to do the work necessary to file additional cases. The section must also expand its activities to include cases involving discrimination against such minority groups as Mexican Americans, Puerto Ricans, and American Indians.

Veterans Administration

The Veterans Administration loan guarantee program, together with the FHA mortgage insurance program, represent the major direct Government involvement in the private housing market. The VA program, which uses the Government guaranty against loss as a means of inducing private lenders to make home loans to veterans under favorable terms, is covered both by the Executive order on equal opportunity in housing and Title VIII. VA rarely has assumed an aggressive posture in carrying out its civil rights responsibilities. Usually, it has followed

the lead of its sister agency, FHA, in adopting civil rights requirements and procedures. Sometimes it has failed to go along with even the minimal steps taken by FHA.

For example, in June 1969, FHA, in light of the enactment of Title VIII and the Supreme Court's decision in *Jones v. Mayer and Co.*, prohibiting racial discrimination in all housing, eliminated its exception of one and two-family, owner-occupied housing from coverage under the Executive order. As of April 1970, VA still retained that exception. Similarly, VA's policy on guaranteeing loans on property carrying racially restrictive covenants lags behind that of FHA in terms of promoting the cause of equal housing opportunity.

It moved ahead of FHA in 1968 by beginning to collect data on minority group participation in the sale of VA-acquired properties. As of April 1970, FHA still did not collect these data. Further, in August 1969, VA proposed to collect data on racial and ethnic participation with respect to the loan guarantee programs. Collection of these data was held up pending HUD concurrence. In April 1970, HUD announced a decision to collect racial and ethnic data on all its programs, but as of August 1970, it was still in the process of resolving problems of implementation. Presumably, when problems of implementation are worked out by HUD, the VA proposal will be put into effect.

VA has done little in carrying out its responsibilities to assure compliance with nondiscrimination requirements. Other than requiring a nondiscrimination certification from builders, the only compliance reviews conducted by VA are through complaint investigations. The agency has received relatively few complaints and has been of assistance to minority group veterans in only a handful of cases brought to its attention. Further, any builder found guilty of discrimination is reinstated by VA once he agrees to make the dwelling unit available to the minority group veteran. No requirements are imposed upon such a builder other than to agree to sell to all persons without discrimination. This, of course, is precisely the agreement the builder originally made and subsequently violated.

Federal Financial Regulatory Agencies

The great majority of the Nation's housing is financed through conventional (non-FHA or

VA) loans by mortgage lending institutions supervised and benefited by Federal agencies. The institutions are savings and loan associations, almost all of which are insured by the Federal Savings and Loan Insurance Corporation (FSLIC) and regulated by the Federal Home Loan Bank (FHLB), and commercial and mutual savings banks, nearly all of whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC) and regulated either by the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or FDIC. These institutions are prohibited under Section 805 of Title VIII from discriminating in the financing of housing. Further, in view of their central role in the housing market, a requirement of nondiscrimination imposed by them on builders and developers with whom they deal could be a major factor in achieving the goals of fair housing.

Each of the four agencies employs a large number of examiners who visit member lending institutions on a regular and systematic basis to determine compliance with various laws affecting them. The lending institutions, in turn, are required to keep written records so that examiners can determine instances or patterns of non-compliance.

With this network of compliance officers, these agencies have the capacity for conducting intensive and complete compliance reviews. This network of compliance, however, is not being utilized to carry out the agencies' responsibilities under Title VIII. Adequate records to permit examiners to determine compliance with the requirements of Section 805 are not kept. The agencies have agreed only to send a questionnaire to their member institutions to determine the extent to which the problem of discrimination in mortgage lending exists. This can only be considered a first step. As in other areas of civil rights compliance, the required collection of racial and ethnic data is crucial. Further, the agencies have taken no steps with respect to the practices of builders and developers financed through these institutions.

The General Services Administration and Site Selection For Federal Installations

The economic benefits frequently generated by the location of Federal installations can be a persuasive force in opening up housing oppor-

tunities throughout metropolitan areas and furthering the purposes of fair housing. Increasingly, major Federal installations have been locating or relocating outside central cities in suburban and outlying parts of metropolitan areas. Until recently, the housing needs of lower-income employees and minority group employees were not specifically among the considerations taken into account with site decision.

The General Services Administration, responsible for acquiring space for most Federal agencies, possesses the greatest potential for promoting uniform policy to assure the availability of housing for lower-income and minority group families in communities where Federal installations locate. In March 1969, GSA took a significant forward step by announcing a policy to avoid locations lacking adequate low- and moderate-income housing in reasonable proximity. This policy has not yet fully been implemented. Further, neither GSA nor other Federal agencies yet have adopted policies aimed at assuring access to housing for minority group members.

In its report on "Federal Installations and Equal Housing Opportunity", this Commission recommended a detailed Executive order aimed at both aspects of the problem. Shortly after the Commission's report was issued, the President issued an Executive order setting forth criteria to be considered in selecting sites for Federal installations. Although the order specified, as one of the criteria, availability of adequate low- and moderate-income housing, it, too, was silent on the matter of racial discrimination.

In March 1970, HUD initiated a series of meetings with major departments and agencies aimed at establishing a uniform site selection policy for Federal installations dealing both with the matter of housing for lower-income families and for minority group families. As of April 1970, these meetings were continuing.

The Department of Defense and Off-Base Housing

The program of equal opportunity for military personnel in off-base housing was initiated by the Department of Defense prior to the passage of the Federal fair housing law and the *Jones v. Mayer* decision. This early action by the Defense Department resulted in significant progress. The program has substantially improved the open housing situation in the areas around the par-

ticipating military installations. For example, only 22 percent of the surveyed facilities in July 1967, before the program was started, were open to Negro servicemen. As of June 1969, the owners of 96 percent of the surveyed housing units had signed an assurance of open housing. In Maryland and northern Virginia, where many large military installations are located, the percentage of open housing rose from 27 percent and 36 percent respectively to well over 90 percent.

However, the problems have not disappeared entirely. The percentage in Louisiana, for example, is still below 70 percent. It is also clear that many landlords sign assurances intending never to rent to minority servicemen. The Department is now first gathering rough statistics on the number of "open" facilities which are actually integrated. A review of the incomplete returns indicates that the degree of integration is still low.

Chapter 4

The Federal Government maintains a large number of federally assisted programs, many of which are aimed at meeting key social and economic problems of the American people—housing, education, health, job training, economic development. These programs frequently take the form of benefits flowing directly from the Federal Government to the individual beneficiary, such as social security payments, Small Business Administration business loans, and farm support subsidies. Other Federal programs involve one or more intermediaries, and program benefits reach individual beneficiaries indirectly, through the intermediaries. Some of these indirect assistance programs take the form of cash disbursements—grants or loans—which go to intermediaries to be used for specified program purposes, as in the case of urban renewal and Federal aid to education. In other instances, the indirect assistance is in the form of Federal insurance or guarantees of loans for specific purposes made by private lending institutions, as in the case of VA housing loan guarantees and HEW student loan insurance.

All three forms of Federal program assistance carry prohibitions against discrimination. In direct assistance programs, which involve only the Federal Government and the individual beneficiaries, the fifth amendment to the Constitution clearly prohibits racial or ethnic discrimination

by Federal officials who administer these programs. In indirect assistance programs that operate through Federal insurance and guarantees of loans made by intermediaries, the constitutional prohibition against discrimination applies with equal force. In indirect assistance programs involving loans or grants, this constitutional prohibition is strengthened by legislation—Title VI of the Civil Rights Act of 1964. Although Federal agencies that administer these programs of direct and indirect assistance have generally recognized the legal principle of nondiscrimination, the manner in which they have sought to translate the principle into operating practice in the administration of their programs varies widely. In the case of Title VI, some agencies have made efforts to enforce nondiscrimination requirements aggressively, but in no case have Federal agencies implemented these nondiscrimination requirements with maximum effectiveness.

Title VI and Federally Assisted Programs

Title VI of the Civil Rights Act of 1964 has great potential for eliminating discrimination throughout the country. The loan and grant programs subject to its provisions affect the lives of most Americans and are of vital importance to the Nation's social and economic growth. Community development programs, such as urban renewal and Federal aid for the construction of highways, are necessary to the orderly development of cities and metropolitan areas. Federal aid for education is playing an important role in the effort to assure quality education for the Nation's children. Federal programs of health and welfare are needed to assist in caring for those who are infirm and indigent. Through these programs, substantial leverage is afforded to attack the problem of racial and ethnic discrimination on a broad front. Title VI provides Federal departments and agencies with strong authority to make use of this leverage. Thus far, however, the Federal effort under Title VI has failed to match the law's promise.

The mechanisms developed by Federal agencies with Title VI responsibilities have glaring deficiencies. For example, as of June 1970, some agencies with programs subject to that law had not yet issued regulations to effect its provisions.

In addition, there are inconsistencies in the way agencies view the scope of their responsibilities under Title VI. Uniformity of interpretation has

not yet been achieved even with respect to the meaning of basic statutory terms, such as "Federal financial assistance", "program or activity", or "discrimination".

In addition to the problem of lack of uniformity and inconsistent interpretations by agencies with Title VI responsibilities, there are a number of deficiencies common to nearly all Title VI agencies. All are severely handicapped by a lack of sufficient staff to carry out Title VI responsibilities adequately. In most agencies, the official in charge of Title VI compliance has relatively low status, as measured by title, grade, authority, and relative position within the administrative hierarchy. In some instances, Title VI duties are secondary to other functions and are shared with program managers over whom the Title VI officers have no authority. Rarely do agencies conduct training programs for civil rights or program personnel to assist them in developing the knowledge and awareness necessary to carry out effective Title VI compliance programs. In those cases where training programs are conducted, they tend to be superficial and inadequate.

The methods agencies have devised for achieving and monitoring compliance with Title VI requirements have had serious weaknesses. Undue reliance has frequently been placed on paper assurances, with no attempt made to review the actual compliance status of the recipients. In the case of at least one agency a number of recipients have never even submitted assurances.

Further, although Title VI regulations provide for submission of compliance reports by recipients to assist agencies in determining their compliance status, few agencies have made adequate use of this important monitoring device. In some cases, recipients of Federal aid have never been asked to furnish compliance reports or to provide information showing racial or ethnic participation in their programs. In others, where such information is provided, the data lack sufficient detail to be of real use as a means of determining compliance. Many reporting systems which otherwise are adequate are rendered ineffective because information is elicited too infrequently (e.g., every second or third year).

Of those agencies which have developed good compliance reporting systems, most have not developed the capacity to utilize the data collected to its fullest potential. Few agencies follow up on

the information revealed in compliance reports by conducting onsite reviews of recipients' facilities and services to determine the actual state of compliance. Some agencies never have conducted a single onsite review of any of their recipients. No agency has reviewed more than a small fraction of its recipients and many of the reviews that have been conducted have been superficial or otherwise lacking in thoroughness. Frequently persons assigned to conduct field reviews for purposes of Title VI compliance are drawn from program bureaus and lack any Title VI training. Further, to the extent compliance reviews are conducted, they are almost always conducted well after the funds are committed and the program is underway. In many cases, it is then too late for effective corrective action to be taken. For example, a water and sewer line planned and constructed so as to bypass those areas where minority families are heavily concentrated cannot easily be altered once it is built, nor can the configuration of a federally aided highway, which effectively seals off centers of minority population from the rest of the community, readily be changed after it is completed.

Another problem common to most agencies with Title VI responsibilities has been their passive approach to implementation. Most rely heavily on receipt of complaints as the principal indicator of compliance. The way they carry out their responsibility for complaint processing, moreover, leaves much to be desired. Inordinate delays in investigating complaints are commonplace. In some instances, complaint investigations are not performed adequately. Sometimes agencies fail to conduct any investigation at all.

One of the strengths of Title VI lies in the strong sanctions available to Federal departments and agencies to bring about compliance. Among the available sanctions is termination of Federal financial assistance. It has rarely been used. Rather, many agencies have placed sole reliance on voluntary compliance as the means of ending discrimination in their programs. Protracted negotiations with noncomplying recipients have taken place, sometimes extending over a period of several years, while Federal funds continue to flow. In most instances where the sanction of fund termination has been used, it has been imposed only after a prolonged course of investigation, negotiation, hearing, and appeal and review, during which time discriminatory

practices have often continued unabated. In addition, the mechanism of judicial enforcement, intended to be used in addition to the administrative procedure leading to fund termination, is currently being used instead of the administration procedure, thus further weakening the force of Title VI.

Because Title VI involves well over 20 Federal departments and agencies and covers some 400 Federal loan and grant programs, coordination of agency efforts is of particular importance. It has been inadequate.

Under Executive Order 11247, the Department of Justice is vested with responsibility for coordinating and supervising enforcement of Title VI. The Department consistently has failed to devote adequate manpower or resources to the task. Over the years, Title VI coordination has become increasingly peripheral to the work of the Department. Originally, this responsibility was carried out by a Special Assistant to the Attorney General, who reported directly to the Attorney General. Now it is carried out by a junior attorney, who directs a small unit within the Civil Rights Division. He reports to a junior Deputy Assistant Attorney General. Further, the Department of Justice views its Title VI responsibility narrowly, focusing on litigation rather than on assuring effective administrative enforcement by various Federal agencies. Liaison with agencies is maintained primarily on an *ad hoc* basis. The inconsistencies in agency interpretations of their responsibilities under Title VI and the general inadequacy of agency compliance programs can be attributed, at least in part, to the failure of the Department of Justice to carry out its coordination responsibility with maximum effectiveness.

Programs of Insurance and Guarantee

Federally insured and guaranteed loan programs constitute a significant economic benefit for millions of persons in the United States. They involve assistance in such key areas as housing, education, business entrepreneurship, and agriculture. In terms of dollar value alone, these programs will amount to some \$40 billion in Fiscal Year 1971. Although programs of insurance and guarantee, like Title VI programs, generally operate through intermediaries intervening between the Federal Government and individual beneficiaries, these programs are expressly

excluded from coverage under Title VI to the extent they involve assistance solely in the form of insurance or guarantees. Despite this exemption from Title VI coverage, discrimination in programs of insurance and guaranty is prohibited by the fifth amendment to the Constitution. Further, most agencies that operate these programs are prohibited from practicing or permitting discrimination, either by Presidential Executive order or by regulations which they have issued.

The enforcement mechanisms established by these Federal agencies, however, have not been adequate to assure compliance with their non-discrimination requirements. For example, no agency requires compliance reports from intermediaries such as lending institutions. The racial and ethnic data concerning program participation that agencies collect themselves are frequently inadequate to inform the agencies whether minority group beneficiaries are participating on an equitable basis. None of the agencies conducts affirmative compliance reviews to determine firsthand whether intermediaries are following non-discriminatory policies and practices. Sole reliance for enforcement most frequently is placed on complaint procedures. These procedures have rarely been made formal, nor have specific guidelines been set down governing investigations and resolution of complaints. Further, little information is provided to the public or to Federal officials responsible for assuring compliance concerning the existence of nondiscrimination requirements or the procedure to be followed when discrimination occurs.

If the mechanisms established to enforce Title VI have been inadequate, the civil rights enforcement mechanisms for programs of insurance and guaranty are in a barely rudimentary stage.

Direct Assistance Programs

Direct assistance programs—those in which Federal benefits flow directly to individual beneficiaries—involve benefits, such as social security, business loans, and assistance to veterans, which are of importance to many Americans. In terms of dollar value, they will amount to some \$75 billion in Fiscal Year 1971, three times as much as the amount represented by grant-in-aid programs covered by Title VI.

Discrimination in direct assistance programs clearly is prohibited by the fifth amendment to

the Constitution. Unlike indirect assistance programs involving loans, grants, insurance, or guarantees where statutory and administrative procedures and requirements have been established to prevent discrimination by public and private program intermediaries, almost no action has been taken to implement nondiscrimination requirements in direct assistance programs. Congress has not addressed itself to the problem of discrimination in these programs, nor has the President or the agencies that operate these programs taken any significant action to assure against such discrimination. Thus, the Federal Government is in the position of holding itself to a lesser standard of nondiscrimination enforcement than it imposes on others.

These programs, which operate without intermediaries, frequently limit the discretion of Federal officials in determining the rights of beneficiaries. Hence the opportunities for discrimination here are somewhat more remote than in programs of indirect assistance. Nevertheless, the opportunities do exist and charges of discrimination have been made.

Currently, little in the way of mechanisms exists to assure equal opportunity in direct assistance programs. Compliance reviews are not conducted. Data on racial and ethnic participation frequently are not collected at all and, when collected, are not adequately used. There also are no complaint procedures specifically concerned with racial or ethnic discrimination, nor are personnel given special guidance on how such complaints are to be investigated or what steps should be taken to eliminate discrimination when found.

Chapter 5

Over the past 80 years, Congress has created a number of regulatory agencies and provided them with authority to control the activities of specific industries. For example, the Interstate Commerce Commission regulates railroads and motor carriers; the Federal Communications Commission regulates radio and television stations, and telephone and telegraph companies; the Federal Power Commission regulates gas and electric companies; the Civil Aeronautics Board regulates airlines; the Federal Maritime Commission regulates water carriers.

Congress also has created regulatory agencies with responsibility for controlling specific busi-

ness practices, rather than particular industries. For example, the Federal Trade Commission has responsibility for preventing deceptive business practices and unfair competition, regardless of the industries in which these practices occur. By the same token, the Securities and Exchange Commission has responsibility for protecting investors and the public by requiring full disclosure of financial information by companies offering stock or other securities. The SEC's authority also extends across industry lines.

The common standard governing all of these regulatory agencies is that of serving the public interest. There are a number of civil rights issues that necessarily arise in connection with the activities of the industries they regulate and, by close adherence to the standard of serving the public interest, the agencies could contribute substantially to furthering the cause of civil rights and contributing to social and economic justice.

For example, nearly all of the business enterprises they regulate are subject to the equal employment opportunity requirements provided under Title VII of the Civil Rights Act of 1964. Many also are Government contractors and, by virtue of that status, are subject to the equal opportunity requirements of Executive Order 11246. In view of the degree of control exercised by the agencies over the industries they regulate, the agencies could be a significant force for promoting the cause of equal employment opportunity.

In some industries, excellent opportunities are presented for enabling minority group members to participate in business ownership and management. For example, the motor carrier industry and the radio and television industry both require relatively small capital investments. By virtue of the licensing authority of the ICC and the FCC, these agencies could contribute measurably to facilitating greater minority business entrepreneurship. Moreover, minority participation in radio and television could be of special help in creating greater understanding within the majority community of the deep-seated injustices which minority group members experience. The agencies could also play a key role in eliminating discrimination or segregation of services and facilities provided by members of the industries they regulate.

The agencies, in most cases, have ignored their civil rights responsibilities. In those cases where

they have accepted these responsibilities, their performances have been disappointing.

For example, only one of the five agencies that regulate specific industries—FCC—has taken steps to assure against employment discrimination by the members of its industry. The FCC has issued a rule against such discrimination by radio and television stations and is planning to issue a similar rule regarding telephone and telegraph companies. None of the other four agencies under consideration in this chapter has given indication of taking a similar step. Some of the FCC's actions, such as license renewals of radio stations that apparently discriminate in their employment policies, have suggested that the agency does not consider its antidiscrimination rule to have a high priority.

Neither the ICC nor the FCC has taken advantage of the special opportunities afforded them to promote greater minority participation as owners and managers in the industries they regulate. In fact, the standards used by the two agencies in approving license applications tend to exclude new entrepreneurship in favor of protecting those already entrenched in the industry.

Further, while most of the agencies operate under statutes which prohibit discrimination in facilities or services offered by industry members, few have even taken rudimentary steps to carry out their responsibility of enforcing the statutory prohibitions against overt discrimination. Little, if anything, has been done to eliminate the more subtle forms of discrimination in their industries, such as programming policies of FCC-licensed radio and television stations and recreational facilities provided at FPC-licensed hydroelectric plants. Nor have any of the agencies even attempted to inform themselves of the extent to which minority group members are participating in industry-provided services and facilities.

The five agencies charged with responsibility for regulating specific industries have barely joined in the civil rights effort being carried out by other Federal departments and agencies. To the extent they have adopted rules and policies against discrimination, they generally enforce them solely through the processing of complaints. Only the FCC has adopted an affirmative program to assure against discrimination. None has taken even the basic step of establishing a staff or single staff member with direct responsibility for implementing the agency's civil rights func-

tions. Thus, such important matters as devising affirmative civil rights programs, coordinating the agency's civil rights responsibilities, establishing liaison with other departments and agencies having similar civil rights functions, and proposing new ideas for strengthening the agency's civil rights performance, are largely ignored insofar as no one is given specific responsibility for handling them.

The Federal Trade Commission and the Securities and Exchange Commission, although they do not regulate specific industries, are charged with responsibilities that carry significant civil rights implications. For example, the FTC, in carrying out its responsibility to prevent deceptive practices, could be an affirmative force for protecting the ghetto poor from unscrupulous businessmen who exploit them. Indeed, the FTC has recognized the need to act in this area. Its one effort, however, involving creation of a Washington, D.C. task force, generally failed because of inadequate staff and lack of imaginative implementation. In carrying out its responsibility to enforce antitrust laws, the agency should, in appropriate cases, be concerned with the effect of incipient mergers on the economy of ghetto areas, including such matters as unemployment, price levels, and the quality of goods and services that will be available. Currently, the FTC does not view its functions with sufficient breadth to take these matters into account.

The SEC, in carrying out its responsibility of assuring full disclosure of information by registering companies, could contribute to more effective civil rights enforcement. For example, the agency could require registering companies to disclose the fact that sanctions are being imposed for violation of Federal contract requirements under Executive Order 11246, of pending lawsuits under Title VII of the Civil Rights Act of 1964, and findings of employment discrimination by the Equal Employment Opportunity Commission. In addition, if the ICC, the CAB, or the FPC issue rules prohibiting employment discrimination by their regulatees, as the FCC has done, a regulatee found to be in non-compliance with the rule should be required to disclose this fact to the SEC. The requirement of public disclosure not only would tend to strengthen enforcement of equal employment opportunity laws, but also would be of legitimate interest to potential stockholders who are con-

cerned over possible loss of important contracts or pending litigation against companies in which they are thinking of investing. Currently, the SEC does not require the disclosure of such information.

Further, stockholders, by way of the proxy mechanism, could be in a position to bring an end to discriminatory practices by the companies in which they own stock and to transform these companies into instruments of social progress. The SEC, however, currently prohibits use of the proxy mechanism for the purpose of promoting "general economic, political, racial, religious, and social" causes, thus preventing socially motivated stockholders from even suggesting changes in company policy related to any of these matters.

Each of the regulatory agencies considered in this chapter can play a significant role in promoting the cause of civil rights. None has made more than a half-hearted effort to do this. Some of the agencies have failed to recognize that they have civil rights responsibilities. In this Commission's view, only after all of these agencies have acted forcefully and affirmatively to promote civil rights and end social and economic injustice can they truly proclaim themselves to be protectors of the public interest.

Chapter 6

In several of the specific subject areas covered by civil rights laws, provision has been made for mechanisms to coordinate the activities of agencies that have compliance and enforcement responsibility. In housing, HUD is charged with this responsibility by statute. Coordination of Title VI activities is the responsibility of the Department of Justice, pursuant to Presidential Executive order. In Federal employment, the Civil Service Commission has this responsibility, also by virtue of Presidential Executive order. And in private employment, a loose-knit arrangement among OFCC, EEOC, and the Department of Justice serves this function.

Mechanisms that cut across subject area lines also have been established to coordinate agency civil rights and related activities. Some of these mechanisms, such as the Federal Executive Boards, are limited in function to disseminating information concerning Federal programs on the local level and assuring that they are carried

out in a coordinated manner. Others, such as the Community Relations Service and the Cabinet Committee on Opportunity for the Spanish-Speaking, also serve as advocates for minorities in general or for particular minority groups, and seek to make the Federal Government more responsive to the needs of the minority community. These agencies and mechanisms play little role in determining overall civil rights policy and they have no authority to make binding decisions on how departments and agencies carry out particular civil rights and related laws.

There are agencies and mechanisms, however, that play important roles, at the highest level of Government, in determining across-the-board civil rights programs and policies, and whose functions involve decisions that can directly influence the compliance and enforcement activities of departments and agencies having various civil rights responsibilities. The Department of Justice, through its functions as the Government's litigator and chief legal advisor, can be key to devising strategies and priorities in civil rights enforcement and to determining how broadly or narrowly departments and agencies construe their civil rights responsibilities. The Bureau of the Budget, through its functions of reviewing budgetary submissions by all Federal departments and agencies and planning and evaluating Federal programs, can stimulate greater civil rights compliance activities. And the President's own White House staff, through the close association and direct access that many of its members have with the President, possesses the persuasive leverage necessary to induce significant changes in overall civil rights policy and in the way departments and agencies carry it out.

Federal Executive Boards (FEB's)

As previously noted, Federal Executive Boards were established in 1961 as vehicles for rapid communication of Administration policy to the field and to facilitate coordination among the regional offices of the various agencies located in particular cities and metropolitan areas. Although never given specific civil rights duties, the FEB's have become increasingly involved in civil rights and related matters, particularly in the period following the 1965 riot in Watts.

The FEB's, while they have enjoyed some success—most notably, the Philadelphia Plan concerning equal employment opportunity in the

construction trades, which was initiated in 1967 by the Philadelphia FEB, and a 1968 study of Federal program delivery in Oakland, which was undertaken by the San Francisco FEB—have proved to be poor vehicles for coordination of civil rights and related Federal programs in urban areas, particularly as a source of program innovation and coordination. There are several reasons for their relative ineffectiveness. Lack of money and staff, infrequency of meetings, and lack of continuity in direction and leadership account for part of the failure. In addition, they have suffered from a lack of authority to make decisions binding on particular agencies or programs. Further, their activities have been restricted to the particular metropolitan areas in which the regional offices of the agencies represented are located. Many of the problems with which they have had to deal, however, are regional in scope. They also have suffered from unwieldy size, with membership ranging from 40 to 70 members.

In 1969, the civil rights role of FEB's was restricted and a new coordinating mechanism, the Federal Regional Councils, was established to be the primary coordinating mechanism dealing with urban problems. The Federal Regional Councils have several advantages over the FEB's. First, their membership is limited to the Regional Directors of only four Federal agencies—HUD, HEW, OEO, and the Manpower Administration of Labor—which are those most concerned with human resources and urban problems. Thus, the problem of the unwieldy composition of FEB's is not present with the Federal Regional Councils. Second, the Councils, unlike the FEB's, will have full-time support of senior level personnel from the participating agencies and will receive staff assistance and be coordinated by the Bureau of the Budget. Third, they will have regional, as opposed to local, jurisdiction. Like the FEB's, however, the Federal Regional Councils will not have authority to make decisions binding on the participating agencies. The Councils were established late in 1969 and it is still too early to evaluate their effectiveness as a Federal programs coordinator in general or their potential impact in the area of civil rights.

Community Relations Service (CRS)

The Community Relations Service was created as part of the Civil Rights Act of 1964 princi-

pally as a means for dealing with the volatile reaction that was expected as a result of desegregation of public accommodations under another provision of the 1964 act. Originally a part of the Department of Commerce, it was to function as a peace-making body by providing assistance in the resolution of racial conflicts. In early 1966, it was transferred to the Department of Justice and its Director holds the rank of Assistant Attorney General.

In its early years, CRS was essentially crisis-oriented and its program, heavily concentrated in the South, operated largely as a conciliation service, attempting to keep channels of communication open between hostile groups in racial controversies. In 1966, CRS began to shift its focus to northern urban areas. It also began to change the emphasis of its activities from efforts at short-term conciliation to assistance to communities in developing substantive programs capable of bringing about long-range changes. Special emphasis was placed on the agency's media relations program, working with professional associations and with local and national newsmen to help them get a better understanding of the daily suffering of minority group citizens in the ghettos and barrios of our cities.

The emphasis of CRS activities currently has shifted even further away from crisis-orientation to program development. CRS has designated two groups of goals which govern the activities of its field representatives. The first is the building of minority institutions and consists of economic development and land use [housing and planning]. The second is aimed at changing establishment institutions and is composed of education and police-community relations. To carry out its programs, CRS necessarily has become involved on a systematic basis with the programs of other Federal agencies. For example, it has begun to establish a formal relationship with officials of the Justice Department's Law Enforcement Assistance Administration, and is making similar efforts to work closely with officials of the Small Business Administration, the Economic Development Administration, and HEW's Office of Education.

The activities of CRS differ decisively from those of most Federal departments and agencies. It is neither a policymaker, a dispenser of Federal benefits, nor a law enforcement agency. Rather, it serves as a valuable communication link

between minority groups and Federal agencies. At a time of minority alienation toward the Federal establishment, CRS potentially can be a valuable instructor, not only to the minority community but also to the Federal bureaucracy. It also serves as an advocate for minorities, seeking to make the Federal Government and Federal programs more responsive to minority needs and more sensitive to their hopes and aspirations.

Cabinet Committee on Opportunity for the Spanish-Speaking

The emphasis of nearly all Federal agencies concerned with civil rights has been on meeting the problems of black Americans. One agency exists, however, with activities relating exclusively to the problems of another minority group, subject to equally severe discrimination. This is the Spanish-speaking community, consisting of Mexican Americans, Puerto Ricans, Cubans, and other Latin Americans.

In the face of demands for increased attention to the problems of Mexican Americans, President Johnson, in 1966, formed the Inter-Agency Committee on Mexican American Affairs. The Committee consisted of the heads of seven major departments and agencies. Its mandate was to assure that Mexican Americans were receiving the Federal assistance they needed, to promote new programs dealing with the unique problems of Mexican American groups, and to suggest ways of meeting the problems facing Mexican Americans throughout the country.

The Committee's first major effort to fulfill this mandate took the form of a conference held in October 1967, in El Paso, Texas, at which representatives of the more than 1,500 Mexican Americans who attended told Federal department and agency heads about the problems they were facing. Several months later, Vicente T. Ximenes, Chairman, sent a memorandum to the President suggesting solutions to some of the more acute problems raised at the conference, such as education, housing, manpower training, health and welfare, and the administration of justice.

The work of the Committee covered a broad spectrum of subject areas and Federal programs. For example, it was involved in discussions with the Bureau of the Census resulting in the addition of a question in the 1970 census questionnaire permitting persons of Spanish heritage to identify themselves. It participated with HUD in

the process of selecting municipalities for Model Cities grants, and it attempted to persuade the Economic Development Administration to focus more of its efforts on the Southwest. It also worked with the Departments of Labor and Agriculture and the Office of Economic Opportunity in an effort to make the programs of those agencies more responsive to the needs of Mexican Americans.

Several problems limited the success of the Committee. One was funding. Since the Committee owed its existence to a Presidential directive it had to derive its financial resources from the departments and agencies which made up its membership. Its staff was extremely limited, consisting of 20 persons during Fiscal Year 1969. Since the Committee had no enforcement power and was not even sanctioned by Congress, the success of its efforts with other Federal agencies depended largely on the personal relationship between the Chairman and the President, the President's support, and the good relations between the Chairman and the heads of agencies. In addition, its activities were not directed to any Spanish-speaking group except the Mexican American.

In December 1969, Congress enacted legislation giving the Committee a statutory base and expanding the scope of its jurisdiction. The name was changed to the "Cabinet Committee on Opportunity for the Spanish-Speaking", and provision was made for appropriations for the Committee through the ordinary budget process. The Committee still has no enforcement authority and serves primarily as an advocate and lobbyist on behalf of Spanish-speaking people to improve the conditions of their life by working with various Federal agencies.

Despite the severe limits on the authority of the Cabinet Committee and its predecessor, the Inter-Agency Committee, the two units have engaged in significant projects on behalf of their constituency and have contributed substantially to making the Federal Government more aware of the problems of Spanish-speaking Americans and more responsive to their needs.

The Department of Justice

The Department of Justice holds a key position in the formulation of domestic policy and in determining how it will be carried out. The Department is the Government's lawyer and, as

such, plays a major role in determining the Government litigation policy and provides legal opinions on important matters of statutory and constitutional authority. In the area of civil rights, the Justice Department plays a particularly significant role. It possesses the most important civil rights legislation; it coordinates Title VI enforcement activity; it is the authority concerning questions of legal interpretation; and it has been the traditional pace-setter for the entire civil rights effort.

The major arm of the Department in this important area is the Civil Rights Division, which was established in 1957. The responsibilities of the Division include litigation in such areas as discrimination in public accommodations, public facilities, voting, schools, employment, and housing. The Civil Rights Division has consistently been understaffed. For example, it is less than half the size of the Antitrust Division of the Justice Department. The Division's staff shortage has not only limited the number of suits that it could participate in, but also has restricted its ability to become adequately involved in all matters of importance in the civil rights area.

Until recently, the Division did not have written priorities and still does not appear to order its priorities within the context of the national need for improved civil rights enforcement. The priorities of the Division are heavily focused on law enforcement through litigation and insufficient attention has been provided to the use of nonlitigative powers.

The Attorney General has become the most important single figure in the Government's civil rights program. However, he has not been able to coordinate the Federal civil rights effort effectively. He has no authority over other Cabinet members and represents a Department whose view of civil rights has been a relatively narrow one which tends to view problems strictly in terms of litigation. The Attorney General remains the logical individual to assume a coordinative role but he must require that his Department develop a broader perspective and set an example of imaginative and vigorous enforcement of civil rights laws if he expects other agencies to regard civil rights as a significant responsibility which cannot be carried out passively.

Bureau of the Budget

The responsibility of the Bureau of the Budget

is to provide the President with staff service to promote effective and economical administration of the Federal Government. Its function of overseeing executive management and assuring that executive departments and agencies are responsive to Presidential priorities and policies make it one of the most powerful institutions in the Federal bureaucracy and one which can have a significant impact on the Government's civil rights effort. Specifically, its central role in the budget submission process, its authority to review and approve all legislative proposals, and its responsibility for approving agency data collection proposals afford the Bureau significant opportunities for improving the effectiveness of civil rights compliance and enforcement.

The Bureau's involvement in civil rights has so far been largely limited to its participation in the legislative process.

In each of its major roles the Bureau has the opportunity for exerting leadership over agency civil rights programs. Yet basic steps to enable the Bureau to fill that civil rights leadership role have not been taken. The Bureau has not acknowledged that it has any civil rights coordinating role, nor has its staff received any civil rights training. Civil rights concerns are not systematically included in the budget review process but are considered only when individual examiners happen to have an interest in civil rights. No systematic review is made of agency civil rights programs to determine if there is sufficient funding to meet the requirements of particular civil rights laws.

Although the Bureau encourages Federal agencies to collect a wide variety of data for the purpose of determining how effectively programs are working, it has not recommended governmentwide collection of racial or ethnic data, nor has it established governmentwide guidelines concerning the kind and form of such data. This has permitted inconsistent approaches within the Government and has made it impossible for the Bureau and others to determine if Federal assistance programs are reaching minority group citizens in proportion to their eligibility.

In its review of legislation having important civil rights implications, such as housing or education, the Bureau usually neither inquires specifically into the civil rights aspects nor requests the comments of agencies that have special civil rights experience.

Recently, the President announced a reorganization plan, transferring to him all functions vested in the Bureau of the Budget and redesignating the Bureau as the Office of Management and Budget. The President has announced that he will delegate all of the Bureau's functions to the new Office. The principal concern of the new Office will be nonbudgetary matters, including program evaluation and coordination. Essentially, the Office will focus on the means of implementing national policy and evaluating the results of agency efforts to carry out their program assignments. The reorganization offers an opportunity for greater Bureau involvement in improving the effectiveness of agency civil rights compliance and enforcement. Enlarged program evaluation efforts accompanied by an increased sensitivity to the problems of minority groups could produce dramatic changes in agency policies. It remains for the Director and staff of the proposed Office of Management and Budget to make civil rights a priority issue of concern and to shape the mechanisms necessary to uncover the problems neglected for so many years by its predecessor.

The White House

The Constitution vests the full power of the executive branch of Government in the President. In the final analysis, it is the President who has responsibility for the success or failure of departments and agencies in carrying out their civil rights responsibilities. It is difficult, however, for the President to maintain full control over the decisions and actions of the various agencies that have civil rights responsibilities. Mechanisms, outside the control of the Federal bureaucracy, are needed to serve the President in assuring that civil rights programs and policies are being carried out with maximum effectiveness. One place where Presidents have sought to locate these mechanisms is the White House itself.

In 1961, President Kennedy created the first White House unit—the Subcabinet Group on Civil Rights—to review civil rights policy and practices. The Group, consisting of ranking representatives of key agencies, limited itself largely to discussion of a variety of civil rights matters. Its most important function was to serve as a clearinghouse for disseminating information, exchanging ideas, and exerting pressure on agencies. The Cabinet Group lacked policymaking

authority and, in fact, several of its policy recommendations on significant civil rights issues were rejected by the President or his senior staff.

The second major effort to develop a White House mechanism for coordinating agency civil rights activities, was the establishment of the President's Council on Equal Opportunity shortly after passage of the Civil Rights Act of 1964. The Council, consisting of top officials of major Federal agencies, had as its Chairman, the Vice President. It did not have the power to set policy. Rather, its function was to collect information and make reports to the President on the need for new laws, Executive orders, policies, and changes in administrative structure of the agencies. During its 6 months of existence it became involved in a number of important civil rights matters, such as developing plans for the collection of racial and ethnic data and evaluating school desegregation guidelines. It was abolished by the President in September 1965 and its functions related to Title VI of the Civil Rights Act of 1964 transferred to the Department of Justice. Other civil rights matters with which it had been concerned, however, were no longer subject to specific coordination.

During the last 3 years of President Johnson's Administration, civil rights coordination was handled on an *ad hoc* basis. Decisions were made on the advice of the Attorney General, Presidential assistants, and private individuals, with little provision for followup. In short, the vacuum created by the demise of the Council was not filled and agency civil rights staffs were left largely to themselves in the effort to assure that civil rights received priority agency attention.

Currently, White House involvement in civil rights matters is more structured than it previously was. Five White House staff members spend all or most of their time dealing with issues and programs relating to minority group citizens. They receive civil rights information through monthly agency reports and periodic meetings with agency officials, and through informal meetings such as discussions with minority group leaders and Government officials. Nonetheless, the current system shares some of the deficiencies of the past. Some of the White House staff members assigned civil rights responsibilities have a number of duties in addition to their civil rights commitments which take up significant amounts of their time. Further, the agency reports consist of

material which the agencies choose to include, making it almost impossible to evaluate agency performance accurately or to determine what an agency should be doing that it is not doing. No evaluation of the reports is made. White House staff has undertaken a number of *ad hoc* projects concerning civil rights but there is still no systematic effort made to evaluate the enforcement activities of Federal agencies, to coordinate their civil rights efforts, or to set goals or priorities for the agencies.

The President's recently announced reorganization of the Executive Office established a new White House entity—the Council on Domestic Affairs—which will have authority to coordinate policy formulation in the domestic area. The

Council, which will have an Executive Director and a staff, is intended to serve as a coordinator of Executive policy. Its concern will be with what the Federal Government should do. The Office of Management and Budget will determine how policies should be carried out and how well they are carried out. Establishment of the Council offers an opportunity for bringing about additional structure to the coordination of civil rights activities. Through an adequately staffed Civil Rights Subcommittee, necessary overall coordination of civil rights policies and enforcement can be achieved. This Subcommittee could provide the President with the quantity and quality of information necessary for him to take the civil rights action that he must take to fulfill his Executive responsibility.

GENERAL FINDINGS

The Federal civil rights arsenal consists of legislation, Presidential Executive orders, and court decisions outlawing racial or ethnic discrimination in almost every aspect of American life. It represents a powerful instrument for assuring equal opportunity for all citizens. A variety of problems common to most agencies with civil rights responsibilities, however, has prevented full utilization of these laws and has virtually impeded them from achieving their goals.

1. Without exception, all agencies with civil rights responsibility lack sufficient staff to carry them out at an acceptable level of effectiveness.

2. In most agencies, the official in charge of civil rights responsibilities lacks the status, authority, and position in the administrative hierarchy to make certain that civil rights needs and goals are accorded an appropriate priority among agency activities.

3. In most cases, agencies either have failed to state the goals of their civil rights programs with sufficient clarity and specificity or have defined them too narrowly. This has hindered the setting of strategic priorities for civil rights activities and the development of programs capable of attacking the problem of discrimination on a broad scale.

4. Many agencies operate their substantive programs in isolation from civil rights compliance and enforcement programs and without regard to their civil rights implications. Few agencies offer civil rights training to their program officials.

5. Some agencies have failed to recognize that they have any civil rights responsibility. Others, while recognizing the applicability of nondis-

crimination laws and policies, have failed to take any action implementing these laws and policies.

6. The agencies have not been adequately concerned with the civil rights problems of such groups as Spanish surnamed Americans, American Indians, and women.

7. The agencies have failed to collect, maintain, and evaluate racial and ethnic data to determine compliance and to measure the impact of substantive and civil rights programs.

8. Many agencies have adopted a passive role in carrying out their civil rights responsibilities. They have relied mainly, or entirely, upon the receipt of complaints as the indicator of civil rights compliance and have exhibited reluctance to initiate compliance actions, such as instituting compliance reporting systems and conducting onsite compliance reviews.

9. Failure to make sufficient use of the sanctions available to enforce civil rights laws has placed undue emphasis on voluntary compliance. This often results in delays and interminable negotiations. Sanctions such as fund termination and debarment have been used so rarely as to undermine the credibility of the Government's civil rights effort.

10. There has been a failure to coordinate and focus the Federal civil rights enforcement effort adequately. Agencies having civil rights responsibilities in the same area have tended to operate independently—with different goals, different orientations, and different levels of compliance activity—even where specific coordination mechanisms have been provided. There also has been a failure to provide overall coordination of and direction to the Federal civil rights enforcement efforts.

FINDINGS IN SPECIFIC SUBJECT AREAS

I. EMPLOYMENT

A. Federal Employment

1. The Federal Government, with nearly three million civilian workers, is the largest single employer in the Nation. Despite recent improvements, minority group members remain underrepresented in the Federal employment ranks.

a. Disparities are most pronounced at higher grade levels. In nearly all Federal agencies the proportion of Negroes, Spanish surnamed Americans, and American Indians decreases at each grade level above GS-3 or its equivalent.

b. Minority underrepresentation is more pronounced at the regional than the central office level.

2. Over the past year, the Civil Service Commission, responsible under a Presidential Executive order for supervising the Federal equal employment opportunity effort, has taken up its equal employment opportunity duties with increasing vigor and imagination. CSC has reorganized, centralized, and strengthened its equal opportunity office to facilitate carrying out the affirmative action program of minority employment called for by the President in his 1969 Executive order.

3. CSC has initiated innovative programs and has made energetic efforts to increase minority employment in the Federal service. Among the steps CSC has undertaken are:

a. Increased efforts to recruit more minority employees.

b. Continuing reappraisal of civil service examinations to weed out bias and to eliminate employment tests that tend to exclude minority group applicants.

c. Revision of Federal merit procedures to reduce the possibility of deliberate or inadvertent discrimination and to facilitate more rapid promotions for minority group employees.

d. A requirement that all first-line supervisors undergo training to make them aware of and sensitive to equal opportunity problems.

e. Increased attention in CSC inspections to equal employment aspects of agency programs.

f. Revision of discrimination complaint procedures to facilitate resolution of problems on an informal basis.

g. Modernization of the system for collecting and maintaining Federal employment data by race and ethnic origin, with recommendations for adoption by all Federal agencies.

h. Increased efforts to promote communication between Federal agencies and private groups and individuals concerning issues of equal employment opportunity.

4. Of great potential significance is a recent CSC guideline which emphasizes specific goals in the Federal equal employment opportunity effort. In the past, CSC has discouraged agencies from listing specific numerical or percentage goals in their equal employment opportunity plans of action. The recent guideline suggests that these earlier restrictions may be modified.

5. Despite the recent affirmative steps taken by CSC, weaknesses remain in the effort to increase employment opportunities in the Federal service for minority group members.

a. Some Federal agencies have not adopted adequate procedures for collecting and maintaining racial and ethnic data on Federal employment, necessary to provide them with an accurate picture of progress being made. Further, use of broad categories, such as "Spanish American" or "Spanish surnamed American", precludes a more accurate assessment of problems affecting ethnic groups within these categories, such as Mexican Americans, Puerto Ricans, and Cubans.

b. Although currently there is greater emphasis on training supervisors in becoming aware of and sensitive to civil rights problems, training to facilitate advancement of lower- and middle-grade employees and to permit full utilization of their talents remains inadequate.

c. Positions at the executive level usually are filled by promotion from the ranks of senior

level personnel already in the Federal service, most of whom are majority group members.

6. Rigid adherence to the existing merit system by CSC and other Federal departments and agencies has impeded achievement of the goal of equitable representation of minorities in the Federal service.

B. Contract Compliance Office of Federal Contract Compliance (OFCC)

1. Federal efforts to require Government contractors to follow nondiscrimination in their employment practices began nearly 30 years ago and culminated in the issuance of Executive Order 11246 in 1965, under which leadership responsibility was assigned to the Office of Federal Contract Compliance (OFCC) in the Department of Labor. Until recently, OFCC had failed to adopt and implement policies and procedures that would produce vigorous compliance programs in the Federal agencies immediately responsible for contract compliance.

a. OFCC and the contracting agencies were grossly understaffed and, despite recent increases, remain so.

b. OFCC monitoring of compliance agency enforcement activities—a key ingredient to an effective contract compliance program—was haphazard, consisting of a series of *ad hoc* efforts which did not have lasting effects. For example, OFCC was not systematically informed of the number, kind, and adequacy of compliance reviews of Government contractors conducted by the agencies, nor was there a method of evaluating the reviews of compliance agencies.

c. OFCC had to deal with a large number of compliance agencies, which were assigned responsibility for equal employment opportunity on the basis of the amount of the contracts each held with particular companies.

d. OFCC failed to define what was meant by the “affirmative action” requirement of the Executive order, leaving compliance agencies and contractors in doubt as to what steps were called for to satisfy the requirement.

e. Efforts to establish an effective compliance program in employment by federally assisted construction contractors failed to produce significant results.

f. Effective OFCC liaison with the Department of Justice and EEOC, which also have

significant responsibilities in the equal employment opportunity area, was not achieved. For example, between 1965 and 1970, OFCC referred only eight cases to the Department of Justice for litigation.

2. Recent OFCC actions show promise of overcoming some of these past weaknesses.

a. Early in 1970, OFCC expanded its regulations dealing with the nature of the affirmative action requirement of the Executive order, to require contractors to establish plans which include specific numerical goals and timetables to correct deficiencies in minority utilization.

b. OFCC recently improved its capacity for monitoring the activities of compliance agencies by reorganizing its own structure and reducing the number of compliance agencies from 26 to 15. Compliance agency responsibility now is assigned on the basis of particular industries rather than individual contractors.

c. OFCC has established a firm basis for a governmentwide construction compliance program through the Philadelphia Plan which establishes numerical goals of minority employment by federally assisted contractors. This stimulates community-developed plans, or “home-town solutions”, which set goals for all construction in a given community.

3. A continuing weakness in the contract compliance program is OFCC's consistent failure to impose the sanctions of contract termination or debarment on noncomplying Government contractors. The failure to use these sanctions lessens the credibility of the Government's compliance program and weakens the contract compliance effort.

Compliance Agencies

1. Of the 15 departments and agencies currently assigned contract compliance responsibility, the Department of Defense, the major Federal contracting agency, is the most important. Until 1970, the Department did not perform effectively in this respect.

a. In two 1969 contract compliance matters, involving southern textile mills and a large aircraft manufacturer, the Department of Defense failed to follow its own compliance procedures.

b. Its compliance review efforts have been inadequate. Only a small fraction of its contractors are reviewed at all. Although non-compliance frequently is found, followup reviews

to determine whether violations have been corrected are almost never done.

2. Since exposure in 1970 of noncompliance by a multi-billion dollar aircraft manufacturer, the Department of Defense has made significant changes to strengthen its compliance program. The Department has assisted in developing a model compliance plan by the aircraft contractor and has issued "show cause" notices (the first formal step leading to the imposition of sanctions) to more than 35 contractors.

3. The other 14 compliance agencies, including agencies such as HUD and GSA which are responsible for billions of dollars in Government contracts and federally assisted construction contracts, have failed to take the steps necessary to assure compliance with equal opportunity requirements.

a. The compliance agencies do not have sufficient staff to carry out compliance responsibilities and frequently assign staff to contract compliance duties on less than a full-time basis.

b. Only a small percentage of contractors are reviewed by the compliance agencies. When deficiencies are found, few followup reviews are conducted to determine whether corrective action has been taken.

c. None of the compliance agencies has taken more than rudimentary steps to implement OFCC's recent guidelines on affirmative action.

d. Lesser sanctions, such as passing over non-complying low bidders for construction projects and temporary suspension of contractors, rarely have been used. In no case have they been used systematically and consistently as compliance tools. In most cases where agencies have determined noncompliance, they take no action themselves, but forward the cases to OFCC. The sanctions of contract termination or debarment never have been imposed by compliance agencies.

e. The compliance agencies do not collect adequate information to measure the impact of the contract compliance program. Consequently, they are unable to plan effective compliance programs or evaluate the extent of progress in minority employment.

C. Equal Employment Opportunity Commission

1. The Equal Employment Opportunity Commission (EEOC), charged with responsibility for administering Title VII of the Civil Rights

Act of 1964 prohibiting private employment discrimination, has not had sufficient budget and staff resources to carry out its responsibilities with anything approaching maximum effectiveness. It has not been able to process expeditiously the large number of employment discrimination complaints it receives and has been unable to devote adequate attention to its other responsibilities.

2. The effectiveness of EEOC has been adversely affected by a rapid turnover and long vacancies in key agency positions, such as Chairman, Commission members, Executive Director, General Counsel, and Director of Compliance. This has resulted in a lack of continuity and direction in the agency's program.

3. In carrying out its functions, EEOC, limited by statute to enforcement by "conference, conciliation, and persuasion", has further restricted its effectiveness by adopting a passive role, placing heavy emphasis on the processing of individual discrimination complaints received. EEOC has made relatively little use of its initiatory capabilities, such as public hearings and Commissioner-initiated charges, to broaden its attack against job bias.

4. Although EEOC has placed primary emphasis on processing individual complaints, it has failed to establish mechanisms necessary to process them with dispatch. A discrimination charge currently takes the Commission approximately 16 months to 2 years to process. This delay has the effect of rendering cases moot, making respondents less willing to conciliate, and requiring reinvestigations by the Department of Justice in cases which it wishes to litigate. New procedures have been developed, however, designed to accelerate the complaint process.

5. No system of priorities has been developed in EEOC complaint processing by which cases of greater importance are handled on an expeditious basis. Efforts have not been made to broaden EEOC investigation beyond the individual complaint or to secure relief that would benefit persons in addition to the individual complainant.

6. EEOC has not made effective use of the affirmative action mechanisms available to it.

a. Technical assistance and cooperation with State and local fair employment practices commissions have, for all purposes, operated in a vacuum, all but unrelated to EEOC compliance functions.

b. Public hearings have not been coordinated with the activities of other Federal agencies concerned with equal employment opportunity—OFCC, Department of Justice, compliance agencies—nor have they been followed up in a systematic fashion.

c. In collecting racial and ethnic data concerning employment, EEOC has had difficulty in processing the data quickly. Thus, studies based on them tend to be outdated by the time they are published which severely hampers use of the data for compliance purposes.

D. Department of Justice

1. The Employment Section of the Civil Rights Division, which carries out the Department of Justice's litigation role in enforcing the equal employment opportunity provisions of Title VII of the 1964 Civil Rights Act and Executive Order 11246, has 25 authorized attorney positions, thereby making it the largest unit in the Division. However, this number is not sufficient to make a significant impact on existing discriminatory employment practices.

2. Employment cases brought by the Department have been largely limited to those involving discrimination against Negroes. To date, it has brought few cases in which Spanish surnamed Americans, American Indians, or women are the major victims of employment discrimination.

3. The Department has failed to coordinate its law suits into a total Government effort to eliminate employment discrimination. It also has failed in effectively coordinating its nonlitigative activities with EEOC and OFCC.

E. Coordination

1. Despite overlapping legal jurisdiction and inadequate staff, EEOC, OFCC, and the Department of Justice have not yet effectively coordinated their efforts.

a. Each has independently developed its own goals, policies, and procedures which are not matched with those of its sister agencies and sometimes reflect inconsistencies.

b. Until recently, no systematic efforts were made to share data or findings based on complaint investigations or compliance.

c. Employers occasionally have been reviewed by two or three different Federal agencies and inconsistent demands have been made upon them.

d. An Interagency Staff Coordinating Committee, consisting of representatives of EEOC, OFCC, and the Department of Justice, formed in July 1969 to deal with problems of coordination among the three agencies, has made little overall progress in resolving these problems.

2. The lack of successful coordination in meeting problems of discrimination in employment has resulted, in large part, from the fact that responsibilities are split among three separate agencies, each having different orientations and goals.

II. HOUSING

A. Department of Housing and Urban Development (HUD)

1. HUD, which has fair housing responsibilities under Title VIII of the Civil Rights Act of 1968, Title VI of the Civil Rights Act of 1964, and Executive Order 11063, is the only Federal Department other than the Department of Justice whose chief civil rights officer is at the Assistant Secretary level.

2. HUD lacks sufficient staff to carry out its fair housing responsibilities with maximum effectiveness.

3. Although HUD is restricted in its methods of enforcing fair housing laws, it has not made full use of the enforcement tools at its command, nor has it made most effective disposition of available resources.

a. The Department has emphasized processing of individual complaints almost to the exclusion of other potentially more effective means of furthering the cause of fair housing.

b. Although HUD has begun to assume a leadership position under Title VIII in attempting to focus the entire Federal housing effort toward promoting the purposes of fair housing, it has been less vigorous in shaping its own programs to that end. For example, although it previously had urged Federal financial regulatory agencies to require mortgage lending institutions to maintain racial and ethnic data on loan applicants to implement the prohibition against discrimination in mortgage lending, the Department did not decide to collect such data regarding its own programs until April 1970. As of August 1970, it had not yet actually begun to collect the data. Similarly, HUD urged GSA and agencies that maintain major installations to establish site

selection criteria that would assure open housing available to lower-income employees in determining locations for Federal installations. But in its own programs, decisions on site selection criteria had not, as of August 1970, been made.

c. HUD has done little systematically to carry out other Title VIII responsibilities such as publishing and disseminating reports and giving technical assistance to public and private agencies concerned with fair housing.

d. Under Title VI and Executive Order 11063 (1962), there has been little activity by HUD. As of April 1970, the basic step of establishing complaint procedures had not yet been taken.

B. Department of Justice

1. The Department of Justice, which has responsibility under Title VIII for bringing law suits in cases involving patterns and practices of violations, has undertaken an aggressive enforcement program.

a. Within its staff limitations, the Department has brought a comparatively large number of law suits on the basis of criteria involving size of city and extent of minority group population.

b. Justice has sought to establish a close working relationship with HUD to assure effective coordination of the activities of the two Departments.

2. Justice's fair housing activities suffer from a serious staff shortage, limiting the number of lawsuits in which it can be engaged.

3. The Department has been insufficiently concerned with problems of housing discrimination against minority groups other than Negroes.

C. Veterans Administration (VA) and Federal Housing Administration (FHA)

1. VA and FHA relied almost entirely on complaint processing as a means of assuring against discrimination in housing provided under their loan guarantee and mortgage insurance programs. They have received relatively few complaints and have been of assistance to minority group members in only the comparatively small number of cases brought to their attention.

2. In the few cases in which builders have been debarred for discrimination, neither VA nor

FHA impose requirements for reinstatement other than the builder's renewed agreement that he will not discriminate, an agreement he already has violated.

3. VA rarely has taken the initiative in adopting civil rights requirements, usually following the lead of FHA, or lagging behind that agency.

a. FHA has eliminated the exemption of one- and two-family owner occupied housing from coverage under Executive Order 11063. VA retains that exemption.

b. FHA requires a certification of nondiscrimination before it will insure loans on property carrying racially restrictive covenants. VA does not require such a certification.

c. In the important area of collection of data on racial and ethnic participation in programs, however, VA preceded FHA in officially recognizing the need for such data.

D. Federal Financial Regulatory Agencies

1. Federal agencies that supervise and benefit the majority of the Nation's mortgage lending institutions (savings and loan associations, commercial banks, and mutual savings banks) have failed to institute mechanisms—such as the requirement that the institutions maintain racial and ethnic data on loan applications for examination—necessary to monitor compliance by mortgage lending institutions with the Title VIII requirement of nondiscrimination in mortgage finance. Instead, the agencies have agreed to send questionnaires to member institutions for the purpose of determining current policy of mortgage lenders and the extent to which the problem of discrimination exists.

2. The agencies have failed to institute procedures by which member mortgage lending institutions would include nondiscrimination clauses in their agreements with builders, as a further tool to assure against housing discrimination.

E. General Services Administration and Site Selection for Federal Installations (GSA)

1. The General Services Administration, responsible for acquiring space for most Federal agencies, in 1969 instituted a policy of avoiding sites for the location of Federal installations which lack adequate low- and moderate-income

housing in reasonable proximity to the site. This policy has not yet been fully implemented and is silent on the matter of assuring access to housing for minority group members.

2. In February 1970, the President issued an Executive order which, in effect, extended GSA's policy announcement to all Federal departments and agencies. The Executive order also is silent on the matter of racial discrimination.

3. HUD has recently initiated a series of meetings with major departments and agencies aimed at establishing a uniform site selection policy for Federal installations dealing both with the need for housing for lower-income families and for minority group families. As of June 1970, however, no such uniform policy had been established.

F. Department of Defense and Off-Base Housing

1. The Department of Defense program of equal opportunity for military personnel in off-base housing, which operates mainly through the submission of nondiscrimination assurances by landlords, was initiated several years ago and has substantially improved housing opportunities around participating military installations.

2. Although almost all landlords have signed such nondiscrimination assurances, a review of statistics on the number of housing facilities subject to such assurance which are *in fact* integrated indicates that the degree of integration is still low.

3. Military base officials generally have not consulted with minority personnel to determine the extent and nature of the problem of unequal housing opportunity in the surrounding communities.

III. FEDERAL PROGRAMS

A. Title VI and Federally Assisted Programs

1. Title VI of the Civil Rights Act of 1964, that directive to all Federal departments and agencies which administer programs involving Federal financial assistance by way of loans or grants to adopt measures to prevent discrimination in the programs' operations, can have a significant impact on ending the overall problem of racial and ethnic discrimination in the country.

2. Although most agencies which have programs subject to Title VI have issued uniform regulations approved by the President, some agencies still have not issued regulations covering Title VI loan and grant programs. No uniform substantive amendments designed to strengthen the Title VI regulations have ever been promulgated despite the clear need for revision.

3. No Title VI agency has sufficient staff to carry out its responsibilities under that law with maximum effectiveness. Further, the position of the official in charge of Title VI compliance is, in most cases, disproportionately low when measured by his title, grade, and rank in the administrative hierarchy.

4. Few agencies provide adequate civil rights training to civil rights or program personnel whose work involves Title VI and related matters.

5. Methods by which most Title VI agencies seek to achieve and monitor compliance need strengthening.

a. Some agencies rely solely on the receipt of assurances of compliance, making no effort to determine for themselves whether compliance is, in fact, being achieved.

b. Some agencies have never conducted onsite visits to determine whether recipients are in compliance. Of those that do, most reach only a small fraction of their total recipients. Many of the onsite reviews that are conducted are perfunctory and superficial.

c. Despite the fact that in many cases, including those involving construction of highways, public housing, and various public works projects, it is necessary to determine compliance before the financial assistance is made and the projects are built, such preapproval reviews are rarely undertaken.

d. Many agencies, rather than undertake action on their own initiative to monitor compliance, such as onsite compliance reviews, rely on the receipt of complaints as the yardstick of compliance. Further, some agencies have failed to develop adequate complaint procedures and complaint investigations are often of poor quality.

6. There is little sustained collection and use of racial or ethnic data to determine whether program benefits actually are reaching minority group beneficiaries on an equitable basis.

a. Most agencies do not collect racial or ethnic data on a continuing basis, nor do they

use data that are collected for purposes of evaluating the effectiveness of their programs.

b. Many agencies do not require recipients to submit compliance reports indicating, on a racial and ethnic basis, use of their services and facilities. Where compliance reporting systems have been developed, the information often is not elicited with sufficient frequency and reports are not subjected to evaluation.

7. Most agencies have been reluctant to impose sanctions as a means of enforcing the nondiscrimination requirements of Title VI.

a. Some agencies have emphasized voluntary compliance as the principal method of enforcement and have permitted protracted negotiations and interminable delays on the part of recipients while continuing to provide Federal financial assistance.

b. The sanction of fund termination, authorized under Title VI with procedural safeguards, has rarely been used by the agencies. Some agencies have never imposed this sanction.

c. Litigation by the Department of Justice, which can be of value as a *supportive* mechanism to fund termination proceedings, is being used at present as an *alternative* to termination proceedings, thus lessening the force of Title VI.

8. The Department of Justice, responsible under Presidential Executive order for fulfilling the need for coordinating enforcement of Title VI by the more than 20 Federal departments and agencies having Title VI responsibilities, has not done an effective coordination job.

a. The status of the official responsible for carrying out the Title VI coordinating function of the Department of Justice has been systematically downgraded. Originally it was carried out by a Special Assistant to the Attorney General, who, although housed in the Civil Rights Division, reported directly to the Attorney General. It is now carried out by a relatively junior attorney in the Civil Rights Division.

b. The amount of staff assigned to the Title VI unit in the Civil Rights Division is inadequate.

c. The Civil Rights Division views its Title VI coordinating responsibility narrowly, focusing on litigation rather than on assuring effective administrative enforcement by the various Federal agencies.

d. Liaison with agencies is not systematic, but is primarily done on an *ad hoc* basis.

e. In some instances, the Department of Justice's recommendations to other departments and agencies calling for increased enforcement activity have not been acted upon.

B. Insurance and Guarantee Programs

1. Federal programs involving financial assistance solely in the form of insurance or guarantee are expressly exempted from the effectuating provisions of Title VI. Although most agencies that administer insurance and guarantee programs have issued nondiscrimination requirements, either through Presidential Executive order or on their own initiative, these requirements lack the support of specific legislation.

2. The mechanisms for implementing and enforcing nondiscrimination in programs of insurance and guarantee have been deficient.

a. No agency requires compliance reports from intermediaries such as lending institutions. Many agencies do not collect racial and ethnic data concerning program participation and, to the extent that they do, the data are frequently inadequate to inform the agency whether minority group beneficiaries are participating on an equitable basis.

b. None of the agencies conduct onsite compliance reviews to determine firsthand whether lending institutions and other intermediaries are following nondiscriminatory policies and practices. Sole reliance, most frequently, is placed on receipt of complaints. Further, complaint procedures have rarely been set down formally, nor have specific guidelines been drawn up governing investigations and resolutions of complaints.

c. Little information is provided to the public or to Federal officials responsible for assuring compliance with nondiscrimination requirements concerning the existence of these requirements or the procedure to be followed when discrimination occurs.

C. Direct Assistance Programs

1. Discrimination in direct assistance programs which involves benefits flowing directly from the Federal Government to individual beneficiaries is clearly prohibited by the fifth amendment to the Constitution, but neither Congress nor the executive branch has established specific regulations or procedures to assure against such discrimination.

2. Currently, little in the way of mechanisms exists to assure equal opportunity in direct assistance programs.

a. Compliance reviews are not conducted.

b. Data on racial or ethnic participation frequently are not collected at all and, when collected, are not adequately used.

c. There are no complaint procedures specifically concerned with racial or ethnic discrimination, nor are personnel given special guidance on how such complaints are to be investigated or what steps should be taken to eliminate discrimination when found.

IV. REGULATED INDUSTRIES

A. Industries such as broadcasting, motor and rail transportation, airlines, and power, which are regulated by independent agencies—Federal Communications Commission (FCC), Interstate Commerce Commission (ICC), Civil Aeronautics Board (CAB), and Federal Power Commission (FPC), respectively—can contribute to the cause of equal opportunity through opening opportunities for employment to minorities and assuring nondiscriminatory delivery of their services. The agencies, through issuing appropriate rules and orders, can assure that the industries they regulate do make such a contribution.

B. Despite uniformly poor employment records in these industries, only the Federal Communications Commission has issued rules prohibiting employment discrimination.

C. The FCC and ICC regulate industries [broadcasting and trucking] which, because of the relatively low capital investment necessary to enter them, offer substantial opportunities for minority entrepreneurship. Because of the agencies' cumbersome procedures regarding issuance of licenses, which serve mainly to protect the economic interest of existing licensees, many minority group members are effectively barred from entry into these industries and are prevented from competing on an equal basis with existing licensees.

D. Many minority group members are unable to challenge proposed agency actions by the high cost of such challenges and the lack of needed legal assistance. None of the four regulatory agencies offers free legal services to individuals or groups who wish to challenge a license renewal

or other proposed agency action but do not possess the financial means to do so.

E. Although all four agencies have recognized the requirement of nondiscrimination in services and facilities by the industries they regulate, none has instituted the mechanisms necessary to assure against such discrimination.

1. All rely basically on receipt of complaints as the indicator of noncompliance. Complaint processing has been inadequate.

2. None has instituted affirmative actions to promote greater minority utilization of industry services and facilities.

F. The Federal Trade Commission (FTC), through its authority to protect consumers and to assure fair business competition, can contribute to protecting the rights of minorities.

1. Although the FTC has taken some actions, such as the Consumer Protection Program in Washington, D.C., to protect the ghetto poor from exploitation by unscrupulous businessmen, the agency has not assigned enough staff to such activities and has not carried out the responsibility with sufficient vigor or imagination.

2. In carrying out its responsibility to enforce antitrust laws, the FTC has not been concerned with the effect of corporate actions, such as mergers, on the social and economic life of ghetto areas.

3. In the area of franchising, the FTC has not sufficiently exercised its authority to protect minority businessmen from investing in economically unsound franchises.

E. The Securities and Exchange Commission (SEC), in carrying out its statutory responsibility of assuring full disclosure of pertinent information by registering companies, can contribute to more effective civil rights enforcement.

1. The SEC leaves to registering companies the decision of what information must be disclosed to potential investors and does not require specific disclosure when sanctions are being imposed for violation of Federal contract requirements under Executive Order 11246 (1965) or when lawsuits are pending under Title VII of the Civil Rights Act of 1964, although such public disclosure would tend to strengthen enforcement of equal employment opportunity requirements and would be of legitimate interest to potential stockholders.

2. SEC regulations, which currently prohibit stockholders from raising questions involving "general, economic, political, racial, religious, and

social" considerations, prevent socially motivated stockholders from suggesting changes in company policy that would permit corporate enterprises to play a more significant role in contributing to the resolution of civil rights problems.

V. THE CIVIL RIGHTS POLICY MAKERS

A. Federal Executive Boards (FEB's)

1. Federal Executive Boards, consisting of the regional directors of a large number of Federal agencies, were established to provide rapid communication of Administration policy to the field and to facilitate coordination of programs of the various agencies located in particular cities. Although they have enjoyed some successes, they have been largely ineffective in coordinating civil rights and related programs in urban areas, because of such obstacles as insufficient staff, unwieldy membership, limited jurisdiction, and lack of authority.

2. Federal Regional Councils, recently established to replace the FEB's as the primary coordinating mechanism dealing with urban problems, offer several advantages over their predecessors in that they will have staff, more manageable membership, and broader jurisdiction. Like the FEB's, however, Federal Regional Councils will not have authority to make decisions binding on the agencies.

B. Community Relations Service (CRS)

1. The Community Relations Service, which originally was crisis-oriented and sought to keep channels of communication open between hostile groups, now serves as a valuable communication link between minority groups and Federal agencies.

2. CRS, which neither dispenses Federal benefits nor enforces civil rights laws, plays an important educational role, not only for the minority community, but also for the Federal bureaucracy, instructing it on the needs and desires of minority group members.

C. Cabinet Committee on Opportunity for the Spanish-Speaking

1. Both the Cabinet Committee on Opportunity for the Spanish-Speaking and its predecessor, the Inter-Agency Committee on Mexican American Affairs, which have served primarily as

advocates on behalf of Spanish-speaking people, have engaged in significant projects on behalf of their constituency and have contributed substantially to making the Federal Government more aware of the problems of Spanish-surnamed Americans and more responsive to their needs.

2. The Cabinet Committee, which recently replaced the Inter-Agency Committee, has several advantages over its predecessor.

a. The Cabinet Committee has a statutory base and is able to obtain funds through appropriations from Congress, while the Inter-Agency Committee, which was created by Presidential order, had to obtain its funds from its member agencies.

b. The jurisdiction of the Cabinet Committee is wider than that of the Inter-Agency Committee, covering not only Mexican Americans but all Spanish surnamed Americans, including Puerto Ricans and Cubans.

c. Like the Inter-Agency Committee, however, the Cabinet Committee has no enforcement authority.

D. Department of Justice

1. The Civil Rights Division, which is the major civil rights arm of the Department of Justice, having responsibilities in such areas as voting, schools, employment, housing, public facilities, and public accommodations, has been unable to carry out all of these activities with maximum effectiveness.

a. The Division has been consistently understaffed, which limits the number of lawsuits in which it can participate and restricts its ability to become involved in all areas of importance.

b. Until recently, the Division had not established a system of written priorities. Currently, its priorities are ordered in terms of its own statutory mandate rather than in terms of the national need for improved civil rights performance.

c. The Division focuses its activities on law enforcement through litigation and pays insufficient attention to its nonlitigative powers.

2. The Department of Justice, which has been the focal point of the Federal civil rights enforcement effort over recent years, has not been able to establish effective coordination of the civil rights activities of other departments and agencies.

a. The Attorney General has no authority to direct other departments and agencies to take specific actions. On occasion, his advice on civil rights has been ignored by these agencies.

b. The Department has tended to view civil rights issues in terms of litigation and has been insufficiently concerned with the need for more effective governmentwide administrative enforcement.

E. Bureau of the Budget

1. Although the Bureau of the Budget—through its central role in the budget submission process, its authority to review and comment on all legislative proposals, and its responsibility for approving agency data collection proposals—can play a significant role in improving the effectiveness of civil rights compliance and enforcement, it has failed to do so.

a. The Bureau has not officially acknowledged that it has any civil rights coordinating role, nor has its staff received any civil rights training.

b. Civil rights concerns are not systematically included in the budget review process, but are considered only when individual examiners happen to have an interest in civil rights.

c. No systematic review is made of agency civil rights programs to determine if there is sufficient funding to meet the requirements of particular civil rights laws.

d. Although the Bureau encourages Federal agencies to collect a wide variety of data for the purpose of determining how effectively their programs are working, it has not recommended governmentwide collection of racial or ethnic data to permit the Bureau and the agencies to determine if Federal assistance programs are reaching minority group citizens on an equitable basis.

e. In its review of substantive legislation having important civil rights implications, the Bureau usually neither inquires specifically into the civil rights aspects of the legislation nor requests the comments of agencies that have civil rights expertise.

2. The Office of Management and Budget, which will replace the Bureau of the Budget under the President's recent reorganization plan, will focus on implementing national policy and evaluating the results of agency efforts to carry out their program assignments. This will permit the new Office to become more deeply involved in agency activities implementing national civil rights policy, including evaluation of the civil rights implications of agency programs and coordination of agency civil rights efforts.

F. The White House

1. Despite the efforts of White House civil rights units established over the years, such as the Subcabinet Group on Civil Rights and the Council on Equal Opportunity, White House coordination of civil rights is still not conducted on a systematic and comprehensive basis.

a. Although there are specific White House staff members currently assigned to civil rights enforcement, some have other duties which significantly impinge on their time.

b. Reports received at the White House from agencies on their civil rights activities are inadequate for purposes of accurate evaluation of agency performance. Further, no systematic effort to evaluate these reports is made.

c. White House staff has undertaken a number of *ad hoc* projects concerning civil rights, but no systematic effort has been made to evaluate the enforcement activities of Federal agencies, to coordinate their civil rights efforts, or to set goals or priorities for the agencies.

2. The White House Council on Domestic Affairs, established under the President's recent reorganization, is intended to serve as a coordinator of executive policy. The Council on Domestic Affairs, through establishment of a Civil Rights Subcommittee, and the new Office of Management and Budget can work in cooperation to develop national civil rights goals and priorities and assure that the agencies function effectively to carry them out.

GENERAL RECOMMENDATIONS

The responsibility for seeing that civil rights laws, as well as all other laws, operate with maximum effectiveness lies with the President. To carry out this responsibility, the President is entitled to and must have the full cooperation and support of all executive departments

*** Among the recommendations that have been made to strengthen the overall Federal civil rights enforcement effort is the creation of a Cabinet-level Department of Human Rights. See *Ripon Society Magazine*, Feb. 1969. See also R. Nathan, *Jobs and Civil Rights* (prepared for the United States Commission on Civil Rights) 245-63 (1969).

Under this proposal, all civil rights enforcement responsibility would be transferred to a new Department whose sole functions would pertain to civil rights. This proposal has the attraction of elevating considerations of civil rights to the highest councils of Government and creating a single civil rights chief of Cabinet status. In addition, this proposal, by consolidating all civil rights enforcement responsibilities in one agency, undoubtedly would contribute substantially to eliminating existing problems of inadequate coordination among the various agencies with civil rights responsibilities.

One principal difficulty with this proposal is that the Secretary of Human Rights would be, at best, the co-equal of a number of other Cabinet Secretaries whose departments would continue to operate programs having important civil rights implications. He would not have the authority to order his Cabinet colleagues or other agency heads to take specific civil rights actions. If conflicts should arise, he would have to rely, as does the Attorney General under the existing structure, on Presidential intervention which, as a practical matter, he could call for only in the most crucial matters. Further, removal of civil rights enforcement responsibility from existing departments and agencies would tend to lower the priority accorded to civil rights in their decisions on substantive program operation.

If the Secretary of Human Rights were provided with authority to order his Cabinet colleagues or other agency heads to take specific actions, such as terminating Federal financial assistance under programs covered by Title VI, additional problems would arise. Removal of the right to determine the operation of their own programs from the Cabinet members and agency officials undoubtedly would lead to institutional resentment of the new Department and its Secretary and would deter the full cooperation that is necessary if substantive programs are to be harnessed for purposes of promoting civil rights goals.

and agencies that serve under his direction. The Commission believes a vehicle outside the Federal bureaucracy is needed, responsible to the President, to provide the assistance he needs in setting national civil rights goals and priorities and assuring that the activities of Federal agencies serve to achieve them. For this purpose the newly created mechanisms in the President's Office—the Council on Domestic Affairs and Office of Management and Budget—can be utilized effectively.***

1. The President should establish a special Civil Rights Subcommittee of the White House Council on Domestic Affairs, with the following responsibilities:

a. To identify civil rights problems, develop specific national goals, and establish government-wide priorities, policies, and timetables for their achievement.

b. To establish, with the assistance of the Office of Management and Budget and Federal departments and agencies, such mechanisms and procedures as are necessary to expeditiously implement the policies and achieve the goals.

c. To determine the need for additional civil rights legislation and Executive orders or for strengthening of existing civil rights laws and Executive orders.

2. The President should instruct the Director of the Office of Management and Budget to establish a Division on Civil Rights within his office, which would work closely with the Civil Rights Subcommittee of the Council on Domestic Affairs, and provide civil rights guidance and direction to OMB examiners and other appropriate OMB units.

3. The Director of the Office of Management and Budget should direct appropriate office units and budget examiners to give high priority to civil rights considerations in their dealings with Federal departments and agencies, subject to the guidance and direction of the OMB Division on Civil Rights. Among their specific duties should be:

a. To assist agencies in developing civil rights goals of sufficient breadth and specificity and in establishing program priorities and policies to promote achievement of these goals.

b. To evaluate existing compliance and enforcement mechanisms, such as compliance reports, collection of racial and ethnic data on program participation, onsite compliance reviews, complaint procedures, and imposition of sanctions, utilized by agencies having civil rights responsibilities and, where necessary, to recommend appropriate changes to assure vigorous and uniform civil rights implementation.

c. To evaluate the extent of coordination between the operation of substantive programs and civil rights enforcement efforts and recommend such changes as are necessary to promote more effective coordination.

4. In furtherance of national civil rights goals, priorities, and policies established by the Council on Domestic Affairs, all agencies should, in cooperation with the Office of Management and Budget, establish specific civil rights goals toward which their programs and activities would be directed. They should specifically delineate the steps and procedures by which these goals will be achieved. These should include reference to the overall results to be achieved, a timetable for their achievement, the way in which substantive programs will be geared to the effort, and the

compliance and enforcement mechanisms that will be utilized.

5. The President should direct the head of every Federal department and agency to elevate the position of chief civil rights officer to a level equal to that of officials in charge of agency programs. To the extent legislation is necessary to accomplish this, as in the case of establishing Assistant Secretary positions, Congress should enact such legislation.

6. The President should direct the heads of all Federal departments and agencies to submit proposals for increased staff and financial resources necessary to carry out their civil rights responsibilities with maximum effectiveness. These proposals should be evaluated by the Office of Management and Budget and, where necessary, adjustments should be made based on a realistic assessment of agency civil rights responsibilities and the staff and other resources necessary to fulfill them. The President should request appropriations legislation to provide the necessary resources and Congress should enact such legislation.

7. All agencies with civil rights responsibilities should increase their compliance and enforcement activities significantly to assure adequate attention to the civil rights problems of such groups as Spanish surnamed Americans, American Indians, and women.

RECOMMENDATIONS IN SPECIFIC SUBJECT AREAS

I. EMPLOYMENT

A. Federal Employment

1. The Civil Service Commission should clarify its current policy, emphasizing specific goals in the Federal equal employment opportunity effort and develop a governmentwide plan designed to achieve equitable minority group representation at all wage and grade levels within each department and agency. This plan should include minimum numerical and percentage goals, coupled with specific target dates for their attainment, and should be developed jointly by CSC and each department or agency.

2. CSC and all other Federal agencies should develop and conduct large-scale training programs designed to develop the talents and skills of minority group employees, particularly those at lower grade levels. Congress should amend the Government Employees Training Act, as necessary, and should appropriate sufficient funds to permit these programs to operate with maximum effectiveness.

3. Existing procedures concerning complaints of discrimination should be strengthened in the following ways:

a. Free legal aid should be provided on request to all lower grade employees who require it. In this connection, CSC should take the lead in establishing a governmentwide pool of attorneys who are prepared to volunteer their services in discrimination complaint cases or adverse actions involving minority group employees.

b. Agencies should take appropriate disciplinary action against supervisors or administrators who have been found guilty of discrimination.

c. Adequate compensation, such as retroactive promotion and back pay, should be provided to employees who have been discriminated against in promotion actions. To the extent legislation is necessary for this purpose, Congress should enact it.

4. CSC should direct all Federal departments and agencies to adopt new procedures it has developed for collection and maintenance of racial and ethnic data on Federal employment. CSC should use the expanded data basis to produce studies and reports to provide public information concerning such matters as recruitment efforts, training, rates of hiring, promotions and separations by race and ethnicity, and other significant facts concerning Federal personnel practices.

5. Increased efforts should be made to increase substantially the number of minority group members in executive level positions by recruiting from sources that can provide substantial numbers of qualified minority group employees, such as colleges and universities, private industry, and State and local agencies.

B. Contract Compliance

OFCC, with the assistance of the 15 compliance agencies, in implementing OFCC's recent regulations on affirmative action requirements, should develop a comprehensive equal employment opportunity plan, on an industry-by-industry basis, aimed at obtaining equitable representation of minority group members in all industries and at all job levels. The plan should include the following elements:

1. Establishment of numerical and percentage employment goals, with specific timetables for meeting them and procedures describing the means by which they will be met.

2. Development of uniform data collection and compliance reporting systems and procedures for evaluating and following up on the information submitted.

3. Development of uniform onsite compliance review systems containing procedures for establishing priority of reviews, frequency of reviews, and review techniques.

4. Prompt imposition of the sanctions of contract termination and debarment where non-

compliance is found and not remedied within a reasonable period of time.

C. Equal Employment Opportunity Commission

1. Congress should amend Title VII of the Civil Rights Act of 1964 to authorize the Equal Employment Opportunity Commission to issue cease and desist orders to eliminate discriminatory practices through administrative action.

2. EEOC should emphasize initiatory activities, such as public hearings and Commissioner charges, as opposed to the essentially passive activity of processing individual complaints, to facilitate elimination of industrywide or regional patterns of employment discrimination.

3. EEOC should amend its complaint procedures to make more effective enforcement use of the complaint processing system. Priority should be assigned to complaints of particular importance, complaints should be consolidated wherever possible, and emphasis should be placed on processing complaints involving classes of complainants rather than individuals.

D. Coordination

The President should issue a reorganization plan transferring the contract compliance responsibilities of OFCC and the litigation responsibilities of the Department of Justice to EEOC, so that all responsibilities for equal employment opportunity will be lodged in a single independent agency.

II. HOUSING

A. Department of Housing and Urban Development (HUD)

1. Congress should amend Title VIII of the Civil Rights Act of 1968 to authorize HUD to issue cease and desist orders to eliminate discriminatory housing practices through administrative action.

2. HUD should establish specific fair housing goals, governing its efforts under Title VIII of the Civil Rights Act of 1968, Title VI of the Civil Rights Act of 1964, and Executive Order 11063. These goals should be of sufficient breadth not only to facilitate the successful resolution of individual complaints, but to provide substantially expanded housing opportunities throughout

metropolitan areas for minority group members and to reverse the trend toward racial and economic separation.

3. HUD should establish program priorities and policies governing the administration of its programs of housing and urban development as well as its fair housing programs to facilitate achievement of these goals. Based on an analysis of racial and ethnic data on program participation, HUD should adjust its program priorities and policies to facilitate achievement of fair housing goals.

4. HUD should strengthen its efforts as leader of the entire Federal fair housing effort to assure that all other departments and agencies that have programs and activities relating to housing and urban development administer them in a way to facilitate achievement of fair housing goals.

a. HUD should assign staff to monitor key programs of particular departments and agencies.

b. HUD should convene periodic meetings with other departments and agencies to discuss progress made in furthering the cause of fair housing.

5. HUD should strengthen its efforts under nonenforcement provisions of Title VIII, such as rendering technical assistance to public and private fair housing agencies and convening conferences on a local, State, and national basis to promote the purposes of fair housing and to stimulate cooperative efforts of industry and fair housing groups in achieving them.

B. Veterans Administration (VA) and Federal Housing Administration (FHA)

1. VA and FHA should require aided builders to advertise housing and develop marketing policies and practices aimed at attracting minority as well as majority group purchases.

2. VA and FHA should undertake a program of onsite compliance reviews to monitor the activities of aided builders.

3. VA and FHA should require as a condition to reinstatement that aided builders, debarred for discriminatory practices, must agree to additional affirmative actions, such as submission of periodic compliance reports showing the number of houses sold to minority group families. Reinstatement also should be conditioned on the achievement of specific goals in sales of housing to minority group families.

C. Federal Financial Regulatory Agencies

1. To implement Title VIII's prohibition against discrimination in mortgage financing, the agencies which supervise and benefit mortgage lending institutions (savings and loan associations, commercial banks, and mutual savings banks) should require these institutions to maintain racial and ethnic data on loan applications—those rejected as well as those approved—and develop instructions and procedures for examiners that will enable them to detect patterns of discriminatory practices by these institutions.

2. The agencies should develop procedures for the imposition of sanctions against institutions in violation of Title VIII. These sanctions should include issuance of cease and desist orders and, in appropriate cases, termination of Federal insurance or charters.

3. To assist in assuring compliance by builders and developers with Title VIII obligations, the agencies should require mortgage lending institutions to include nondiscrimination clauses in their agreements with builders, including appropriate penalties for violations, such as acceleration of payment.

D. Site Selection for Federal Installations

The President should amend Executive Order 11512 (1970) concerning the selection of sites for Federal installations, in accordance with this Commission's recommendations in its report, "Federal Installations and Equal Housing Opportunity", to assure that communities are, in fact, open to all economic groups and to racial and ethnic minorities, as a condition of eligibility for location of Federal installations.

III. FEDERAL PROGRAMS

A. Title VI and Federally Assisted Programs

1. All agencies that administer programs subject to Title VI should strengthen their compliance systems by assuring that the following minimum compliance activities are carried out:

a. Systematic onsite reviews of recipients should be conducted to assure that all recipients are reviewed at frequent intervals.

b. Comprehensive guidelines for compliance reviews should be developed by Title VI agencies, with the assistance of the Department of Justice, to assure thoroughness and, where appropriate, uniformity of review.

c. Preapproval compliance reviews should be conducted by agencies that administer programs involving construction of facilities, such as public housing projects, recreational facilities, and highways, to assure that these facilities, through location and design, will serve minority group members on an equitable basis.

d. All agencies should establish compliance reporting systems, including collection of data on racial and ethnic participation in agency programs. These data should be subjected to evaluation and, where possible discrimination is indicated, onsite compliance reviews should be conducted.

2. Agencies should place specific limits on the time permitted for voluntary compliance and should make greater use of the sanction of fund termination.

3. Litigation by the Department of Justice should be used as a mechanism in support of fund termination proceedings rather than as a substitute for such proceedings.

4. The Department of Justice should establish an adequately staffed Office of the Special Assistant to the Attorney General for Title VI Coordination, housed in the Office of the Attorney General and reporting directly to him.

5. Justice should concentrate its Title VI activities on assuring effective administrative enforcement by the various Federal agencies having Title VI responsibilities rather than on litigation.

6. The President should amend Executive Order 11247 (1965) to authorize the Attorney General to direct departments and agencies to take specific compliance and enforcement actions, including fund termination proceedings.

B. Insurance and Guarantee Programs

Agencies that administer programs of insurance and guarantee should institute mechanisms to determine compliance with existing nondiscrimination requirements of lending institutions and other intermediaries between the Federal Government and borrowers. The mechanisms should include compliance reporting systems, onsite compliance reviews, and specific procedures for processing discrimination complaints.

C. Direct Assistance Programs

Agencies which administer programs of direct Federal assistance should issue regulations and establish specific mechanisms to assure against racial and ethnic discrimination by Federal officials that operate these programs. The regulations and mechanisms should provide for a system of periodic reviews of agency offices, procedures for complaint investigations, and procedures for gathering and evaluating racial and ethnic data. Appropriate disciplinary action should be taken against Federal officials found to have practiced such discrimination.

IV. Regulated Industries

A. The Interstate Commerce Commission (ICC), the Civil Aeronautics Board (CAB), and the Federal Power Commission (FPC) should join the Federal Communications Commission (FCC) in issuing rules prohibiting employment discrimination by their licensees and in implementing such employment opportunity rules by instituting appropriate mechanisms. These should include compliance reports from licensees, onsite compliance reviews, and requirements under which licensees would be required to demonstrate that they are taking affirmative actions to increase minority employment.

B. The FCC and the ICC should amend their procedures concerning issuances of licenses, which currently tend to protect the economic interests of existing licensees, to facilitate minority group entrance as entrepreneurs and to permit them to compete for licenses on an equal basis with existing licensees.

C. To facilitate challenges of proposed agency actions concerning such matters as license renewals, the four agencies should provide free legal services to individuals or groups who wish to challenge the proposed agency action but can-

not afford the legal assistance necessary to do so effectively.

D. To implement existing requirements of non-discrimination in services and facilities by the industries they regulate, the FCC, ICC, CAB, and FPC should abandon reliance on complaint processing and establish affirmative compliance mechanisms.

E. The Federal Trade Commission (FTC) should expand its efforts to protect the ghetto poor from unscrupulous businessmen and should work in close cooperation with local consumer groups, community action representatives, welfare organizations, and other public and private groups concerned with exploitation of the poor. FTC should also impose the sanctions available to it, such as the imposition of penalties, when exploitation is found.

F. In carrying out its responsibilities to enforce antitrust laws, the FTC should broaden the scope of its investigations of mergers and other corporate actions to include matters concerning the potential impact on the social and economic life of ghetto areas.

G. The Securities and Exchange Commission (SEC), in carrying out its statutory responsibility of assuring full disclosure of information by registering companies, should establish guidelines requiring companies to disclose facts concerning possible imposition of sanctions for violation of Federal contract requirements under Executive Order 11246 or pending law suits under Title VII of the Civil Rights Act of 1964.

H. The SEC should amend its regulation prohibiting stockholders from raising questions involving "general, economic, political, racial, religious, and social considerations," as a means of stimulating greater concern and activity by corporate enterprises in civil rights and related areas.

CONCLUSIONS

The basic conclusion of this report is that the great promise of the civil rights laws, Executive orders, and judicial decisions of the 1950's and 1960's has not been realized. The Federal Government has not yet fully prepared itself to carry out these legal mandates of equal opportunity.

The Federal arsenal of civil rights protections is impressive. In nearly every aspect of life—voting, jobs, housing, education, access to places of public accommodation and facility, and participation in the benefits of all Federal programs—equal opportunity is guaranteed to every American as a matter of legal right. In many areas, however, the Government has not yet developed the mechanisms and procedures necessary to secure this right *in fact* as well as in legal theory.

To some extent, the failure to fulfill the promise of equal opportunity can be traced to impediments in the civil rights laws under which Federal agencies must operate. Coverage, while generally broad, is not always all-encompassing. For example, in the areas of housing and private employment, there are statutory exceptions which exclude millions of jobs and homes from the ambit of civil rights protection. Similarly, the remedies provided under some of these civil rights laws are inadequate to secure in fact the rights that are guaranteed by law. Often, the only recourse available to persons discriminated against is litigation, which can be a time-consuming and expensive method of securing relief.

Impediments in coverage and enforcement provided under the laws themselves, however, have not been the major obstacles to more effective administration of civil rights laws. Rather, the principal impediment has been the failure of departments and agencies having civil rights responsibilities to make maximum use of the procedures and mechanisms available to them. As a result, there is danger that the great effort made by public and private groups to obtain the civil rights laws we now have will be nullified through ineffective enforcement. The focus of civil rights

must shift from the halls of Congress to the corridors of the Federal bureaucracies that administer these laws.

The Federal Government is not a monolith. It consists of a large number of departments and agencies that administer a wide variety of programs and carry different sets of responsibilities. By the same token, the civil rights problems facing these departments and agencies are not all the same and the techniques necessary to meet them often vary depending upon the kind of program the agency administers and the kind of civil rights law it carries out. Further, implementation of civil rights laws by these agencies has, by no means, been a total failure. Some agencies have had marked success in carrying out their civil rights responsibilities. Some agencies have been successful in carrying out certain aspects of their responsibilities but unsuccessful in carrying out others. Nonetheless, the Commission's study has revealed a number of fundamental weaknesses and inadequacies in civil rights compliance and enforcement that are common to most agencies, regardless of the programs they administer or the civil rights laws they enforce. Among these shared weaknesses are:

- Inadequate staff and other resources to conduct civil rights enforcement activities with maximum effectiveness.
- Lack of authority and subordinate status of agency civil rights officials.
- Failure to define civil rights goals with sufficient specificity or breadth.
- Failure to coordinate civil rights and substantive programs.
- Undue emphasis on a passive role, such as reliance on receipt of complaints, in carrying out civil rights compliance and enforcement responsibilities.
- Undue emphasis on voluntary compliance and failure to make sufficient use of available sanctions to enforce civil rights laws.
- Failure to provide adequate coordination and

direction to agencies having common civil rights responsibilities.

- Failure to collect and utilize racial and ethnic data in planning and evaluating progress toward goals.

Some of these weaknesses may be the result of the trial-and-error efforts of agencies attempting in good faith to meet responsibilities in a relatively new area of concern. The Commission has made detailed findings and recommendations concerning each of the subject areas examined in its report, suggesting ways in which agencies can strengthen existing avenues of compliance and enforcement.

Many of these weaknesses, however, also reflect more deep-seated problems—problems of hostile bureaucracies that view civil rights as a threat to their prerogatives and programs, problems of inadequate or misordered priorities which cannot be resolved solely through modification of specific compliance and enforcement mechanisms. For example, the failure to make sufficient use of strong sanctions, such as fund termination and contract cancellation, is less a reflection of inadequate enforcement mechanisms than it is the triumph of program bureaucrats in the artificial conflict between the exercise of program responsibilities and civil rights responsibilities. Rather than combining civil rights and substantive programs in a joint effort to achieve social and economic justice, in most agencies the two have been separated and civil rights programs have operated in isolation from those that provide substantive benefits.

By the same token, the failure to provide sufficient resources for civil rights enforcement and the subordinate position in which civil rights officials are placed in agency hierarchies, undoubtedly are less a result of a lack of understanding of what is necessary for effective civil rights enforcement than a reflection of the deeper problem of misordered agency priorities in which civil rights is relegated to a position of secondary importance.

These problems suggest that more is needed than a strengthening and modification of compliance and enforcement mechanisms utilized by particular agencies. They suggest that the most serious flaw in the Federal civil rights enforcement effort has been the failure to provide overall direction and coordination—that the basic mechanisms that have been lacking have been those necessary to develop a cohesive, governmentwide

civil rights policy and to assure that this policy is faithfully carried out.

In fact, a total civil rights policy has not been developed, nor have overall national civil rights goals and priorities been established to govern the component parts of the Federal civil rights effort. Agencies have operated independently with little recognition or understanding of what the Government's total civil rights program is or the role they should play in carrying it out. For the most part, they have been only dimly aware of their responsibilities in their own areas of concern. No substantial attempt has yet been made to coordinate the various civil rights laws and policies into a total, coordinated Federal civil rights effort. The Commission also has addressed itself to this problem and has made recommendations to facilitate development of national civil rights goals and policies and to permit effective coordination of the entire civil rights program as well as its separate parts.

This report has dealt primarily with problems of structure and mechanism in the Government's efforts to enforce civil rights laws. The Commission recognizes, however, that achievement of civil rights goals and the full exercise of equal rights by minority group members will involve more than adjustments in civil rights enforcement machinery. It will require dedication and resolve on the part of Government officials and the American people alike. The Commission's recommendations in this report are addressed only to ways in which the mechanisms of civil rights enforcement can be strengthened, not to ways in which national will and resolution can be inspired.

In the Government, this is the responsibility of each Cabinet Secretary or agency head, who must take the steps necessary to assure that his subordinates honor and support the principle of equality. It also is the responsibility of public and private groups—groups that labored hard and successfully to get civil rights laws passed, that pushed for needed Executive orders, and that won the crucial court decisions that established the principle of equality as basic constitutional doctrine. They must now undertake the more difficult task of seeing that these laws are faithfully and vigorously carried out.

In the final analysis, achievement of civil rights goals depends on the quality of leadership exer-

cised by the President in moving the Nation toward racial justice. The Commission is convinced that his example of courageous moral leadership

can inspire the necessary will and determination, not only of the Federal officials who serve under his direction, but of the American people as well.

