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

Volume I: A Blueprint for Civil Rights Enforcement

U.S. Commission on Civil Rights
September 2002

U.S. Commission on Civil Rights

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

- Study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice.

- Appraise Federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice.

- Serve as a national clearinghouse for information in respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin.

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

- Issue public service announcements to discourage discrimination or denial of equal protection of the laws.

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U.S. Commission on Civil Rights
624 Ninth Street, NW
Washington, DC 20425

(202) 376-8128 voice
(202) 376-8116 TTY
www.usccr.gov

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Letter of Transmittal

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

Sirs:

Pursuant to Public Law 103-419, the United States Commission on Civil Rights transmits this report, *Ten-Year Check-Up: Have Federal Agencies Responded to Civil Rights Recommendations? Volume I: A Blueprint for Civil Rights Enforcement.* This report examines the civil rights implementation, compliance, and enforcement programs of federal agencies from the 1990s to the present. Volume I catalogs and summarizes Commission recommendations to federal agencies on a wide range of civil rights issues, including nondiscrimination and equality of opportunity in employment, education, housing, health care, and transportation in federally assisted programs. This volume presents the strategies and elements the Commission believes are necessary for an effective civil rights program. Succeeding volumes will use the criteria established here to evaluate the performance of specific agencies.

This study reveals that in the last decade most agencies were failing to meet their civil rights obligations. Only a handful of agencies were adequately meeting their full civil rights duties, while a few more were only partially satisfying obligations. Inadequate funding for civil rights at all levels, insufficient staff, and increased workloads were the primary reasons for the poor performance of agencies.

The Commission recommends that federal agencies be provided adequate funding for their civil rights duties. Increases in the statutory authority of agencies, in the number of complaints they receive and process, and in the number of federal funding recipients that they oversee, without commensurate budget increases, have essentially ensured that agencies fail to meet their civil rights obligations. Increased funding and adoption of the strategies and elements for a successful civil rights program cited in this study, will pave the way for improvement in the area of federal civil rights enforcement.

For the Commissioners,

Mary Frances Berry
Chairperson

Acknowledgments

This report was prepared by the Office of Civil Rights Evaluation under the direction of Terri A. Dickerson, assistant staff director for civil rights evaluation. Eileen Rudert, social scientist, served as team leader, and along with Manuel Alba, social scientist, Mireille Zieseniss, civil rights analyst, and Michael Wolf, an intern from Columbia University, New York, New York, wrote the report. Other staff who assisted with the report include civil rights analysts Margaret Butler, Monique Dennis-Elmore, Wanda Johnson, Kirk Perry, and secretary Teresa Brooks. The following interns also contributed to the report: Tammy Chu, University of Michigan, Ann Arbor, Michigan; Danielle Head, Taylor University, Upland, Indiana; and Victoria Tung, University of Pennsylvania, Philadelphia, Pennsylvania.

The report was reviewed for legal sufficiency by Joyce A. Smith, attorney-advisor, Office of General Counsel. Bernard A. Quarterman, Jr., attorney-advisor, Office of General Counsel, assisted with the legal review. Editorial review was performed by David Aronson, editor, Public Affairs Unit; Ivy Davis, chief, Regional Programs Coordination Unit; and Melvin Jenkins, director, Central Regional Office. Dawn Sweet, editor, prepared this report for final publication.

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Executive Summary

During the 1990s, the U.S. Commission on Civil Rights issued numerous statutorily required reports evaluating the operations of major federal civil rights enforcement agencies. The reports are represented in 16 volumes, which have examined federal agencies' efforts to address a wide range of civil rights issues, including nondiscrimination and equality of opportunity in employment, education, housing, health care, and transportation in federally assisted programs; among state and local government agencies; and in the private sector.

The Commission's reports focused on the enforcement process—how federal agencies promote a national understanding of discrimination, how they ensure that recipients of federal funds do not discriminate, and how they handle complaints and initiate litigation or mediate when discrimination occurs. They fulfill their mandate through policy dissemination, education and outreach, compliance reviews of federal funding recipients, technical assistance to entities that may not be complying with civil rights laws, complaint processing and litigation, and holding accountable other entities responsible for enforcing civil rights laws.

As the nation's consciousness on civil rights, the Commission must issue annual reports evaluating the effectiveness of civil rights enforcement agencies. Over the past decade, the Commission has examined 11 such agencies in reports that yielded more than 1,100 recommendations. Have agencies implemented those recommendations? If not, why not? If so, what has been the result? These are questions to which this report addresses itself.

A series of reports will grow out of these questions. This, the first report, catalogs and summarizes recommendations made between 1992 and 2000 to the 11 federal agencies that were subjects of the original examinations (the Equal Employment Opportunity Commission, the Departments of Justice, Education, Health and Human Services, Housing and Urban Development, Labor, Transportation, Agriculture, and the Interior, the Environmental Protection Agency, and the Small Business Administration). No new information was obtained from agencies in the completion of this first report, volume I. To the extent that findings and recommendations are offered here, they are based on information contained in the earlier reports.

Subsequent volumes will probe further, attempting to determine whether or not specific agencies have implemented recommendations, and with what results. New information will be obtained from agencies in order to make those determinations. Findings and recommendations will further direct the agencies in the effective enforcement of civil rights laws.

In preparing this study, the Commission reviewed relevant policy, procedures, planning and budget documents; prepared interrogatories to solicit current information on civil rights initiatives within the agencies; interviewed civil rights staff; and reviewed other relevant reports and sources. This effort is reflected in later volumes that show where specific federal agencies are strong or weak in civil rights enforcement, how the Commission's recommendations were addressed, and where civil rights programs have been strengthened or changed since the Commission's earlier assessment.

In addition to federal agencies, the Commission's recommendations over the past decade were directed to Congress, the President, state and local agencies, and other entities such as advocacy groups and professional and community organizations. This report, however, focuses on recommendations directed to the federal agencies and, when funding and resources are involved, to Congress.

Most agencies the Commission reviewed have responsibilities to ensure nondiscrimination in federally assisted programs as required under Title VI of the Civil Rights Act of 1964.[1] Some agencies have key civil rights responsibilities related to enforcement under other statutes, for example, the Americans with Disabilities Act (ADA).[2] But despite the different enforcement responsibilities the various statutes impose

[1] 42 U.S.C. §§ 2000d *et seq.* (2002). Note that the Equal Employment Opportunity Commission does not have civil rights responsibilities under Title VI of the Civil Rights Act because it does not have funding recipients. Its enforcement efforts fall under Title VII of the Civil Rights Act.

[2] 42 U.S.C. §§ 12141 *et seq.* (2002).

on federal agencies, broadly applicable themes are evident in the Commission's recommendations for improved enforcement throughout the decade.

What the Commission Found in Past Reports

Some agencies had more effective civil rights enforcement systems than others. For example, the Equal Employment Opportunity Commission and the Department of Education had laudable implementation programs. In two instances, agencies had implemented good civil rights enforcement systems in some areas but not throughout the agency. Among these were the Department of Labor, which was excellent when considering regulations and reporting requirements for recipients, and its job training program of that era; and the Department of Transportation, which had several good elements, including staff training, a state monitoring program, a technical assistance program, and a data collection and analysis system. Other agencies had, at best, minor meritorious elements or lacked consistency. Those with rudimentary systems still struggling to create effective enforcement programs were the Departments of Agriculture, Justice, Health and Human Services, and Housing and Urban Development. Finally, agencies that had yet to establish a solid basis for effective civil rights enforcement were the Environmental Protection Agency, the Department of the Interior, and the Small Business Administration.

Key Elements for Civil Rights Enforcement

In evaluating federal agencies' civil rights enforcement programs in the 1990s, the Commission identified required elements for effective civil rights enforcement. A program must have established authority and resources for carrying out civil rights enforcement. Without these, other necessary elements are difficult to establish. Secondary elements are planning, policy guidance, technical assistance, education and outreach, complaint processing, a compliance review system, oversight and quality assurance procedures, and staff training. Effective civil rights enforcement must have:

1. *A high priority for civil rights enforcement.* Twenty to 25 percent of the Commission's recommendations over the study period concerned the priority an agency gave to civil rights enforcement. At the heart of placing high priority on civil rights enforcement is providing adequate staff and funding for meeting civil rights obligations. Over the decade, the Commission asked Congress to provide more funds to federal agencies for civil rights enforcement. Agency officials were asked to request more funds from Congress and to allocate more of the agency's resources to civil rights enforcement.

2. *An organizational structure that expresses the priority of civil rights.* The effectiveness of civil rights enforcement, indeed the ability to obtain sufficient civil rights funding and staffing, is impaired when an agency does not have a civil rights enforcement unit with a direct line of authority to the agency head. Furthermore, if the civil rights unit is not devoted solely to external civil rights enforcement, resources may be drawn off for internal civil rights, or non-civil rights functions, causing some civil rights obligations to go unmet.

3. *Planned civil rights goals and activities.* The failure of agencies to include civil rights goals and objectives in their strategic planning shows a low priority for civil rights. In addition, many federal agencies are required to submit a civil rights implementation plan to the Department of Justice describing enforcement activities to ensure federal funding recipients' compliance with Title VI. The Commission urged that these plans conform to the Department of Justice's guidelines for enforcement, describe civil rights implementation and enforcement fully, and specify short-term civil rights goals and long-term objectives and timeframes for achieving them, specify priority civil rights issues, and realistically assess the available staff and resources to accomplish the goals and objectives. Agencies should implement management information systems that track expenditures and workload for different civil

rights statutes and enforcement activities and use this information to support the planning and budgeting processes.

4. *Clear and pertinent policy guidance, current regulations, technical assistance, education, and outreach.* A third of the Commission's recommendations over the past decade emphasized the need for attention to this aspect of civil rights enforcement. First, federal agencies must regularly develop and disseminate internal procedures and external policies for civil rights enforcement. The Commission further called for federal agencies to establish policy units so that some staff and resources were committed to develop and disseminate civil rights policy and guidance, and not encumbered with enforcement responsibilities. Agencies must involve community organizations and advocacy groups when developing policy.

   The Commission found that federal agencies' regulations for civil rights enforcement were out of date. They needed to be regularly updated in the light of recent legislation. Notably in 1996, many agencies had yet to revise regulations to reflect the Civil Rights Restoration Act of 1987, which extended Title VI coverage to prohibit discrimination in an entire institution even if only part of the institution receives federal assistance.

   The Commission asked many agencies to provide or improve technical assistance to funding recipients. Many such entities are employers and service providers who need assistance in meeting their civil rights obligations. Agencies were asked to provide or improve technical assistance to their own civil rights enforcement components, including field offices and contracting agencies.

   To ensure that perpetrators and victims of civil rights violations and the public are informed about civil rights, federal agencies must provide adequate education and outreach programs. Education and outreach materials must reach all populations and be disseminated in non-English languages in addition to English. The Commission asked that agencies be creative in targeting education and outreach to special audiences such as attorneys or small businesses; in using innovative venues, including the Internet; and in coordinating intra-agency education and outreach.

5. *Effective complaint processing systems.* The Commission urged that agencies improve customer service for handling complaints by creating systems that are easy to navigate for potential charging parties and adequately publicizing policies and procedures. Complaint processing systems must resolve complaints efficiently and expeditiously to achieve maximum results. They must be based upon complaint processing and investigation procedures that ensure consistency of handling nationwide. When charges are resolved with settlement agreements and court rulings, agencies must systematically monitor compliance.

6. *Systems to ensure review of all funding recipients' compliance before and after the awards are made and to correct deficiencies.* Agencies must conduct thorough and in-depth compliance reviews of all funding recipients; impose reporting requirements on recipients and analyze recipients' reported information for possible discrimination; identify recipients to receive on-site reviews; and monitor the quality of enforcement efforts. In particular, agencies should conduct desk audits to identify potential noncompliance and select recipients to receive on-site compliance reviews. The quality of pre- and post-award reviews, whether conducted by field office staff, contractual organizations, or state recipients, should be monitored.

   Many federal agencies provide funding to state recipients. State recipients must be required to describe the methods used to ensure civil rights compliance among their subrecipients and to report data on the race, ethnicity, and gender of program participants and beneficiaries. States, in turn, must subject their funding recipients to reporting requirements and compliance reviews.

When reviews reveal noncompliance, agencies must provide technical assistance to assist funding recipients in voluntarily complying or apply sanctions if a voluntary agreement is not forthcoming. The agency should continue to monitor such recipients for compliance and seek fund termination or temporary suspension for noncomplying recipients. The Department of Justice should consider whether sanctions for noncompliance should be strengthened.

7. *Regular staff training on civil rights statutes and emerging issues*.

Strategies for Effective Civil Rights Enforcement

Although the Commission recognized that many agencies had limited resources for performing civil rights enforcement activities, it continually recognized the importance of all the above elements. Yet, exemplary civil rights enforcement systems were found in agencies that had taken further actions to meld these elements together into an effective, efficient whole. The strategies that produce exemplary enforcement are:

1. *Integrating civil rights enforcement throughout the agency, including in every program that receives federal funding.*

2. *Delegating enforcement activities.* Whenever possible, agencies should delegate compliance reviews from their headquarters offices to agency divisions and to regional or district offices, and to state recipients to perform on subrecipients. Funding recipients should be required to report data and other information and perform self-analyses that federal staff can use to determine compliance. Similarly, federal agencies may refer complainants to private attorneys, reserving cases with the largest impact for the federal agency to pursue.

3. *Implementing oversight mechanisms.* Commission recommendations named four levels where oversight for civil rights enforcement was essential. These are (1) the Department of Justice's (DOJ) oversight responsibilities for the Title VI enforcement of all other federal agencies; (2) intradepartmental delegation of civil rights responsibilities from headquarters to operating divisions or administrations and to field offices; (3) agency or departmental responsibilities with respect to contracting organizations; and (4) agencies' promulgation of Title VI enforcement among federal funding recipients with subrecipients, particularly states.

   DOJ's Coordination and Review Section (CORS) of the Civil Rights Division needs to strengthen its oversight process and enforce its regulations requiring federal agencies to submit annual Title VI enforcement plans conforming to DOJ's guidelines. CORS should conduct on-site reviews of agencies' enforcement programs to identify deficiencies and provide training or technical assistance to correct any deficiencies, as well as monitor all federal agencies' delegation agreements.

   Headquarters units with oversight responsibilities for civil rights enforcement should develop comprehensive procedures to delegate enforcement authority to the agencies' subdivisions. They should establish an oversight and monitoring system to review, evaluate, and direct these units' civil rights activities and conduct regular reviews and evaluations of the subdivisions' enforcement efforts. They should require the units with delegated authority to regularly report information that can be reviewed, including their enforcement activities and an annual self-assessment of their enforcement. Similarly, agencies or their operating divisions must charge their state recipients with the responsibility for overseeing the civil rights compliance of their subrecipients and must develop similar oversight systems for monitoring the state recipients. Agencies that use contracting organizations to carry out civil rights enforcement activities should monitor the contractors, conduct on-site visits, and ensure consistency of enforcement activities across contractors.

4. *Coordinating civil rights enforcement efforts.* Coordination is particularly important because recipients may be funded by more than one agency. For example, both the Departments of Education and Health and Human Services fund teaching hospitals. Thus, agencies sharing jurisdiction could share responsibilities for conducting compliance reviews, technical assistance, and education and outreach. The Department of Justice should study the extent to which agencies would benefit from such coordination and request funds from Congress to develop a database of federal funding recipients that would enable agencies to determine when multiple agencies are funding the same recipient.

5. *Streamlining civil rights enforcement procedures.* The agencies should review complaint processing and compliance review systems for efficiency and effectiveness. They should, for example, ensure that charge intake staff collects appropriate information from complainants and that this task does not fall to investigators. Charges of discrimination should be prioritized and, if not meritorious for handling in the federal system, resolved quickly through dismissal, referral to private attorneys, mediation, or conciliation. Compliance reviews should be balanced between desk audits and on-site reviews, and funding recipients should be required to provide information for desk audits.

6. *Involving advocacy groups and community organizations in civil rights enforcement activities.* The affected communities must participate in policy development to ensure that policy addresses their concerns. They must also assist in designing education and outreach to appeal to the affected communities; and in developing litigation strategies that address the issues that concern these communities and provide the remedies they desire.

In short, the Commission asked that agencies integrate civil rights enforcement throughout their offices and programs, delegate responsibility for conducting enforcement activities, implement oversight and quality assurance procedures to ensure that the delegated activities are carried out properly, coordinate with other federal agencies to ensure that civil rights enforcement efforts are not duplicative, streamline procedures, and involve affected communities in designing enforcement.

Thus, this report evaluates federal activities based on the foregoing essential elements for an enforcement program. This report suggests ways to maximize the effectiveness of an enforcement system and assesses which federal agencies were, or are, doing well or poorly at enforcing civil rights. It documents the Commission's recommendations to enforcement offices over the past decade. The recommendations provide an enforcement guide for federal agencies charged with promoting equality for all individuals and groups disenfranchised in the United States because of differences of skin color, national origin, gender, age, disability, or religion.

CHAPTER 1

Introduction

"The vitality and effectiveness of our nation's civil rights laws depends upon the commitment and strength of the federal agencies charged with their enforcement. The various federal civil rights agencies investigate and redress instances of discrimination, and provide guidance to individuals and businesses about their rights and responsibilities under the law. Because the degree of faith that Americans have in the value of these laws is in large part a reflection of how well these agencies do their jobs, ensuring their adequate funding is essential."[1]

—Leadership Conference on Civil Rights

During the 1990s, the U.S. Commission on Civil Rights issued numerous reports evaluating the operations of most major federal civil rights enforcement agencies. Those reports examined agencies' efforts to address a wide range of civil rights issues, including nondiscrimination and equality of opportunity in employment, education, housing, health care, and transportation in federally assisted programs; among state and local government agencies; and in the private sector. All of these reports contained careful analysis, thoughtful observations, and advice to federal civil rights enforcement agencies on developing more effective enforcement operations.

The Commission's reports focused on the enforcement process—how federal agencies promote a national understanding of discrimination, how they ensure that recipients of federal funds do not discriminate, and how they handle complaints and initiate litigation or other enforcement activities when discrimination occurs. The Commission recommended ways for agencies to provide more effective civil rights enforcement.

The Commission's Office for Civil Rights Evaluation (OCRE) is responsible for evaluating federal efforts to combat discrimination through enforcement activities. In the past, the Commission has had sufficient staff and resources to continuously evaluate each of the federal agencies with civil rights responsibilities and ensure that recommendations were implemented. However, because of resource reductions beginning in the 1980s, the Commission's monitoring program has been reduced to periodic reviews of agencies with major civil rights responsibilities. Follow-up on whether the agencies have responded to the Commission's recommendations has not been possible because of resource constraints. Thus, with this report, the Commission monitors whether and how the evaluated agencies have addressed the recommendations issued over the past 10 years.

PURPOSE AND METHODOLOGY

This study began with a review of the more than 1,100 recommendations contained in 16 volumes of Commission enforcement reports issued between 1992 and 2000. The recommendations were summarized and sorted by topic. This first volume only catalogs those earlier recommendations and gives an overview of the themes that emerged from the earlier reports. No new interviews were conducted or documents obtained from agencies to produce this initial report, volume I. To the extent that findings and recommendations are offered in this volume, they are based on information contained in the earlier studies. This initial report is a reminder to the agencies studied of what the Commission found needed improvement and a blueprint for effective enforcement for others.

[1] Civilrights.org, "Civil Rights Enforcement: Overview," n.d., <http://www.civilrights.org/issues/enforcement/overview>.

Between 1992 and 2000, the Commission evaluated the enforcement programs of 11 federal agencies. The first volume is a preface to a series that cumulatively will reexamine the recommendations made during those years. The Commission will do so by conducting interviews and evaluating responses to written interrogatories to the agencies, and reviewing documents (regulations, budgets, annual reports, strategic plans, civil rights implementation plans, training manuals, technical assistance guides, etc.). These activities will help to measure the agencies' progress in implementing the Commission's previous recommendations and in planning civil rights programs relevant to present-day needs. This first volume provides a general overview of all recommendations made in the earlier enforcement reports. Later volumes will concentrate on individual agencies and their civil rights enforcement efforts since that time.

SCOPE

In total, 16 volumes, published between 1992 and 2000, were reviewed.[2] (See table 1, page 7. Appendix A contains brief descriptions of the reports.) The reports directed their recommendations to Congress, the President, federal, state, and local agencies, and other entities such as advocacy groups and professional and community organizations. However, the scope of this project covers only recommendations directed to the federal agencies and, when funding and resources are involved, to Congress.

The 11 federal agencies that were the subject of the reports are the Equal Employment Opportunity Commission (EEOC); the Departments of Justice (DOJ), Education (DOEd), Health and Human Services (HHS), Housing and Urban Development (HUD), Labor (DOL), Transportation (DOT), Agriculture (USDA), and the Interior (DOI); the Environmental Protection Agency (EPA), and the Small Business Administration (SBA). Table 2 (page 8) shows the agencies reviewed in each of the reports and the number of recommendations that were directed to them.

11 Federal Agencies Studied:

- Department of Justice
- Equal Employment Opportunity Commission
- Department of Agriculture
- Department of Education
- Department of Health and Human Services
- Department of Housing and Urban Development
- Department of Labor
- Department of the Interior
- Environmental Protection Agency
- Small Business Administration
- Department of Transportation

The present study is comprehensive in its coverage with respect to civil rights statutes. Except for EEOC, each of the agencies reviewed has responsibilities to ensure nondiscrimination in federally assisted programs, as required under Title VI of the Civil Rights Act of 1964[3] and Executive Order 12,250. However, several agencies have key civil rights responsibilities related to enforcement under other statutes: (1) HUD must ensure equal housing opportunity through enforcement of the Federal Fair Housing Act of 1968 (also called Title VIII of the Civil Rights Act of 1968) and the Fair Housing Amendments Act of 1988;[4] (2) DOEd must ensure equal educational opportunity through Section 504 of the Rehabilitation Act of 1973,[5] Title IX of the Education Amendments Act of 1972,[6] and other statutes; (3) EEOC must ensure

[2] A 17th enforcement volume, published in 2001, was not included in this study. It was still in the progress when this study was undertaken, making a judgment of the agency's implementation of the recommendations of that report premature. This particular report examined the enforcement activities of the Employment Litigation Section, a section within the Department of Justice's Civil Rights Division that has responsibility to ensure that public workers have a workplace free from harassment and discrimination. Its findings and recommendations contain many of the same themes laid out in the study herein. (*See* U.S. Commission on Civil Rights, *Federal Efforts to Eradicate Employment Discrimination in State and Local Governments: An Assessment of the U.S. Department of Justice's Employment Litigation Section*, September 2001.) The review of the Commission's reports herein does cover the Department of Justice and its Civil Rights Division, within which the Employment Litigation Section is housed.

[3] 42 U.S.C. §§ 2000d *et seq.* (2002).

[4] *Id.* §§ 3601–3619, 3631.

[5] 29 U.S.C. § 794 (2002).

[6] 20 U.S.C. §§ 1681–1688 (2002).

nondiscrimination and equal employment opportunity on the bases of race, color, national origin, sex, and religion as required under Title VII of the Civil Rights Act of 1964,[7] and on the basis of disability under Title I of the Americans with Disabilities Act (ADA);[8] (4) DOJ must ensure that state and local government agencies practice nondiscrimination and equal opportunity in their programs for people with disabilities, as required under Title II of the ADA;[9] and (5) HHS must enforce civil rights under Titles VI and XVI of the Public Health Service Act, known as the Hill-Burton Act,[10] and the Omnibus Reconciliation Act of 1981,[11] among other statutes where the agency does not have sole responsibility for enforcement. (See appendix B for brief descriptions of the key civil rights statutes.) Table 3 (page 9) shows the civil rights statutes enforced by the agencies the Commission has examined in the past decade.

> ***Key Finding:***
>
> The Commission's recommendations revealed the need for widespread improvement in establishing key elements for effective civil rights enforcement. These elements are important for all agencies with civil rights responsibilities.

Many of the agencies are subject to the same civil rights statutes and, although some statutes impose different enforcement responsibilities on some agencies, broadly applicable themes become evident in the Commission's recommendations for improved enforcement. Chapter 2 presents the themes of the Commission's recommendations regarding federal agencies' civil rights enforcement activities and sets the stage for later reviews of each agency's implementation of the recommendations and the issuance of further recommendations where necessary. The Commission's recommendations are organized around several elements that are necessary for effective civil rights enforcement. These elements are given in the next section along with approaches that the Commission has repeatedly recommended for maximizing the efficiency of civil rights enforcement programs. This chapter ends with a brief overview of which agencies were doing well or poorly when the Commission last reviewed them, in most cases in 1996.

ESSENTIALS FOR CIVIL RIGHTS ENFORCEMENT

To be successful, the civil rights enforcement programs of agencies must incorporate all of the elements the Commission identified. These elements are:

- a high priority for civil rights enforcement, established through sufficient resources consisting of funding and staffing;
- an organizational structure that expresses the priority of civil rights, for example, by having the top civil rights official reporting directly to the agency head;
- planned civil rights goals and activities, such as a strategic plan for which and how many enforcement activities are needed to fulfill the agency's civil rights obligations and what resources will be allocated to accomplish them;
- clear and pertinent policy guidance, including internal procedures, external policy, and current regulations;
- technical assistance, such as helping employers and service providers establish policies and procedures that comply with antidiscrimination laws;
- education and outreach, such as helping victims of discrimination and the public understand their civil rights and how to obtain assistance if discrimination occurs;
- effective complaint processing systems to ensure that those who believe they have been discriminated against have a means of resolution;

[7] 42 U.S.C. §§ 2000e–2000e-17 (2002).

[8] *Id.* §§ 12111 *et seq*.

[9] *Id.* §§ 12141 *et seq*.

[10] Title VI of the Public Service Act of 1964, Pub. L. No. 88-443, § 3(a), 78 Stat. 447 (codified as amended at 42 U.S.C. §§ 291 *et seq*. (2002)). Title XVI of the Pubic Service Act of 1979, Pub. L. No. 96-79, Title II, § 202(b), 93 Stat. 632 (codified as amended at 42 U.S.C. §§ 300q *et seq*. (2002)).

[11] Omnibus Reconciliation Act of 1986, Pub. L. No. 97-35, 95 Stat. 357–933 (codified as amended in scattered sections of various titles of the United States Code).

- systems to review all federal funding recipients' compliance with antidiscrimination laws both before and after awards are made and to correct deficiencies; and
- regular staff training on civil rights statutes and enforcement policies and procedures.

Of these elements, the first two—having a high priority for, and an organizational structure to support, civil rights—are key and determine whether the resources can be allocated to institute an enforcement program with the remaining elements. Most, if not all, of the federal agencies the Commission reviewed were faced with inadequate civil rights budgets due to the limited funds Congress and the federal agencies directed to civil rights enforcement.

> ***Key Finding:***
>
> Many agencies have shortages of resources—both budget and staffing—devoted to civil rights enforcement. However, some agencies have found ways to achieve efficient enforcement despite such limitations.

Limited monetary and staff resources may lead an agency to assess which elements of its civil rights enforcement program are the most critical, and perhaps discard or reduce those considered less important. The Commission does not view any part of an enforcement program as more critical than another, but it does believe that limited budgets and staff can be combated by:

- integrating civil rights enforcement throughout every part of the agency, including all of its agency components, programs, and field offices, and in every program that receives federal funding;
- delegating enforcement activities, such as responsibility for reviewing civil rights compliance, from agency headquarters to agency components, field offices, contracting organizations, and recipients with subrecipients;
- implementing oversight and quality assurance procedures to ensure that delegated responsibilities are carried out properly and consistently;
- coordinating civil rights enforcement activities with other federal agencies;
- streamlining enforcement procedures to ensure that they are conducted effectively and efficiently with the fewest resources; and
- involving advocacy groups and community organizations in designing civil rights enforcement activities.

Federal agencies could enhance civil rights enforcement by integrating such efforts agencywide, thus distributing the workload of what are typically vastly understaffed and overworked civil rights offices. Civil rights enforcement can also be improved by delegating civil rights responsibilities. For example, regional offices and state recipients can be assigned the task of conducting compliance reviews of their respective recipients. Overseeing data-reporting requirements can stretch limited civil rights enforcement budgets by ensuring that all necessary data for conducting post-award desk audits, for example, are provided by all parties when first requested. Simultaneously, quality assurance is provided through oversight of the work performed by these parties and prevents wasted human and monetary resources by ensuring that all requirements are met each and every time. Coordination between federal agencies will permit agencies funding the same recipient to designate which agency will conduct pre-award reviews, for example, thus eliminating duplicative efforts. Alternating between desk audits and on-site reviews for recipients, thus not conducting both in the same review cycle, allows federal agencies to streamline their enforcement efforts and stretch limited monetary and human resources. Involving the target community in developing an education and outreach program, for example, increases the likelihood the program will be effective in that community. Comprehensively incorporating these six features into a civil rights enforcement program will help an agency meet its civil rights obligations.

AGENCY PERFORMANCE ACCORDING TO THE COMMISSION'S PAST REPORTS

The civil rights enforcement performance of the agencies reviewed in this report varied substantially. Two agencies—DOEd and EEOC—were found to be performing at high levels with many of the essential elements for civil rights enforcement in place. DOEd was the only agency having an

organizational structure with all the necessary criteria for an effective Title VI enforcement program.[12] It also had an excellent information management system to track resources and expenditures by enforcement activity; good planning, policy development and dissemination, outreach, education, and technical assistance; an effective compliance review system supported by data collection and analysis and resulting in on-site reviews targeted to priority issues; and good coordination with professional organizations, including state and local education agencies.[13] EEOC, for its part, was praised by the Commission for establishing policies and procedures that allowed it to improve civil rights enforcement despite limited resources.[14] Still, both agencies did have areas that could be improved. EEOC, for example, needed to expand and strengthen its coordination with federal, state, and local agencies and organizations concerning such crucial factors as education and outreach.[15]

DOL and DOT had civil rights enforcement that was exemplary in certain programs, but needed to be spread throughout the agency. Although DOL had Title VI guidelines, policies, and procedures superior to those of many other agencies and laid a solid foundation for a Title VI enforcement program,[16] the enforcement effort was limited to its main training program, the Job Training Partnership Act,[17] which has since been replaced. Similarly, DOT had good staff training provided by the Office of the Secretary, fine state monitoring and technical assistance programs in one operating administration, and a good data collection and analysis program in another operating administration, but civil rights enforcement was not well implemented in any one program or across the agency.[18]

Key Finding:

Agencies varied in their success in implementing effective and efficient civil rights enforcement.

A third group of agencies includes those that had established civil rights enforcement programs but were still striving for effectiveness. Among those agencies performing unsatisfactory civil rights enforcement were USDA, HHS, HUD, and DOJ. For example, despite having Title VI regulations meeting all the necessary requirements,[19] USDA did not ensure that its agencies adhered to them. Consequently, its Food and Nutrition Service was not conducting pre-award reviews of all applicants nor was it providing formal Title VI training to its civil rights staff, relying instead on "on-the-job" training.[20] HHS, for its part, had a direct line of authority between its Office for Civil Rights (OCR) director and the Secretary.[21] Although this clearly shows the prioritization of civil rights, the Commission found its efforts to develop policy and conduct civil rights enforcement activities to be halfhearted.[22] HUD was struggling to overcome a huge backlog in complaints and reconfigure its system of using state and local agencies

[12] U.S. Commission on Civil Rights, *Federal Title VI Enforcement to Ensure Nondiscrimination in Federally Assisted Programs*, June 1996, pp. 6, 187, 209–10 (hereafter cited as USCCR, *Federal Title VI Enforcement*).

[13] USCCR, *Federal Title VI Enforcement*, pp. 187–88, 198, 201, 204, 207–08, 210, 212–14, 216–17; U.S. Commission on Civil Rights, *Equal Educational Opportunity and Nondiscrimination for Students with Limited English Proficiency: Federal Enforcement of Title VI and Lau v. Nichols, Equal Educational Opportunity Project Series, Vol. III*, November 1997, pp. 83–84, 92, 105–07, 213, 215–16; U.S. Commission on Civil Rights, *Equal Educational Opportunity and Nondiscrimination for Girls in Advanced Mathematics, Science, and Technology Education: Federal Enforcement of Title IX, Equal Educational Opportunity Project Series, Vol. V*, July 2000, pp. 75–76, 94, 138, 143; U.S. Commission on Civil Rights, *Equal Educational Opportunity and Nondiscrimination for Students with Disabilities: Federal Enforcement of Section 504, Equal Educational Opportunity Project Series, Vol. II*, pp. 157, 263–66, 371, 380, 382.

[14] U.S. Commission on Civil Rights, *Overcoming the Past, Focusing on the Future: An Assessment of the U.S. Equal Employment Opportunity Commission's Enforcement Efforts*, September 2000, p. 263 (hereafter cited as USCCR, *EEOC Report*).

[15] USCCR, *EEOC Report*, p. 264.

[16] USCCR, *Federal Title VI Enforcement*, p. 359.

[17] Ibid.

[18] Ibid., pp. 518–19.

[19] Ibid., p. 251.

[20] Ibid., pp. 280–85.

[21] U.S. Commission on Civil Rights, *The Health Care Challenge: Acknowledging Disparity, Confronting Discrimination, and Ensuring Equality, Vol. II, The Role of Federal Civil Rights Enforcement Efforts*, September 1999, pp. 19–20 (hereafter cited as USCCR, *Health Care Report*, *Vol. II*).

[22] USCCR, *Health Care Report, Vol. II*, pp. 274–75, 296, 321.

to investigate complaints to align with expanded fair housing jurisdiction.[23] The external civil rights unit had reorganized in 1994 and was revising policy and procedural guidance but had far to go to accomplish this and rebuild an effective compliance review system.[24] Finally, although DOJ issued guidelines for agency civil rights implementation plans, the Coordination and Review Section did not ensure that agencies' plans conformed to them. Few, if any, agencies actually complied with the guidelines.[25] In the light of DOJ's civil rights oversight and coordination responsibilities, this was a grave failure.

The final group of agencies had not yet established a solid basis for an effective civil rights enforcement program. Among this group were DOI, EPA, and SBA. EPA ensured its OCR of conducting inadequate civil rights enforcement by assigning it both external and internal civil rights duties.[26] Also hindering the effectiveness of the civil rights enforcement program was EPA's limited pre-award review system and virtually nonexistent post-award review system.[27] Similarly, when reviewed by the Commission, SBA was not conducting pre-award reviews and doing only limited post-award reviews of recipients with 15 or more employees.[28] Of the agencies reviewed, DOI had by far the weakest Title VI civil rights enforcement program. It lacked adequate leadership, coordination, oversight, and direction. Moreover, Title VI enforcement was absent from DOI's stated mission, goals, and objectives.[29]

Agency Performance According to the Commission's Past Reports:

- Agencies performing civil rights enforcement at high levels:

  Department of Education
  Equal Employment Opportunity Commission

- Agencies with exemplary performance in certain programs that needed to be replicated with other programs:

  Department of Labor
  Department of Transportation

- Agencies with established civil rights programs that were still striving for effectiveness:

  Department of Agriculture
  Department of Health and Human Services
  Department of Housing and Urban Development
  Department of Justice

- Agencies that had not yet established a solid basis for an effective civil rights enforcement program:

  Department of the Interior
  Environmental Protection Agency
  Small Business Administration

[23] U.S. Commission on Civil Rights, *Prospects and Impact of Losing State and Local Agencies from the Federal Fair Housing System*, September 1992; U.S. Commission on Civil Rights, *The Fair Housing Amendments Act of 1988: The Enforcement Report*, September 1994, pp. 221, 225–26.

[24] USCCR, *Federal Title VI Enforcement*, pp. 327–28, 331, 343, 347–52.

[25] Ibid., p. 151.

[26] Ibid., p. 419.

[27] Ibid., pp. 429–30.

[28] Ibid., pp. 473–74.

[29] Ibid., p. 405.

TABLE 1—List of Enforcement Reports, 1992–2000

No.	Short Name	Report Title	Published
1	Asian Report	*Civil Rights Issues Facing Asian Americans in the 1990s*	Feb-92
2	Fair Housing I	*Prospects and Impact of Losing State and Local Agencies from the Federal Fair Housing System*	Sept-92
3	Fair Housing II	*The Fair Housing Amendments Act of 1988: The Enforcement Report*	Sept-94
4	Federal Employee Report	*Equal Employment Rights for Federal Employees*	Aug-93
5	Transportation Report	*Enforcement of Equal Employment and Economic Opportunity Laws and Programs Relating to Federally Assisted Transportation Projects*	Jan-93
6	Title VI Report	*Federal Title VI Enforcement to Ensure Nondiscrimination in Federally Assisted Programs*	June-96
7	Education I	*Equal Educational Opportunity Project Series, Vol. I*	Dec-96
8	Students with Disabilities Report	*Equal Educational Opportunity and Nondiscrimination for Students with Disabilities: Federal Enforcement of Section 504, Equal Educational Opportunity Project Series, Vol. II*	Sept-97
9	LEP Report	*Equal Educational Opportunity and Nondiscrimination for Students with Limited English Proficiency: Federal Enforcement of Title VI and Lau v. Nichols, Equal Educational Opportunity Project Series, Vol. III*	Nov-97
10	Ability Grouping Report	*Equal Educational Opportunity and Nondiscrimination for Minority Students: Federal Enforcement of Title VI in Ability Grouping Practices, Equal Educational Opportunity Project Series, Vol. IV*	Sept-99
11	Title IX Education Report	*Equal Educational Opportunity and Nondiscrimination for Girls in Advanced Mathematics, Science, and Technology Education: Federal Enforcement of Title IX, Equal Educational Opportunity Project Series, Vol. V*	July-00
12	ADA I	*Helping Employers Comply with the ADA: An Assessment of How the U.S. Equal Employment Opportunity Commission Is Enforcing Title I of the Americans with Disabilities Act*	Sept-98
13	ADA II	*Helping State and Local Governments Comply with the ADA: An Assessment of How the U.S. Department of Justice Is Enforcing Title II, Subpart A, of the Americans with Disabilities Act*	Sept-98
14	Health Care I	*The Health Care Challenge; Acknowledging Disparity, Confronting Discrimination, and Ensuring Equality, Vol. I: The Role of Governmental and Private Health Care Programs and Initiatives*	Sept-99
15	Health Care II	*The Health Care Challenge; Acknowledging Disparity, Confronting Discrimination, and Ensuring Equality, Vol. II: The Role of Federal Civil Rights Enforcement Efforts*	Sept-99
16	EEOC Report	*Overcoming the Past, Focusing on the Future: An Assessment of the U.S. Equal Employment Opportunity Commission's Enforcement Efforts*	Sept-00

TABLE 2—A Decade of Reports: What Agencies Were the Recommendations Directed Toward?

	Number of Recommendations by Accountable Agency or Organization													
Report	**Total**	**EEOC**	**DOJ**	**DOEd**	**DOL**	**HUD**	**HHS**	**DOT**	**SBA**	**DOI**	**USDA**	**EPA**	**General**	**Other**
Title VI Report	406		60	18	26	22	24	88	17	24	55	29	43	
Asian Report	44	11	12	8			5						5	3
Fair Housing I	11					11								
Fair Housing II	33					33								
Federal Employee Report	8	8												
Transportation Report	13				8			8						1
Education I	23			23										
Students with Disabilities Report	56			56										
LEP Report	40			40										
Ability Grouping Report	33			33										
Title IX Education Report	46			46										
ADA I	68	68												
ADA II	30		30											
Health Care I	52						52							
Health Care II	155						153							
EEOC Report	112	112												
TOTAL	1,130	199	102	224	34	66	234	96	17	24	55	29	48	4

TABLE 3—Federal Agencies and the Major Civil Rights Statutes They Enforce

Statutes[1]					
Agencies	**Civil Rights Acts of 1964 and 1991**	**Education Statutes**[2]	**Disability Statutes**[3]	**Housing Statutes**[4]	**Other**
USDA	**Title VI** (1964)		*Title II of the ADA* *Section 504*	*Title VIII of 1968*	
DOEd	**Title VI** (1964)	**Title IX of 1972** *IDEA of 1975*	**Title II of the ADA** **Section 504**		*Age Discrimination Act of 1975*
DOI	**Title VI** (1964)	*Title IX of 1972*	*Title II of the ADA*		
DOJ	**Title VI** (1964) *Title VII* (1964) *Civil Rights Act of 1991*	*Title IX of 1972*	ADA (**Title II**)	**Title VIII of 1968**	**Hate Crimes Statistics Act of 1990** *Voting Rights Act of 1965*
DOL	**Title VI** (1964) *Title VII* (1964)	*Title IX of 1972*	*ADA* *Sections 504 and 508*		*Equal Pay Act of 1963* *Age Discrimination Act of 1975*
DOT	**Title VI** (1964)		*ADA* *Sections 504 and 508*		*Equal Pay Act of 1963* *ADEA of 1967* *Age Discrimination Act of 1975*
EEOC	**Title VII** (1964) *Civil Rights Act of 1991*		Titles **I** and *V* of the ADA *Sections 501 and 505*		**Equal Pay Act of 1963** **ADEA of 1967**
EPA	**Title VI** (1964)	*Title IX of 1972*	*Section 504*	*Title VIII of 1968*	*Age Discrimination Act of 1975*
HHS	**Title VI** (1964)	**Title IX of 1972**	*Title II of the ADA* *Section 504*		**Hill-Burton Act of 1946** *Age Discrimination Act of 1975*
HUD	**Title VI** (1964)		**Section 504** *Title II of the ADA*	**Title VIII of 1968** **Fair Housing Act of 1988** **Section 109 of 1974**[5]	*Age Discrimination Act of 1975* *Section 3 of 1968*[6]
SBA	**Title VI** (1964)	*Title IX of 1972*			*Age Discrimination Act of 1975*

[1] The enforcement of statutes presented in bold face has been reviewed by the Commission for that agency while enforcement of those presented in italics has not been reviewed.

[2] Education acts include Title IX of the Education Amendments of 1972, the Women's Educational Equity Act (WEEA) of 1965, and the Individuals with Disabilities Education Act (IDEA) of 1975. This last act also addresses the issue of disability.

[3] Disability acts include Sections 501, 504, 505, and 508 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA) of 1990.

[4] Housing acts include Title VIII of the Civil Rights Act of 1968, also known as the Fair Housing Act, and the Fair Housing Amendments Act of 1988.

[5] Section 109 of the Housing and Community Development Act (HCD) of 1974.

[6] Section 3 of the HUD Act of 1968.

CHAPTER 2

Themes of Recommendations From a Decade of Enforcement Reports

A review of the Commission's 16 volumes of enforcement reports written over the past decade revealed that the Commission had set broad civil rights goals as well as others more narrowly focused on achieving a more effective federal system of civil rights enforcement. Establishing equal treatment of all parties was among broad civil rights goals the Commission asked federal agencies to pursue in their civil rights enforcement efforts.[1] Still other Commission recommendations encouraged federal agencies to interpret how civil rights laws apply to their specialized programs. This chapter addresses the themes embodied in the Commission's recommendations to all agencies, despite any unique aspects of the programs they operate.

The subject matter of recommendations fell in several categories: the priority given to civil rights enforcement; the dissemination of policy through guidance, regulations, technical assistance, outreach, education, and publicity; the complaint processing and litigation system; the compliance review system for funding recipients; and certain managerial aspects such as staff training and coordination with other agencies.

One-third of the Commission's more than 1,100 recommendations pertained to policy dissemination. Roughly 20 to 25 percent of the recommendations related to the priority of civil rights enforcement.[2] About 12 percent of the recommendations dealt with the system of ensuring compliance among funding recipients. Recommendations about complaint processing made up 7 percent. Recommendations about substantive issues such as limited English proficiency or diversity accounted for 4 to 6 percent. Together, recommendations about staff training, coordination, and interaction with other federal agencies, advocacy groups, and community organizations, and the need for additional research on substantive areas of enforcement were 12 percent of the whole. Finally, 8 percent of the recommendations were directed at organizations other than federal agencies (e.g., professional associations and advocacy groups) or dealt with unique matters not readily categorized here and are not included in the summary that follows.

Subjects of the 1,130 Recommendations:

Policy dissemination 33%
Priority of civil rights enforcement 20–25%

[1] *See, e.g.,* U.S. Commission on Civil Rights, *Equal Educational Opportunity Project Series*, *Vol. I*, December 1996, pp. 10–16, 20–27, 42, 247–48 (hereafter cited as USCCR, *Education Report, Vol. I*); U.S. Commission on Civil Rights, *The Health Care Challenge; Acknowledging Disparity, Confronting Discrimination, and Ensuring Equality, Vol. I*, September 1999, pp. 64–69, 198–99 (hereafter cited as USCCR, *Health Care Report, Vol. I*).

[2] Note that the 16 volumes of reports had 1,130 headers labeled "Recommendation." However, many recommendations were broad, covering a range of issues, or directed to more than one agency or entity. The percentage of recommendations of each type varies depending on whether each recommendation is counted once based on the primary subject matter or whether each is counted multiple times to reflect all the different issues addressed by the recommendation.

PRIORITY GIVEN TO CIVIL RIGHTS ENFORCEMENT

In prior studies of federal agencies, the Commission often found a lack of commitment to civil rights enforcement, which was evident in the failure to issue policy guidance and to conduct compliance reviews.[3] It repeatedly recommended renewing commitment to, or revitalizing, civil rights compliance and enforcement programs, whether they were concerned with Title VI of the Civil Rights Act, Title IX of the Education Amendments of 1972, the Americans with Disabilities Act, or another civil rights law. In numerous instances, the Commission indicated that any revitalization of one aspect of enforcement should not occur at the expense of other civil rights programs. Agencies should seek ways to improve the effectiveness and efficiency of civil rights enforcement, possibly even by consolidating efforts with other federal agencies.[4] The Commission also asked that civil rights enforcement activities be integrated into the activities of all other agency offices to ensure that civil rights goals and objectives would be met.[5]

Apart from this general complacency about civil rights enforcement, the priority given to it is expressed in the lack of vigor with which agencies seek funds and how they allocate them to enforcement functions; the organization and line of authority for civil rights staff within agencies; the formal establishment of procedures for accountability and oversight of civil rights enforcement; agencies' strategic planning to accomplish civil rights goals and objectives; and the management of enforcement through tracking of civil rights activities. All of these are important; however, the need for additional funding and resources devoted to civil rights enforcement is the most prevalent recommendation with respect to the priority of civil rights.

Resources—Funding and Staffing

Nearly 10 percent of the Commission's recommendations to agencies between 1992 and 2000 sought to increase funding and resources.[6] In some

[3] U.S. Commission on Civil Rights, *Federal Title VI Enforcement to Ensure Nondiscrimination in Federally Assisted Programs*, June 1996, pp. 223, 252, 258, 268, 356–58, 387, 421, 455, 592, 612–13 (hereafter cited as USCCR, *Federal Title VI Enforcement*); U.S. Commission on Civil Rights, *Civil Rights Issues Facing Asian Americans in the 1990s*, February, 1992, pp. 130–56, 201 (hereafter cited as USCCR, *Civil Rights Issues Facing Asian Americans*); U.S. Commission on Civil Rights, *Enforcement of Equal Employment and Economic Opportunity Laws and Programs Relating to Federally Assisted Transportation Projects*, January 1993, pp. 1–3, 6–8, 13, 14 (hereafter cited as USCCR, *Transportation Report*); U.S. Commission on Civil Rights, *Equal Educational Opportunity and Nondiscrimination for Girls in Advanced Mathematics, Science, and Technology Education: Federal Enforcement of Title IX, Equal Educational Opportunity Project Series, Vol. V*, July 2000, pp. 121–22 (hereafter cited as USCCR, *Education Report, Vol. V*); U.S. Commission Civil Rights, *The Health Care Challenge; Acknowledging Disparity, Confronting Discrimination, and Ensuring Equality, Vol. II*, September 1999, pp. 1–15, 275–77, 279–80, and chaps. 3 and 4 (hereafter cited as USCCR, *Health Care Report, Vol. II*).

[4] USCCR, *Federal Title VI Enforcement*, pp. 186, 219, 405, 617; USCCR, *Transportation Report*, pp. 1–3, 6–8, 13, 14.

[5] USCCR, *Federal Title VI Enforcement*, pp. 220–22, 296–97, 311, 389–90, 395–96, 540–41, 599, 626.

[6] U.S. Commission on Civil Rights, *Prospects and Impact of Losing State and Local Agencies from the Federal Fair Housing System,* September 1992, p. 32 (hereafter cited as USCCR, *Federal Fair Housing System*); U.S. Commission on Civil Rights, *The Fair Housing Amendments Act of 1988: The Enforcement Report*, pp. 221–22 (hereafter cited as USCCR, *Fair Housing Enforcement Report*); U.S. Commission on Civil Rights, *Equal Employment Rights for Federal Employees*, August 1993, pp. 21–22 (hereafter cited as USCCR, *Federal Employee Report*); USCCR, *Federal Title VI Enforcement*, pp. 178–79, 189–90, 204–05, 222–23, 232, 257–58, 260, 278, 285–86, 297, 303, 312, 316–18, 330, 356, 359, 366–68, 391–92, 424–25, 435, 455–56, 466, 480, 488, 513, 525, 540, 542–43, 549–50, 556–57, 560, 569–70, 572–74, 582–83, 585, 593, 603, 631, 633, 665–66; USCCR, *Education Report, Vol. I*, pp. 183–84, 252–53; U.S. Commission on Civil Rights, *Equal Educational Opportunity and Nondiscrimination for Students with Disabilities: Federal Enforcement of Section 504, Equal Educational Opportunity Project Series, Vol. II*, pp. 192–94, 381 (hereafter cited as USCCR, *Education Report, Vol. II*); U.S. Commission on Civil Rights, *Equal Educational Opportunity and Nondiscrimination for Students with Limited English Proficiency: Federal Enforcement of Title VI and Lau v. Nichols, Equal Educational Opportunity Project Series, Vol. III*, November 1997, pp. 138–44, 221–22 (hereafter cited as USCCR, *Education Report, Vol. III*); USCCR, *Education Report, Vol. V*, pp. 83–84, 92–94, 141–43; U.S. Commission on Civil Rights, *Helping State and Local Governments Comply with the ADA: An Assessment of How the U.S. Department of Justice Is Enforcing Title II, Subpart A, of the Americans with Disabilities Act*, September 1998, pp. 11–13, 19–22, 134–35 (hereafter cited as USCCR, *ADA Report, Vol. I*); U.S. Commission on Civil Rights, *Helping Employers Comply with the ADA: An Assessment of How the U.S. Equal Employment Opportunity Commission Is Enforcing Title I of the Americans with Disabilities Act*, September 1998, pp. 62–65, 202–07, 211–13, 247, 265–66 (hereafter cited as USCCR, *ADA Report, Vol. II*); USCCR, *Health Care Report, Vol. I*, pp. 60–63, 196; USCCR, *Health Care Report,*

instances, the need for more funding arose because new statutes had expanded agencies' civil rights jurisdictions.[7] In other instances, the Commission recommended that Congress provide more funds for specific enforcement functions (e.g., for litigation or mediation,[8] outreach,[9] and improved computer technology to support civil rights enforcement[10]) or for social programs designed to address particular civil rights issues.[11]

Similarly, many recommendations suggested that agency officials request more funds from Congress or allocate more of the agency resources, either funding or staff, to civil rights enforcement.[12] Recommendations encouraged agency officials, including the U.S. attorney general and departmental secretaries, to request or allocate more resources for or to specific civil rights enforcement activities.[13]

The Commission also found need for additional staff. Some departments had only implemented effective Title VI enforcement within some administrations or programs and needed more civil rights staff to expand these efforts throughout the entire agency.[14] Additional staff was recommended for many activities related to civil rights enforcement. Among these were developing civil rights enforcement plans and Title VI regulations, guidelines, policies, and procedures;[15] conducting pre- and post-award compliance reviews and complaint investigations; coordinating regional and states' civil rights enforcement activities;[16] collecting and analyzing data on program participants or beneficiaries;[17] providing community outreach, public education, and Title VI staff training;[18] and conducting social science research on issues concerning women and minorities.[19]

Agencies were asked to develop an inventory of the functions and activities needed to sustain civil rights enforcement and to focus on the deficiencies in the overall enforcement program when identifying areas that need staff increases.[20] However, because assigning additional staff to civil rights enforcement is often unfeasible, the Commission often recommended that staff be reallocated for greater effectiveness of civil rights enforcement activities or that more efficient methods of enforc-

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Vol. II, pp. 44, 280–81, 294; U.S. Commission on Civil Rights, *Overcoming the Past, Focusing on the Future: An Assessment of the U.S. Equal Employment Opportunity Commission's Enforcement Efforts*, September 2000, pp. 66–69, 121–39, 178–79, 210, 221–23, 229–30, 241–45, 251, 259, 263–64, 270, 277, 283–84, 288–89, 290, 292, 294, 296, 298–99 (hereafter cited as USCCR, *EEOC Report*).

[7] *See, e.g.,* USCCR, *Fair Housing Enforcement Report*, pp. 221–22; USCCR, *Federal Fair Housing System*, p. 32.

[8] USCCR, *EEOC Report*, pp. 121–39, 178–79, 210, 277, 283–84, 288–89; USCCR, *ADA Report, Vol. II*, pp. 202–07, 265; USCCR, *ADA Report, Vol. I*, pp. 11–13, 134.

[9] USCCR, *EEOC Report*, pp. 221–23, 229–30, 241–45, 251, 259, 290, 292, 294, 296, 298–99.

[10] USCCR, *ADA Report, Vol. II*, pp. 211–13, 266.

[11] Special programs for which the Commission recommended funding included, for example, special language instruction programs for students with limited English proficiency (*see* USCCR, *Education Report, Vol. III*, pp. 138–44, 221–22) and financial assistance to health care professionals providing services to underserved populations (*see* USCCR, *Health Care Report, Vol. I*, pp. 60–63, 196).

[12] USCCR, *Education Report, Vol. I*, pp. 213–14, 261–62; USCCR, *Education Report, Vol. V*, pp. 49, 130; USCCR, *Health Care Report, Vol. I*, pp. 73, 135–38, 202, 217–18; USCCR, *Health Care Report, Vol. II*, pp. 41–44, 229, 239–56, 292–93, 356–58; USCCR, *Federal Title VI Enforcement*, pp. 55–57, 61, 66–68, 70–71, 75, 98, 100, 131–32, 138–40, 151–52, 190, 388–89, 405–07, 418–19, 439, 509, 511–12, 518–19, 558–59, 564, 616–17.

[13] USCCR, *ADA Report, Vol. I*, pp. 11–13, 134, 136; USCCR, *ADA Report, Vol. II*, pp. 211, 265–66; USCCR, *Federal Title VI Enforcement*, pp. 466–67, 475–76, 560–62, 565–66; USCCR, *EEOC Report*, pp. 201, 214–17, 201, 208–09, 287, 286–90; USCCR, *Education Report, Vol. I*, pp. 215–16, 263–64; USCCR, *Education Report, Vol. III*, pp. 197–200, 230–31; USCCR, *Education Report, Vol. II*, pp. 192–94, 381; USCCR, *Education Report, Vol. V*, pp. 52, 131–32; U.S. Commission on Civil Rights, *Equal Educational Opportunity and Nondiscrimination for Minority Students: Federal Enforcement of Title VI in Ability Grouping Practices, Equal Educational Opportunity Project Series, Vol. IV*, September 1999, pp. 84, 127 (hereafter cited as USCCR, *Education Report, Vol. IV*); USCCR, *Health Care Report, Vol. II*, pp. 42–43, 46, 48–49, 218–19, 294–96, 352.

[14] USCCR, *Federal Title VI Enforcement*, pp. 355–58, 375, 525–26, 537, 572–73, 581, 585–86, 590–92, 595, 598.

[15] Ibid., pp. 238, 585–86, 590–92, 595, 598; USCCR, *Health Care Report, Vol. II*, pp. 27–29, 287–88.

[16] USCCR, *Health Care Report, Vol. II*, pp. 18–19, 27–29, 282–83, 287–88; USCCR, *Federal Title VI Enforcement*, pp. 282–83, 290, 592.

[17] USCCR, *Federal Title VI Enforcement*, p. 592.

[18] Ibid., pp. 354–55, 373, 525–26, 537, 592; USCCR, *Health Care Report, Vol. II*, pp. 27–29, 287–88.

[19] USCCR, *Health Care Report, Vol. I*, pp. 118, 141, 155–56, 161–62, 213, 220–22.

[20] USCCR, *Federal Title VI Enforcement*, pp. 424–25, 441; USCCR, *Health Care Report, Vol. II*, pp. 31–33, 290–91.

ing civil rights be found.[21] For example, among the Title VI enforcement activities the Commission viewed as more efficient were the following: conducting pre-award desk audits of funding recipients' civil rights compliance, which might prevent an agency from awarding funds to a discriminating organization; providing technical assistance to aid recipients in complying; requiring recipients to conduct self-evaluations as part of their grant or contract obligations; and delegating implementation and enforcement activities to states for state-administered assistance programs, so that the federal agency was responsible only for oversight and monitoring.[22] In some instances, the Commission recommended that a study be done to identify the enforcement activities that most needed additional resources or that proved most effective for achieving civil rights goals.[23]

Organizational Structure to Meet Civil Rights Goals

The Commission has been concerned about whether federal agencies have organizational structures that foster effective civil rights enforcement.[24] It recommended that civil rights enforcement be integrated into all parts of an agency.[25] Yet how federal agencies achieved this integration differed. The Commission's studies of federal enforcement revealed three distinct structures, which will be referred to as the "centralized," "oversight," and "decentralized" models (see figure 1). In the centralized model, agencies have headquarters civil rights offices that conduct all civil rights enforcement activities.[26] In the oversight model, agencies have a headquarters office directing civil rights enforcement, while regional or local offices conduct most of the day-to-day enforcement activities.[27] The Department of Housing and Urban Development (HUD) and the Equal Employment Opportunity Commission (EEOC) fit this model. In the decentralized model, federal agencies have delegated most of the responsibility for civil rights enforcement to operating administrations.[28] The Department of Agriculture has decentralized civil rights enforcement.

Civil rights responsibilities are carried out under each of the models with varying degrees of success. The Commission identified several key elements that must be achieved with each model in order for Title VI implementation, compliance, and enforcement to be effective. These are discussed below. Notably, only one of the federal agencies reviewed in the Commission's Title VI report—the Department of Education (DOEd)—had an organizational structure meeting all of the elements the Commission identified.[29] The Commission commended EEOC for its organizational structure, too.[30]

Placement

The first element to foster civil rights enforcement is a primary civil rights office organizationally placed to ensure primacy within the agency.[31] One way to achieve this primacy is for the civil rights unit to have a direct line of authority to the departmental Secretary or the agency head.[32] The Commission recommended organizational changes to have the head of the Department's Office for Civil Rights report directly to the Secretary in the Department of Agriculture (USDA), Department of Labor (DOL), and Department of the

[21] *See, e.g.,* USCCR, *Federal Title VI Enforcement*, pp. 190, 211, 572–73, 581.

[22] USCCR, *Federal Title VI Enforcement*, pp. 480, 491; USCCR, *Health Care Report, Vol. II*, pp. 41–42, 293.

[23] *See, e.g.,* USCCR, *Federal Title VI Enforcement*, pp. 68, 70–71, 139–40, 256–58, 269; USCCR, *Education Report, Vol. I*, pp. 183–84, 252–53.

[24] *See, e.g.,* the Commission's recommendation that DOEd's OCR, which reorganized in 1996, should monitor the efficiency of the structure. USCCR, *Education Report, Vol. I*, pp. 188, 253.

[25] USCCR, *Health Care Report, Vol. II*, p. 278, and chaps. 1–4.

[26] USCCR, *Federal Title VI Enforcement*, p. 6.

[27] Ibid.

[28] Ibid.

[29] Ibid.

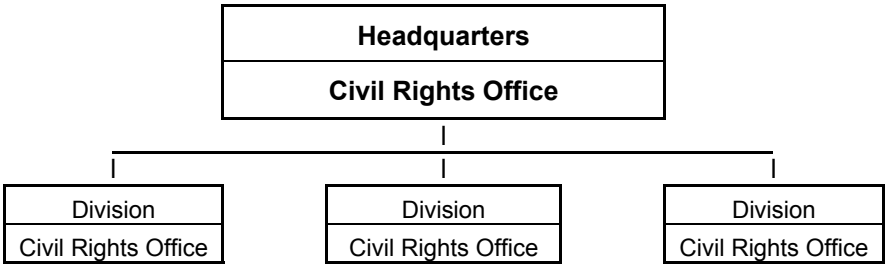
[30] USCCR, *ADA Report, Vol. II*, pp. 38–51. Note that the EEOC was not reviewed in the Title VI report because it does not have any responsibilities under Title VI. Its civil rights enforcement authority falls under Title VII and the Americans with Disabilities Act.

[31] USCCR, *Federal Title VI Enforcement*, p. 6.

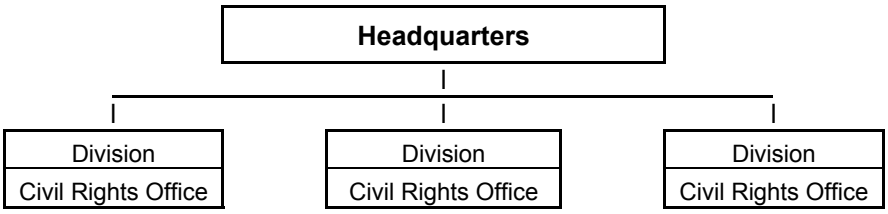
[32] Ibid., pp. 14–20, 186, 219, 253, 256–58, 278, 312, 326, 355–59, 391–92, 418, 453–54, 479–82, 507, 523–24, 539–40, 549, 562, 582, 591, 622.

FIGURE 1—Organizational Structure for Civil Rights Enforcement

(a) "Centralized" Model. Example: SBA



(b) "Oversight" Model. Examples: HUD, EEOC



(c) "Decentralized" Model. Example: USDA

Interior (DOI).[1] Within various administrations of the Department of Transportation (DOT) and USDA, the Commission recommended that organizational charts be revised so that the directors of the offices of civil rights report directly to their respective administrators.[2] Further, all staff engaged in civil rights enforcement, including those in regional and local offices, should report to a director of an office for civil rights who, in turn, reports directly to the agency head (i.e., the Secretary or administrator).[3]

Authority

The civil rights office must have sufficient authority to enforce civil rights within the agency programs.[4] Here, HUD and the Department of Health and Human Services (HHS) had faults. At HUD, the Commission found that responsibility for administering a civil rights statute was divided among executive staff, with no one below the secretarial level having sole responsibility for implementing the law. The Commission recommended that a single independent administrative agency be formed at an appropriate level to carry out the enforcement responsibilities.[5] At HHS, some operating divisions had minority and women's health coordinators in an advisory role, but without a budget or status to implement civil rights policies.[6]

Functions

Internal civil rights functions should be separated from external civil rights functions and non-Title VI enforcement responsibilities.[7] Several agencies had offices for civil rights with responsibility for the agency's internal equal employment opportunity programs along with external civil rights functions. The external civil rights responsibilities of some offices included other responsibilities along with the Title VI requirements to ensure that funding recipients comply with civil rights laws. Agencies in which the Commission recommended that separate offices be established for Title VI enforcement included USDA, HUD, the Environmental Protection Agency (EPA), DOT, and HHS operating divisions.[8] Similarly, the Commission recommended that staff assigned to external civil rights functions be full time and specialized in that area.[9]

Coordination With Other Offices

Other elements for fostering civil rights enforcement stressed the importance of coordination between the primary civil rights office and program offices and the organizational and managerial links that primary civil rights offices must have with regional and field offices.[10] For example, recommendations stated that for administrations or operating divisions to carry out external civil rights responsibilities, the regional staff and structure must be in place, with channels of regular communication and interaction with headquarters staff.[11] HHS needed improvement in the communication between its headquarters and regional staff.[12]

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[1] Ibid., pp. 253–56, 268, 355, 373, 387–88, 405–06.

[2] Ibid., pp. 275–78, 288, 310–11, 322, 558, 564, 584, 590, 601–02, 607.

[3] Ibid., pp. 186–88, 219–20, 276, 295–97, 305, 311, 419–21, 525, 536, 599, 623; USCCR, *Fair Housing Enforcement Report*, p. 224. In the fair housing study, the Commission recommended that regional attorneys be required to report both to the general counsel and the assistant secretary. USCCR, *Fair Housing Enforcement Report*, p. 224.

[4] USCCR, *Federal Title VI Enforcement*, p. 6.

[5] USCCR, *Fair Housing Enforcement Report*, p. 224.

[6] USCCR, *Health Care Report, Vol. I*, pp. 155–58, 221.

[7] USCCR, *Federal Title VI Enforcement*, p. 6.

[8] USCCR, *Health Care Report, Vol. II*, pp. 234–54, 359–60; USCCR, *Federal Title VI Enforcement*, pp. 186–87, 219–22, 239–40, 253, 255–56, 268, 295, 311, 328, 336, 344, 355–58, 387, 420–01, 424–25, 439–41, 454, 481, 501–02, 505, 518, 523–25, 536, 539–46, 555–57, 567–71, 580, 591–92, 599, 625–26. USDA's Soil Conservation Service was reorganizing when the Commission reviewed the agency and was directed to guard against ill effects on Title VI enforcement in the process of transferring internal civil rights responsibilities to another office (USCCR, *Federal Title VI Enforcement*, pp. 312–13, 322). Similarly, DOT/OCR was asked to ensure that DOT reorganization did not impede civil rights enforcement activities (USCCR, *Federal Title VI Enforcement*, pp. 502–05, 517). DOEd and DOJ/OJP, which had separate internal and external civil rights offices, were directed to maintain the separateness (USCCR, *Federal Title VI Enforcement*, pp. 187, 209–10, 478–80, 491).

[9] USCCR, *Federal Title VI Enforcement*, pp. 311, 322.

[10] Ibid., p. 6.

[11] Ibid., pp. 329, 343, 389–90, 398–99, 407, 627; USCCR, *Health Care Report, Vol. II*, pp. 24–25, 231–54, 286, 359–60, 364–65.

[12] USCCR, *Health Care Report, Vol. II*, pp. 24–25, 49, 285.

The Commission's recommendations about the link between offices that carry out civil rights enforcement activities revealed a preference for the "oversight" and "centralized" models over a decentralized enforcement system. Some agencies had decentralized civil rights efforts by assigning enforcement responsibilities to programmatic staff in an effort to fully integrate civil rights enforcement into all parts of the agency. Although the Commission often commended such strategies as an effective means of overcoming limited resources, it recommended that an office of civil rights be established, independent of, and in a "watchdog" capacity over, other offices. This office should oversee, monitor, and coordinate civil rights enforcement and should have a separate unit to develop and disseminate policy and provide programmatic guidance.[13] The Commission further recommended that "watchdog" offices delegate civil rights responsibilities and hold others accountable for performing the delegated civil rights activities.

In a number of instances, the Commission recommended that an agency consider centralizing its external civil rights activities, particularly where the links among offices were ineffective.[14] For example, the Commission suggested that HUD consider centralizing field and regional staff to establish more direct reporting to headquarters and better oversight and monitoring of the field and regional staff responsible for Title VI enforcement.[15] DOT needed funding to consolidate its external civil rights activities into a headquarters office that would coordinate and oversee regional offices' activities.[16] Perhaps most important of all, the Commission asked agencies to evaluate whether their organizational structures were hampering their ability to enforce civil rights.[17]

Designated Offices for Enforcement Activities

The primary civil rights office should have units devoted exclusively to certain enforcement activities. Policy development was the activity most often named as deserving exclusive staff. Other activities named included enforcement planning; quality assurance; compliance; litigation; public education and outreach; federal, state, and local government coordination; analysis; and systems services.[18]

The Commission recommended a number of actions that might flow from having established the authority and lines of communication for civil rights offices, such as receiving a priority response to the need for resources. For example, in one instance the Commission recommended that the director of the office of civil rights be actively involved in the budget process in order to secure more funds for civil rights enforcement.[19]

Oversight and Accountability of Civil Rights Enforcement

The Commission's recommendations addressed concerns about oversight and accountability of the civil rights enforcement programs at many levels. These were (1) the Department of Justice's (DOJ) oversight responsibilities for the Title VI enforcement of all other federal agencies; (2) intradepartmental allocation of civil rights responsibilities from headquarters to operating divisions or administrations and to regional or field offices; (3) departmental responsibilities with respect to contracting organizations such as agencies under the Fair Housing Assistance Program (FHAPs), Federal Employment Practice Agencies (FEPAs), and Tribal Employment Rights Organizations (TEROs); and (4) agencies' promulgation of Title VI enforcement among federal funding recipients with subrecipients, particularly states.

[13] USCCR, *Federal Title VI Enforcement*, pp. 219, 253–55, 296, 300–01, 311, 387–90, 405–06, 501–05, 537–40, 624; USCCR, *Health Care Report, Vol. I*, pp. 155–56, 221; USCCR, *Health Care Report, Vol. II*, pp. 229, 239–56, 356–58. Within agency operating administrations, the Commission recommended creating an office concerned with minority or women's issues to more effectively address, evaluate, and resolve civil rights issues, and to provide leadership and coordination for programs throughout the agency. USCCR, *Health Care Report, Vol. I*, pp. 163, 222.

[14] USCCR, *Federal Title VI Enforcement*, pp. 219–20, 260–63, 387–96, 401, 501–02, 509, 511, 513–14, 664.

[15] Ibid., pp. 329, 344.

[16] Ibid., pp. 505, 518.

[17] Ibid., pp. 326–30, 343, 345.

[18] Ibid., pp. 6, 186–88, 219, 254, 326–27, 503, 624–25, 628; USCCR, *Health Care Report, Vol. II*, pp. 376–77.

[19] USCCR, *Federal Title VI Enforcement*, pp. 479–80, 490.

Department of Justice's Title VI Oversight

DOJ's Coordination and Review Section (CORS) of the Department's Civil Rights Division oversees the Title VI enforcement of all federal agencies. To strengthen oversight, the Commission recommended that CORS, first, must enforce coordination regulations requiring that federal agencies prepare annual Title VI enforcement plans. The unit should define procedures for developing enforcement plans.[20] Second, CORS must ensure that all agencies submit the required civil rights implementation plans and that the plans conform to DOJ's "Guidelines on Agency Implementation Plans." Any plans that do not meet minimum standards should be returned to the agencies for revision.[21] Third, DOJ/CORS should hold agencies accountable for the activities promised in their civil rights implementation plans.[22] To ensure that agencies set realistic goals for conducting enforcement activities, CORS should require a demonstration of the relationship between the program expenditures and resources and the enforcement activities accomplished in order to support budget requests for additional resources.[23] CORS should also require justifications or explanations for shortfalls in the completed work relative to that which was planned, and should provide assistance to remedy any agency's repeated deficiencies.[24]

In addition, DOJ/CORS should reinstate regularly administered agency surveys to oversee Title VI enforcement programs,[25] use on-site reviews of the programs to identify deficiencies, and correct any deficiencies through training and technical assistance.[26] DOJ/CORS should monitor all federal agencies' delegation agreements and require that the agencies, organizations, or contractors with delegated authority provide information on their civil rights activities to the delegating agency and CORS.[27]

Oversight of Civil Rights Enforcement Within Agencies

Federal agencies may distribute the responsibilities for civil rights enforcement among various divisions, administrations, or bureaus and among regional, district, or field offices. The agency divisions and regional or field offices may appear at different levels in an agency's organizational structure. Nonetheless, the Commission directed similar recommendations toward all levels.

The Commission strongly supported the delegation of civil rights enforcement responsibilities to both operational and regional staff.[28] HHS, DOJ's Office of Justice Programs, DOI, and EPA were agencies to which the Commission recommended delegation of responsibility or improvement in the existing method of delegation.

The Commission made many recommendations for how the responsibilities for civil rights enforcement should be delegated. First, departments that delegate civil rights responsibilities must clearly define the roles of the civil rights office and the units to which responsibilities are delegated.[29] Furthermore, the delegation should occur in a formal agreement, regulation, or internal order supported by the Department's Secretary or other agency head.[30] Second, an agency should institute an oversight mechanism to ensure that the divisions with delegated authority fulfill their civil rights enforcement responsibilities.[31] For example, to ensure close supervision and implementation of direction from headquarters' civil rights offices, staff, including area or regional directors, should be held accountable for the civil rights compliance and enforcement activities that are performed.[32]

[20] Ibid., pp. 90, 150–51.

[21] Ibid., pp. 90–91, 95, 98, 151.

[22] Ibid., pp. 151–52.

[23] Ibid., pp. 90, 150–51.

[24] Ibid., pp. 151–52.

[25] Ibid., pp. 101–03, 152.

[26] Ibid., pp. 104, 152.

[27] Ibid., pp. 106–07, 109, 153.

[28] Ibid., pp. 218–23, 238–40, 389–90, 407.

[29] USCCR, *Health Care Report, Vol. II*, pp. 26, 35–36, 240–43, 250, 287, 291, 358–59, 367.

[30] USCCR, *Federal Title VI Enforcement*, pp. 238–39; USCCR, *Health Care Report, Vol. II*, pp. 240–42, 367.

[31] USCCR, *Federal Title VI Enforcement*, pp. 238–39, 388, 395–96, 406, 410–11, 478–80, 491.

[32] Ibid., pp. 419–20, 439, 478–80, 491.

The Commission also specified what role the headquarters unit with oversight responsibilities should have. The overseeing office should:

- provide leadership in the creation, implementation, and evolution of departmentwide civil rights programs, initiatives, and policies, and be a major force in recommending civil right legislation;[33]
- develop comprehensive procedures to delegate the enforcement authority to operating divisions, administrations, or other appropriate units;
- establish an oversight and monitoring system to review, evaluate, and direct these units' civil rights activities;
- conduct regular reviews and evaluations of the subdivisions' enforcement efforts and assess their efficiency and effectiveness seeking more efficient use of limited resources;
- take responsibility for the operational planning and development of fiscal year goals for the agency's civil rights enforcement efforts;
- provide agency policy, legal, and regulatory guidance as necessary;
- require the units with delegated authority to regularly report information that can be reviewed by the oversight office, including their enforcement activities and an annual self-assessment of their enforcement;
- coordinate outreach, education, technical assistance, and staff training;
- regularly assist and train operational staff; and
- function as the central databank for the agency's information on alleged civil rights violations.[34]

The Commission further recommended that the headquarters office with oversight responsibilities have units charged with carrying out these functions. Thus, the office should have units for planning, evaluation, policy development, and data collection.[35] In one instance, the Commission suggested forming a review team to examine the agency's civil rights enforcement activities, examine and determine appropriate staffing levels in each enforcement component, and monitor the quality of compliance activities.[36]

The Commission also provided the model specifications for nature and content of the evaluations any office with oversight responsibilities should conduct. Offices with oversight responsibilities should conduct both document reviews (for example, of any self-assessments of civil rights enforcement) and site visits. During site visits, staff should examine complaint intake procedures and files of complaints and compliance reviews, evaluate data collection, and interview staff, program beneficiaries, and people from affected communities.[37] For complaint processing, headquarters civil rights offices should conduct systematic quality assurance reviews of letters of finding and other case closure documents to ensure sound investigations and findings.[38] Evaluations of complaint processing or compliance review systems should result in written reports with findings and recommendations for improving the programs.[39]

Site visits were a key part of monitoring programs. The Commission noted that the functions of district offices must be monitored and evaluated through routine visits.[40] Furthermore, such visits should ensure that regional, field, or district offices have consistency in their available resources and procedures for civil rights enforcement.[41]

[33] USCCR, *Health Care Report, Vol. I*, pp. 118, 135–38, 213, 217–18; USCCR, *Health Care Report, Vol. II*, pp. 35–36, 291.

[34] *See, e.g.*, USCCR, *Federal Title VI Enforcement*, pp. 239, 388, 406, 510, 519–20; USCCR, *Health Care Report, Vol. II*, pp. 24–25, 218–19, 235–55, 286, 352, 363–64; USCCR, *EEOC Report*, p. 265, and *see* chaps. 4–7.

[35] USCCR, *Federal Title VI Enforcement*, pp. 254, 503, 624–25.

[36] USCCR, *Health Care Report, Vol. II*, pp. 29–31, 288–89.

[37] USCCR, *Federal Title VI Enforcement*, pp. 395–96, 410–11, 510, 519–20; USCCR, *EEOC Report*, pp. 106, 274.

[38] USCCR, *Health Care Report, Vol. II*, pp. 22, 284–85.

[39] USCCR, *Federal Title VI Enforcement*, pp. 395–96, 410–11, 510, 519–20.

[40] USCCR, *EEOC Report*, pp. 273–74, and *see* chap. 5; USCCR, *Health Care Report, Vol. II*, pp. 24–25, 49, 285.

[41] USCCR, *Fair Housing Enforcement Report*, pp. 223–24; USCCR, *ADA Report, Vol. II*, pp. 191–93, 262–63; USCCR, *Health Care Report, Vol. II*, pp. 24–25, 49, 285, 377; USCCR, *EEOC Report*, pp. 125–26, 205–06, 288.

Oversight of Contracting Organizations

Some federal agencies carry out part of their civil rights enforcement activities through contractual arrangements with other organizations. These include EEOC and HUD, which use state or local human rights organizations to investigate complaints of discrimination. Some of these organizations are known as Federal Employment Practice Agencies (FEPAs), substantially equivalent agencies under the Fair Housing Assistance Program (FHAPs), and Tribal Employment Rights Organizations (TEROs). In addition, DOT's Federal Transit Authority (FTA) was in the early stages of acquiring a contractor to perform Title VI compliance reviews of funding recipients.

In 1996, with DOT/FTA poised to establish a contractual arrangement for carrying out civil rights enforcement, the Commission recommended that the operating administration select its contractor with care, closely review and evaluate any procedural manuals the contractor prepares, closely monitor the contractor's performance of on-site compliance reviews, and have federal staff accompany the contractor on several reviews.[42] This recommendation partly reflects DOT/FTA's early stage of implementing the contractual arrangement.

EEOC and HUD had well-established contractual arrangements for civil rights enforcement with existing procedural guidance.[43] Thus, the Commission recommended more monitoring of the contractors. For EEOC, the Commission suggested conducting more frequent on-site visits to promote a greater exchange of information with the FEPAs, and providing larger travel budgets to district offices that have broad geographical oversight responsibilities to facilitate more frequent visits to the FEPAs.[44] For HUD, the Commission suggested a cost analysis of state and local agencies' complaint processing in order to identify ways to save funds.[45] In general, procedures must be established to ensure that different contractors handle cases or charges consistently.[46]

[42] USCCR, *Federal Title VI Enforcement*, pp. 575, 581.

[43] *See, e.g.,* EEOC, "EEOC's FY 1995 Contracting Principles for State and Local FEP Agencies," Aug. 4, 1994.

[44] USCCR, *EEOC Report*, pp. 214, 288.

[45] USCCR, *Federal Fair Housing System*, p. 34.

[46] USCCR, *EEOC Report*, pp. 205–06, 288.

Oversight of Title VI Enforcement Among Subrecipients, Particularly by States

In studies over the past decade, the Commission concluded that civil rights enforcement was weak in oversight of state recipients. States often receive block grants that are then disbursed to subrecipients. DOEd and DOT and many of its operating administrations were remiss in the oversight of state recipients. The Federal Highway Administration (DOT/FHWA) was an exception and had an enforcement program that could serve as a model for other parts of DOT.[47]

To ensure that states operating block grant programs comply with Title VI, the Commission's recommendations asked the agency or operational division to:

- devote the necessary resources to oversee the states' programs effectively;[48]
- implement an effective system for monitoring their compliance policies and activities;[49]
- develop procedures or guidelines clearly indicating states' responsibilities for compliance;[50]
- require states to submit, for federal staff to review and evaluate, annual civil rights enforcement plans and self-assessments, including their methods of administration demonstrating how they intend to ensure their own and subrecipient compliance with civil rights statutes;[51]
- provide guidance to states on the information they should include in their self-assessments and on the elements of acceptable methods of administration;[52]

[47] USCCR, *Federal Title VI Enforcement*, pp. 204, 215, 551–52, 557.

[48] Ibid., pp. 576–77, 582.

[49] Ibid., pp. 204, 215, 338–39, 350, 587–88, 591, pp. 665–66, 668–69; USCCR, *Education Report, Vol. III*, pp. 179–84, 199–203, 228–29, 231–32; USCCR, *Health Care Report, Vol. I*, pp. 64–69, 198–99; USCCR, *Health Care Report, Vol. II*, pp. 205–15, 242–43, 346–49, 368–69.

[50] USCCR, *Federal Title VI Enforcement*, pp. 534, 539, 587–88, 591, 636, 665–66, 668–69.

[51] Ibid., pp. 204, 215, 364, 366–68, 380–82, 401–04, 413, 488, 497–98, 534, 539, 587–88, 591, 665–66, 668–69; USCCR, *Health Care Report, Vol. I*, pp. 64–69, 198–99; USCCR, *Health Care Report, Vol. II*, pp. 205–15, 242–43, 346–49, 368–69.

[52] USCCR, *Federal Title VI Enforcement*, pp. 204, 215.

- ensure that on-site reviews of states and their subrecipients are conducted periodically[53] to review their compliance policies and activities, evaluate how their methods of administration are applied, and oversee their data collection and analysis programs;[54]
- provide technical assistance and civil rights training to state staff to assist them in maintaining or coming into compliance;[55] and
- maintain a database on the compliance history of recipients, including states and local agencies.[56]

Commission recommendations directed the departments as well as their operating divisions and regional offices to take responsibility for *ensuring* that periodic on-site reviews are conducted and to provide technical assistance to states so that civil rights provisions are implemented in recipients' programs. However, the task of performing on-site reviews was to be delegated. The Commission suggested to one agency that it delegate on-site investigations of subrecipients to states and strengthen requirements for states' methods of administration and technical assistance so that they can be monitored.[57] Elsewhere, the Commission directed the Department or headquarters office to require its operating divisions (e.g., DOT's operating administrations) to perform on-site reviews of states and other recipients.[58] At the same time, in conducting oversight and monitoring reviews of its operating divisions, a federal agency should monitor the Title VI activities of state recipients, visit and evaluate state recipients' Title VI programs, provide any necessary technical assistance, and ensure that the operating units take steps to correct any deficiencies in states' compliance.[59] Thus, all recipients and subrecipients should receive periodic on-site reviews, but not necessarily by headquarters staff.

The Commission, thus, charges states with responsibility for overseeing the civil rights compliance of their subrecipients. It suggested, first, that the federal government, states, and state subrecipients work together to ensure that civil rights are protected. Second, states, in turn, must establish quality assurance measures to ensure that minorities and women benefit equally from state recipients' programs.[60]

The Commission gave examples of ways states could meet their responsibilities. First, better coordination among federal agencies, states, and state recipients may occur if, as a requirement of receiving funds, the federal agency required all recipients to designate a civil rights coordinator. The federal agency could train, certify, and periodically recertify the recipients' coordinators. The Commission suggested that the federal agency could designate the civil rights responsibilities for the coordinators, which would include ensuring that the recipients' employees are knowledgeable of applicable civil rights laws.[61]

Strategic Planning With Civil Rights Objectives

Two general themes on planning permeate the Commission's Title VI report, among other reports. The first establishes that planning documents must be developed and specifies appropriate civil rights content to be contained in them. The second sets forth that a management information system must be developed or used to support budget requests and other planning.

These themes were expressed in Commission recommendations referencing various types of planning documents. They included (1) strategic plans that all agencies are required to develop in response to the Government Performance and Results Act of 1993 (GPRA);[62] (2) civil rights enforcement plans that every agency should have; (3) the civil rights implementation plans that DOJ requires when overseeing Title VI enforcement; and (4) work plans that the Commission suggested

[53] Ibid., pp. 59, 204, 215, 285–86, 291, 364, 366–68, 380–82, 534, 539, 576–77, 582, 587–88.

[54] Ibid., pp. 488, 497–98.

[55] Ibid., pp. 204, 215, 364, 366–68, 380–82, 488, 497–98, 587–88, 591, 665–66, 668–69.

[56] Ibid., pp. 323, 499; USCCR, *Health Care Report, Vol. II*, pp. 155–71, 283–84, 333–34.

[57] USCCR, *Federal Title VI Enforcement*, pp. 364, 366–68, 380–82.

[58] Ibid., pp. 534, 539, 576–77, 582; USCCR, *Health Care Report, Vol. I*, pp. 106–09, 210.

[59] USCCR, *Federal Title VI Enforcement*, pp. 514, 511.

[60] USCCR, *Health Care Report, Vol. I*, pp. 64–69, 198–99.

[61] USCCR, *Health Care Report, Vol. II*, pp. 245–48, 365.

[62] Pub. L. No. 103-62, 107 Stat. 285 (codified at 31 U.S.C. § 1101 (Supp. V 2002)).

should be used to link the workload to staff and budget resources.

The Commission specified qualities that all planning documents should have, whether they are strategic plans, civil rights implementation plans, or work plans. The qualities include (1) specific short-term goals and long-term objectives, (2) timeframes for meeting goals and objectives, and (3) consideration of both available and projected resources and budget constraints. In addition, planning documents should be regularly re-evaluated and updated to reflect changes in responsibilities. The Commission suggested this updating should occur every three or six months.[63]

Agencies' Strategic Plans

Commission recommendations for strategic plans emerged in reports published later in the decade, following the implementation of GPRA. Notably, GPRA requires that federal agencies develop strategic plans defining goals and objectives. The need for each agency to have *civil rights* goals and objectives was not articulated in the law. Thus, the Commission recommended that agencies include civil rights goals and objectives in their strategic planning. This recommendation was directed to DOEd and HHS.[64]

The Commission also asked that agencies integrate civil rights planning with other planning procedures. The agency's overall management and strategic planning processes should be related to the civil rights enforcement plan, the DOJ-required civil rights implementation plan, and the work plan for civil rights enforcement.[65]

Finally, because GPRA requires agencies to establish performance measures to track progress in reaching the plan's goals, the Commission asked that agencies determine the best measures of civil rights outcomes. For example, the Commission suggested that indicators of completed work, such as the number of Title VI compliance reviews, might not be the best measures of progress in eliminating discrimination. A better measure would be the diversity of a recipient's program beneficiaries, which the recipient should be required to report.[66]

Agencies' Civil Rights Enforcement Plans

The Commission advocated that agencies develop comprehensive civil rights enforcement plans.[67] The civil rights implementation plans that the Department of Justice requires, discussed in more detail below, concern Title VI and therefore cover only a part of the civil rights responsibilities that many agencies have. The Commission identified numerous desirable qualities for such plans. Comprehensive civil rights enforcement plans should:

- set measurable goals and objectives;[68]
- establish priority civil rights issues and have flexibility to add emerging issues;[69]
- reference the civil rights statutes that authorize or mandate the planned activities;[70]
- specify the types of civil rights enforcement activities to be carried out;[71]

[63] USCCR, *Federal Title VI Enforcement*, pp. 372, 384; USCCR, *Health Care Report, Vol. II*, pp. 34, 290. *See also* USCCR, *Education Report, Vol. I*, pp. 175, 251.

[64] USCCR, *Education Report, Vol. I*, pp. 175, 251; USCCR, *Health Care Report, Vol. II*, pp. 31–33, 290–91; USCCR, *Education Report, Vol. V*, pp. 48–49, 129.

[65] USCCR, *Federal Title VI Enforcement*, pp. 208, 217, 340–42, 352, 372, 384; USCCR, *ADA Report, Vol. II*, pp. 56–59, 246.

[66] USCCR, *Health Care Report, Vol. II*, pp. 35–36, 291; USCCR, *ADA Report, Vol. II*, pp. 56–59, 246.

[67] USCCR, *ADA Report, Vol. II*, pp. 53–56, 246; USCCR, *Health Care Report, Vol. II*, pp. 1–15, 275–77.

[68] USCCR, *Federal Title VI Enforcement*, pp. 297, 306; USCCR, *ADA Report, Vol. II*, pp. 53–56, 246.

[69] USCCR, *ADA Report, Vol. II*, pp. 43, 245; USCCR, *Health Care Report, Vol. II*, pp. 31–36, 257, 289–90, 362; USCCR, *EEOC Report*, pp. 79–80, 270.

[70] USCCR, *ADA Report, Vol. I*, pp. 16–17, 135.

[71] USCCR, *Federal Title VI Enforcement*, pp. 223–24, 258–59, 331–32, 358–61, 636.

- identify the individuals responsible for carrying out activities within the plan;[72]
- integrate civil rights goals and objectives in all agency programs;[73]
- involve all agency components, including operating divisions and regional and local offices, in the planning process and establish goals for each unit and appropriate interactions between them;[74]
- be developed through consultations with stakeholders and advocacy groups to ensure responsiveness to their needs and priorities;[75]
- provide for outreach to victims of discrimination;[76] and
- incorporate regular self-assessment of the enforcement program in the planning process.[77]

The Commission directed recommendations for developing civil rights enforcement plans generally to all federal agencies. Among those singled out for such recommendations were USDA's Farmers Home Administration (FmHA), DOEd, and DOJ. In some instances, the Commission recommended that agencies establish specific priority civil rights issues. For example, it asked DOJ to plan strategies and goals to protect the civil rights of people with disabilities[78] and DOEd to create a plan to address the unique challenges of children with disabilities and with limited English proficiency.[79]

Two agencies—EEOC and HHS—had regional or local civil rights enforcement plans that needed improvement. The Commission recommended that these plans be developed from a comprehensive headquarters plan. Furthermore, a headquarters office should assist regional and local offices in developing their enforcement plans to ensure uniform format and effectiveness of those plans. The district and regional office plans should contain measurable goals and objectives that headquarters can use to evaluate success in achieving the goals and objectives.[80]

Commission recommendations for planning civil rights enforcement urged the following: the budget and resources must be tied to the strategic plan;[81] monies must be earmarked separately for different statutory authorities (i.e., external vs. internal, or Title VI vs. Title IX enforcement) or enforcement activities (e.g., technical assistance and outreach);[82] the funds and staff needed for civil rights enforcement must be realistically assessed;[83] and requests for additional resources must be justified with anticipated increases in enforcement activities or workload.[84] The Commission further suggested a need for studies of effective allocation of budget and staff resources.[85]

Strategic planning and budget studies should also be used to find ways to streamline the civil rights enforcement program.[86] As ways of making civil rights enforcement more effective the Commission suggested that agencies consider (1) increasing education and outreach to secure voluntary compliance with civil rights laws and en-

[72] Ibid., pp. 297, 306; USCCR, *Health Care Report, Vol. II*, pp. 1–15, 275–77.

[73] USCCR, *Health Care Report, Vol. I*, pp. 118, 213.

[74] USCCR, *Education Report, Vol. III*, pp. 65–67, 210–11; USCCR, *Health Care Report, Vol. I*, pp. 118, 213; USCCR, *Health Care Report, Vol. II*, pp. 31–36, 257, 289–90, 362. For example, the Commission suggested that DOEd's OCR should include its interaction with the Office of Bilingual Education and Minority Languages Affairs in its strategic plans and establish goals and timetables for interaction between the two offices. USCCR, *Education Report, Vol. III*, pp. 65–67, 210–11.

[75] USCCR, *ADA Report, Vol. II*, pp. 53–56, 246; USCCR, *Health Care Report, Vol. II*, pp. 31–36, 257, 289–90, 362.

[76] USCCR, *Health Care Report, Vol. II*, pp. 257, 362.

[77] USCCR, *Federal Title VI Enforcement*, pp. 181–82, 207–09, 235–36, 238, 287–88, 304–05, 320–21, 340–41, 371–72, 404–05, 437–38, 468–69, 514, 533–34, 551–52, 561–62, 576–78, 586–87, 603–04, 670–71.

[78] USCCR, *ADA Report, Vol. I*, pp. 16–17, 135.

[79] USCCR, *Education Report, Vol. II*, pp. 255–57, 390; USCCR, *Education Report, Vol. III*, pp. 85–88, 214.

[80] USCCR, *ADA Report, Vol. II*, pp. 53–56, 246; USCCR, *Health Care Report, Vol. II*, pp. 36–39, 291–92.

[81] USCCR, *Education Report, Vol. V*, p. 130; USCCR, *Health Care Report, Vol. II*, pp. 42, 293–94.

[82] USCCR, *Federal Title VI Enforcement*, pp. 330, 345, 355, 374; USCCR, *Education Report, Vol. V*, p. 130.

[83] USCCR, *Federal Title VI Enforcement*, pp. 514–15, 520–21.

[84] USCCR, *ADA Report, Vol. II*, pp. 59–62, 247; USCCR, *Health Care Report, Vol. II*, pp. 42, 293–94.

[85] USCCR, *Federal Title VI Enforcement*, pp. 256–58, 269; USCCR, *ADA Report, Vol. II*, pp. 51–53, 59–62, 245, 247.

[86] USCCR, *Federal Title VI Enforcement*, pp. 186–88, 219–20, 276, 295–96, 311, 419–21, 599, 623; USCCR, *Health Care Report, Vol. II*, pp. 30, 346. Although many agencies were asked to initiate such studies, HHS was asked to reconvene a review team to follow-up on recommendations that had not been implemented from a 1993 study. USCCR, *Health Care Report, Vol. II*, pp. 30, 346.

hance the public's knowledge of how to safeguard its rights,[87] (2) organizing offices on programmatic lines with specialized staff who serve as subject-matter experts or issue coordinators,[88] and (3) promoting information-sharing projects among agency components and state and local recipients.[89]

Title VI Civil Rights Implementation Plans

For the required Title VI civil rights implementation plans, the Commission recommended that federal agencies develop these plans in conformance with Department of Justice guidelines. The agencies should describe more fully the structure of civil rights enforcement in their plans, specifying the scope, organization, budget, staffing, and the extent they conduct various civil rights activities. The implementation plan should include the qualities mentioned earlier—precise civil rights goals and objectives and timeframes for accomplishing them. The goals and objectives should be based on realistic assessment of resources—budget and staff—available for civil rights enforcement. Finally, the implementation plan should be used as a management tool. It should be updated quarterly and include a report of program accomplishments and progress made toward each of the goals and objectives.[90] And, in addition to these qualities, the Commission suggested that, with respect to Title VI civil rights enforcement, planning documents should (1) consider increases in workload, such as the expected numbers of civil rights complaints; and (2) apply civil rights priorities and plans to (a) each type of funding program administered and (b) the particular enforcement mechanism for block grant and continuing state programs.[91]

As suggested by the recommendation to "apply civil rights priorities and plans to each type of funding program administered," the Commission asked that planning documents fully integrate civil rights enforcement into all aspects of the agency.[92] The Commission explained that priority civil rights issues should be identified through input from staff in operating divisions and civil rights advocacy groups and community organizations.[93] The Commission further stipulated that with some agencies, such as HHS with its numerous operating divisions, the Secretary must promote cohesiveness among its many and varied offices and components, and require them to work together with an office of civil rights to show the relationship between the agency's civil rights enforcement and its initiatives and strategic goals, and to ensure that civil rights concerns are comprehensively and uniformly integrated among all agency initiatives and strategic objectives.[94] Because of the need for such coordination and integration, the Commission recommended that all departments and agencies form a division within the primary civil rights office that is exclusively dedicated to strategic planning of the agency's enforcement efforts.[95]

Work Plans for Civil Rights Enforcement

The Commission directed recommendations to develop work plans to a number of agencies. Resources are often shifted between competing civil rights responsibilities without formal accountability to statutory obligations. This concern arose with DOJ's Civil Rights Division (CRD) and its Coordination and Review Section (CORS), which has oversight for federal agencies with civil rights enforcement responsibilities, for example. The Commission asked CRD to create a formal planning process detailing the activities of each section and their relationship to the mission and goals of the Division; to require each section to prepare a section work plan; to review the section work plans; and to submit a management plan to DOJ for review.[96]

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[87] USCCR, *Health Care Report, Vol. II*, pp. 217–18, 350–51.

[88] Ibid., pp. 24, 285–86; USCCR, *Education Report, Vol. I*, pp. 188–89, 253–54.

[89] USCCR, *Health Care Report, Vol. II*, pp. 24, 285–86.

[90] USCCR, *Federal Title VI Enforcement*, pp. 89–93, 208, 217, 235–37, 249, 287–88, 291, 304–05, 308, 340–42, 352, 404–05, 414, 437, 451, 468–69, 476–77, 489–90, 499, 514–15, 520–21, 540, 553–54, 557, 563–64, 567, 579–80, 582–83, 588–89, 592, 598, 600, 606–07, 610; USCCR, *Health Care Report, Vol. II*, pp. 31–36, 289–90.

[91] USCCR, *Federal Title VI Enforcement*, pp. 372, 384; USCCR, *Health Care Report, Vol. II*, pp. 34, 290. *See also* USCCR, *Education Report, Vol. I*, pp. 175, 251.

[92] USCCR, *Health Care Report, Vol. II*, pp. 31–33, 290–91.

[93] Ibid., pp. 31–36, 289–90.

[94] USCCR, *Health Care Report, Vol. I*, pp. 119–22, 215.

[95] USCCR, *Federal Title VI Enforcement*, pp. 187, 628–29.

[96] Ibid., pp. 71–72, 140–41.

Management of Enforcement Through Tracking of Civil Rights Activities

Federal agencies should develop and implement management information systems (MIS) to support strategic planning. The Commission suggested such systems should track expenditures and workload for various civil rights statutes and activities, such as compliance reviews, complaint processing, and technical assistance and outreach. The MIS should be used to prepare annual civil rights enforcement plans that have goals and objectives in each program area and that assign specific resources to accomplish them. Staff should use the MIS to analyze and/or change the allocation of resources, to prepare budget submissions, and to justify requests for additional resources.[97]

At the time of these reports, all but DOEd were in the early stages of developing or implementing such systems. DOEd had an information management system in place that the Commission recommended be expanded to track resources devoted to civil rights activities such as pre-award reviews, post-award reviews, and data collection and analysis.[98] The Farmers Home Administration (FmHA), a USDA component that provides supervised credit assistance through loan and grant programs to rural residents, had a separate budget allotment for Title VI enforcement, and thus was able to track Title VI expenditures separately from expenditures on other civil rights activities. Still, the annual Title VI enforcement plan did not contain goals and objectives based on the work to be accomplished and the resources available for Title VI activities, and the Commission recommended that it should. Furthermore, the FmHA plan should have specified which offices and which staff were responsible for meeting civil rights goals and objectives.[99] In short, FmHA should use its information system to demonstrate that its budget is not sufficient to enforce Title VI and other civil rights statutes effectively, the Commission said.[100]

Justifying requests for additional resources for civil rights enforcement activities was a key reason, but not the only one, for having a well-developed information database. Other recommendations directed agencies to develop features of their databases to monitor the quality of their enforcement efforts and to aid in identifying civil rights noncompliance. Recommendations addressed the databases' ability to track and analyze trends with complaints,[101] to identify investigations of complaints ended through alternative dispute resolution,[102] to measure the amounts and types of outreach and technical assistance,[103] and to better identify the sources of funding for recipients and subrecipients of block grants.[104] The Commission was also concerned about the quality of the database system. Agencies must have a quality control system to ensure that data entered are complete and accurate.[105]

Dissemination of Policy Through Guidance, Regulations, Technical Assistance, Education, Outreach, and Publicity

The Commission issued numerous recommendations throughout the past decade concerning the dissemination or publicity of information about civil rights, to agencies enforcing civil rights, potential violators of civil rights laws, and victims of discrimination. Depending on the audience, dissemination can be accomplished through policy guidance and regulations; technical assistance intended to bring about compliance; education and outreach to potential victims, violators, and the public; and general publicity of successful enforcement efforts.

[97] Ibid., pp. 187–90, 207–08, 216–17, 222–23, 240, 256–58, 269, 275, 278, 288–89, 297, 312, 322, 330–31, 335, 345, 391, 408, 424, 440, 455–56, 470–71, 479–80, 509, 518, 523–26, 537, 542–46, 551, 555–58, 565, 567–72, 580–83, 592–93, 600, 602, 608, 629–30; USCCR, *Health Care Report, Vol. II*, pp. 42, 293.

[98] USCCR, *Federal Title VI Enforcement*, pp. 188, 210–11.

[99] Ibid., pp. 292, 297, 306.

[100] Ibid., pp. 297, 306.

[101] USCCR, *ADA Report, Vol. I*, pp. 30–31, 137.

[102] USCCR, *Health Care Report, Vol. II*, pp. 195–96, 342–43.

[103] USCCR, *EEOC Report*, pp. 234–35, 240–41, 293–94.

[104] USCCR, *Health Care Report, Vol. II*, pp. 209–15, 349.

[105] USCCR, *ADA Report, Vol. I*, pp. 30–31, 137.

Policy Guidance

In its recommendations on policy guidance, the Commission called for federal agencies to establish policy units dedicated to developing and disseminating such guidance; to develop new internal and external procedural guidance and policy, and regulations and interpretations of laws; to seek the involvement of community and advocacy groups when developing policy guidance; and to develop or issue policy guidance on specific substantive issues such as state recipients, block grants, disabilities, and limited English proficiency.

The Need for a Policy Unit

The Commission called for federal agencies to establish policy units so that staff and resources were committed to developing and disseminating civil rights policy guidance, and not encumbered with civil rights compliance and enforcement responsibilities.[106] The Commission also explained the role of the policy unit. The policy unit should:

- have the authority and responsibility for modifying and maintaining the agency's regulations, guidelines, policies, and procedures;
- oversee all aspects of the agency's policy development and dissemination for civil rights enforcement;
- provide policy, programmatic, and legal guidance to agency subdivisions (i.e., operating divisions, administrations, or bureaus) and other civil rights staff members; and
- have the necessary legal staff to perform the legal work for successful civil rights enforcement.[107]

Developing Internal Policy Guidance

The lack of updated and clear policy guidance, and the inadequate resources devoted to it, are among the primary reasons for poor civil rights enforcement. In its report on Title VI enforcement, the Commission recommended that federal agencies, including DOJ with its oversight responsibilities, keep civil rights enforcement staff abreast of Title VI policy development. The Commission recommended that DOJ's Coordination and Review Section issue guidance clarifying DOJ authority and explaining its responsibilities to monitor federal funding agencies' Title VI enforcement activities.[108] DOJ was also counseled to adopt new pre-award requirements and provide guidelines to federal agencies for enforcing Title VI.[109] At the same time, the Commission issued a blanket recommendation to all federal agencies calling for them to regularly distribute comprehensive Title VI policy guidance to all of their civil rights staff.[110] Some recommendations directed agencies to provide policy and legal guidance to staff involved in Title VI implementation and enforcement activities and to clarify the application of Title VI generally.[111]

The Commission advised federal funding agencies with decentralized enforcement programs to begin issuing detailed procedural manuals on Title VI and to maintain an active and comprehensive policy program, keeping subagencies informed of new developments regarding Title VI.[112] Parts of USDA were asked to revise, clarify, or implement departmental regulations and procedural manuals and instructions for the benefit of their civil rights enforcement staff.[113] HHS and HUD's FHEO were asked to develop policies for staff and funding recipients to use in assessing civil rights compliance.[114] Another general recommendation called for federal agencies to regularly update and issue procedural manuals tailored to their specific programs.[115] For example, DOEd's Office for Civil Rights (OCR) was asked to develop formal investigative guidance, compliance standards, and

[106] USCCR, *Federal Title VI Enforcement*, pp. 354–56, 373–74, 388, 406, 453–55, 459–60, 470, 472, 512, 519.

[107] Ibid., pp. 406, 472.

[108] Ibid., pp. 55–57, 74, 131–32, 141–42.

[109] Ibid., p. 146.

[110] Ibid., pp. 72–75, 165, 193–96, 224–26, 241–42, 259, 269–70, 332–34, 346, 360–61, 377–78, 393–95, 409–10, 428, 445–46, 538, 573, 581, 602–03, 608, 643–44.

[111] Ibid., pp. 218–23, 238, 240, 243, 333, 347, 377, 427, 442, 455, 459–60, 461–62, 472–73, 483, 492–93, 511–12, 518–19.

[112] Ibid., pp. 258–59, 278–79, 378–79, 298–300, 313–14, 510–11, 528, 545–46, 601, 646–47.

[113] Ibid., pp. 258–59, 269, 299–300, 306, 313–15, 323.

[114] USCCR, *Health Care Report, Vol. II*, pp. 67–68, 75–76, 78–79, 298, 303–04; USCCR, *Federal Title VI Enforcement*, pp. 332–34, 347.

[115] USCCR, *Federal Title VI Enforcement*, pp. 196, 225–26, 258–59, 279, 332–33, 394, 428, 460–61, 484, 645.

manuals addressing specific educational concepts such as "the least restrictive environment."[116] EPA was asked to develop procedures on how to evaluate environmental justice risks in recipient compliance activities and complaint investigations.[117] DOT's Federal Aviation Administration was asked to develop Title VI compliance standards guidelines for its staff on each of its programs' recipients.[118]

Despite numerous concerns about the oversight, implementation, and enforcement of Title VI, the Commission's review revealed satisfactory Title VI efforts. USDA's Food and Nutrition Service and DOT's Federal Highway Administration (FHWA) had internal Title VI policy guidance that could be models for other agencies.[119] Although needing improvement, HUD's FHEO was asked to maintain its practice of issuing technical guidance memorandum, manuals, and handbooks on program-specific procedures as new programs were developed.[120]

Other issue areas in which the Commission examined the development of policy and internal procedural guidance concerned people with disabilities, employment, health care, education, housing, and transportation. In studying these areas, the Commission made numerous recommendations for improvements in the internal civil rights processes of federal funding agencies. Regarding health care, for example, HHS was asked to develop civil rights policy on proper negotiating methods for HHS civil rights staff to use;[121] collection and use of data in compliance reviews and investigations; the provision of training for operating division staff on civil rights matters; investigating provisions to ensure equal access to, and quality health care for, all individuals;[122] how to integrate women's perspectives and minority concerns in the agency's agenda;[123] and nondiscrimination in medical school admissions, managed care, and clinical trials.[124]

Similarly, EEOC was asked to review and revise compliance manuals and investigative resource guidance; develop mandatory review procedures and monitoring and program evaluation policy for district offices; use subject-matter experts in ADA case handling and policy development; and review and revise Indian preference policy guidance.[125] DOEd's OCR was asked to use the Section 504 policy development effort as a model for Title VI and Title IX programs[126] and to include guidelines and a checklist in its finalized investigative guidance.[127] HUD was asked to develop written guidelines and instructions on agencies with interim referral agreements for staff that monitors their activities and progress.[128]

Recommendations to the EEOC requested that the agency update and expand its guidance on employer retaliation against employees and the Equal Pay Act, and reinstitute a practice of issuing brief policy statements on the Americans with Disabilities Act (ADA).[129] In 2000, the Commission commended EEOC for its exemplary regulatory guidance.[130]

Developing External Policy Guidance

The regular development and dissemination of external policy guidance and interpretation of laws are critical for civil rights enforcement.[131] Federal agencies' sophistication in policy development varied, yet the Commission found that all needed to develop further policy, whether to address particular civil rights statutes or provisions, or to tailor policies to specific programs.

[116] Ibid., pp. 60–64, 133, 187–89, 383.

[117] Ibid., pp. 428, 445–46.

[118] Ibid., pp. 72–75, 538.

[119] Ibid., pp. 278–79, 289; 546–48, 555–56.

[120] Ibid., pp. 333, 347.

[121] USCCR, *Health Care Report, Vol. II*, pp. 155–78, 326–27, 329.

[122] Ibid., pp. 68–75, 80–83, 92–100, 137–38, 160, 196–97, 261–62, 299, 300, 304–05, 307, 311, 320–21, 327, 343–44, 364.

[123] USCCR, *Health Care Report, Vol. I*, pp. 84–91, 119–26, 205, 216.

[124] USCCR, *Health Care Report, Vol. II*, p. 280.

[125] USCCR, *EEOC Report*, pp. 4, 75, 117–18, 128–31, 196, 250, 259, 277–79, 286, 298.

[126] USCCR, *Education Report, Vol. I*, pp. 200–04, 257–59.

[127] USCCR, *Education Report, Vol. IV*, pp. 69–70, 125.

[128] USCCR, *Federal Fair Housing System*, p. 34.

[129] USCCR, *EEOC Report*, pp. 85–86, 92, 271–72.

[130] Ibid., pp. 84–92, 271.

[131] USCCR, *Federal Title VI Enforcement*, pp. 193, 331–32, 359–60, 426–28, 457–59, 526–28, 636.

Agencies were sometimes asked to provide external policy on particular civil rights statutes, for example, DOEd on Section 504 of the Rehabilitation Act of 1973 and Title IX of the Education Amendments of 1972; HHS' OCR on Title IX and the Hill-Burton Act; and EEOC on the Equal Pay Act.[132] Many agencies were asked to develop policy concerning Title VI of the Civil Rights Act of 1964 and the Americans with Disabilities Act.

Requests for policy development on Title VI were directed to DOJ in its oversight capacity as well as the agencies that DOJ oversees. The Commission asked DOJ to develop external policy for other agencies on state-administered and block grant programs and other Title VI areas.[133] Because of changes the Civil Rights Restoration Act of 1987 made in the definition of "program or activity" covered by Title VI, the Commission urged DOJ to clarify the scope of Title VI and require federal agencies to revise their regulations and provide guidelines on Title VI coverage and fund termination.[134] The Commission also asked DOJ/CORS to adopt new Title VI pre-award requirements and provide such guidelines to state and local government recipients.[135] The federal agencies that DOJ oversees were asked in many different recommendations to develop or revise external policy guidance on recent changes in Title VI, such as from the Civil Rights Restoration Act;[136] the responsibilities of state programs in civil rights compliance and enforcement;[137] block grant programs;[138] and compliance and enforcement generally.[139]

In numerous recommendations, the Commission requested that DOJ's Disability Rights Section, EEOC, DOEd, and HUD develop further policy on disability issues related to employment, education, and housing.[140] DOJ was asked to assist states and local government officials in complying with Title II of the Americans with Disabilities Act.[141] As the Commission recommended generally, it found that the EEOC should involve the public in developing policy guidance on the ADA.[142]

The Commission issued recommendations to develop external policy guidance concerned with discrimination, cultural competency, limited English proficiency, and other issues common to many agencies. For example, HHS was asked to develop policy to address the effect of culture and language on access to and quality of health care received.[143] The Commission issued 18 recommendations for policy on limited English proficiency to DOEd.[144]

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[132] USCCR, *Education Report, Vol. II*, pp. 85–88, 109–15, 195–96, 298–99, 320–22, 343–47, 360–62, 376, 384, 396, 398, 403, 406; USCCR, *Education Report, Vol. V*, pp. 64–65, 132–33; USCCR, *Health Care Report, Vol. I*, pp. 64–69, 199; USCCR, *Health Care Report, Vol. II*, pp. 105–11, 127–33, 312–14, 318–19; USCCR, *EEOC Report*, pp. 81–82, 85–86, 92, 270–72.

[133] USCCR, *Federal Title VI Enforcement*, pp. 80–81, 88, 143, 145, 149, 483–84, 493–94.

[134] Ibid., pp. 76, 143–44.

[135] Ibid., pp. 146, 159–84.

[136] Ibid., pp. 269, 482–83, 492, 602–03, 608; USCCR, *Health Care Report, Vol. II*, pp. 101–05, 311–12.

[137] USCCR, *Health Care Report, Vol. II*, pp. 211, 348; USCCR, *Federal Title VI Enforcement*, pp. 393, 409–10.

[138] USCCR, *Federal Title VI Enforcement*, pp. 55–57, 74, 131–32, 141–42, 146, 159–84, 269, 393, 409–10; USCCR, *Health Care Report, Vol. I*, pp. 64–69, 199; USCCR, *Health Care Report, Vol. II*, pp. 65–66, 75–76, 206–15, 301, 347–48.

[139] USCCR, *Federal Title VI Enforcement*, pp. 223–24, 240–41, 360–61, 377–78, 426, 428, 443–44.

[140] USCCR, *ADA Report, Vol. I*, pp. 22, 45, 53–54, 65–73, 77–78, 109–12, 127, 137–38, 140–42, 144–48, 162–72, 257–58, 260; USCCR, *ADA Report, Vol. II*, pp. 72–76, 79–80, 85, 87–91, 108–15, 128–36, 140–44, 148–57, 249, 250–52, 255, 257–58, 259–60; USCCR, *Education Report, Vol. II*, pp. 126–27, 192–94, 211–12, 214–16, 221–23, 333–35, 378, 383, 387–88, 402; USCCR, *Fair Housing Enforcement Report*, pp. 227–28. For example, EEOC needed to clarify standards for identifying and diagnosing mental disorders and the definition of a "substantial limitation." USCCR, *ADA Report, Vol. I*, pp. 119–21, 124–27, 256–57.

[141] For example, DOJ and its Disability Rights Section were asked to promote uniform policies and procedures among state supreme courts and to produce and disseminate a guide for local government officials on their responsibilities under Title II of the ADA. *See* USCCR, *ADA Report, Vol. I*, pp. 22, 40–43, 109–15, 137–38, 142.

[142] USCCR, *EEOC Report*, pp. 83, 271.

[143] More than a half dozen recommendations asked HHS to issue policy addressing discrimination in the health care system generally as well as in the health care received by individuals with limited English proficiency or with less formal education. *See* USCCR, *Health Care Report, Vol. I*, pp. 52–55, 77–78, 195; USCCR, *Health Care Report, Vol. II*, pp. 77–78, 92–98, 111–15, 137–38, 252–53, 302, 309–10, 314–15, 320–21, 366–67, 465, 555; USCCR *Federal Title VI Enforcement*, pp. 224–26, 241–42, 264–70, 371–72.

[144] USCCR, *Education Report, Vol. III*, pp. 39–42, 69–71, 73–77, 84, 92–96, 98–99, 113–17, 124–27, 135–36, 144–54, 154–61, 168–72, 206, 209–20, 222–28; USCCR, *Education Report, Vol. II*, pp. 214–15, 386.

EEOC received recommendations concerning religion and racial harassment.[145] At the same time, some agencies were asked to develop policy guidance on civil rights compliance tailored to their specific programs, most often to clarify definitions used in their programs.[146]

Involving Community Organizations and Advocacy Groups in Policy Development

The Commission asked federal agencies to seek public involvement in developing external policy guidance.[147] For example, the EEOC was asked to involve the public and community groups and other organizations in the planning and prerelease stages of policy development.[148] Similarly, HHS was asked to include local researchers, and media, advocacy, and community groups in external policy development.[149] DOEd's OCR was advised to survey advocacy groups, customers, and affected groups to identify areas of concern that may require policy guidance from OCR.[150]

Policies for Special Issues

The Commission's reports during the past decade have included numerous recommendations about civil rights policies pertaining to specific programs. Although many policy issues are unique to particular programs or statutes, others echo across agencies and programs and represent approaches to ensuring equal opportunity. Recommendations for promoting diversity and cultural competency, overcoming limited English proficiency, combating sex discrimination and sexual harassment, and other substantive issues are found in many of the Commission's reports.

Diversity and Cultural Competency

The Commission has promoted diversity and cultural competency throughout its reports. It broadly asked DOEd and other federal agencies to "defuse racial and ethnic tensions in public schools and promote mutual tolerance and understanding among racial and ethnic groups."[151] At the same time, a concern about cultural competency was at the heart of many of the Commission's recommendations for diversity.

The issue of the cultural competency of those rendering services, specifically their ability to provide equal opportunities to program participants and beneficiaries from diverse cultures, arose in Commission reviews of civil rights enforcement, particularly in the health care industry. The Commission said cultural differences should not hinder the delivery of social services, such as quality health care, to people of color.[152] The Commission advised federal funding agencies to:

- involve people of color in planning and developing programs, initiatives, and outreach,[153] and in monitoring and enforcement aimed at curtailing discriminatory practices;[154]
- begin or increase funding for cultural sensitivity programs and social service programs that meet the specific cultural needs of low-income and immigrant communities, for example, programs for Asian Pacific American women experiencing domestic violence;[155]
- increase the number of qualified professionals with the necessary multilingual and multicultural understanding to effectively work in eth-

[145] On religion, *see* USCCR, *EEOC Report*, pp. 41, 267; on racial harassment, *see* pp. 87–88, 271.

[146] USCCR, *Civil Rights Issues Facing Asian Americans*, pp. 104–29, 197; USCCR, *Education Report, Vol. IV*, pp. 21–24, 26–27, 32, 79–82, 108–12, 121, 125, 127, 132; USCCR, *Education Report, Vol. V*, pp. 60–65, pp. 102–04, 109–14, 132, 147, 149; USCCR, *Education Report, Vol. II*, pp. 21–22, 103–04, 130, 146–47, 155–57, 196–98, 204, 211–14, 291–92, 366–67, 374, 379, 382, 384–85, 395, 408; USCCR, *Health Care Report, Vol. I*, pp. 52–55, 77–78, 195; USCCR, *Health Care Report, Vol. II*, pp. 68–76, 88–92, 101–05, 115–27, 299, 301, 303–04, 308, 311–12, 315–16; USCCR, *Federal Title VI Enforcement*, pp. 224–26, 241–42; USCCR, *EEOC Report*, pp. 81–82, 85–86, 92, 270–72; USCCR, *Federal Fair Housing System*, pp. 32, 34.

[147] *See, e.g.,* USCCR, *ADA Report, Vol. II*, p. 251, and USCCR, *Education Report, Vol. V*, pp. 121–22.

[148] USCCR, *EEOC Report*, pp. 83, 271.

[149] USCCR, *Health Care Report, Vol. I*, pp. 60–69, 78–91, 196–97, 199, 203–04.

[150] USCCR, *Education Report, Vol. I*, pp. 200–04, 257–59.

[151] USCCR, *Civil Rights Issues Facing Asian Americans*, pp. 68–103, 195.

[152] USCCR, *Health Care Report, Vol. I*, pp. 53–55, 194.

[153] Ibid., pp. 47–50, 170, 177, 192–93, 223, 225.

[154] USCCR, *Civil Rights Issues Facing Asian Americans*, pp. 130–56, 198.

[155] Ibid., pp. 163–68, 174–80, 202, 204; USCCR, *Health Care Report, Vol. I*, pp. 52–55, 193–94.

nic or immigrant communities, whether they be health care providers or complaint investigators;[156] and
- collect data and conduct research on cultural and other differences between and among racial and national origin populations and use the information to serve everyone's needs.[157]

The broad application of these recommendations is obvious from the Commission's recommendations regarding health care. To increase the number of culturally aware health care professionals, for example, the Commission made many suggestions. It directed DOEd's OCR to ensure that medical school administrators and other decision-making personnel understand the objectives in encouraging efforts to include minorities and women among medical student populations.[158] It also directed HHS to develop guidelines requiring an adequate number of minority-serving providers in health care plans;[159] and to begin requiring medical training programs, especially those in racially and ethnically diverse areas, to recruit minority students.[160]

To increase research and data collection on women and differences among minority populations, the Commission urged HHS' operating divisions to provide technical assistance on the available grants and research funds and the grant application and review process, so as to increase the number of people of color and female applicants applying for and successfully receiving federal funds.[161] Other Commission recommendations directed HHS to do more to identify resources and strategies to help ethnic Americans remain healthy, to combat health care providers' myths and stereotypes about the health of racial and ethnic minorities, and to address the issue of culturally competent care in technical assistance to health care facilities.[162]

Limited English Proficiency

Achieving equal opportunity by overcoming the barrier of limited English proficiency was the subject of many Commission recommendations. Most were directed toward improving educational opportunities and health care for national origin minorities, particularly Asian Pacific Americans.[163] They urged that federal agencies require that service providers take all appropriate steps to ensure equal access to quality services for language minority individuals.[164]

The Commission's suggestions for limited English proficiency were often similar to those for cultural competency. The Commission asked federal agencies to fund social service programs that meet the specific language needs of language minority individuals;[165] increase the number of qualified professionals who work within ethnic and immigrant communities; and to collect data and conduct research on the needs of those with limited English proficiency.

Recommendations asked federal agencies to increase the number of qualified professionals who have appropriate language skills to provide services to these communities;[166] bilingual and English-as-a-second-language instructors for underserved languages, such as Southeast Asian languages;[167] programs to recruit and train bilingual and English-as-a second-language teachers for underserved languages;[168] and multilingual investigators and program analysts to facilitate interaction with limited-English-proficient individuals seeking civil rights enforcement.[169] Recommendations on data collection and research concerned education and asked for information on the numbers, national origins, and achievement of limited-English-proficient stu-

[156] USCCR, *Civil Rights Issues Facing Asian Americans*, pp. 163–68, 203, 208; USCCR, *EEOC Report*, pp. 253–54, 296.

[157] USCCR, *Health Care Report, Vol. I*, pp. 23–28, 29–55, 77–78, 193, 195; USCCR, *Education Report, Vol. I*, pp. 249–50.

[158] USCCR, *Health Care Report, Vol. II*, pp. 118–19, 317–18.

[159] USCCR, *Health Care Report, Vol. I*, pp. 64–69, 199.

[160] Ibid., pp. 60–63, 197.

[161] Ibid., pp. 62, 197.

[162] Ibid., pp. 52–55, 193–94.

[163] *See, e.g.,* USCCR, *Education Report, Vol. III*, pp. 83–84, 213; USCCR, *Civil Rights Issues Facing Asian Americans*, pp. 68–103, 194.

[164] USCCR, *Education Report, Vol. III*, pp. 179–84, 199–203, 228–29, 231–32; USCCR, *Health Care Report, Vol. II*, pp. 264–70, 371–72.

[165] USCCR, *Civil Rights Issues Facing Asian Americans*, pp. 174–80, 204.

[166] Ibid., pp. 163–68, 203.

[167] Ibid., pp. 68–103, 194.

[168] USCCR, *Education Report, Vol. III*, pp. 167–68, 172–73, 225–28.

[169] USCCR, *EEOC Report*, pp. 253–54, 296.

dents in the nation's schools;[170] the distinction between language minority students who speak English "very well" and those who speak it "with difficulty" and how this relates to reading, writing, speaking, and understanding English;[171] how these students' needs have been met;[172] and how DOEd can best serve them while allowing state and local education agencies latitude in suiting programs to the needs of their students.[173]

The Commission's recommendations regarding limited English proficiency also asked federal agencies to conduct more compliance reviews[174] and to provide regulations,[175] guidance, and training. Recommendations asked agencies to issue guidance on the objectives and methods of monitoring compliance with respect to limited English proficiency;[176] the definition of terms and examples of variations in recipients' noncompliance that might assist investigative staff in compliance activities;[177] how to reach people with language barriers;[178] and various education issues.[179]

Recommendations on training largely concerned the use of interpreters to overcome language barriers. The Commission asked federal agencies to give service providers the necessary training, such as training in how to certify and work with interpreters.[180] The quality assurance standards for interpreter services, the need for interpreters to have technical expertise, for example in interpreting medical terminology, and acceptable alternatives to interpreter services were other areas in which federal agencies needed to provide training to ensure recipient compliance with civil rights laws.[181]

Sex Discrimination and Sexual Harassment

Concerns about sex discrimination and sexual harassment arose in the areas of employment, education, and health care. The Commission urged that EEOC, DOEd, and HHS conduct more compliance reviews on these issues. It asked HHS to provide resources for compliance reviews on whether sex discrimination was occurring in health programs and to develop comprehensive policy guidance for investigative staff and funding recipients on the topic.[182]

The Commission asked DOEd to combat hindrances to women's and girls' educational opportunities. The agency should develop programs to eliminate the gender stereotypes attached to certain careers. Compliance reviews and investigations of Title IX issues should examine (1) the context of specific sexual harassment incidents and whether the harassment dampens the academic performance of female students; (2) girls' access to advanced math and science courses; (3) whether tests contain gender bias; and (4) the usefulness of single-sex programs, whether they serve their intended purpose, and if comparable programs are available for the other sex.[183]

EEOC was not handling sex discrimination as well as it was sexual harassment. The Commission said EEOC must address the sex discrimination issues that the Glass Ceiling Commission raised during investigations and when initiating commis-

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[170] USCCR, *Education Report, Vol. III*, pp. 18–19, 27–30, 207–09, 250.

[171] Ibid., pp. 15–17, 158–61, 208, 225.

[172] USCCR, *Civil Rights Issues Facing Asian Americans*, pp. 68–103, 194.

[173] USCCR, *Education Report, Vol. III*, pp. 39–42, 69–71, 73–75, 83–84, 92–96, 117–21, 148–57, 179–84, 192, 206, 208–13, 219, 222–24, 228–30.

[174] USCCR, *Civil Rights Issues Facing Asian Americans*, pp. 63–103, 194.

[175] USCCR, *Health Care Report, Vol. II*, pp. 92–98, 310–11.

[176] Ibid., pp. 92–98, 310.

[177] Ibid., pp. 92–98, 309.

[178] Ibid., pp. 252–53, 366–67.

[179] Schools need guidance on their legal obligations toward national origin minorities and students with disabilities who are limited English proficient; teacher training and certification for teaching limited-English-proficient (LEP) students; and on developing strategies that all school districts can use, regardless of the size of their LEP student population. USCCR, *Education Report, Vol. I*, pp. 200–04, 257–59; USCCR, *Education Report, Vol. II*, pp. 211–12, 214–16, 387; USCCR, *Education Report, Vol. III*, pp. 85–88, 169–72, 214, 226–27. The Commission further asked DOEd to work with state and local education agencies to rely on educational approaches that benefit LEP students and incorporate program evaluations to periodically reassess and appropriately reassign students who are in alternative language programs. USCCR, *Education Report, Vol. III*, pp. 131–37, 220–21.

[180] USCCR, *Health Care Report, Vol. I*, pp. 52–55, 193–94; USCCR, *Civil Rights Issues Facing Asian Americans*, pp. 168–74, 203.

[181] USCCR, *Health Care Report, Vol. II*, pp. 92–98, 310.

[182] Ibid., pp. 137–38, 166, 320–21, 332.

[183] USCCR, *Education Report, Vol. V*, pp. 14–26, 25–26, 65–68, 70–74, 109–10, 121–25, 134, 137–38, 148–49.

sioner charges.[184] But, because the Commission regarded the agency's enforcement of sexual harassment as a model program other agencies might follow, it merely asked EEOC to continue its efforts to identify sexual harassment in the workplace and litigate such cases and to continue widely disseminating its technical assistance materials on the subject.[185]

Outreach to Underserved Populations

In other recommendations, the Commission raised concerns about reaching people in underserved areas and communities. The Commission asked federal agencies to ensure that their programs reached participants and beneficiaries in rural and inner-city areas as well as underserved populations, such as African Americans, Asian Pacific Americans, Hispanic Americans, Native Americans, migrant and seasonal farm workers and their children, and women. It asked federal agencies to find alternate or innovative methods of reaching such areas and groups.[186] Federal agencies should also initiate or increase technical assistance, outreach, and education in small or minority communities and regions with large migrant populations to inform these individuals about the available services.[187] Other recommendations asked federal agencies to better serve these underserved populations by replicating local initiatives more widely[188] and reviewing or reporting the available services and their effectiveness.[189]

Disability Access

The Commission raised the issue of disability access with the Department of Education. To improve Section 504 enforcement, the Commission asked DOEd to continue encouraging school districts to focus on student needs rather than disability definitions in providing appropriate services to students with disabilities.[190] The Commission also requested that DOEd, through OCR, its Office of Special Education and Rehabilitative Services, and state and local education agencies, ensure that students with learning and behavioral disabilities, emotional disturbance, and mental retardation can participate in strategies such as counseling for successful transitions to regular classrooms[191] and partake of extracurricular services and activities.[192] The Commission also recommended that DOEd ask local school districts to allow regular education teachers to receive special education in-service training.[193]

Updating Regulations

The Commission asked some federal funding agencies to develop new regulations and others to update existing ones. It often said that federal agencies must keep their civil rights regulations current to reflect legislative developments.

The Commission asked DOJ/CRD/CORS to assume a leadership role in reviewing and, where needed, providing updated Title VI regulations to all federal funding agencies.[194] DOJ's CORS was also invoked to improve its process of reviewing proposed legislation involving civil rights or federal financial assistance programs to inform Congress of any civil rights consequences.[195] In some instances, the Commission asked CORS to develop additional regulations that would apply to the federal agencies enforcing Title VI.[196]

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[184] USCCR, *EEOC Report*, pp. 42, 267.

[185] Ibid., pp. 41–42, 46–47, 266–67, 286.

[186] Ibid., pp. 32–38, 250–54, 266, 296; USCCR, *Health Care Report, Vol. I*, pp. 60–63, 175–76, 182–84, 196, 224, 226.

[187] USCCR, *Health Care Report, Vol. I*, pp. 60–69, 175–76, 182–84, 196, 199, 224–26; USCCR, *EEOC Report*, pp. 32–38, 250–54, 266, 296.

[188] USCCR, *Health Care Report, Vol. I*, pp. 64–69, 175–76, 182, 199, 224–26.

[189] USCCR, *Health Care Report, Vol. II*, pp. 242–43, 368–69; USCCR, *Civil Rights Issues Facing Asian Americans*, p. 206.

[190] USCCR, *Education Report, Vol. II*, pp. 187–89, 347–54, 362–66, 381, 404–05, 407.

[191] Ibid., pp. 347–52, 404.

[192] Ibid., pp. 335–42, 402–03.

[193] Ibid., pp. 187–89, 347–54, 362–66, 381 404–05, 407.

[194] USCCR, *Federal Title VI Enforcement*, pp. 75, 87, 142, 149, 223, 251–53, 331, 356–61, 392, 457–59, 482, 633.

[195] Ibid., pp. 112–13, 155.

[196] For example, the Commission asked that regulations require federal agencies with funding assistance programs to provide a program of technical assistance to their recipients. USCCR, *Federal Title VI Enforcement*, pp. 75, 87, 142, 149.

The Commission was particularly concerned that DOJ/CRD/CORS ensure that regulations were updated to reflect legislation, such as the Civil Rights Restoration Act of 1987, which extended Title VI coverage to prohibit discrimination in an entire institution even if only part of that institution receives funds. It asked that DOJ and federal funding agencies update all Title VI regulations based on this act.[197] DOEd, DOL, DOI, EPA, the Small Business Administration (SBA), and HHS were agencies specifically asked to consider the impact of this act on civil rights.[198] Agencies asked to review the effects of other legislative changes were HHS and DOT and one of its operating administrations, the Federal Aviation Administration.[199]

The Commission also requested that agencies consider adopting nondiscrimination regulations similar to those for DOL's main job-training program (then the Job Training Partnership Act) to ensure that states are enforcing Title VI in state and locally administered programs.[200] The Commission further encouraged federal funding agencies to develop model regulations that prohibit discrimination not just in employment but also when employment practices result in discrimination against program beneficiaries or others.[201] It directed agencies with decentralized enforcement programs to ensure that their subagencies have regulatory guidance in addition to Title VI regulations.[202] Finally, the Commission asked federal agencies to update Title VI regulations to incorporate a comprehensive list of specifically prohibited discriminatory practices.[203]

DOT's National Highway Traffic and Safety Administration had yet to develop Title VI regulations.[204] Other agencies needed to revise existing ones, for example, to clarify terms or the application of civil rights statutes to the assisted programs, or to modify the enforcement process. These agencies included DOEd,[205] EEOC,[206] HUD,[207] SBA,[208] DOL,[209] EPA,[210] and HHS.[211]

Technical Assistance

Technical assistance consists of educational forums, advice, or written policy documents offered to agencies responsible for enforcing civil rights laws or potential violators to improve their ability to meet civil rights obligations.[212] Many agencies were asked to provide or improve technical assistance to funding recipients.[213] The Commission

[197] USCCR, *Federal Title VI Enforcement*, pp. 36–40, 635.

[198] Ibid., pp. 192, 211–12, 359–60, 376, 392–93, 409, 442, 457–59, 471; USCCR, *Health Care Report, Vol. II*, pp. 77–78, 302, 377 465, 555.

[199] USCCR, *Health Care Report, Vol. II*, pp. 77–78, 302, 377 465, 555; USCCR, *Federal Title VI Enforcement*, pp. 505–07, 517, 527–28, 537.

[200] USCCR, *Federal Title VI Enforcement*, pp. 198, 258–59, 359–60, 383, 639, 665–67.

[201] USCCR, *Health Care Report, Vol. II*, pp. 163–64, 191, 223–24, 258–59, 331, 359–60, 393, 426–27, 457–58, 482–83, 510, 638.

[202] USCCR, *Federal Title VI Enforcement*, pp. 164–65, 220, 258–59, 278–79, 298–99, 313–18, 508, 526–28, 544–46, 557–58, 571, 584, 593, 600–01, 640–41.

[203] USCCR, *Federal Title VI Enforcement*, pp. 162, 191, 223–24, 259, 267, 331, 359, 392–94, 427, 459, 482, 507, 510–11, 637.

[204] Ibid., pp. 586, 590–91.

[205] For example, the Commission called upon DOEd to update Section 504 regulations to, among other things, allow parents to be used in interpreting evaluation data and making placement decisions concerning students with disabilities. USCCR, *Education Report, Vol. II*, pp. 234–36, 254–55, 389. It also asked the agency to address affirmative action provisions "in the context of State run institutions and medical schools receiving federal funding." USCCR, *Health Care Report, Vol. II*, pp. 122–25, 316–17. *See also* USCCR, *Education Report, Vol. I*, pp. 190–97, 254–57.

[206] For example, a recommendation asked EEOC for stronger guidance on the issue of "mitigating measures" as related to the ADA. USCCR, *ADA Report, Vol. II*, pp. 91–99, 253. Another asked the agency to extend the time period for filing a civil rights complaint. USCCR, *Federal Employees Report*, p. 21. *See also* USCCR, *EEOC Report*, pp. 84–92, 271.

[207] USCCR, *Fair Housing Enforcement Report*, p. 225; USCCR, *Federal Title VI Enforcement*, pp. 331–32, 346.

[208] The SBA was asked to retain the language currently used in Title VI regulations addressing employment discrimination. USCCR, *Federal Title VI Enforcement*, pp. 459, 472.

[209] The Commission requested that existing regulations for the job-training program be extended to all DOL programs. USCCR, *Federal Title VI Enforcement*, pp. 366–69, 376, 382–83.

[210] One of several recommendations asked EPA to clarify that discrimination is not permissible at a facility built with federal funds. USCCR, pp. 425–27, 435, 441–41, 449.

[211] HHS was asked to draft regulations concerning LEP. USCCR, *Health Care Report, Vol. II*, pp. 92–98, 310–11.

[212] *See, e.g.,* USCCR, *Federal Title VI Enforcement*, pp. 116–17.

[213] USCCR, *Education Report, Vol. IV*, pp. 53–61, 71–82, 90, 94–104, 112–15, 119, 126–27, 130, 132; USCCR, *Education Report, Vol. III*, pp. 83–84, 92, 105–07, 117–21, 135–36, 144–

asked all federal agencies to implement active Title VI technical assistance programs because it found most lacking in this area.[214]

The Commission also asked some federal funding agencies to provide or improve technical assistance to their own civil rights enforcement components, including field offices and contracting agencies, and to parallel agencies and offices sharing civil rights jurisdiction with them.[215] The Commission's recommendations for technical assistance sometimes emphasized principles such as ensuring that uniform enforcement procedures are used throughout the agency.[216] Another principle the Commission supported was assigning full-time education and outreach coordinators to headquarters to monitor and coordinate technical assistance, education, and outreach activities in regional offices throughout the agency.[217] Other recommendations were specific to particular agencies or issues.[218]

Education and Outreach to Potential Victims, Violators, and the Public

The Commission concluded that federal agencies had to implement or improve education and outreach programs and make clear the agency components' responsibilities for conducting education and outreach.[219] The improvements requested varied. Several recommendations asked for regular education and outreach,[220] while others asked that education and outreach be targeted to special audiences such as attorneys[221] or small businesses.[222] The Commission also recommended new or innovative venues for education and outreach such as the Internet[223] or publicity of an agency's successes in defending the public's civil rights.[224]

A number of recommendations requested that federal agencies mount inter-agency coordinated outreach.[225] In particular, the Commission suggested campaigns aimed at educating all U.S. residents on Title VI[226] and workplace violence,[227] and at informing recent Asian American immigrants

48, 158–61, 169–73, 197–200, 206, 213, 215–16, 219, 222, 225–28, 230–31; USCCR, *Education Report, Vol. V*, pp. 14–32, 64–65, 70–74, 78–79, 92–99, 102–04, 123–26, 134–35, 137–39, 142–47; USCCR, *Education Report, Vol. II*, pp. 192–94, 221–23, 318–22, 263–66, 333–35, 354–59, 366–67, 383, 388, 391, 397–98, 402, 405–06, 408; USCCR, *ADA Report, Vol. II*, pp. 128–30, 133–35, 148–57, 230–31, 239–41, 257–58, 260, 268–69; USCCR, *ADA Report, Vol. I*, pp. 13, 45–46, 77–83, 108, 119, 123–27, 134, 138–42, 143, 160–61; USCCR, *EEOC Report*, pp. 2, 32–38, 224–27, 231–33, 245–46, 250, 255–56, 265–66, 291–92, 295–97; USCCR, *Federal Fair Housing System*, pp. 33, 223; USCCR, *Health Care Report, Vol. I*, pp. 28–36, 53–55, 62–63, 159–60, 170, 194, 197–98, 222–23; USCCR, *Health Care Report, Vol. II*, pp. 88, 146–50, 216–26, 235–39, 249–55, 307, 324–25, 350, 352–53, 361, 363–64, 376–77; USCCR, *Federal Title VI Enforcement*, pp. 228–30, 243–45, 303, 307, 317–18, 324, 401, 412–13, 427, 433, 442, 448–49, 466, 475, 497, 533–34, 539, 561–62, 566, 576, 582, 586–87, 591, 597, 599, 605, 609.

[214] USCCR, *Federal Title VI Enforcement*, pp. 177–78, 204, 231–32, 262, 285, 303, 313, 317, 337–38, 366, 401, 433–35, 466, 487, 512–13, 531–32, 549, 559–60, 573–74, 594, 602–03, 661.

[215] USCCR, *ADA Report, Vol. I*, pp. 117–19, 123–31, 139, 143, 160–61; USCCR, *Health Care Report, Vol. II*, pp. 24–25, 49, 186–87, 219–21, 231–55, 242–43, 249–62, 280, 285–86, 340, 351–53, 361–65, 368–69. USCCR, *Education Report, Vol. IV*, pp. 69, 125; USCCR, *Education Report, Vol. III*, pp. 197–200, 230–31; USCCR, *Education Report, Vol. V*, pp. 14–26, 94, 124, 143. USCCR, *EEOC Report*, pp. 220–26, 229, 234–35, 290–93; USCCR, *ADA Report, Vol. II*, pp. 236–41, 268–69; USCCR, *Federal Fair Housing System*, p. 34; USCCR, *Federal Title VI Enforcement*, pp. 259, 269, 401, 412–13, 513, 519, 592.

[216] USCCR, *Health Care Report, Vol. II*, pp. 249–55, 361.

[217] Ibid., pp. 218–19, 352.

[218] For example, the Commission asked DOEd's OCR to cite the sources for the propositions it was advancing pertaining to ability grouping practices when developing resource guidance materials. USCCR, *Education Report, Vol. IV*, pp. 69, 125.

[219] USCCR, *Education Report, Vol. V*, pp. 14–26, 80–82, 123–24, 140; USCCR, *Education Report, Vol. IV*, pp. 112–15, 132; USCCR, *Education Report, Vol. II*, pp. 191–95, 223–27, 384, 388; USCCR, *ADA Report, Vol. I*, pp. 59–61, 139; USCCR, *ADA Report, Vol. II*, pp. 133–35, 236–39, 258, 268; USCCR, *EEOC Report*, pp. 137–38, 224–26, 235–36, 279, 291, 293; USCCR, *Health Care Report Vol. I*, pp. 165–67, 223; USCCR, *Health Care Report, Vol. II*, pp. 19–25, 216–26, 284, 286, 350; USCCR, *Federal Title VI Enforcement*, pp. 87, 114–16, 149, 156–58, 218–23, 231–32, 240, 245–46, pp. 252, 268, 284, 290, 400–01, 412, 513, 519, 533, 538–39, 576, 582, 586–87, 590–92.

[220] *See* USCCR, *Health Care Report, Vol. I*, pp. 63, 198.

[221] USCCR, *EEOC Report*, pp. 238–39, 293.

[222] Ibid., p. 295.

[223] USCCR, *Education Report, Vol. I*, p. 259.

[224] *See* USCCR, *Fair Housing Enforcement Report*, pp. 229–30.

[225] *See, e.g.,* USCCR, *Transportation Report*, pp. 1–12, 13, 15; USCCR, *Education Report, Vol. IV*, pp. 94, 130.

[226] USCCR, *Federal Title VI Enforcement*, pp. 659–60.

[227] The Commission asked DOL, DOJ, and EEOC to coordinate this effort. USCCR, *EEOC Report*, pp. 40–41, 52–53, 266–67, 269.

about their civil rights.[228] Similarly, the Commission recognized EEOC and its Office of Field Programs for acknowledging the importance of sharing information with other agencies about the innovative approaches to education and outreach that its field offices were developing.[229]

Another frequent recommendation was that information concerning civil rights issues be readily available to recipients and subrecipients, potential and actual victims of civil rights violations, violators, and the public.[230] In ensuring that education and outreach materials reach all populations, the Commission stressed that they must be disseminated in languages other than English. Agencies were asked to disseminate information in other languages to accommodate the populations they served.[231]

COMPLAINT PROCESSING AND LITIGATION

The Commission reviewed the complaint processing procedures of several agencies over the past 10 years. Out of these reviews emerged several common findings, including areas that have continued to present challenges to these enforcement agencies and in which efforts have been insufficient. The Commission has thus made many recommendations for charge processing and complaint resolution. Generally, the recommendations have focused on ensuring that agencies have a comprehensive process to resolve complaints efficiently and expeditiously to achieve maximum results. Another key theme has been improving customer service by creating systems that are easy to navigate for potential charging parties and publicizing policies and procedures.

Charge Intake

The intake process is an agency's first communication with potential complainants and provides valuable information on the enforcement process. It must be organized to promote efficiency yet easy for complainants to navigate. The Commission's recommendations for the intake process have generally concerned streamlining the intake process and formalizing intake procedures to ensure consistency across offices. Several Commission reports emphasized that internal procedures must ensure that every part of an agency (such as a district office) has the same standards for charge intake.[232]

Improving customer service goes hand in hand with the intake process, but also extends beyond that to include better communication with complainants throughout the investigation and resolution stages of charge handling. Recommendations for improving customer service include:

[228] USCCR, *Civil Rights Issues Facing Asian Americans*, p. 205.

[229] USCCR, *ADA Report, Vol. II*, pp. 236–39, 268.

[230] USCCR, *ADA Report, Vol. I*, pp. 26–28, 40–42, 53–54, 59–61, 119, 123–31, 136–39, 143; USCCR, *ADA Report, Vol. II*, pp. 148–57, 195, 215, 239–41, 260, 264, 266, 269; USCCR, *EEOC Report*, pp. 31–32, 113, 220–27, 238–39, 241–46, 255–59, 265–66, 276, 290–91, 293, 294–95, 297–99; USCCR, *Health Care Report, Vol. I*, pp. 28–36, 52–55, 63, 77–78, 102–03, 120, 134, 138, 140–41, 170–86, 192, 195, 198, 209, 216, 220, 224; USCCR, *Health Care Report, Vol. II*, pp. 13, 19–23, 175, 216–26, 242–43, 249–55, 261–62, 264–70, 278–79, 284, 337, 350–52, 361, 368–69, 364, 371–74; USCCR, *Fair Housing Enforcement Report*, p. 223; USCCR, *Federal Title VI Enforcement*, pp. 114–15, 144, 156–57, 192–93, 212, 218–23, 231–32, 240, 245–46, 261–62, 271, 284, 290, 302–03, 307, 315–17, 323, 336–38, 349–50, 364–65, 380–81, 400–01, 412, 463–66, 474–75, 487, 497, 550–51, 556, 561, 566, 596–97, 599, 604, 609; USCCR, *Civil Rights Issues Facing Asian Americans*, pp. 22–48, 192, 205; USCCR, *Education Report, Vol. IV*, pp. 53–61, 71–78, 94–102, 112–15, 119, 126, 130–32; USCCR, *Education Report, Vol. V*, pp. 67–68, 80–82, 86–88, 102–04, 134–35, 140–41, 147–46; USCCR, *Education Report, Vol. III*, pp. 83–84, 92–96, 117–21, 126–27, 135–36, 144–48, 158–61 169–73, 206, 213, 219–20, 222, 225–28; USCCR, *Education Report, Vol. II*, pp. 211–16, 221–23, 255–57, 263–66, 285–87, 333–35, 347–52, 354–58, 386–88, 390–91, 394, 402, 404–05; USCCR, *Education Report, Vol. I*, pp. 205, 209–14, 251–52, 259, 261–62.

[231] USCCR, *Health Care Report, Vol. I*, pp. 52–55, 77–78, 138, 195, 220; USCCR, *Health Care Report, Vol. II*, pp. 19–23, 261–62, 284, 364; USCCR, *Federal Title VI Enforcement*, pp. 433, 448–49, 513, 519, 586, 590–91; USCCR, *Education Report, Vol. I*, pp. 213–14, 261–62; USCCR, *Education Report, Vol. III*, pp. 92–96, 206; USCCR, *EEOC Report*, pp. 257, 259–60, 297–99; USCCR, *ADA Report, Vol. II*, pp. 239–41, 269.

[232] USCCR, *EEOC Report*, pp. 154–56, 274; USCCR, *ADA Report, Vol. II*, pp. 191–92, 262.

- expanding office hours to include evenings and weekends;[233]
- establishing intake booths in convenient locations (e.g., community centers and malls);[234]
- reassessing intake functions on a continual basis and using customer satisfaction surveys;[235]
- extending deadlines for submission of information requested of charging parties to allow ample time to respond;[236]
- expanding accessibility of enforcement staff;[237]
- improving interaction with the complainant to gather necessary information instead of placing the burden entirely on the charging party;[238]
- assessing why many inquiries from complainants never become formal charges ;[239] and
- training intake staff on interaction and communication skills.[240]

Expediting the intake process while conducting a thorough first assessment of an individual complaint is often a difficult balance to achieve. Intake staff should be provided with questionnaires to be used when caseloads are large. This will not only ensure that the correct information is collected, but will also promote uniformity within and across offices.[241] In addition, intake staff should begin the initial stages of investigation to ensure that charges are fully developed before being referred to other enforcement or legal staff.[242]

Charge Prioritization/Case Selection

Prioritization of Complaints Received

Because civil rights enforcement agencies have limited resources, agencies should have procedures to prioritize charges and select cases that identify a high percentage of actionable complaints and cases able to affect the most people. Agencies must have clearly defined prioritization methods, use them systematically in determining which cases to pursue, and be able to justify the resources expended on any one complaint. The prioritization process extends to many levels of charge development, including determinations as to which complaints to investigate, which to resolve through mediation or other settlement procedures, and which warrant litigation.

Even with prioritization procedures, enforcement agencies often lack resources to give adequate attention to all meritorious complaints. Under such circumstances, the Commission has often recommended that agencies emphasize systemic cases, which can provide relief for a large number of victims, although these cases are also the most resource intensive.[243]

Agency-Initiated Charges

Case selection also includes the proactive identification of discrimination absent the filing of a specific complaint. Most enforcement agencies have the authority to investigate self-initiated charges, as is the case with commissioner charges filed by the EEOC and secretary-initiated charges filed by HUD. Although such agencies have the discretion to choose which charges to file, they do not always exercise such discretion to its fullest, so the Commission has made recommendations for ensuring that they take full advantage of this option.

The Commission has found agency-initiated charges useful for identifying systemic discrimination. It has recommended that agencies use statistical and research tools to identify instances of potential systemic discrimination. With respect to EEOC, the agency's Office of Research and Information Planning should provide EEOC commissioners with regular reports identifying areas with discriminatory trends in the employment data the agency collects to determine if a charge or systematic investigation should be initiated.[244] District office enforcement and legal staff should also regularly analyze employment data to determine areas of potential charges.[245]

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[233] USCCR, *EEOC Report*, pp. 105, 275–76.

[234] Ibid., pp. 105, 275–76.

[235] Ibid., pp. 105, 154–56, 274–76.

[236] USCCR, *Health Care Report, Vol. II*, pp. 173–74, 337.

[237] Ibid.

[238] Ibid., pp. 172–74, 328.

[239] USCCR, *EEOC Report*, pp. 154–56, 274.

[240] Ibid.

[241] Ibid., pp. 109–10, 276.

[242] Ibid., pp. 105, 275.

[243] Ibid., pp. 178–79, 283–84.

[244] Employers with more than 100 employees are required to submit annual reports to the EEOC on the racial, ethnic, and gender makeup of their employees. These are referred to as EEO-1 reports.

[245] USCCR, *EEOC Report*, pp. 164–65, 282.

The Commission also recommended that HUD intensify efforts to develop secretary-initiated complaints, specifically that the agency should target cases not easily corrected through individual complaints, issue guidance or regulations on the subjects that might be pursued through this method, and increase resources for agency-initiated complaints.[246]

Some agencies identify discrimination through testing, and the Commission has occasionally recommended that efforts in this area be heightened. For example, the Commission recommended that HUD fund testing for law enforcement purposes whenever there are grounds to believe discrimination may be occurring.[247] Areas to proceed with testing can also be identified through statistical disparities, media reports, or substantive anecdotal evidence.

Investigation

Over the years, the Commission has found many deficiencies in the way enforcement agencies conduct investigations. The Commission found inconsistencies across offices, inadequate probing of facts, and failure to conduct thorough investigations such as through on-site visits. The Commission's recommendations asked agencies to provide guidance to investigative staff during and after an investigation. Agencies need to develop complaint processing and investigation procedures that delineate the process of handling complaints and indicate the types of information needed to support a finding.[248] Following are specific recommendations made to various agencies:

- Model investigative plans should be developed and issued for each priority issue as a guideline to ensure uniformity across regional enforcement offices.[249] Experts and task forces should have input into their development.[250]
- Investigative plans should be encouraged for all charges, and enforcement managers or supervisory investigators should review them for consistency.[251]
- Quality assurance reviews—to review case files for quality and to ensure that investigators used the proper analyses—should be done regularly, either by agency management[252] or by independent outside auditors hired on a contractual basis.[253] If the reviews uncover evidence that some investigations have been done superficially or improperly, these cases should be reopened and reinvestigated.
- Headquarters should develop guidelines for mandatory review procedures across district offices. The guidelines should require charge review at various stages of development—after initial assessment, during investigation, and upon issuance of determination.[254]
- Investigative staff should confer with the written guidance for investigative procedures determining the scope and parameters of an investigation.[255] Further, investigative staff should be encouraged to tailor requests for information so that respondents submit only relevant information.[256]
- Agencies should recognize the usefulness of on-site investigations and perform them as necessary.[257]
- State agencies (and other external entities that conduct investigations) should be required to submit a written report on each complaint and its investigation.[258]
- Witness contact should be tracked uniformly across district offices so that investigators are held accountable for the thoroughness of their work.[259]

The Commission suggested ways to improve the efficiency of enforcement staff and streamline the investigative process. For example, district of-

[246] USCCR, *Fair Housing Enforcement Report*, p. 229.

[247] Ibid., p. 227.

[248] USCCR, *Federal Title VI Enforcement*, pp. 561, 565–66.

[249] USCCR, *Health Care Report, Vol. II*, pp. 184, 339.

[250] USCCR, *Education Report, Vol. I*, pp. 212, 260–61.

[251] USCCR, *EEOC Report*, pp. 144, 280.

[252] USCCR, *Federal Title VI Enforcement*, pp. 399, 412.

[253] USCCR, *ADA Report, Vol. II*, pp. 62–63, 247.

[254] USCCR, *EEOC Report*, pp. 117–18, 277.

[255] Ibid., pp. 143, 279–80.

[256] Ibid., pp. 145–46, 280.

[257] USCCR, *Fair Housing Enforcement Report*, p. 222; USCCR, *EEOC Report*, pp. 28, 148–49.

[258] USCCR, *Federal Title VI Enforcement*, pp. 430–31, 447.

[259] USCCR, *EEOC Report*, pp. 151, 281.

fice management staff should regularly evaluate the caseloads of investigators to determine whether any investigator has a disproportionate number of difficult charges on his or her docket. The distribution of charges should be based on investigative experience and difficulty of the charge.[260]

Improving Efficiency and Reducing Complaint Backlogs

Enforcement agencies have been criticized for taking too long to process discrimination charges. Increases in responsibilities, and hence in the number of charges filed, and decreases in resources have exacerbated the problem.[261] As a result, agencies have needed to develop ways to reduce their growing backlogs and process charges more efficiently.[262] Some agencies have done so by prioritizing the charges they would spend time investigating and resolving, as has been discussed.

Complaint Resolution

Complaints can be resolved in several ways—through dismissal, voluntary agreement between the parties involved, adjudication, or litigation. The Commission has made many recommendations specific to the vehicles commonly used by each agency.

Determinations and Dismissals

The Commission's evaluations of enforcement agencies suggest that a large percentage of complaints are dismissed for administrative reasons or closed with a no cause determination. This fact is disturbing to many charging parties who may not understand the charge processing procedures and requirements or the legal provisions that validate a complaint. EEOC is one agency in which the number of no cause findings and administrative closures continues to be large. The Commission has recommended that the agency study the reason for this trend. EEOC should try to improve education and outreach efforts so that the public is better informed about what types of charges have merit under EEOC jurisdiction.[263]

Upon closure of a complaint, enforcement agencies must notify the parties involved of the outcome of the complaint in a letter of determination or letter of finding. The Commission found that many such letters lack sufficient information to inform the parties of the reasons for the finding. For example, the Commission recommended that EEOC require that enforcement staff conduct predetermination interviews with charging parties, giving them a chance to provide any additional information before having their cases dismissed.[264] In addition, staff should ensure that the determination letters sent to charging parties clearly explain why no cause was found, or why a charge was dismissed.[265]

Similar recommendations were made to benefit the respondent to a complaint. For instance, the Commission recommended that HHS/OCR fully inform every recipient that has been the subject of a complaint investigation of OCR's investigative activities. OCR's Office of Program Operations should conduct a large-scale quality assurance review of all letters of finding and case closure documents, and should prepare a report with recommendations to upgrade the overall quality of these documents.[266] OCR should develop a compendium of model letters of finding and corrective action agreements for each of the statutes it enforces. This will enable investigative staff to develop thorough case closure documents.[267]

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[260] Ibid., pp. 143, 279–80.

[261] *See, e.g.,* USCCR, *EEOC Report*, p. 66. *See also* USCCR, *Funding Federal Civil Rights Enforcement: 2000 and Beyond*, February 2001.

[262] USCCR, *EEOC Report*, pp. 153–54, 156–57, 174, 283, 281–82; USCCR, *ADA Report, Vol. II*, pp. 217–20, 267; USCCR, *Federal Fair Housing System*, p. 32; USCCR, *Fair Housing Enforcement Report*, p. 223; USCCR, *Health Care Report, Vol. II*, pp. 178–80, 189, 336, 341; USCCR, *Federal Title VI Enforcement*, pp. 229–30, 245–32, 657.

[263] USCCR, *ADA Report, Vol. II*, pp. 215, 266.

[264] USCCR, *EEOC Report*, pp. 172, 283.

[265] USCCR, *ADA Report, Vol. II*, pp. 201–02, 265.

[266] USCCR, *Health Care Report, Vol. II*, pp. 187–88, 340–41.

[267] Ibid., pp. 184, 338–39.

Settlement Agreements and Conciliation

To conserve resources, there has been a move toward settling complaints early in the charge handling process. While the Commission has generally supported methods such as mediation and conciliation, some concerns about the implementation of these methods have prompted a series of recommendations.[268] For example, the Commission recognizes that for effective enforcement, remedies must address the root of discrimination. Mediation or other settlement negotiations, if not performed carefully, may ignore the larger picture in the interest of resolving the complaint at hand. To avoid this, the Commission recommended that mediation only be used when it is appropriate to the nature of the complaint, and mediation staff should ensure that settlements include provisions for changes in employer practices or policies that might have a discriminatory effect.[269]

A recurring theme in recommendations regarding settlement of complaints is improving communication of rights and procedures to the parties involved. For instance, the Commission recommended to HUD that complainants be informed about the consequences of resolving complaints outside conciliation.[270] In addition, HUD should establish standards for conciliation to ensure that parties' rights are respected[271] and should notify parties of their right to object to administrative law judges' decisions before the Secretary's review.[272]

Litigation

Many agencies consider litigation a last resort to resolve complaints of discrimination. While the Commission recognizes the resource demands involved in litigating cases, it also recognizes the importance of doing so to develop case law, to obtain appropriate relief and to send a message to potential violators about the strength of an agency's enforcement program. Thus, many of the Commission's recommendations in this area have centered on stepping up litigation in areas of law that are relatively undeveloped.[273]

Because few complaints result in litigation, enforcement agencies must have strong litigation strategies. The Commission recommended that litigation be central to an enforcement strategy, but advised agencies to seek and litigate cases that set legal precedent and to mediate other cases.[274] It also advised agencies to seek input from stakeholders in developing the litigation strategy. Agencies should obtain the affected community's views on which issues need to be litigated.[275]

One example of an efficient litigation strategy is EEOC's delegation of litigation authority to regional attorneys, allowing them to identify and pursue cases for litigation within the constraints of clearly established local and national priorities. The Commission supported this practice of delegating constrained authority as long as district offices select the most appropriate and diverse cases, and headquarters monitors district office dockets and rescinds authority when regional attorney discretion fails to maintain a successful litigation program.[276]

Further recognizing the limitations of enforcement agencies' litigation programs, the Commission has made recommendations for using external resources. For instance, some EEOC district offices have developed attorney-referral programs for cases exceeding the agency's budget or not defined as priorities. The Commission recommended that this practice continue and that EEOC's legal staff be available to offer guidance to private attorneys and to collaborate with organizations such as the American Bar Association. However, not all individual cases should be referred to the private bar, including class cases and those that might further define the law, that have potential for broader impact, or that will aid an individual the private bar cannot or will not assist.[277]

As was mentioned earlier, not all agencies have the authority to litigate the charges that fall within

[268] The Commission also warns that mediation is not a solution for all charges or a substitute for investigation and litigation. It should only be seen and used as one of the strategies to eliminate unfair employment practices. USCCR, *EEOC Report*, pp. 121–39, 277.

[269] USCCR, *EEOC Report*, pp. 135–36, 277–78.

[270] USCCR, *Fair Housing Enforcement Report*, p. 223.

[271] Ibid.

[272] Ibid., p. 229.

[273] USCCR, *ADA Report, Vol. I*, pp. 30, 56, 77–78, 136, 139–40; USCCR, *Fair Housing Enforcement Report*, p. 231.

[274] USCCR, *Health Care Report, Vol. II*, pp. 204–05, 346; USCCR, *ADA Report, Vol. II*, pp. 202, 265; USCCR, *ADA Report, Vol. I*, pp. 29, 136.

[275] USCCR, *ADA Report, Vol. I*, pp. 29, 136.

[276] USCCR, *EEOC Report*, pp. 177, 284.

[277] Ibid., pp. 180–81, 284–85.

their enforcement jurisdiction. HUD is one such agency. The Commission views this as a detriment to full enforcement of fair housing laws and therefore has recommended that DOJ authorize HUD attorneys to pursue charges when DOJ disagrees with the substantive issue of the HUD charge. HUD attorneys should be authorized to handle litigation of elected charges, where appropriate.[278]

Monitoring Compliance

Monitoring compliance with settlement agreements and court rulings is critical to ensure enforcement. In its more recent reports, the Commission emphasized the need for systematic monitoring. It recommended that HHS' OCR require monitoring for every complaint case resolved through early complaint resolution or predetermination settlement.[279] OCR should conduct on-site monitoring of all cases resulting in findings of noncompliance and all cases ending in a resolution in which a recipient agrees to undertake corrective action. OCR should use testers in monitoring voluntary compliance agreements to ensure recipients are implementing the terms of these agreements.[280] HHS should provide enforcement staff specific examples of monitoring activities appropriate for different kinds of compliance agreements.[281] Similar recommendations were made to the Office for Civil Rights at DOEd.[282]

COMPLIANCE FOR FUNDING RECIPIENTS

Compliance Reviews

The Commission often found agencies lacking in their processes for conducting compliance reviews. Recommendations were issued that addressed pre-award reviews, post-award reviews, and sometimes both. Recommendations also addressed desk audits and on-site reviews. Note that either desk audits or site visits, or both, can be part of a pre-award or a post-award review.

Major themes in the recommendations called for (1) implementing systems for thorough pre- and post-award reviews; (2) establishing strategies to streamline the review process; (3) imposing reporting requirements on recipients and analyzing recipients' reported information for possible discrimination; (4) identifying recipients to receive on-site reviews; and (5) monitoring the quality of enforcement efforts.

Implementing Thorough Pre- and Post-award Compliance Reviews

Commission studies have asked federal agencies to initiate compliance review systems for their funding recipients. In its review of Title VI enforcement, the Commission invoked all federal agencies to do so.[283] Agencies must conduct thorough, in-depth pre-award[284] and post-award[285] reviews for all programs and recipients receiving federal funds.[286]

Pre- and post-award reviews must determine whether funding applicants and recipients are in compliance with Title VI.[287] The Commission indicated that pre-award reviews must encompass more than merely checking to see that the recipient has submitted a signed assurance of nondiscrimination.[288] Furthermore, post-award reviews must be a broad investigation of the recipient's programs and practices.[289] Desk audits should be capable of identifying for on-site reviews any recipients with questionable compliance.[290] The information collected and reviewed in desk audits should include:

[278] USCCR, *Fair Housing Enforcement Report*, pp. 231–32.

[279] USCCR, *Health Care Report, Vol. II*, pp. 176–77, 337–38.

[280] Ibid., pp. 191–93, 342.

[281] Ibid., pp. 175–78, 327–28.

[282] USCCR, *Education Report, Vol. I*, pp. 206–07, 259–60.

[283] USCCR, *Federal Title VI Enforcement*, pp. 650–56.

[284] Ibid., pp. 301, 306, 323, 362, 378–79, 396–97, 411, 429–30, 446, 529–30, 531–32, 538; *Health Care Report, Vol. II*, pp. 41–42, 159, 239–45, 293, 329–30, 360.

[285] USCCR, *Federal Title VI Enforcement*, pp. 301, 307, 335, 348, 363, 379, 397–98, 411, 495–97, 603–04, 608. The Commission advised certain agencies to establish a joint post-award compliance review process. USCCR, *Transportation Report*, pp. 1–12, 13, 15.

[286] USCCR, *Federal Title VI Enforcement*, pp. 362, 378–79, 429–30, 446.

[287] Ibid., pp. 396–97, 411, 603, 608.

[288] Ibid., pp. 226–28, 242–43, 362, 378–79, 396–97, 411, 450, 484–85, 494–95.

[289] Ibid., pp. 398–99, 411–12.

[290] Ibid., pp. 198, 214, 228, 281–82, 301–02, 315, 335, 363, 379, 397, 430, 462, 485, 530–31, 535, 538–40, 547, 558, 572, 584, 588, 591, 594, 601–02, 654–55.

- the recipient's civil rights implementation and enforcement policies and activities;
- statistical evidence by racial and ethnic minorities on (a) the recipient's staffing patterns, (b) program participation rates or beneficiaries, and (c) rejection rates;
- applications or interview materials related to program participation or selection;
- the demographic makeup of the program's affected community or potential participants;
- materials demonstrating efforts to educate the public and affected communities, particularly those with limited English proficiency;
- any discrimination complaints lodged against the applicant; and
- any previous findings of compliance or noncompliance relating to the applicant.[291]

For state recipients, the Commission recommended that, before granting funds, federal agencies assess states' methods of administration as well as their annual reports or self-assessments of their recent Title VI enforcement.[292] Agencies should assess whether the state conducted a pre-award review of all subrecipients, the information considered in the reviews, the state's letter of finding for any reviews, and any required corrective actions and whether the funding applicant or recipient agreed to implement them.[293]

In contrast to a desk audit, an on-site compliance review should involve interviews of funding recipient officials, the communities affected by the recipient's programs or activities, and program participants or beneficiaries;[294] review recipients', particularly states', data collection and analysis programs used to assess civil rights compliance;[295] and provide written results with findings and recommendations for achieving compliance for the entity that was reviewed.[296] It should identify deficiencies in recipients' delivery of program services, investigate allegations of discriminatory barriers to participation, evaluate recipients' public education about program accessibility, and identify recipients needing technical assistance or further on-site investigation.[297] The Commission did not regard a compliance review system as fully implemented if it did not have established procedures for conducting pre-award, post-award, and on-site compliance reviews or if the procedures were not applied.[298]

Streamlining the Review Process

While the Commission was urging agencies to review all recipients, it recognized the tension between the need to complete compliance reviews for all recipients and the additional resources that these reviews would require to have more depth and meaning. The Commission proposed that agencies find "strategies that will promote a meaningful and efficient pre-award process on as many applicants and recipients as possible…."[299] Suggestions included increased (but not exclusive) reliance on desk audits rather than on-site reviews,[300] delegating pre-award review responsibilities to more local agency components such as operating divisions,[301] ensuring that at least recipients of major amounts of funding were reviewed,[302] or reviewing every recipient periodically, say, once every three years.[303]

[291] Ibid., pp. 226–29, 233–34, 242–45, 248, 281–82, 289, 323, 436–37, 450, 473, 499, 562–63, 567; USCCR, *Health Care Report, Vol. I*, pp. 62, 64–69, 78–91, 197–99, 203.

[292] USCCR, *Federal Title VI Enforcement*, pp. 362, 378–79.

[293] Ibid., pp. 280–82, 289.

[294] Ibid., pp. 229, 244–45, 336, 349, 398–99, 411–12, 430, 432, 447–48, 495–96, 532, 538, 560–61, 565.

[295] Ibid., pp. 232, 246–47, 488, 497–98.

[296] Ibid., pp. 363, 379–80, 485, 495–96; USCCR, *Health Care Report, Vol. II*, pp. 269–70, 374–75.

[297] Ibid., pp. 485, 495–96.

[298] Ibid., pp. 196, 213, 301, 307, 397–98, 411, pp. 531, 538, 595, 598, 603, 608; USCCR, *Health Care Report, Vol. II*, pp. 41–42, 159, 293, 329–30; USCCR, *Education Report, Vol. V*, pp. 65–68, 134.

[299] USCCR, *Federal Title VI Enforcement*, pp. 485, 495. *See also* USCCR, *Health Care Report, Vol. II*, pp. 162, 330–31.

[300] USCCR, *Federal Title VI Enforcement*, pp. 363, 379.

[301] Ibid., pp. 218–23, 240.

[302] Ibid., pp. 529–30, 538.

[303] Ibid., pp. 336, 349, 532, 538; USCCR, *Health Care Report, Vol. I*, pp. 78–91, 203.

Requiring Recipients to Submit Data on Compliance and Analyzing the Data

Federal agencies should acquire a large portion of the information for their reviews of funding recipients by imposing annual (or even quarterly) reporting requirements that allow an evaluation of the equality among the recipients' program participants and beneficiaries.[304] These requirements should be imposed as a precondition to receiving grants[305] and as support for post-award compliance reviews.[306] The agencies must then analyze and use this information to improve enforcement or select recipients for on-site reviews.[307] Better still, federal agencies should require recipients to submit annual self-assessments of their civil rights compliance that the federal agency can evaluate.[308] The Commission said that state recipients should be required to submit details of how they will ensure compliance with Title VI and that federal agencies should collect data that allow them to assess the administration of state programs and implement an active state monitoring system.[309]

Targeting Recipients for On-site Compliance Reviews

Because federal agencies have limited resources for conducting on-site compliance reviews of funding recipients, the Commission urged that they have methods of selecting recipients with potential civil rights violations to receive the on-site reviews.[310] Thus, recipients should be selected for on-site reviews using desk audits,[311] input from advocacy groups and community organizations, and results from ongoing research.[312] Other criteria the Commission suggested using were amount of funding or the size or complexity of the project.[313] Recipients for on-site reviews could also be identified using priority civil rights issues,[314] but the review should assess the recipient's entire operation, not just compliance with respect to the priority issue.[315]

In at least some agencies, the Commission called for regional offices to conduct on-site compliance reviews because of their greater knowledge of, and proximity to, recipients in their areas. These agencies should annually plan the number of on-site reviews for regional offices to perform and ensure that they conduct them.[316]

The Commission found that some agencies were devoting insufficient resources to on-site reviews. It stressed that agencies should ensure sufficient resources for on-site reviews of funding recipients and states that perform civil rights enforcement activities. In some agencies, more funds, staff, or both should be provided to regional offices, to ensure that a lack of travel or other resources do not inhibit the completion of on-site reviews.[317] However, where on-site reviews were conducted with insufficient detail, the Commission asked that resources be reallocated to conduct more desk audits so that all recipients would receive some review.[318]

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[304] *See, e.g.,* USCCR, *Federal Title VI Enforcement*, pp. 280–82, 289, 450, 484–85, 494–95, 588, 591, 595, 598; USCCR, *Health Care Report, Vol. II*, pp. 159, 162, 239–45, 329–31, 360.

[305] USCCR, *Federal Title VI Enforcement*, pp. 484–85, 494–95.

[306] *See, e.g.,* USCCR, *Federal Title VI Enforcement*, pp. 531, 538.

[307] USCCR, *Civil Rights Issues Facing Asian Americans*, pp. 104–29, 197; USCCR, *Federal Title VI Enforcement*, pp. 198, 213, 233–34, 247–48, 308, 398–99, 411–12, 467–68, 476, 499, 514, 520, 531–32, 538, 588, 591, 605–06, 609.

[308] USCCR, *Federal Title VI Enforcement*, pp. 603–04, 608.

[309] Ibid., pp. 25, 87, 148, 178–81, 202–07, 215–16, 218–23, 230–34, 240, 246–48, 260, 263, 272, 280–81, 283–87, 289, 291, 303–05, 308, 315–22, 324, 336–37 339–40, 351, 364–68, 380, 400–04, 413–14, 432, 435–37, 450, 464–65, 467–68, 476, 484–85, 487–89, 494–95, 497–99, 513, 531, 535, 538–40, 549–50, 560–63, 567, 572–76, 577–78, 582, 585, 588, 591, 595, 597–98, 600, 603, 605–06, 609, 658, 665–66, 668–69.

[310] USCCR, *Education Report, Vol. V*, pp. 65–68, 134; USCCR, *Health Care Report, Vol. II*, p. 334; USCCR, *Federal Title VI Enforcement*, pp. 229, 244–45, 301, 306, 430, 447, 531–32, 538, 588, 591.

[311] USCCR, *Federal Title VI Enforcement*, pp. 603–04, 608.

[312] USCCR, *Health Care Report, Vol. II*, pp. 155–71, 283–84, 333–34.

[313] USCCR, *Federal Title VI Enforcement*, pp. 229, 244–45, 301, 306, 430, 447, 495–96, 532, 538. *See also* USCCR, *Health Care Report, Vol. II*, pp. 159, 162, 329–31.

[314] USCCR, *Education Report, Vol. V*, pp. 33–41, 127.

[315] USCCR, *Federal Title VI Enforcement*, pp. 201, 214.

[316] USCCR, *Health Care Report, Vol. II*, pp. 36–39, 155–71, 190–91, 283–84, 291–92, 341; USCCR, *Federal Title VI Enforcement*, pp. 531–32, 538.

[317] USCCR, *Federal Title VI Enforcement*, pp. 354–56, 374, 549, 556; USCCR, *Health Care Report, Vol. II*, pp. 165, 332.

[318] USCCR, *Federal Title VI Enforcement*, pp. 463, 473–74.

Monitoring Civil Rights Enforcement

The Commission issued recommendations concerned with monitoring the quality of the civil rights enforcement system. Agencies were advised to monitor the quality of their pre-award reviews in order to ensure recipient compliance,[319] to evaluate the post-award compliance review process,[320] and to periodically evaluate the quality of on-site reviews conducted by regional offices and states and to offer them any needed assistance.[321] Recommendations charged agency headquarters offices with the responsibility of assessing the enforcement activities of their operating divisions and administrations.[322]

Deficiencies, Remedies, and Sanctions

When deficiencies have been found, federal agencies are required to offer technical assistance to recipients to correct their deficiencies and obtain recipients' agreement to voluntarily comply. The Commission asked that agencies monitor these agreements and urged the use of on-site investigations to do so. Thus, agencies were called upon to establish systems of regularly and uniformly monitoring all recipients' commitments to corrective action to ensure that compliance is fully achieved.[323] At the same time, the Commission asked the Department of Justice to require that federal agencies develop mechanisms to monitor voluntary compliance agreements; and to ensure that these follow-up mechanisms are in place and that the agencies offer recipients the needed technical assistance.[324]

Should voluntary compliance not be achieved, the Commission recommended that federal agencies make use of all enforcement options, such as fund termination and suspension, and notify DOJ/CRD/CORS of all such decisions so that CORS can assist the federal agencies with voluntary compliance efforts and prevent a termination action.[325] Furthermore, it asked CORS to provide guidelines and examples for when an agency should seek fund termination or temporary suspension for noncomplying recipients.[326] It also asked federal agencies to request additional resources to augment administrative sanctions in Title VI enforcement.[327]

OTHER ASPECTS OF MANAGEMENT

Training

The Commission made several recommendations for improving staff training. It asked federal agencies to train new staff, and periodically retrain old staff, to establish, update, and deepen their knowledge of civil rights statutes and emerging issues. Every federal funding agency the Commission reviewed received a recommendation to regularly train staff on Title VI issues.[328]

The Commission also called for training, particularly advanced training, on other civil rights statutes, including the ADA and Title IX of the Education Amendments of 1972. EEOC,[329] DOJ,[330] and DOEd[331] were asked to provide advanced training on the statutes they enforce. Commenting on Title IX enforcement, the Commission found that DOEd could improve its civil rights staff training by instructing staff on what constitutes a Title

[319] Ibid., pp. 334–35, 347, 450, 529–30, 538; USCCR, *Health Care Report, Vol. II*, pp. 41–42, 162, 293, 330–31.

[320] USCCR, *Federal Title VI Enforcement*, pp. 336–37, 349.

[321] Ibid., pp. 281–82, 289–90, 531–32, 538. USCCR, *Health Care Report, Vol. II*, pp. 36–39, 155–71, 190–91, 283–84, 291–92, 341.

[322] USCCR, *Federal Title VI Enforcement*, pp. 324, 514, 520.

[323] Ibid., pp. 230–31, 245, 364–65, 380, 487, 496.

[324] Ibid., pp. 87, 148.

[325] Ibid., pp. 87, 114, 148, 156, 202–03, 215, 432, 448.

[326] Ibid., pp. 87, 114, 148, 156.

[327] Ibid., pp. 550, 556.

[328] Ibid., pp. 119, 120–22, 157–58, 185–86, 193, 198, 203–06, 213, 215–16, 218, 220–22, 224, 232–33, 239–40, 247, 262–63, 272–75, 278–79, 285, 290, 292–94, 303–04, 308, 319, 324, 325, 337–39, 350–51, 353, 359–61, 366, 368–69, 371–72, 381, 383, 383, 385–86, 389–91, 393, 402–03, 407–09, 413–14, 436–37, 450, 453, 466–67, 475–76, 478–80, 487–88, 491, 497–98, 509–10, 513, 550, 586, 595–96, 597, 599, 614, 627, 662; USCCR, *Education Report, Vol. IV*, pp. 82–84, 127; USCCR, *Health Care Report, Vol. II*, pp. 32–33, 44–47, 50–51, 81–83, 167, 236–37, 255–62, 291, 294–95, 305, 333, 362–64, 367–68.

[329] USCCR, *ADA Report, Vol. II*, pp. 7–8, 52–53, 76, 81–83, 91–99, 125–26, 246, 191–92, 262. Despite asking for more training, the Commission found that EEOC had an excellent ADA training manual. Ibid., pp. 62–65, 187–88, 217–20, 247, 261, 267.

[330] USCCR, *ADA Report, Vol. I*, pp. 13–14, 134.

[331] USCCR, *Education Report, Vol. V*, pp. 14–26, 124. *See also* USCCR, *Health Care Report, Vol. II*, pp. 133–37, 320.

IX violation and how compliance may be effected in specific circumstances.[332]

Some recommendations asked that regular and appropriate training be directed to certain types of staff or functions, such as training for investigative staff on investigative procedures and legal issues. EEOC, HHS, and HUD received such recommendations.[333] For the Americans with Disabilities Act, the Commission suggested EEOC provide training for investigators,[334] charge intake personnel,[335] staff of state and local contractors that conduct enforcement activities (i.e., the Fair Employment Practices Agencies),[336] and federal judges.[337] The Commission asked DOJ to provide more advanced ADA training to trial attorneys to enhance their litigation skills.[338]

The Commission recommended that agencies develop training on civil rights enforcement generally[339] and on specific topics, such as how to establish or carry out a memorandum of understanding with another agency for shared or delegated enforcement responsibilities, develop a voluntary compliance agreement,[340] prioritize charges of discrimination for processing,[341] apply principles of case resolution,[342] perform analyses to identify discrimination,[343] provide technical assistance to recipients,[344] and coordinate outreach.[345]

Finally, some recommendations directed agencies, particularly DOJ/CRD/CORS, to assume a leadership role in offering training and providing training resources. Because of DOJ's oversight responsibilities of other federal agencies' civil rights programs, the Commission asked CORS to establish (1) a civil rights training center at which a governmentwide approach to Title VI civil rights training could be developed[346] and (2) a civil rights reference library where federal agencies could obtain information for developing their own civil rights training programs.[347] Similarly, the federal agencies were asked to assume leadership of civil rights staff instruction for their own staff as well as those of their administrations or operating divisions.[348] In turn, the administrations or operating divisions were asked to schedule more frequent training on civil rights activities with their headquarters agencies[349] and to seek headquarters' assistance in developing formal training modules to use in training civil rights staff.[350]

Coordination Between Civil Rights Entities

Commission recommendations asked federal agencies to start or enhance working relationships with their own internal offices and components, professional organizations involved in the enforcement process, other federal agencies, affected communities and advocacy groups, and state and local organizations and contractual organizations performing enforcement responsibilities on their behalf.[351]

[332] USCCR, *Health Care Report, Vol. II*, pp. 133–37, 320.

[333] USCCR, *EEOC Report*, pp. 159, 282; USCCR, *Health Care Report, Vol. II*, pp. 32–33, 44–47, 175–78, 184, 236–37, 249–55, 291, 295, 327–28, 339, 361, 367–68, 378. USCCR, *Federal Fair Housing System*, p. 33.

[334] USCCR, *ADA Report, Vol. II*, pp. 62–63, 247.

[335] Ibid., pp. 191–92, 217–20, 262, 267.

[336] Ibid., pp. 52–53, 246.

[337] Ibid., pp. 7–8, 76, 81–83, 91–99, 125–26.

[338] USCCR, *ADA Report, Vol. I*, pp. 13–14, 134.

[339] USCCR, *Federal Title VI Enforcement*, pp. 220–22, 239–40; USCCR, *Health Care Report, Vol. II*, pp. 44–47, 295.

[340] Ibid., pp. 236–37, 239–55, 363, 367–68.

[341] USCCR, *EEOC Report*, pp. 117, 276.

[342] USCCR, *Education Report, Vol. I*, pp. 206–07, 259–60.

[343] USCCR, *Health Care Report, Vol. II*, pp. 187–88, 340–41.

[344] USCCR, *Federal Title VI Enforcement*, pp. 401, 412–13.

[345] USCCR, *EEOC Report*, pp. 229–30, 292.

[346] USCCR, *Federal Title VI Enforcement*, pp. 119, 157–58.

[347] Ibid., pp. 120–22, 158.

[348] HHS' Indian Health Service and the Administration on Aging were particularly in need of training. USCCR, *Health Care Report, Vol. II*, pp. 32–33, 235–39, 291, 363–64, 367–68. *See also* ibid., pp. 44–47, 50–51, 167, 255–62, 294–95, 333, 362–63; USCCR, *Federal Title VI Enforcement*, pp. 232–33, 247.

[349] USCCR, *Health Care Report, Vol. II*, pp. 231–35, 364–65.

[350] USCCR, *Federal Title VI Enforcement*, pp. 534, 539.

[351] USCCR, *EEOC Report*, p. 264; *see* chaps. 4–7.

Internal Agency Offices and Components

The Commission asked for better coordination and communication within agencies among units charged with different enforcement activities and between headquarters offices and administrations, operating divisions, and regional and field offices.[352] For example, the Commission urged agency components to share or consolidate their efforts in developing training programs[353] and technical assistance,[354] and to coordinate in the development of policy and guidance[355] and data collection and analysis systems[356] that identify discrimination or determine inequalities in service. Coordination with other internal offices was particularly important for developing memoranda of understanding with operating divisions or administrations detailing the roles and responsibilities for enforcement activities.[357]

Professional Organizations

Federal agencies also need strong relationships with professional organizations and research groups.[358] For example, through a relationship with the American Bar Association, EEOC staff was able to offer guidance to private attorneys handling employment litigation and enhance its training on emerging civil rights issues.[359] The Commission suggested relationships could be improved through staff exchange programs.[360]

Other Federal Agencies

The Commission noted that civil rights enforcement could be enhanced through better communication among federal agencies, perhaps through an interagency coordinating council.[361] Federal agencies should coordinate with one another, first because of overlapping jurisdictions for civil rights enforcement. When jurisdictions overlap, federal agencies need to coordinate with each other on all types of compliance activities, such as by developing policy and performing compliance reviews[362] and on education and outreach and developing litigation strategies.[363] To facilitate coordination among federal agencies, the Commission invoked agencies to maintain a centralized database on their Title VI enforcement efforts and responsibilities concerning recipients, thus allowing them to know when overlap exists—that is, when recipients were receiving funds from more than one federal agency.[364] A second reason the Commission asked federal agencies to establish better communication was so that they could take advan-

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[352] *See, e.g.,* USCCR, *Health Care Report, Vol. I*, pp. 84–91, 205; USCCR, *Health Care Report, Vol. II*, pp. 81–83, 242–43, 306, 368–69.

[353] USCCR, *Federal Title VI Enforcement*, pp. 206, 232–33, 262–63, 285, 303, 319, 339, 368–69, 402, 466–67, 488, 513, 550, 552, 557, 586, 595–96, 662; USCCR, *ADA Report, Vol. II*, pp. 7–8, 76, 81–83, 91–99, 125–26; USCCR, *Education Report, Vol. III*, pp. 65–67, 210–11.

[354] USCCR, *Education Report, Vol. III*, pp. 65–67, 210–11.

[355] This included policy and guidance for compliance procedures as well as interpretations of discrimination in the context of specific programs. For the former, *see, e.g.,* USCCR, *ADA Report, Vol. II*, pp. 53–56, 246; USCCR, *Health Care Report, Vol. II*, pp. 105–07, 312–13; USCCR, *Education Report, Vol. I,* pp. 165–68, 248–49; USCCR, *Education Report, Vol. V*, pp. 50–54, 130–31. For the latter, *see* USCCR, *Education Report, Vol. III*, pp. 65–67, 210–11; USCCR, *Civil Rights Issues Facing Asian Americans*, p. 206; USCCR, *Education Report, Vol. IV*, pp. 72–74; USCCR, *Education Report, Vol. II*, pp. 324–31, 400–01.

[356] USCCR, *Federal Title VI Enforcement*, p. 451.

[357] *See, e.g.,* USCCR, *Federal Title VI Enforcement*, pp. 261, 271.

[358] USCCR, *Health Care Report, Vol. II*, pp. 48–49 81–83, 305; USCCR, *Health Care Report, Vol. I*, pp. 84–91, 170, 206–07, 224; USCCR, *Education Report, Vol. V*, pp. 14–26, 60–65, 124, 132; USCCR, *Education Report, Vol. II*, pp. 255–57, 390. Note that DOEd had established a good working relationship with the National Academy of Sciences, Board on Testing and Assessment concerned with the validation of tests, and with other professional groups regarding standard definitions for disabilities. USCCR, *Education Report, Vol. II*, pp. 157, 380, 382.

[359] USCCR, *EEOC Report*, pp. 180–81, 284–85; USCCR, *ADA Report, Vol. II*, pp. 62–65, 247.

[360] USCCR, *Education Report, Vol. I*, p. 249.

[361] USCCR, *Federal Title VI Enforcement*, pp. 223, 251–53, 331, 356–61, 392, 457–59, 482, 633; USCCR, *Education Report, Vol. I*, pp. 154, 250.

[362] USCCR, *Transportation Report*, pp. 1–12, 13, 15; USCCR, *Health Care Report, Vol. II*, pp. 17–18, 48–49, 60–62, 115–27, 133–37, 279–80, 283, 317–20; USCCR, *Health Care Report, Vol. I*, pp. 52–55, 77–78, 194–95.

[363] The named agencies included DOEd, DOL, DOJ, EEOC, HHS, HUD, and SBA. *See* USCCR, *Education Report, Vol. V*, pp. 94, 143, USCCR, *EEOC Report*, pp. 32–38, 40–41, 52–53, 267, 269; USCCR, *ADA Report, Vol. II*, pp. 6–7, 121, 202–07, 243, 265; USCCR, *Fair Housing Enforcement Report*, p. 231; USCCR, *Federal Title VI Enforcement*, pp. 465, 474–75.

[364] USCCR, *Federal Title VI Enforcement*, pp. 465, 575, 617–18.

tage of the exemplary aspects of one another's enforcement programs in improving their own efforts.[365]

Affected Community Organizations and Advocacy Groups

The Commission asked for increased involvement of community organizations and advocacy groups in enforcement programs.[366] As part of this effort, it asked federal agencies to regularly solicit comments and suggestions on Title VI enforcement efforts from the affected communities and recipients.[367] Underserved populations,[368] including rural and immigrant communities[369] and Native Americans and Alaskan Natives,[370] were groups that should be consulted.

State and Local Agencies

State and local organizations were other groups with which federal agencies should form partnerships to obtain information and enhance data collection on programs, program modifications, and services that are needed as well as on state and local initiatives that may prove effective in providing more equitable opportunities and benefits to minority groups and women.[371]

EEOC and HUD contract with state and local organizations to perform enforcement activities such as complaint investigations. The Commission asked both agencies to coordinate more with those that perform complaint investigations under contract. Training needs, the prioritization of charges, and the quality of investigations were areas in which EEOC needed more communication.[372] HUD needed greater involvement with state and local organizations to ensure that they were certified to perform enforcement functions.[373] At the same time, HUD was asked to expand its outreach by having state and local agencies that are not under contract to the agency inform tenants of their civil rights and remedies under federal law, including the option of filing a complaint to HUD.[374]

Additional Data and Research on Civil Rights Enforcement

The collection of additional data and further research on enforcement, such as disparities in educational opportunities, in job patterns, and in health services, was a concern of the Commission expressed throughout its reports. In education, additional data collection and research were needed on the disparate participation of different groups in various education programs,[375] achieving a gender-neutral education system,[376] gender differences in course selection[377] and the use of technology,[378] students with disabilities and their needs,[379] and children with limited English proficiency.[380]

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[365] Ibid., pp. 198, 203–04, 215, 258–59, 359–60, 383, 639, 665–67.

[366] USCCR, *EEOC Report*, pp. 38–40, 239–40, 266, 293–94; USCCR, *ADA Report, Vol. II*, p. 268, and chap. 7; USCCR, *Education Report, Vol. I*, pp. 208–09, 260; USCCR, *Health Care Report, Vol. II*, pp. 169–70, 335–36; USCCR, *Health Care Report, Vol. I*, pp. 52–55, 77–78, 194–95.

[367] USCCR, *Federal Title VI Enforcement*, pp. 231–32, 245–46; USCCR, *Health Care Report, Vol. II*, pp. 269–70, 374–75.

[368] USCCR, *EEOC Report*, pp. 250–52, 296.

[369] USCCR, *Health Care Report, Vol. I*, pp. 102–03, 209.

[370] USCCR, *Health Care Report, Vol. II*, pp. 242–43, 368–69.

[371] Ibid., pp. 153–55, 325–26; USCCR, *Health Care Report, Vol. I*, pp. 170, 181–84, 224, 225–26; USCCR, *Education Report, Vol. II*, pp. 122–23, 134, 255–57, 269–83, 285–87, 320–22, 377, 380, 390, 392–94, 398; USCCR, *Education Report, Vol. III*, pp. 192, 229–30.

[372] USCCR, *EEOC Report*, pp. 201–02, 286–87; USCCR, *ADA Report, Vol. II*, pp. 52–53, 246.

[373] USCCR, *Federal Fair Housing System*, p. 34.

[374] Ibid., p. 33.

[375] USCCR, *Education Report, Vol. V*, pp. 34–44, 128.

[376] Ibid., pp. 33–41, 52, 70–74, 127, 131–32, 137.

[377] Ibid., pp. 23–26, 123, 128.

[378] Ibid., pp. 96–99, 144.

[379] USCCR, *Education Report, Vol. II*, pp. 67–91, 370–72.

[380] USCCR, *Education Report, Vol. I*, p. 250; USCCR, *Education Report, Vol. III*, pp. 27–30, 209, USCCR, *Civil Rights Issues Facing Asian Americans*, pp. 68–103, 194.

CHAPTER 3

Findings and Recommendations

This volume described the civil rights enforcement of federal agencies the U.S. Commission on Civil Rights has studied in the past decade as a first step in determining the progress those agencies have made in furthering their enforcement efforts. No information was analyzed beyond that contained in the 16 volumes of enforcement reports the Commission issued in the 1990s. Later reports in the series will review individual agencies and give recommendations based on their enforcement achievements. Nonetheless, the review of past reports has revealed areas in which the need for improvement was often widespread. Thus, a number of general recommendations are offered here. The recommendations that follow emphasize key aspects of civil rights enforcement that agencies should follow. Agencies that have not responded to recommendations the Commission has issued to them, agencies that the Commission has not reviewed, and agencies that are tasked with new civil rights responsibilities requiring the design and implementation of enforcement systems will benefit from using these recommendations to direct or evaluate their efforts.

Past Commission reports have continuously stressed important elements of civil rights enforcement. Without establishing priority of civil rights and gaining sufficient funding and staffing, federal agencies will struggle to even implement a civil rights enforcement system. However, once the priority of civil rights is recognized and resources are provided, the agency must implement civil rights planning, policy guidance and regulations, technical assistance, education and outreach, a complaint processing system, a compliance review system for federal funding recipients, and staff training. The Commission finds that enforcement efforts are fragmented without each of these elements. The preceding chapter provided detailed recommendations regarding the elements, highlights of which follow.

Over the decade the Commission's recommendations regarding civil rights enforcement matured, partly as enforcement systems themselves developed. This review reveals that apart from the basic components of civil rights enforcement, superior enforcement systems were maximizing effectiveness and efficiency of civil rights enforcement by integrating it throughout the agency, delegating responsibility, establishing oversight for others performing civil rights responsibilities, coordinating civil rights enforcement activities with other federal agencies, streamlining them, and involving the affected community in their development. Thus, the recommendations that follow raise the standard for effective civil rights enforcement beyond that asked of many federal agencies in the Commission's past reports.

1. Priority Given to Civil Rights Enforcement

Resources—Funding and Staffing

Finding 1.1: Commission reviews of civil rights implementation, compliance, and enforcement programs at several federal agencies over the past decade revealed a system that was often unequal to the task. The greatest hindrances to fulfilling the civil rights obligations were insufficient funding and inefficient, thus ineffective, use of available funds.

Recommendation 1.1: Congress should allocate more funding and resources to agencies for civil rights enforcement activities. Several federal agencies have increased civil rights enforcement responsibilities owing to jurisdiction over new civil rights statutes but are expected to enhance their civil rights efforts with insufficient funding.

Civil rights enforcement requires funding sufficient to the tasks at hand and maintenance at a level that is not eroded by inflation or increased enforcement responsibilities. The Commission established in its evaluations of civil rights enforcement funding that after adjusting for inflation, none of the civil rights offices had received continuous increases in funding during the past nine years.[1]

Organizational Structure to Meet Civil Rights Goals

Finding 1.2: Civil rights programs at federal agencies were often void of clear authority, responsibility, and accountability. Whether authority for civil rights activities was centralized in one office or distributed throughout several, civil rights personnel often had no direct line of authority to the Department Secretary or agency head. The organizational placement of the office and staff in charge of civil rights often impaired the staff's ability to gain the funding and resources needed to carry out the office mission and failed to provide the office the authority to ensure that civil rights concerns were fully integrated into all departmental or agency programs. Civil rights staff was frequently encumbered with both internal (EEO) and external civil rights responsibilities, with resources moved between them and no protection to ensure that any particular civil rights statute was enforced.

Recommendation 1.2: Federal agencies should ensure that civil rights enforcement is given priority through the organizational structure for civil rights, allocation of resources and staffing, and efforts to integrate civil rights into every component of the agency. At the same time, the implementation, compliance, and enforcement of external civil rights programs should be directed by an office and staff that are separate from the office and staff responsible for internal (EEO) civil rights functions. Accordingly, these offices and staff should be provided with separate budgets so that each and every civil rights statute is properly enforced without resources being taken from one to enforce another.

[1] *See* U.S. Commission on Civil Rights, *Funding Federal Civil Rights Enforcement*, June 1995; *Funding Federal Civil Rights Enforcement: 2000 and Beyond*, February 2001; and *Funding Federal Civil Rights Enforcement: 2000–2003*, April 2002.

Strategic Planning With Civil Rights Objectives

Finding 1.3: Federal agencies' strategic planning to accomplish civil rights goals and objectives needed improvement. The Department of Justice requires all agencies with financial assistance programs to submit civil rights implementation plans (CRIPs) for review; however, the plans were often vague in detailing the civil rights activities, such as technical assistance and education and outreach, that were to be conducted and in specifying timeframes for their accomplishment. Although the implementation of the Government Performance and Results Act of 1993 (GPRA) required all federal agencies to begin preparing strategic plans with goals, performance measures, and timeframes in which to address them, *civil rights* goals and objectives were not required in the strategic plans developed under GPRA. Many of the Commission's past recommendations asked that CRIPs be improved to include goals, measures of performance, and timeframes for accomplishing various civil rights activities. Federal agencies also had to proactively assist and oversee the development of strategic plans by those units performing civil rights activities, including the development of civil rights implementation plans adhering to Department of Justice (DOJ) guidelines. Finally, federal agencies had to realistically assess the budget and staff resources needed for civil rights implementation, compliance, and enforcement.

Recommendation 1.3: First, all federal agencies should include civil rights objectives and goals in their strategic plans. These objectives should specify the agency's responsibilities for enforcing all applicable civil rights statutes and specify goals, performance measures, and timeframes for fulfilling the responsibilities of each statute as well as the resources necessary to do so.

Second, federal agencies with Title VI responsibilities should enhance civil rights implementation plans and ensure that they conform to DOJ guidelines. Plans should clearly and fully describe implementation, compliance, and enforcement programs; specify goals and objectives and the period for achieving them; and realistically detail all available resources, such as staff and funding, for meeting civil rights obligations, so that they may be used as an effective management tool. Plans should also specify the extent to which civil rights

activities, such as technical assistance, education and outreach, policy guidance, and the enforcement of statutes, are conducted.

Third, federal agencies should proactively assist and oversee the development of strategic plans or CRIPs by those units having civil rights responsibilities. Finally, federal agencies should consult with stakeholders, advocacy groups, and other pertinent parties in developing strategic plans so that the concerns of affected communities are addressed through civil rights enforcement.

Management of Enforcement Through Tracking of Civil Rights Activities

Finding 1.4: Although some federal agencies were able to report the number of complaints processed or compliance reviews completed during the fiscal year, many were unable to provide detailed information on the full range of civil rights enforcement activities that were accomplished each year, particularly technical assistance and education and outreach. Furthermore, the agencies were unable to relate the various types of enforcement activities or the statutes these activities were designed to enforce to the amount of resources expended for or needed to complete these tasks. Budget submissions requesting more resources for civil rights enforcement from departmental appropriations or from Congress would be strengthened with justifications that tied additional funds and staff to expected increases in the number and types of civil rights activities that could be accomplished and to the need to provide civil rights enforcement across all civil rights statutes.

Recommendation 1.4: Federal agencies must implement or enhance their systems of tracking their workload, accomplishments of civil rights enforcement activities, and expenditures. They must use a management information system to prepare annual civil rights enforcement plans with goals and objectives in each program area, assign specific resources to accomplish them, conduct ongoing analyses of resource allocation to support increasingly accurate budget submissions, and justify requests for additional resources according to the number and types of civil rights enforcement activities that will be accomplished and the need for broader coverage of civil rights statutes to fulfill the agency's civil rights obligations.

2. Dissemination of Policy Through Guidance, Regulations, Technical Assistance, Education, Outreach, and Publicity

Policy Guidance

Finding 2.1: Federal agencies' civil rights staff were encumbered with far too many civil rights responsibilities. Not only were staff members expected to perform compliance and enforcement duties but they were also required to develop civil rights policy. The end result of this overtasking was that very little time and energy were left for successful work in any area. The slow development of Title VI regulations, guidelines, policies, and procedures was cited as an example of the overburdensome multitasking required of civil rights staff at most federal agencies. Similarly, both internal and external procedural and policy guidance development and distribution were found inadequate at most federal funding agencies. Federal agencies had failed to develop policy guidance interpreting civil rights obligations as they apply to each and every federally assisted program. Moreover, many federal agencies were not addressing substantive issues, such as limited English proficiency or disability issues, when developing policy. Finally, policy development efforts at nearly all federal agencies neglected to seek the input of community and advocacy groups, resulting in civil rights policies poorly geared to assisting the individuals for whom they were developed.

Recommendation 2.1: Federal agencies should establish policy development units with staff members who are free of civil rights compliance and enforcement responsibilities and thus able to direct their full attention to developing and issuing civil rights standards and policies. Policy development units should have the authority and responsibility to modify and maintain regulations, guidelines, policies, and procedures. The policy unit should (1) regularly develop or update both internal guidance on enforcement procedures and external policies, including policy related to issues such as state recipients' obligations under Title VI, the application of Title VI to block grants, and disabilities and limited English proficiency; (2) oversee and assist with all aspects of the agency's policy development and dissemination for civil rights enforcement among divisions and field offices and ensure that policy is interpreted specific

to every federally assisted program; (3) ensure policies and procedures are consistently interpreted in agency components; (4) involve community and advocacy groups in the development of policy guidance, guidelines, and regulations; and (5) ensure the regular and timely dissemination of all policy to appropriate audiences. Policy units should be provided the necessary legal staff to perform the legal work required for developing policy related to civil rights enforcement.

Finding 2.2: The Commission identified a number of civil rights issues that federal agencies needed to address. They included such issues as promoting diversity and cultural competency and overcoming the barrier of limited English proficiency. In short, federal agencies were not promoting an atmosphere of understanding among ethnic and racial groups nor were they ensuring that federally funded programs were equally available to all groups, including minorities and women, by overcoming cultural and language barriers. Federal agencies were also failing to verify whether work and educational environments were free of sexual discrimination and harassment. Lastly, federal agencies needed to collect additional data and expand research on substantive areas of enforcement, such as job patterns and health needs.

Recommendations 2.2: Federal agencies should promote an atmosphere of understanding among ethnic and racial groups throughout society. They should design programs to overcome cultural and language barriers as well as harassment. To do so, agencies should consult with advocacy groups and community organizations and include them in the process of developing policy and planning civil rights enforcement activities such as education and outreach. Finally, federal agencies should regularly collect and analyze additional data from the Census Bureau, the Bureau of Labor Statistics, and other sources. They must expand research on substantive areas of enforcement, such as disparities in educational opportunities, job patterns, and health needs, to identify areas of discrimination that can be subjected to civil rights enforcement.

Updating Regulations

Finding 2.3: Federal agencies had been negligent in updating regulations in order to stay abreast of pertinent new legislation. In particular, the Departments of Labor and Transportation had not updated them in light of the Civil Rights Restoration Act of 1987 that extended the applicability of Title VI to all parts of an institution or program, not just the part receiving the federal assistance. Furthermore, DOJ, through CRD and CORS, was lax in reviewing and assisting federal agencies in updating their regulations to be in accord with new civil rights legislation and in informing Congress when new regulations had negative consequences for civil rights. Similarly, federal agencies were not assisting their subagencies in issuing and updating regulatory guidelines to enforce civil rights.

Recommendation 2.3: Federal agencies should regularly update regulations to reflect changes in pertinent legislation. In particular, all regulations should be updated to reflect the broader coverage of Title VI since the Civil Rights Restoration Act was passed. Federal agencies should ensure that their subagencies have regulatory guidelines in conformance with current civil rights statutes.

DOJ, through CRD and CORS, should periodically review the regulations of all agencies with Title VI responsibilities and ensure that these regulations are updated when changes in legislation or its interpretation occur. DOJ should also enhance its process of reviewing proposed legislation concerning civil rights or federal financial assistance programs and inform Congress of any civil rights consequences.

Technical Assistance

Finding 2.4: Several federal agencies did not have programs to provide either internal or external technical assistance. Furthermore, many agencies that did provide technical assistance had not formalized their efforts, thus hindering their effectiveness and the number of individuals reached. In addition, federal agencies were not taking full advantage of on-site compliance reviews by offering funding recipients technical assistance during these face-to-face meetings. External technical assistance to parallel agencies and offices sharing jurisdiction was similarly lacking and, with improvement, may have eliminated overlapping efforts that resulted in wasted human and monetary resources. Finally, federal agencies were not tracking, or even able to track, the resources expended for technical assistance.

Recommendation 2.4: Federal agencies should establish formal technical assistance programs. They

should provide regular, perhaps annual or semiannual, events providing technical assistance for both internal units, such as field offices and contracting agencies, and external audiences. Technical assistance should also be provided as needed to address unique individual situations or noncompliance of funding recipients. In particular, technical assistance should be provided to funding recipients when conducting on-site compliance reviews.

Federal agencies should attempt to involve representatives of other federal agencies, particularly those with parallel jurisdiction that may be funding the same recipients, in their technical assistance events so that federal staff as well as those compelled to comply with civil rights laws and the public become aware of overlapping jurisdictions and so that federal staff can plan coordinated enforcement efforts that conserve resources.

Agencies should formalize their technical assistance programs so that they can track the types of technical assistance provided, the number of persons reached through technical assistance, and resources expended on it. The agencies should also consider assigning full-time coordinators to headquarters staff to monitor and coordinate technical assistance, education, and outreach activities in regional offices that perform civil rights enforcement.

Education and Outreach to Potential Victims, Violators, and the Public

Finding 2.5: Federal agencies had weak or nonexistent education and outreach programs that failed to clearly designate the responsibilities of agency components. They were not ensuring that education and outreach programs were available to all affected communities. Existing education and outreach programs sometimes neglected to address specific audiences and their specialized needs, and frequently provided information only in English, thus excluding individuals not fully proficient in English or non-English speakers. Lastly, federal agencies were not carefully crafting education and outreach to reach their intended program beneficiaries or making use of new technological innovations such as the Internet.

Recommendation 2.5: Federal agencies should implement or improve education and outreach programs that designate the specific responsibilities of individual agency components, establish clear and realistic goals and objectives, and hold components accountable for reaching them. They should ensure that civil rights information is readily available to all parties, including funding recipients, program participants, intended beneficiaries, potential victims of discrimination and violators, the public and, where appropriate, specific audiences such as attorneys, small businesses, and persons with limited English proficiency. Hence, federal agencies should develop and disseminate civil rights information in English and other languages. Lastly, federal agencies should creatively design education and outreach to best reach intended program beneficiaries using innovative resources, including but not limited to, the Internet.

3. Complaint Processing and Litigation

Complaint Handling and Intake

Finding 3.1: Reviewing complaints of discrimination is an important aspect of any civil rights enforcement program. In examining federal agencies' complaint processing, particularly that of the Equal Employment Opportunity Commission, the Commission found that both charging parties and the recipients of their complaints considered the charge intake and investigative processes bewildering. Charging parties did not always find complaint policies and procedures to be accessible to them. They received limited information about the merits of their complaints and the probability that their charges would be investigated. Finally, complaint processing, investigation, and/or resolution of charges required a very long time.

Recommendation 3.1: Federal agencies need to dramatically improve their customer service in handling complaints. They must improve the charge intake process and promulgate its policies and procedures in order to increase its accessibility to charging parties. Federal agencies must provide charging parties more information on the status of their charges, the merits of the case, and information on the probability that their charge will be investigated. The time for charge processing must be reduced. Agencies must establish standards for dismissing complaints, provide written communication of their decisions regarding complaints, provide for an appeals process for charges that are dismissed without investigation, and assist in directing complainants to external organizations that can assist them.

To make filing a complaint more accessible, federal agencies should consider such customer service techniques as expanding office hours to include evenings and weekends and establishing intake booths at convenient locations such as malls and community centers. They should consider extending the time allotted to charging parties for submission of required information; making enforcement staff more accessible to charging parties; increasing the quality and quantity of interaction with charging parties and respondents in order to more readily gather necessary information and provide information on the status of the charge; assessing why many complaints never become formal charges; and enhancing the interaction and communication skills of complaint intake staff. They should reassess intake functions on a continual basis and use customer satisfaction surveys to obtain feedback from complainants.

Federal agencies should ensure that their complaint intake process will direct individuals with civil rights complaints outside their jurisdiction to the agencies or nongovernmental organizations that may be able to assist them. Agencies should buttress this effort by maintaining referral lists of organizations and advocacy groups for individuals they cannot help. All agency civil rights components should implement this program consistently and ensure that it remains consistent.

Finding 3.2: Complaints took a long time to resolve, and complaint backlogs and large caseloads contributed to the lengthy time agencies took to resolve them.

Recommendation 3.2: Federal agencies must reduce and avoid complaint backlogs and process complaints in a timely fashion. To do so, they should develop management plans that will permit them to eliminate backlogs by efficiently, thoroughly, and properly processing complaints. These plans should implement procedures to streamline processing and yet ensure that complaints with the largest impact are pursued. Thus, agencies should develop charge-prioritization procedures, similar to those EEOC uses, with clearly defined methods of prioritizing charges for further processing. High-priority charges should include those with the most grievous discrimination, those affecting the most people (such as systemic and class cases), those that will result in the largest monetary relief, or those that will clarify the interpretation of law. The charge-prioritizing methods must be clearly defined and systematically applied so that the resources expended on every investigation can be justified.

Complaint processing may also be streamlined by training complaint intake staff to begin the initial stages of an investigation and fully develop charges before referring cases to other enforcement staff. If charge processing time cannot be reduced, the agency should conduct an internal audit to determine why charges are not processed more rapidly.

Finding 3.3: Federal agencies were not clearly delineating the duties, such as goals and responsibilities, of every office and individual processing complaints. Furthermore, federal agencies were not properly training individuals responsible for processing complaints nor were they systematically developing and issuing procedures for this activity.

Recommendation 3.3: Federal agencies should clearly delineate the duties, such as goals and responsibilities, of every office and individual responsible for complaint processing. They should ensure that the civil rights personnel processing complaints are properly trained for such activity.

Complaint Investigation

Finding 3.4: Federal agencies also failed to develop and promulgate procedures for conducting complaint investigations and to provide model investigative plans for priority issues, with the result that regional offices lacked uniformity in complaint investigations. Furthermore, staff members were not issuing investigative plans for all charges, if at all, so that enforcement managers or supervisory investigators were not able to review the investigative process for accuracy, thoroughness, and consistency. In many instances, when investigative plans were issued they needed to be improved. The quality of investigations was further compromised by the infrequency of on-site investigations and the lack of guidance offered to investigative staff during the investigation. Finally, there was no standard guideline for the timeframe within which the investigative process should be completed.

Recommendation 3.4: Federal agencies should systematically develop and issue complaint processing and investigation procedures that clearly establish the process of handling complaints and indicate the types of information needed to support

a finding. Model investigative plans should be developed and issued for each priority issue as a method of ensuring uniformity across regional enforcement offices. Investigative staff must consult and follow the written guidance for investigative procedures. Those procedures must establish a standard timeframe for initiating and concluding the stages of an investigation. Finally, federal agencies should initiate more on-site investigations.

Finding 3.5: Quality assurance reviews of the complaint or charge handling process were rarely initiated to ensure accountability or consistency across field offices and contractual organizations. In complaint investigations, contacts with witnesses were not uniformly tracked and written reports on complaints and investigations were not always provided.

Recommendation 3.5: Agency head offices should develop guidelines for mandatory quality assurance review procedures of charge handling, including investigations, across field offices, to increase enforcement staff accountability. They should authorize trained staff to regularly conduct quality assurance reviews of case files to assess whether an investigator used the proper analyses in reaching a conclusion. When reviews reveal that a case was conducted superficially or improperly, it should be reopened and reinvestigated. If a federal agency prefers, it can hire independent external auditors to review case files and make a determination as to the accuracy of the investigation.

The guidelines agencies develop should require charge review at various stages of development, such as after initial assessment, during investigation, and upon issuance of a determination. They should require that regional and district offices uniformly track witness contact so that investigators are held accountable for the thoroughness of their work.

All organizations, such as state agencies, conducting investigations must be required to submit a written report on each complaint and investigation.

Agency-Initiated Charges

Finding 3.6: Federal agencies did not have strategies for proactive enforcement and needed to intensify efforts to target cases not easily reached via individual complaints.

Recommendation 3.6: Federal agencies should improve or develop strategies for proactive enforcement and intensify efforts to target cases not easily reached through individual complaints. First, they should ensure that they have the legislated authority to pursue cases in the absence of a complaint. Second, they should use tools such as analyses of statistical data, testing, and contact with community organizations to identify discrimination, including systemic discrimination.

Complaint Resolution: Dismissals, Conciliation, and Litigation

Finding 3.7: Federal agencies were not always notifying involved parties regarding the outcome of complaints via comprehensive and lucid letters of determination or finding.

Recommendation 3.7: Federal agencies should notify all concerned parties—including both complainant and respondent—of the outcome of a complaint via a comprehensive and clear letter of determination or letter of finding.

Finding 3.8: Federal agencies were not always making the most or best use of alternate dispute resolution techniques, such as mediation or conciliation. Concerned parties were not always informed about alternative dispute resolution or about the consequences involved with these and other types of resolution.

Recommendation 3.8: Federal agencies should begin or increase use of mediation, conciliation, or other alternative dispute resolution techniques. At the same time, these types of resolution should only be used when appropriate and when the respondent agrees to change the policies or procedures that might have a discriminatory effect.

Finding 3.9: Federal agencies did not have litigation strategies. They did not view litigation as a central enforcement strategy and were not developing litigation strategies to address important or emergent issues. They often were not delegating litigation authority to field office staff, or if they did, were not monitoring the appropriateness and diversity of cases on district office dockets. Further, they were not making appropriate use of an attorney-referral system to assist complainants in pursuing charges that, because they were more routine or of lesser import, could not be handled by the federal enforcement system. Finally, federal agencies were not always pursuing benefits on behalf of charging parties and were not involving the affected communities in developing their litigation strategies.

Recommendation 3.9: Federal agencies should make litigation central to an enforcement strategy and develop a litigation strategy that addresses important or emerging issues. Affected communities and advocacy groups should have input into the litigation strategy.

To make the most of their budget constraints, agencies' litigation strategies should consider (1) delegating litigation authority to field office staff or to agencies or offices with parallel jurisdiction and (2) developing an attorney-referral system and criteria for identifying cases to be referred to the private bar. If litigation authority is delegated, federal agencies should monitor the dockets of units that handle delegated litigation to ensure that the cases being litigated are the most appropriate as well as diverse. Similarly, if an attorney-referral system is used, the charges to be referred should include those that do not concern the priority issues established in the litigation strategy and those that are less important because the discrimination is less grievous or the outcome will not have broad impact in terms of the number of people or the monetary relief it entails. Finally, the litigation strategy should include obtaining benefits for complainants as an important outcome.

Monitoring Compliance

Finding 3.10: In many instances, federal agencies were not actively monitoring the current status of respondents to complaints that were resolved with settlements agreements and court rulings. Furthermore, litigation was not being used as a method of ensuring compliance or addressing conciliation breaches.

Recommendation 3.10: Federal agencies should strengthen compliance monitoring of existing decrees and agreements and use litigation as a method of ensuring compliance or addressing conciliation breaches. They should provide enforcement staff with specific examples of monitoring activities appropriate for the various kinds of compliance agreements. For example, they may wish to use testers to ensure that recipients are meeting the terms of their compliance agreement.

4. Compliance for Funding Recipients

Compliance Reviews

Pre-award Reviews

Finding 4.1: In ensuring that recipients of federal funding were complying with civil rights statutes requiring nondiscrimination, several federal agencies were relying on the good-faith effort of funding applicants, who submit certificates of assurance of their compliance. The agencies were not conducting pre-award reviews of all applicants for funding assistance. They were not requiring applicants to submit data that could be used to analyze their compliance, or self-assessments of such data concerning civil rights compliance.

Recommendation 4.1: Federal agencies should require all recipients to acknowledge, sign, and adhere to a certificate of assurance. However, a signed assurance of discrimination by a recipient is merely a first step in ensuring the equal participation of all groups in publicly funded programs. Federal agencies must supplement this with a pre-award review system.

Federal agencies must implement pre-award review systems that perform at least desk audits on all applicants for federal funding. These systems must impose requirements on funding applicants to report statistical evidence and to provide a self-assessment of civil rights compliance, which the federal agencies must then analyze. The reported information must include data by race, ethnicity, and gender on the applicant's staffing patterns; program participation rates or beneficiaries, and rejection rates; the demographic makeup of the program's affected community or pool of potential participants; and the outcomes of all federal agencies' previous findings of civil rights compliance or noncompliance concerning the applicant; and other information. Federal agencies must analyze this information and either not fund any applicants with deficiencies or provide technical assistance to the applicant to achieve compliance before providing funding.

Post-award Reviews

Finding 4.2: Similar to the situation with pre-award reviews, federal agencies were conducting very few, if any, post-award reviews of funding recipients. They did not have effective post-award

systems or procedures in place or the reviews were not sufficiently thorough to identify recipients with questionable compliance. Many of the agencies had failed to require recipients to submit annual reports containing statistical evidence and self-assessments that could be analyzed in a desk audit to determine their civil rights compliance. Nor did the agencies have effective means of selecting funding recipients with questionable compliance to receive on-site reviews. Post-award reviews that were completed often did not have written findings and recommendations.

Recommendation 4.2: Federal agencies should implement post-award desk-audit programs to review recipients annually for Title VI compliance. They should impose reporting requirements on recipients and analyze recipients' information and self-assessments in the desk audits. The systems should use the information in the desk audits to select recipients with existing or potential civil rights violations for on-site compliance reviews. Criteria for selecting recipients for on-site reviews should be uniformly applied and include analyses performed in the desk audits, complaints of discrimination filed with the agency, statistical data on a funding recipient's beneficiaries, input from advocacy groups and community organizations, and results from an ongoing program of research projects. Recipients with existing violations should be selected first for on-site compliance reviews. Finally, when post-award reviews are completed, federal agencies should produce written results of the findings and recommendations for achieving recipient compliance and provide them to the recipient.

Requiring Recipients to Submit Data on Compliance and Analyzing the Data

Finding 4.3: Federal agencies were not requiring recipients to submit annual data on program participants and beneficiaries or self-evaluations of their civil rights compliance. What data recipients did submit were not being comprehensively analyzed, if at all, by funding agencies. Furthermore, in their on-site compliance reviews, federal agencies were not reviewing and assessing the quality of recipients' data collection and reporting systems to ensure that the information they submitted accurately reflected their compliance status.

Recommendation 4.3: Federal agencies should require recipients to annually submit data on program participants and beneficiaries that can be used to determine the compliance status of the recipient. The data submission should be required both as a precondition of receiving grants and as support for post-award compliance reviews and should be accompanied with the recipients' self-assessments of their compliance with civil rights obligations.

Moreover, the federal agencies should analyze data the recipients submit to determine whether federally assisted programs ensure that all demographic groups have equal opportunity to participate in the programs. Analyses should compare participants in the federally funded programs with relevant applicant pools, eligible populations, and the populations adversely affected by federally funded programs.

When conducting on-site compliance reviews, federal agencies should review and assess the data collection and reporting systems to ensure that the information reported is reflective of the recipient's civil rights compliance status.

Monitoring Civil Rights Enforcement

Finding 4.4: Federal agencies were not monitoring the quality of their civil rights enforcement activities, such as compliance reviews, conducted by headquarters staff, their agency components, regional offices, or contractors.

Recommendation 4.4: Federal agencies should monitor the quality and consistency of civil rights enforcement activities, whether pre- or post-award reviews or desk audits or site visits, and whether conducted by headquarters staff, agency administrations or divisions, regional or district offices, or contractors. Any required technical assistance should be provided to ensure that future activities are carried out according to standard procedures.

Deficiencies, Remedies, and Sanctions

Finding 4.5: When deficiencies in compliance were found, federal agencies were to offer technical assistance to recipients to correct the deficiencies and obtain recipients' agreements to voluntarily comply. But recipients' commitments to corrective action were not being monitored to ensure that compliance was fully achieved. Furthermore, the Department of Justice was not assisting agencies with guidelines and examples for when they should seek

fund termination or temporary suspension for noncomplying recipients. Federal agencies needed more resources to develop methods to better apply administrative sanctions to Title VI enforcement and to determine whether the existing sanctions needed to be strengthened, for example, through the addition of a monetary penalty.

Recommendation 4.5: Federal agencies must establish systems of regularly and uniformly monitoring recipients' voluntary agreements to address civil rights deficiencies in their programs and should request the resources they need to develop and use administrative sanctions effectively. The Department of Justice must require federal agencies to develop mechanisms to monitor voluntary compliance agreements. It must establish guidelines and provide examples for the federal agencies on when and how to apply administrative sanctions and assist them in using the sanctions. Finally, the Department of Justice should conduct a study to determine whether existing administrative sanctions are sufficient to enforce civil rights and make recommendations as to any further sanctions that are needed.

5. Staff Training

Finding 5.1: Federal agencies were not providing the appropriate training or retraining for enforcement staff in numerous areas critical to effective job performance. Title VI training, especially as concerned agency-specific guidance, was also being ignored, as was advanced training on other civil rights statutes. Finally, DOJ was not taking the lead role in coordinating training or providing training resources for federal agencies with civil rights responsibilities under Title VI of the Civil Rights Act.

Recommendation 5.1: DOJ should assume the lead in offering training and providing training resources for federal agencies. It should assist federal agencies in coordinating joint training efforts, particularly when agencies are funding the same recipients or have overlapping jurisdictions.

Federal agencies should provide training and retraining for enforcement staff on appropriate civil rights statutes and activities, including (1) complaint processing and investigative techniques; (2) Title VI compliance reviews, whether pre- or post-award reviews, desk audits, or on-site reviews; and (3) advanced knowledge of federal civil rights statutes, such as the Americans with Disabilities Act, that would allow trained individuals to serve as specialists or resources for other staff.

6. Maximizing Enforcement Effectiveness

Finding 6.1: Constrained by limited civil rights enforcement budgets for the reasons discussed throughout this report, most federal agencies have been unable to meet their civil rights obligations. Limited resources demand that creative and effective methods be used to enhance civil rights enforcement. The Commission has identified six strategies for maximizing enforcement:

- integrating civil rights enforcement throughout every part of the agency, including all of its agency components, programs, and field offices;
- delegating responsibility for reviewing civil rights compliance from agency headquarters to agency components, field offices, contracting organizations, and recipients with subrecipients;
- establishing oversight and quality assurance procedures to ensure that delegated responsibilities are carried out properly and consistently across the nation;
- coordinating civil rights enforcement activities with other federal agencies;
- streamlining enforcement activities to ensure that they are conducted effectively and efficiently with the fewest resources; and
- involving the affected communities in designing civil rights enforcement activities.

Recommendation 6.1: Federal agencies should create task forces to examine and recommend how best to employ these six strategies in their respective agency. Assessments should discuss how to rapidly and successfully incorporate these strategies without disrupting the work of any agency office. For those agencies that have already developed one or more of these strategies, the goal is to incorporate all of them and thus establish or further an effective civil rights program.

Integration

Finding 6.2: The Commission found that few agencies had integrated civil rights enforcement throughout the agency, including in every program

that receives federal funding. The Department of Labor, for example, had concentrated its civil rights efforts on its main job-training program and achieved superior results, but had not expanded enforcement efforts to other programs. The Department of Transportation had a few good elements for civil rights enforcement but in only a couple of operating administrations. Furthermore, agencies had not made a concerted effort to develop policy guidance to interpret how civil rights enforcement applies to each and every assisted program.

Recommendation 6.2: Federal agencies must integrate civil rights enforcement throughout the agency in order to most effectively and efficiently use all available human and monetary civil rights resources. This integration must first develop policy guidance with specific programmatic examples of civil rights policies and enforcement in the context of every program. It must draw upon any current exemplary enforcement efforts to expand efforts to other programs. Agencies should explore ways programmatic staff can be properly trained in, or involved in, civil rights efforts. Large programmatic units should support a full-time trained civil rights analyst to monitor the civil rights implications of program developments and policies and to provide civil rights training and expertise to program staff and to act as liaison between the program and the civil rights offices. A civil rights specialist assigned to a program office should also develop mechanisms by which program staff, particularly any who make site visits, can provide feedback that could be used for a desk audit or as a selection criterion for choosing recipients for on-site compliance reviews.

Delegation

Finding 6.3: Agencies' success in handling a workload of thousands of complaints needing to be processed or funding recipients and subrecipients requiring compliance reviews rested on whether the work was delegated. Delegation of the civil rights enforcement workload could occur at various levels within departments or agencies, as well as with contracting organizations and recipients (such as states) that have subrecipients. Thus, the responsibilities for civil rights enforcement could be distributed among the agencies' various divisions, administrations, or bureaus and among district or other field offices. Some agencies, such as the Equal Employment Opportunity Commission (EEOC) and the Department of Housing and Urban Development, contracted with state or local human rights organizations to handle their civil rights workload, which was investigating complaints. The EEOC also offloaded time-intensive complaint investigations by referring complainants with cases that did not have broad civil rights impact to private attorneys.

Federal agencies can also reduce their workload by having the recipient collect the appropriate information to determine compliance and conduct a self-assessment. Thus, the Commission stressed the need to impose requirements for reporting and self-assessments on recipients. Furthermore, many recipients of funding assistance are states that disburse block grants to subrecipients. States must pass the reporting and self-analysis requirements on to their subrecipients.

Recommendation 6.3: Every federal agency should develop a civil rights enforcement system that appropriately delegates enforcement activities. Agencies unable to meet their civil rights obligations should convene a task force to determine appropriate means to distribute the work either internally or externally to achieve an efficient and effective civil rights enforcement system.

Oversight and Accountability of Civil Rights Enforcement Programs

Finding 6.4: Several federal agencies were running Title VI civil rights implementation, compliance, and enforcement programs that were not adhering to DOJ guidelines. DOJ, through CORS, was lax in its oversight of federal agencies' civil rights programs and had thus allowed deficient agencies to continue running ineffective and inefficient, some worse than others, programs. Furthermore, federal agencies had not sufficiently stressed the compliance and enforcement responsibilities of agency components, such as operating administrations and operating divisions, nor had they sufficiently seen to the oversight, accountability, and coordination of the civil rights programs directed by their components. Regular monitoring and evaluation of agency components, such as field offices, had also been dismal in numerous instances. The oversight and monitoring of contracting organizations, such as Tribal Employment Rights Organizations (TEROs), had not been as

stringent as conditions demanded. Finally, federal agencies had been remiss in their oversight and monitoring of state recipients that distribute their block grants to subrecipients.

Recommendation 6.4: DOJ, through CORS, should ensure that federal agencies are strictly adhering to the regulations established for the implementation and enforcement of civil rights programs. Oversight of all agencies and technical assistance to those agencies whose Title VI programs are found lacking should be proactive and exhaustive. Accountability should extend to the effective and efficient use of all resources, including funds and staff.

All federal agencies with funding recipients should implement civil rights enforcement programs in accordance with DOJ's guidelines for Title VI enforcement. Furthermore, they should clarify the civil rights implementation, compliance, and enforcement responsibilities of all agency components, such as operating administrations and operating divisions. To improve their oversight, accountability, and coordination of the civil rights programs that agency components direct, federal agencies should (1) establish regular channels of communication with the components having civil rights responsibilities; (2) require them to submit annual self-evaluations that will be reviewed and evaluated by knowledgeable agency personnel free of any conflicting interests with said agency components and who will be authorized to direct deficient programs, based on DOJ guidelines, to improve their performance; (3) conduct regular on-site monitoring and evaluation reviews of agency components with civil rights obligations and provide them with comprehensive reports evaluating and recommending improvements in implementation, compliance, and enforcement programs; and (4) monitor and evaluate field offices to ensure the consistency of procedures and resource materials across these offices and provide them with comprehensive reports citing where improvements must be made.

Furthermore, federal agencies should carefully select any contracting organizations that perform civil rights functions, and closely oversee and monitor the contractor's performance through on-site visits that include accompanying contractors when performing enforcement activities such as conducting complaint investigations or on-site compliance reviews of recipients. Finally, federal agencies should improve their oversight and monitoring of state recipients that distribute their block grants to subrecipients. One method of accomplishing this is through improved coordination between these entities, including the training, certification, and periodic recertification of pertinent recipient staff by the concerned federal agency.

Coordination Between Federal Agencies

Finding 6.5: Despite its oversight responsibility to ensure that federal agencies ensure compliance with Title VI, DOJ was not promoting inter-agency coordination. Nor were federal agencies with overlapping jurisdiction for ensuring compliance among the same recipients sharing information or coordinating compliance reviews. Indeed, agencies had no way of knowing which of their recipients were being funded by another federal agency subject to Title VI enforcement responsibilities.

Recommendation 6.5: DOJ should direct inter-agency coordination as part of its oversight responsibilities. It should hold conferences for federal agencies with Title VI responsibilities so that they may communicate with each other and take advantage of the exemplary aspects of one another's enforcement programs in improving their own efforts.

As part of enhancing inter-agency coordination, DOJ should conduct a study of how much overlap exists among agencies concerning recipient funding. DOJ should develop and require federal agencies to help maintain a centralized database of Title VI funding recipients and the enforcement activities to which they have been subjected to permit the federal agencies to know when recipients are receiving funds from more than one agency and to facilitate inter-agency coordination on compliance activities such as on-site reviews. Congress should allocate funding to support the development and maintenance of this database.

The study should also develop guidance for procedures by which agencies can share responsibility for enforcement activities or eliminate the need to perform a particular activity on one recipient since another agency has or will perform it. The use of a memorandum of understanding or other formal agreements for sharing responsibilities should be explored.

Streamlining

Finding 6.6: A number of agencies had huge backlogs in unprocessed complaints and large numbers of funding recipients that had not been reviewed for compliance. Nonetheless, little attention had been paid to trying to find ways for more efficient and effective processes.

Recommendation 6.6: Federal agencies should regularly evaluate their enforcement activities for efficiency and effectiveness. They should, for example, ensure that charge intake staff collects appropriate information from complainants and that this task does not fall to investigators. Charges of discrimination should be appropriately prioritized and, if not meritorious for handling in the federal system, resolved quickly through dismissal, referral to private attorneys, mediation, or conciliation. Efforts to conduct compliance reviews should be appropriately balanced between desk audits and on-site reviews, and funding recipients should be required to provide the information reviewed in the desk audits. Agencies should explore whether and how program staff who monitor recipients' general compliance might provide civil rights feedback that could be included in civil rights desk audits or among selection criteria for an on-site civil rights compliance review.

Involving the Affected Community

Finding 6.7: Federal agencies were not actively involving the affected communities in developing their civil rights programs. Federal agencies should have been at least contacting community organizations and advocacy groups when conducting education and outreach; however, many agencies had weak or nonexistent education and outreach programs. Furthermore, for civil rights enforcement to be most effective, the affected communities must be involved in developing policy to ensure that it addresses their needs, in designing education and outreach to make the best appeal to the communities that are victimized, and in developing litigation strategies that address the issues that concern these communities and provide the remedies they desire.

Recommendation 6.7: Federal agencies must involve advocacy groups and community organizations in their civil rights enforcement programs. These groups must be involved in developing policy and litigation strategies, in identifying priority civil rights issues, and in designing education and outreach programs and strategies that will be most effective in reaching the victims of discrimination.

Dissent Statement

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

We, the undersigned, voted against the approval of this report on July 19, 2002, for the following reasons.

Development of Federal Civil Rights Policy and Litigation

The report develops a Checklist for Evaluating Federal Agencies' Civil Rights Enforcement that calls for involvement of special interest advocacy groups in the development of federal civil rights policy and litigation. Recommendations 1.3, 2.1, and 6.7 specifically call for the extensive engagement of advocacy groups in the development and enforcement of federal policy. Recommendation 3.9 calls for the inclusion of advocacy groups in the litigation process. Although it is important for civil rights agencies to understand and interact with affected communities, it is inappropriate for the federal government to defer to special interest groups in crafting federal policy or planning litigation strategy. Accordingly, we oppose any and all of the recommendations contained herein that advocate such an approach.

Burden on Federal Recipients

Recommendation 4.3 suggests that agencies require recipients to submit data annually on program participants and beneficiaries. This recommendation is based upon the flawed premise that progress can be demonstrated by raw numerical data. In fact, requiring recipients of federal funds to report on the number of "affected peoples" present in a particular program does little to end discriminatory practices and, indeed, might even encourage unlawful behavior. This recommendation also creates another layer of red tape that has the potential of discouraging applications to the federal government. To encourage a broad and diverse population of recipients of federal funds, we should not add to their burden with useless demands.

This dissenting statement respectfully submitted by,

Jennifer C. Braceras, Commissioner
Peter N. Kirsanow, Commissioner
Abigail Thernstrom, Commissioner

July 29, 2002

APPENDIX A

Descriptions of the Enforcement Reports

During the 1990s, the U.S. Commission on Civil Rights issued numerous enforcement reports evaluating the operations of most major federal civil rights enforcement agencies. The Commission's reports examined these agencies' efforts to address a wide range of civil rights issues, including nondiscrimination and equality of opportunity in employment, education, housing, health care, and transportation in federally assisted programs; among state and local government agencies; and in the private sector. Each report is described below.

Civil Rights Issues Facing Asian Americans in the 1990s (February 1992)

From the perspective of Asian Pacific Americans, the issues this study examined included hate crimes, police-community relations, educational opportunity from the primary through the university level, employment discrimination as exemplified by the glass ceiling, accessibility to health care, and religious accommodation. Recommendations called for the Department of Justice to promote understanding for Asian Pacific Americans, for police departments to hire interpreters to assist individuals in the communities with limited English skills, and for federal and state agencies to aggressively enforce antidiscrimination concerning noncredible job requirements that result in a dearth of promotions for Asian Pacific Americans.

Prospects and Impact of Losing State and Local Agencies from the Federal Fair Housing System (September 1992)

The Fair Housing Amendments Act of 1988 (FHAA) provided a much-needed stronger enforcement mechanism for combating housing discrimination (which is studied in a later Commission report) and preserved an existing state and local government partnership in enforcement efforts. Under this partnership, state and local agencies process complaints of discrimination filed with the Department of Housing and Urban Development (HUD) when the state or local law has been established to provide rights and remedies substantially equivalent to those of the federal housing laws. Because the 1988 amendments also expanded coverage to people with disabilities and to families with children, state and local agencies had to become recertified as substantially equivalent under this broader coverage to continue handling complaints. This report focused on the progress of state and local agencies in gaining certification under the new law, and the consequences if many agencies failed to be certified. When the 1988 law was enacted, 122 agencies were participating in the federal fair housing system.

The report found that by 1992, only 14 agencies had substantially equivalent status and no agencies had been fully certified. Many agencies simply would not be able to meet the substantial equivalency requirements by the statutory deadline and would drop out of the federal system. As a result, HUD would not be able to enforce the FHAA effectively.

In its recommendations, the Commission asked HUD to (1) develop a management plan ensuring that adequate resources and staff were available to process fair housing complaints if a large number of state and local agencies were not certified by the deadline; (2) clearly define "substantially equivalent," and provide uniform written guidelines on the certification process, to assist agencies in attaining substantial equivalency; and (3) negotiate memoranda of understanding concerning civil rights enforcement activities with state and local agencies not in the federal fair housing system.

Enforcement of Equal Employment and Economic Opportunity Laws and Programs Relating to Federally Assisted Transportation Projects (January 1993)

This report monitored civil rights enforcement at the Department of Transportation (DOT) and Department of Labor (DOL) relative to federally assisted funds for a national intermodal transportation system. It evaluated the effectiveness of DOT and its operating administration, the Federal Aviation Administration (FAA), and DOL's Office of Federal Contract Compliance Programs (OFCCP) in conducting compliance reviews and investigations pursuant to Title VI of the Civil Rights Act of 1964 and DOT's Disadvantaged Business Enterprise (DBE) program.

The report cited critical failings by the Department of Transportation in enforcing civil rights programs under Title VI, the DBE program, and Title II of the Americans with Disabilities Act of 1990. It concluded that DOT's Title VI enforcement lacked leadership and direction. Civil rights enforcement was neither a top priority nor an integral part of the Department's primary mission planning. In addition, DOT's Office of Civil Rights did not have procedures to ensure that the operating administrations were implementing effective DBE programs. The Commission recommended that (1) DOT immediately and vigorously enforce Title VI and other civil rights laws; (2) the Secretary of Transportation assist its modal administrations in establishing effective civil rights enforcement programs; (3) DOL/OFCCP seek greater community involvement in selecting companies for civil rights reviews; and (4) DOT and DOL coordinate compliance reviews.

Equal Employment Rights for Federal Employees (August 1993)

In response to complaints from federal employees that the Equal Employment Opportunity Commission's (EEOC) regulations for filing claims of discrimination were too complex and bureaucratic, the Commission examined the Federal Employees Fairness Act and the Federal Sector Equal Employment Opportunity regulations.[1] Significant deficiencies were found within the established procedures.

[1] 29 C.F.R. §§ 1613–1614.

The report cited four concerns about EEOC's methods of handling federal employees' complaints: complexity in the system, serious delays in resolving complaints, inherent conflicts of interest between adjudicating complaints and having the respondent agencies largely control the investigation, and inadequate sanctions for violators. In addition, the Commission concluded that the 45-day period in which federal employees were required to report acts of discrimination was too short.

The Commission asked EEOC to increase the filing period for claims and establish better communication between the appropriate agencies and the EEOC. Other recommendations asked Congress to increase EEOC funding, increase sanctions for agencies in noncompliance with EEOC requirements, and authorize the EEOC to file a commissioner's charge if an agency was found to discriminate. The Commission asked the President to issue an executive order to hold heads of federal agencies accountable for enforcing the equal employment opportunity laws.

The Fair Housing Amendments Act of 1988: The Enforcement Report (September 1994)

The passage of the Fair Housing Amendments Act of 1988 (FHAA) required the Department of Housing and Urban Development to change its enforcement procedures from resolving complaints through conciliation and voluntary resolution to emphasizing administrative enforcement. It also granted HUD the power to file complaints at the Secretary's determination and gave the Department legal tools, such as subpoena power, that it had been lacking. In response, HUD staff had to develop cases that could now withstand judicial scrutiny; overhaul the complaint processing system; develop policy for the newly covered bases of disability and family status; and expand coordination with the Department of Justice (DOJ) on the enforcement of the new law.

The Commission's report evaluated (1) the levels of funding needed for proper enforcement of this statute; (2) HUD's guidelines for the Fair Housing Amendments Act and fair housing programs; (3) HUD's policies for remediating discrimination in public housing; (4) coordination between HUD, DOJ, and private fair housing organizations and civil rights advocacy groups in enforcing the law; and (5) DOJ's policies with re-

spect to disparate impact theory, certification for state and local housing agencies as "substantially equivalent," race-conscious methods of fostering housing integration, land-use cases, and settlements.

The report found that HUD had failed to aggressively enforce the new law, partly due to insufficient resources provided by Congress and the President and partly due to internal shortcomings. In particular, HUD lacked a systemic approach to processing complaints that would ensure timely, consistent management of complaints across regions.

Federal Title VI Enforcement to Ensure Nondiscrimination in Federally Assisted Programs (June 1996)

Title VI of the Civil Rights Act of 1964 imposes nondiscrimination requirements on all recipients of federal funding. This report assessed the Department of Justice's oversight and coordination of Title VI implementation and examined the efforts of 10 of the then roughly 27 federal agencies responsible for enforcing the law.

The report's findings included (1) DOJ had neglected its responsibility to ensure nondiscrimination in all federally funded programs and activities; (2) federal agencies' Title VI enforcement programs generally were understaffed and poorly coordinated, and deficiencies had persisted for 20 years; (3) federal agencies had made no effort to formally codify Congress' conclusive definition of covered programs and activities in the Civil Rights Restoration Act of 1987; (4) federal agencies had failed to oversee and monitor state agencies to determine whether state enforcement activities ensured compliance among their subrecipients; and (5) DOJ and federal agencies generally failed to develop regulations, guidelines, and policies for civil rights implementation and enforcement procedures. However, the Commission found areas in which Title VI obligations were satisfactorily addressed by, among others the Department of Education.

The Commission recommended that (1) federal agencies, Congress, and the President reinvigorate Title VI enforcement programs; (2) DOJ show leadership in assisting federal agencies in civil rights enforcement; and (3) federal agencies adopt proactive Title VI enforcement methods, including developing oversight mechanisms for state recipients.

Equal Educational Opportunity Project Series, Volume I (December 1996)

The Equal Educational Opportunity Project Series, Volume I, describes the history of the federal presence in education and provides a brief overview of the Department of Education's (DOEd) organizational structure. The report evaluated the Office of Civil Rights' history, performance, regulations, policies, and activities and set the stage for four other education reports examining specific issues.

The Department of Education's Office for Civil Rights (OCR) enforces statutes that prohibit discrimination, including on the bases of gender and disability, in federally funded education programs, such as Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and Section 504 of the Rehabilitation Act of 1973. OCR's implementation and enforcement activities for these statutes include developing and disseminating civil rights policy, investigating complaints alleging discrimination by recipients of the Department of Education's financial assistance, and initiating enforcement actions against recipients who refuse to voluntarily comply with civil rights requirements.

The Commission's report gave DOEd a good overall rating. OCR's civil rights enforcement program is well developed and can serve as a model to other civil rights agencies. At the same time, the report made recommendations to enhance enforcement in the areas of planning; regulations; guidance, particularly to regional staff; data reported on national origin; coordinating and integrating civil rights enforcement into DOEd program offices; requiring funding recipients to conduct self-evaluations of their civil rights compliance; and involving program beneficiaries and advocacy groups in enforcement. The report also recommended increases in the budget, staffing, and training for OCR to fulfill its duties and responsibilities.

Equal Educational Opportunity and Nondiscrimination for Students with Disabilities: Federal Enforcement of Section 504, Equal Educational Opportunity Project Series, Volume II (September 1997)

In this report the Commission examined the efforts of the Department of Education and its Office

of Civil Rights (OCR) in enforcing Section 504 of the Rehabilitation Act of 1973, which mandates that equal educational opportunities be provided to students with disabilities. Issues related to the development of individualized education programs and the placement of students with disabilities were the focus.

In analyzing OCR's efforts to implement, ensure compliance with, and enforce Section 504 in public elementary and secondary education, the Commission found that the agency's performance was exemplary overall. However, the agency could improve enforcement, for example, by (1) updating its Section 504 regulations to use contemporary disability language; (2) issuing policy guidance on discrimination with regard to issues such as the denial of "free appropriate public education," the use of technological devices in the special education classroom, and extracurricular activities for students with disabilities; and (3) collecting and disseminating more data on students with disabilities.

Equal Educational Opportunity and Nondiscrimination for Students with Limited English Proficiency: Federal Enforcement of Title VI and Lau v. Nichols, Equal Educational Opportunity Project Series, Volume III (November 1997)

Title VI of the Civil Rights Act of 1964 and the U.S. Supreme Court's 1974 decision in *Lau v. Nichols* provide for nondiscrimination and equal educational opportunity for national origin minority students with limited English proficiency. The third report in the education series examined the efforts of the Department of Education and its Office of Civil Rights (OCR) to implement, ensure compliance with, and enforce Title VI and *Lau v. Nichols* in public elementary and secondary education.

The Commission found that OCR generally operated a highly developed Title VI/*Lau* civil rights enforcement program but that some improvements were needed. OCR must develop more mechanisms to (1) determine the number of limited-English-proficient minority students; (2) prevent limited-English-proficient students from being placed in special education programs based only on their English skills; and (3) ensure that language barriers do not prevent them from participating in gifted and talented programs, advanced courses, or other opportunities for education and advancement.

Equal Educational Opportunity and Nondiscrimination for Minority Students: Federal Enforcement of Title VI in Ability Grouping Practices, Equal Educational Opportunity Project Series, Volume IV (September 1999)

This report evaluated the efforts of the Department of Education and its Office of Civil Rights (OCR) to enforce Title VI of the Civil Rights Act of 1964 in public elementary and secondary education programs with respect to ability grouping and tracking as well as participation in advanced courses and gifted and talented programs. The Commission identified five major principles that affect equal access to a quality education. Education programs should (1) be structured to serve a diverse student population with periodic reevaluations and regroupings of students to reflect differential ability in various subjects and changes in achievement and performance; (2) use neutral and nondiscriminatory screening and diagnostic procedures when placing students in programs; (3) facilitate and encourage the involvement of parents and communities in their children's education; (4) allocate good teachers, counselors, facilities, and other resources equitably among classes of students with high and low ability; and (5) use innovative approaches to eliminate barriers to educational opportunities and to maximize each student's potential.

The Commission found that DOEd's OCR had made ensuring nondiscrimination in ability grouping and tracking a priority issue in its strategic plan. However, OCR's enforcement program had deficiencies, particularly in the issuance of policy guidance. It failed to issue formal or final policy guidance on Title VI enforcement with respect to ability grouping and tracking. The Commission recommended that OCR (1) investigate and vigorously monitor how schools implement ability grouping; (2) strengthen and improve its technical assistance, outreach, and education programs to provide guidance on ways to implement the Commission's five principles; (3) require state and local education agencies to develop accountability systems to monitor and ensure that all school personnel understand and apply these principles; (4) work with school administrators and public universities to develop partnerships in their communities supporting efforts to provide equal educational opportunities to all students; and (5) incorporate the five

principles in and update and formalize Title VI policy guidance, procedures, and technical assistance documents.

Equal Educational Opportunity and Nondiscrimination for Girls in Advanced Mathematics, Science, and Technology Education: Federal Enforcement of Title IX, Equal Educational Opportunity Project Series, Volume V (July 2000)

The Commission examined the Department of Education's enforcement of Title IX of the Education Amendments of 1972, which prohibits exclusion from, denial of the benefits of, or discrimination under federally assisted education programs based on an individual's sex. It looked at Title IX from a policy perspective to determine what measures ensure that women and girls have educational opportunities in math, science, and technology programs, providing equal access to fields that have been traditionally dominated by men.

The Commission's evaluation found that Title IX has increased women's access to mathematics, science, and technology education over the last 30 years. However, disparities persist, and DOEd's Office for Civil Rights (OCR) has had a mixed record in Title IX compliance and enforcement activities. OCR has tried to ensure that schools do not discriminate against girls in math and science classes, but could strengthen its program by coordinating activities with other program offices within and outside the Department, and with educators, parents, and community groups; by conducting comprehensive research on the representation of girls in all levels of math and science courses and other issues; and by improving its Title IX enforcement activities, including collecting data to target schools for compliance reviews and technical assistance, increasing compliance reviews and investigations, and issuing more policy guidance. Finally, the report called for a greater commitment from the Department and OCR to address gender equality in education.

Helping Employers Comply with the ADA: An Assessment of How the United States Equal Employment Opportunity Commission Is Enforcing Title I of the Americans with Disabilities Act (September 1998)

In this report on the Americans with Disabilities Act (ADA), the Commission focused on the Equal Employment Opportunity Commission's efforts to enforce Title I, which prohibits discrimination based on disability in employment. The report evaluates EEOC's regulations and policies clarifying the language of the statute; the processing of charges of discrimination based on disability; Title I-related litigation activities; and outreach, education, and technical assistance efforts.

The Commission found that EEOC had developed a credible enforcement program to implement the act but that its efforts could be more effective in some areas. The Commission recommended that EEOC (1) involve affected communities in developing policy and in its decision-making processes; (2) provide technical assistance, education and outreach to ensure that employers understand their obligations under the law and that individuals with disabilities understand and are able to exercise their rights under the act; (3) evaluate the effectiveness of its ADA charge processing and enforcement activities; and (4) form partnerships with other federal agencies, community organizations and advocacy groups, and employers, to promote understanding of and support for the ADA.

Helping State and Local Governments Comply with the ADA: An Assessment of How the United States Department of Justice is Enforcing Title II, Subpart A, of the Americans with Disabilities Act (September 1998)

This study focused on the efforts of the Department of Justice to enforce Title II, Subpart A, of the Americans with Disabilities Act, which prohibits discrimination based on disability by public entities such as state and local governments. The report evaluates DOJ's regulations and policies clarifying the language of the statute; the processing of complaints based on disability; litigation; and outreach, education, and technical assistance efforts relating to the act. It examines the development, resources, and enforcement efforts of the Disability Rights Section (DRS), the DOJ office

with coordination and oversight responsibility over the seven other agencies that enforce Title II. The Commission commended DRS, as a newly created office, for its implementation of the act, particularly in the areas of education and outreach.

The Commission urged DOJ to provide adequate resources to DRS to increase its staff, particularly the number of investigators and litigators; to support and improve monitoring of designated ADA federal agencies, and to develop and publish policy guidance to explain the law and help state and local entities carry out their responsibilities under the law. The Commission reiterated its support for the full implementation of the ADA, urged that DOJ vigorously enforce the law, and stressed the importance of its coverage and implementation in the public sector.

The Health Care Challenge; Acknowledging Disparity, Confronting Discrimination, and Ensuring Equality, Volume I: The Role of Governmental and Private Health Care Programs and Initiatives (September 1999)

In 1999, the Commission published a two-volume report on health care disparities. Volume I, *The Role of Governmental and Private Health Care Programs and Initiatives*, examines racial, ethnic, and gender disparities in health status, health research, access to health services, and health care financing. The Commission found many health care initiatives implemented at the federal, state, and local levels aimed toward eliminating disparities and improving the health status of traditionally underserved groups. Nonetheless, discrimination in the health care system continues to manifest itself in many ways, including: differential delivery of health care services based on race, ethnicity, and gender; inability to access health care because of lack of financial resources, culturally incompetent providers, language barriers, and the unavailability of services; and exclusion of women and people of color from health-related research.

The Commission's recommendations were directed throughout the government. Congress and the President must allocate funds to close the health care financing gap—the gap between qualifying for existing public assistance programs and being able to afford private health insurance. The Department of Health and Human Services (HHS) must include the perspectives of women and people of color in developing the health care agenda and ensure that civil rights objectives are integrated into all health care initiatives. The HHS Office for Civil Rights and offices of women's and minority health should ensure that the agency and its funding recipients consider socio-cultural contexts of individuals' lives when designing and reviewing health programs. HHS must also enforce the mandated inclusion of females and people of color in health-related research, both as funding recipients for, and participants in, research. Finally, health care programs must be implemented at the community level in conjunction with community-based organizations that serve women and people of color.

The Health Care Challenge; Acknowledging Disparity, Confronting Discrimination, and Ensuring Equality, Volume II: The Role of Federal Civil Rights Enforcement Efforts (September 1999)

Volume II of the health care report, *The Role of Federal Civil Rights Enforcement Efforts,* looked at the civil rights enforcement activities of the Department of Health and Human Services' Office for Civil Rights (OCR) and their impact in ensuring equal quality health care. It examined how OCR meets its mandates to implement and enforce Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; the Hill-Burton Act of 1946, which provided federal grants for the constructions of hospitals and other health care facilities; and the nondiscrimination provisions of the community block grant programs.

The report found that OCR needed to improve its enforcement activities in all areas. The Commission recommended an overall restructuring of OCR, staff training to fulfill civil rights enforcement responsibilities, and more effective civil rights enforcement activities. It also recommended that the President, Congress, and the Secretary of HHS allocate more funding for civil rights enforcement because inadequate funding contributed to deficiencies.

Overcoming the Past, Focusing on the Future: An Assessment of the U.S. Equal Employment Opportunity Commission's Enforcement Efforts (September 2000)

In September 2000, the Commission released a report on civil rights enforcement of nondiscrimination in employment. It discusses the Equal Employment Opportunity Commission's enforcement efforts under Title VII of the Civil Rights Act of 1964 and other civil rights statutes in the private sector and evaluates the agency's progress in reducing its complaint backlog, processing charges of discrimination more efficiently and selectively, and improving customer service between 1995 and 2000.

The report determined that EEOC should conduct an internal reassessment of expenditures to identify program areas where funds should be focused. Areas needing improvement were (1) the involvement of advocacy groups and community organizations in policy development; (2) attention to recent developments in regulatory guidelines; (3) customer service, particularly assistance for charging parties and outreach to both charging parties and complaint respondents; and (4) EEOC's relationship with state, local, and tribal employment rights agencies. EEOC was lauded and encouraged to continue expeditiously resolving as many charges as possible. Likewise, EEOC's internal enforcement activities review program was cited as an effort worthy of continuation. The Commission recommended that EEOC (1) expand working relationships with other federal as well as state and local agencies; (2) continue its efforts to reach out to people of color to ensure that they understand their rights under fair employment laws; (3) increase the development of regulatory guidelines; and (4) contact and interact with the public more.

APPENDIX B

Key Civil Rights Statutes and Regulations

The federal government has sought to uphold individual and group civil rights by establishing laws guaranteeing and protecting these rights. A brief overview of statutes relevant to this study is given below.

GENERAL CIVIL RIGHTS PROTECTIONS—THE CIVIL RIGHTS ACT OF 1964

On July 2, 1964, Congress enacted the Civil Rights Act of 1964,[1] characterized as the most comprehensive civil rights legislation since the post-Civil War era.[2] The Civil Rights Act represented Congress' response to growing public demand for equality for Americans of all races and embodied significant civil rights provisions aimed at eradicating racial discrimination. Title II of the Civil Rights Act prohibits discrimination in public accommodations;[3] Title III forbids segregation in public facilities;[4] Title IV proscribes segregation in public schools;[5] Title VI prohibits discrimination in all federally funded programs and activities;[6] Title VII prohibits discrimination in employment based on race, color, religion, sex, or national origin;[7] and Title VIII prohibits discrimination in housing.[8] Together, these provisions promote equality of opportunity in virtually all areas of our national life.

NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS—TITLE VI OF THE CIVIL RIGHTS ACT AND THE CIVIL RIGHTS RESTORATION ACT

Title VI of the Civil Rights Act ensures that public funds are not used to further racial discrimination in federal programs or activities but is designed to eradicate racial and ethnic discrimination in such programs and activities, not to penalize the recipients of federal funds who administer the programs.[9] It provides that:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.[10]

Congress intended Title VI to cover a broad range of activities, including "programs for schools, highways, hospital construction, farm price supports, depressed areas, housing, urban renewal, vocational education, ship and airline subsidies, disaster relief, civilian defense, school lunches, and public health."[11] It is the broadest instrument available for the nationwide elimination of invidious discrimination and the effects of discrimination on the basis of race or national origin.[12] In 2001, Title VI applied to approximately 63 federal agencies that administer nearly 1,500 programs and annually distribute more than $1.8 trillion in federal financial assistance.[13]

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[1] Pub. L. No. 88-352, 78 Stat. 241 (codified as amended in scattered sections of 42 U.S.C.).

[2] *See* John Hope Franklin and Alfred A. Moss, Jr., *From Slavery to Freedom: A History of African Americans* (New York: Alfred A. Knopf, Inc., 1994), pp. 220–46.

[3] 42 U.S.C. § 2000a (2002).

[4] *Id*. § 2000b.

[5] *Id*. § 2000c.

[6] *Id*. § 2000d.

[7] *Id*. § 2000e.

[8] *Id*. § 3604.

[9] 110 CONG. REC. 6544 (1964) (statement of Senator Humphrey).

[10] 42 U.S.C. § 2000d (2002).

[11] Bureau of National Affairs, *Operational Manual: The Civil Rights Act of 1964* (1964), p. 93.

[12] U.S. Commission on Civil Rights, *The Federal Civil Rights Enforcement Effort—1974: To Extend Federal Financial Assistance*, vol. 6, November 1975, p. 3.

[13] *See* U.S. General Services Administration and Office of

The Civil Rights Restoration Act of 1987[14] was passed to reaffirm and clarify the definition of "programs or activities" covered by the nondiscrimination provisions of civil rights statutes after a Supreme Court decision limited their coverage. The act ensures the broad, institutionwide application of Title VI and other civil rights statutes by stating that discrimination is prohibited throughout an entire agency or institution, if any part of that agency or institution received federal financial assistance.[15]

EQUAL EMPLOYMENT OPPORTUNITY

The Equal Employment Opportunity Commission enforces equal employment laws. Its responsibilities arise from Title VII of the Civil Rights Act of 1964,[16] as amended by the Equal Employment Opportunity Act of 1972;[17] the Equal Pay Act of 1963;[18] the Age Discrimination in Employment Act of 1967;[19] the Americans with Disabilities Act of 1990;[20] Section 504 of the Rehabilitation Act of 1973;[21] and the Civil Rights Act of 1991.[22]

Title VII of the Civil Rights Act of 1964

The Civil Rights Act includes Title VII, which protects people from discrimination in employment. It says:

> It shall be an unlawful employment practice for an employer—
>
> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
>
> (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.[23]

The Equal Pay Act

Historically, men have earned more than women, even when performing the same jobs. The Equal Pay Act was enacted in 1963 as an amendment to the Fair Labor Standards Act of 1938[24] to provide equal pay for men and women who perform substantially equal work in the same establishment.[25]

Age Discrimination in Employment Act

The Civil Rights Act of 1964 did not cover older Americans. In fact, little could be done to combat age discrimination before the enactment of the Age Discrimination in Employment Act (ADEA).[26] The ADEA prohibits discrimination against employees or job applicants 40 years of age or older. It applies to employers with 20 or more employees, labor organizations affecting commerce with 25 or more members, employment

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Management and Budget, *2001 Catalog of Federal Domestic Assistance,* 2001, p. 6-01, and U.S. Census Bureau, Governments Division, *Federal, State, and Local Governments, Federal Assistance Award Data System*, "2001 1st Quarter—Summary Table," "2001 2nd Quarter—Summary Table," "2001 3rd Quarter—Summary Table," and "2001 4th Quarter—Summary Table," <www.census.gov/govs/faads>. Note that federal assistance has grown considerably. The Commission's 1996 report stated that Title VI applied to 27 federal agencies and more than 1,000 assisted programs, with the agencies distributing approximately $900 billion in assistance. USCCR, *Federal Title VI Enforcement to Ensure Nondiscrimination in Federally Assisted Programs*, June 1996, p. 12.

[14] Pub. L. No. 100-259, 102 Stat. 28 (codified as amended at 20 U.S.C. §§ 1681 note, 1687, 1687 note, 1688, 1688 note (2002); 29 U.S.C. §§ 706, 794 (2002); 42 U.S.C. §§ 2000d-4a, 6107 (2002)).

[15] 42 U.S.C. § 2000d-4a (2002). *See also* U.S. Congress Senate, Committee on Labor and Human Resources, *Civil Rights Restoration Act of 1987*, 100th Cong., 2d sess. S. REP. NO. 64, pp. 1, 4, *reprinted in* 1988 U.S.C.C.A.N. 3, 6.

[16] 42 U.S.C. §§ 2000e–2000e-17 (2002).

[17] *Id.* § 2000e-16.

[18] 29 U.S.C. § 206 (2002).

[19] *Id.* §§ 621–634.

[20] 42 U.S.C. §§ 12101–12213 (2002).

[21] 29 U.S.C. §§ 701–796i (2002).

[22] 42 U.S.C. §§ 2000e–2000e-17 (2002).

[23] *Id.* § 2000e-2.

[24] Fair Labor Standards Act of 1938, chap. 676, 52 Stat. 1060 (1963) (codified as amended at 29 U.S.C. § 206 (2002)).

[25] Equal Pay Act of 1963, H.R. REP. NO. 88-309 (1963), *reprinted in* 1963 U.S.C.C.A.N. 687.

[26] 29 U.S.C. §§ 621–634 (2002).

agencies serving at least one covered employer, and federal, state, and local governments.[27]

FAIR HOUSING

The Department of Housing and Urban Development enforces fair housing under many laws, including Title VI of the Civil Rights Act of 1964;[28] Title VIII of the Civil Rights Act of 1968 (also known as the Fair Housing Act);[29] Section 504 of the Rehabilitation Act of 1973;[30] the Age Discrimination Act of 1975;[31] Title II of the Americans with Disabilities Act of 1990;[32] the Fair Housing Amendments Act of 1988;[33] and others.[34] The Fair Housing Act, Title VIII of the Civil Rights Act of 1968, and the Fair Housing Amendments Act of 1988 are discussed below.

The Fair Housing Act—Title VIII of the Civil Rights Act of 1968

The Civil Rights Act of 1968 banned discrimination in most housing transactions. Title VIII prohibits discrimination, on the basis of race, color, religion, or national origin, and by amendment in 1974, on the basis of sex,[35] in the sale or rental of a dwelling,[36] including the negotiation of terms, conditions, or privileges, and in the provision of services or facilities.[37] It enables HUD to investigate and conciliate complaints of housing discrimination. It also allows state and local agencies to process individual complaints filed with HUD where the Secretary determines that the state or local law provides rights and remedies substantially equivalent to those provided by Title VIII.

The Fair Housing Amendments Act of 1988

To eliminate housing discrimination, Title VIII relied heavily on conciliation and voluntary compliance and lacked an effective enforcement mechanism. In response to concerns raised by fair housing advocacy groups and HUD itself, Congress rewrote the Fair Housing Act and, in 1988, passed the Fair Housing Amendments Act (FHAA).[38] The FHAA established an administrative mechanism for enforcing the law, which could result in the award of damages and civil penalties for complaints filed with HUD and tried by an administrative judge. The FHAA also extends the provisions of the Fair Housing Act to individuals with disabilities and families with children.

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[27] Equal Employment Opportunity Commission, Compliance Manual, p. 0:2301.

[28] 42 U.S.C. §§ 2000d–2000d-7 (2002).

[29] *Id.* §§ 3601–3619, 3631.

[30] 29 U.S.C. § 794 (2002).

[31] 42 U.S.C. §§ 6101–6107 (2002).

[32] *Id.* §§ 12131–12165.

[33] *Id.* §§ 3601–3619, 3631.

[34] Other statutes with civil rights provisions related to housing include the Housing and Urban Development Act of 1968 (*see* Section 3; Pub. L. No. 90-448, 92 Stat. 476 (codified as amended at 12 U.S.C. § 5309 (2002)); the Housing and Community Development Acts of 1974 (*see* Section 109 of Title I; Pub. L. No. 93-383, 88 Stat. 633 (codified as amended at 42 U.S.C. § 5309 (2002)); 1987 (Pub. L. No. 100-242, 101 Stat. 1815 (1994)); and 1992 (Pub. L. No. 102-550, § 905(b), 106 Stat. 3672, 3869–3872 (codified as amended at 42 U.S.C. § 3616a (2002)); and the Equal Credit Opportunity Act (15 U.S.C.A. §§ 1691–1691(e) (2002); 24 C.F.R. § 25.9 (2002)). The Housing and Community Development Act of 1974 added "sex" to the protected groups covered under the 1968 Fair Housing Act. It also created new housing assistance programs for lower income families, commonly known as section 8, and the Community Development Block Grant program, authorizing public works funds for local communities to use if they are willing to undertake certain fair housing responsibilities. The 1987 act created the Fair Housing Initiatives Program, which provides grants for public agencies and private organizations to conduct fair housing activities that prevent or eliminate housing discrimination. The 1992 act added funds for private fair housing enforcement groups in underserved areas to conduct a national fair housing awareness media campaign.

[35] 42 U.S.C. § 3604 (2002); Housing and Community Development Act Amendments to the Fair Housing Act of 1974, Pub. L. No. 93-383, § 808(b)(1), 88 Stat. 633, 729 (1974).

[36] The statutory definition of a dwelling is: "[A]ny building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof." 42 U.S.C. § 3602(VIb) (1988).

[37] 42 U.S.C. § 3604(b) (2002). *See also* Smith v. Town of Clarkton, 682 F.2d 1055 (4th Cir. 1982); McDonald v. Verble, 622 F.2d 1227 (6th Cir. 1980); United States v. Housing Authority of City of Chickasaw, 504 F. Supp. 716 (S.D. Ala. 1980).

[38] 42 U.S.C. §§ 3601–3619, 3631 (2002).

EQUAL EDUCATIONAL OPPORTUNITY

Equal educational opportunity is brought about through the Department of Education's enforcement of various statutes, including Title VI of the Civil Rights Act of 1964,[39] the Equal Educational Opportunities Act,[40] Title IX of the Education Amendments of 1972,[41] the Women's Educational Equity Act of 1974,[42] the Age Discrimination Act of 1975,[43] Section 504 of the Rehabilitation Act of 1973,[44] Title II of the Americans with Disabilities Act of 1990,[45] and the Individuals with Disabilities Education Act (IDEA).[46]

Equal Education Opportunity Act of 1974

The Equal Education Opportunity Act of 1974 (also known as the Equal Educational Opportunities Act) prohibits the segregation of students based on race, color, or national origin. The act also prohibits discrimination against faculty and staff and requires school districts to provide students with limited English proficiency an equal opportunity to participate in education programs.[47] Under Section 1703(f) of the act, school districts are required to take "appropriate action" to rectify language barriers that impede students' ability to participate effectively in the schools' education programs.[48]

Title IX of the Education Amendments of 1972

Title IX of the Education Amendments of 1972[49] prohibits exclusion from, denial of the benefits of, or discrimination under federally assisted education programs because of a person's sex.[50] Title IX and its implementing regulations have offered a means for women to gain equal access to classes, activities, and education services. The regulations implementing Title IX outline criteria for what constitutes compliance with Title IX and, thus, nondiscrimination under the law.[51]

Individuals with Disabilities Education Act

The Individuals with Disabilities Education Act (IDEA)[52] guarantees a "free, appropriate public education to each child with a disability in every state and locality across the country."[53] IDEA's other goals are to improve the identification and education of children with disabilities, evaluate the success of these efforts, and provide "due process protections for children [with disabilities] and their families."[54] IDEA also mandates that students be provided culturally relevant instruction within mainstream environments. At the heart of IDEA are two programs. One aims to "identify and meet the unique needs of each infant and toddler with a disability and his or her family."[55] The other ensures that education programs are geared to students' individual needs[56] and requires funding recipients to develop procedures to assist students in transitioning into independent adult living. Financial incentives encourage states and localities

[39] *Id.* §§ 2000d–2000d-7.

[40] 20 U.S.C. § 1703(f) (2002).

[41] Pub. L. No. 92-318, Title IX, 86 Stat. 373 (codified as amended at 20 U.S.C. §§ 1681–1688 (2002)).

[42] Pub. L. No. 93-380 (codified as amended at 20 U.S.C. §§ 3041–3047 (2002)).

[43] 42 U.S.C. §§ 6101–6107 (2002).

[44] 29 U.S.C. § 794 (2002).

[45] 42 U.S.C. §§ 12131–12165 (2002).

[46] Pub. L. No. 105-17, §§ 601–687 (1997).

[47] U.S. Department of Justice, Civil Rights Division, Educational Opportunities Section, "Frequently Asked Questions," n.d., <http://www.usdoj.gov/crt/edo/faq.htm>.The act prohibits discrimination expressed through the deliberate segregation of students, and the employment, employment conditions, or assignment to schools of faculty or staff. *See* 20 U.S.C. § 1703(a), (d), (f) (2002); and Cornell Law School, *US Code Collection*, "Sec. 1703.—Denial of equal educational opportunity prohibited," n.d., <http://www4.law.cornell.edu/uscode/20/1703.html>.

[48] 20 U.S.C. § 1703(f) (2002).

[49] *Id.* §§ 1681–1688.

[50] *Id.* § 1681(a).

[51] 34 C.F.R. pt. 106 (2002).

[52] Pub. L. No. 105-17, §§ 601–687 (1997).

[53] Office of Special Education Programs (OSEP), U.S. Department of Education, *IDEA, The Individuals with Disabilities Education Act: Lessons for All!* "Lesson 1: History & Impact, History: Twenty-Five Years of Progress in Educating Children with Disabilities Through IDEA," 2001, <http://www.ed.gov/offices/OSERS/Policy/IDEA25th/Lesson1_History. html> (hereafter cited as OSEP/DOEd, "Educating Children with Disabilities Through IDEA").

[54] OSEP/DOEd, "Educating Children with Disabilities Through IDEA."

[55] Ibid.

[56] U.S. Commission on Civil Rights, *Making a Good IDEA Better: The Reauthorization of the Individuals with Disabilities Act*, briefing paper, 2002, p. 2.

nancial incentives encourage states and localities to meet these objectives and comply with IDEA.[57]

PROTECTION FOR PEOPLE WITH DISABILITIES

Protections for people with disabilities are provided through Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, and the Individuals with Disabilities Education Act. The last of these was described above.

Section 504 of the Rehabilitation Act of 1973

In addition to IDEA, Section 504 of the Rehabilitation Act of 1973[58] has had profound impact on the education of children with disabilities. Section 504 prohibits exclusion from participation in, denial of the benefits of, or discrimination under any federally assisted program or activity because of a person's disability.[59]

The Americans with Disabilities Act

The Americans with Disabilities Act of 1990 helped establish protections for individuals with physical and/or mental limitations.[60] Its most powerful clauses, Titles I, II, and III, ensure that people with disabilities are not discriminated against in employment, public services, or public accommodations, respectively. The Commission's Office of Civil Rights Evaluation has only studied enforcement of Titles I and II.

The ban on discrimination in Title I applies to "job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment."[61] It protects "qualified" individuals with a disability, where "qualified" is defined as "an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position. . . ."[62] Title I places a responsibility on employers to make reasonable accommodations necessary for a qualified individual with a disability to perform the job.

Title II prohibits discrimination on the basis of a person's disability in all services, programs, and activities provided or made available by state and local governments or any of their instrumentalities or agencies.[63]

AGE DISCRIMINATION

Protection against age discrimination is provided through the Age Discrimination in Employment Act of 1967,[64] which was discussed above, and the Age Discrimination Act of 1975.[65] The Age Discrimination Act of 1975 prohibits discrimination on account of age in any program or activity receiving federal funds. However, exclusions are permissible when a specific age requirement is established by law or differentiation is made "based upon reasonable factors other than age."[66]

[57] OSEP/DOEd, "Educating Children with Disabilities Through IDEA."

[58] 29 U.S.C. § 794 (2002).

[59] *Id.* § 794(a).

[60] 42 U.S.C. §§ 12101–12213 (2002).

[61] *Id.* § 12112(a).

[62] *Id.* §§ 12111(8), 12112(b).

[63] *Id.* §§ 12131–12165.

[64] 29 U.S.C. §§ 621–634 (2002).

[65] 42 U.S.C. §§ 6101–6107 (2002).

[66] Cornell Law School, *US Code Collection*, "Sec. 6102.—Prohibition of discrimination," n.d., <http://www4.law.cornell.edu/uscode/42/6102.html>.

APPENDIX C

Checklist for Evaluating Federal Agencies' Civil Rights Enforcement

THE PRIORITY OF CIVIL RIGHTS

Authority for Civil Rights Enforcement

- ☐ Has the authority for the agency's or office's civil rights responsibilities changed? (If so, how?)

Resources—Funding and Staffing

- ☐ Has Congress allocated sufficient funding and resources to the agency's civil rights enforcement?
  - –In particular, if Congress has expanded the civil rights jurisdiction and responsibilities of an agency, has an increase in funding and resources been allocated to cover the expansion?
- ☐ Have funding and resources been designated for specific programmatic areas (e.g., enforcement of particular statutes or types of enforcement activities such as mediation, training, and outreach)?
- ☐ Has the department/agency provided sufficient funding and resources to civil rights enforcement either by allocating them from existing departmental or agency provisions or by requesting them from Congress?
- ☐ Have appropriate numbers and types of staff been assigned to carry out civil rights enforcement responsibilities?
- ☐ In the absence of sufficient staff, have personnel been reallocated for greater effectiveness in civil rights enforcement activities?

Organization and Structure

- ☐ Has civil rights enforcement been integrated into all sections of the department/agency?
- ☐ Does the civil rights enforcement unit have a direct line of authority to the departmental Secretary or the agency head to ensure the primacy of civil rights responsibilities?
- ☐ Does the civil rights office have sufficient authority to enforce civil rights within the agency programs?
- ☐ Does the agency or office have a unit and staff devoted solely to external civil rights enforcement, without internal civil rights (i.e., EEO) responsibilities or collateral non-civil rights duties?
- ☐ Do the agency's regional offices have separate units devoted solely to external civil rights compliance and enforcement activities (e.g., complaint processing)?
- ☐ In departments or agencies with decentralized civil rights activities, is there a headquarters office to coordinate and oversee civil rights enforcement responsibilities?
- ☐ Does the primary civil rights office have units exclusively devoted to specific enforcement activities, including policy development, enforcement planning, quality assurance, compliance, litigation, and public education and outreach?

Accountability and Oversight of the Enforcement Program Throughout the Agency

Department or Agency Oversight of Components

- ☐ Have the civil rights enforcement responsibilities of various agency components (administrations, operating divisions, or regional and field offices) been made clear?
- ☐ Has the agency delegated civil rights enforcement responsibilities to both operational and regional staff?
- ☐ Has the agency established effective oversight of, accountability within, and active coordination of, its various civil rights enforcement components (e.g., operating divisions, administrations, and regional and field offices)?
- ☐ Does the agency require its various components (e.g., administrations or operating divisions) to submit annual civil rights self-assessments, and does it review and evaluate these submissions?
- ☐ Does the agency conduct regular on-site monitoring and evaluation reviews of the civil rights enforcement activities of its agency components (e.g., administrations or operating divisions), resulting in thorough evaluative reports with recommendations for improving the compliance and enforcement programs?
- ☐ Does the agency monitor regional and field offices to ensure the consistency of procedures and resource materials across offices?

Department or Agency Oversight of Contracting Organizations

- ☐ Does the agency monitor contracting organizations (e.g., FEPAs, FHAPs, and TEROs) to ensure that their civil rights enforcement activities adhere to all agency regulations, guidelines, and procedures?

Department or Agency Oversight of State Recipients

- ☐ Has the agency established a systematic oversight and monitoring program to evaluate Title VI compliance policies and activities connected with programs administered at state and local levels?
- ☐ Has the agency required states to submit methods of administration demonstrating how they intend to ensure recipient compliance with Title VI?
- ☐ Has the agency regularly conducted reviews of Title VI compliance policies and activities of states to evaluate how states apply their methods of administration?
- ☐ Has the agency systematically monitored states' data collection and analysis of program participants and beneficiaries?
- ☐ Has the agency provided comprehensive guidance to states on their responsibilities for performing Title VI activities, including technical assistance in developing procedures and staff training manuals and communications?
- ☐ Has the agency ensured that recipients are required to submit annual data on program participants and beneficiaries that can be used to determine the compliance status of the recipient?
- ☐ Does the agency analyze the data the recipients submit to determine whether federally assisted programs ensure that all demographic groups have equal opportunity to participate?
- ☐ Does the agency review and assess data-reporting systems during its on-site compliance reviews of federal funding recipients?

Strategic Planning With Civil Rights Objectives

- ☐ Has the agency developed a strategic plan to accomplish civil rights activities with measures of performance, performance goals, and assessments of the accomplishments?
- ☐ Has the agency specified the extent to which various civil rights activities are conducted (e.g., technical assistance, education and outreach, policy guidance, and enforcement with respect to different statutes) in its strategic plan?
- ☐ Has the agency realistically assessed the budget and staff resources needed for civil rights enforcement?
- ☐ Has the agency consulted with stakeholders, advocacy groups, and community organizations in developing its strategic plan?

- ☐ Has the agency developed any strategic streamlining of the civil rights enforcement program?
- ☐ For agencies with Title VI responsibilities, has the agency developed a civil rights implementation plan that:
  - Conforms to the Department of Justice's guidelines?
  - Fully describes civil rights implementation and enforcement?
  - Specifies civil rights goals and objectives with timeframes for achieving them?
  - Is used as a management tool to realistically assess the available staff and resources to accomplish the civil rights enforcement goals and objectives?
  - Specifies priority civil rights issues?
- ☐ Has the agency, possibly through the aid of the Department of Justice, worked with other federal agencies to consolidate efforts when possible for more efficient use of civil rights enforcement resources?
- ☐ Has civil rights enforcement been integrated into the activities of all agency components (e.g., administrations, operating divisions, and program offices) to ensure that civil rights goals and objectives are met?
- ☐ Has the agency provided aid or oversight to units of the agency that are developing strategic plans?

Tracking Expenditures and Staffing Needed for Civil Rights Activities

- ☐ Does the agency or office track the resources required for various types of enforcement activities in order to demonstrate to the Department or Congress a realistic number of resources needed to perform more civil rights enforcement?

POLICY DISSEMINATION AND PUBLICITY

Technical Assistance

- ☐ Does the agency have a regular and effective program to provide internal technical assistance (e.g., procedural manuals and training) to the agency's civil rights enforcement components (e.g., field offices and contracting agencies)?
- ☐ Does the agency have a regular and effective program to provide external technical assistance to entities striving for compliance (e.g., employers, federal funding recipients, and health care providers)?

Policy Guidance and Regulations

- ☐ Does the agency have a civil rights policy development unit, without civil rights compliance and enforcement responsibilities, to actively develop and issue civil rights standards and policies?
- ☐ Does the agency develop new internal procedural guidance and policy or provide regular and up-to-date issuance and promulgation of internal policy guidance, guidelines (including procedural guidelines and manuals), and interpretations of laws?
- ☐ Does the agency develop new external policy guidance, guidelines, regulations and interpretations of laws, or provide regular and up-to-date promulgation of external policy guidance, guidelines, regulations, and interpretations of laws?
- ☐ Does the agency involve community and advocacy groups when developing policy guidance, guidelines, etc.?
- ☐ Has the agency developed or issued policy guidance on recent civil rights issues such as those concerning changes in statutes or interpretations of civil rights laws?
- ☐ Has the agency undertaken any initiatives or issued policy on the following civil rights issues:
  - Cultural competency?
  - Diversity (cultural, racial, and gender)?
  - Limited English proficiency?
  - National origin?
  - Sex discrimination/sexual harassment?
  - Reaching underserved areas and communities?
  - Disability access?
  - Religion?
  - Racial profiling?

- ☐ Has the agency developed or issued policy guidance that interprets civil rights enforcement responsibilities by giving examples within the context of the agency's specific programs?
- ☐ Has the agency updated regulations on civil rights enforcement to reflect recent changes in legislation or interpretations of laws?

Education and Outreach to Potential Victims, Violators, and the Public

- ☐ Has the agency developed and effectively disseminated information in English and in other languages on civil rights and how to protect or enforce them?
- ☐ Are all agency components (headquarters, administrations, operating divisions, and regional and field offices) actively engaged in an effective education and outreach program?
- ☐ Does the agency ensure that information on civil rights enforcement is readily available to potential victims of discrimination, violators, and the public, including, with respect to Title VI, funding recipients, program participants, and intended beneficiaries?
- ☐ Has the agency actively involved advocacy and community groups in strategically planning and designing outreach activities?

COMPLIANCE FOR FUNDING RECIPIENTS

Pre-award Reviews

- ☐ Has the agency implemented a pre-award review system or conducted in-depth pre-award reviews of all applicants for major amounts of federal funding?
  - – Has the agency developed procedures for a pre-award review system?
- ☐ Does the agency monitor the quality of pre-award reviews to ensure applicants for federal funding comply with Title VI?

Post-award Reviews

- ☐ Has the agency implemented a post-award desk-audit program to review each recipient annually for compliance with Title VI and to identify which recipients will receive on-site compliance reviews?
- ☐ Has the agency developed appropriate procedures for selecting which funding recipients will receive on-site compliance reviews?
- ☐ Does the agency allocate sufficient resources (e.g., travel costs) for on-site reviews of funding recipients, particularly for evaluations of states that perform civil rights enforcement activities?
- ☐ Does the agency establish a goal for the number of on-site reviews to conduct in its annual planning (e.g., the number of reviews each regional or field office will complete)?
- ☐ Do the post-award reviews include reviews of the following types of information:
  - – Staffing patterns of the recipient's facility that could identify potential discrimination?
  - – Statistics on group participation rates and rejected applications?
  - – Applications and interview materials that could reveal possible barriers to participation?
  - – Interview responses of funding recipient officials, affected communities, program participants or beneficiaries, and service providers who assist participants and beneficiaries?
  - – Compliance policies and practices?
  - – Materials demonstrating efforts to increase program accessibility, including, for example, education about the program for the public and affected communities, and information provided in languages other than English?
- ☐ Do the post-award reviews produce written results with findings and recommendations for achieving compliance?
- ☐ Does the agency periodically evaluate the quality of on-site compliance reviews and provide technical assistance to the staff conducting them (e.g., to ensure consistent quality across regional or field offices)?

Deficiencies, Remedies, and Sanctions

- ☐ Has the agency requested additional resources to enhance the use of administrative sanctions in Title VI enforcement?

- ☐ Has the agency developed ways of using administrative sanctions to ensure compliance with Title VI?
- ☐ Has the agency engaged in any activities to inform Congress or the Department of Justice of the complexities of civil rights enforcement in block grant programs?

COMPLAINT PROCESSING, AGENCY-INITIATED CHARGES, AND LITIGATION

Complaint Processing and Investigation

- ☐ Has the agency established an effective intake process whereby charging parties can easily file a complaint?
- ☐ Does the agency have an adequate complaint database system to support complaint processing, including complaint intake and resolution?
- ☐ Has the agency established an effective process for complaints that minimizes backlogs and provides rapid dismissal for complaints the agency will not pursue?
- ☐ Does the agency make effective use of contracting agencies or offices with parallel jurisdiction (such as FHIPs, FEPAs, TEROs, and U.S. attorneys' offices) in handling complaint overflow?
- ☐ Does the agency have procedures that clearly delineate the roles and responsibilities of the various offices and/or individuals responsible for complaint processing?
- ☐ Has the agency developed and implemented a system for reviewing the quality of the charge handling process, including investigations, to ensure the accountability of enforcement staff?
- ☐ Has the agency developed and implemented standard guidelines for conducting investigations, including timelines for various stages of an investigation?
- ☐ Does the agency develop written investigation plans for complaints?
- ☐ Does the agency initiate sufficient numbers of on-site investigations?
- ☐ Has the agency developed standards for the dismissal of complaints and for letters of finding?
- ☐ Has the agency established a reasonable appeals process for complainants who challenge the agency's handling of their charges?
- ☐ Does the agency have a customer service system to keep charging parties updated on the status of a complaint?

Agency-Initiated Charges

- ☐ Has the agency developed a strategy for proactive enforcement to identify and pursue cases not easily reached through individual complaints (such as systemic discrimination)?
- ☐ Does the agency seek to identify discrimination (e.g., through the use of testers or analyses of statistical data)?
- ☐ Does the agency initiate enforcement activities that are not in response to a filed complaint?

Litigation

- ☐ Has the agency developed a litigation strategy to address important or emerging substantive issues within resource limitations?
- ☐ Does the agency manage its limited resources for litigation with strategies such as:
  - –Using an attorney-referral program?
  - –Using mediation, conciliation, or other alternative dispute resolution techniques to avoid costly court cases?
  - –Using litigation when it is most needed, for example, in systemic cases, or to ensure compliance or address conciliation breaches?
  - –Appropriately delegating litigation authority to other staff?
- ☐ Has the agency developed a litigation strategy to address important or emerging substantive issues within resource limitations?
- ☐ Does the agency pursue broad resolution and relief in its cases?
- ☐ Does the agency conduct regular compliance monitoring of existing consent decrees, agreements, etc.?

STAFF TRAINING

- ☐ Has the agency provided appropriate training for enforcement staff on:

- Internal procedures for civil rights enforcement activities?
- The applicable civil rights statutes and policies?

INTERACTION AND COORDINATION WITH EXTERNAL AGENCIES AND ORGANIZATIONS

- ☐ Has the agency established the appropriate relationship between internal agency offices and components?
- ☐ Has the agency established the appropriate relationships with the following external agencies and organizations to carry out its enforcement responsibilities:
  - Other federal agencies that share or have similar civil rights enforcement responsibilities?
  - Professional organizations?
  - Contracting agencies or offices with parallel jurisdiction that assist in carrying out civil rights enforcement responsibilities (e.g., U.S. attorneys' offices, FHAPs, FEPAs, TEROs)?
  - Advocacy groups and community organizations?
  - Federal funding recipients that have subrecipients (e.g., states)?
- ☐ Are the roles and responsibilities of any agencies and organizations that assist in the civil rights enforcement clearly articulated (e.g., through the use of memoranda of understanding or states' methods of administration)?

RESEARCH

- ☐ Has the agency collected and analyzed additional data and research showing or dispelling concerns about discrimination or disparities among groups in pertinent program areas (e.g., job patterns, educational opportunities, and health needs)?