



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

HRD-77-78

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The Honorable Birch Bayh
United States Senate

Dear Senator Bayh:

Pursuant to your letter of December 18, 1975, and subsequent discussions with your office, we made a limited review of the Department of Health, Education, and Welfare's Office for Civil Rights (OCR).

In your letter, you expressed deep concern that problems in OCR's management and use of resources had seriously impaired its effectiveness in carrying out its Federal civil rights enforcement responsibilities. Similar concerns have been expressed by other members of the Congress and by a substantial number of civil rights groups over the past several years who charge that OCR has failed to adequately protect the civil rights of racial and ethnic minority groups, women, and handicapped persons. Accordingly, you requested that we review OCR's management of its civil rights enforcement responsibilities with particular emphasis on the way OCR was using its resources.

Our review was performed at OCR's Washington, D.C. headquarters and its New York and Philadelphia regional offices. As requested, we inquired into OCR's appropriations, staffing, complaint processing and compliance review policies and procedures, resources expended on various enforcement activities, and the results/accomplishments achieved by OCR under each of the Federal civil rights laws for which it has enforcement responsibility. A general across-the-board absence of basic management information, however, severely hampered our audit work in each of these areas and precluded a more detailed evaluation of OCR's operations. This and other management problems observed during the course of our limited review are summarized below.

HRD-77-78

BACKGROUND

The Office for Civil Rights, under the general direction of the Secretary, is charged with directing, coordinating, and enforcing the Department's nondiscrimination responsibilities related to Federal financial assistance programs pursuant to title VI of the Civil Rights Act of 1964; titles VII and IX of the Education Amendments of 1972; titles VII and VIII of the Public Health Service Act; section 407 of the Drug Abuse and Treatment Act of 1972; section 321 of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, as amended; section 504 of the Rehabilitation Act of 1973; and section 7(b) of Public Law 93-638. OCR is also responsible for enforcing Executive Order 11246 equal employment opportunity requirements for construction contracts involving Department funds and for Federal contracts involving insurance; insurance agents; medical, legal, and education services; museums and art galleries; nonprofit organizations; and certain State and local governments.

Organization

Prior to 1967, the Department's civil rights responsibilities were scattered among its various program agencies except that actual enforcement proceedings were centralized in the Department's Office of General Counsel. This administrative structure, however, proved unsatisfactory for a number of reasons. For example, it created coordination problems by having the civil rights responsibilities divided among various program agencies and levels within the Department; it involved complicated funding arrangements throughout the Department, which made it difficult to accurately assess the total amount of funds being used for civil rights; and it resulted in program funds being used to finance civil rights activities.

In 1967, at the behest of the House Appropriations Committee, the Department created a centralized Office for Civil Rights in the Office of the Secretary to correct the aforementioned administrative problems and to handle anticipated increases in workload. OCR was formed by a consolidation of the existing enforcement components and offices in the Department's various program agencies.

OCR's headquarters office is presently comprised of four major operating divisions, several administrative and support offices, and certain attorneys in the Office of General Counsel who are funded by OCR and who

are counted against OCR's authorized staffing ceiling. The four operating divisions are the Elementary and Secondary Education Division, the Higher Education Division, the Contract Compliance Division, and the Health and Social Services Division. OCR also has staff assigned in the Department's ten regional offices which are organized along similar lines.

During 1975, OCR's organizational structure was reviewed by a private consulting firm. By June 1976, OCR had completed furnishing its proposals for reorganization to the Secretary. However, no decision had been made on this matter as of January 1977.

Resources and Workload

In fiscal year 1967, the Department's budget for civil rights enforcement totaled \$3,434,000 with 278 authorized staff positions. Since that time, its civil rights enforcement responsibilities have increased significantly as additional nondiscrimination requirements have been enacted: These added responsibilities account for at least part of the substantial increases in OCR's appropriations and staffing in recent years as shown in the table below. Also shown in the table are the amounts of funds OCR returned to the U.S. Treasury and its staff vacancies as of the end of each fiscal year.

<u>Fiscal year</u>	<u>Funding</u>		<u>Staffing</u>	
	<u>Appropriations (note a)</u>	<u>Returned to Treasury</u>	<u>Authorized</u>	<u>Vacancies</u>
1970	\$ 6,154,000	\$ 228,000	401	22
1971	9,408,000	734,000	550	75
1972	11,759,000	319,000	596	81
1973	15,828,000	884,000	706	135
1974	18,576,000	3,599,000	872	147
1975	22,172,000	2,568,000	847	66
1976	25,113,000	599,000 <u>b/</u>	904	115

a/

Includes authorized transfers from the Social Security Administration but does not include a proposed supplemental appropriation for October 1976 pay increases.

b/

Covers a 15-month period, including the 3-month transition quarter.

An OCR official stated that the large amounts returned to the Treasury for fiscal years 1974 and 1975 were primarily due to hiring freezes imposed by the White House and contract freezes imposed by the Congress.

As discussed in more detail below, OCR does not have reliable workload and production statistics covering its operations over the past several years. Although the available information is not current, complete, or accurate, it indicates a substantial growth in OCR's complaint workload from year to year. Agency officials readily admit that OCR has not been able to keep up with its workload and accomplish many of its enforcement activities, primarily because of a lack of staff resources, and increased requirements imposed on OCR by the courts.

LACK OF A COMPREHENSIVE AND
RELIABLE MANAGEMENT INFORMATION SYSTEM

In an attachment to your December 18, 1975, letter and in subsequent discussions with your office, a series of questions was posed for us to consider in our review of the Office for Civil Rights. The questions relate primarily to the nature and extent of OCR's complaint and compliance review workload, case processing timeframes, and the number and type of resolutions and settlements being achieved. Much of the information requested appears to be the type of data that would be essential for effective administration and management of OCR's Federal civil rights responsibilities. However, most of the requested information was not readily available in OCR.

OCR did not know and could not readily ascertain for fiscal years 1970-1976

- how many complaints had been received by type (race, sex, national origin, handicap, etc.) and by authority (title VI, title IX, section 504, etc.);
- how many of these complaints were in each stage of the enforcement process (awaiting investigation, investigation in process, investigation completed, letter of findings issued, etc.);

- what was the average age of the complaints in each step of the enforcement process;
- what proportion of these complaints received an "on-site" review;
- how many of these complaints had been closed and on what basis (successful settlement, complaint withdrawn, no jurisdiction, not meritorious, referred to another agency, etc.);
- for those cases referred to the Equal Employment Opportunity Commission, what was the final disposition and how long it took to resolve the complaints;
- how much staff time was spent on the average complaint;
- the extent that the amount of staff time varied by type of discrimination complaint and by authority;
- if there were any correlation between the amount of staff time spent on each complaint and the relative success of the complaint resolution process;
- the extent that the amount of lapsed time varied for complaint resolutions by type of discrimination and by authority;
- how many compliance reviews (broken down by type of discrimination) had been initiated, how many had reached each stage of the compliance review process, and what was the final disposition of those which had been completed;
- what portion of OCR's funding and staff resources had been devoted to its various enforcement activities (complaint investigations, compliance reviews, equal educational services reviews, training, data collection, etc.);
- the extent that the problem of discrimination in Federal financial assistance programs has been

reduced as a direct result of OCR's enforcement activities; and

--how much of the discrimination problem still remains.

In short, OCR does not have a comprehensive and reliable management information system which provides top-level officials with the basic data needed for making management decisions and improving the agency's efficiency and effectiveness in carrying out its civil rights enforcement responsibilities. OCR has attempted to compile some of the information outlined above through physical inventories of case files and through sampling and projecting workload statistics; however, these efforts have not proven satisfactory.

OCR has a computerized civil rights case following system which evolved from a departmental correspondence tracking system. The computerized system is designed to monitor the status of complaints and compliance reviews in OCR's enforcement process. However, the system does not contain a comprehensive record of OCR's cases. For example, the Health and Social Services Division has entered only those cases commenced since 1975. OCR officials stated that Health and Social Services' data prior to 1975 would not be entered into the case following system because the Division lacked the personnel resources to search the necessary files to compile and computerize the data. Although some operating divisions plan to include pre-1975 cases in the system, all of them have experienced difficulties in getting their field offices to compile and submit this data for inclusion in the system.

Once the case following system becomes fully operational it will still fall far short of providing OCR with the broad range of basic management information outlined above. Instead, it will simply permit OCR to monitor the various milestones in the complaint investigation and compliance review processes, such as when a complaint was received, when a complaint was assigned for investigation, and when the investigation was initiated.

LACK OF UNIFORM POLICY
GUIDELINES AND COMPLIANCE STANDARDS

The Office for Civil Rights has not developed uniform policy guidelines and compliance standards for office-wide application in carrying out its civil rights enforcement responsibilities. Instead, each of the four operating divisions has a separate policy unit within its organizational structure which is responsible for developing policy guidelines and compliance standards for use by the headquarters and field personnel assigned to that particular division. In addition, OCR has an Office of New Programs which is responsible for developing regulations and guidelines for newly delegated authority; however, its only project to date has been the drafting of regulations for the implementation of section 504 of the Rehabilitation Act of 1973. In some instances, field offices independently developed their own policy guidelines and compliance standards without the knowledge of the headquarters operating divisions.

This fragmentation of the responsibility for development of guidelines and standards has resulted in the various divisions operating as separate entities rather than as members of the same organization. For example, they duplicated each other's efforts and failed to share their interpretations of civil rights laws and information which could serve as input into generic or uniform OCR policy guidelines and compliance standards for assessing the compliance status of recipients of Federal financial assistance. As a result, the guidelines and standards have tended to be somewhat disjointed and dissimilar.

Additionally, some civil rights program areas have been neglected in the development of policy guidelines and compliance standards. Only the Higher Education Division and the Contract Compliance Division have developed operating manuals containing policy guidelines and civil rights compliance standards for use by their respective headquarters and field office personnel; the Elementary and Secondary Education Division and the Health and Social Services Division have not developed uniform divisional guidelines. One Health and Social Services Division official blamed a lack of staff

resources for that Division's failure in this regard. Accordingly, there has been a lack of uniformity in some field office enforcement actions. In addition, the section 504 regulations drafted by the Office of New Programs have not been issued although it has been over 3 years since enactment of the legislation.

The proposed reorganization of OCR, which was submitted to the Secretary during fiscal year 1976, provided for the establishment of a single organizational unit within OCR which would be responsible for developing office-wide policy guidelines, operating procedures, and compliance standards. As previously noted, however, no action had been taken on the reorganization as of January 1977.

FAILURE TO DETERMINE JOB SKILLS AND KNOWLEDGE
REQUIRED FOR EFFECTIVE PERFORMANCE OF OCR'S
CIVIL RIGHTS ENFORCEMENT RESPONSIBILITIES

Several top-level agency officials told us that one of the main reasons for the Office for Civil Rights' limited effectiveness has been a lack of quality staff--particularly employees with adequate investigative skills. Some officials stated that investigations often took too long and were not adequate because the investigators did not have sufficient legal training and investigative-type work experience. One official said OCR needed a cadre of investigators who could conceptualize what it takes to develop a case and define appropriate legal hypotheses.

In this regard, most of OCR's professional employees, including its investigators, are classified under the Federal personnel system as Equal Opportunity Specialists, Job Series No. 160. OCR officials indicated that the work experience of these persons primarily involved the delivery of program services and their academic training was generally in the social science area which, in these officials' opinion, did not meet OCR's needs.

There is no evidence that OCR has ever made a detailed analysis of its work tasks to determine the job skills and knowledge actually required to effectively carry out its civil rights compliance and enforcement

responsibilities. Without such an analysis, OCR is not in a position to determine to what extent untimely and inadequate investigations and other enforcement activities may be attributed to the quality of staff hired under Job Series No. 160.

ABSENCE OF UNIFORM CRITERIA FOR
ALLOCATING STAFF RESOURCES AMONG
OCR'S VARIOUS ENFORCEMENT ACTIVITIES

The Office for Civil Rights does not have a uniform system or criteria for determining staffing needs and allocating staff resources among its various organizational components and enforcement activities on the basis of workload and productivity. The operating divisions and regional offices have used a variety of methods for determining their staffing requirements, including attempts to systematically collect time-cost data, use of estimated time-cost data, and on-site reviews of staff operations.

We found no evidence that staff requirements for the operating divisions and regional offices were based on the actual size of their respective complaint backlogs, a comprehensive analysis of their complaint and compliance review workloads compared to productivity levels, and planned accomplishments. This problem may be attributed, at least in part, to the absence of reliable workload and productivity statistics.

In addition, we noted instances in which staff officially assigned to authorized positions in one division and/or regional office were informally reassigned to other divisions or regional offices for indefinite periods of time to work on crisis situations, newly initiated compliance projects, or for other purposes. For example, because of a court order directing OCR to concentrate its efforts on resolving complaints in its backlog, OCR borrowed staff from other regions and headquarters to process incoming and current work in the Dallas office, which had the greatest backlog problem, so that the Dallas staff could work on its complaint backlog.

OCR officials acknowledged that in some cases these informal, "temporary" assignments have adversely affected the ability of the regional offices supplying such personnel to (1) eliminate their own complaint backlogs, (2) carry out compliance reviews, and (3) meet the statutory requirements for reviewing and approving desegregation plans under the Emergency School Aid Act, as amended.

COORDINATION BETWEEN OCR AND THE
DEPARTMENT'S PROGRAM AGENCIES IS
LIMITED

Since its establishment in late 1967, the Office for Civil Rights has not systematically coordinated its civil rights enforcement and compliance activities with the Department's various program agencies and activities, except for portions of the Emergency School Aid program. Moreover, with this one exception there are no established policies, guidelines, procedures, or reporting systems for OCR staff to follow or use in order to monitor the Department's program activities, or lend technical assistance to program officials to insure full implementation of the Department's civil rights responsibilities under the various Federal financial assistance programs it administers.

As a result, OCR is not always aware of program activities and policy decisions that may impact on or otherwise have implications for civil rights compliance. Also, OCR does not systematically coordinate with the Department's program officials on affirmative action matters in the award of Federal financial assistance.

The one area in which systematic coordination has taken place is OCR's reviews of Emergency School Aid Act applications received by the Office of Education, which are specifically required by legislation. Also, the Department's Public Health Service has taken some steps to include affirmative action and civil rights compliance in its program activities, and has voluntarily coordinated some of the planning of these efforts with OCR.

COMMUNICATION BETWEEN HEADQUARTERS
AND REGIONAL OFFICES IS LIMITED

The Office for Civil Rights does not appear to have an effective communication or information dissemination system for keeping its field offices informed in a timely manner of headquarters pronouncements and actions on field issues. OCR regional office officials told us they sometimes receive information on OCR headquarters policies and actions via the news media or community sources prior to the receipt of official copies or notices of new compliance issues, policy pronouncements, or actions that OCR will take on matters of direct relevance to their particular regions. Some regional office staff stated that these incidents not only caused them personal embarrassment, but also tended to reduce the agency's credibility and effectiveness with those with whom it deals, such as beneficiaries under Federal financial assistance programs, Federal fund recipients, adversaries, and communities.

COSTS AND BENEFITS OF PROTOTYPE
PROJECTS AND UNIQUE COMPLIANCE
REVIEWS ARE UNKNOWN

The Office for Civil Rights has not made any provisions for monitoring the costs incurred on nor the benefits derived from large prototype projects or unique compliance reviews which it has undertaken from time to time, such as the equal educational services review conducted in New York City, even though OCR officials view these efforts as significant in terms of costs and staffing.

During its first few years of existence, OCR's primary compliance emphasis in the area of education was on the elimination of de jure segregation in public schools. In more recent years, OCR has expanded its program beyond student assignment issues to include equal educational services. The equal educational services review approach was conceived and developed to determine whether there is discrimination on the basis of race, color, national origin, sex, or handicap in the delivery of educational services. The New York City review, which was to be a prototype for subsequent equal educational services reviews in Philadelphia,

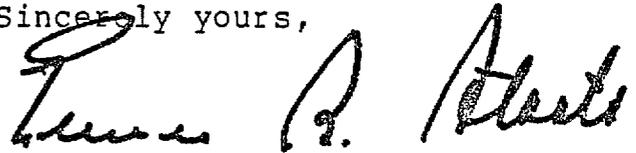
Chicago, and Los Angeles, has been substantially completed and work in the other cities has begun on a limited basis.

However, OCR does not know the amount of costs incurred on the New York City review. Since its beginning in fiscal year 1972, a number of contracts related to the review have been awarded, expensive equipment has been purchased, office space has been leased in the World Trade Center, part-time staff has been hired, and practically all of the permanent staff in the Elementary and Secondary Education Branch in the New York Region have worked extensively on the review; yet, no provisions have been made to track these expenditures and accumulate the costs of this prototype effort. In addition, no provisions have been made to measure the results or benefits expected to accrue from this effort to determine whether the same results could have been achieved through other less-costly compliance activities.

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As requested by your office, officials of the Department of Health, Education, and Welfare have not been given an opportunity to consider and comment formally on the contents of this report.

Sincerely yours,

A handwritten signature in black ink, appearing to read "James A. Abate". The signature is written in a cursive style with a large initial "J".

Comptroller General
of the United States