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Report to the Chairman, Subcommittee on the Constitution, Committee on the Judiciary, House of Representatives

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CIVIL RIGHTS DIVISION

Selection of Cases and Reasons Matters Were Closed

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United States General Accounting Office
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General Government Division

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September 27, 2000

The Honorable Charles T. Canady
Chairman, Subcommittee on the Constitution
Committee on the Judiciary
House of Representatives

Dear Mr. Chairman:

The Justice Department's Civil Rights Division (which uses the abbreviation CRT) is the principal federal authority charged with the responsibility of enforcing the nation's civil rights laws. The direction of CRT enforcement efforts has been the subject of several Subcommittee hearings. Furthermore, CRT enforcement actions have been affected by several U.S. Supreme Court decisions rendered in the 1990s that provided new guidelines for the enforcement of certain federal civil rights laws and affirmative action programs.[1] In your CRT-oversight role, you requested that we review several issues that included, among other things,[2] determining CRT's approach for selecting cases to pursue and the reasons that matters were closed.[3] This letter provides information on these two issues for the Employment Litigation, Housing and Civil Enforcement, and Voting sections in CRT.

Background

CRT was established in 1957 and is the primary institution within the federal government responsible for enforcing federal statutes prohibiting discrimination on the basis of race, color, sex, handicap, religion, age, familial status, and national origin (referred to as protected classes).[4] CRT has grown in size from 15 attorneys in 1958 to 274 attorneys at the end of fiscal year 1999. CRT's responsibilities also grew over this period. CRT

[1] Adarand Constructors, Inc., v. Pena, 515 U.S. 200 (1995); Seminole Tribe of Florida v. Florida, 517 U.S. 44 (1996); Shaw v. Reno, (Shaw I), 509 U.S. 630 (1993), and Shaw v. Hunt, (Shaw II), 517 U.S. 899 (1996).

[2] We have responded to other issues that you requested we review in two products issued earlier this year, Information on Civil Rights Division Operations (GAO/GGD-00-58R, Feb. 17, 2000) and Civil Rights Division's FY 2000 Performance Plan Could Be Improved (GAO/GGD-00-90R, Mar. 30, 2000).

[3] A "matter" is defined as an activity that has been assigned an identification number but has not resulted in the filing of a complaint, indictment, or information. A "case" is defined as an activity that has been assigned an identification number that has resulted in the filing of a complaint, indictment, or information.

[4] CRT uses the term "protected class" to refer to the different groups covered in the statutes that it enforces.

enforces the federal Civil Rights Acts; the Voting Rights Act (VRA) of 1965, as amended through 1992; the Fair Housing Act (FHA)[5]; the Equal Credit Opportunity Act (ECOA); the Americans with Disabilities Act (ADA); the National Voter Registration Act (NVRA); the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA); the Voting Accessibility for the Elderly and Handicapped Act; and additional civil rights provisions contained in other laws and regulations. These laws prohibit discrimination in education, employment, credit, housing, public accommodations and facilities, voting, and certain federally funded and conducted programs.

CRT is headed by an Assistant Attorney General who reports to the Associate Attorney General. CRT has eight sections that have enforcement responsibilities over particular subject areas related to prohibited discrimination. The Employment Litigation, Housing and Civil Enforcement, and Voting sections are among the largest of these sections. These three sections are managed by a section chief and several deputy section chiefs. CRT's organizational chart and a brief description of the organization can be found in appendix I.

Because CRT does not have written policies or procedures for selecting matters that are to be pursued as cases nor written documentation of internal processes for handling matters and cases, we interviewed the section chiefs for the Employment Litigation, Housing and Civil Enforcement, and Voting sections and asked them to describe the process to us. According to these officials, the process, from initiating a matter to the filing of a lawsuit, can vary among the sections. While some steps were common to all three sections, variation occurs because of the structure of the statutes they enforce.

The Employment Litigation section receives referrals from the Equal Employment Opportunity Commission (EEOC) and the Housing and Civil Enforcement section receives referrals from the Department of Housing and Urban Development (HUD) and federal bank regulatory agencies.[6] All three sections receive allegations of discrimination from numerous other

[5]The Fair Housing Act is Title VIII of the Civil Rights Act of 1968, as amended. Key amendments to the act were contained in the Fair Housing Amendments Act of 1988.

[6]For the Employment Litigation section, the term "charge" refers specifically to those allegations of discrimination referred to them by EEOC. HUD refers allegations of discrimination under FHA to the Housing and Civil Enforcement section. The federal bank regulatory agencies also refer allegations of discrimination to the Housing and Civil Enforcement section under the Equal Credit Opportunity Act. We will use the term "referral " to refer to HUD, regulatory agency, and EEOC referrals. The more general term "allegation of discrimination" will be used to describe all other instances of alleged discrimination.

sources such as citizens, advocacy groups, private attorneys, and other federal agencies. According to CRT, when a referral or allegation of discrimination is received, each section will frequently initiate a matter to review or investigate the referral or allegation.

The Employment Litigation section reviews referrals received from EEOC and has the discretion to select which matters to pursue as investigations. If the Employment Litigation section does not pursue the referral received from EEOC, the section is to return the file to the agency and issue a right-to-sue letter to the charging party or their attorney. The right-to-sue letter informs the charging party of their right to file a private lawsuit. In contrast, the Housing and Civil Enforcement section is required to file a lawsuit for some HUD referrals that involve violations of the FHA, when the complainant or respondent elects to have the case heard in federal court. The Voting section differs from the other two sections in that it generally does not receive referrals from other federal agencies.

The sections also undertake investigations that tend to be larger and more complex than referrals that allege a single act of discrimination against a person or persons. In the Employment Litigation and Housing and Civil Enforcement sections, these investigations are referred to as "pattern or practice,"[7] and in the Voting section, they are systemic investigations.

We found that, in addition to initiating matters to investigate referrals or allegations of discrimination for possible litigation, the Voting section initiated matters to monitor private lawsuits and to observe elections. Appendix II provides more detailed information on CRT's process for handling matters and cases.

One of CRT's roles is to represent the United States as plaintiff in a case whereby it brings a lawsuit against an entity for alleged discriminatory behavior or practices. However, CRT can also represent the United States as a defendant in certain circumstances. For example, CRT sometimes becomes involved in cases while representing the United States as defendant because of lawsuits brought by plaintiffs against federal agencies challenging the enforcement of certain laws passed by Congress.

[7]According to CRT, pattern or practice investigations and cases are generally defined as attacking a systemic practice of discrimination and not a single act against a person or persons.

In addition, CRT also participates on behalf of the United States as an amicus curiae or intervenor[8] in lawsuits brought by others.

Results in Brief

We reviewed case selection in CRT's Housing and Civil Enforcement, Employment Litigation, and Voting sections. According to officials in these sections, CRT does not have written procedures for selecting cases to pursue. Our review of cases found that—although cases were pursued for legal reasons—for many cases, the sections had discretion in deciding which cases they would pursue based on various criteria. Officials said that the predominant criterion for selecting cases to pursue is the legal merit of the case. Some cases we reviewed were initiated because the particular section had been delegated responsibility for defending certain charges brought against federal agencies. Officials said that other criteria or factors, in addition to legal merit, were more apt to be considered when they decided to initiate a matter for starting an investigation or considered participating in a lawsuit as an amicus curiae or intervenor. The section chiefs said other factors that were considered when selecting a case to pursue included (1) the priorities of the Attorney General or the Assistant Attorney General; (2) targeting enforcement to affect certain types of discrimination; or (3) targeting areas of the country with a predominance of minorities or prevalence of discrimination, among other things.

To determine CRT's approach for selecting cases to pursue, we reviewed 44 Housing and Civil Enforcement section and 6 Voting section cases that were initiated during fiscal year 1998.[9] For the Employment Litigation section, we reviewed 21 cases—which included 20 cases initiated during fiscal year 1998 and the single pattern or practice case initiated in fiscal year 1999, since no pattern or practices cases were initiated in fiscal year 1998. We interviewed section chiefs about factors considered when they decided to investigate the matters that became cases. In interviews with the section chiefs, we found numerous instances where the previously mentioned factors were considered when cases were pursued. For example, our review of the Housing and Civil Enforcement section case files showed that the section had initiated pattern or practice cases, which the Attorney General and Assistant Attorney General deemed a priority for the section because of their broad impact, according to the section chief. The section chief indicated that, in one lending pattern or practice case,

[8]A plaintiff refers to the party that initiates a lawsuit in court. A defendant is one against whom an action is brought. An amicus curiae refers to a person who advises a court on a matter of law in a case to which he is not a party. To be an intervenor is to enter into a lawsuit as a third party for the protection of an alleged interest.

[9] The cases reviewed were initiated as matters in fiscal year 1998 (Oct. 1, 1997 to Sept. 30, 1998) and subsequently, a formal complaint was filed whereby the matter became a case.

the section targeted the discriminatory practices of a major lender that served a large area with a predominantly African-American population to send a message to other lenders in the area. Our review of the Employment Litigation section case files showed that several of the discretionary cases targeted a particular type of discrimination that involved complaints based on sexual harassment. The section chief stated that these types of EEOC referrals were often pursued as cases when they were deemed to have merit because this type of discriminatory behavior was difficult to identify through means other than individual EEOC referrals of harassment. Our review of the Voting section's discretionary cases found, for example, that the section had selected a case that involved the enforcement of voting practices and procedures for a language minority group, which was selected, in part, because it addressed a priority area of enforcement of the Assistant Attorney General. In addition, officials said that this case enabled the section to file a minority-language lawsuit in a location of the country that had been experiencing a growth in its minority population and that had not been targeted for enforcement in the past.

To determine the reasons that matters were closed, we reviewed the population of 54 Housing and Civil Enforcement section closed matters and 22 Voting section closed matters initiated in fiscal year 1998. For the Employment Litigation section, we reviewed a statistically representative sample of 64 Employment Litigation section closed matters from the population of 149 closed employment matters initiated in fiscal year 1998. The three sections had different reasons for closing matters because the types of matters initiated often differed. In our review of the Housing and Civil Enforcement and Voting sections matter files, we found that most matters were closed due to a lack of merit, the problem was resolved, or no further action was warranted. Voting section officials indicated that they also closed matters that were initiated to monitor private lawsuits and elections because no further action was warranted. For example, private lawsuits were subsequently resolved through court actions.

For the Employment Litigation section, most matters were initiated to review referrals from EEOC and to determine whether the section should participate in the matter or close it by notifying the charging party of their right to file a private lawsuit. Of the 64 closed matters, the 61 EEOC referred matters were closed because the section determined that participation was not justified. For some of the closed employment matters, the files cited additional reasons for closing the matter and not selecting it for further investigation. These included reasons such as (1) the limited scope of the referral—whether multiple victims would be

entitled to remedial relief—did not justify the resources necessary for prosecution, (2) EEOC did not recommend litigation, (3) the matter was resolved, or (4) the individual was represented by a private attorney. Seven of the closed EEOC-referred matters were selected for further investigation, and most of these were closed because the section determined the facts of the matter were problematic. The Employment Litigation section chief said that the decision to select a matter for further investigation was based on factors such as whether the matter had the potential to affect a larger population, target enforcement in a particular location, target a particular type of discrimination, or result in a change of policies or practices that were discriminatory.

On September 11, 2000, CRT officials provided oral comments whereby they agreed with the message of this report.

Objectives, Scope, and Methodology

Our review focused on three of the CRT sections—Employment Litigation, Housing and Civil Enforcement, and Voting. These sections were selected because they were among the largest of the eight sections with enforcement responsibility in the division. Our objectives were to (1) describe the reasons why each section selected some matters to pursue as cases filed in court and (2) describe the reasons why each of the three sections closed matters. Section officials said that lawsuits were filed based on their legal merit. However, inherent in the decision to initiate a case or not pursue a matter is the application of a variety of judgmental factors, such as availability of resources and enforcement objectives.

To determine why some matters were closed and others were pursued as cases, we obtained information from CRT's Case Management System (CMS). CRT provided CMS data on matters and cases for fiscal years 1994 to 1999 as of October 31, 1999. CRT's CMS included limited data on matters and cases opened and closed by each section, in part, because each section used the system somewhat differently. Therefore, we supplemented the CMS data with a review of individual matter and case files. We reviewed matter and case files in each of the three sections, using a structured data collection instrument to record information such as the nature of the allegation and the reasons for closing the matter. Some files had more information than others, and the Employment Litigation and Housing and Civil Enforcement sections' files often contained closing memorandums that summarized why the matters were closed. After reviewing these files, we discussed the matters and cases for each section with the section chief or a deputy section chief. For many of the matters and cases, the section chief or deputy section chief was able to provide additional information not found in the files.

Using the CMS, we identified all matters that were initiated during fiscal year 1998 in the three sections in our review and that were closed as of October 31, 1999, with the exception of the Voting section, in which we used matters identified as closed by the end of March 2000. We were unable to identify closed Voting matters using the CMS because the Voting section had not entered information on closing dates into the database. Thus, we asked Voting section officials to identify which matters initiated in fiscal year 1998 were closed when we started our file review. We reviewed the entire population of closed matters initiated in fiscal year 1998 for the Voting section (22 matters) and the Housing and Civil Enforcement section (54 matters). Because of the larger number of closed employment matters initiated in fiscal year 1998 (149 matters), we reviewed a statistically representative sample (64 matters) from the population of closed employment matters initiated in fiscal year 1998. Of these 64 employment matters, 61 were referred by EEOC. For 10 of these 61 referrals, we were unable to determine the protected class and for 13 of the 61 referrals, we were unable to identify the alleged discrimination issue because the section decided not to pursue the referral, and the complaint file had been returned to EEOC. We do not know whether the protected class and the alleged discrimination issue were similar to those matters for which data were available. Thus, our findings regarding the protected class and alleged discrimination issue were limited to matters for which data were available.

Our case file review included all cases initiated during fiscal year 1998 in each of the three sections plus the single employment pattern or practice case that was initiated during fiscal year 1999. We included the additional pattern or practice case because a CRT enforcement priority is the pursuit of cases in which a pattern or practice of illegal behavior is alleged, and we wished to include, if possible, such a case in our review of cases for each section. Our case file review included both open and closed cases. We reviewed 21 employment cases, 44 housing cases, and 6 voting cases. We interviewed section chiefs about factors considered when they decided to investigate the matters that became cases and factors considered when they decided to file a lawsuit or amicus brief or intervene in a lawsuit. Officials said that the primary factor considered in deciding to file a lawsuit is the merit of the legal issues. They said that factors other than legal merit were more apt to be considered when they decided to initiate an investigation or participate in some other manner. Therefore, when we interviewed section officials about the reasons for pursuing a case, we discussed the factors considered when the section decided to initiate an investigation into the initial matter that subsequently became a case.

We performed our audit work in Washington, D.C., from November 1999 through August 2000 in accordance with generally accepted government auditing standards.

Employment Litigation Section Responsibilities

The Employment Litigation section enforces the provisions of Title VII of the Civil Rights Act of 1964, as amended, and other federal laws prohibiting employment practices that discriminate on the basis of race, sex, religion, and national origin against state and local government employers.

The section has two enforcement mechanisms. Under the statutes it enforces, the Attorney General has authority to bring lawsuits where there is reason to believe that a pattern or practice of discrimination exists. Generally, these are factually and legally complex cases that seek to alter an employment practice—such as recruitment, hiring, assignment, and promotions—which has the purpose or effect of denying employment or promotional opportunities to a class of individuals. Under its pattern or practice authority, the section obtains relief in the form of injunctive relief, systemic relief reforming unlawful employment policies and practices, offers of employment, back pay, and other compensatory relief for individuals who have been the victims of the unlawful employment practices. According to CRT, these cases are frequently resolved through settlement agreements prior to trial.

The section's second enforcement mechanism is filing lawsuits based upon referrals from EEOC. Individuals who believe that they were unlawfully denied an employment opportunity or otherwise discriminated against by a state or local government employer may file charges with the EEOC. If, after investigation, the EEOC determines that a charge has merit and efforts to obtain voluntary compliance are unsuccessful, the EEOC may refer it to the Employment Litigation section. The section then has authority to determine whether to initiate litigation. If the section decides not to initiate litigation, it issues a right-to-sue letter to the charging party.[10] A limited number of these lawsuits are initiated each year. According to the section chief, while the charges referred by EEOC for individuals may be small in scope when compared with pattern or practice lawsuits that target systemic discrimination practices, the individual cases are important. These individual cases are important because they (1) might not be pursued without the section's participation and (2) often address types

[10]The section is required under Title VII to notify the charging party of their right to file a private lawsuit.

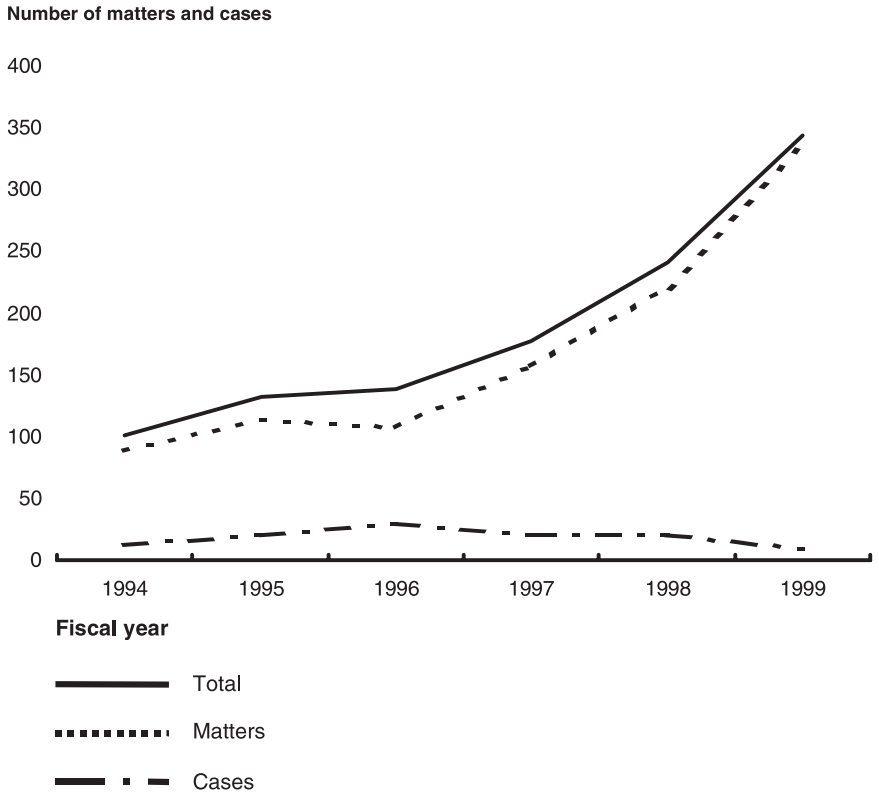
of discrimination that may not be remediable through pattern or practice lawsuits.

The section also represents the Departments of Labor and Transportation and other federal agencies when they are sued for what is alleged to be overzealous enforcement of federal laws that prohibit discrimination and/or require affirmative action by government contractors or recipients of federal financial assistance. In addition, the section has authority to prosecute enforcement actions for the Department of Labor of referrals arising under Executive Order 11246, which prohibits discrimination in employment by federal contractors.

Enforcement Efforts in Fiscal Years 1994 to 1999

The number of matters initiated by the Employment Litigation section has increased significantly over the past 6 years. As shown in figure 1, the number of matters increased over 250 percent from fiscal year 1994 to 1999. Although the number of cases initiated fluctuated some from year to year, the section initiated on average about 19 cases per year between fiscal years 1994 and 1999. According to the section chief, the number of matters increased significantly because EEOC streamlined its processing of referrals and was referring more matters.

Figure 1: Employment Matters and Cases Initiated for Fiscal Years 1994 Through 1999



Source: CRT's Case Management System.

The Employment Litigation section represents other federal agencies when they are sued for allegedly overzealous enforcement of federal laws that prohibit discrimination or when they are challenged regarding the use of affirmative action programs regarding government contractors or recipients of federal financial assistance. Our analysis of the Employment Litigation section cases showed that of 113 cases initiated in fiscal years 1994 through 1999, 67 cases, or 59 percent, involved defending other federal agencies. According to the section chief, these types of cases increased because of a Supreme Court decision in 1995, referred to as the Adarand decision,[11] which affected the standard applied to federal affirmative action programs. According to a section official, they had to

[11]In Adarand Constructors Inc., v. Pena, 515 U.S. 200 (1995), the Supreme Court ruled that federal affirmative action programs to benefit minorities must meet the same "strict scrutiny" standard that applies to state and local programs. To survive strict scrutiny, federal programs must serve a compelling government interest and be narrowly tailored to meet that interest. Previously, the Court had subjected congressionally mandated affirmative action to a lesser standard of review in light of Congress' broad authority to enforce equal protection guarantees.

devote considerable resources to these cases, which affected its ability to initiate Title VII litigation.

Selection of Employment Litigation Cases to Pursue

The Employment Litigation section initiated 20 cases in fiscal year 1998 and 1 pattern or practice case in fiscal year 1999. The section brought lawsuits alleging violations of Title VII in six cases referred by EEOC that alleged state or local governmental entities had engaged in discriminatory activities and intervened in two private lawsuits. These eight cases were initiated at the discretion of the section. According to the section chief, the predominate criteria for pursuing discretionary cases is their legal merit.

The section also represented federal agencies in seven cases and monitored or provided assistance on six private lawsuits. Because the section, on behalf of the Department of Justice, is required to represent federal agencies when federal statutes related to employment discrimination or affirmative action programs are challenged, the section does not have the discretion to participate or not participate in these cases. However, we noted that of the seven cases where the section was representing other federal agencies, five involved lawsuits against federal agencies based on the Adarand decision. According to the section chief, an administration objective in these cases was to comply with the standards in the Adarand decision while preserving the intent of such programs. These cases also represented a body of on-going casework within the Department of Justice.

Aside from legal merit, the factors considered in selecting the eight discretionary cases included priorities of the Attorney General or Assistant Attorney General; the impact of the case in a type or category of discrimination or a particular location; meeting performance goals; and the casework of the section. Of the six discretionary cases where the section chose to pursue litigation against a state or local entity, five were filed on the basis of sex discrimination, and one on the basis of religious discrimination. According to the section chief, the section was interested in pursuing referrals by individuals that were based on sex—more specifically sexual harassment—or religious discrimination because such discriminatory practices are difficult to detect through pattern or practice investigations. The section chief said that individual referrals of sexual harassment and religious discrimination enable the section to combat these discriminatory practices.

Three of the sex discrimination cases illustrate factors other than legal merit that are considered when the section decides to pursue a case. In

one case, the section chief said that while the primary factor was the egregiousness of the alleged sexual harassment, another factor considered was the particular geographic location that the alleged discriminatory behavior occurred. Specifically, the discriminatory practice complaint was filed against a city police department in a small town, and the section chief said that filing the lawsuit enabled the section to publicize the issue of sexual harassment in order to deter such behavior on the part of other small-town law enforcement agencies in the surrounding area.

A second sex discrimination case involved a correctional facility. The section selected the case, in part, because it related to a body of casework that the section had an interest in pursuing. According to the section chief, the section has performed a large body of casework in assignment practices in state departments of corrections. The case we reviewed involved allegations that a county discriminated against guards at a correctional facility on the basis of their sex by pursuing certain policies and practices. The alleged practices discriminated against men and women by assigning only men to guard male inmates and only women to guard female inmates during trips outside of the facility. According to the allegation, these procedures were followed regardless of whether such gender-based assignments were reasonably necessary as bona fide occupational qualifications.

In a third sex discrimination case, the section weighed different factors in selecting a case that involved a lawsuit against a county and its role in ensuring a sexual harassment-free work environment for a female aide who was to go into a private home and provide services. According to the section chief, the case enabled the section to meet a priority of the Assistant Attorney General that the section initiate work in new areas apart from police and fire departments, and the case was of particular interest because it had the potential to establish case law. Other factors considered included affecting a particular type of discrimination and meeting performance goals. Specifically, the section was interested in pursuing sexual harassment cases and investigating a certain number of EEOC referrals that may become cases. Two of the section's annual performance goals were to (1) perform supplemental investigation for a percentage of EEOC referrals and (2) have a percentage of those investigations lead to lawsuits.[12]

[12]Civil Rights Division's FY 2000 Performance Plan Could Be Improved (GAO/GGD-00-90R, Mar. 30, 2000), provided information on potential improvements to CRT's annual performance plan.

The section intervened on behalf of the plaintiffs in two cases to defend the constitutionality of laws passed by Congress, referred to as Seminole Tribe[13] type cases. These particular cases drew into question the constitutionality of Title VII and the Equal Pay Act as applied to the state of Alabama. For example, in one of these cases, the defendant, a state university, asserted that Congress exceeded its authority when it extended coverage of Title VII and the Equal Pay Act to the states. Thus, the defendant argued immunity from claims of discrimination set forth in these statutes. The section intervened in these cases because the Attorney General and the Assistant Attorney General have designated these types of cases a Justicewide priority. Seminole Tribe type cases represent a body of casework within the Division and the Department of Justice. According to the section chief, the Attorney General convened a task force to coordinate all Department of Justice casework related to Seminole Tribe issues.

Table 1 summarizes the factors considered by the section when weighing whether to initiate an investigation for discretionary cases.

Table 1: Factors Considered by the Employment Litigation Section in Initiating Discretionary Cases

Case name	Case type	Attorney General priority	Assistant Attorney General priority	Impact in particular location	Impact in particular type or category of discrimination	Performance goal	Part of body of casework on going	Other
U.S. v. City of Winter Springs, FL	Plaintiff on behalf of U.S. in Title VII Litigation				•			
U.S. v. City of Alma, GA and Bacon City, GA	Plaintiff on behalf of U.S. in Title VII Litigation			•	•	•		
U.S. v. Columbus County, NC	Plaintiff on behalf of U.S. in Title VII Litigation		•		•	•		
U.S. v. North Little Rock School District	Plaintiff on behalf of U.S. in Title VII Litigation				•	•		

[13]Seminole Tribe of Florida v. Florida, 517 U.S. 44 (1996), (holding that Congress lacked authority under the Commerce Clause of the Constitution to abrogate state's eleventh amendment sovereign immunity).

Case name	Case type	Attorney General priority	Assistant Attorney General priority	Impact in particular location	Impact in particular type or category of discrimination	Performance goal	Part of body of casework on going	Other
U.S. v. Erie County, NY	Plaintiff on behalf of U.S. in Title VII Litigation				•		•	
U.S.and Terry Piersol v. City of Belen, NM	Plaintiff on behalf of U.S. in Title VII Litigation (pattern or practice case)			•				According to the section chief, the primary factor for initiating the investigation was the egregiousness of the defendant's behavior.
Diane Cummings, et al., v. University of Alabama at Birmingham	Intervenor on behalf of plaintiff	•	•				•	According to the section chief, the section has a responsibility to defend the constitutionality of laws passed by Congress.
Ethel Lois Larry, Denese Pounds v. Board of Trustees of the University of Alabama and the University of Alabama at Birmingham	Intervenor on behalf of plaintiff	•	•				•	According to the section chief, the section has a responsibility to defend the constitutionality of laws passed by Congress.

Source: Interviews with the Employment Litigation section chief.

Appendix III provides more information on the employment cases related to the types of cases, a description of the employment cases, and their dispositions as of April 2000.

Reasons That Employment Matters Were Closed

We reviewed 64 closed matter files in the Employment Litigation section. Of these 64 matters, 61 were EEOC referrals and 3 were referrals from another federal agency. We found that all of the EEOC referred matters were closed because the section concluded that participation was not justified. The three matters referred by another federal agency were closed because no further action was warranted.

For 20 of the EEOC referred closed matters, additional information was available either in the file or from section officials on the reason for closing the matter. Seven of these closed matters were selected for further

investigation or research, and six of these matters were closed because the attorney found problems with the facts of the matter. Thirteen of the EEOC referred matters were reviewed by the section and closed for various reasons, such as the limited scope of the referral did not justify the resources necessary to prosecute (7 matters); EEOC did not recommend litigation (3 matters); the matter was resolved (2 matters); or the individual was represented by a private attorney (1 matter).

According to the section chief, when reviewing EEOC referrals, emphasis was placed on pursuing those that could impact a particular type of discrimination, geographic location, affect a large group of people, or result in a change of policies or practices that were discriminatory. Thus, most EEOC referrals were returned to EEOC with a determination that CRT participation was not justified because they did not meet these criteria. The section chief also said that a secondary consideration was whether the charging party was represented by a private attorney.

Appendix IV provides information on employment matters, such as the protected class, the type of state or local entity alleged to have discriminated, a description of the employment closed matters, and the reason matters were closed. The appendix also provides additional information on the reasons the section selected the seven EEOC referred matters for further investigation or research.

Housing and Civil Enforcement Section Responsibilities

The Housing and Civil Enforcement section has responsibility for enforcing federal civil rights laws, including the Fair Housing Act (FHA), which prohibits discrimination in all types of housing transactions; the Equal Credit Opportunity Act (ECOA), which prohibits discrimination in lending; and Title II of the Civil Rights Act of 1964, which prohibits discrimination in places of public accommodation, such as hotels, restaurants, and certain places of entertainment.

The section is also responsible for enforcing several statutes that prohibit discrimination in, among other things, programs where the operator of the program receives federal funds. Such statutes include Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color, or national origin in federally funded programs; and section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of disability in federally funded programs. These kinds of cases can be brought only after a referral from the agency that administers the relevant federally funded program. According to the Housing and Civil Enforcement section chief, these kinds of cases represent only a small number of the section's cases.

The FHA applies not only to actions by direct providers of housing, such as landlords and real estate companies but also to actions by municipalities, banks, insurance companies, and other entities whose discriminatory practices make housing unavailable to persons because of their race, color, religion, sex, national origin, handicap, or familial status. Those practices include (1) directly refusing to sell, rent, or finance housing; (2) providing false information about housing availability; (3) blockbusting and steering;[14] (4) redlining;[15] and (5) discriminating by the use of zoning or other land power use. In addition, regarding individuals with disabilities, discrimination includes refusing to permit the reasonable modification of existing premises and refusing to make reasonable accommodations in rules, policies, practices, or services. The statute also requires that most multifamily dwellings constructed for initial occupancy after March 1991 be accessible for persons with disabilities.

The Fair Housing Amendments Act of 1988 created a new remedial structure to enforce the FHA, which significantly strengthened the federal role in the enforcement process by giving the Attorney General and HUD shared enforcement responsibility. In particular, the act expanded the types of remedies the Attorney General could obtain in lawsuits addressing discriminatory policies or "patterns or practices" and also created an administrative enforcement mechanism.[16] Under the amended FHA, individuals may file discrimination complaints with HUD, which is to investigate each complaint. If the complaint cannot be resolved in a conciliation process, HUD is required to determine whether there is reasonable cause to believe that the act had been violated. If HUD finds reasonable cause to believe that discrimination has occurred, it is to issue a charge of discrimination. An administrative trial of the charge is to occur unless either the complaining or responding party elects to have HUD findings of reasonable cause litigated in federal court by the Department of

[14]Blockbusting refers to the practice of real estate agents inducing owners to list property for sale or rent by telling them that persons of a particular race, color, religion, sex, national origin, handicap or familial status are moving into the area. Steering is the practice of real estate agents directing prospective home buyers that are interested in equivalent properties to different areas, according to their race.

[15]Redlining is the refusal of lenders to make mortgage loans in certain geographic areas regardless of the creditworthiness of the loan applicant, based on the racial or ethnic composition of the neighborhood.

[16]Under the original FHA, Justice could obtain only injunctive relief in cases involving a pattern or practice of discrimination or the denial of fair housing rights to a group of persons or intervention in private suits raising issues of general public importance. Justice did not have the authority to bring lawsuits on behalf of individual victims of discrimination. Similarly, HUD was authorized only to investigate and conciliate complaints of housing discrimination and had no power to take any enforcement action in court or before an administrative law judge.

Justice instead of through HUD administrative proceedings. As mentioned previously, these cases are known as election cases, and the section is required to file these cases in federal court. Because of the large number of election cases arising under the Amendments Act, in November 1993, the Attorney General asked the U.S. Attorneys' offices to participate in the program to enforce the FHA by assuming responsibility for many of the HUD election and prompt judicial action[17] cases.

In addition to election cases, the amended act requires HUD to refer to the Attorney General pattern or practice cases as well as any cases involving alleged discrimination in zoning and land use decisions. The section has discretion on whether these referrals warrant filing a lawsuit.

To help enforce the FHA, the section established a fair housing testing program in 1991. Generally, fair housing testing involves individuals who pose as prospective buyers or renters of real estate to gather information that may indicate whether a housing provider is complying with fair housing laws. Evidence gathered from the testing program might result in the filing of a lawsuit.

The ECOA prohibits discrimination in any aspect of a credit transaction and applies to any extension of credit, including extensions of credit to consumers, small businesses, corporations, partnerships, and trusts. The section may file a lawsuit when a case is referred by 1 of the 12 federal bank regulatory agencies—such as the Office of the Comptroller of the Currency (OCC)—or when the section independently identifies a pattern or practice of credit discrimination.

Enforcement Efforts in Fiscal Years 1994 to 1999

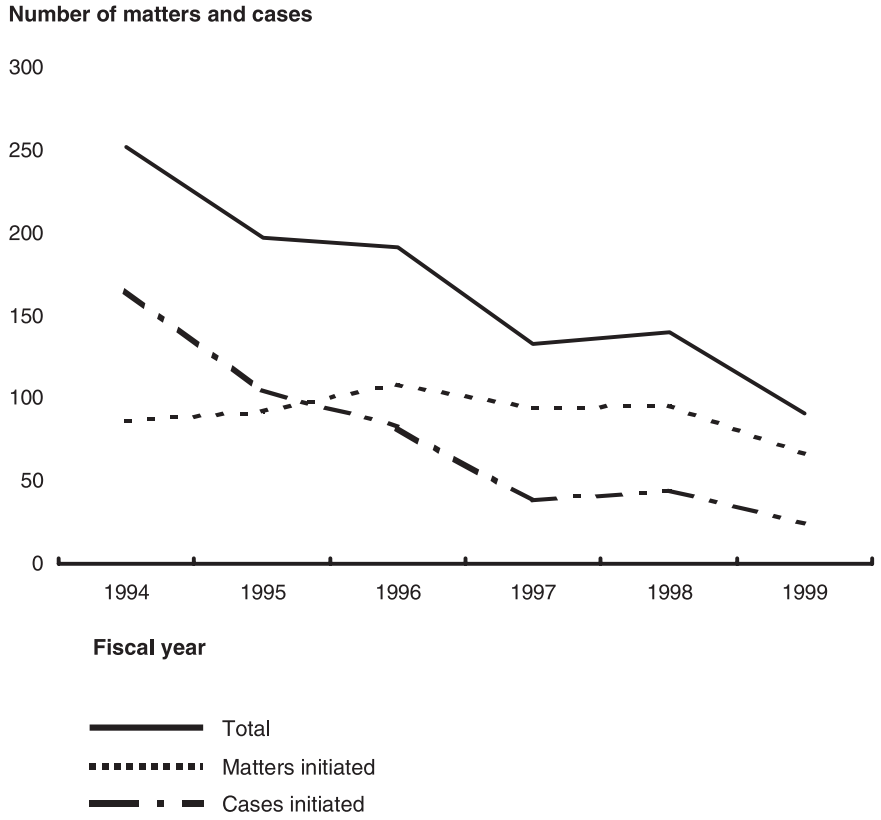
Our analysis of CMS data indicated that the Housing and Civil Enforcement section's volume of cases and matters has declined over the last 6 years. Between fiscal years 1994 and 1999, the total number of matters declined overall from 86 to 66, or 23 percent. However, in our analysis, we found that the percentage of matters involving a pattern or practice of discrimination increased over the past several years. For example, in fiscal year 1994, 28 percent (24 of 86) of the matters the section initiated involved allegations of a pattern or practice, compared with 55 percent (36 of 66) of the matters the section initiated in fiscal year

[17]Under section 810 (e) of the Amendments Act, HUD may authorize a civil action for appropriate temporary or preliminary relief pending final disposition of a complaint of housing discrimination that has been filed with HUD. The statute provides that when such authorization is received, Justice shall commence promptly and maintain a prompt judicial action lawsuit. The matters considered for prompt judicial action include potential emergency situations that require immediate action to prevent a threatened injury during HUD's investigation and processing of a complaint.

1999. According to the section chief, the increase was due, in part, to the U.S. Attorneys' offices assuming some of the responsibility for litigating election cases, which permitted the section to devote more of its resources to investigating pattern or practice matters.

Our analysis of CMS data showed an overall decline in the number of cases initiated by the section over the past several years. Figure 2 shows that, between fiscal years 1994 and 1999, the total number of cases initiated declined from 166 to 25, or by nearly 85 percent. Our analysis further showed that HUD election cases, which accounted for a majority of the cases initiated during that period, declined from 136 in fiscal year 1994 to 18 in fiscal year 1999. The section chief indicated that the decrease in the number of election cases being referred by HUD could be the result, in part, of more complaints of housing discrimination being handled by state fair housing agencies instead of HUD, as more state fair housing laws are determined to be substantially equivalent to federal law.

Figure 2: Housing and Civil Enforcement Matters and Cases Initiated for Fiscal Years 1994 Through 1999



Source: CRT's Case Management System.

Selection of Housing and Civil Enforcement Cases to Pursue

The Housing and Civil Enforcement section initiated 44 cases in fiscal year 1998. Of those cases, 32 were HUD election cases—4 of which included an additional allegation of a pattern or practice of discrimination. The remaining 12 cases included 7 pattern or practice cases, 4 cases in which the section filed an amicus brief, and 1 case in which the section served as intervenor on behalf of the plaintiffs. The section does not have discretion about whether to file a lawsuit for the HUD election cases, but the section has discretion about whether to attach a pattern or practice allegation to the HUD referred election complaint. Furthermore, the section has the authority and discretion to independently file pattern or practice cases and has discretion about whether to pursue referrals other than HUD election cases.

Regarding nondiscretionary HUD election cases—those that did not include pattern or practice allegations as part of the complaint—the only factor considered was the Department of Justice's legal requirement to file a lawsuit. However, for the discretionary cases, many of which included a pattern or practice allegation, the section considered various factors when deciding to investigate the allegations in the case or participate as an amicus curiae or intervenor.

Aside from the legal merits of the case, the factors considered in selecting the discretionary pattern or practice cases included the priorities of the Administration, Attorney General, or Assistant Attorney General; the impact of the case in a type or category of discrimination or a particular location; and the casework of the section. According to the section chief, the Attorney General and Assistant Attorney General generally consider pattern or practice cases a section priority because of their broad impact. Of the 16 discretionary cases shown in table 2, 11 cases are pattern or practice cases—4 election cases in which the section included a pattern or practice allegation, 2 lending cases, 3 testing cases, and 2 general pattern or practice cases. The remaining 5 discretionary cases involved the section's participation in cases as an amicus curiae or intervenor.

The section chief indicated that both of the lending cases in the 44 cases that we reviewed were considered section priorities of the Attorney General and Assistant Attorney General and that several other factors were considered in selecting the cases, such as the type of discrimination and the location in which the discrimination occurred. For example, one lending case involved discrimination by the largest bank in a particular southern state that served a very large area with a predominantly African-American population. The section chief indicated that by targeting the discriminatory practices of a leading lender, the section attempts to make

significant impact and send a broad message to other lenders, particularly in areas where discrimination appears to be pervasive. The section chief also indicated that lending cases are considered part of a body of ongoing casework. Furthermore, she said that the Department of Justice's views about what conduct violates fair lending laws, as expressed in complaints and consent decrees, have established benchmarks and standards of conduct within the lending industry, although most of the lending cases have resulted in settlements and have not gone through litigation.

The section chief indicated that, of the 44 cases we reviewed, the three testing cases were also section priorities of the Attorney General and Assistant Attorney General. For the most part, these cases allow the section to identify potential patterns or practices of housing discrimination that may go undetected. In one of the three testing cases, the section chief indicated that the impact of the case in the particular type or category of discrimination and the particular location in which the discrimination occurred were considerations in pursuing the case. Specifically, the case alleged that the owner of numerous rental units in a particular southern state and his former rental agents had discriminated on the basis of race by giving false information about apartment availability to African-American testers and applicants. The section chief noted that, as a result of the testing efforts, individuals in that area began to come forward with allegations of discrimination that may otherwise not have been brought forward.

In the two general pattern or practice cases that involved sexual harassment, the section considered the impact in a type or category of discrimination. According to the section chief, these cases alleged sexual harassment, an egregious form of housing discrimination. In both of these cases, the defendants were managers and owners of numerous rental properties that subjected female tenants to housing discrimination on the basis of sex in the form of sexual harassment. According to the section chief, the section tries to target these cases to give women an opportunity—particularly those in subsidized housing who have few alternative housing options and may not want to jeopardize their living arrangements—to come forward with complaints of discrimination.

The section chief indicated that, in the 44 cases reviewed, all the pattern or practice cases that involved discrimination based on race and national origin were considered priorities of the Administration, the Attorney General, and the Assistant Attorney General. As shown in table 2, these cases—which included various election and all testing and lending cases—accounted for the majority of pattern or practice cases that we reviewed.

In several of those cases, the section considered the location in which the alleged discrimination occurred. For example, one case involved allegations of housing discrimination in a relatively rural western section of the country that had a large number of Hispanic immigrants. Specifically, the owners and operators of a mobile-home park had discriminated on the basis of national origin by refusing to rent mobile-home space to Hispanic individuals. They also discriminated by refusing to allow Caucasian individuals to sell their mobile-home units to Hispanic individuals. According to the section chief, mobile-home parks can be the only source of housing for some people in rural areas, and pursuing these cases and others like them enables the section to be responsive to individuals that may have few housing options.

In addition to selecting pattern or practice cases, the decision to participate in cases as an amicus curiae or intervenor were based on several factors, including (1) the priorities of the Administration, Attorney General and Assistant Attorney General; (2) the impact of the case in a particular type of discrimination; and (3) the section's ongoing casework in the particular area. Three of the four amicus curiae cases and the one intervenor case were considered part of a body of ongoing casework. For example, according to the section chief, the section has filed amicus briefs in various cases to argue for a broad-standing analysis under Title VI. One amicus curiae case that we reviewed involved race discrimination in police profiling. Specifically, the plaintiffs in this case claimed that they were being stopped, searched, and detained by state police troopers along a major interstate because of their race and/or national origin, rather than on the basis of legitimate law enforcement reasons. The section's brief urged the court to find that there was a private right of action to enforce Title VI and that the plaintiffs had the right to assert such a claim.

Two other cases that involved the section's participation as an amicus curiae involved housing discrimination based on handicap. According to the section chief, the Attorney General and Assistant Attorney General consider accessibility cases a section priority. One case, for example, involved the applicability of the FHA requirements for accessible design. This case was filed against the builders of a condominium, alleging that the builder had designed and constructed the ground floor units in 10 of the buildings in a way that made them inaccessible to people with disabilities. This particular case was also part of a body of the section's ongoing casework.

In the one case where the section intervened, the section participated as an intervenor on behalf of the plaintiffs to defend the constitutionality of a

federal statute. This case was considered part of the section's ongoing casework. As mentioned previously, these types of cases, referred to as Seminole Tribe cases, are generally priorities of the Attorney General and Assistant Attorney General; and in this particular case, the Administration. In this case, the section had intervened to defend the constitutionality of parts of Title VI, which the defendants were challenging. Specifically, the plaintiffs in the case had filed a lawsuit to prevent the construction of a highway and tunnel through their neighborhood that would require the condemnation of several homes and allegedly cause flooding, noise and traffic problems, creating a disparate impact on their predominantly African-American community. The defendants moved to dismiss the lawsuit on the basis of Eleventh Amendment immunity or, in the alternative, asked the court to abstain from exercising federal jurisdiction in favor of state eminent domain proceedings.

Table 2 shows the factors that the section considered for the pattern or practice, amicus curiae, and intervenor cases that the Housing and Civil Enforcement section initiated in fiscal year 1998.

Table 2: Factors Considered by the Housing and Civil Enforcement Section in Initiating Discretionary Cases

Case name	Case type	Administration or presidential initiative or priority	Attorney General priority	Assistant Attorney General priority	Impact in a type or category of discrimination	Impact in a particular location	Part of a body of ongoing casework
U.S. v. Charles Harlan, et al.	Pattern or practice/ election	•	•	•	•	•	
U.S. v. Duane B. Hagadone and Fran I. Goff	Pattern or practice/ election				•	•	
U.S. v. Choice Property Consultants, Inc., et al.	Pattern or practice/ election	•	•	•	•		
U.S. v. Richmond 10-72 Ltd., et al.	Pattern or practice/ election	•	•	•	•		
U.S. v. A. Waddell Nejam, et al.	Pattern or practice/ testing	•	•	•	•	•	
U.S. v. Garden Homes Management Corp., et al.	Pattern or practice/ testing	•	•	•			
U.S. v. Henry K. Vernon, et al.	Pattern or practice/ testing	•	•	•		•	
U.S. v. L. T. Jackson; and L.T. Jackson Trust	Pattern or practice				•		

Case name	Case type	Administration or presidential initiative or priority	Attorney General priority	Assistant Attorney General priority	Impact in a type or category of discrimination	Impact in a particular location	Part of a body of ongoing casework
U.S. v. Lyle Kreuger[a]	Pattern or practice				•		
U.S. v. Associates National Bank	Pattern or practice/ lending	•	•	•	•		•
U.S. v. Deposit Guaranty National Bank	Pattern or practice/ lending	•	•	•	•	•	•
Maryland State Conference of National Association for the Advancement of Colored People (NAACP) Branches, et al. v. Maryland State Police, et al.	Amicus curiae						•
National Fair Housing Alliance Inc., v. Liberty Mutual Insurance Company, et al.	Amicus curiae				•		•
Baltimore Neighborhoods Inc., et al. v. Rommel Builders, Inc.	Amicus curiae		•	•	•		•
Project Life, Inc., et al. v. Parris Glendening, et al.	Amicus curiae		•	•	•		
Lillian E. Bryant, et al. v. New Jersey Department of Transportation, et al.	Intervenor on behalf of plaintiff	•	•	•			•

[a]This case also included an enforcement of conciliation.

Source: Interviews with the Housing and Civil Enforcement section chief.

Appendix V provides information on the Housing and Civil Enforcement section cases, such as the origin, legal role of the section, the protected class, a description of these cases, and their disposition as of May 2000.

Reasons That Housing and Civil Enforcement Matters Were Closed

Our analysis of the 54 Housing and Civil Enforcement section closed matter files showed that the section did not pursue specific matters for a variety of reasons. Half of the matters (27 of 54) were closed due to a lack of merit, while the remainder were closed because (1) the parties settled, (2) no further action was warranted, (3) the referral was returned to the referring agency for administrative resolution, or (4) for various other reasons, such as the complainant withdrew the complaint.

The 27 matters that the section did not pursue due to a lack of merit originated from various sources, such as citizens, the section's testing program, and a U.S. Attorney's office. For example, in one of these matters, the section investigated a complaint received from a citizen that alleged a pattern or practice of discrimination based on familial status. Specifically, a couple alleged that a condominium association had asked

them to sign a pledge that they would not have children as a condition of approval of their rental application. The Housing and Civil Enforcement section determined that no one else had been asked to sign a similar pledge and there did not appear to be any danger of a repetition. The section also determined that at least one other family with children lived in the complex.

In 8 of the 54 closed matters, the section did not pursue an investigation because it was able to resolve the matter out of court. For example, two HUD election matters that alleged rental discrimination on the basis of familial status resulted in presuit out-of-court settlements.

Seven of the closed matters, which alleged discrimination in lending, were returned to the referring federal bank regulatory agency for administrative resolution. In some of these matters, the lending institution had taken action to remedy the alleged discrimination. For example, one matter involved a referral from OCC alleging that a particular bank had engaged in a pattern or practice of lending discrimination through some of its policies. Specifically, the referral alleged that the bank administered a policy that required college freshman (except for adults returning to school to further their education), who applied for credit under the bank's student credit-card program, to have parental cosigners prior to obtaining a credit card. The bank took steps to remove the requirement of a cosigner from its credit-card practice and the matter was returned to OCC for administrative resolution.

In six of the closed matters, the section concluded that further action was not warranted. For example, one matter concerned allegations that a bar/lounge had denied service to a group of individuals on the basis of their race. The issue became moot when the establishment under investigation went out of business.

The remaining six matters were closed for various other reasons, such as the complaint was withdrawn, the complainant decided to file a class-action lawsuit, or the section lacked the resources to pursue the particular matter.

Appendix VI provides information on the Housing and Civil Enforcement section closed matters, such as origin, protected class, a description of the closed matters, and the reason the matters were closed.

Voting Section Responsibilities

The Voting section is charged with the responsibility of enforcing federal voting rights statutes. The most important of the laws enforced by the section include the following:

- section 5 of the Voting Rights Act (VRA),
- section 203 and 4(f)(4) of the VRA,
- section 6 of the VRA,
- section 2 of the VRA,
- National Voter Registration Act (NVRA), and
- Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA).

Section 5 is a provision of the VRA that requires state and local governments in certain parts of the country to get federal approval — known as "preclearance"—before implementing changes in their voting procedures, which includes anything from moving a polling place to changing district lines in the county.[18] To receive preclearance under section 5, a covered jurisdiction must obtain an administrative finding by the Attorney General or a judgment by the U.S. District Court for the District of Columbia that a jurisdiction has met the burden of demonstrating that the Voting change(s) does not have the intent nor the effect of worsening the position of minority voters.

Section 203 and 4(f)(4) are the language minority provisions of the VRA. These provisions require certain covered jurisdictions to provide bilingual written materials and other assistance for elections.

Section 6 provides the Attorney General the authority to assign federal voting examiners to a county. Federal voting examiners prepare and maintain lists of persons eligible to vote in federal, state, and local elections . Section 8 allows the Attorney General to request that federal observers be sent to any jurisdiction where a federal voting examiner has been assigned. Federal observers monitor election-day practices in response to concerns about racial discrimination in the voting process and to provide information about compliance with bilingual election procedures.

Section 2 is a nationwide prohibition against certain voting practices and procedures, including redistricting plans and at-large election systems, poll-worker hiring, and voter registration procedures that discriminate on

[18]The detailed list of "covered jurisdictions" is printed in the Code of Federal Regulations in the appendix to 28 C.F.R. part 51. These are the Department of Justice section 5 guidelines that explain how the section 5 review process works.

the basis of race, color, or membership in a language minority group. Section 2 prohibits not only election-related practices and procedures that are intended to be racially discriminatory but also those that are shown to have a racially discriminatory impact. The Department of Justice through the Voting section—as well as affected private citizens—may bring lawsuits to obtain court-ordered remedies for violations of section 2.

The NVRA facilitates voter registration for federal elections by allowing voters to register by mail, when obtaining driver's licenses, or when obtaining services from various government agencies; and it permits voter purges—removal of voters names from the voting registery—only under very controlled conditions. NVRA also helps ensure that eligible voters are not removed from the voting rolls and that people who move in the same registrar's district retain their eligibility to vote, even if they have not reregistered at their new location.

UOCAVA requires that the states and territories allow military personnel and citizens overseas to register and cast absentee votes in elections for federal offices. The Department of Defense (DOD) receives complaints and refers them to the Voting section. According to Voting section officials, DOD is not required to refer complaints to the section, but if it is unable to resolve complaints on its own, then DOD forwards the complaint to the Voting section for action. The Voting section is not required to investigate or file a lawsuit, but section officials said that they usually pursue these complaints.

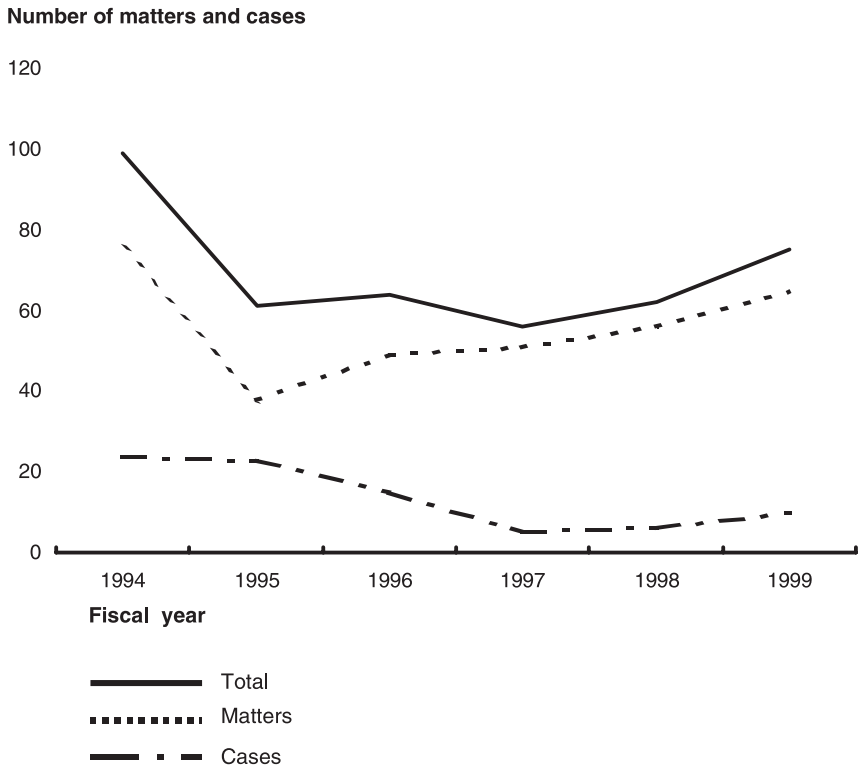
To carry out its mission, the section (1) brings lawsuits against states, counties, cities, and other jurisdictions to remedy denials and abridgments of the right to vote; (2) defends lawsuits that the VRA authorizes to be brought against the Attorney General; (3) participates, where appropriate, in cases involving issues raised by the U.S. Supreme Court in Shaw v. Reno covering racial gerrymandering (e.g. that race was the sole factor in drawing the district lines) of election districts; (4) reviews changes in voting laws and procedures administratively under section 5 of the VRA; and (5) monitors election day activities through the assignment of federal observers under section 8 of the VRA.

Enforcement Efforts in Fiscal Years 1994 to 1999

The Voting section initiated fewer than 100 matters and cases per year from fiscal year 1994 through fiscal year 1999. As can be seen in figure 3, the number of matters initiated dropped between fiscal years 1994 and 1995 and increased thereafter. According to a Voting section official, the number of matters initiated over the course of these fiscal years varied,

depending on the amount of federal observer exercises the section conducted in any given year.

Figure 3: Voting Section Matters and Cases Initiated for Fiscal Years 1994 Through 1999



Source: CRT's Case Management System and Voting section officials.

The number of cases initiated was higher in fiscal years 1994 through 1996 than in fiscal years 1997 through 1999. According to Voting section officials, the section had more cases in fiscal years 1994 through 1996 because it was involved in many cases related to the 1993 Supreme Court decision in Shaw v. Reno, either as a party in the lawsuit or an amicus curiae participant. The decision in that case and related cases created a complex legal, political, and policysetting standard for legislative redistricting plans. According to section officials, they have participated as amicus curiae or intervenor in most Shaw-type cases. Officials said that their objective is to help shape the body of case law to ensure a proper balance between the requirements of the VRA and the constitutional standard set forth in the Shaw decision. The section official stated that these types of cases are large, complex, resource-intensive cases, and they can continue for years—from the initial liability findings through the appeals process and remedy stages. The official further stated that the

section dedicated a significant portion of its resources to these types of cases from 1994 to 1998.

During that same period, according to the same section official, the section had a significant new enforcement obligation to defend the constitutionality of the NVRA. The section official said that from December 1994 to June 1995, the section handled seven NVRA cases against states. Another major case was filed in June 1996. The official also noted that several of these cases extended over many years before final resolution and that two major cases were still open at the time of our review.

According to the same section official, by the latter part of the 1990s, most of the NVRA cases had been resolved, the larger Shaw-type cases had begun to wind down; and the section was then able to focus more of its resources on section 2 and language minority group issues. According to the official, the number of matters and cases began to rise in the last couple of years, as resources were redirected.

The section was also involved in several cases representing the United States as defendant where a state was seeking a declaratory judgment action,[19] in response to a Department of Justice section 5 objection to a voting change submitted for preclearance.

Selection of Voting Cases to Pursue

The Voting section initiated six cases in fiscal year 1998. All of these cases were initiated at the discretion of the section. Three of these cases were Shaw-type cases; two cases involved enforcement of UOCAVA; and one case involved enforcement of provisions of the VRA related to vote dilution, voter assistance, and minority language assistance. The factors considered when the Voting section decided to investigate a matter or participate in a particular case were based on the type of issues.

Section officials said that, during the 1994 to 1998 time frame in particular, the section monitored Shaw-type cases to decide whether to participate as an amicus curiae or intervenor. The section participated as an amicus curiae in the three Shaw-type cases in our review. The Attorney General and the Assistant Attorney General have indicated to section officials that they expect the Department of Justice to participate in these cases to help frame the legal issues for the body of casework that is developing in this

[19]A state may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that the voting change does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color.

area. According to section officials, the decision to participate as amicus curiae or intervenor depends on the extent to which they believe that they can add value to the issues. If the section believes they can sufficiently contribute to the development of the evidentiary record, they may participate as an intervenor whereby they are a party to the case. If they do not believe they can contribute to the record, they may decide to file an amicus brief to present the government's position. According to a section official, the section has evaluated all cases that challenged congressional redistricting plans made after the Shaw decision, and the section has participated as an amicus curiae or intervenor in most.

The two UOCAVA cases were initiated because the section routinely investigates these types of complaints when DOD refers them. In these types of cases, the section officials said that they check to see whether ballots were mailed in time to be returned and counted. If they found that not enough time had been allowed, they prepared a complaint. According to section officials, they usually resolved these cases with settlement agreements. A section official said that the section also usually filed the complaint and the settlement agreement with the court at the same time. According to section officials, the Administration and DOD consider enforcement of UOCAVA a priority because of their commitment to protecting the voting rights of military personnel overseas.

The last case in our population was one brought against the city of Lawrence, Massachusetts. In this case, the government brought a lawsuit under section 2 and section 203 of the VRA that alleged the defendant (1) failed to provide assistance in the Spanish language, (2) failed to appoint and assign Hispanic individuals on the same basis as whites to serve as poll workers, (3) denied Hispanic citizens an equal opportunity to participate in the electoral process, (4) diluted the voting strength of Hispanic citizens in its method of electing the city council, and (5) diluted the voting strength of Hispanic citizens in its method of electing the school committee. This case originated from citizen complaints. According to section officials, they investigate all complaints from citizens. In this particular case, the magnitude of the complainants and the number of issues, led the section to pursue a broad investigation. Other factors that were considered when the section decided to initiate this case included priorities of the Assistant Attorney General, impact in a particular location, impact on a particular type of discrimination, and part of a body of on-going casework. According to voting section chief, the Assistant Attorney General set a priority for the section to protect against voting practices and procedures that discriminate on the basis of race, color, or membership in a language minority group. They said that remedying

insufficient bilingual election procedures on behalf of language minority groups has been an area of emphasis for the section for several years. Also, section officials said that in this case, they considered the potential for having an impact in a particular location of the country where they had not had a presence before. Officials said that Massachusetts was an area of the country that the section had not focused on in the past because, prior to the 1980s, the state did not have a large minority language population. However, officials said that areas in New England, such as Lawrence, have experienced a growth in their Hispanic populations in recent years, and the section is interested in ensuring enforcement of the VRA in these geographic areas.

Table 3 shows the factors the Voting section considered when they decided to investigate a matter that led to a case or participate in a case as an amicus curiae for the six cases initiated during fiscal year 1998.

Table 2: Factors Considered by the Voting Section in Initiating Discretionary Cases

Case name	Case type	Administration or presidential initiative priority	Attorney General priority	Assistant Attorney General priority	Impact in particular location	Impact particular type or category of discrimination	Part of a body of casework on going	Other
Charles Stovall, et al., v. City of Cocoa, et al.	Shaw		•	•			•	
Thomas S. Fouts, et al., v. Sandra Mortham et al., and Florida State Conference Black Business Association, et al.	Shaw		•	•			•	
Martin Cromartie, et al., v. James B. Hunt, Jr. Governor of North Carolina, et al.	Shaw		•	•			•	Section involved in case from origin when Shaw lawsuit initially brought against AG Reno
U.S. v. the Board of Elections in the City of New York	UOCAVA	•						DOD priority
U.S. v State of Oklahoma; Oklahoma State Election Board; and Lance D. Ward, as Secretary of the Oklahoma State Election Board	UOCAVA	•						DOD priority
U.S. v City of Lawrence, Massachusetts	Language minority group			•	•	•	•	

Source: Interviews with Voting section officials.

Appendix VII provides information on the voting cases, such as origin, legal role of the section, protected class, a description of the cases, and their disposition as of May 2000.

Reasons That Voting Section Matters Were Closed

Our analysis of the 22 closed Voting section matters found that the majority of matters that we reviewed were closed because the section determined that the complaint lacked merit or that no further action was warranted. The Voting section initiated matters that reflected three roles on the part of the section—investigative, monitoring of private lawsuits, and monitoring of elections.

Eight of the 10 closed matters that were investigative matters were closed due to lack of merit. For example, in one closed matter the section investigated purge procedures that appeared to be inconsistent with the voter cancellation requirements set forth in the NVRA. A county clerk had purged about 30,000 voters from the county's voter registration list. The Voting section investigation did not reveal sufficient evidence that electors were harmed by the process to justify filing a lawsuit or continuing the investigation. Two investigative matters were closed because concerns raised were resolved through corrective actions. For example, the Voting section initiated a preelection investigation in response to concerns about election-day poll workers in a county. At issue was the racial balance of poll worker appointments. The Director of the Board of Elections agreed with the concerns raised and took corrective action.

Nine of the section's closed matters were related to monitoring private lawsuits. Six of these matters were closed because the lawsuit was resolved through court actions or the lawsuit was dismissed so no further action was warranted. For example, the section monitored a lawsuit that challenged the congressional redistricting in a particular state. The redistricting plan was established in 1992 by a three-judge court order and had been in use since then. In August 1997, the plaintiff filed a federal lawsuit challenging the majority black district in the court-ordered plan, alleging racial gerrymandering. The Voting section was considering whether to intervene on behalf of the defendant (state) or file an amicus brief. The District Court dismissed the case recognizing the inherent impracticability of attempting to modify the congressional districting plan through litigation prior to the 2000 Census. According to section officials, all parties recognized that the 2000 Census redistricting plans should address the need to comply with the laws. The remaining three matters were also closed because no further action was warranted (i.e., the Voting section determined that the lawsuit did not warrant its participation or further action).

Three of the section's closed matters were related to its responsibilities for monitoring elections. These three matters were closed because no further action was warranted. For example, one matter was closed because the election was cancelled.

Appendix VIII provides information on the voting closed matters such as the origin, type of matter, protected class, a description of each closed matter, and the reason for closing each matter.

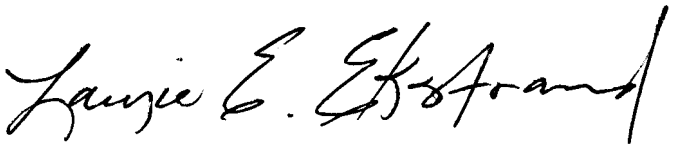
Agency Comments and Our Evaluation

On September 11, 2000, we obtained oral comments on a draft of this report from the Civil Rights Division's Chief of Staff and the Counsel to the Assistant Attorney General. These officials agreed with the message and suggested some technical corrections, which we have incorporated, where appropriate.

As arranged with the Subcommittee, we plan no further distribution of this report until 15 days after the date of this letter. We will then send copies to Representative Melvin L. Watt, Ranking Minority Member, Subcommittee on the Constitution; and Senator John Ashcroft, Chairman and Senator Russell D. Feingold, Ranking Minority Member, Senate Subcommittee on the Constitution, Federalism and Property Rights. We will also send copies to the Honorable Janet Reno, Attorney General; and to Mr. Bill Lann Lee, the Assistant Attorney General, Civil Rights Division. We will also make copies available to others on request.

Please contact Mr. William Jenkins or me on 512-8777 if you or your staff have any questions about this report. Other contributors are acknowledged in appendix IX.

Sincerely yours,



Laurie E. Ekstrand
Issue Area Director
Administration of Justice Issues

Contents

Letter	1
Appendix I The Civil Rights Division Structure	38
Appendix II CRT's Internal Process for Handling Matters and Cases	40
Appendix III Information on Employment Litigation Section Cases	46
Appendix IV Information on Employment Litigation Section Closed Matters	55
Appendix V Information on Housing and Civil Enforcement Section Cases	67

Appendix VI Information on Housing and Civil Enforcement Section Closed Matters 90

Appendix VII Information on Voting Section Cases 105

Appendix VIII Information on Voting Section Closed Matters 111

Appendix IX GAO Contacts and Staff Acknowledgments 117

Tables

Table 1: Factors Considered by the Employment Litigation Section in Initiating Discretionary Cases 13
Table 2: Factors Considered by the Housing and Civil Enforcement Section in Initiating Discretionary Cases 22
Table 2: Factors Considered by the Voting Section in Initiating Discretionary Cases 31
Table III.1: Information on the Employment Litigation Section's Discretionary Cases 46
Table IV.1: Information on Employment Litigation Section's Matters Initiated During Fiscal Year 1998 That Were Closed as of October 31, 1999 56
Table IV.2: Description of Closed Matters and the Reasons That Matters Were Closed 59
Table IV.3: Factors Considered by the Employment Litigation Section When Selecting Matters for Investigation That Were Not Pursued as Cases. 66

Table V.1: Characteristics of Housing and Civil Enforcement Cases 67
Table VI.1: Information on Matters Initiated During Fiscal Year 1998 That Were Closed as of October 31, 1999 91
Table VI.2: Description of Closed Matters and the Reasons That Matters Were Closed 94
Table VII.1: Information on the Voting Section's Discretionary Cases 106
Table VIII.1: Information on Voting Section's Matters Initiated During Fiscal Year 1998 That Were Closed as of March 2000 111
Table VIII.2: Matters and the Reason the Matter Was Closed 113

Figures

Figure 1: Employment Matters and Cases Initiated for Fiscal Years 1994 Through 1999 10
Figure 2: Housing and Civil Enforcement Matters and Cases Initiated for Fiscal Years 1994 Through 1999 18
Figure 3: Voting Section Matters and Cases Initiated for Fiscal Years 1994 Through 1999 27
Figure I.1: CRT's organizational chart, as of July 2000 39
Figure II.1: General Internal Process Followed When a Section Received a Referral or Allegation of Discrimination or Initiated an Investigation 44
45

Abbreviations

ADA	Americans with Disabilities Act
CMS	Case Management System
CRT	Civil Rights Division
DOD	Department of Defense
DOL	Department of Labor
DOT	Department of Transportation
ECOA	Equal Credit Opportunity Act
EEOC	Equal Employment Opportunity Commission
FBI	Federal Bureau of Investigation
FDIC	Federal Deposit Insurance Corporation
FHA	Fair Housing Act
FHCO	Fair Housing Council of Oregon
HUD	Department of Housing and Urban Development
NAACP	National Association for the Advancement of Colored People
NFHA	Northwest Fair Housing Alliance
NSF	National Science Foundation
NVRA	National Voter Registration Act
OCC	Office of the Comptroller of the Currency
OTS	Office of Thrift Supervision
UOCAVA	Uniformed and Overseas Citizens Absentee Voting Act
VRA	Voting Rights Act

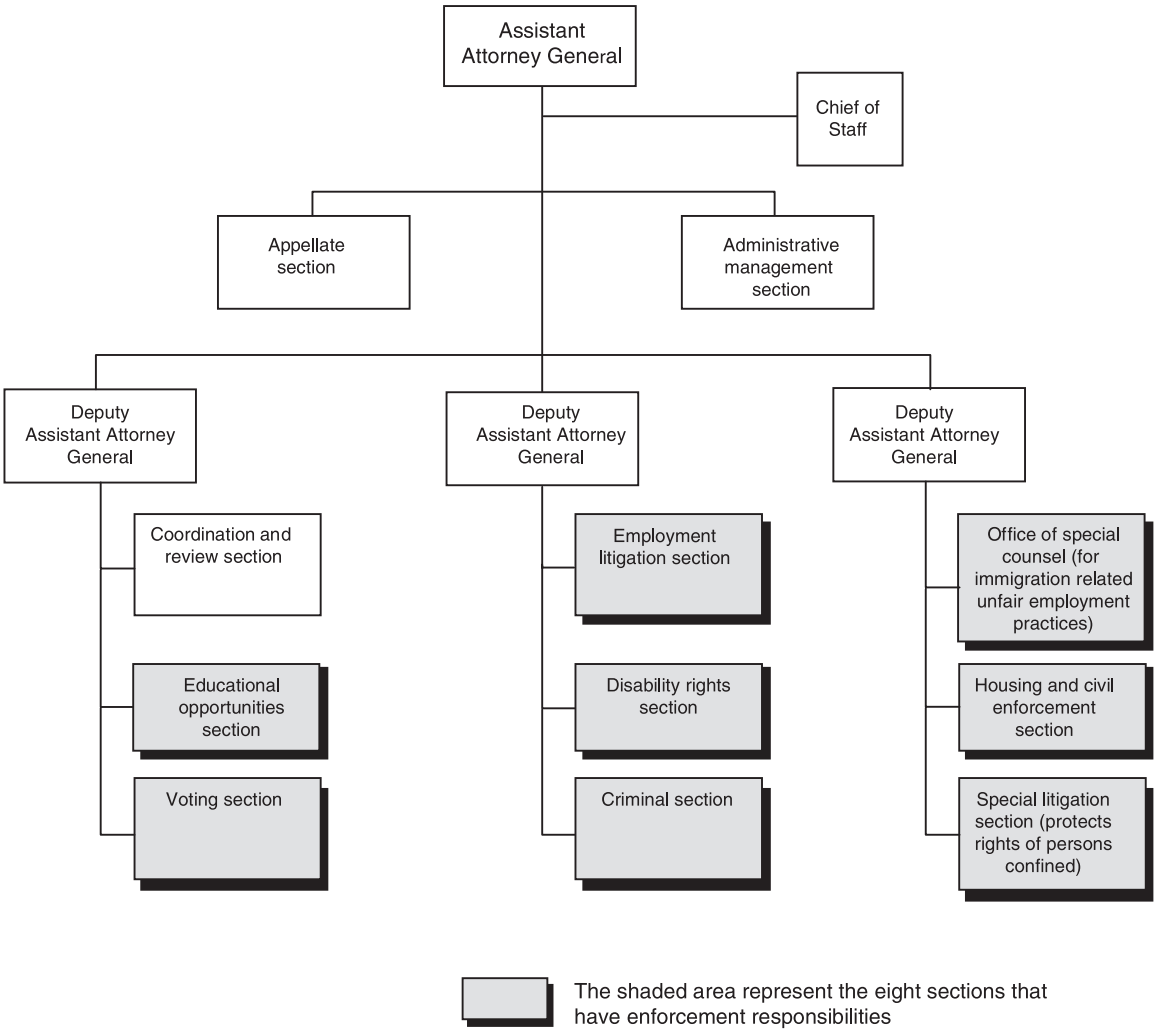
The Civil Rights Division Structure

The Civil Rights Division (CRT) is headed by an Assistant Attorney General. He is assisted by three Deputy Assistant Attorneys General. The Office of the Assistant Attorney General establishes policy and provides executive direction and control over litigative enforcement and administrative management activities in the Division.[1] CRT has 11 sections—10 program-related sections and an Administrative Management section. Eight of the 10 program sections have enforcement responsibilities over particular subject areas that include criminal, voting, employment, education, housing, disability rights, and conditions in institutional confinement. Of the remaining two sections, one is responsible for coordinating federal agencies' civil rights enforcement efforts, and the other handles appellate matters and provides legal guidance. Each of the enforcement sections, with the exception of the Office of Special Counsel, is headed by a section chief and has several deputy section chiefs.[2] CRT's litigation work is national in scope. CRT has no regional offices. Figure I.1 shows CRT's organizational chart, as of July 2000.

[1] Our report, Civil Rights Division: Policies and Procedures for Establishing Litigation Priorities, Tracking and Managing Casework, and Disseminating Litigation Results (GAO/GGD-00-58R, Feb. 17, 2000) describes CRT's policymaking role.

[2] The head of the Office of Special Counsel for Immigration-Related Unfair Employment Practices is appointed by the President of the United States, and the appointee has the title of Special Counsel.

Figure I.1: CRT's organizational chart, as of July 2000



Source: Civil Rights Division.

CRT's Internal Process for Handling Matters and Cases

We found that the Civil Rights Division (CRT) did not have written policies or procedures that explained their internal processes for handling matters and cases. Therefore, we asked CRT officials in the three sections we reviewed to describe their processes for us. According to these officials, their processes, from initiating a matter to filing a lawsuit, can vary among the sections. While some steps were common to all three sections, variation usually occurred because of the structure of the statutes they enforce.

For example, the Housing and Civil Enforcement section receives some Fair Housing Act (FHA) referrals from the Department of Housing and Urban Development (HUD)[1] for which Justice is required to file a lawsuit. Managers in the section review these referrals to determine whether they should be handled in the section or referred to a U.S.

Attorney's office for handling. In contrast, when the Employment Litigation section receives a referral from EEOC, it has the discretion either to (1) close the matter with a right-to-sue letter,[2] after reviewing the charge or (2) consider it for possible litigation. If the section elects to consider the charge further, it is to (1) conduct a supplemental investigation and (2) based on the results of that investigation, either close the matter and issue a right-to-sue letter or recommend that a lawsuit be filed.

In addition to referrals, the sections undertake investigations that tend to be larger and more complex than referrals that allege a single act of discrimination against a person or persons. In the Employment Litigation section and Housing and Civil Enforcement section these investigations are referred to as "pattern or practice," and in the Voting section they are called "systemic" investigations.

The Voting section is different from the other two sections in that it generally does not receive referrals from other federal agencies. However,

[1]HUD refers allegations of discrimination under FHA to the Housing and Civil Enforcement section. The federal bank regulatory agencies also refer allegations of discrimination to the Housing and Civil Enforcement section under the Equal Credit Opportunity Act. For the Employment Litigation section, the term "charge" refers specifically to those allegations of discrimination referred to them by the Equal Employment Opportunity Commission (EEOC). We will use the term "referral " to refer to HUD, regulatory agency, and EEOC referrals. The more general term "allegation of discrimination" will be used to describe all other instances of alleged discrimination.

[2]The Employment Litigation section is legally required to notify the charging party when it is not going to pursue a charge so that the charging party can pursue private litigation. This notification is made by means of a letter from the Assistant Attorney General to the charging party or his/her attorney and is referred to as a right-to-sue letter.

like the other two sections it has authority to initiate its own litigation. According to the section chief, while the section does not have pattern or practice authority like the other two sections, cases initiated by the Voting section typically address systemic problems in the method of election of a given jurisdiction or other discriminatory voting practices. According to CRT, such systemic cases are very similar in scope and complexity to pattern or practice discrimination cases of the Employment Litigation and the Housing and Civil Enforcement sections.

The process for initiating the pattern or practice cases by the Employment Litigation section and Housing and Civil Enforcement section and the systemic cases brought by the Voting section is different from that for referred cases. The sections all have authority to initiate their own investigations, regarding this kind of case. While many of these investigations are the result of allegations from citizens and civil rights and community organizations to the sections, such allegations are not necessary to initiate an investigation. For example, investigations may be and are initiated as a result of section survey and outreach work, information from newspaper articles, U.S. Attorneys' offices, and other similar sources of information about discrimination. Before filing such pattern or practice and systemic cases, approval of the Assistant Attorney General is required; and for certain statutory claims (public accommodations), approval by the Attorney General is required.

The sections may also follow a different process, depending on their role in the case (i.e., representing the United States as plaintiff, defendant, plaintiff-intervenor, defendant-intervenor, or amicus curiae.) For example, when the Employment Litigation section defends a federal agency in a lawsuit brought against the federal government, it would not prepare a memorandum recommending a lawsuit, as it would do when it is the plaintiff.

When the sections initiate a matter to investigate or review a referred charge and pursue the matter as a case (e.g., file a lawsuit), the sections generally have the same internal process. The Employment Litigation section receives charges of discrimination from individuals in the form of a referral from EEOC. The section chief, a deputy section chief, or a trial attorney may review the referrals, but the decision to investigate a referred matter is generally made by the section chief. In most instances, EEOC referrals are reviewed initially by a deputy section chief. The deputy section chief brings to the attention of the section chief referrals that have potential for litigation, including all referrals on which EEOC has

recommended pursuing a lawsuit. If the section chief concurs that the referred matter has potential, it is assigned to a trial attorney.

The Housing and Civil Enforcement section receives a number of referrals from HUD. Some of the HUD referrals of alleged FHA violations are required to be filed in district court and can be filed either by the Housing and Civil Enforcement section or a U.S. Attorney's office. These nondiscretionary referrals are called "election cases" because either the complaining party or the respondent has elected to have the case heard in federal court, rather than through a HUD administrative hearing process.

According to section officials, the sections also receive allegations of discrimination from numerous sources, such as citizens, private attorneys, Members of Congress, media, advocacy groups, and federal agencies. These allegations may involve individual instances of discrimination or a pattern or practice of discrimination. In each section, an attorney manager or section chief is responsible for reviewing all allegations of discrimination and deciding whether further investigation is warranted.

In each section, if a decision is made to investigate a referral or allegation of discrimination, the section chief assigns a trial attorney, who conducts an investigation. When the investigation is completed, the trial attorney makes a recommendation to the section chief on whether the section should file a lawsuit, close the matter, or participate in some other manner. However, the section chief is responsible for making the final decision about closing a matter, recommending a lawsuit, or other participation to the Assistant Attorney General.

If a referral or allegation of discrimination is not pursued, all appropriate parties are notified, and the matter is closed. As mentioned previously, the Employment Litigation section is required to notify the charging parties of their right to file a lawsuit if the section does not intend to pursue the EEOC referral. The practice in the section is to prepare a right-to-sue letter in these instances. The section is also responsible for notifying the employer when the investigation has been closed.

In all three sections, if a decision is made to pursue a matter and file a formal complaint to initiate a lawsuit, then the trial attorney is to prepare a justification package. The contents of this package vary by section but always include (1) a justification memorandum that presents the facts of the case and the legal argument for filing a lawsuit, (2) the proposed formal complaint of a violation of discrimination laws to be filed with the court, and (3) a cover memorandum from the section chief through the

Deputy Assistant Attorney General to the Assistant Attorney General. An attorney manager and the section chief are responsible for reviewing and approving the justification package. The Deputy Assistant Attorney General for CRT reviews and approves the justification package, which is then forwarded to the Assistant Attorney General for final review and approval. The justification package also is to be sent to the U.S. Attorney's office for the district where the lawsuit is to be filed for review and concurrence.

If the justification package is not approved, the trial attorney generally prepares a closing memorandum and notifies the charging party, when appropriate, that the Department of Justice is not filing a lawsuit. The matter is then closed. According to CRT officials, the justification package is rarely disapproved. If the justification package is approved, CRT is to notify the defendant by letter of the Department of Justice's intent to file a lawsuit. After the defendant has been notified, the trial attorney and the defendant often have presuit settlement discussions.[3]

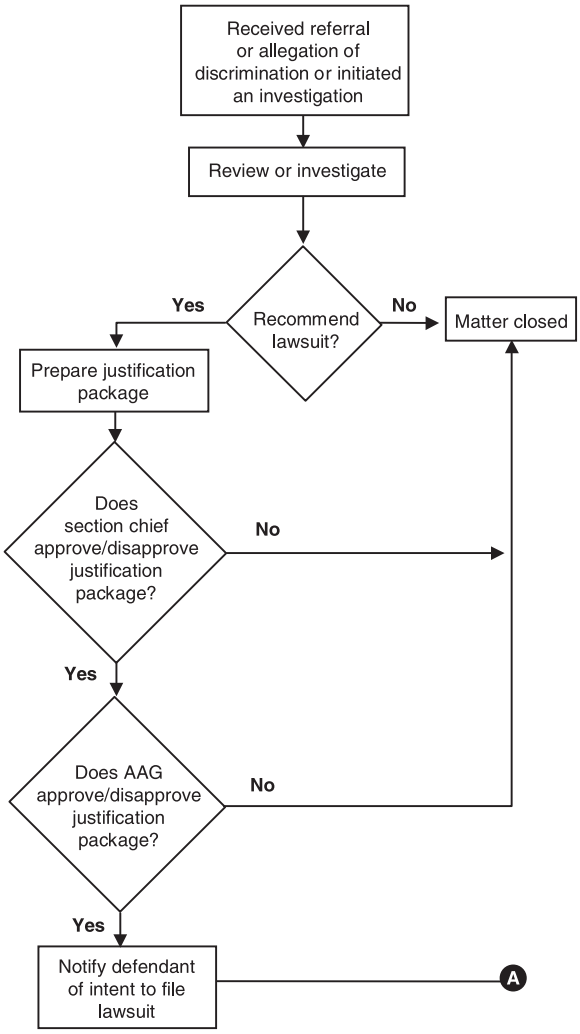
If a presuit settlement is reached, a settlement document stating the agreements reached is prepared and signed by all parties. The settlement document is almost always filed with the federal district court along with the complaint. The sections may monitor the settlement agreement for compliance where appropriate.

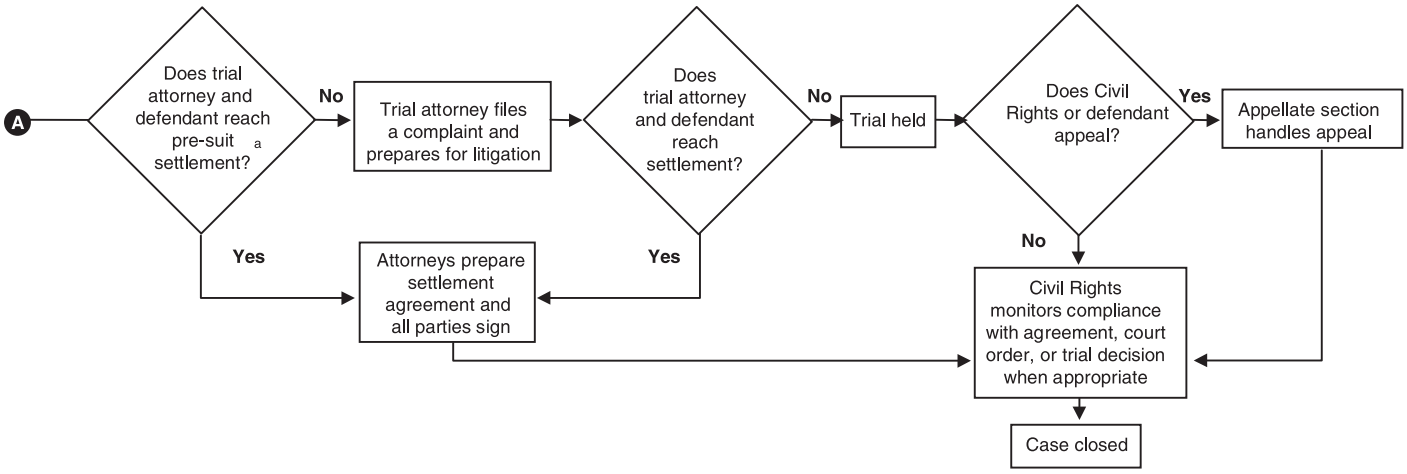
If the presuit settlement discussions do not result in a settlement, the complaint is to be filed in federal district court and the parties are to engage in litigation conducted pursuant to the federal rules of civil procedure and evidence. Filing a complaint and the beginning of legal proceedings do not preclude the trial attorney and defendant from continuing negotiations and reaching a settlement. According to section officials, defendants often settle prior to, or during, a trial. If a trial is held, the plaintiff or defendant can appeal the decision. If the decision is appealed, the section works closely with the Appellate section of CRT, which assumes responsibility for the appeal stage of the case.

Figure II.1 shows the general internal process from the time when a referral or allegation of discrimination is received or an investigation is initiated, at the discretion of a section, to the closing of the matter or the case.

[3]Settlement negotiations can occur at any time during the process. Negotiations held prior to the filing of a formal complaint to initiate the lawsuit are referred to as presuit settlement discussions.

Figure II.1: General Internal Process Followed When a Section Received a Referral or Allegation of Discrimination or Initiated an Investigation





[a]Settlement negotiations can be held at any time but CRT specifically attempts to negotiate a settlement agreement prior to filing a lawsuit.

Source: GAO developed based on discussions with CRT officials.

Information on Employment Litigation Section Cases

This appendix provides general information and a brief description of the 21 Employment Litigation section cases and their disposition, as of April 2000. In 8 of the 21 cases, the section had the discretion to decide whether to participate in the case. Table III.1 provides information on the eight discretionary cases, including the case type, government role, protected class, defendant type, and discriminatory issue. Six of the 8 cases were EEOC referrals related to the Employment Litigation section's enforcement of provisions of Title VII against state or local government entities, and the remaining two involved the section intervening on behalf of plaintiffs in Seminole Tribe type private lawsuits.[1] The section also initiated 13 other cases that involved participating in cases as a defendant or involved the section monitoring private lawsuits but not actually participating in the lawsuits. More information is provided on all 21 cases in the description of cases that follows.

Table III.1: Information on the Employment Litigation Section's Discretionary Cases

Case name	Case type	Government role	Protected class	Defendant type accused of discrimination	Discriminatory issues
U.S. v. City of Winter Springs, Florida	Individual	Plaintiff	Religion	City fire department	Discharge
U.S., Pamela Starling, Gail Berry, Jackie Embry, and Janice Waters v. City of Alma, Georgia and Bacon County Georgia	Individual	Plaintiff	Sex	City and county fire departments	Hiring
U.S. v. Columbus County, North Carolina	Individual	Plaintiff	Sex	County agency	Sexual harassment Retaliation
U.S. v. North Little Rock School District	Individual	Plaintiff	Sex	School district	Sexual harassment Retaliation

[1] In general, the Seminole Tribe type cases involve litigation whereby the plaintiffs are charging a defendant state entity with discrimination, and the state entity argues that it is not covered by the particular federal law because it violates state's rights under the Eleventh Amendment. According to the section chief, the section participates in these cases because it has a responsibility to defend the constitutionality of laws passed by Congress.

Case name	Case type	Government role	Protected class	Defendant type accused of discrimination	Discriminatory issues
U.S. v. Erie County, New York	Individual	Plaintiff	Sex	County agency	Assignment
U.S. and Terry Piersol v. City of Belen, New Mexico	Individual Pattern or practice	Plaintiff	Sex	City police	Sexual harassment Retaliation Discharge
Diane Cummings, et al., v. University of Alabama at Birmingham	Intervenor on behalf of plaintiff	Plaintiff-intervenor		[a] State agency	Seminole Tribe type case
Ethel Lois Larry, Denese Pounds v. Board of Trustees of the University of Alabama and the University of Alabama at Birmingham	Intervenor on behalf of plaintiff	Intervenor		[a] State agency	Seminole Tribe type case

[a]Not applicable.

Source: Employment Litigation section case files and interviews with the section chief.

The following paragraphs provide brief descriptions of the 21 cases that the Employment Litigation section initiated during fiscal year 1998 and the one pattern or practice case initiated during fiscal year 1999 and their disposition, as of April 2000. The first eight descriptions involve the discretionary cases initiated by the section. The remaining 13 cases involve those where the section was either representing other federal agencies as a defendant or monitoring a private lawsuit. Some of the cases were closed, and others were open. The open cases included (1) those where the section was involved in litigation and (2) those where the case had been resolved and the section was monitoring compliance with a settlement agreement or court order. The section may monitor compliance for several years, as specified in the settlement agreement or court order.

(1.) U.S. v. City of Winter Springs, Florida

The section filed a lawsuit against the City of Winter Springs, Florida, alleging that its fire department discriminated against an individual by (1) failing and refusing to provide reasonable accommodation to the person regarding religious observances, practices, and/or beliefs and (2) discharging or constructively discharging the person from employment, as a probationary firefighter because of his religion.

Disposition: Open.

	This case is in litigation. The discovery phase was expected to end in August 2000 and the trial was to begin in 2001.
(2.) U.S. v. City of Alma, Georgia and Bacon County, Georgia	The section filed a lawsuit against the City of Alma, Georgia and Bacon County, Georgia, alleging discrimination against several women on the basis of their sex by failing or refusing to hire them as full-time firefighter/emergency medical technicians or full-time firefighter/paramedics in the Alma-Bacon County Fire and Emergency Medical Service, an entity jointly operated by the city and county. **Disposition: Open.** A settlement agreement has been filed, and the section is monitoring compliance.
(3.) U.S. v. Columbus County, North Carolina	The section filed a lawsuit against Columbus County, North Carolina, which alleged the County had, through its Department of Aging, discriminated against a woman on the basis of her sex by subjecting her to a sexually hostile work environment. The lawsuit also alleged retaliation against her for failing or refusing to assign her work because of her opposition to the unwelcomed sexual conduct and for failing or refusing to take appropriate action to remedy the effects of the discriminatory treatment. A settlement agreement was filed with the court in March 1999. **Disposition: Open.** The section is monitoring compliance with the settlement agreement.
(4.) U.S. v. North Little Rock School District	The section filed a lawsuit against the school district alleging that it discriminated against a woman, on the basis of her sex, by subjecting her to a sexually hostile work environment and failing or refusing to take appropriate action to remedy the effects of the discriminatory treatment. The lawsuit also alleged that the school district had retaliated against the woman by increasing her workload, supervising her work more closely, and transferring her to a less desirable position after she made an internal complaint alleging sexual harassment. **Disposition: Open.** The litigation is in the discovery phase, and the trial is scheduled for later this year.

(5.) U.S. v. Erie County, New York	The section filed a lawsuit against Erie County's Correctional Facility, alleging that the county discriminated against guards at a correctional facility, on the basis of their sex, by pursuing certain policies and practices. These policies and practices assigned only men to guard male inmates and only women to guard female inmates during trips outside the facility, regardless of whether such gender-based assignments were reasonably necessary as bona fide occupational qualifications. EEOC investigated the charge and found reasonable cause to believe that the guards had been discriminated against based on their sex. A settlement agreement was filed with the court in April 1999. **Disposition: Open.** The section is monitoring the settlement agreement.
(6.) U.S. and Terry Piersol v. City of Belen, New Mexico	The section filed a lawsuit against the City of Belen, New Mexico, alleging that its city police department (1) discriminated against women, on the basis of their sex, by engaging in a pattern or practice of sexual harassment and (2) discriminated against a female supervisor, on the basis of sex, and retaliated against her for assisting subordinates who had been sexually harassed. The original charge in this case, which was referred by EEOC, involved the supervisor who had been the subject of the retaliatory behavior. According to the section chief, after investigating, the section found widespread sexual harassment, so it included a pattern and practice allegation in its complaint. Subsequently, the section received an individual EEOC referral that alleged sexual harassment. As a result, the section amended the complaint for the lawsuit to include the individual sexual harassment complaints in order to seek compensatory relief for the individuals subjected to the sexual harassment. **Disposition: Open.**
(7.) Diane Cummings, et al., v. University of Alabama at Birmingham	The section was intervenor in this case. The section intervened because the constitutionality of acts of Congress affecting the public interest had been drawn into question. More specifically, the section intervened to defend the constitutionality of Title VII of the Civil Rights Act of 1964, as amended, and the Equal Pay Act, as amended. The plaintiffs in this private suit alleged that the University of Alabama at Birmingham had discriminated against them on the basis of their sex. Relying on Seminole Tribe of Florida v. Florida, the University of Alabama argued that it was immune from the plaintiffs' disparate impact claims under Title VII and the Equal Pay Act claims. The University argued that Congress did not constitutionally abrogate the states' Eleventh Amendment immunity from

such claims when it extended the coverage of each of the statutes to the states.

Disposition: Closed.

This case was dismissed and settled out of court.

(8.) Ethel Lois Larry, Denese Pounds v. Board of Trustees of the University of Alabama and the University of Alabama at Birmingham	The section was an intervenor in this case. This case is similar to the previous case, Cummings, et al., v. University of Alabama at Birmingham. The section intervened because the constitutionality of acts of Congress affecting the public interest had been drawn into question based on the Seminole Tribe decision. **Disposition: Open.** The case is on appeal.
(9.) Synetics Corporation v. Department of the Navy, Naval Surface Warfare Center	The section was the lead defense attorney for the Navy. This was an Adarand type case.[2] The plaintiff brought suit against the Navy because of the Navy's plans to set aside a government contract at the Naval Surface Warfare Center for a sole-source award to a small business concern, owned and controlled by socially and economically disadvantaged individuals, as defined under section 8(a) of the Small Business Act.[3] The plaintiff protested that, as the incumbent contractor on the predecessor government contract, the company was not afforded an opportunity to compete for the contract. The plaintiff contended that the "set-aside" was in violation of the equal protection clause of the Fifth Amendment of the Constitution and in further violation of the Administrative Procedures Act. The issue in the complaint became moot when the contractor who received the 8(a) contract award was disqualified and the contract was rebid without the 8(a) requirement.

[2] In Adarand Constructors Inc., v. Pena, 515 U.S. 200 (1995), the Supreme Court ruled that federal affirmative action programs to benefit minorities must meet the same "strict scrutiny" standard that applies to state and local programs. To survive strict scrutiny, federal programs must serve a compelling government interest and be narrowly tailored to meet that interest. Previously, the Court had subjected congressionally mandated affirmative action to a lesser standard of review in light of Congress' broad authority to enforce equal protection guarantees.

[3] According to the complaint, an 8(a) contractor is a "small business concern owned and controlled by socially and economically disadvantaged individuals…" "Socially disadvantaged" individuals, in turn, are defined as individuals who …"have been subjected to racial or ethnic prejudice or cultural bias because of their identity as members of a group, without regard to their individual qualities." Certain groups are presumed to be socially disadvantaged, including: Black, Hispanic, Asian Pacific, Subcontinent Asian, and Native Americans.

	Disposition: Closed. The district court dismissed the complaint.
(10.) Highway Supply Company, Bixby Electric, Inc., Salls Brothers Construction, Inc., and RMCI, Inc., v. City of Albuquerque, U.S. Department of Transportation (DOT), and New Mexico State Highway, Transportation Department	The section was defense attorney for the U. S. DOT. This is an Adarand type case. In October 1997, the plaintiffs filed suit against the City of Albuquerque, U. S. DOT, and New Mexico State Highway, Transportation Department in the U.S. District Court for the District of New Mexico. The plaintiffs alleged that the defendants' Disadvantaged Business Enterprise goals of 13 percent or any goal higher than 0 percent on a particular project denies plaintiffs their rights to equal protection, as guaranteed by the Fourteenth Amendment of the United States Constitution. **Disposition: Closed.** The case was settled out of court, and the defendants agreed to readvertise the contract without the goals.
(11.) Travis Kidd v. National Science Foundation (NSF), et al.	The section was the defense attorney for NSF with assistance from the Education section on this case. This is an Adarand type case that involves the constitutionality of a minority fellowship program authorized by Congress and administered by the NSF. **Disposition: Closed.** In June 1998, the U.S. District Court for the Eastern District of Virginia rendered an order that dismissed the complaint with prejudice.
(12.) Kline v. Department of Transportation of Maryland and U.S. DOT	The section is defense attorney for the U.S. DOT. This is an Adarand type case that involves the constitutionality of the Disadvantaged Business Enterprise Program. **Disposition: Open**
(13.) Royal Lubricants, Inc., v. Department of Defense (DOD)	The section is actively litigating this case as defense attorney for DOD. This is an Adarand type case. The plaintiff challenged DOD's Price Credit Program, which was suspended by an act of Congress for 1 year. The defensive issues for this case related to a challenge to the constitutionality of affirmative action programs in relation to a statutory federal procurement program designed to assist small businesses owned by disadvantaged individuals. **Disposition: Open.**

	The section is negotiating with the plaintiff.
(14.) Trinity Industries, Inc., v. Department of Labor (DOL)	The section was the defense attorney for DOL. The section referred to this case as an Executive Order type case. The plaintiff in this case brought suit in December 1997 in the District Court for the Western District of North Carolina to challenge the final decision and order of the Administrative Review Board of DOL. The issue concerned whether Trinity Industries was subject to compliance reviews by the Office of Federal Contract Compliance Programs (OFCCP) under Executive Order 11246, as amended. Trinity maintained that its Asheville facility was not subject to OFCCP jurisdiction because of its complete distinction from any other of Trinity's facilities, which had federal contracts. Trinity sought a waiver from OFCCP review. DOL's Review Board did not grant Trinity's request for a waiver because under the Executive Order, waivers are to be given explicitly, and that did not happen in this case. **Disposition: Closed.** The District Court's judgment in July 1998 affirmed the decision of the DOL Review Board.
(15.) Superior Paving Company, Inc., v. Washington State Department of Transportation, U.S. DOT, and the Administrator of Federal Highway Administration	The section was defense attorney for the U.S. DOT. This is an Executive Order 11246 and affirmative action Adarand type case. The plaintiff in this case filed suit against the state of Washington's Department of Transportation alleging that regulations adopted by the Federal Highway Administration were unconstitutional. These regulations (1) required state agencies receiving federal funds to adopt, establish, and enforce affirmative action program; (2) required hiring and utilization goals; and (3) required the use of race and sex based preferences. Specifically, the plaintiff alleged that the regulations, policies, and practices, which required the use of race and sex as a factor in the performance of contracts, were violations of the due process and equal protection components of the Fifth and Fourteenth Amendments of the U.S. Constitution. **Disposition: Closed** This case was settled out of court.

(16.) Frank Paul Lukacs v. Health and Human Services (HHS)	The section monitored the case and provided advice to the Civil Division as appropriate. This case was the responsibility of the Department of Justice's Civil Division, Federal Programs Branch. This case was another Adarand type case that involved a challenge to HHS' affirmative action program for scholarships. **Disposition: Closed.** The court dismissed the case, finding there was no cause of action.
(17.) Shine v. DOD	The section monitored this case and coordinated with the Department of Justice's Civil Division. The Civil Division, Federal Programs Branch was monitoring this case that was handled by a U.S. Attorneys office. This is an Adarand type case that involved a challenge to the standards for applying affirmative action programs that benefit minorities. The plaintiff in this case challenged whether it was appropriate for DOD to pay for federal employees to attend a Blacks in Government conference. The plaintiff also challenged other unnamed affirmative action programs on the basis that they discriminated against white males. **Disposition: Closed.** The district court dismissed the case.
(18.) Associated Builders and Contractors v. Utah Transit Authority	The section monitored and provided advice to the state of Utah. This is an Adarand type case in which the Employment Litigation section did not have a formal role because the U.S. DOT was not named as a defendant in the case. The plaintiff in this case challenged, in the state court, Utah's implementation of the federal Disadvantaged Business Enterprise Program. **Disposition: Closed** The state court dismissed the case.
(19.) Carlton Construction Company v. West Virginia, Department of Transportation	This case is similar to the previous case, in that the section monitored a case in state court where the plaintiff challenged the state's implementation of DOT's Disadvantaged Business Enterprise Program. The section is monitoring the case to determine whether the case will be moved to federal court. **Disposition: Open.**

	If the case is moved to federal court, the section would consider whether to intervene.
(20.) Beth Walter Hondale v. University of Vermont and State Agricultural College	The section monitored this case and provided advice to the State of Vermont. In July 1998, the plaintiff filed suit against the University of Vermont in the U.S. District Court for the District of Vermont. The plaintiff alleged that the defendant's affirmative action program violated the Equal Protection clause of the Fourteenth Amendment of the United States Constitution. The plaintiff applied for a position at the University of Vermont and State Agricultural College. The person selected for the position, an Asian woman, was hired pursuant to the University's affirmative action program, which encouraged race-conscious selection of faculty members. DOL contacted the Employment Litigation section and asked them to monitor this case because of concerns that Executive Order 11246 requirements might become an issue in the case. **Disposition: Closed.** The executive order was never raised in litigation, and no federal programs were challenged in the case.
(21.) Engineering Contractor Association of South Florida, Inc., et al v. Metropolitan Dade County, Florida, et al.	The section monitored this case to determine whether a federal issue needed to be addressed. This is an Adarand type case that was brought to the section's attention by DOT. The plaintiff challenged Dade County's Affirmative Action Contracting Program. The plaintiff filed in federal district court, but the complaint was made only against Metropolitan Dade County. **Disposition: Closed.** No federal programs were challenged in this case.

Information on Employment Litigation Section Closed Matters

This appendix provides general information on the statistically representative sample of 64 closed matters from a population of 149 closed matters that we reviewed. Specifically, the appendix provides a description of each matter and the reason the matter was closed. Of the 64 closed matters, 61 were referred by EEOC, and the remaining 3 were referred by another federal agency, regarding bid protests. The majority of the EEOC discrimination allegations were against state and city agencies. For example, 15 matters alleged discrimination against states, and 27 matters alleged discrimination against city entities such as police and fire departments. We found that 43 of the 61 referred matters alleged discrimination on the basis of race and/or sex, 4 alleged religious discrimination, and 4 alleged discrimination on the basis of national origin. We were unable to determine the protected class for 10 matters.[1] The employment discrimination issues varied for EEOC referrals. For example, we found that 10 matters related to harassment, 10 related to promotion, 7 involved issues concerning discharge, and 7 involved hiring issues. We were unable to determine the discriminatory issue for 13 matters because the files had been returned to EEOC. Matters often included more than one issue.

Table IV.1 provides general information for each closed matter on the matter issue, protected class, and the government entity alleged to have engaged in discriminatory behavior. The 61 matters referred by EEOC are listed first.

[1]The information was unavailable because the section returned the complaint file to EEOC when it decided not to pursue the matter.

Table IV.1: Information on Employment Litigation Section's Matters Initiated During Fiscal Year 1998 That Were Closed as of October 31, 1999

Matter number	Matter issue	Protected class	Government entity alleged to have engaged in discrimination behavior
1	Hiring	Sex	County agency
2	Promotion Assignment Retaliation	Race	Multistate entity (multijurisdiction)
3	Retaliation Equal pay	Race Sex	County sheriff department and county agency
4	Promotion Retaliation	Race Sex	City fire department
5	Racial harassment	Race	City agency (public golf course)
6	Sexual harassment	Sex	City agency
7	Race Retaliation	Race Sex	State agency
8	Promotion Terms and conditions	Race Sex	City agency and county agency
9	Unable to determine	Unable to determine	County agency
10	Discharge	Sex	State agency
11	Unable to determine	Unable to determine	County agency
12	Sexual harassment	Sex	City police department
13	Discipline Harassment Promotion Terms and conditions Retaliation	National origin	County agency
14	Hiring	Race	City agency
15	References unfavorable Retaliation	Sex	City agency
16	Discharge	Race	State agency
17	Harassment Terms and conditions Retaliation	Race	State agency
18	Unable to determine	Unable to determine	State agency
19	Unable to determine	Unable to determine	County agency
20	Discipline Reasonable accommodation	Religion National origin	State agency
21	Harassment Retaliation	Sex Race	School board
22	Sexual harassment Harassment Retaliation	Sex Race	City police department
23	Retaliation	National origin	State agency

Matter number	Matter issue	Protected class	Government entity alleged to have engaged in discrimination behavior
24	Discharge	Religion	State agency
25	Promotion	Race	State agency
26	Promotion	Race	State agency
27	Unable to determine	National origin	School board
28	Harassment Intimidation Terms and conditions	Race	State agency
29	Reasonable accommodation Disability	Sex	State agency
30	Sex discrimination	Unable to determine	State agency
31	Constructive discharge Harassment	Race	City agency
32	Demotion Harassment Retaliation	Race Sex	City agency
33	Promotion Terms and conditions	Sex	County sheriff
34	Discipline Harassment Retirement involuntary Training Retaliation	Race	City agency
35	Discipline Retaliation	Race	City fire department
36	Sexual harassment Retaliation	Sex	City agency
37	Hiring Terms and conditions	Sex Race Age	County agency
38	Sexual harassment Retaliation	Sex	County agency
39	Unable to determine	Unable to determine	School district
40	Discharge	Religion	State agency
41	Constructive discharge Sexual harassment	Sex	School board
42	Promotion Training	Race	City police department
43	Assignment	Race Sex	City police department
44	Harassment	Race	City agency
45	Unable to determine	Unable to determine	City police
46	Sexual harassment Terms and conditions	Sex	State agency
47	Unable to determine	Unable to determine	City police department

Matter number	Matter issue	Protected class	Government entity alleged to have engaged in discrimination behavior
48	Hiring	Sex	City police department
49	Unable to determine	Unable to determine	County agency
50	Promotion	Sex	City police department
51	Promotion Retaliation	Race Sex	City police department
52	Hiring	Religion	City agency
53	Hiring	Age Disability	City agency
54	Constructive discharge Discharge Harassment Sexual harassment Terms and conditions	Sex	City agency
55	Discharge	Sex	City agency
56	Hiring	Race	City agency
57	Unable to determine	Sex	City police department
58	Unable to determine	Sex	School district
59	Racial harassment	Race	County agency
60	Unable to determine	Race	City fire department
61	Unable to determine	Unable to determine	County agency
62	Bid protest	Not applicable	Air Force
63	Bid protest	Not applicable	Air Force
64	Bid protest	Not applicable	Air Force

Source: Employment Litigation section closed matter files and interviews with the section chief.

Table IV.2 provides a brief description for each of the 64 closed matters that were initiated during fiscal year 1998 and provides information on the reasons that matters were closed.[2] We found that all 61 matters referred by EEOC were closed because the section concluded that participation was not justified. Three matters referred by another federal agency were closed because no further action was warranted. The order of the matters in Table IV.2 is presented in the same order as Table IV.1.

Additional information was available for 20 of the closed EEOC referred matters, regarding the reason the matter was closed. Seven of these closed matters were selected for further investigation or research but were not pursued as cases. Most of these were closed because the attorney's investigation found that the facts of the matter were problematic. Thirteen of the closed EEOC referred matters that were reviewed included

[2] We were unable to obtain a description for 38 closed matters because the files had been returned to EEOC.

additional reasons, such as the size and/or limited impact of the referred matter did not justify the resources necessary to prosecute, the individual was represented by a private attorney, the matter was resolved, or EEOC did not recommend litigation.

Table IV.2: Description of Closed Matters and the Reasons That Matters Were Closed

Matter number	Description of matter	Reason matter closed	Additional reasons cited
1	The section investigated an allegation that a county board had treated the complainant, a female, differently from male candidates in past instances where the county manager's recommendations to the Board was endorsed by the board. The complainant had applied for a management job. She was one of two final candidates for the job. The city manager recommended her to the county board, which rejected her for the position.	Participation not justified.	The result of the investigation was that the section attorney identified problems with the facts and recommended that a right- to-sue letter be issued to the complainant. Section attorney noted that the complainant had a private attorney who was able to pursue the claim.
2	The section investigated allegations of two separate EEOC referrals that a multistate transit authority discriminated against the complainants, two African-American males, on the basis of race while working at one of the entity's facilities. EEOC identified that the complainants had been retaliated against after its investigation.	Participation not justified.	The result of the investigation was that the section attorney identified problems with the facts and recommended that a right- to-sue letter be issued to the complainants. Section attorney noted that the complainants had a private attorney who was able to pursue their claim.
3	The section investigated an allegation that a county sheriff department and a county agency discriminated against the complainant, a female, on the basis of her race, African-American. The complainant alleged that she was denied equal pay and was discharged in retaliation for filing a complaint with EEOC.	Participation not justified.	The result of the investigation was that the section attorney identified problems with the facts and recommended that a right- to-sue letter be issued to the complainant.

Matter number	Description of matter	Reason matter closed	Additional reasons cited
4	[a]	Participation not justified.	Size and/or limited impact would not justify the resources necessary to prosecute.
5	The section investigated an allegation that a city agency denied the complainant, an African-American, a full-time job as a ground maintenance worker and subjected the complainant, a temporary employee, to racial harassment.	Participation not justified.	The result of the investigation was that the section attorney identified problems with the facts and recommended that a right-to-sue letter be issued to the complainant.
6	The section investigated an allegation that a city housing authority agency subjected the complainant, a male, to sexual harassment while working for the city agency. According to the complainant, he suffered retaliatory discharge from his position because he accused his supervisor with sexual harassment.	Participation not justified.	The result of the investigation was that the section attorney identified problems with the facts and recommended that a right- to-sue letter be issued to the complainant.
7	The section reviewed an allegation that a state veterans home discriminated against the complainant, an African-America female, on the basis of race and sex when she was denied a newly created position.	Participation not justified.	[b]

Matter number	Description of matter	Reason matter closed	Additional reasons cited
8	The section reviewed an allegation that a city agency and county personnel office discriminated against the complainant, a female, on the basis of sex when she was passed over for a promotion. She also alleged that she was discriminated against on the basis of race in regard to reimbursement for wages and expenses during the period of time when she temporarily acted as the Clerk for the City. EEOC's preliminary review did not find sufficient evidence of discrimination to support a finding of sex discrimination. However, the EEOC referred to the section for review of the complainant's allegation that she had been discriminated against on the basis of race in regard to reimbursement for wages and expenses.	Participation not justified.	Size and/or limited impact would not justify the resources necessary to prosecute.
9	[a]	Participation not justified.	[b]
10	[a]	Participation not justified.	[b]
11	[a]	Participation not justified.	[b]
12	[a]	Participation not justified.	[b]
13	[a]	Participation not justified.	[b]
14	[a]	Participation not justified.	[b]
15	[a]	Participation not justified.	[b]
16	The section reviewed an allegation that a state commission retaliated against the complainant, an Asian, for filing a complaint with EEOC. The complainant alleged that her position was abolished in retaliation.	Participation not justified.	Size and/or limited impact would not justify the resources necessary to prosecute.
17	[a]	Participation not justified.	[b]
18	[a]	Participation not justified.	[b]
19	[a]	Participation not justified.	[b]
20	[a]	Participation not justified.	[b]
21	[a]	Participation not justified.	[b]

Matter number	Description of matter	Reason matter closed	Additional reasons cited
22	The section reviewed an allegation of retaliation by a city police department. The female complainant alleged that her employer retaliated against her because she filed a sexual harassment complaint with EEOC.	Participation not justified.	The complainant was represented by counsel. There were no unique issues.
23	The section reviewed the complainant's allegation that he had been denied a tenure position at a state university because he had filed a national origin discrimination complaint against a former employer.	Participation not justified.	[b]
24	The section reviewed an allegation that a state correction agency refused to provide religious accommodation for the complainant. The complainant, a Native-American, was disciplined and then discharged for failing to comply with the state agency policy regarding hair length.	Participation not justified.	The complainant filed a union grievance and the matter was settled with the employer.
25	The section reviewed allegations from five African-American complainants that a particular state liquor control agency failed to promote them.	Participation not justified.	[b]
26	The section reviewed an allegation that a state correctional institution failed to promote the complainant, who was white, on the basis of race. Some of the evidence indicated that race was a factor in the selection process because the state agency's decisions considered its affirmative action goals.	Participation not justified.	EEOC did not recommend litigation.

Matter number	Description of matter	Reason matter closed	Additional reasons cited
27	The section reviewed an allegation that a school board discriminated against a female complainant on the basis of her national origin.	Participation not justified.	[b]
28	[a]	Participation not justified.	[b]
29	[a]	Participation not justified.	[b]
30	[a]	Participation not justified.	[b]
31	[a]	Participation not justified.	[b]
32	[a]	Participation not justified.	[b]
33	[a]	Participation not justified.	[b]
34	[a]	Participation not justified.	[b]
35	[a]	Participation not justified.	[b]
36	The section reviewed an allegation that a city aviation department subjected the complainant, a female, to sexual harassment by a coworker. The complainant also alleged that retaliation by the coworker created a hostile work environment.	Participation not justified.	The city agency concluded that the complainant was sexually harassed and then discharged the harasser.
37	[a]	Participation not justified.	[b]
38	[a]	Participation not justified.	[b]
39	[a]	Participation not justified.	[b]
40	The section reviewed an allegation that a state health agency discriminated against the complainant, a female, on the basis of her religion.	Participation not justified.	[b]
41	[a]	Participation not justified.	[b]
42	[a]	Participation not justified.	[b]
43	The section investigated an allegation that a city police department denied the complainant, a white female, a lateral transfer to a position due to her race and sex.	Participation not justified.	The result of the investigation was that the section attorney noted no back-pay relief was available and the likelihood of a repetition of the alleged discrimination was remote and recommended that a right-to-sue letter be issued to the complainant.
44	[a]	Participation not justified.	[b]
45	[a]	Participation not justified.	[b]
46	[a]	Participation not justified.	[b]
47	[a]	Participation not justified.	[b]

Matter number	Description of matter	Reason matter closed	Additional reasons cited
48	The section considered investigating an allegation that a city police department engaged in discriminatory employment practices on the basis of sex by refusing to hire the complainant for the position of police officer.	Participation not justified.	After researching the matter, the section attorney identified problems with the facts and recommended that a right-to-sue letter be issued to the complainant.
49	[a]	Participation not justified.	[b]
50	The section reviewed an allegation that a city police department denied the complainant, a female, a promotion because of her sex.	Participation not justified.	[b]
51	The section reviewed an allegation that a city police department denied complainants, two white males, promotions because of their race and sex.	Participation not justified.	EEOC did not recommend litigation.
52	The section reviewed an allegation that a city college would not hire the complainant as a tutor because the complainant did not provide a social security number.	Participation not justified.	EEOC did not recommend litigation.
53	[a]	Participation not justified.	Size and/or limited impact would not justify the resources necessary to prosecute.
54	[a]	Participation not justified.	Size and/or limited impact would not justify the resources necessary to prosecute.
55	[a]	Participation not justified.	Size and/or limited impact would not justify the resources necessary to prosecute.
56	[a]	Participation not justified.	Size and/or limited impact would not justify the resources necessary to prosecutes.
57	The section reviewed an allegation against a city police department. The section attorney made some telephone calls and closed the matter.	Participation not justified	[b]
58	[a]	Participation not justified.	[b]

Matter number	Description of matter	Reason matter closed	Additional reasons cited
59	The section reviewed an allegation that a county nursing agency subjected the complainant, a female African-American, to racial harassment by another county employee.	Participation not justified.	[b]
60	[a]	Participation not justified.	[b]
61	[a]	Participation not justified.	[b]
62	The section monitored a bid protest against a federal agency, regarding the awarding of a federal procurement contract. The bid protest challenged the awarding of the contract based on federal affirmative action objectives.	No further action was warranted.	The contractor did not file a lawsuit against the U.S. government.
63	The section monitored a bid protest against a federal agency, regarding the awarding of a federal procurement contract. The bid protest challenged the awarding of the contract based on federal affirmative action objectives.	No further action was warranted.	The contractor did not file a lawsuit against the U.S. government.
64	The section monitored a bid protest against a federal agency, regarding the awarding of a federal procurement contract. The bid protest challenged the awarding of the contract based on federal affirmative action objectives.	No further action was warranted.	The contractor did not file a lawsuit against the U.S. government.

[a] CRT's file did not contain a description of the matter.

[b] No additional reasons cited.

Source: Employment Litigation section closed matter files and interviews with the section chief.

As mentioned previously, the Employment litigation section selected seven EEOC referred matters for further investigation or research. Although these matters were not pursued as cases, they were selected for consideration as potential cases for litigation. Therefore, to provide information regarding the section's reasons for initiating these

investigations, we asked the section chief to indicate the factors considered when these seven matters were selected for further consideration. As shown in table IV.3, EEOC recommended that Justice consider the matter for litigation in five of the seven matters. In six of the seven matters, a factor considered, in part, was the particular type or category of discrimination, such as those related to sex discrimination or assignment practices. Two of the matters were selected, in part, because they involved priorities set in 1995 by the prior Assistant Attorney General, which continue to be priorities under the current Assistant Attorney General. For example, one matter involved an allegation that a county board had discriminated against a female applicant for a management position based on her sex. According to the section chief, the issues in this matter addressed a priority to identify illegal discrimination against minorities and women in mid- and upper-level positions. The other matter considered a priority involved an allegation that a multistate transit authority discriminated against two African-American males on the basis of race. According to the section chief, this matter addressed a priority to identify patterns or practices of illegal discrimination against minorities and women in government facilities or agencies that deal with the public, such as public utilities and mass transit systems. Table IV.3 summarizes the factors considered by the section when it decided to investigate seven matters referred by EEOC.

Table IV.3: Factors Considered by the Employment Litigation Section When Selecting Matters for Investigation That Were Not Pursued as Cases.

Matter Number	Matter issue	Protected class	Assistant Attorney General priority	Impact in a particular type or category of discrimination	Impact in a particular location	EEOC recommended Justice consider the matter for litigation	Part of body of casework on going
1	Hiring	Sex	•			•	
2	Promotion Assignment Retaliation	Race	•	•	•		
3	Retaliation Equal pay	Race Sex		•		•	
5	Racial harassment	Race		•		•	
6	Sexual harassment	Sex		•			•
43	Assignment	Race Sex		•		•	
48	Hiring	Sex		•		•	

Source: Interviews with the Employment Litigation section chief.

Information on Housing and Civil Enforcement Section Cases

This appendix provides general information on the 44 Housing and Civil Enforcement section cases that were initiated in fiscal year 1998. Specifically, table V.1 contains information on the characteristics of these cases, including the origin or source, the section's role in the case, whether the U.S. Attorney's office handled the case, the protected class, type, and the subject matter covered in the case. Following table V.1 is a narrative that provides a descriptive summary of the facts of each case along with the case disposition.

Table V.1: Characteristics of Housing and Civil Enforcement Cases

Case name	Origin	Government role	U.S. Attorney's office handle case	Protected class	Case type	Subject matter
U.S. v. Burnette Company, Inc.	HUD	Plaintiff	Yes	Familial status	Election	Discriminatory advertising or statements
U.S. v. Beacon Woods East Homeowners' Association, Inc.	HUD	Plaintiff	No	Handicap	Election	Refusal to make reasonable accommodations
U.S. v. Zachary Cowan and Carla Sydnor	HUD	Plaintiff	Yes	Familial status	Election	Discriminatory advertising or statements Discrimination in terms and conditions
U.S. v. Marvin A. Gardner	HUD	Plaintiff	No	Familial status	Election	Discriminatory advertising or statements
U.S. v. Metroplex, Inc., et al.	HUD	Plaintiff	Yes	Handicap	Election	Refusal to make reasonable accommodations
U.S. v. Dave Landis and Annuities, Land, Patents, and Securities Corporation	HUD	Plaintiff	Yes	National origin	Election	Discriminatory advertising or statements Discrimination in sale Discrimination in lending
U.S. v. Danny LeBlanc	HUD	Plaintiff	Yes	Race	Election	Rent discrimination
U.S. v. Dennis C. Pospisil, et al.	HUD	Plaintiff	Yes	National origin Race	Election	Intimidation/coercion/ retaliation
U.S. v. New Hampshire Housing Finance Authority	HUD	Plaintiff	No	Handicap	Election	Refusal to make reasonable accommodations
U.S. v. Cove Realty, Inc., et al.	HUD	Plaintiff	Yes	Familial status	Election	Rent discrimination Discriminatory advertising or statements Discrimination by an entity engaged in real estate transactions

Case name	Origin	Government role	U.S. Attorney's office handle case	Protected class	Case type	Subject matter
U.S. v. Evergreen Park Condominium I Board of Managers	HUD	Plaintiff	Yes	Handicap	Election	Refusal to make reasonable accommodations Refusal to make reasonable modifications[a]
U.S. v. Walt Whitman Brokers Ltd., et al.	HUD	Plaintiff	Yes	Familial status	Election	Rent discrimination Discriminatory advertising or statements
U.S. v. Freeport Housing Authority	HUD	Plaintiff	Yes	Familial status	Election	Discrimination in terms and conditions
U.S. v. James Ziebold	HUD	Plaintiff	Yes	National origin Race	Election	Discriminatory advertising or statements Intimidation/coercion/ retaliation
U.S. v. Michael Hall, et al.	HUD	Plaintiff	Yes	Familial status	Election	Discrimination in terms and conditions
U.S. v. Walter Hartinger and Friederike Hartinger	HUD	Plaintiff	Yes	Race	Election	Rent discrimination Discriminatory advertising or statements Discrimination in terms and conditions Interference/coercion/ retaliation
U.S. v. Alexander C. Waterhouse, Jr., et al.	HUD	Plaintiff	Yes	Familial status	Election	Rent discrimination Discrimination in terms and conditions
U.S. v. Conifer 307 Oregon, Ltd., et al.	HUD	Plaintiff	Yes	Familial status	Election	Discriminatory advertising or statements Discrimination in terms and conditions
U.S. v. Rembold Trusts, Inc., and Billie Ivory	HUD	Plaintiff	Yes	Familial status	Election	Rent discrimination Discriminatory advertising or statements Discrimination in terms and conditions Discriminatory representations in availability Discrimination by an entity engaged in real estate transactions
U.S. v. Henry B. Lamb	HUD	Plaintiff	Yes	Familial status	Election	Rent discrimination Discrimination in terms and conditions Discriminatory representations in availability

Case name	Origin	Government role	U.S. Attorney's office handle case	Protected class	Case type	Subject matter
U.S. v. Craig A. and Mary Ann Ciarlone, et al.	HUD	Plaintiff	Yes	Race	Election	Discrimination in terms and conditions Discriminatory representations in availability Discrimination in sale
U.S. v. Kenneth Billington and Sandra Hagen	HUD	Plaintiff	Yes	Familial status	Election	Rent discrimination Discriminatory advertising or statements Discrimination in terms and conditions
U.S. v. Housing Authority of the City of Pasco and Franklin County, et al.	HUD	Plaintiff	Worked jointly with the U.S. Attorney	Handicap	Election	Refusal to make reasonable accommodations Section 504 of the Rehabilitation Act and Title II of the ADA
U.S. v. Coldwell Banker Corrado Realty, Inc., and Guy Corrado	HUD	Plaintiff	Yes	Familial status	Election	Rent discrimination Discriminatory advertising or statements Discrimination in terms and conditions
U.S. v. John Hobbs, et al.	HUD	Plaintiff	Yes	Race	Election	Rent discrimination Discriminatory advertising or statements Intimidation/coercion/ retaliation
U.S. v. Leslie J. Waltke, et al.	HUD	Plaintiff	Yes	Familial status	Election	Rent discrimination Discrimination in terms and conditions
U.S. v. Oakdale Estates, Inc., et al.	HUD	Plaintiff	Yes	Familial status	Election	Rent discrimination Discriminatory advertising or statements Discrimination in terms and conditions
U.S. v. Betty Egner	HUD	Plaintiff	No	Handicap Race	Election	Rent discrimination Discriminatory advertising or statements Discrimination in terms and conditions Discriminatory representations in availability Intimidation/coercion/retaliation
U.S. v. Charles Harlan, et al.	HUD	Plaintiff	No	National origin	Pattern or practice/election	Rent discrimination Discriminatory advertising or statements Discrimination in terms and conditions Discriminatory representations in availability Discrimination in sale

Case name	Origin	Government role	U.S. Attorney's office handle case	Protected class	Case type	Subject matter
U.S. v. Duane B. Hagadone and Fran I. Goff	HUD	Plaintiff	No	Familial status	Pattern or practice/election	Rent discrimination Discriminatory advertising or statements Discrimination in terms and conditions
U.S. v. Choice Property Consultants, Inc., et al.	HUD	Plaintiff	Yes	Familial status National origin Race	Pattern or practice/election	Rent discrimination Discriminatory advertising or statements Discrimination in terms and conditions Discriminatory representations in availability
U.S. v. Richmond 10-72 Ltd., et al.	HUD	Plaintiff	No	Race	Pattern or practice/election	Rent discrimination Discriminatory advertising or statements Discrimination in terms and conditions Discriminatory representations in availability
U.S. v. A. Waddell Nejam, et al.	Testing	Plaintiff	No	Race	Pattern or practice/testing	Rent discrimination Discriminatory advertising or statements Discriminatory representations in availability
U.S. v. Garden Homes Management Corp., et al.	Testing	Plaintiff	No	Race	Pattern or practice/testing	Rent discrimination Discriminatory representations in availability
U.S. v. Henry K. Vernon, et al.	Testing	Plaintiff	No	Familial status Race	Pattern or practice/testing	Rent discrimination Discriminatory advertising or statements Discrimination in terms and conditions Discriminatory representations in availability
U.S. v. L.T. Jackson; and L.T. Jackson Trust	Public housing authority	Plaintiff	No	Sex	Pattern or practice	Rent discrimination Discriminatory advertising or statements Discrimination in terms and conditions Intimidation/coercion/ retaliation Sexual harassment
U.S. v. Lyle Krueger	HUD	Plaintiff	No	Sex	Pattern or practice Enforcement of conciliation	Intimidation/coercion/retaliation Sexual harassment
U.S. v. Associates National Bank	Office of the Comptroller of the Currency (OCC)	Plaintiff	No	National origin	Pattern or practice/lending	Discrimination in terms and conditions Pricing/underwriting

Case name	Origin	Government role	U.S. Attorney's office handle case	Protected class	Case type	Subject matter
U.S. v. Deposit Guaranty National Bank	OCC	Plaintiff	No	Race	Pattern or practice/lending	Pricing/underwriting Discrimination by an entity engaged in real estate transactions
Maryland State Conference of NAACP Branches, et al., v. Maryland State Police, et al.	Private attorney	Amicus	No	Race	Amicus curiae	Racial discrimination in police profiling
National Fair Housing Alliance Inc., et al. v. Liberty Mutual Insurance Company, et al.	Fair housing group	Amicus	No	Race	Amicus curiae	Discrimination in terms and conditions Pricing/ underwriting in insurance
Baltimore Neighborhoods, Inc., et al. v. Rommel Builders, Inc.	Fair housing group	Amicus	No	Handicap	Amicus curiae	Discrimination in accessibility – multifamily housing
Project Life, Inc., et al. v. Parris Glendening, et al.	U.S. Attorney	Amicus	No	Handicap	Amicus curiae	Refusal to make reasonable accommodations Applicability of ADA and FHA
Lillian E. Bryant, et al. v. New Jersey Department of Transportation, et al.	District court	Plaintiff/ intervenor	No	Race	Intervenor	Environmental justice Constitutionality of Title VI

[a]According to Justice, this refers to allowing an individual to make physical modifications to the premises.

Source: Review of Housing and Civil Enforcement section case files and interviews with section officials.

The following section provides descriptions of cases that the Housing and Civil Enforcement section initiated in fiscal year 1998 and their dispositions.

(1.) U.S. v. Burnette Company, Inc.

This case was filed on behalf of a woman and her minor child—tenants of a 53-unit apartment complex, who had filed a complaint with HUD—against the owner of the complex, a construction company, and several other individuals associated with the leasing, management, or operation of garden apartments. The complaint in this case alleged that the defendants discriminated on the basis of familial status by enforcing written rules, by verbal and written notice, that unreasonably restricted the activities of resident children. Specifically, the woman had asked the resident manager of the complex if she could hold a birthday party for her son at the pool on a particular afternoon at a specific time. The manager told her that, based on pool use restrictions imposed by the complex, she would not be able to hold her son's birthday party on the particular afternoon that she had requested.

Disposition: Closed.

The parties reached an out of court settlement.

(2.) U.S. v. Beacon Woods East Homeowners' Association, Inc.

This case was filed on behalf of a husband and wife couple who had filed a complaint with HUD alleging housing discrimination by the home-owners association that had jurisdiction over the subdivision in which they owned their single-family home. The complaint in this case alleged that the husband, confined to a wheelchair with a severe disability, needed constant access to bathing facilities so that he could cleanse and keep his body sterile. The complaint alleged that the association had discriminated against the couple, on the basis of handicap, by refusing to make a reasonable accommodation from a subdivision deed that prohibited their parking a mobile home—equipped with water and bathing facilities—at their residence.

Disposition: Open.

(3.) U.S. v. Zachary Cowan and Carla Sydnor

This case was filed on behalf of a couple and their two minor children, renters of mobile-home space at a recreational vehicle park, who had filed a complaint with HUD. The complaint alleged that the defendants, an owner and manager of a recreational vehicle park, had discriminated against the couple and their children on the basis of familial status. Specifically, the owner had served them with a 30-day notice to remove their mobile home from the subject property or he would begin eviction

proceedings against them, because of his policy of limiting occupancy to two persons in front row mobile home space in the recreational vehicle park.

Disposition: Closed.

The case was resolved through a settlement decree filed with the court whereby, the defendant was ordered to pay the complainants $6,665.

(4.) U.S. v. Marvin A. Gardner	This case was filed on behalf of the Idaho Fair Housing Council, a nonprofit organization, which had filed a complaint with HUD alleging that the owner of an apartment property injured the organization by engaging in unlawful discrimination, on the basis of familial status, in the rental of property. Specifically, the complaint in this case alleged that the defendant, the owner of a four-unit building, included the words “no children” in an advertisement for a vacancy in his building and made a statement to two testers (that the Idaho Fair Housing Council instructed to telephone) that occupancy by children was prohibited or restricted. **Disposition: Closed.** The case was resolved through a consent order that required future compliance with the FHA, including advertising in compliance with the act, imposing recordkeeping, and attending training.
(5.) U.S. v. Metroplex, Inc., et al.	This case was filed on behalf of a mother and her disabled son who had filed a complaint with HUD against the defendants—the management agents and owner of the subject apartments, the on-site manager, and the owners of corporations that acted as managing agents for the complex. The complaint alleged that the defendants discriminated against the woman and her son, on the basis of the son’s handicap, when they welded shut the gate to which the mother had been given a key to accommodate her son's disability and allow him access to the nearest exit from his apartment to the school bus. With the gate welded, the son had to use an exit at the other side of the complex and be wheeled a distance of more than two blocks to the school bus. The complaint further alleged that snow was not shoveled along the path of travel required after the gate had been welded and the mother had requested an alternative apartment. **Disposition: Closed.** The case was resolved through a defendant's offer of judgment whereby the defendants agreed to pay the complainants $45,000.

(6.) U.S. v. Dave Landis and Annuities, Land, Patents, and Securities Corporation	This case was filed on behalf of a husband and wife Italian-American couple who had filed a complaint with HUD alleging discrimination, on the basis of national origin, when the defendants refused to sell or to negotiate for the sale of a particular property. Specifically, the couple alleged that the corporation that held redemption rights to the subject property discriminated against them, when the couple attempted to make a written offer on the property through their real estate agent. The defendant, in faxing back the complainants written offer on the property, wrote on the back of the offer that the complainants were "WOPS" and that they should go to another neighborhood to steal property. **Disposition: Closed.** The case was resolved through a consent decree that required the defendants to pay $5,000 to the complainants in punitive damages, or to pay $20,000 in civil penalties.
(7.) U.S. v. Danny LeBlanc	This case was filed on behalf of an African-American male and Louisiana Acorn Fair Housing—a private nonprofit fair housing organization—against the defendant, an owner of several apartment units. Specifically, the man had filed an earlier complaint with HUD that alleged that the defendant discriminated against him, on the basis of race or color, by refusing to rent to him a one-bedroom studio apartment. The individual consulted with Louisiana Acorn Fair Housing, which conducted testing that confirmed the individual's complaint. **Disposition: Open on appeal.** The case resulted in a favorable jury decision that awarded Louisiana Acorn Fair Housing compensatory damages of $1,076, and attorney's fees, and punitive damages to the plaintiff-intervenor in the amount of $10,000. The case also resulted in a favorable court-ordered decision that included injunctive relief.
(8.) U.S. v. Dennis C. Pospisil, et al.	This case was filed on behalf of a woman and her three minor children who had filed a complaint with HUD alleging discrimination in housing, on the basis of race, color, or national origin. The complaint alleged that the defendants and other individuals burned a cross on the lawn of the woman's residence and slashed two tires on her vehicle. **Disposition: Open.**

(9.) U.S. v. New Hampshire Housing Finance Authority

This case was filed on behalf of a woman with multiple serious illnesses—including AIDS, Hepatitis C, and liver disease—that severely restricted her ability to walk without assistance and conduct daily activities. The woman had filed a complaint with HUD that alleged that the defendant, the New Hampshire Housing Finance Authority,[1] had discriminated against her by improperly refusing to make a reasonable accommodation in its administration of its section 8 program. Specifically, it had refused her request to use her housing voucher to subsidize an apartment in Massachusetts rather than New Hampshire. She had requested the accommodation to eliminate the hardship she would face if she were forced to live a substantial distance away from her medical specialist and other supports on which she relied.

Disposition: Closed.

The case was resolved through a consent decree that provided for injunctive relief and compensatory relief for the complainant in the amount of $45,000. The order further required the defendant to impose recordkeeping and reporting and to inform all employees, agents, and representatives involved in administering its fair housing programs about the prohibitions on discrimination imposed by the FHA.

(10.) U.S. v. Cove Realty, Inc., et al.

This case was filed on behalf of a woman, her two minor children, and two other adults, who filed complaints with HUD alleging discrimination on the part of a licensed real estate brokerage firm and the receptionist and real estate agent employed there. The complaint alleged that the defendants discriminated against the complainants on the basis of familial status. Specifically, the complainants had responded to an advertisement placed by the firm for a five-room apartment. She spoke with the firm's agent, who told her that the owner of the property did not want to rent to anyone with children. The complaint also indicated testing by the particular county's housing services, which revealed discrimination on the basis of familial status.

Disposition: Closed.

The case was resolved through a consent decree that required the defendant to impose recordkeeping and reporting and attend fair housing training with the employees. The decree further required the defendants to pay $10,000 in damages to the complainants.

[1] The New Hampshire Housing Finance Authority is a state entity that assists in the development and/or operation of low-income housing, including the administration of section 8 programs.

(11.) U.S. v. Evergreen Park Condominium I Board of Managers	This case was filed on behalf of a couple and their minor son who had filed a complaint with HUD alleging violations of the FHA, based on the son's disability. The complaint in this case alleged that a home-owners association and its managing agent had denied the couple's request to make structural modifications to their condominium unit, deemed necessary as a result of the son's mobility impairment. In particular, the complainants alleged that the defendants had denied their request to install, at their expense, a motorized elevator or wheelchair lift outside their condominium unit. **Disposition: Closed.** The case was resolved through a consent order, providing for injunctive relief only and requiring the defendant to allow and accommodate the construction of an elevator in the complainants' condominium.
(12.) U.S. v. Walt Whitman Brokers Ltd., et al.	This case was filed on behalf of a woman and her minor son, who had filed a complaint with HUD alleging housing discrimination, on the basis of familial status. Specifically, it was alleged that the woman inquired about rental apartments from a sales agent with a licensed real estate brokerage firm. For about 4 months, she was repeatedly told that no children were allowed. When she claimed she had no children, she was finally shown an advertised apartment. **Disposition: Open.** The case was resolved through a partial consent order that required the defendant to impose recordkeeping and reporting and attend fair housing training with the employees. The decree further required the defendants to pay $1,000 in damages to the complainants.
(13.) U.S. v. Freeport Housing Authority	This case was filed on behalf of a foster mother who had filed a complaint with HUD alleging housing discrimination, on the basis of familial status. Specifically, the complaint in this case alleged that a public housing authority and its former director threatened to evict her if she did not move into a smaller apartment, despite her custody of three minor foster children. According to the defendant's occupancy guidelines, a three-bedroom apartment should be occupied by four to six people. **Disposition: Closed.** The case was resolved through a consent order that required the defendants to discontinue or withdraw the eviction notice and to

	implement nondiscriminatory rental policies. The order further required the defendants to pay $7,500 in damages to the complainant.
(14.) U.S. v. James Ziebold	This case was filed on behalf of a woman, a co-owner of property containing three rental apartments, who had filed a complaint with HUD that alleged that the defendant discriminated against her on the basis of race and national origin. Specifically, the complaint alleged that the defendant had made threatening telephone calls to the complainant's rental home stating that if she rented to African-American or Hispanic applicants, her home would be blown up. A police department investigation revealed the defendant's identity. **Disposition: Closed.** The case resulted in a favorable court-ordered decision that provided for injunctive relief and $2,500 in compensatory damages.
(15.) U.S. v. Michael Hall, et al.	This case was filed on behalf of six families, alleging discrimination in the operation of a mobile-home park. Specifically, the complaint alleged that the defendants enacted, published, implemented, and enforced policies, rules, and regulations, regarding the mobile home park, which were designed to (1) discourage families with children from residing in the park; (2) discriminate against families with children in the park; and/or (3) unreasonably restrict the terms, conditions, and privileges of use of the park for tenants with children. Additionally, complaints were filed with HUD by five of the six families on whose behalf the case was brought, alleging that the defendants retaliated against them for filing a fair housing complaint or asserting their fair housing rights. **Disposition: Closed.** The case was resolved through a consent order providing for injunctive and monetary relief.
(16.) U.S. v. Walter Hartinger and Friederike Hartinger	This case was filed on behalf of a Caucasian woman, her son, and her African-American boyfriend. She had filed a complaint with HUD alleging that the owners of an apartment complex, in which the complainant resided with her son, discriminated against her, on the basis of race because of her association with an African-American. Specifically, the complaint in this case alleged that the respondents discriminated against them by harassing the woman and her family and by issuing her an eviction notice because of her association with him.

Disposition: Closed.

The case was resolved through a consent order, which provided for $15,000 in monetary relief for the complainants, as well as injunctive relief. The order further required the defendant to impose recordkeeping and reporting and attend fair housing training.

(17.) U.S. v. Alexander C. Waterhouse, Jr., et al.	This case was filed on behalf of a couple and their minor children, who had filed a complaint with HUD alleging discrimination, on the basis of familial status by the owner, officers, and resident managers of a recreational vehicle park. Specifically, the complaint in this case alleged that when the complainants moved into the recreational vehicle park, the defendants discriminated against them by adopting and implementing a policy of imposing different rental charges, based on the number of occupants in the household. By enforcing this policy against the complainants, the defendants made the property unavailable to the complainants on the basis of familial status. **Disposition: Open.**
(18.) U.S. v. Conifer 307 Oregon, Ltd., et al.	This case was filed on behalf of a couple, and their two children, who had filed a complaint with HUD against the defendants—an owner and resident managers of an apartment complex in which they resided. Specifically, the complainants alleged that the defendants had discriminated against them on the basis of familial status by not allowing their children into the recreation room of the complex. **Disposition: Closed.** The case was resolved by a consent order for monetary payment for the complainants in the amount of $4,700, plus injunctive relief. The order further required the defendants and their employees to attend fair housing training.
(19.) U.S. v. Rembold Trusts, Inc. and Billie Ivory	This case was filed on behalf of the Fair Housing Council of Oregon (FHCO), a nonprofit organization established for the purpose of furthering the goal of equal housing opportunity, in part through counseling, testing, and other enforcement efforts. FHCO had filed a complaint with HUD against an owner and site manager of 30 condominium units alleging that the organization's testing efforts had revealed that the defendants had discriminated against families with children, regarding the sale and availability of the condominium units.

Disposition: Closed.

The case was resolved through a consent order, whereby the defendants were ordered to pay the complainants $6,000, in addition to injunctive relief. The order further required the defendants and their employees to attend fair housing training.

(20.) U.S. v. Henry B. Lamb	This case was filed on behalf of FHCO. Specifically, FHCO had filed a complaint with HUD that alleged that, through its testing efforts, FHCO had determined that the defendant, owner and manager of real estate, had discriminated against families with children in the rental of property. **Disposition: Closed.** The case was resolved through a consent order, whereby the defendants were ordered to pay the complainants $6,000, in addition to injunctive relief. The order further required the defendant to impose recordkeeping and reporting and to attend fair housing training.
(21.) U.S. v. Craig A. and Mary Ann Ciarlone, et al.	This case was filed on behalf of an African-American couple and their two children who had filed a complaint with HUD alleging discrimination on the basis of race and color. Specifically, the complaint in this case alleged that the defendants—owners of real estate property, including a single-family home—a real estate agent, and a real estate agent company, had listed the owner's home for sale. The complaint further alleged that, after the complainants showed interest in the property, the defendants abruptly removed the property from the market and misrepresented to the complainants that the property was no longer for sale, when in fact it was for sale. **Disposition: Closed.** The case was resolved through a consent order that required the owners of the property to enter into an agreement with the complainants for the sale of the subject property and pay $3,500 to the complainants. In addition, the order contained standard injunctive relief provisions and required the real estate agent and company to waive all commissions on the sale of the property and attend fair housing training.
(22.) U.S. v. Kenneth Billington and Sandra Hagen	This case was filed on behalf of a woman and her three minor children who had filed a complaint with HUD that alleged discrimination, on the basis of familial status. Specifically, the complaint in this case alleged that

the defendants, property owners, refused to rent the property to the complainant because she had three children.

Disposition: Closed.

The case was resolved through a consent order requiring, among other things, the defendants to pay the complainants $1,000.

(23.) U.S. v. Housing Authority of the City of Pasco and Franklin County, et al.	This case was filed on behalf of a woman who had filed a complaint with HUD that alleged discrimination, on the basis of her disability. Specifically, the complaint alleged that the woman had a physical impairment that severely limited her ability to walk and required the use of a wheelchair to assist with her mobility. She resided in a public housing complex and had requested a reserved parking space to use in the parking lot in close proximity to her apartment to accommodate her physical impairment. The complaint further alleged that the defendants—the housing authority that owned and operated the complex, its executive director, and the chairperson of its Board of Commissioners—discriminated against her, on the basis of her handicap by not meeting her request and thus, failing or refusing to make a reasonable accommodation in their rules, policies, practices, or services. **Disposition: Closed.** The case resulted in a consent order that provided for injunctive relief, by providing the complainant with a parking space designated as reserved for her dwelling, in close proximity to her apartment. The order also required the defendants to pay the complainant $2,000. The order further required the defendant to impose recordkeeping and reporting.
(24.) U.S. v. Coldwell Banker Corrado Realty, Inc. and Guy Corrado	This case was filed against a realty company and its owner that provided management services, including rental advertising for residential single and multiple family rental properties, in Spokane, WA. A complaint had been filed with HUD by the Northwest Fair Housing Alliance (NFHA)—a private fair housing organization that receives and investigates complaints of unlawful housing discrimination and conducts periodic reviews of rental policies in a particular area to measure compliance with federal, state, and local law. NFHA's review of the company's rental policies and practices revealed that it had engaged in discriminatory action, regarding families with children, by openly advertising and marketing to prospective renters that the dwellings contained in certain multifamily apartment buildings were not available, or were available on different terms and conditions, to families with children.

	Disposition: Closed. The case was resolved through a consent order, whereby the defendants were ordered to pay the complainants $1,500.
(25.) U.S. v. John Hobbs, et al.	This case was filed on behalf of an African-American couple and their three children, who had filed a complaint with HUD that alleged discrimination, on the basis of race. Specifically, it was alleged that the defendants, neighbors of the complainants, had discriminated against them by seeking to interfere with, intimidate, or impede their choice of residence on account of race. **Disposition: Closed.** The case resulted in a favorable court-ordered decision and a favorable jury decision whereby the jury found for the complainants and awarded them $10,000 in damages.
(26.) U.S. v. Leslie J. Waltke, et al.	This case was filed on behalf of a mother and her three minor children, who had filed a complaint with HUD alleging discrimination on the basis of familial status by the defendants, who owned and managed a rental property. Specifically, the woman was seeking a three-bedroom apartment that was advertised in a newspaper. When she called to inquire about the rental, one of the defendants told her that the owner did not want children in the building. Subsequently, the Metropolitan Milwaukee Fair Housing Council conducted housing tests for the same rental and was told that the owner did not want children. In an amended complaint, the government alleged that the defendants discriminated against the complainant and her children by refusing to negotiate with her over the rental of an apartment because of her familial status and by making statements that indicated a preference, limitation, and discrimination on the basis of familial status. **Disposition: Closed.** The case was resolved through a consent order, whereby the defendants were ordered to pay the sum of $1,500 to the complainant. Injunctive relief was also provided, and the defendants were ordered to impose recordkeeping and reporting and training to any individuals involved in the leasing of any of the units owned or operated by the defendants.
(27.) U.S. v. Oakdale Estates, Inc., et al.	This case was filed on behalf of a woman and her minor children and the owner of a mobile-home dealership. Specifically, the owner of the dealership had filed a complaint with HUD, which alleged that the owners

and operators of a mobile home park had discriminated against the woman, her children, and fiancé on the basis of familial status when they refused to rent or to negotiate the rental of a lot because of children. The dealership lost the sale for the mobile home that would have been placed on the lot but for the discrimination.

Disposition: Closed.

The case was resolved through a consent order that provided for injunctive relief and monetary relief in the amount of $7,000 payable to the woman and $1,000 to the owner of the mobile home dealership. The order further required the defendants to impose recordkeeping and reporting. At the request of the United States, copies of records and reports are to be made available to the United States for monitoring.

(28.) U.S. v. Betty Egner	This case was filed on behalf of the Arkansas Fair Housing Council—a nonprofit housing group—and a Caucasian HIV-positive male and an African-American male who had filed a claim with HUD against an apartment complex owner. Specifically, the complaint alleged that the owner discriminated against the two male individuals when she refused to rent or make unavailable to them a dwelling because of their race, color, or handicap. **Disposition: Closed.** The case was resolved through a consent order that provided for injunctive and monetary relief. The order also required the defendant to advertise in compliance with the FHA, to impose fair housing rental policies, and to attend fair housing training and provide training to her employees.
(29.) U.S. v. Charles Harlan, et al.	This case was filed on behalf of several individuals of Mexican and Anglo national origin against owners of a mobile-home park. Specifically, those individuals had filed complaints with HUD alleging that the owners discriminated against them, on the basis of national origin, by refusing to allow them to rent a mobile-home space or sell a mobile home in the park to persons of Mexican national origin. After HUD referred the matter, the Housing and Civil Enforcement section added a charge that the defendants had engaged in a pattern or practice of discrimination by (1) refusing to allow a Caucasian resident at the park to sell his unit to Hispanic persons, (2) telling a manufactured home sales agent that she could not sell the unit to Hispanic individuals, and (3) making derogatory statements about Hispanic individuals to several persons.

Disposition: Closed.

The case was resolved through a consent decree that included a total of $92,500 in monetary relief--$75,000 collectively for the complainants, a $10,000 civil penalty, and $7,500 in attorney's fees for the plaintiff-intervenor-- fair housing training for the defendants, and reporting and monitoring requirements for the period of the decree.

(30.) U.S. v. Duane B. Hagadone and Fran I. Goff	This case was filed on behalf of two families and the Idaho Fair Housing Council, who filed a complaint with HUD that alleged discrimination, on the basis of familial status, against the owner and resident manager of a 256-unit apartment building. The Housing and Civil Enforcement section also included a charge that the defendants had engaged in a pattern or practice of discrimination. Specifically, the complaint alleged that the defendants imposed a standard that limited occupancy of two-bedroom apartments to two persons as well as rules and regulations that unreasonably restricted the use of facilities by children. **Disposition: Closed.** The case was resolved through a consent order, which required a total payment of $105,000. The order also required that the defendants attend and provide to their employees fair housing training, impose tenant rules and regulations and undertake marketing measures consistent with fair housing, and comply with recordkeeping and reporting requirements.
(31.) U.S. v. Choice Property Consultants, Inc., et al.	This case was filed on behalf of the Housing Discrimination Project, a private nonprofit corporation that promotes fair housing practices. The corporation had filed a complaint with HUD against a private rental agency and its president, alleging that they limited prospective applicants based on the race, national origin, and familial status preferences of a landlord. The Housing and Civil Enforcement section also added a charge that the defendants' conduct was a pattern or practice of housing discrimination, such as their use of coded vacancy reports provided to their employees to reflect those landlords that would not rent to African-Americans, Hispanics, or to families with children. **Disposition: Closed.** The case was resolved through a consent decree in which the defendants agreed to provide fair housing training to their employees and agents, undertake affirmative marketing and other affirmative measures, and comply with recordkeeping and reporting requirements. In addition, the

	Housing Discrimination Project received $30,000 in compensatory damages.
(32.) U.S. v. Richmond 10-72 Ltd., et al.	This case was filed on behalf of a private nonprofit fair housing organization, Housing Opportunities Made Equal of Richmond, Inc., and two individuals who had filed a complaint with HUD against the owners and managers of an apartment complex in Richmond, VA. Specifically, the complaint alleged that those individuals had discriminated on the basis of race by refusing to rent to African-Americans. Based on further investigation, the section added a pattern or practice charge of racial discrimination to the complaint. **Disposition: Closed.** The case was resolved through a consent decree whereby the defendants agreed to develop a fair housing policy, require their employees to attend fair housing training, and hire an independent consulting firm to conduct self-testing of the complex over the next 3 years. The agreement also required the defendants to pay $480,000 in damages and civil penalties.
(33.) U.S. v. A. Waddell Nejam, et al.	This case was based on evidence developed through the Housing and Civil Enforcement section's testing program. The complaint alleged that the owner of numerous rental units in Jackson, MS, and his former rental agents had discriminated on the basis of race. Specifically, the complaint alleged that the defendant and his agents gave false information about apartment availability to African-American testers and applicants. **Disposition: Closed.** The case was resolved through a consent decree, which provided a total of $200,000 in monetary relief, including a $5,000 civil penalty. The decree also required that (1) the owner's employees undergo fair housing training, (2) the owner maintain detailed records of apartment availability and make the information available to all prospects, and (3) notify the public of his nondiscriminatory policy.
(34.) U.S. v. Garden Homes Management Corp., et al.	This case was based on evidence developed through the Housing and Civil Enforcement section's testing program. The complaint alleged that the defendants—owners and managers of three apartment complexes—discriminated on the basis of race. Specifically, the complaint alleged that the defendants discouraged African-American testers from renting units and told them that there was a long waiting list for apartments, while Caucasian testers were encouraged to rent units. In addition, the

	complaint alleged that African-American testers were falsely told that apartments were unavailable, while white testers were told of, and shown, available apartments. **Disposition: Open.**
(35.) U.S. v. Henry K. Vernon, et al.	This case was based on evidence developed through the Housing and Civil Enforcement section's testing program that revealed that the defendants, the owner and manager of an apartment of complex, engaged in a pattern or practice of discrimination based on race and familial status. Specifically, the complaint alleged that the defendants discriminated against African-Americans and families with children. **Disposition: Closed.** The case was resolved through a consent order, which provided for $75,000 in monetary relief, including $25,000 in civil penalties against the owner of the complex and $1,000 in civil penalties against the manager. The order also required the owner to attend and send his employees to fair housing training, implement and advertise nondiscriminatory rental policies, pay for self-testing over the next several years, and impose recordkeeping and reporting.
(36.) U.S. v. L.T. Jackson; and L.T. Jackson Trust	The complaint in this case alleged that the defendant, the owner and manager of numerous identified rental properties, had engaged in a pattern or practice of discrimination based on sex. Specifically, the defendant had subjected numerous female tenants (and, on some occasions, their minor daughters), and prospective female tenants to severe, pervasive, and unwelcome verbal and physical sexual advances. Further, the defendant had explicitly based the terms, conditions, and privileges of the women's tenancy on the granting of sexual favors. **Disposition: Open.**
(37.) U.S. v. Lyle Krueger	This case started several years ago with one individual who had filed a complaint with HUD. In 1995, an administrative law judge held that the defendant had sexually harassed a former tenant, and ordered him to pay $32,000 in damages and civil penalties. In 1998, the section filed a complaint that alleged that the defendant had breached a HUD-approved conciliation agreement that had resolved a claim of sexual and racial harassment filed by a second tenant. The section later amended the complaint to include allegations that the defendant engaged in a pattern or practice of sexual harassment against other female tenants.

Disposition: Closed.

The case was resolved through a consent order, whereby the defendant was prohibited from managing any residential property for a period of 6 years. In addition, the defendant was required to pay the $32,000 judgment, plus applicable interest, due to the initial Administrative Law Judge proceeding, the $2,000 plus interest, under the conciliation agreement, and $2,000 to a third victim.

(38.) U.S. v. Associates National Bank

This case was filed against Associates National Bank, a major issuer of VISA and MasterCard bankcards, claiming that the bank violated the Equal Credit Opportunity Act by discriminating, on the basis of national origin, against Hispanic individuals. Specifically, the complaint alleged that individuals applying for a certain MasterCard through the bank's Spanish-language application were processed through a separate approval system, which used a credit-scoring system that required higher passing scores than those required for English-language applicants. Consequently, some Spanish-language applicants were denied credit on a discriminatory basis. The complaint further alleged that approved Spanish-language applicants were given lower-credit line assignments than English-language applicants and that they were offered different credit services than those offered to other customers.

Disposition: Open.

(39.) U.S. v. Deposit Guaranty National Bank

The complaint in this case alleged that Deposit Guaranty National Bank had discriminated, on the basis of race, against African-American loan applicants in Mississippi, Arkansas, and Louisiana through the use of subjective underwriting practices. The complaint further alleged those African-American applicants for home-improvement loans whose applications were credit scored were at least three times as likely to be rejected than similarly situated white applicants.

Disposition: Closed.

The case was resolved through a settlement agreement approved by the court, whereby those applicants whose applications for home-improvement loans were evaluated under the bank's flawed underwriting system are to share in a $3 million fund. Among other things, the agreement also provides that (1) loan applications are to be underwritten using uniform and centralized policies and procedures, (2) applications initially denied are to receive a second level of review by senior underwriting officials, (3) decisions to override the result indicated by a

	credit score can only be made by a small number of bank officials, and (4) reviews and analyses of all underwriting decisions are to be conducted to ensure consistency with fair lending requirements.
(40.) Maryland State Conference of NAACP Branches, et al., v. Maryland State Police, et al.	The Housing and Civil Enforcement section's participation in this case was limited to the filing of an amicus brief on certain Title VI (of the Civil Rights Act of 1964) issues—whether there can be implied a private right of action to sue under Title VI regulations alleging discriminatory effect and whether the plaintiffs have standing to do so. The plaintiffs in this case were the Maryland State Conference of NAACP branches and various minorities who had residence in the United States and were from other countries. In the part of their first amended complaint, the plaintiffs alleged that they were stopped, searched, and detained by state police troopers along a major interstate in Maryland because of their race and/or national origin, rather than on the basis of legitimate law enforcement reasons. Further, the plaintiffs alleged that such stops were pursuant to a policy and practice of stopping and searching African-American and other minority motorists along the interstate. The section, as amicus curiae, urged the court to find that there was a private right of action to enforce Title VI regulations establishing an "effects standard" and that the plaintiffs had standing to assert such a claim. **Disposition: Closed.** The court found for the plaintiffs on the issue of standing and the parties reached an out-of-court settlement.
(41.) National Fair Housing Alliance, Inc., et al. v. Liberty Mutual Insurance Company, et al.	The Housing and Civil Enforcement section's involvement in this case was limited to the filing of an amicus brief. NFHA had alleged that the defendants, insurers doing business in Ohio, Wisconsin, Virginia, and the District of Columbia, had discriminated in the provision of home-owners insurance on the basis of race in violation of the FHA. The defendants moved to dismiss on three grounds: (1) that the FHA did not apply to the sale of home-owners insurance; (2) that, if applicable, those claims were barred by the McCarran Ferguson Act (15 U.S.C. 1011 et seq); and (3) that the doctrine of "primary jurisdiction" required that the plaintiffs' challenge to the defendants' practices be brought before the state insurance regulators, rather than in a private action. The brief addressed those issues and concluded that none had merit. **Disposition: Closed.** The case was resolved through an out-of-court settlement.

(42.) Neighborhoods, Inc., et al. v. Rommel Builders, Inc.	The Housing and Civil Enforcement section's role in this case involved filing two amicus briefs, regarding the applicability of the requirements of the FHA related to accessible design. Specifically, the plaintiffs, Baltimore Neighborhoods, Inc., and one individual brought this action against the builders of a condominium alleging that the builder had designed and constructed the ground floor units in 10 of the buildings in a way that made them inaccessible to persons with disabilities. In its first brief, the section set forth the standard for determining whether the defendants had violated the accessibility provisions of the FHA. In its second brief, the section presented the court with its views on what equitable remedies were appropriate in a case in which the defendants were found liable for violating the accessibility provisions of the FHA. **Disposition: Open.**
(43.) Project Life, Inc., et al. v. Parris Glendening, et al.	The Housing and Civil Enforcement section's role in this case involved the filing of an amicus brief. The plaintiffs in this case sought injunctive and monetary damages under the Americans with Disabilities Act (ADA), FHA, and the Maryland Discrimination in Housing Act, based on the defendants' denial of a long-term berth in the state of Maryland's port for the decommissioned hospital ship upon which the plaintiffs intended to operate a short-term residential, educational, and training program for recovering substance abusers. The defendants had maintained, inter alia, that neither the ADA nor the FHA were applicable to the facts as alleged by the plaintiffs. **Disposition: Open.**
(44.) Lillian E. Bryant, et al. v. New Jersey Department of Transportation, et al.	The Housing and Civil Enforcement section's participation in this case was that of intervenor on behalf of the plaintiffs. Specifically, the plaintiffs in this case filed this action to prevent the construction of a highway through their neighborhood, which would require the condemnation of several homes and would allegedly cause flooding, noise, and traffic problems. The plaintiffs claimed that the construction of the highway would have a disparate impact on their predominantly African-American community in violation of Department of Transportation regulations promulgated pursuant to Title VI of the Civil Rights Act of 1964. The defendants moved to dismiss on the basis of Eleventh Amendment immunity or, in the alternative, had asked the court to abstain from exercising federal jurisdiction in favor of state eminent domain proceedings. The section intervened to defend the constitutionality of the Eleventh Amendment immunity abrogating provision of Title VI, which the defendants were challenging.

Disposition: Closed.

The court entered an order upholding the constitutionality of the statute. The parties reached a settlement agreement.

Information on Housing and Civil Enforcement Section Closed Matters

This appendix provides general information on the 54 Housing and Civil Enforcement section closed matters that we reviewed. Table VI.1 contains information on the characteristics of those matters, including the origin or source, the protected class, the type, and the subject covered. Table VI.2 provides a description of each matter along with the corresponding reason for its closing.

As shown in table VI.1, our review of the 54 Housing and Civil Enforcement section closed matters revealed that they included a wide range of allegations of fair lending and housing discrimination. Matters involving pattern or practice allegations of discrimination accounted for 30 of the 54 matters. Of those 30 matters,

- four involved allegations of discrimination in places of public accommodation, such as hotels, restaurants, and certain places of entertainment;
- eleven involved allegations of lending discrimination, such as redlining and pricing or underwriting;
- eight involved general pattern or practice allegations of housing discrimination, such as rental and sales discrimination;
- three involved allegations of rental discrimination developed through the section's testing program; and
- four involved allegations of discrimination in zoning and group homes.

The remaining 24 closed matters, which did not include pattern or practice allegations, consisted of 12 matters that alleged zoning discrimination and 12 that alleged various other types of housing discrimination.

Our review also showed that these matters originated from a variety of sources, such as citizens, housing groups, federal agencies, private attorneys, the section's fair housing testing program, and other sections of the Civil Rights Division. Nearly all matters that alleged a pattern or practice of lending discrimination were referred by federal bank regulatory agencies, such as the Office of the Comptroller of the Currency (OCC), the Federal Reserve, the Office of Thrift Supervision (OTS), and the Federal Deposit Insurance Corporation (FDIC), while the remaining matters in the population originated from several sources.

The majority of zoning matters alleged discrimination, on the basis of handicap, while most of the remaining matters involved allegations of discrimination based on race. In addition, the matters involved a wide range of issues related to fair housing and lending discrimination, such as rental and sales discrimination; discrimination in group homes; discrimination in lending; and discrimination through intimidation, coercion, and retaliation.

Table VI.1: Information on Matters Initiated During Fiscal Year 1998 That Were Closed as of October 31, 1999

Matter number	Origin	Protected class	Type	Subject matter
1	Citizen	Race	Title II Pattern or practice	Discrimination in public accommodations – gas station
2	Federal Bureau of Investigation (FBI)	Race	Title II Pattern or practice	Discrimination in public accommodations – lodging
3	Nonprofit group	Race	Title II Pattern or practice	Discrimination in public accommodations – swim club
4	Citizen	Race	Title II Pattern or practice	Discrimination in public accommodations – lodging
5	Citizen	Race	Pattern or practice/lending	Redlining
6	Office of the Comptroller of the Currency (OCC)	Familial status	Pattern or practice/lending	Pricing/underwriting
7	Federal Reserve	Marital status	Pattern or practice/lending	Discrimination in terms and conditions Discounting child support income for purposes of credit
8	OCC	National origin Race	Pattern or practice/lending	Underwriting
9	Federal Reserve	National origin Race	Pattern or practice/lending	Redlining
10	Citizen	Race	Pattern or practice/lending Pattern or practice/mortgage	Redlining in home mortgage and business lending
11	Office of the Attorney General, State of Maryland	Race	Pattern or practice/lending	Redlining
12	Office of Thrift Supervision (OTS)	National origin Race	Pattern or practice/lending	Overage pricing[a]
13	OCC	Age	Pattern or practice/lending	Underwriting
14	Federal Deposit Insurance Corporation (FDIC)	National origin Race	Pattern or practice/lending	Overage pricing
15	OCC	Age	Pattern or practice/lending	Underwriting
16	Fair housing group	Race	Pattern or practice/testing	Rent discrimination
17	Testing program	Handicap	Pattern or practice/testing	Rent discrimination
18	Testing program	Handicap	Pattern or practice/testing	Discriminatory advertising or statements
19	Private attorney	Handicap	Pattern or practice	Refusal to make reasonable accommodations Zoning
20	Fair housing group	Race	Pattern or practice	Zoning

Matter number	Origin	Protected class	Type	Subject matter
21	Private attorney	Handicap	Prompt judicial action Pattern or practice	Group home
22	Private attorney	Handicap	Pattern or practice	Zoning Group home
23	Citizen	Race	Pattern or practice	Rent discrimination
24	U.S. Attorney's office	Family status	Pattern or Practice	Rent discrimination
25	Disability Rights section forwarded a request from a private attorney	Handicap	Pattern or practice	Rent discrimination
26	Citizen	Family status	Pattern or practice	Rent discrimination
27	Citizen	Race	Pattern or practice	Discrimination in sale
28	Employment Litigation section	Race	Pattern or practice	Intimidation/ coercion/ retaliation
29	Criminal section	Race	Pattern or practice	Intimidation/ coercion/ retaliation
30	Private attorney	Race	Pattern or practice	Rent discrimination
31	HUD	Handicap	Zoning referral	Group home
32	HUD	Handicap	Zoning referral	Zoning Group home
33	HUD	National origin	Zoning referral	Zoning
34	HUD	Handicap	Zoning referral	Zoning Group home
35	HUD	Familial status Handicap National origin Race	Zoning referral	Zoning
36	HUD	Race Sex	Zoning referral	Zoning
37	HUD	Race	Zoning referral	Zoning
38	HUD	Familial status	Zoning referral	Housing for older persons Zoning
39	HUD	Handicap	Zoning referral	Zoning
40	HUD	Handicap	Zoning referral	Zoning Group home
41	HUD	National origin	Zoning referral	Zoning
42	HUD	Handicap	Zoning referral	Zoning Group home
43	Citizen	Race	Title II	Discrimination in public accommodations – lodging
44	Newspaper	Race	Title II	Discrimination in public accommodations – bar lounge
45	Citizen	Race	Title II	Discrimination in public accommodations – restaurant/pool hall
46	Citizen	Race	Title II	Discrimination in public accommodations – restaurant
47	Citizen FBI	Race	Title II	Discrimination in public accommodations – bar
48	Private attorney	Handicap	Request by plaintiffs for the government to participate as an amicus curiae	Group home

Matter number	Origin	Protected class	Type	Subject matter
49	U.S. Attorney's office	Sex	Quiet title[b]	Provisions in an individual will
50	HUD	Family status Religion	Election	Discrimination in terms and conditions
51	HUD	Familial status	Election	Rent discrimination Occupancy standard
52	HUD	Familial status National origin	Prompt judicial action	Discrimination in sale
53	U.S. Attorney's office Section initiated	Handicap	Investigation	Accessible new construction
54	Section initiated investigation	National origin Race	Investigative task force to identify pattern or practices in lending	Business lending

[a]An overage refers to an extra amount charged to a borrower as a means of increasing compensation to brokers and loan officers.

[b]Generally, a quiet title action is a remedy available for a person to clear title to real property against any kind of interest or adverse claim.

Source: Review of Housing and Civil Enforcement section closed matter files and interviews with section officials.

Table VI.2 below provides a description of each matter along with the corresponding reason for its closing.

Table VI.2: Description of Closed Matters and the Reasons That Matters Were Closed

Matter number	Description of matter issues	Reason for closing
1	This matter arose from a citizen complaint that a gas station had discriminated against African-American customers by requiring them to pay first and then pump gas while allowing Caucasian customers to pump gas before paying.	Other—The Housing and Civil Enforcement section concluded that their active involvement in the case was not necessary because the complainant was being represented by an attorney who had filed a class-action suit.
2	An African-American couple had filed a complaint with the FBI alleging that they had been quoted a lower hotel rate over the telephone, but when they arrived, the owners of the particular inn attempted to increase the rate. The owners explained that their daughter had erroneously quoted a lower rate to the couple that did not apply during the July 4th weekend.	Lacked merit—The FBI completed an investigation and determined that there was no evidence of discrimination.
3	A human rights organization requested an investigation into the apparent discriminatory conduct of a swim club. Specifically, two African-American boys were denied admission to the swimming pool and a television crew captured the discriminatory conduct of the staff on tape. When the two boys offered to pay the standard $3.00 admission fee, they were informed that they would not be admitted unless they purchased a $200 club membership. Minutes later, the television crew filmed a young Caucasian male—a nonmember of the pool—entering the pool after paying a $3.00 fee.	No further action was warranted. Upon its investigation, the Housing and Civil Enforcement section learned that because of financial problems, the pool management planned to close pool operations at the end of the summer season. The section attorney concluded that further investigation or action related to the allegations in all likelihood would not be fruitful.
4	The FBI investigated possible racial discrimination at a motel. An inn had allegedly discriminated against two Caucasians by refusing to rent them a room because of their association with an African-American church.	Lacked merit—The FBI investigation did not develop evidence of discrimination.
5	The Housing and Civil Enforcement section received allegations that two lending companies treated certain heavily minority-populated areas differently than other areas of a particular locale, including employing different appraisal practices and policies for properties within those areas. Additionally, data submitted pursuant to the Home Mortgage Disclosure Act suggested that the lenders might have been employing different marketing practices in those same minority areas. CRT initiated an investigation.	Lacked merit.
6	OCC wrote to document the substance of its telephonic referral of violations by a bank. The legal violations stemmed from the adoption and apparent application of discriminatory mobile-home appraisal guidelines that were in effect at the bank. Specifically, the complaint alleged that the bank had discriminated against families with children by adopting and endorsing a policy that treated family mobile-home parks as inferior to, and less valuable than, adult-only mobile-home parks. OCC found three instances where individuals were harassed.	The matter was returned to OCC for administrative resolution and corrective action was taken.

Matter number	Description of matter issues	Reason for closing
7	The Federal Reserve conducted a regular full-scope examination of a bank to determine its level of compliance with consumer credit, civil rights, and consumer laws and regulations. The examiners reviewed the bank's written loan policies and procedures and conducted interviews with bank staff to determine the bank's articulated lending standards and evaluation practices. The review found evidence that the bank had engaged in a practice of routinely discounting the child support income of credit-card applicants. The Federal Reserve found four instances where individuals were harassed.	The matter was returned to the Federal Reserve for administrative resolution.
8	OCC referred materials to the Housing and Civil Enforcement section that supported its belief that a bank had engaged in a pattern or practice of discrimination against persons of non-Asian race and/or national origin in extending credit for residential mortgages. The referral had come to OCC's attention following a targeted fair lending examination of the bank. OCC conducted comparative file reviews and performed statistical modeling based on data derived from the bank's credit files. OCC's analysis showed 25 potential victims, involving 29 instances of discrimination.	The matter was returned to OCC for administrative resolution.
9	The Federal Reserve referred this matter to the Housing and Civil Enforcement section, indicating that it had reason to believe that a mortgage company had engaged in a pattern or practice of lending violations. Specifically, during a compliance examination, it determined that the company adhered to guidelines issued by a correspondent lending institution that excluded the offering of certain loans secured by residential properties in certain geographic areas in a particular state. Since the excluded areas contained a disproportionately high percentage of the state's minority population, the Federal Reserve believed that the exclusion of these areas resulted in a pattern or practice of treating applicants within the excluded areas differently from those outside those areas on the basis of race and national origin.	Lacked merit—The Housing and Civil Enforcement section noted in its file that information from the Board of Governors of the Federal Reserve indicated that no loans were actually denied as a result and that the company made the loans through other correspondent banks.
10	The Housing and Civil Enforcement section received a complaint that a one-branch bank was redlining a predominantly African-American area of a particular city in both its home mortgage and business lending activities. However, neither a former bank official nor an African-American contractor who had unsuccessfully sought a construction loan from the bank could provide any direct evidence of unlawful lending practices.	Lacked merit—The Housing and Civil Enforcement section's investigation, together with OTS's examination of the bank's lending practices—a process in which they shared with that agency all they had—failed to produce sufficient evidence of racially discriminatory practices to warrant the initiation of litigation.

Matter number	Description of matter issues	Reason for closing
11	A state Attorney General requested that the Housing and Civil Enforcement section review information obtained by its office, regarding allegations that a corporation had engaged in a pattern or practice of redlining college students from preapproved solicitations at predominantly African-American colleges.	Lacked merit—Evidence submitted to the section for review did not support redlining allegations. It appeared that the company was not involved in the selection process and had merely purchased a student list culled by a vendor list. The section attorney's files further indicated that if evidence was found that the company was responsible for the racial composition of the student list, it would consider reopening the matter for further investigation.
12	OTS submitted this referral, concerned that a savings bank had engaged in a pattern or practice of discrimination on the basis of race and national origin through its policy of charging overages or granting shortages and overages to individual loan customers. Specifically, the savings bank's own review of shortages and overages by the borrower's race found a disproportionate number of overages charged to minority borrowers and a disproportionate number of shortages granted to Caucasian applicants. The review also found that the average overage charged to African-American borrowers was higher than that charged to Caucasian borrowers. In response, the bank changed its policy. In response to OTS's concerns over the bank's policy, the bank made further changes to its policy. OTS analyzed the bank's data on overages and found that their policy—a race conscious overage policy—appeared to have been a well intentioned, but misguided, remedy for perceived discrimination.	The matter was returned to OTS for administrative resolution. The bank subsequently stopped its policy after OTS asked them to do so.
13	OCC wrote to document an understanding reached between the Housing and Civil Enforcement section attorney and OCC attorneys over two pattern and practice violations that had occurred at a bank and its subsidiary. Both instances involved age discrimination against elderly account holders and credit seekers. OCC wrote to obtain the Housing and Civil Enforcement section's consent for OCC to handle the matter independently.	The matter was returned to OCC for administrative resolution.
14	The FDIC referred this matter, citing disparate treatment in the area of overages. The loans in question were all made through a savings bank's wholly owned mortgage lending facility. FDIC used documentation from the state banking department in finalizing its examination report. Specifically, an analysis of a population of residential loans, excluding home improvement loans, was performed. The analysis revealed that when overages were imposed, minority applicants were charged more frequently and at higher rates of overages than nonminority applicants.	The matter was returned to FDIC for administrative resolution. A settlement was reached between the bank and the state banking department providing for compensation to minorities who paid higher overages.

Matter number	Description of matter issues	Reason for closing
15	During an examination, OCC determined that a particular bank had a policy of requiring college freshmen (except for adults returning to school to further their education), who apply for credit under the bank's student credit-card program, to have parental cosigners prior to obtaining a credit card. After the matter was brought to the attention of the bank's board of directors, the bank conducted a review and determined that a total of 91 freshman accounts had been approved and required a cosigner. However, no applicant had been denied credit as a result of the bank's policy. It appeared that the bank had treated those applicants less favorably than others because of their age.	The bank had taken steps to remove the requirement of a cosigner from its credit-card practice and the matter was returned to OCC for administrative resolution.
16	A private fair housing organization conducted a number of tests of rental properties operated by a particular company and sent the results of the tests to the Housing and Civil Enforcement section for review.	Lacked merit—After reviewing the information, the section decided there was insufficient information to support a pattern or practice claim.
17	The Housing and Civil Enforcement testing program conducted two tests at a nursing home regarding the treatment of prospective patients/residents with asymptomatic HIV. These patients were seeking short-term nursing home care for injuries or illnesses unrelated to their HIV status.	Lacked merit—The tests were inconclusive of discrimination.
18	The Housing and Civil Enforcement section reviewed a report from its testing program of tests performed at a nursing facility. The test summary discussed the actions of the admissions director, regarding her meetings with a tester posing as AIDS/HIV-positive and a tester posing as non-AIDS/HIV-positive.	Lacked merit—The tests were inconclusive.
19	The plaintiffs in this matter brought a civil action to enjoin the defendant's refusal to allow an assisted living facility for mentally retarded adults in an area on the same terms and conditions as other assisted facility living housing occupied by nonmentally disabled or nonhandicapped persons. The plaintiffs claimed that the defendant's denial of a special exception permit for an assisted living facility in a multifamily hotel zone where assisted living facility use is specifically allowed with a permit constituted discrimination and violated the FHA.	Settled—The plaintiff was issued the permit for an assisted living facility.
20	This investigation was prompted by a complaint from a fair housing group alleging that a particular community's plan to demolish a residential hotel as a part of a Tax Increment Finance[a] redevelopment plan was a form of racial discrimination.	Lacked merit—The investigation disclosed no evidence of discriminatory impact. The section also concluded that even if the action had a discriminatory impact, no evidence was found that the community's inclusion of the hotel site for demolition in the redevelopment plan was in any way a pretext for unlawful discrimination.

Matter number	Description of matter issues	Reason for closing
21	A nonprivate organization that provides services to developmentally and/or physically or mentally handicapped individuals of all ages sought prompt judicial action and injunctive relief against the city for prohibiting the construction of a group home for six mentally ill disabled adults, on the basis of an illegal "dispersion ordinance." The ordinance mandated that a home for disabled residents could only be located in a neighborhood that had the least number of previously approved and currently operating residential facilities. The matter was investigated by the U.S. Attorney's office as a possible prompt judicial action or pattern or practice matter.	Settled—As a result of discussions between the city attorney, the attorney for the provider, and the Assistant U.S. Attorney, the matter was resolved without litigation.
22	This matter involved an appeal of the decision of a township zoning board that denied the petitioner's request for a permitted use, special exception use, or variance to operate a group home on the subject premises. The petitioner appealed the decision to the court of common pleas, which held that the petitioner had failed to meet all the criteria of the township zoning ordinance and concluded that the petitioner had not produced sufficient evidence to indicate that the proposed use was similar to a permitted use or qualified for a variance. The court also found that the ordinance was valid under federal law and had not discriminated against the handicapped or discriminated on the basis of familial status.	Lacked merit—The facts failed to show that the complainants were members of a class protected by the FHA.
23	The complainant alleged that African-Americans with section 8 vouchers[b] had to wait far longer and jump through more procedural hoops to gain entrance into an apartment complex than similarly situated Caucasians. Over several telephone calls, the Housing and Civil Enforcement section attorney asked the complainant if she could identify similarly situated Caucasians persons who got into the complex with less waiting. The complainant could not identify any such persons and repeatedly told the attorney that she would get back to him with information. She did not provide the information.	Lacked merit—The section was unable to substantiate the complaint.
24	The complainant, a 29-year old male, had applied as a prospective renter with a trailer-park association. Because there was no one in the complainant's household who was age 55 or older, and because he was under 45 years, his occupancy did not meet the requirements of the association's policy, as set forth in the provisions of a prior consent order. Specifically, in a different case involving the association and the issue of familial discrimination in housing, the judge signed a consent decree that included a provision permitting the association to hold itself out as "housing for older persons" if it met the requirements of the FHA. The order stated that at least one person in each household must be 55 years or older. This provision also included a requirement that no one in the household be less than 45 years old.	Lacked merit—The section had insufficient information to warrant taking further action.

Matter number	Description of matter issues	Reason for closing
25	A man and his social worker met with an assisted living facility's owner/ administrator to apply for housing. Upon seeing him, the owner questioned the complainant about having AIDS. When the complainant admitted that he was HIV-positive, the owner denied his admission to the home stating that her basis for the decision was an unavailability of trained staff who could care for an HIV resident. The man claimed a violation of his rights under the Americans with Disabilities Act, the AIDS Omnibus Act, the Rehabilitation Act, and the Florida Civil Rights Act.	Lacked merit—The investigation did not substantiate allegations.
26	A condominium association had asked a couple to sign a pledge that they would not have children as a condition of approval of their rental application.	Lacked merit—No evidence found to support pattern or practice of family status discrimination. After investigating, the Housing and Civil Enforcement section found that there was no indication that anyone else had been asked to sign a similar pledge, and there did not appear to be any danger of a repetition. At least one family with children lived in the complex.
27	The complainant, an African-American woman with children, alleged discrimination against a particular housing authority. Specifically, the woman claimed that after she was accepted into the authority's lottery for moderate/low income home purchases and although she drew an appropriate number from the lottery that qualified her to purchase a home, she had not been contacted by the developer.	Lacked merit—A fair housing agency within the state investigated the complaint and determined that the claims were without merit. The complainant then began working with the housing authority through the same lottery process to purchase a home.
28	This matter was referred by the Employment Litigation section, which had sued a particular city over its police hiring procedures. Specifically, an African-American police officer hired pursuant to the consent decree in that case had alleged that the building contractor he had hired to build his house told him that city officials had pressured the contractor to avoid doing business with him. This allegation came amidst a dispute over whether he would be forced to move his family into an apartment within the city limits, pending completion of the house due to a city rule requiring police officers to reside within the city 15 months after being hired.	Lacked merit—The section found no evidence to support a pattern or practice of housing discrimination.
29	A woman alleged that because she was African-American, a man and/or his then minor sons had vandalized her house, after they sold it to her.	Lacked merit —An FBI investigation had not produced sufficient information to connect the individuals to the vandalism and further investigation was not warranted.
30	Sixteen private lawsuits were filed against a real estate company alleging various types of discrimination, such as steering and refusal to rent.	Settled —Preliminary investigation revealed that the underlying private claims against the company had been settled.

Matter number	Description of matter issues	Reason for closing
31	This zoning matter involved a complaint of housing discrimination filed with HUD by owners and operators of a group home for 12 developmentally disabled adults. They alleged the city had used a city-zoning ordinance to discriminate against residents of the group home. They filed their complaint after a code inspector contacted them and told them that they needed a conditional use permit to operate the home (which had been operating for several years) and that they would be unable to obtain one because the home was located in an area that had a zoning classification which did not permit that type of use.	No further action was warranted. After contacting both the complainant and the City Attorney's Office, the Housing and Civil Enforcement section learned that the city had not taken enforcement action against the group home and had no plans to do so. The complainant told the section attorney that since his contact with the code inspector and filing of the HUD complaint, he had not heard anything more about the matter.
32	This matter involved a city's closing of three group homes for recovering substance abusers for fire and safety reasons, allegedly in violation of the disability provisions of the FHA. The alleged discrimination occurred when the city issued the complainant "Notices of Code Violations" for operating rooming houses without permits in single-family zoned districts and for fire safety and building code violations. The city ordered the complainant to remove residents from the premises and return the houses to their intended use as single-family dwellings. The complainant filed a complaint with HUD.	Lacked merit —After a review of the files and communication with the complainant, the section concluded that this matter was not appropriate for further action by Justice.
33	This HUD zoning referral concerned allegations of discrimination against persons of Hispanic origin. The complainants alleged that the city required them to satisfy certain conditions before issuing a housing permit that it had not imposed on other similarly situated non-Hispanic whites.	Lacked merit —Further investigation revealed that the allegation could not be substantiated.
34	HUD referred this matter as a zoning and land use case. The complaint alleged that a particular city had discriminated against the complainants by refusing to allow them to operate group homes in the city. The complainants in state court litigated the issues raised in the HUD complaint. The state court granted the complainants' motion for summary judgment and held that the local zoning ordinance did not prohibit the operation of the group homes in this case.	Settled —The complainants entered into a settlement agreement with the city. The attorney spoke with the counsel for the complainants, who informed CRT that he expected the two group homes to be operating within 1 to 2 months.
35	The complainant filed a complaint with HUD alleging that a particular city had violated the FHA, on the basis of race (African-American), national origin (Hispanic), familial status, and handicap, by refusing to rezone an area of property owned by the complainant from industrial use to multifamily residential use.	Settled—The complainant and the city entered into a settlement agreement in voluntary resolution. CRT assisted as mediator in the resolution.
36	The complainant, an African-American female, alleged that a particular county and several of its officials had discriminated against her, on the basis of race and sex, through its denial of several applications she made regarding property she owned.	Lacked merit —According to section officials, allegations involving race or sex would have been difficult to prove.

Matter number	Description of matter issues	Reason for closing
37	A husband and wife filed a complaint with HUD alleging that, because of their race, a city had discriminated against them in the administration of its permit and building code enforcement powers in connection with the couple's attempts to rehabilitate two small apartment buildings they owned in a redevelopment area. The HUD investigative file indicated that the city had been enforcing its codes against all landlords in the affected area—both African-American and Caucasian—citing landlords of both races for code violations and taking by eminent domain the buildings of both African-American and Caucasian landlords that were not being rehabilitated.	Lacked merit—The evidence in the HUD file provided little support for the complainants' allegations. In addition, this referral reached CRT only several weeks before expiration of the 18-month statute of limitations, effectively precluding further investigation by CRT.
38	This matter involved the complainant's desire to use a land parcel to build a mobile home park that would be open to all ages. Initially, the city restricted use of the parcel to housing for those over 50 years of age. Because this violated the FHA, the city later raised its age restriction to 55 and older. Before the city had raised the age restriction, the complainant sued the city in state court, subsequently lost, and failed to file a timely appeal. The complainant then turned to HUD, and HUD referred the case to the Housing and Civil Enforcement section.	Other—Based on the attorney's review, any legal action CRT might have taken would have been limited to injunctive relief and the section would not have been able to obtain damages if it filed suit. The city had already changed the age restriction, so a lawsuit would not have accomplished much.
39	The Housing and Civil Enforcement section was asked to participate as an amicus curiae in this zoning case. The complainant, a developer, alleged that the respondent had refused to grant reasonable accommodations to its zoning regulations after such had been requested, thus prohibiting the development of an assisted living facility for the disabled elderly. The complainant also alleged that the respondent granted a use variance to a development for able-bodied seniors in the same zone and 500 feet from the complainant's proposed development.	Lacked merit—After a review of their pleadings, CRT decided that participation would not be appropriate.
40	This HUD zoning referral alleged discrimination on the basis of handicap. Specifically, the complainants, a youth services group and its executive director, alleged that a city had discriminated, on the basis of handicap, when it refused to approve a group home for mentally disabled minors.	Other—The section attorney concluded that it would be difficult to prove that the boys qualified as handicapped, that intentional discrimination took place based on handicap, and that the city had denied a reasonable accommodation.
41	This matter was an early referral from HUD in connection with a zoning/land use complaint alleging that a county had discriminated, on the basis of national origin, by denying use permits and/or requests for rezoning to place additional residential units on vacant land currently zoned for commercial use. The Housing and Civil Enforcement section reviewed the HUD file and requested that HUD further investigate a number of issues. In its last conversation with HUD, the Housing and Civil Enforcement attorney was informed that HUD had not yet made a final determination, with respect to the complaint (and a second one making the same allegations) and the specific issues the section attorney had raised.	No further action was warranted. HUD did not make a formal referral.

Matter number	Description of matter issues	Reason for closing
42	This was a HUD zoning referral filed by a complainant who applied for permission to construct an "accessory dwelling unit" in which the family would live while the complainant operated his residence as a group home. The city delayed permission for a few months, but eventually granted it.	No further action was warranted. All that was at issue in this action was damages and there were no important legal issues to be resolved.
43	This matter was referred by a Caucasian woman who alleged that she and her fiancé, an African-American man, were refused a hotel room at a motel because they were an interracial couple.	Lacked merit—The FBI conducted a test of the hotel, using an interracial couple, which did not reveal racial discrimination. Insufficient evidence existed to pursue a case. Also, the complainants filed a private suit in federal court.
44	The Housing and Civil Enforcement section received information alleging that a bar lounge had denied service to a group of people because the group had included two African-Americans. The incident was publicized in a local newspaper. The section requested that the FBI conduct an investigation into the matter. The FBI determined that the bar had stopped doing business and was for sale.	No further action was warranted. The issue became moot when the establishment under investigation went out of business.
45	This matter concerned an incident in which the proprietor of a restaurant/pool hall refused to serve two young African-American boys. When the mother of the two boys demanded an explanation, the proprietor explained that she had mistakenly thought the boys were the same ones who had previously entered the restaurant/pool hall and cursed at her.	Lacked merit—A subsequent FBI investigation revealed that while the restaurant/pool hall served a primarily Caucasian clientele, it also had African-American patrons. Further, the investigation did not reveal any known incidents in which African-Americans had been denied service.
46	This matter concerned a citizen complaint about an incident in a particular town. The complainants, a Caucasian couple and their adopted 4-year-old African-American son, visited the town as tourists. Upon entering the town, the husband and son visited some of the stores while the wife spoke to the mayor's wife. During their conversation, the wife mentioned that her son was African-American. In response, the mayor's wife said that the son could not eat in any of the restaurants. Shortly thereafter, the complainants left town. At no point were the complainants ever denied service at the town's restaurants.	Lacked merit—Subsequent calls by the attorney to the civil rights entities and public interest organizations in the area revealed no prior known incidences of discrimination.
47	This matter involved a display outside a bar that appeared to depict the lynching of an African-American male. Members of the local NAACP were "appalled and offended" by the display and requested corrective action. After the FBI conducted an investigation, the bar management made assurances that the display was not meant to depict an African-American being lynched.	No further action was warranted. The bar management agreed to alter the appearance of the display. The FBI then submitted photographs to the section to substantiate the changes.

Matter number	Description of matter issues	Reason for closing
48	The plaintiffs requested the Housing and Civil Enforcement section's participation as an amicus curiae in support of their motion for summary adjudication on the validity of an apartment complex's tenancy requirements. Specifically, an elderly couple, residents of a housing complex, had filed suit against the complex alleging that its practice of inquiring into the details of an applicant's disability and ability to live independently violated the Fair Housing Amendments Act and HUD regulations.	Lacked merit—The facts of the case were insufficient to support such a brief.
49	The U.S. Attorney's office asked the Housing and Civil Enforcement section for advice regarding a case it was handling. Specifically, the U.S. was the defendant in an action to quiet title to a piece of real property that had been left by will to a lodge to be used exclusively for "Masonic" purposes. The U.S. was the residuary legatee under the will and had a right of reentry if the lodge used the property in violation of the will. The Masons wanted to build a retirement home on the property and proposed a settlement of the action that would have given them a preference for the units in order to meet the requirement that the property be used exclusively for Masonic purposes. The U.S. Attorney's office was concerned that this preference might violate the FHA. Before the section reached a conclusion, the U.S. Attorney's office concluded that a retirement home that did not have a preference for Masons would still fit within the provisions of the will.	Settled—They settled the case with the entry of an agreed judgment mooting any fair housing problems that may have resulted from a preference for Masons.
50	A woman had filed a complaint with HUD alleging that a particular apartment complex and its management company discriminated against her and her family, by making exceptions in enforcing rules against families with children, who were Jehovah's Witnesses. The complaint also alleged that the curfew imposed limited her and her children's enjoyment of their dwelling and that such policies had an adverse impact on families with children.	Settled—The parties and the U.S. Attorney negotiated a presuit out-of-court settlement agreement, which provided the complainants with $1,000 and obligated the respondents to treat families with children the same as other tenants.
51	The complainants in this case had filed a complaint with HUD alleging discrimination on the basis of familial status. Specifically, the complainants alleged that, on two different occasions, they called to inquire about rental rates of apartments that had been advertised for rent. Each time, they were informed that the complex did not rent to people with children.	Settled—An out of court settlement agreement was reached without a lawsuit. Compensation was paid to the complainant and modifications were made to the respondent's rental policies.
52	This prompt judicial action, referred by HUD, involved national origin and familial status discrimination against an Indian male, who claimed that a co-op refused to sell him a one-bedroom unit because they did not believe only he and his brother would live there. The co-op indicated that their experience with Indian families was that they have their extended families live with them.	Other—The complainant withdrew his complaint.
53	This joint investigation between the Housing and Civil Enforcement section and the U.S. Attorney's office was designed to target noncompliant new construction at the blueprint or building stage.	Other—The section lacked the resources to pursue.

Matter number	Description of matter issues	Reason for closing
54	The Housing and Civil Enforcement section created a task force to look at business lending problems nationwide. This file related to a particular geographic location as part of a larger investigation.	Other—The investigation focused on other locations.

[a] According to CRT, tax increment finance is a technique used for financing urban renewal.

[b] According to CRT, section 8 vouchers are HUD subsidies that are issued to individuals to use as rent payment. To receive these vouchers, which are generally administered through public housing authorities, individuals must meet certain income eligibility requirements to qualify for the program.

Source: Review of Housing and Civil Enforcement section closed matter files and interviews with section officials.

Information on Voting Section Cases

This appendix provides general information on the six cases initiated by the Voting section in fiscal year 1998 and provides a brief description of each case and its disposition as of May 2000. The six cases were initiated at the discretion of the section.

The section participated as amicus curiae in three Shaw-type cases and participated as plaintiff in three cases. Race was the protected class for half the cases, national origin was the protected class for one, and the remaining two cases related to voting protections for military personnel and civilians residing overseas. Table VII.1 provides information regarding the origin, government role, protected class, case type, and discrimination issue for each of the Voting section cases initiated during fiscal year 1998.

Table VII.1: Information on the Voting Section's Discretionary Cases

Case name	Origin	Government role	Protected class	Case type	Discrimination issues
Charles Stovall, et al., v. City of Cocoa, et al.	Section initiated	Amicus curiae	Race	Participation in Shaw-type case	14th Amendment issue
Thomas S. Fouts, et al., v. Sandra Mortham et al., and Florida State Conference Black Business Association, et al.	Section initiated	Amicus curiae	Race	Participation in Shaw-type case	14th Amendment issue
Martin Cromartie, et al., v. James B. Hunt, Jr. Governor of the State of North Carolina, et al.	Section involved in case from origin when Shaw lawsuit initially brought against AG Reno	Amicus curiae	Race	Participation in Shaw-type case	14th Amendment issue
U.S. v. The Board of Elections in the City of New York	DOD referred, and Section initiated for UOCAVA and Section 5 enforcement	Plaintiff	U.S. citizens/military personnel residing overseas	Overseas voters Section 5-related	U.S. citizens/military personnel residing overseas
U.S. v. State of Oklahoma; Oklahoma State Election Board; and Lance D. Ward, as Secretary of the Oklahoma State Election Board	DOD	Plaintiff	U.S. citizens/military personnel residing overseas	Overseas voters	U.S. citizens/military personnel residing overseas
U.S. v. City of Lawrence, Massachusetts; Patricia Dowling, Mayor of Lawrence; Lawrence Board of Registrars of Voters; Robert Hutton, Chairperson, James Driscoll, Ronald Martin, members of the Lawrence Board of Registrars of Voters; and James McGravey, City Clerk and member of the Lawrence Board of Registrars of Voters.	Citizen	Plaintiff	National origin	Language minority group Voter assistance Vote dilution	Assistance At-large Bilingual Dilution Method of election Polling place Redistricting

Source: Review of Voting section case files and interviews with section officials.

The following provides a brief description of Voting section cases initiated during fiscal year 1998 and their disposition as of May 2000.

(1.) Charles Stovall, et al., v. City of Cocoa, et al	The section participated as an amicus curiae in this case. The case involved a determination of whether a consent decree designed to achieve compliance with section 2 of the Voting Rights Act (VRA), as amended, violated the Equal Protection Clause of the Fourteenth Amendment. The U.S. Supreme Court has rendered several opinions— referred to as the Shaw line of cases[1] that provide guiding principles for interpreting protections under the Equal Protection Clause in this context. The applicability of the U.S. Supreme Court guidelines to this case required a comprehensive analysis to determine whether, as a threshold issue, strict scrutiny applied to the district plan at issue, and if strict scrutiny did apply, whether the plan was narrowly tailored to further a compelling governmental interest. The section filed an amicus brief on June 11, 1999, to convey to the court the U.S. interest in the effective enforcement of section 2 of the VRA. **Disposition: Closed**. The U.S. District Court for the Middle District of Florida issued an order in August 1999 wherein it concluded that the districting plan was constitutional because it was not based predominantly on race, and the court ordered the consent decree to be entered.
(2.) Thomas S. Fouts, et al., v. Sandra Mortham, et al., and Florida State Conference, Black Business Association, et al.	The section filed a motion with the court to participate as amicus curiae in support of the defendants and defendant-intervenors. In its motion, the section stated that it had been involved in previous constitutional challenges to congressional and state legislative districting plans in Florida, and elsewhere, because those cases, like this one, raised issues concerning the proper interpretation and application of the VRA. Specifically, the Department of Justice stated that it had a strong interest in cases that consider the balance that must be struck between the requirements of the VRA and the constitutional standard set out in the Shaw line of cases mentioned previously. **Disposition: Closed**. In April 1999, the court granted the Department of Justice motion to participate as amicus curiae. However, the section did not file an amicus brief because the district court dismissed the case on procedural grounds before the section had an opportunity to present its brief.

[1] Shaw v. Reno (Shaw I), 509 U.S. 630 (1993); and Shaw v. Hunt (Shaw II), 517 U.S. 899 (1996). See also Miller v. Johnson, 515 U.S. 900 (1995); and Bush v. Vera, 517 U.S. 952 (1996).

(3.) Martin Cromartie, et al., v. James B. Hunt, Jr. Governor of the State of North Carolina, et al.	The section participated as amicus curiae in this case. The case stems from the original Shaw v. Reno case that challenged North Carolina's redistricting. The Voting section has been involved in the North Carolina cases from the beginning. In this particular case, the Voting section filed a brief as amicus curiae with the U.S. District Court for the Eastern District of North Carolina in June 1998. The brief addressed the plaintiffs' contention that the redistricting plan enacted by North Carolina in May 1998, and precleared by the Assistant Attorney General in June 1998, violated their rights under the Fourteenth Amendment's Equal Protection Clause. The Department of Justice brief stated that the redistricting plan was not subject to the strict scrutiny under the Equal Protection Clause because the redistricting plan was not predominantly based on race. **Disposition: Open**. This case is on appeal before the U.S. Supreme Court.
(4.) U.S. v. the Board of Elections in the City of New York	The section brought action pursuant to sSection 5 and 12(d) of the VRA of 1965, as amended, to enforce rights guaranteed by section 5.[2] The action was also brought to enforce the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). The suit sought injunctive relief to ensure that U.S. citizens serving in the military and nonmilitary voters residing outside the U.S. would be given a reasonable opportunity to execute and return ballots and therefore, to have their ballots counted. The complaint stated that state law previously precleared under section 5 of the VRA required absentee ballots to be mailed to eligible military absentee voters at least 32 days in advance of an election. However, New York City had implemented a new voting procedure that failed to mail absentee ballots to eligible military absentee voters sufficiently in advance of the election without obtaining preclearance in violation of section 5. Election officials also violated UOCAVA when they failed to mail absentee ballots to military voters and nonmilitary overseas voters sufficiently in advance of the election. The complaint stated that, as a result, U.S. citizens would be deprived of an opportunity to vote in the November 3, 1998, general election unless relief was granted.

[2] Under section 5, any change with respect to voting that a specially covered jurisdiction—or any political subunit within it—makes is legally unenforceable unless and until the jurisdiction obtains from the federal court in the District of Columbia or from the Attorney General, a determination that the change is not discriminatory on account of race, color, or membership in a language minority group. If the jurisdiction is unable to prove the absence of such discrimination, the Attorney General objects to the change, and it remains legally unenforceable. The Voting section files lawsuits to enjoin the enforcement of voting changes that have not received the required section 5 preclearance. section 5 of the VRA applies to nine states in their entirety and one or more counties in seven other states.

Disposition: Closed.

A settlement agreement was filed with the U.S. District Court for the Southern District of New York, whereby New York City agreed, among other things, to extend the deadline by 10 calendar days for receipt of ballots from military and nonmilitary overseas voters.

(5.) U.S. v. State of Oklahoma; Oklahoma State Election Board; and Lance D. Ward, as Secretary of the Oklahoma State Election Board

The section brought action to ensure that U.S. citizens overseas, who were qualified to vote in the September 15, 1998, federal primary runoff election of the State of Oklahoma, and who had filed timely applications for absentee ballots, would have their ballots counted. In the September federal primary runoff election, voters in the State of Oklahoma were to select or participate in the selection of nominees for the offices of U.S. Senator and members of the U.S. House of Representatives. The complaint stated that election officials in Oklahoma failed to mail absentee ballots to military and civilian overseas voters on a date sufficiently in advance of September 15th to allow the casting and return of ballots by the state established deadline. The U.S. sought a court order to require Oklahoma to take corrective action.

Disposition: Closed.

The section and the defendants entered into a consent decree, whereby the state agreed, among other things, to extend its deadline by 14 days to allow for receipt of absentee ballots.

(6.) U.S. v. City of Lawrence, Massachusetts; et al.

In this case the government brought a lawsuit under section 2 and section 203 of the VRA. The section's complaint alleged (1) that defendants failed to provide registration or voting notices, forms, instructions, assistance, or other materials or information, including ballots, in the Spanish language; (2) that defendants' failed to appoint and assign Hispanic persons on the same basis as whites to serve as poll workers; (3) that defendants' ineffective oral and written bilingual assistance and discriminatory poll worker appointment and assignment practices and procedures denied Hispanic citizens, including Spanish-language minority citizens, an equal opportunity to participate in the electoral process; (4) that the method of electing the Lawrence City Council diluted the voting strength of Hispanic citizens; and (5) that the method of electing the Lawrence School Committee diluted the voting strength of Hispanic citizens.

Disposition: Open/Closed in parts.

The defendants in this case entered into a settlement agreement of the first three allegations of the complaint. The settlement agreement was filed with the court, and the section is to monitor it until December 31, 2003. The remaining two allegations have been put on hold through a joint motion to administratively close the case, pending release of the 2000 Census in April 2001.

Information on Voting Section Closed Matters

This appendix provides (1) general information on the Voting section's closed matters that we reviewed and (2) a brief description of each matter and the reason the matter was closed.

Our review of the Voting section's 22 closed matter files found that 10 of the closed matters involved section-initiated investigations of potential discriminatory voting issues, 9 of the closed matters involved the section monitoring on-going private lawsuits to determine whether they should participate in a particular case, and 3 of the closed matters involved monitoring of elections. The origin of the matters varied. The protected class for most of the closed matters was race. Of the 22 closed matters, 15 of the matters related solely to race discrimination. The 22 closed matters dealt with a variety of voting issues. Table VIII.1 provides general information on each closed matter initiated during fiscal year 1998 that was closed as of March 2000.

Table VIII.1: Information on Voting Section's Matters Initiated During Fiscal Year 1998 That Were Closed as of March 2000

Matter number	Section involvement	Matter type	Matter subject	Protected class	Origin
1	Investigation	Language minority group	Voter assistance	Spanish language minority	Section initiated
2	Investigation	NVRA compliance	Purge/ reidentification	Not applicable	Section initiated Identified in newspaper articles
3	Investigation	Absentee ballot fraud	Interference with vote	Race	Citizen
4	Investigation	Racial imbalance of poll workers	Racial imbalance of poll workers	Race	Received periodic citizen complaints since 1992
5	Investigation	Polling place procedures	Voter identification requirements at polls	Race	Section initiated
6	Investigation	Section 5 related	State judicial campaign finance reforms	Not applicable	Referred by section 5 review
7	Preelection investigation	Voter assistance Privacy and absentee voting procedures	Assistance	Race	Section initiated
8	Investigation	Section 2 of VRA	Dilution	Language minority or race	Section initiated
9	Investigation	Section 2 of VRA	Dilution	Language minority or race	Section initiated
10	Investigation	Improper election procedures	Improper election procedures	Race	Citizen
11	Monitor a private lawsuit	Section 5 related Section 2 of VRA	Annexation Redistricting Regularly scheduled election cancelled	Race	Private attorney
12	Monitor a private lawsuit	Shaw type case	Redistricting	Race	Private attorney

Matter number	Section involvement	Matter type	Matter subject	Protected class	Origin
13	Monitor a private lawsuit	Section 2 of VRA, denial of right to vote	Take over of powers of elected school board	Language minority, race (Black and Hispanic)	Citizen
14	Monitor a private lawsuit	Racial gerrymandering	Redistricting	Race	Private attorney
15	Monitor a private lawsuit	Section 2 of VRA	Dilution	Race	U.S. Attorney Office
16	Monitor a private lawsuit	Section 2 of VRA	Annexation Incorporation	Race	Citizen complaint
17	Monitor a private lawsuit	Shaw-type case	Redistricting	Race	Private attorney
18	Monitor a private lawsuit	Shaw-type case	Redistricting	Race	Section initiated
19	Monitor a private lawsuit	Section 2 of VRA Minority language	Dilution Redistricting	Race (Native American)	Private attorney
20	Monitor election	Federal observers	Voter assistance Polling place procedures	Race	Section initiated
21	Monitor election	Federal observers	Voter assistance	Race	Referred from Section 5 and related to private litigation against the same county that the section was monitoring
22	Monitor election	Language minority group Voter intimidation	Bilingual Interference with vote	Spanish language minority	Another case in the section, local official

Source: Review of Voting section closed matter files and interviews with section officials.

Table VIII.2 provides a brief description for each Voting section matter initiated during fiscal year 1998 and the reason that the matter was closed.

Table VIII.2: Matters and the Reason the Matter Was Closed

Matter number Type of matter	Description of matter	Reason for closing
1 Investigation	The section initiated a section 203 language minority group investigation in several counties in California, one of which was this particular matter. The investigation assessed the bilingual programs in the particular counties.	Lacked merit—No problem existed. County was found to be providing assistance to minorities.
2 Investigation	The section investigated purge procedures that appeared to be inconsistent with the voter cancellation requirements set forth in the NVRA. A county clerk had purged about 30,000 voters from the county's voter registration list in August 1997.	Lacked merit—The Voting section investigation did not reveal sufficient evidence that electors were harmed by the process to justify filing a lawsuit or continuing the investigation.
3 Investigation	The issue in this election investigation was whether absentee ballots were being used without the permission of the voters. The allegation involved black voters who were approached by a campaign worker for a white candidate and asked if they would like to vote in an upcoming circuit judge election using an absentee ballot. The black voters declined but the campaign worker requested their names and addresses and the voters provided the information. Subsequently, the black voters received absentee ballots in the mail even though they had declined the initial request to vote absentee. The voting section provided limited observer coverage for the election to determine whether the white candidate had fraudulently obtained the absentee ballots of certain black voters.	Lacked merit—The coverage of the election did not reveal evidence of fraud.
4 Investigation	The Voting section initiated a preelection investigation in response to concerns about election day poll workers in a county. At issue was the racial balance of poll-worker appointments.	Corrective action—The Director of the Board of Election agreed with concerns raised and took corrective action.
5 Investigation	The section conducted an election investigation to determine whether a particular state's photo identification requirements were being administered in a racially discriminatory manner, or otherwise would have a racial impact. The concern was that African-Americans generally were not aware of the new state requirement for voters to provide identification at the polls or that those who did not have identification could vote after signing an affidavit.	Lacked merit—The investigation revealed no complaints or evidence that the identification requirement was applied in a discriminatory manner.
6 Investigation	The section investigation focused on whether they should litigate a section 5 coverage issue against a particular state. The state had submitted for section 5 review a statutory change that required campaign contribution disclosures for judicial elections and provided that judges recuse themselves from individual cases where a conflict might exist. Following inquiries from the Voting section, the state withdrew its submission on the grounds that the changes were not covered under section 5. The section was considering whether section 5 coverage applied or not. At the same time, the state legislature was considering one or more bills in its 1998 session to alter the statute that was at issue.	Lacked merit—The section attorney recommended against litigation for the time being because the state legislature was considering changes to the statutory provisions in question.

Matter number Type of matter	Description of matter	Reason for closing
7 Preelection Investigation	The section investigated concerns about assistance provided to voters in a particular county. Specifically, the concerns related to providing voter privacy, ensuring voters have assistance from whom they choose, and ensuring that absentee voters did not vote twice.	Corrective action—Official in the voting district acknowledged problems at the polls in the past and had been proactive in preventing occurrences. Voting section attorney believed that the official would continue to be proactive in preventing reoccurring problems in assistance and voter privacy.
8 Investigation	The section investigated whether school board elections in a particular school district had resulted in polarization and lack of electoral success for Native-Americans.	Lacked merit—The section found that the facts of a section 2 suit would show polarization and lack of electoral success, but the school district could show that Native- American turnout in school elections was poor. Thus, a potential court assessment could find that the Native-American electorate was disinclined to participate. The section attorney concluded that a lawsuit would not be wise.
9 Investigation	The section initiated an investigation of a particular school district to determine whether the district's at-large elections of school board members denied or abridged the rights of Native-Americans.	Lacked merit—The investigation concluded that it could not establish all three preconditions established by the Supreme Court to show evidence of unlawful vote dilution under section 2 of the VRA.[a]
10 Investigation	The section initiated an investigation in response to citizen complaints about the way in which a particular county calculated the results of an August 1998 school board election between a white incumbent and a black challenger. The same citizens also complained about the county's denial of a requested recount by an unsuccessful black candidate for county commissioner that was conducted in the same election.	Lacked merit—The investigation found that (1) the recount was consistent with state law, (2) there was no evidence of a failure or refusal to count the vote of a person permitted to vote, and (3) the election administrator complied with state law when he denied the recount request of the black county commission candidate.
11 Monitor private lawsuit	The section monitored a private lawsuit filed against a particular city with respect to several actions it had taken. These included a 1994 annexation, cancellation of a regularly scheduled municipal election in 1996, and a 1997 redistricting plan. The city submitted a section 5 preclearance request to the Voting section, but it was not submitted in a timely manner and the city delayed providing requested information.	Court action—The District Court order found in favor of the plaintiff and ordered the city to hold special city elections. In August 1998, the Attorney General, through the Voting section, interposed a section 5 objection to the city's submitted voting preclearance request.
12 Monitor private lawsuit	The section monitored a suit that challenged the congressional redistricting in a particular state. The redistricting was established in 1992 by a three-judge court order after the Voting section had objected to the state legislature's plan following a section 5 review. The court-ordered redistricting plan has been in use ever since. In August 1997 the plaintiff filed a federal lawsuit challenging the majority black district in the court-ordered plan alleging racial gerrymandering—that race was the sole factor in drawing the district lines. The Voting section was considering intervening on behalf of the defendant or filing an amicus curiae brief. The court dismissed the case before the Voting section had to take action.	Court action—The District Court dismissed the case recognizing the inherent impracticability of attempting to modify the Congressional districting plan through litigation prior to the 2000 Census. All parties recognized that the 2000 Census redistricting plans should address the need to comply with the laws.

Matter number Type of matter	Description of matter	Reason for closing
13 Monitor private lawsuit	The section monitored a class-action lawsuit brought by parents of children in a school district against a state government. The parents asked the Department of Justice to investigate perceived violations of their voting rights by the state. The state had assumed control of the school district in 1993. The private class-action lawsuit alleged that the state had failed to manage the school district properly and had failed to provide an adequate education and a safe environment for its students. New state legislation was initiated to provide a mechanism to return to an elected school board.	No further action warranted—The section concluded that there was an insufficient basis upon which to find any violations of VRA.
14 Monitor private lawsuit	The section received pleadings and correspondence from plaintiff's lawyer in a lawsuit filed against a particular city that challenged the city's elections scheduled in 1998 and 2000 because they would be affected by a 1991 city redistricting plan. The plaintiffs alleged that the city had violated the rights of voters by racially polarizing six local election districts when it packed black electors into two districts and whites and others in the remaining four.	No further action warranted—Claims alleged did not warrant the Voting section's participation.
15 Monitor private lawsuit	The section monitored a case filed that challenged the merger of two courts on the basis that the merger violated section 2 of the VRA. The merger involved combining a city recorders court and a county circuit court. The plaintiffs alleged that merging the two courts and requiring all judges of the merged court to be elected on a countywide basis would dilute the voting strength of African-Americans. The plaintiffs based their dilution prediction on African-American populations of 76 percent in the city and 40 percent in the county.	Court action—District Court granted summary judgment to the defendant (state), finding that the plaintiffs failed to show a violation of section 2.
16 Monitor private lawsuit	The section monitored a case that involved the redefining of a particular town's boundaries. In 1998, the section initiated an investigation to further investigate charges that the incorporation of the town was racially motivated.	No further action warranted—The section found no evidence of racial motivation.
17 Monitor private lawsuit	The section monitored a case that challenged the reapportionment of districts in a particular county following the 1990 census. The county was covered under section 5 and was required to submit the changes to the Voting section for preclearance. In an effort to gain preclearance from Justice, the county council felt compelled to create a new, additional majority minority district. The complaint alleged that the council used race as a predominant factor in deciding district lines.	Court action—The District Court decision found the redistricting plan created and imposed by the county to be unconstitutional because it impermissibly separated voters into different districts on the basis of race, and that separation lacked sufficient justification. The county was required to develop a new plan and file the revised plan with the court and submit it to Justice for preclearance.
18 Monitor private lawsuit	The section considered amicus curiae participation in this case. The plaintiff challenged a state's congressional redistricting plan. The section was interested in the outcome to ensure that the state satisfied section 2 interest by maintaining a majority-minority congressional district in which African-Americans had an equal opportunity to elect their preferred candidate.	Court action—Judge dismissed litigation based on state motion.

Matter number Type of matter	Description of matter	Reason for closing
19 Monitor private lawsuit	The section monitored this case because the section had section 2 investigations that could be impacted by the decision in this on-going case against a particular state. The plaintiffs sought declaratory and injunctive relief against the continued use of the House and Senate districts in the state on the grounds that they diluted the voting strength of Native- Americans.	Court action—The case was decided in favor of the defendants.
20 Monitor election	Federal observers were assigned to cover a municipal election in June 1997. The observers were assigned to cover the election because of prior problems with affidavit ballots and voter assistance in an election that took place in May 1997.	No further action warranted—The June 1997 observation concluded that the election had gone smoothly and poll workers provided proper assistance.
21 Monitor election	Federal observers were to be assigned to monitor the treatment of African-American voters in a municipal election. The monitoring was to address concerns about voter assistance procedures. Federal observers were to ensure that black voters in need of help at the polls were not denied assistance and that they would receive assistance from the person of their choice, as guaranteed under the VRA.	No further action warranted—Election was cancelled.
22 Monitor election	The Voting section monitored the primary election in a county to determine whether county officials were complying with the language minority group assistance requirements of the VRA, as amended. In addition, observers monitored polling place activities and absentee ballot processing procedures to gather information regarding challenges to Hispanic voters, which might rise to the level of intimidation.	No further action warranted—The section monitored the election for compliance and found the county to be in compliance

[a]The U.S. Supreme Court, in Thornburg v. Gingles, 478 U.S. 30 (1986), established three preconditions a plaintiff must establish in order to prove unlawful vote dilution. Under section 2 of the VRA, the plaintiffs must demonstrate that (1) the minority group is significantly large and geographically compact to constitute a majority in a single-member district, (2) the minority group is politically cohesive, and (3) the white majority votes significantly as a bloc to enable it to usually defeat the minority-preferred candidate.

Source: Review of Voting section closed matter files and interviews with section officials.

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