

**DEPARTMENT OF HEALTH AND HUMAN SERVICES  
OFFICE FOR CIVIL RIGHTS**

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**OFFICE FOR CIVIL RIGHTS**

For expenses necessary for the Office for Civil Rights, [\$30,621,000] \$32,043,000, together with not to exceed [\$3,281,000] \$3,314,000 to be transferred and expended as authorized by section 201(g)(1) of the Social Security Act from the Hospital Insurance Trust Fund and the Supplemental Medical Insurance Trust Fund. (*Department of Health and Human Services Consolidated Appropriations Act, 2004, P.L. 108-199*).

**DEPARTMENT OF HEALTH AND HUMAN SERVICES  
OFFICE FOR CIVIL RIGHTS**

**Amounts Available for Obligation<sup>1</sup>**

	<u>2003 Actual</u>	2004 <u>Final Conference</u>	<u>2005 Estimate</u>
<u>Appropriation:</u>			
Annual .....	\$30,328,000	\$30,936,000	\$32,043,000
Enacted rescission .....	-219,000	---	---
Enacted rescission .....	---	-133,000	---
Enacted rescission .....	---	-182,000	---
Subtotal, adjusted appropriation .....	30,109,000	30,621,000	32,043,000
Transfer to GDM for consolidation of administrative functions .....	<u>-385,000</u>	<u>---</u>	<u>---</u>
Subtotal, adjusted budget authority .....	29,724,000	30,621,000	32,043,000
<u>Trust funds:</u>			
Annual appropriation .....	<u>3,314,000</u>	3,314,000	<u>3,314,000</u>
Enacted rescission .....	---	-14,000	---
Enacted rescission .....	---	<u>-19,000</u>	---
Subtotal, adjusted trust funds .....	3,314,000	3,281,000	3,314,000
<u>Total Budget Authority</u>	33,038,000	33,902,000	35,357,000
Unobligated balance lapsing .....	<u>- 66,000</u>	<u>---</u>	<u>---</u>
<b>Total obligations .....</b>	<b>\$32,972,000</b>	<b>\$33,902,000</b>	<b>\$35,357,000</b>

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<sup>1</sup> Excludes the following amounts for reimbursable activities carried out by this account:  
FY 2004 \$112,000; FY 2005 \$115,000.

**OFFICE FOR CIVIL RIGHTS  
SUMMARY OF CHANGES**

2004 Final Conference .....	\$30,621,000
Trust fund transfer .....	3,281,000
Total estimated budget authority .....	\$33,902,000
2005 Estimate - General funds .....	\$32,043,000
Trust funds transfer .....	<u>3,314,000</u>
Total estimated budget authority .....	\$35,357,000
Net Change .....	+\$1,455,000



	<u>2004 Current Budget Base</u>		<u>Change from Base</u>	
	<u>(FTE)</u>	<u>Budget Authority</u>	<u>(FTE)</u>	<u>Budget Authority</u>
Increases:				
A. <u>Built-in:</u>				
1. Annualization of January 2004 pay raise .....	(267)	\$24,852,000	(---)	+\$250,000
2. Effect of January 2005 pay raise .....	(267)	24,852,000	(---)	+274,000
3. Within-grade increases and promotions .....	<u>(267)</u>	24,852,000	<u>(---)</u>	+440,000
4. Increase in rental payments to GSA; and Unified Financial Management System, Information Technology Service Center, and other built-in cost increases .....	(267)	<u>_9,050,000</u>	(---)	<u>+826,000</u>
Total Increases .....				\$1,790,000
B. <u>Program:</u> None				
Decreases:				
A. <u>Built-in:</u>				
1. One day less pay .....	(267)	33,902,000	(—)	-94,000
2. Administrative and salaries and expenses savings .....	(267)	33,902,000	(—)	<u>-241,000</u>
Total Decreases .....	(267)	33,902,000	(—)	-335,000
Net Change .....	(267)	33,902,000	(—)	\$1,455,000

**OFFICE FOR CIVIL RIGHTS**  
**BUDGET AUTHORITY BY ACTIVITY<sup>2</sup>**  
(Dollars in thousands)

	<u>2003</u> Actual		<u>2004</u> Final Conference		<u>2005</u> Estimate	
	<u>FTE</u>	<u>Amount</u>	<u>FTE</u>	<u>Amount</u>	<u>FTE</u>	<u>Amount</u>
Compliance Activities..	206	\$27,904	231	\$29,322	231	\$30,490
Legal Services.....	20	2,703	20	2,544	20	2,648
Program Management..	<u>18</u>	<u>2,431</u>	<u>16</u>	<u>2,035</u>	<u>16</u>	<u>2,219</u>
<b>Total Budget Authority</b>	<b>244</b>	<b>\$33,038</b>	<b>267</b>	<b>\$33,902</b>	<b>267</b>	<b>\$35,357</b>
General funds.....		\$29,724		\$30,621		\$32,043
HI/SMI trust funds.....		<u>3,314</u>		<u>3,281</u>		<u>3,314</u>
<b>Total Budget Authority</b>		<b>\$33,038</b>		<b>\$33,902</b>		<b>\$35,357</b>

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<sup>2</sup> Excludes the following projected amounts for reimbursable activities carried out by this account: FY 2004 \$112,000 and one FTE; FY 2005 \$115,000 and one FTE.

**OFFICE FOR CIVIL RIGHTS  
BUDGET AUTHORITY BY OBJECT**

	2004 <u>Final Conference</u>	2005 <u>Estimate</u>	Increase or <u>Decrease</u>
Full-time equivalent employment.....	267	267	---
Full-time equivalent of overtime and holiday hours....	---	---	---
Average SES salary.....	\$136,146	\$139,128	+\$2,982
Average GS grade.....	11.8	11.8	---
Average GS salary.....	\$71,854	\$74,723	+\$2,869
<hr/>			
Personnel compensation:			
Full-time permanent.....	\$19,140,000	\$19,815,000	+\$675,000
Other than full-time permanent.....	351,000	364,000	+13,000
Other personnel compensation.....	308,000	314,000	+6,000
Total, Personnel Compensation.....	19,799,000	20,493,000	+694,000
Civilian personnel benefits.....	5,031,000	5,207,000	+176,000
Benefits to Former Personnel.....	22,000	22,000	---
Subtotal, Pay Costs.....	24,852,000	25,722,000	+870,000
Travel.....	675,000	689,000	+14,000
Transportation of Things.....	35,000	36,000	+1,000
Rental payments to GSA.....	2,800,000	3,000,000	+200,000
Rental payments to others.....	85,000	87,000	+2,000
Communications, utilities, and others.....	350,000	357,000	+7,000
Printing and Reproduction.....	58,000	59,000	+1,000
Services from the Private Sector.....	1,010,000	834,000	-176,000
Purchases of goods and services from other government accounts.....	2,402,000	2,911,000	+509,000
(Service and Supply Fund payment).....	<b>(1,800,000)</b>	<b>(1,823,000)</b>	<b>(+23,000)</b>
Operation and Maintenance of Facilities.....	91,000	93,000	+2,000
Operation and Maintenance of Equipment.....	982,000	995,000	+13,000
Subtotal Other Contractual Services.....	4,485,000	4,833,000	+348,000
Supplies and Materials.....	264,000	270,000	+6,000
Equipment.....	298,000	304,000	+6,000
Subtotal, Non-Pay Costs.....	9,050,000	9,635,000	+585,000
Total Budget Authority by object class.....	\$33,902,000	\$35,357,000	+\$1,455,000

**OFFICE FOR CIVIL RIGHTS  
SALARIES AND EXPENSES**

	2004 <u>Final Conference</u>	2005 <u>Estimate</u>	Increase or <u>Decrease</u>
Personnel compensation:			
Full-time permanent (11.1).....	\$19,140,000	\$19,815,000	+\$675,000
Other than full-time permanent (11.3).....	351,000	364,000	+13,000
Other personnel compensation (11.5).....	308,000	314,000	+6,000
Total, Personnel Compensation (11.9).....	19,799,000	20,493,000	+694,000
Civilian personnel benefits ( 12.1).....	5,031,000	5,207,000	+176,000
Benefits to Former Personnel (13.1).....	22,000	22,000	---
Subtotal Pay Costs .....	24,852,000	25,722,000	+870,000
Travel (21.0).....	675,000	689,000	+14,000
Transportation of Things (22.0).....	35,000	36,000	+1,000
Rental payments to others (23.2).....	85,000	87,000	+2,000
Communications, utilities, and others (23.3).....	350,000	357,000	+7,000
Printing and Reproduction (24.0).....	58,000	59,000	+1,000
<u>Other Contractual Services:</u>			
Other Services (25.2).....	1,010,000	834,000	-176,000
Purchases of goods and service from other government accounts (25.3).....	2,402,000	2,911,000	+509,000
Operation and Maintenance of Facilities (25.4).....	91,000	93,000	+2,000
Operation and Maintenance of Equipment (25.7)....	982,000	995,000	+13,000
Subtotal Other Contractual Services .....	4,485,000	4,833,000	+348,000
Supplies and Materials (26.0).....	264,000	270,000	+6,000
Subtotal, Non-Pay Costs .....	5,952,000	6,331,000	+379,000
Total Salaries and Expenses.....	\$30,804,000	\$32,053,000	+\$1,249,000



**SIGNIFICANT ITEMS IN HOUSE, SENATE, AND CONFERENCE**  
**APPROPRIATIONS COMMITTEE REPORTS**

The following section represents FY 2004 Congressional requirements for reports and significant items derived from House Report 108-188 (Labor, Health and Human Services, and Education). Additional items may be transmitted at a later date as a result of the final Conference report.

Item

**Limited English Proficiency** - The Committee believes that the Department's revised Limited English Proficiency (LEP) guidance should be implemented in a cost effective manner. The Committee therefore requests the Department of HHS to provide information to the Committee by December 1, 2003 on implementation of the revised guidance; HHS funding for services provided to implement the guidance, including publications, web site construction costs, and language line contracts; and the availability of existing data from States and localities relating to the cost of implementing the guidance.

Action taken or to be taken

The above requested information, with the exception of the availability of State and locality data on implementation costs, was also requested in Conference report 108-10, page 1119. The Department provided a report, "Limited English Proficiency," dated October 27, 2003, in response to that request.

Since the above report was submitted, the public comment period for the revised LEP guidance, which was published in the Federal Register on August 8, 2003, closed on January 6, 2004. The Department is now reviewing those comments.

Regarding the availability of existing data from States and localities relating to the cost of implementing the guidance, there is no available standardized information, and the Department has not requested or sought to require States and localities to undertake to break out and report on those costs. The Office for Civil Rights (OCR) seeks to reduce State and local implementation costs by providing technical assistances to the States and localities in developing appropriate implementation plans. Costs are also likely to be lessened by assistance provided in using the guidance and its four factor analysis for determining whether steps need to be taken, and, if so, what most cost effective steps may be taken to comply with Title VI of the Civil Rights Act of 1964 . OCR also refers State and local authorities to other States and governmental subdivisions that have developed "promising practices" that can be emulated to effectively reduce costs.

**OFFICE FOR CIVIL RIGHTS  
AUTHORIZING LEGISLATION**

	2004 Amount <u>Authorized</u>	2004 Final Conference	2005 Amount <u>Authorized</u>	2005 Budget <u>Request</u>
Office for Civil Rights:				
P.L. 88-352;				
42 U.S.C. 300s;				
P.L. 91-616;				
P.L. 92-157;				
P.L. 92-158;				
P.L. 92-255;				
P.L. 93-282;				
P.L. 93-348;				
P.L. 94-484;				
P.L. 95-567;				
P.L. 97-35;				
P.L. 103-382;				
P.L. 104-188;				
P.L. 92-318;				
P.L. 93-112;				
P.L. 94-135;				
P.L. 101-336;				
P.L. 104-191 .....	Indefinite	\$33,902,000	Indefinite	\$35,357,000

**OFFICE FOR CIVIL RIGHTS  
APPROPRIATIONS HISTORY TABLE**

	<u>Budget Estimate to Congress</u>	<u>House Allowance</u>	<u>Senate Allowance</u>	<u>Appropriation</u>
1996				
Appropriation	17,558,000	10,249,000	16,153,000	16,153,000
Rescission	---	---	---	-72,000
1% Transfer	---	---	---	+330,000
Trust Funds	3,602,000	3,251,000	3,314,000	3,314,000
Rescission	---	---	---	-15,000
1997				
Appropriation	18,188,000	16,066,000	16,366,000	16,216,000
Rescission	---	---	---	-33,000
1% Transfer	---	---	---	+475,000
Trust Funds	3,602,000	3,314,000	3,314,000	3,314,000
Rescission	---	---	---	-7,000
1998				
Appropriation	17,216,000	16,345,000	16,345,000	16,345,000
Trust Funds	3,314,000	3,314,000	3,314,000	3,314,000
1999				
Appropriation	17,345,000	17,345,000	17,345,000	17,345,000
Rescission	---	---	---	-34,000
1% Transfer	---	---	---	-7,000
Trust Funds	3,314,000	3,314,000	3,314,000	3,314,000
2000				
Appropriation	18,845,000	18,338,000	18,845,000	18,838,000
Rescission	---	---	---	-64,000
1% Transfer	---	---	---	445,000
Trust Funds	3,314,000	3,314,000	3,314,000	3,314,000
2001				
Appropriation	24,142,000	18,774,000	23,242,000	24,742,000
Rescission	---	---	---	-51,000
1% Transfer	---	---	---	---
Trust Funds	3,314,000	3,314,000	3,314,000	3,314,000
2002				
Appropriation	28,691,000	28,691,000	28,691,000	28,691,000
Rescission	---	---	---	-50,000
Rescission	---	---	---	-23,000
Rescission	---	---	---	-126,000
Transfer to GDM	---	---	---	-376,000
Trust Funds	3,314,000	3,314,000	3,314,000	3,314,000
2003				
Appropriation	30,328,000	---	30,328,000	30,328,000
Transfer to GDM	-385,000	---	-385,000	-385,000
Rescission	---	---	---	-219,000
Trust Funds	3,314,000	3,314,000	3,314,000	3,314,000
2004				
Appropriation	30,936,000	30,936,000	30,936,000	30,936,000
Rescission	---	---	---	-133,000
Rescission	---	---	---	-182,000
Trust Funds	3,314,000	3,314,000	3,314,000	3,314,000
Rescission	---	---	---	-14,000
Rescission	---	---	---	-19,000
2005				
Appropriation	32,043,000			
Trust Funds	3,314,000			

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES  
OFFICE FOR CIVIL RIGHTS**

	2003 <u>Actual</u>	2004 <u>Final Conference</u>	2005 <u>Estimate</u>	Increase or Decrease
Budget Authority	\$33,038,000	\$33,902,000	\$35,357,000	\$1,455,000
FTE <sup>3</sup>	244	267	267	---

**GENERAL STATEMENT**

OCR conducts public education; outreach; complaint investigation and resolution; and other compliance activities to prevent and eliminate discriminatory barriers, to ensure the privacy of protected health information, and to enhance access to quality HHS-funded programs. OCR's activities concentrate on ensuring integrity in the expenditure of Federal funds by making certain that such funds support programs that ensure access by intended recipients of services free from discrimination on the basis of race, national origin, disability, age, and gender; and maintain public trust and confidence that the health care system will maintain the privacy of protected health information while ensuring access to care. In doing so, OCR's activities enhance the quality of services funded by the Department and the benefit of those services, by working with covered entities to identify barriers and implement practices that can avoid potentially discriminatory impediments to quality services and privacy breaches. The Department's goal of providing quality health and human services cannot be met when individuals in need of services do not receive them as a result of practices that violate their fundamental rights of nondiscrimination or privacy.

The President's appropriation request of \$35,357,000 for this account represents current law requirements. No proposed law amounts are included.

**PURPOSE AND METHOD OF OPERATIONS**

OCR enforces nondiscrimination and privacy requirements by processing and resolving complaints; conducting compliance reviews; monitoring corrective action plans; and carrying out

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<sup>3</sup> FTE level does not include one reimbursable FTE projected in each of FY 2004 and FY 2005.

voluntary compliance, public education, outreach, and technical assistance activities. OCR is comprised of investigative, legal counsel, and program management staff.

Funding levels and FTE for OCR (including amounts available for obligation from both budget authority and trust fund transfers) during the last five fiscal years are shown below.

<u>FISCAL YEAR</u>	<u>FUNDS</u>	<u>FTE</u>
2000	\$22,533,000	215
2001	\$27,983,000	223
2002	\$31,430,000	246
2003	\$33,038,000	244
2004	\$33,902,000	267

#### **RATIONALE FOR THE BUDGET REQUEST**

OCR's civil rights and health information privacy activities support Presidential initiatives focusing on expanding opportunities and freedom for all Americans and ensuring the privacy of protected health information. This budget will enable OCR to support key HHS program themes through both nondiscrimination and Privacy Rule compliance activities. Some of the key priorities that OCR's work currently supports and will continue to support during FY 2004 and FY 2005 include: increasing access to health services, improving the quality of health care, working toward independence, leaving no child behind, protecting and effectuating the rights of vulnerable populations, and minimizing health differences and disparities – "Closing the Gaps." Maintaining OCR's work in these key areas is particularly critical because OCR has sole responsibility for Title VI discriminatory effects cases in health and human services, primary responsibility for Americans with Disabilities Act (ADA) enforcement in health and human services, and sole responsibility for Privacy Rule enforcement. In addition to supporting these key initiatives, the FY 2005 budget request for OCR incorporates management initiatives to continue to focus its resources on direct service to customers and to collaborate and coordinate with other Department components to avoid duplication and maximize its efforts.

OCR's budget priorities for FY 2005 concentrate on: (1) increasing access to and receipt of nondiscriminatory quality health care and treatment and social services, while protecting the integrity of HHS Federal financial assistance; and (2) ensuring understanding of and compliance with the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule. Within these broad mission-oriented goals, OCR will use all available compliance tools, with an emphasis on education, outreach, and community involvement, to ensure that all persons are served in a nondiscriminatory manner in HHS-funded programs, that their rights to protection of the privacy of health information are effectuated, and to assist covered entities to achieve

compliance with federal law that prohibits discrimination and protects the privacy of health information. During FY 2005, consistent with broadly inclusive health and social services objectives set out in OCR's Government Performance and Results Act (GPRA) Annual Performance Plan, OCR will address a broad array of concerns including:

- The New Freedom Initiative and the *Olmstead* Executive Order
- Title VI (Race, Color, and National Origin) Access and Disparities in Health and Human Services Programs
- Privacy of Protected Health Information - HIPAA

This budget reflects a continued commitment to the ongoing need for civil rights protection and to ensuring the privacy of protected health information as the nation continues to experience significant change and challenges in the delivery of health care and social services. This commitment is consistent with the HHS Strategic Plan, which calls for the Department "to focus on health promotion and the prevention of disease and social problems, including the prevention of discrimination in the provision of health and human services." The protection of civil rights and protected health information advances, and is integral to, the achievement of a wide spectrum of HHS objectives including, but not limited to: assisting families to achieve economic self-sufficiency and independence; improving long-term care; improving the stability and development of our Nation's children and youth; protecting and empowering specific populations (e.g., community integration and self-sufficiency for persons with disabilities); understanding health differences and disparities ("Closing the Gaps"); increasing access to health care services; and realizing the possibilities of 21st century health care. In all Federally-funded health care and social services, from hospitals and nursing homes to Head Start centers and senior centers, the public must receive high quality services without regard to race, color, national origin, disability, age, sex, and religion. In addition, the privacy of personal health information must be appropriately protected.

OCR's efforts supported by this budget request will address the challenges resulting from the accelerating changes in the diversity of the nation's population and in the resulting need for ensuring access to quality health and social services. Civil rights protection must keep pace with changes in health and social services delivery systems to ensure and strengthen the public's confidence that, as these systems continue to change, individuals are not subject to illegal discrimination or disclosures of protected health information. OCR's initiatives to integrate civil rights awareness and privacy obligations throughout the Department and its network of program service providers and covered entities will enhance the quality and results of the services provided to the public through HHS programs. These programs can do the jobs they are intended to do most effectively — to provide quality health care and social services — if they are grounded in a strong and unified understanding and commitment to civil rights and to the privacy of personal health information.

## **PROGRAM PRIORITIES**

OCR is asking for \$35,357,000 in FY 2005, which is a \$1,455,000 increase over the FY 2004 President's Budget request of \$33,902,000. The additional funding will cover mandatory increases (e.g., pay raises, expenses associated with the consolidation of information technology services, and inflationary adjustment), and will support 267 FTE, the same FTE level as in FY 2004. OCR is not requesting program increases at this time.

OCR will use its resources to carry out public education, outreach, technical assistance, and complaint investigations in support of implementation of the Privacy Rule during 2004, the first full year in which all health plans (including small health plans), providers, and clearinghouses must be in compliance. The addition of Privacy Rule compliance to other civil rights compliance authorities, effective mid-way through FY 2003, has required considerably more FTE than earlier had been estimated for program implementation and related public education and complaint processing in the FY 2003 or FY 2004 budgets. Beginning in FY 2003, through efficiencies in traditional civil rights public education, outreach, and case processing, OCR has been able to dedicate some additional resources from within its FTE base to Privacy Rule public education, outreach, and other compliance activities. At the same time, however, as OCR is applying an increasing amount of its resources to Privacy Rule complaint processing, the number of new discrimination complaints has increased by 14 percent in FY 2003 from FY 2002 and is projected to increase another two percent per year in FY 2004 and FY 2005.

Ensuring the appropriate alignment of FTE to address needs related to implementing the new health information privacy rights authority has resulted in an acceleration of the re-allocation of staff previously dedicated to compliance with other civil rights authorities. OCR has received an average of approximately 100 Privacy Rule complaints per week since April 14, 2003, and a very high volume of requests for technical assistance and public education, including more than 19,000 Privacy hotline and other technical assistance calls between April 1 and December 31, 2003. OCR also provides technical assistance to covered entities in the process of resolving complaints to promote efficient, informal resolution, and voluntary compliance. Although somewhat reduced from the concentrated level of requests experienced in the two to three months before the compliance effective date, we are continuing to receive a high volume of requests from covered entities for technical assistance outside of the complaint context.

Further, regional staff have been providing guidance to covered entities and have been screening and handling complaints since April 14, 2003. To date, the volume of complaints has not been as high as the 10,110 projected for FY 2003 or the 21,700 complaints projected for FY 2004 as noted in the justification of the President's FY 2004 budget submission. However, the complaints received to date have demanded significantly more attention than previously anticipated. Contrary to our earlier projection that 62 percent of complaints would be non-jurisdictional and that another 37 percent would address relatively routine denials of



individual access to their own medical records, thus far about 80 percent of the complaints received require some level of investigation or technical assistance, and typically a combination of both. OCR received 2,267 Privacy Rule complaints during the five and half months of FY 2003 following the April 14 compliance effective date and projects receiving slightly more than 5,200 such complaints each year in FY 2004 and FY 2005.

The net impact of the different mix of Privacy Rule complaints received and the higher than anticipated volume of technical assistance requests required an estimated 40 FTE nationwide committed to the Privacy Rule in FY 2003 compared with 28 FTE previously estimated in the FY 2004 President’s Budget, and 65 FTE in both FY 2004 and FY 2005 compared with the 40 FTE that had been estimated in the justification submitted last year for FY 2004.

Based on the current projections of new Privacy Rule complaints and expected productivity increases as we become more familiar with the issues raised in such complaints, we believe that our projected FTE allocation between Privacy Rule work and traditional civil rights work is sufficient to support key civil rights initiatives and Privacy Rule compliance activities during the first two full years of the Rule’s implementation (FY 2004 and FY 2005). However, given that we are still in the early stages of Privacy Rule compliance, OCR will be continuously assessing its nondiscrimination and Privacy Rule complaint workload, requests for technical assistance and other compliance activities. If, with additional experience responding to Privacy Rule complaints and public education and technical assistance requests, the workload grows beyond current expectations, then as necessary OCR will consult within the Department, and with the Office of Management and Budget to determine how best to maintain an effective balance among all of OCR’s authorities.

In addressing both nondiscrimination and Privacy Rule compliance issues faced by covered entities, OCR's priority is to allocate staff resources to frontline compliance activities, largely in OCR's regional offices. In FY 2005, 231 of 267 FTE (87 percent) will be committed to civil rights and Privacy Rule compliance activities, with another 20 FTE providing compliance legal counsel and 16 providing compliance program management. OCR estimates that nearly three-quarters of the compliance staff FTE will focus on traditional civil rights compliance, while one-quarter of the compliance FTE will be concentrating on Privacy Rule compliance. The projected allocation of OCR's FTE is shown below:

	Actual FY 2003 <u>FTE</u>	Projected FY 2004 <u>FTE</u>	Projected FY 2005 <u>FTE</u>
Compliance Activities	206	231	231
Compliance Legal Counsel	20	20	20
Compliance Program Management	<u>18</u>	<u>16</u>	<u>16</u>
Subtotal	244	267	267

## Impact of OCR Priority Initiatives

During the past three years, OCR has played a key role in implementing critical initiatives that will continue in FY 2005, including the following:

### **1. New Freedom Initiative and the *Olmstead* Executive Order**

OCR is involved in a variety of efforts to increase the independence and quality of life of persons with disabilities, including those with long-term needs. Most notably, OCR has played a critical role in implementation of the Administration's New Freedom Initiative that was announced in February 2001, and implemented through an Executive Order issued on June 19, 2001 (E.O. 13217). The Executive Order commits the United States to a policy of community integration for individuals with disabilities and calls upon the Federal Government to work with states to implement the Supreme Court's decision in *Olmstead v. L.C.* The Executive Order calls for swift implementation of the *Olmstead* Supreme Court decision and full enforcement of Title II of the ADA through investigations, complaint resolution, and the use of alternative dispute resolution.

As part of the Executive Order, the President directed the Secretary of Health and Human Services to coordinate the activities of other Federal agencies. At the Secretary's direction, OCR coordinated the efforts of nine Federal agencies in a rigorous self-evaluation with public input, of their policies, programs, statutes, and regulations to determine whether any should be revised or modified to improve the availability of community-based services for qualified individuals with disabilities.

This coordinated effort led to the production of *Delivering on the Promise*, a comprehensive compilation of the reports of nine Federal agencies outlining more than 400 specific steps the agencies will implement to support community living for the nearly 54 million Americans living with disabilities. *Delivering on the Promise* addresses barriers in the following key areas: health care structure and financing; housing, personal assistance, income supports, and direct care services; community workers, and care giver and family support; transportation, employment, and education; access to technology; accountability and legal compliance; public awareness, outreach and partnerships; gathering, assessment, and use of data; and cross agency collaborations and coordination.

Secretary Thompson has called *Delivering on the Promise* a "comprehensive blueprint toward achieving community living for people with disabilities." Continuing to implement that blueprint will constitute the core of OCR's work to facilitate the community integration of people with disabilities and to respond to the President's directive that HHS "fully enforce" Title II of the ADA and assist States and localities to "implement swiftly" the *Olmstead* decision.

OCR, on behalf of the Department, has sole responsibility for fulfilling certain specific commitments in *Delivering on the Promise*. For example, in response to a specific directive in

E.O. 13217 to use alternate dispute resolution techniques in *Olmstead* complaints, OCR committed to work with the Department of Justice (DOJ) to implement a pilot project to use DOJ's Alternative Dispute Resolution program to resolve complaints filed with OCR that allege a violation of the right under ADA regulations and the *Olmstead* decision to receive services in the most integrated setting appropriate to the needs of people with disabilities. During FY 2003, OCR initiated this pilot project through a Memorandum of Understanding with DOJ, which resulted in the successful mediation and resolution of all cases to date in the pilot, including matters involving children who were allegedly at risk of inappropriate institutionalization.

OCR also committed in *Delivering on the Promise* to disseminate information about complaints that OCR has successfully resolved. In FY 2003, OCR produced and disseminated *Delivering on the Promise: OCR's Compliance Activities Promote Community Integration*, which describes more than 100 satisfactorily resolved OCR "most integrated setting" *Olmstead* complaints. In resolving these matters, complainants, state and local government entities, and other parties worked cooperatively with OCR, often devising creative solutions to the issues involved. The complaints involved individuals who sought to move from allegedly inappropriate institutions to community settings, as well as individuals who resided in the community but alleged that they were at risk of inappropriate institutionalization. OCR resolved these complaints through a variety of methods, including: devising a system of supports and services to facilitate an individual's move from an institution to the community; utilization of HHS Medicaid "waiver" programs to fund community care and consumer-directed services; provision of increased hours of home health care services to individuals; increasing the hourly rate paid to home health care workers; and providing reasonable accommodations to meet complainants' needs in a more integrated setting rather than in an institution. In some cases, OCR's intervention and assistance have helped secure community services for individuals who had been institutionalized for decades. Other matters resolved by OCR resulted in the provision or restoration of community services for individuals who lost their housing and/or community-based supportive services when they entered institutions due to an acute health care problem. Individuals who were provided services in a more integrated setting as a result of OCR's efforts had a range of disabilities, including physical, mental, and developmental impairments. OCR will build on these successes to create models of best practices to share widely with other stakeholders.

OCR also will continue to play a key role in HHS-wide activities to implement the President's Executive Order and to promote community integration. OCR is frequently called upon for its technical expertise in defining HHS policy and responding to Administration initiatives with respect to individuals with disabilities. OCR will continue its participation in the HHS New Freedom Initiative Work Group, which serves as a forum to coordinate, develop, and implement HHS disability policy and specific tasks and projects that facilitate the community integration of people with disabilities. OCR's activities in this Work Group have included serving on a subgroup to devise solutions to barriers to community integration posed by inadequate housing and employment opportunities.

During FY 2005, OCR's public education, direct technical assistance to the states, and investigation and resolution of *Olmstead*-related complaints will continue to underscore the Administration's commitment and the Department's Federal Government leadership and coordinating role in accomplishing the goal of improving access to community-based services for people with disabilities. OCR's activities also will support HHS and government-wide activities focused on access to and the quality of long-term care by helping persons with disabilities who do not have to be segregated in long-term care facilities to receive integrated services in their communities. OCR will continue to provide technical assistance to states as they continue developing comprehensive, effectively-working plans to integrate persons with disabilities into communities and to resolve voluntarily complaints filed by or on behalf of persons with disabilities.

## **2. Title VI (Race, Color, and National Origin) Access Initiatives**

### ***Health Disparities – "Closing the Gaps in Health Care"***

Despite notable progress in the overall health of the nation, there are continuing disparities in illness and death experienced by members of racial and ethnic groups, compared to the U.S. population as a whole. Demographic changes anticipated over the next decade magnify the importance of addressing disparities in health status, which is a primary goal of *Healthy People 2010*. Groups currently experiencing poorer health status are expected to grow as a proportion of the total U.S. population; therefore, the future health of the nation as a whole will be influenced substantially by the Department's and others' success in improving the health of these groups. A national focus on disparities in health status that addresses both medical and social bases for disparities (including potential discrimination and civil rights issues) is important as major changes unfold in the diversity of the population and in the way in which health care is delivered and financed. Given the multiple access barriers faced by rural populations, OCR will focus technical assistance, public education, and awareness activities about civil rights issues in quality health care access by vulnerable rural populations such as persons with disabilities, African-Americans, Native Americans, and national origin minorities in Southwestern, Midwestern, and Southern states. For example, OCR trained over 100 state agency officials and advocates on issues affecting national origin minority access to HHS-funded health care and social services, at a Florida Rural Immigrant Advocacy Summit.

OCR's jurisdictional basis for working with states, localities, and providers with respect to potential race and national origin discrimination is Title VI of the Civil Rights Act of 1964. Recipients of HHS Federal financial assistance must ensure that policies and procedures do not exclude or have the effect of excluding or limiting the participation of beneficiaries in their programs on the basis of race, color, or national origin. Ensuring Title VI compliance is a core function of OCR's mission. In FY 2003 and FY 2004, OCR dedicated policy and compliance staff resources to address the role that discrimination plays in race and ethnic health disparities and will continue to do so in FY 2005. OCR is a key part of the Department's health disparities

initiative and has conducted civil rights sessions at regional and HHS National Leadership Summits on Eliminating Racial and Ethnic Disparities in Health.

Comprehensive studies by the Institute of Medicine (IOM), the Commonwealth Fund, and others have underscored the critical importance of OCR in eliminating these disparities. OCR's role in Title VI issues including health disparities has taken on a heightened importance following the Supreme Court's decision in *Alexander v. Sandoval*, 532 U.S. 275 (2001), which held that there is no private right of action in disparate impact cases. Accordingly, as delegated by DOJ, OCR is the sole entity with authority to conduct investigations of alleged violations of the Title VI rights of individuals receiving HHS-funded services, where service-provider policies and practices may have a discriminatory disparate impact on minority consumers.

In FY 2005, OCR will continue to focus on a broad range of Title VI access issues including disparities in access, quality, and availability of health services. OCR's efforts will continue to be an integral part of the Department's overall initiative to eliminate health disparities. OCR's work also will support other significant Departmental efforts, including prevention, organ and tissue donation and transplantation, mental health services, faith-based initiatives, and strengthening families. In FY 2005, OCR's racial and ethnic disparities effort will concentrate on educating communities and working with stakeholders to identify and implement community-based plans for eliminating race disparities and discrimination in health care access and service provision. OCR has made specific efforts in Pennsylvania, New York, and Massachusetts to increase minority access to diabetes and HIV/AIDS prevention education and treatment, and to enhance community-based participatory research into health disparities. These activities will serve as models for how OCR can bring diverse stakeholders together -- health care providers, academics, state agencies, and community and faith-based organizations -- to address access and quality issues and to increase overall awareness of civil rights laws and their applicability in health care settings.

HHS has identified six priority health areas on which to focus health disparities activities (e.g., cancer screening and management, cardiovascular disease, diabetes, HIV infection/AIDS, immunizations, and infant mortality). In FY 2003, continuing through FY 2005, OCR's nondiscrimination activities will address many of these areas. For example, in the area of improving outcomes for all persons with diabetes, OCR's Region I will work with all six states in that region, as well as with providers and consumer groups such as faith-based organizations in those states, to inform racial and ethnic minorities of their rights to nondiscriminatory access to prevention education and treatment, and addressing social, cultural, and other potential barriers to access. OCR will continue its enforcement component, working with HHS-funded diabetes prevention and treatment programs to ensure that such programs are operated in a nondiscriminatory manner.

In FY 2005, OCR will continue to seek to determine how to address issues of differential access to health care and effects including discrimination and disparities in mental health services and care. This will continue our response to the Surgeon General's August 2001 report *Mental*

*Health: Culture, Race, and Ethnicity.* As set forth in that report, civil rights issues in mental health may include clinician bias, language barriers, and discriminatory access to quality care.

### ***Children and Families***

OCR's Title VI access initiatives also will include working to ensure nondiscriminatory access to Medicaid managed care and State Children's Health Insurance Program (SCHIP) health benefits as well as access to programs funded under the Temporary Assistance for Needy Families (TANF) program designed to provide health supportive services to children and families. These activities will intersect with OCR's existing work on Title VI access issues such as language assistance to limited-English proficient persons and racial and ethnic health disparities, managed care, and TANF, as well as support a focus on children and nondiscrimination.

For example, OCR's Region II office is partnering with each of the region's State Offices of Minority Health (New York, New Jersey, Puerto Rico, and the Virgin Islands), with community-based organizations, and an epidemiologist from the HHS Health Resources and Services Administration (HRSA) to conduct listening sessions with end-users of HHS federal financial assistance to children and families. The goal will be to reach the more vulnerable racial and ethnic populations where morbidity and mortality data evidence wide disparities. Each State Office of Minority Health, in partnership with OCR and the HHS Office of Minority Health, will host a series of education/outreach listening sessions in specified urban and rural areas. The curriculum will cover civil rights issues in family health (including infant mortality, maternal and child health, early childhood health education, and youth prevention activities) that may serve as barriers to access and receipt of quality health services.

OCR will continue to work to address race, color, and national origin discrimination in the context of strengthening families by promoting adoption and foster care. For example, the FY 2005 budget request will enable OCR to further its implementation of Congressional intent to eliminate delays in adoption placement where they are avoidable, as clarified through the Small Business Job Protection Act of 1996 (SBJPA). Section 1808 of the SBJPA affirms and strengthens the prohibition against discrimination in adoption or foster care placements. Since the passage of the SBJPA, OCR has worked with the HHS Administration for Children and Families (ACF) to ensure that states eliminate policies, practices, and statutory provisions that pose Section 1808 compliance problems.

During FY 2005, OCR anticipates continuing technical assistance to states and placement agencies, ongoing joint efforts with ACF and others, reviews and investigations of compliance, and follow-up monitoring of corrective action plans associated with implementation of the strengthened adoption nondiscrimination provisions included in the SBJPA and in guidelines for OCR and ACF implementation. OCR's work in this area supports the President's Safe and Stable Families Initiative and the HHS Strategic Goal of improving the stability and healthy development of our Nation's children and youth.

### *Limited English Proficiency*

Among the issues that OCR will continue to address in our Title VI access compliance activities are the unique needs associated with an increasingly diverse population. This includes racial and ethnic minorities and individuals who are limited English proficient (LEP). OCR's specific activities in this area, which are part of a larger Departmental effort, coordinate closely with the activities previously noted as being sustained by the FY 2005 budget request --- health disparities and nondiscrimination in TANF programs.

On June 18, 2002, DOJ issued revised LEP Guidance for recipients of its Federal financial assistance. On July 8, 2002, DOJ sent a memorandum to Federal agencies directing them to revise their LEP guidance to conform to the revisions in DOJ's guidance. On August 8, 2003, OCR published its revised LEP guidance in the Federal Register. OCR will continue to work with health care and social services providers, state and local agencies, and other HHS components, to ensure that LEP persons are not discriminated against on the basis of national origin in Federally funded programs (e.g., emergency room care, welfare to work, child protective services, senior centers, and in-home services).

To leverage resources for technical assistance, OCR works with other HHS agencies, particularly the Centers for Medicare and Medicaid Services (CMS), ACF, HRSA, and the Substance Abuse and Mental Health Services Administration (SAMHSA) to identify ways to maximize existing HHS resources for language assistance and to develop initiatives to enhance resources and technical assistance for recipients. These initiatives include clarifying what Federal financial assistance can be used to pay the costs of language assistance, identifying and providing translation of common forms and notices, developing sample assessment tools and model language assistance plans, and developing links to Federal, state, and local sources for various forms of language assistance services. OCR will be seeking qualified contractors to efficiently develop resources for recipients as well as for OCR and other HHS components to use in their efforts to improve access for LEP persons to programs and services directly conducted by HHS.

On November 12, 2002, DOJ issued a memorandum directing Federal agencies to draft or review their LEP implementation plans for their own Federally conducted programs in light of the publication of the DOJ revised guidance. OCR has taken the lead in developing the HHS LEP implementation plan and is working with other HHS components to improve access to HHS-conducted services and programs for LEP persons in a cost-effective, competent, and consistent manner.

OCR continues to be a leading member of the HHS Interagency LEP working group that is also coordinating and developing resources for recipients across Federal agencies, including through a centralized website, [www.LEP.gov](http://www.LEP.gov).

### **3. Health Information Privacy - HIPAA**

OCR is responsible for implementing and enforcing the HIPAA Privacy Rule. Compliance with the HIPAA Privacy Rule is required for most covered entities as of April 14, 2003, when OCR's responsibility to enforce the Privacy Rule also commenced. The Rule protects the privacy of individually identifiable health information maintained or transmitted by health plans, health providers, and clearinghouses. This landmark legislation and the Rule provide individuals, for the first time, with Federal protection against the inappropriate use and disclosure of personal health information.

FY 2004 will be the first full year during which OCR will be receiving and investigating complaints under the Privacy Rule. Because HIPAA does not provide a private right of action, OCR will be the only government entity to which aggrieved parties can turn for redress for violation of the Privacy Rule subject to civil monetary penalties. (DOJ is charged with enforcing criminal violations of the Privacy Rule). During FY 2005, the budget projects supporting 65 FTE dedicated to: (1) promoting compliance with the Privacy Rule by receiving, investigating, and resolving complaints, and reviewing the compliance of health care providers, health plans, and clearinghouses, (2) developing policy guidance and public education and technical assistance materials for health providers, health plans, and clearinghouses that maintain individuals' health information and providing technical assistance directly to covered entities and members of the public, and (3) analyzing and making recommendations with respect to any changes in the Privacy Rule to promote workability to better protect privacy.

Essential to effective privacy protection under HIPAA is preventing violations of the Privacy Rule. Therefore, OCR will continue to focus heavily on education and technical assistance activities to prevent violations. OCR's public education activities also will continue to entail outreach and technical assistance to health care providers, clearinghouses, and health plans to ensure that they understand their responsibilities under the Privacy Rule. To the extent that covered entities understand their obligations, the need for enforcement will be minimized. OCR currently receives several requests each week to meet with covered entities and to speak at national conferences. We will be targeting our public education to ensure that we are maximizing our efforts and reaching groups where the need is greatest. OCR also will continue to work with HHS components which are covered entities, or which provide grants to or partner with covered entities, and with other Federal agencies to ensure compliance with the Privacy Rule and consistency in its implementation and interpretation.

These outreach efforts are reflected in the following summary of selected activities in which OCR played a significant role during the months leading up to and after the April 14, 2003 compliance date:

- On-site Conferences and Seminars. We have made our senior experts available on a regional and national basis for presentations at hundreds of conferences and seminars that were attended, in significant measure, by smaller providers and businesses. Particularly,



the Department co-sponsored four national HIPAA Privacy Rule conferences, in New York, Atlanta, Chicago, and San Diego, attended by some 6,000 participants, and viewed remotely (through closed circuit TV, and ultimately, through access to conference videotapes) more broadly by the public.

- Free Telephone Conferences. We also made our experts available to providers and those with limited resources through numerous toll-free telephone conferences. For instance, on March 27, 2003, OCR sponsored a free call-in line on HIPAA Privacy. Over 4,500 telephone lines, with an estimated 8,350 individuals, a record for the Department, joined in the call. OCR staff experts made presentations during a number of these sessions, with increasing frequency as the April 14, 2003, compliance date approached.
- Toll-Free Assistance. The Department offers a free call-in line, 1-866-627-7728, sponsored by CMS and OCR, for HIPAA questions. Operators on this line are able to respond directly to many frequently asked questions. If the operators cannot answer the caller's question, the caller is directed to a phone line where he or she can leave a specific message, and regional and headquarters staff return the call for inquiries related to the Privacy Rule. From April 2003 through the end of December 2003, more than 19,000 phone inquiries concerning the Privacy Rule were handled, including approximately 10,000 by our operators and 9,000 by OCR headquarters and regional staff.
- Publications. We are pleased to find that many of the questions posed at the conferences and on our telephone lines can be readily answered through information already available on Department websites. From March through December 2003, OCR had over 1,000,000 visits to its Privacy web pages and also had 1,635,000 Privacy Rule answers viewed on the frequently asked questions site maintained by HHS. OCR and its sister divisions in the Department, particularly CMS, but also the National Institutes of Health (NIH) and the Centers for Disease Control and Prevention (CDC), among others, have worked and continue to work in concert to produce materials and guides responsive to the needs of the wide range of healthcare industry segments that are affected by the Privacy Rule. Because (with the exception of small health plans) small providers and other smaller entities subject to the Privacy Rule must comply with the April 14, 2003 compliance date, we have especially sought to ensure that these guides and materials are readily understandable and responsive to the needs of these smaller entities. For example, OCR has created a page on its website that allows smaller providers, and other small businesses to quickly access resources and guidance of particular interest to them. OCR also is developing a set of educational documents, tailored to the various segments of the health care community as well as to consumers, describing their rights and responsibilities. These materials will address the specific information needs of small and rural providers.

In addition, OCR also has made the following documents available online at our website [www.hhs.gov/ocr/hipaa](http://www.hhs.gov/ocr/hipaa).

- *Summary of the HIPAA Privacy Rule* published by OCR, a plain language overview of the requirements of the Rule.
- *Frequently Asked Questions* posted by OCR. This database of answers to more than 200 most-asked questions is available online in a word-searchable format. As noted above, as of December 31, 2003, 1,635,000 Privacy Rule answers had been viewed.
- *Sample Business Associate Agreement Provisions*, published by OCR, are designed to assist covered entities in interacting with Business Associates as they comply with the important privacy protections set forth in the Rule.
- Extensive *Guidance* published by OCR, providing fact sheets and explaining key aspects of the Privacy Rule, including prioritized topics suggested by providers and others who have submitted inquiries to us.
- The HHS NIH Guide to Research, "*Protecting Personal Health Information in Research: Understanding the HIPAA Privacy Rule.*"
- A Covered Entity Decision Tool, available both at the OCR website and at the CMS website — [www.cms.gov/hipaa/hipaa2/default.asp](http://www.cms.gov/hipaa/hipaa2/default.asp) — that clearly walks inquirers through the elements that will determine whether they or another entity they work with are required to comply with HIPAA rules.
- The HHS and CDC Guidance on "*HIPAA Privacy Rule and Public Health.*"

The Department has sought to make the requirements of HIPAA readily understandable in plain language in each document, and has kept in mind the needs of a wide range of smaller covered entities, from providers, to business associates, to researchers.

OCR will continue to devote substantial resources to policy development, while allocating resources to handle allegations of noncompliance with the Rule that OCR began to accept as of April 14, 2003. This includes a statutory mandate by HIPAA to review and ensure the Rule's workability. Prior to the 2003 effective date, we identified major parts of the Rule that required modification, for which the Department proposed revisions to the Rule in March 2002, and published final modifications on August 14, 2002. OCR receives multiple requests each week for policy interpretations of the Rule and continues to receive a high volume of calls with questions related to the latest modification. We will continue to provide advice on the Rule in response to these requests during FY 2004 and FY 2005 to facilitate compliance.

OCR's FY 2004 and FY 2005 activities also will include issuing additional guidance to aid in implementation and to dispel misconceptions about the Privacy Rule as well as proposing any further needed modifications to the Rule to ensure its workability so that it can achieve its intended purpose.

#### 4. Cross-Cutting Civil Rights Activities

OCR's work often addresses more than one of its legal authorities simultaneously. For example, certain population groups may face multiple barriers to services that cross-cut race, national origin, disability, and age nondiscrimination authorities. The following are examples of cross-cutting issues.

##### *Temporary Assistance for Needy Families (TANF)*

In the context of addressing multiple barriers to services, during FY 2005, OCR will build on work done in previous fiscal years focused on nondiscrimination in TANF programs. In FY 2005, OCR will continue to work with ACF, states, local governments and other service providers to ensure that TANF welfare-to-work programs remain free from discriminatory barriers that could prevent minorities and individuals with disabilities from obtaining the training and jobs that can lead to self-sufficiency. OCR's work in this area focuses on those TANF beneficiaries identified as "hard to serve," including individuals with physical, mental, and developmental disabilities, and individuals with language barriers.<sup>4</sup> OCR's work is responsive to the recommendation of the General Accounting Office that HHS serve as a focal point to coordinate Federal Government research and technical assistance on "hard to serve" TANF beneficiaries,<sup>5</sup> consistent with ongoing state efforts to identify and respond to disability- or language-related barriers to self-sufficiency in the TANF population.<sup>6</sup> OCR's work may increase the proportion of TANF beneficiaries who improve their economic condition, by ensuring that TANF agencies afford these beneficiaries with equal access to TANF employment, job training, and other programs.

Among the issues that OCR will continue to address are: (1) potential Title VI violations in TANF, such as denying minority persons or persons with limited English proficiency equal access to the range of TANF opportunities, or failing to ensure that TANF programs and materials are accessible to individuals with limited English proficiency; and (2) potential violations of Section 504 of the Rehabilitation Act or of the ADA, such as the failure to make reasonable modifications in TANF programs, policies, and procedures (e.g., the failure to modify TANF application processes so that they are accessible to individuals with disabilities, the failure

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<sup>4</sup> See Department of Health and Human Services Office of Inspector General, State Strategies for Working With Hard-to-Employ TANF Recipients (July 2002) (describing state efforts to provide services for "hard to employ" TANF recipients, and focusing on recipients with, *inter alia*, mental health issues, chronic health problems, physical disabilities, learning disabilities, language barriers, and "multiple barriers."); United States General Accounting Office Report 03-210, Welfare Reform: Former TANF Recipients with Impairments Less Likely to be Employed and More Likely to Receive Federal Supports, at 2, 8-10 (December 2002) (stating that 44 percent of TANF recipients reported having physical or mental impairments, caring for a child with at least one impairment, or both.)

<sup>5</sup> See United States General Accounting Office Report 02-37, Welfare Reform: More Coordinated Federal Effort Could Help States and Localities Move TANF Recipients with Impairments Toward Employment, at 33-34 (October 2001).

<sup>6</sup> See State Strategies, at 7-16.

to modify assessment processes to assess potential disabilities, and the failure to ensure that work assignments for TANF clients with disabilities are modified when necessary to protect these clients from disability-based discrimination). In addition, OCR will work with staff in other HHS components and other agencies to gather and disseminate information about promising practices in serving TANF clients with disabilities and from racial or ethnic minority groups. OCR's work in this area will be guided by any relevant changes to the TANF program following reauthorization of the Personal Responsibility and Work Opportunity Reconciliation Act.

### ***State Application Review***

OCR is making technical assistance available to all states and territories to ensure that the application processes for HHS-funded programs do not contain barriers to access for vulnerable populations and persons with disabilities. With special focus on the joint applications for Medicaid, TANF, and Food Stamps, OCR is working with CMS, ACF, and the Food and Nutrition Service of the USDA to review and highlight changes that facilitate nondiscriminatory access and reduce civil rights complaints. Application reviews seek to ensure that potential applicants are able to obtain assistance with the application process (such as translation and interpretation for blind, deaf, and LEP persons). Reviews also ensure that the process permits persons regardless of their national origins to receive needed health and welfare services to which they are legally entitled.

## **COMPLIANCE ACTIVITIES**

OCR will implement its civil rights and privacy of health information activities through a comprehensive compliance and public education and outreach program. The program includes:

- Complaint Processing
- Preventative Compliance Reviews
- Monitoring
- Public Education, Outreach, and Voluntary Compliance

In FY 2005, OCR estimates that of the total 267 FTE in the request, 231 FTE (87 percent) will be allocated to compliance, education, and outreach activities, including health information privacy activities. The total FTE allocated to compliance legal advisory support and compliance program management will be 20 and 16 FTE respectively.

Of the 231 FTE involved in compliance work, OCR projects allocating approximately 151 FTE to processing of complaints, of which approximately 64 percent will be allocated to processing of complaints alleging violation of traditional civil rights authorities and 36 percent allocated to Privacy Rule complaint processing. As noted earlier in this document, OCR has experienced a 14 percent increase in discrimination complaint receipts during FY 2003, compared with FY 2002. Because there has been considerable fluctuation over the last several years in the volume of civil rights complaints and because there is no single issue-related surge in complaints

that OCR expects to continue in the future, OCR has accounted for such annual variations in receipts by projecting only modest two percent increases per year for civil rights nondiscrimination complaints above the FY 2003 level in both FY 2004 and FY 2005. OCR also projects receipt of approximately 5,200 complaints under the Privacy Rule authority in each of FY 2004 and FY 2005. This is based on the current average of 100 complaints received per week since the April 2003 compliance effective date, a trend which remained fairly steady through 2003.

To be responsive to the public’s filing of allegations of discrimination, this budget reflects a shift of resources within the traditional civil rights compliance activities to ensure that complaints are processed expeditiously. This will result in a reduction in compliance review and civil rights public education and outreach initiatives in FY 2004 and FY 2005.

OCR plans to allocate 32 FTE (14 percent) of compliance staff time to conduct compliance reviews, pre-grant reviews, and monitoring actions in FY 2005. This is comparable to the proportion of compliance staff time currently projected to be allocated to such activities during FY 2004.

The 48 FTE that OCR will dedicate to non-case related outreach, technical assistance, and public education in FY 2005 remains at just over 21 percent of compliance staff, the same percentage as in FY 2004. Further, the number of FTE in FY 2004 and FY 2005 is only three fewer than the staff time estimated to have been used in FY 2003. With respect to technical assistance, both in the civil rights and Privacy Rule contexts, it is possible that the increase in complaint receipts may result in a corollary increase in technical assistance being provided, because a significant amount of complaint resolution involves technical assistance to covered entities.

The table below compares the distribution of compliance FTE in FY 2003 through FY 2005.

	Actual FY 2003 <u>FTE</u>	Projected FY 2004 <u>FTE</u>	Projected FY 2005 <u>FTE</u>
Complaint Processing/Monitoring	122	150	151
Preventative Compliance Reviews/Monitoring	33	32	32
Public Education, Outreach & Voluntary Compliance	<u>51</u>	<u>49</u>	<u>48</u>
TOTAL	206	231	231

**COMPLAINT PROCESSING**

OCR is responsible for investigating complaints of discrimination within our jurisdiction that are filed with the office. This responsibility is based on the Department's regulations implementing the various nondiscrimination statutes and the DOJ coordinating regulations requiring compliance agencies, such as OCR, to establish procedures for the prompt processing

and disposition of complaints alleging discrimination (28 CFR Section 42.408(a)).

### **Olmstead Complaints - Most Integrated Setting**

Since 1999, when the *Olmstead* decision was issued, OCR has received approximately 615 complaints and closed approximately 400 complaints filed by individuals and organizations alleging violations of the Title II integration regulation of the ADA. OCR has successfully resolved a large number of these complaints by working extensively with states to assist them in complying with the requirements of the ADA, particularly to provide services in the most integrated setting as described in the Supreme Court's decision in *Olmstead*. As noted earlier, OCR has helped to move individuals from institutional to community settings, and to help others avoid institutionalization.

The following cases are typical of successful efforts by OCR to obtain services for disabled persons in the most integrated settings. The examples were chosen as representative of the scope of OCR's efforts involving a variety of providers and locales.

- As a result of OCR's intervention and assistance, the State of Georgia provided community placement for individuals who had resided in a state institution for people with mental retardation. Some of these individuals had resided in the institution for decades, and each of the complainants alleged that they had remained institutionalized despite treating professionals' recommendations for community placement.
- OCR worked with the State of New York to provide community-based support services and allow the return of individuals to their own homes after the individuals had been hospitalized for acute care but remained institutionalized beyond the time such institutionalization was appropriate.
- Working closely with the State of Wisconsin, OCR facilitated moving a number of individuals residing in nursing homes and in institutions for people with mental retardation back to their home communities. Some of these individuals had been on waiting lists to receive community services for five to ten years. In addition, OCR worked with Wisconsin officials to secure adequate community-based support services for individuals who resided in the community but were at risk of institutionalization.
- In California, OCR and DOJ jointly issued a finding that a large, publicly-owned nursing home unnecessarily institutionalized some residents in violation of Title II of the ADA and the integration regulation. OCR and DOJ are providing technical assistance to the facility in an effort to achieve voluntary compliance.

## **Multi-Ethnic Placement Act/Section 1808 - Foster Care and Adoption Services**

OCR is continuing to strengthen families and create better conditions for children to live in a permanent, safe environment through our continued work to remedy race, color, and national origin discrimination in foster care and adoption. The following are typical examples of how OCR's work in this area is helping to facilitate non-discriminatory placement of children.

- OCR secured an agreement with the Florida Department of Children and Families that included changes in policies, procedures, and training to better facilitate compliance with Section 1808 after a couple filed a complaint alleging that they were denied the opportunity to adopt an infant of another race.
- A complaint against the California Department of Social Services resulted in the State agency's requiring staff to take training to understand, and ensure compliance with, MEPA/Section 1808; placement of a non-discrimination notice on agency forms and announcements; and development of a policy and procedure that strictly scrutinizes any consideration of race and ethnicity in placement decisions.

### **Summary - Complaints**

OCR's complaint receipts during the past decade have fluctuated considerably within a range of 1,600 to 2,600 receipts annually. We have seen a 14 percent rise in the number of complaints in FY 2003 compared with FY 2002. It is possible that this year's increase in civil rights complaints is related to the increased visibility that OCR has had due its outreach efforts, including the highly visible implementation of the Privacy Rule. Because of the considerable fluctuation over the last several years in the volume of civil rights complaints, we have accounted for such annual variations in receipts by projecting only modest two percent increases per year above the FY 2003 level in both FY 2004 and FY 2005. However, it is conceivable that the level of increase experienced during FY 2003 may continue into the future. If there is a greater increase in complaint receipts than we have projected in this submission, we would need to allocate more resources to be responsive.

In FY 2005, OCR projects completing 2,470 discrimination complaint cases, closing 72 percent of its discrimination complaint workload. This is considerably higher than the proportion of this workload that was closed in FY 2003 (55 percent) and higher than the workload projected to be closed in FY 2004 (70 percent). The low rate of closures in FY 2003 is most likely attributable to activities surrounding the FY 2003 implementation of the Privacy Rule, including training and outreach, responding to public inquiries, and intake of the high volume of complaints received during the last eight months of FY 2003. OCR will maintain productivity increases and faster responses to complaints during FY 2005 in traditional civil rights investigations as a result of continuing actions to streamline complaint handling through changes in investigative processes, use of negotiated resolution and alternative dispute resolution, and enhancements in information management systems.

OCR will allocate 54 FTE to resolution of Privacy Rule complaints during FY 2005, one more than allocated in FY 2004 and 26 more than during FY 2003 (a partial compliance year, since compliance commenced on April 14, 2003). OCR projects receiving 5,232 Privacy Rule complaints in FY 2005, the same level as in FY 2004. The total workload including cases carried in from FY 2004 is projected to be 8,102 complaints, of which OCR projects closing 4,823 (60 percent). OCR currently projects that 80 percent of Privacy Rule complaints will address issues that require investigation or technical assistance at some level of complexity, or other more significant involvement directly with covered entities. The other 20 percent will be susceptible to closure on intake due to lack of jurisdiction or, given the nature of the alleged violation, will require more limited involvement for OCR to appropriately resolve the complaint.

The data concerning FTE and complaint workload and closures reflects that the process for addressing Privacy Rule and civil rights discrimination complaints are dissimilar in some respects. That is, civil rights discrimination complaints more frequently raise issues of complexity requiring considerable policy or legal interpretation, or complex or significant data analysis, technical guidance and assistance, on-site investigation, dispute resolution among parties who are in conflict, and more protracted and complex negotiation with providers of health and social services toward achieving voluntary compliance. On the other hand, thus far the 80 percent of Privacy Rule complaints noted above that are not susceptible to intake closures more frequently allege violations of specific or detailed sections of the Privacy Rule, and thus have been more susceptible to being resolved using more limited staff time in the provision of technical assistance. In FY 2005, OCR estimates that to complete the average civil rights complaint investigation will require several times the staff effort compared to Privacy Rule complaints.

The table below summarizes OCR's total projected complaint workload for FY 2003 - FY 2005:

### Complaint Workload

Status/Activity	Actual <u>FY 2003<sup>7</sup></u>	Projected <u>FY 2004</u>	Projected <u>FY 2005</u>
Beginning Inventory	1,076	2,965	4,001
Complaints Received	4,488	7,497	7,543
Total Workload	5,564	10,462	11,544
Complaints Closed	2,599	6,461	7,293
Ending Inventory	2,965	4,001	4,251

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<sup>7</sup> Data reflect Privacy Rule complaints received on or after the compliance effective date of April 14, 2003.



## **PREVENTATIVE COMPLIANCE REVIEWS**

Currently, OCR does not plan to conduct Privacy Rule compliance reviews in FY 2003 through 2005, other than where compelling and unusual circumstances demand. OCR conducts civil rights preventative compliance reviews in two major ways:

- Compliance Reviews -- A review examines the compliance status of a program recipient after receipt of HHS funds (therefore, these reviews are also referenced as post-grant reviews). Reviews may be comprehensive or of limited scope with respect to the compliance issues involved and the statutory authorities applied.
- Pre-grant reviews -- A pre-grant review is conducted when health care facilities seek approval from CMS to participate in the Medicare program.

During the past few years, OCR has modified its compliance review approach to provide greater flexibility, to expand coverage, and to make it more consistent with regulatory provisions. Under the regulations implementing the nondiscrimination laws, OCR must periodically review the policies and practices of program recipients to assess compliance. In addition, the regulations call for an investigation whenever a review, report, complaint, or other information indicates a possible failure to comply with nondiscrimination requirements. A proactive review and investigation program enables OCR to target our compliance resources to address priority civil rights issues. This enables more effective prevention efforts than can be accomplished through handling of issues raised by complainants alone.

Pre-grant reviews are another type of preventative review of civil rights compliance. They are conducted when health care providers, such as nursing homes and home health agencies, apply to participate in the Medicare program. When providers seek Medicare certification, OCR conducts a pre-grant review to determine if they will be in compliance with Title VI, Section 504, and the Age Discrimination Act when they receive HHS funds. Such reviews promote compliance because they both educate health care providers about their legal responsibilities to refrain from illegal discrimination, and identify potential civil rights concerns prior to receipt of Federal financial assistance. With the technical assistance that accompanies these reviews, health care providers can take steps to avoid future allegations of discrimination.

Several examples of preventative compliance reviews are noted below:

### **Title VI, Multiethnic Placement Act of 1994 (MEPA), and Section 1808 of the Small Business Job Protection Act of 1996**

On October 20, 2003, OCR issued a Letter of Findings to the Hamilton County Job and Human Services Office in Cincinnati, Ohio, and the Ohio Department of Job and Family Services, finding violations by the county and State of the civil rights of children eligible for adoption and of foster families and other prospective adoptive families. Following a thorough investigation,

OCR determined that the county violated Title VI of the Civil Rights Act of 1964, as well as provisions of the Howard M. Metzenbaum Multiethnic Placement Act of 1994 (MEPA), and Section 1808 of the Small Business Job Protection Act of 1996.

OCR found that the county made adoption determinations on the basis of race, rather than on the basis of the individual needs of the children. OCR's Letter of Findings specifically cites instances in which Hamilton County delayed or denied adoptive placements and otherwise discriminated against 16 children and 22 prospective parents on the basis of race. The cited violations included instances where non-African-American foster families were improperly prevented from adopting African-American children in their care with whom they had formed a close bond, because of racial considerations. OCR also found that Ohio violated Title VI, MEPA and/or Section 1808 when it promulgated certain administrative rules governing transracial adoption and foster care. The county's actions were consistent with the direction and guidance provided in Ohio policies and rules.

Since 1998, OCR has initiated more than 130 investigations of racial discrimination in adoption and foster care. In most of these cases, our office has reached a satisfactory conclusion with grantees, either finding no violation or working with grantees to make needed changes in their programs. The Hamilton County case is the first instance in which OCR has had to issue a MEPA/Section 1808 Letter of Findings that the civil rights of individual children or prospective adoptive or foster parents were violated. This action was made necessary due to the prolonged history of discrimination of this kind by the county program and the failure to reach agreement on effective corrections.

OCR provided its findings to HHS ACF, which administers federal assistance for foster care and adoption. Under Section 1808, ACF reviews OCR's findings and investigative record and makes its own determination as to whether Section 1808 has been violated. On November 20, 2003, ACF informed the State of Ohio that it would be levying a financial penalty of approximately \$1.8 million for violation of Section 1808.

### **State Application Review**

To facilitate access by vulnerable populations at the gateway to HHS-funded services, OCR periodically reviews state applications for any access barriers that raise civil rights concerns, and to provide technical assistance to the state in eliminating those barriers. In a recent example involving Maryland's state-wide joint application for TANF, Medicaid, and SCHIP, the state incorporated OCR's recommendations into a revised application, portions of which OCR is now promoting as a promising practice for use by other states considering similar application reforms. The revised forms no longer contain sensitive and unnecessary questions about non-applicant family members, and now offer assistance to LEP and disabled applicants, as well as inform applicants of civil rights complaint procedures, and their rights to equal access to emergency services and to confidentiality in the application procedure.

## **TANF - State Agency**

The following are recent examples of OCR's TANF compliance reviews of state agencies.

After OCR determined that Alabama was not offering persons with learning and mental disabilities reasonable accommodation to participate in the state's welfare-to-work program, the state agreed to develop screening tools to identify TANF clients with disabilities, provide tailored client notices, formulate policy and procedures to document client requests for reasonable accommodation, and train case managers in the use of comprehensive assessments. The state also agreed to provide civil rights training to TANF staff statewide and to monitor counties' compliance with civil rights laws.

As a result of OCR's efforts in its preventative compliance program, literally thousands of eligible and/or potentially eligible Hispanic immigrant beneficiaries in Florida are now able to apply or be assessed for various public benefits without being subjected to discriminatory conduct and inquiries which tend to limit their participation. The Florida Department of Children and Families entered into a voluntary compliance agreement with OCR to revise its application and enrollment processes for TANF, Medicaid, and SCHIP; develop and disseminate relevant new policy guidance to all staff; and train staff regarding the provisions of the agreement and obligations under Title VI.

In Maryland, OCR closed a compliance review of the TANF program in Baltimore, Maryland, after the city, during the course of the review, took several actions regarding TANF clients with disabilities. Among other things, Baltimore adopted a screening tool to identify potential disabilities in the TANF client population, and partnered with the State Department of Rehabilitative Services to assist city TANF staff in identifying resources for disabled clients. The city also trained all TANF staff on the legal requirements of the ADA and Section 504 and sent a letter from OCR to all of the city's TANF program vendors that addressed section 504 and Title II of the ADA regulations. The Maryland Department of Human Resources issued a statewide policy memorandum regarding meaningful access for TANF clients with disabilities, which referred specifically to OCR's 2001 guidance on TANF and disability.

## **Summary - Preventative Compliance Reviews**

OCR currently conducts preventative compliance reviews for its traditional civil rights authorities only, allocating to that effort 29 FTE, or 13 percent of the 231 FTE involved in compliance work. OCR estimates that a total of 4,402 compliance reviews will be conducted in FY 2005, 95 percent of which will be pre-grant reviews. OCR projects that its post-grant compliance review workload in FY 2005 will include 35 more new starts than are currently projected for FY 2004. Reviews will focus on supporting HHS goals to provide services in the most integrated setting possible for persons with disabilities, eliminate race and ethnic health disparities, improve the quality of and access to health care, improve children's health, and strengthen families through effective TANF programs.

The table below summarizes the total preventative compliance review workload for FY 2003 and the projected workload for FY 2004 - FY 2005.

**Preventative Compliance Reviews Workload**

Status/Activity	<u>Actual FY 2003</u>	<u>Projected FY 2004</u>	<u>Projected FY 2005</u>
Beginning Inventory	1,770	2,056	1,967
New Reviews	2,309	2,353	2,435
Total Workload	4,079	4,409	4,402
Actions Completed	2,023	2,442	2,503
Ending Inventory	2,056	1,967	1,899

**MONITORING**

The purpose of monitoring is to ensure that program recipients carry out the measures set forth in corrective action plans negotiated by OCR. Corrective action plans are negotiated to resolve compliance problems that are uncovered or verified during a review or a complaint or post-grant investigation. Monitoring involves reviewing reports or information submitted by program recipients. In some instances, on-site visits may be necessary to assess a recipient's progress in implementing corrective measures. OCR anticipates that monitoring actions will be necessary in 456 and 510 cases in FY 2004 and FY 2005 respectively.

OCR's work with the Arlington County Health Department (ACHD) in Virginia is an example of a successful use of monitoring to ensure that measures set forth in corrective action plans are implemented. The six month monitoring followed a review which examined if individuals were denied meaningful access to ACHD services because of their national origin. ACHD provided evidence of written policy, procedures, and training to communicate effectively with LEP persons, identified 47 new documents that were translated in languages other than English, and provided statistics on the number of LEP persons served and the time spent interpreting for LEP persons.

**PUBLIC EDUCATION, OUTREACH, AND VOLUNTARY COMPLIANCE**

The assignment of staff time to public education, outreach, and voluntary compliance and collaborative projects represents a commitment by OCR to listen and respond cooperatively to its customers and work in collaboration with other HHS components and federal agencies, states, local governments, providers, and community and faith-based and other organizations to address acute and chronic civil rights problems and to work with covered entities and consumers to address Privacy Rule issues. OCR will allocate 48 FTE, or 21 percent of the 231 FTE involved in compliance work, to public education, outreach, and voluntary compliance. Outreach activities often involve several authorities at once, and therefore are not easily differentiated on that basis.

With this allocation OCR will conduct a variety of national outreach, public education, and technical assistance activities, including:

- Working with other HHS staff, program providers, provider groups, trade associations, community-based organizations, state agencies, and others to raise awareness of how to comply with Title VI, the ADA, and MEPA/Section 1808 of the Small Business Act.
- Conducting educational programs in civil rights and nondiscriminatory access to HHS-funded services by racial and ethnic minorities, and to community groups and faith-based organizations working with the target populations.
- Working with medical providers, academics, government agencies, the faith community, professional associations, hospital societies, and others to focus on problem-solving related to health disparities and the extent to which patterns of institutional and practitioner referrals for services may result in discriminatory effects.
- Working with HHS agencies, provider organizations, and others to produce program or industry-specific materials for use by covered entities and their employees to help them to avoid civil rights problems and protect the privacy of protected health information.
- Providing technical assistance, policy clarification, public education, and other guidance to covered entities under the Privacy Rule through continued operation of toll-free phone lines; updating of frequently asked questions for the OCR website; provision of public education and information documents targeted to specific health care service provider and other categories; and presentations either on-site at conferences or through telephone and or web-based conferences.

Public education, outreach, and voluntary compliance activities with HHS providers and covered entities under the Privacy Rule increase their capacity to recognize, prevent, and, as needed, resolve compliance problems. At the same time, OCR learns from such providers and develops guidance and technical assistance based on feedback from them.

The Southeast Civil Rights Training Conference (SECRA) held during the Spring of 2003 illustrates OCR's training/public education efforts that include a variety of activities. OCR cosponsored the Third Annual SECRA in conjunction with the Georgia Department of Human Resources and the Department of Agriculture to provide training and education regarding the rights and obligations arising under the authorities enforced by OCR. Over 550 caseworkers, supervisors, advocates, community representatives, consumers, and other interested parties attended. The conference featured plenary sessions devoted to the elimination of racial/ethnic disparities, emerging civil rights issues and trends, state agency best practices, and challenges that stakeholders face in collaborating to improve access to vulnerable populations. There were also 42 workshops, 17 of which were developed and conducted by OCR staff addressing OCR's priority areas, including the Privacy Rule. Workshops were also conducted by representatives

from eight other Federal agencies. The information and training provided at the conference enable conferees to be better prepared to administer their programs and deliver services in a more non-discriminatory manner.

The following are examples of other successful public education, outreach, and voluntary compliance activities by OCR in specific programs that involved collaborative efforts with state and local agencies, other Federal agencies, and/or HHS agencies:

### **Olmstead (Most Integrated Setting) Implementation**

Over the past several years, OCR has conducted training and outreach nationwide to facilitate state efforts to address systematically the needs of individuals with disabilities by developing comprehensive plans for community integration. OCR also has provided extensive technical assistance to assist states in their planning efforts. The funding included in OCR's FY 2005 budget request will enable continuation and expansion of activities that support the commitment of the Administration and the nation to community-based alternatives for individuals with disabilities under the President's New Freedom Initiative and the Executive Order on community living. As the lead HHS agency for ensuring compliance with the ADA mandate of community integration, OCR continues to have a critical role in eliminating remaining barriers to full integration of persons with disabilities in community life.

OCR is promoting compliance with Title II of the ADA by providing outreach, training and technical assistance to states and community-based organizations. OCR has served as the primary speaker at meetings regarding *Olmstead* implementation with top officials from states across the nation, and has made presentations to a wide variety of state director associations, interested groups, consumers, and provider organizations regarding the New Freedom Initiative and HHS's role in implementing it, and HHS's community integration efforts.

An example of OCR's collaborative efforts in outreach and technical assistance involved an invitation from the Arkansas Governor's Integrated Services Task Force to provide assistance for production of a final results-oriented state *Olmstead* Plan, and to share best practices with State officials regarding building the capacity, and providing support needed, to move people into community-based settings. OCR's technical assistance covered: (1) developing success measures that involve assessment strategies, (2) appropriately moving institutionalized people into the community, (3) setting priorities regarding those who can be moved with existing community supports, and (4) simultaneous building of community infrastructure for those individuals who can be moved into the community with such supports. Progress was made in identification of achievable goals for movement in the first year and succeeding years of their multi-year plan.

### **Racial and Ethnic Disparities in Health**

OCR works with community groups and faith-based communities to provide public education and awareness of civil rights protections in access to health care to racial and ethnic minorities

and provides training and workshops at national, regional, and local meetings of African-American, immigrant and refugee, and Native American organizations. OCR collaborates with state and local government agencies to develop strategies to reduce health disparities, including education and training opportunities. OCR participates with other HHS agencies to sponsor large-scale public education/health expo activities. For example:

- OCR's Region II office is collaborating with the New York State Office of Minority Health and the New York City Department of Health's Office of AIDS Prevention and Education to form partnerships with local community and faith-based groups and to plan listening sessions and focus groups to identify target areas for technical assistance to, education of, and collaboration with end-users of HHS-funded services.
- In Illinois, OCR's Region V office worked with leaders of the Chicago area AIDS treatment, counseling, and advocacy organizations to sponsor a National Black HIV/AIDS Awareness Day Symposium.
- In January 2003, OCR's Region III office co-sponsored the Third Summit on Eliminating Racial and Ethnic Health Disparities with the Center for Minority Health (CMH) at the University of Pittsburgh's Graduate Center of Public Health, the Veterans Administration, and the Maurice Falk Medical Fund. The theme of this year's conference was *The Role of Community Based Participatory Research*. University researchers from across the country and CDC presented their findings and models. The two-day event, well attended by many health care providers, included valuable discussion of the roles providers play in health disparities.
- In March 2003, OCR's Region I office worked with other HHS agencies and the American Diabetes Association to sponsor an all-day, large-scale forum and expo on diabetes, with more than 5,000 attendees, to help address health disparities in diabetes.
- In Colorado, OCR co-sponsored the third annual Healthy People 2010/Health Disparities Forum 2002 for more than 300 persons. The conference goal was to help attendees develop appropriate policies and advocacy strategies that can be used to eliminate racial, ethnic, and other health disparities. Healthcare providers from across Colorado focused on developing solutions and action plans now being tabulated by the HHS Office of Minority Health. This far-reaching event involved people of different backgrounds and disciplines and contributed to educating and informing a significant and important population. The partnerships and coalitions brought together by OCR were instrumental in this effort and represented a committed consortium of governmental agencies, advocacy groups, community organizations, and health care professionals.
- OCR worked with Federal and State partners to host an Immigrant Access Forum in Salt Lake City, Utah. The scope and diversity of this major outreach effort was evidenced by the large number of partners involved. OCR assembled this coalition with the goal of

bringing federal and state agencies together in an effort to cooperatively address issues such as access to health care and the provision of human services and benefits to eligible persons.

OCR Region V collaborated with the State of Wisconsin on a Title VI outreach project to disseminate accurate information to state and county caseworkers regarding barriers which eligible minority and immigrant children may face in accessing programs. This project included a meeting with civil rights and program staff of the Wisconsin Department of Health and Family Services and Department of Workforce Development to develop a "Civil Rights and Cultural Competency" training curriculum for county caseworkers. OCR joined the state agencies in a series of regional civil rights training sessions that will culminate in a day-long conference. Similar training sessions have also been held in Illinois and Michigan, and plans are being made to expand the project to Minnesota in 2004.

### **Outreach - Multi-Ethnic Placement Act/Section 1808 - Foster Care and Adoption Services**

OCR is involved in a variety of outreach and technical assistance activities in this area which are designed to ensure that child welfare agencies and prospective adoptive and foster parents are knowledgeable about the laws' anti-discrimination requirements. Further, OCR works in close consultation with our sister agency, ACF, in reviewing cases and policy issues. OCR regional staff work with state and local agencies involved in foster care and adoption to assure that their practices are in compliance with MEPA/Section 1808 and Title VI. Nondiscrimination in adoption and foster care placements widens the universe of possible foster and adoptive parents for children and increases the likelihood that children will find homes in which they can prosper. The following are examples of OCR's outreach and technical assistance efforts in this area:

- During the Summer of 2003, OCR and ACF engaged in a national collaborative effort to provide technical assistance to all 50 states and the District of Columbia about how to avoid discriminatory delays or denials in the placement of a child for adoption or foster care. OCR and ACF developed a comprehensive self-assessment tool for states to assess their compliance with the Multi-Ethnic Placement Act of 1994 and the Inter-Ethnic Adoption Provisions of the Small Business Job Protection Act of 1996. The OCR and ACF regional offices worked together to contact each state in the region to explain the tool and work with states to provide any needed technical assistance.
- In the first training in Idaho to combine the statutes enforced by both ACF and OCR, more than 100 agency officials, organizations, and adoption and foster care service providers learned about best practices, and how to match families and children without using factors that may include racial identifiers. Partly because of the unqualified success of this project, OCR and ACF hope to conduct similar training in Washington and Oregon during FY 2004.



## **Limited English Proficiency (LEP) Education/Outreach**

OCR has conducted numerous public education and awareness outreach activities to educate limited English proficient populations, covered entities, and appointed officials about the importance of language access, and to share information about OCR's efforts to assist states in revising benefits applications.

- In Texas, at the Southwest Regional Conference on Strengthening the Hispanic Family, OCR reached approximately 150 Latino elected and appointed officials from Colorado, Arizona, New Mexico, and Texas including school board members, city council representatives, county judges, and state legislators with information about Title VI rights to language access.
- As a result of OCR reviews of county health departments in Northern Virginia, other departments in the state have requested OCR training and assistance in developing policies and procedures for providing services to LEP persons. OCR's Region III trained 120 staff in the Jefferson Health District (Charlottesville, VA), 70 staff at the University of Virginia Medical Center, and approximately 65 rural health care providers on the Eastern Shore, and addressed the Human Services Council of Northern Virginia which represents human service providers for four counties and five independent cities. OCR also is working with the state's Department of Health in its development of a statewide plan entitled *Promoting Culturally and Linguistically Appropriate Standards in Virginia*. If funded by the General Assembly, the plan will provide a multi-tiered approach to improving access to culturally and linguistically appropriate health care for county health department customers.
- In addition, following the August 2003 publication of its revised guidance, OCR has undertaken a public outreach program which includes press releases and outreach to minority media, regional presentations to interested groups, and coordination within HHS and with other federal agencies.

## **State Application Implementation**

OCR is providing technical assistance in over 40 states nationwide to ensure that the application processes for HHS-funded programs do not contain barriers to access for vulnerable populations, especially national origin minorities. With special focus on the joint applications for Medicaid, TANF, and Food Stamps used by each of these states, OCR is leading a collaborative effort to partner with CMS, ACF, and the Food and Nutrition Service of the USDA to review and highlight promising practices that facilitate nondiscriminatory access and reduce civil rights complaints. Application reviews seek to ensure that potential applicants who may need assistance with the application process (such as translation and interpretation for blind, deaf, and LEP persons) are able to obtain it. Reviews also promote nondiscriminatory access by immigrant family members to needed health and welfare services to which they are legally entitled.

## **TANF Public Education/Outreach to States for Implementation of TANF Nondiscrimination Guidance**

OCR conducts public education and outreach activities to help states implement their TANF programs in a nondiscriminatory manner. As a result of OCR's public education work based on OCR's policy guidance and applicable Federal law, the two most populous states (California and Texas) issued statewide guidance directing that programs serving TANF clients comply with Federal anti-discrimination law. The California Department of Social Services issued statewide guidance summarizing the OCR guidance and informing California counties of their obligations to conduct TANF programs in compliance with key anti-discrimination principles. The State issued additional guidance specifically concerning California counties' obligations to TANF clients with learning disabilities. This guidance set out substantive and procedural requirements California counties must follow in providing services to TANF clients with learning disabilities, and stated that it "incorporates key provisions" from OCR's guidance.

### **SARS-Related Stigma and Discrimination**

An example of OCR's proactive outreach work is the early community outreach and technical assistance activities of OCR's Boston Regional Office in response to the outbreak of Severe Acute Respiratory Syndrome (SARS) and the subsequent fear and confusion experienced, especially among Asian and Pacific Islander communities in the Northeast because SARS had originated in China, and there were reports of stigmatization and discrimination based on race and ethnicity. OCR established an informal network of Federal civil rights agencies and advocacy organizations in the Boston region to advise relevant stakeholders that unlawful discrimination will not be tolerated, and to receive and share information from the affected communities with a system of early warning. Through this network, OCR was able to offer timely technical assistance and to prevent potential discrimination. OCR also partnered with CDC (especially the SARS Community Outreach Team), community leaders, health care providers, public health authorities, ethnic media representatives, state, city, and local officials and others to help stop rumors, provide accurate and timely information in appropriate languages, and to minimize unsubstantiated fears.

### **Privacy of Health Information**

In the area of privacy of health information, OCR's public education, outreach, and technical assistance activities will continue to include:

- **Providing frequently asked questions (FAQs) and comprehensive policy guidance.** OCR will continue to update its guidance on the Privacy Rule to reflect further clarifications to the Rule as needed and will continue to post and update answers to frequently asked questions on its Privacy Rule website.

- **Providing fact sheets and assisting covered entities to comply with the Privacy Rule.** OCR will continue to assist covered entities to comply with the Privacy Rule by providing fact sheets and technical assistance materials on various privacy issues geared to the specific needs of different audiences.
- **Training and conference presentations.** OCR will continue to provide training on the Privacy Rule to covered entities through scheduled training sessions, presentations at conferences, and toll-free conference calls in which covered entities can call with specific questions.
- **Public education.** The OCR public education campaign will continue to inform individuals of their rights regarding the use and disclosure of protected health information by covered entities and other rights under the Privacy Rule. Public education will include an OCR Privacy Internet site, videotapes, and a system for providing the general public with copies of OCR privacy publications. OCR also will continue to operate a toll-free call center to answer public inquiries about the Rule.

The table on the following page summarizes the projected FY 2003 to FY 2005 public education, outreach, and voluntary compliance workload which reflects individual civil rights projects with recipients, providers, and other organizations. The number of activities shown in the table decreases between FY 2003 and FY 2004 because OCR's strategy in the civil rights arena is increasingly to develop more comprehensive projects. Each of these projects is counted as a single project even though they may include several inter-related public education and technical assistance activities that prior to FY 2004 would have been counted independently. By virtue of doing so, the number of activities counted may diminish even though the scope of these activities is growing.

In addition to these projects, OCR also responds to extensive public telephone inquiries on both civil rights and Privacy Rule matters. In FY 2003, OCR implemented a contract for a toll-free call-in line for technical assistance on the Privacy Rule. Through December 31, 2003, a total of 19,000 calls were handled, including nearly 9,000 directly by OCR staff. In FY 2004 and FY 2005, OCR projects that 6,000 and 4,200 such calls respectively will be handled directly by OCR staff. OCR has not maintained logs covering all categories of incoming calls, including both Privacy Rule and civil rights nondiscrimination, or other calls requiring referral to other agencies; however, we are assessing how best to monitor and review all inquiries handled by our staff. The number of outreach activities in the table on the next page reflects only speaking engagements and public education and outreach projects. It does not include the phone calls noted above.

## Public Education, Outreach, and Voluntary Compliance

	<u>Actual FY 2003</u>	<u>Projected FY 2004</u>	<u>Projected FY 2005</u>
Outreach Activities	942	860	860

### COMPLIANCE LEGAL COUNSEL - OGC (CIVIL RIGHTS)

OCR's budget request includes funds to support compliance legal advisory services provided by the Civil Rights Division of the Department's Office of the General Counsel (OGC). Division attorneys in headquarters and in the regional offices provide OCR staff with legal advice and assistance in interpreting and applying the nondiscrimination laws and regulations and the Privacy Rule. Staff attorneys in each of OCR's regional offices and in Headquarters address issues related to most integrated setting/least-restrictive environment and other ADA/Section 504 case law, health disparities, quality of care, managed care, Title IX, immigration/public charge issues, and privacy of health information.

Specifically, the OGC Civil Rights Division: (1) prepares cases for administrative enforcement proceedings and refers cases to DOJ for enforcement; (2) assists DOJ in litigating court cases involving civil rights issues and health and human services programs and the Privacy Rule; (3) reviews or assists OCR in developing civil rights and privacy regulations, policy interpretations, and guidelines; (4) issues legal opinions at OCR's request; and, (5) provides legal guidance in applying the Privacy Act, the Freedom of Information Act, and other statutes and regulations with which OCR must comply.

OCR will allocate 20 FTE to compliance legal counsel in FY 2005. This is the same level as is currently projected for FY 2004 and includes legal staff both in OCR Headquarters (ten) and regional offices (ten) handling both traditional civil rights and privacy rights issues. OCR anticipates that at the planned FTE level, the Civil Rights Division will be able to provide necessary legal assistance in connection with letters of findings, corrective action plans, regulations, legal interpretations, policy development, guidelines, and technical assistance materials. In FY 2005, the legal staff is expected to provide legal advice in connection with investigated complaints, reviews, corrective action plans, and litigation matters. In addition, the attorney staff will review potential enforcement actions, advise on the development of Privacy Rule exception determinations, represent OCR at administrative hearings and appeals, and provide general legal guidance regarding court decisions and the scope and applicability of statutory and regulatory requirements.

## COMPLIANCE PROGRAM MANAGEMENT

This component of the budget supports OCR's leadership, policy-setting, planning, management systems, and program oversight functions. This includes providing overall policy and program direction; coordinating with HHS officials and with other executive branch departments and agencies; establishing compliance priorities; developing short- and long-range program plans, including formulating and executing the budget; and setting measures for program outcomes (GPRA) and staff performance. Compliance program management leadership and support also includes allocating staff to accomplish program objectives; monitoring, evaluating, and reporting on program effectiveness; implementing management and quality improvement projects; developing and maintaining program management information systems; and coordinating with administrative service providers in the Office of the Secretary and the Department to address a wide array of resource management issues.

OCR will assign 16 FTE to compliance program leadership and management functions in FY 2005, the same number of FTE as projected in FY 2004. This complement of staff includes compliance program management support of the Privacy Rule under HIPAA. Compliance program management staff will continue to provide the office with the leadership, planning, and oversight necessary to manage OCR's headquarters and regional operations. This submission projects that two of these FTE will be associated entirely with the Privacy Rule, with the remaining 14 associated with nondiscrimination issues because the majority of their time is associated with the traditional civil rights authorities, even though they provide direction and planning for the entire program. During the next two years, given more experience with Privacy Rule compliance, it may be possible to reflect a further proportionate share of compliance program management time to each of the major program areas.

### *Unified Financial Management System*

The Unified Financial Management System (UFMS) is being implemented to replace five legacy accounting systems currently used across the Operating Divisions. The UFMS will integrate the Department's financial management structure and provide HHS leaders with a more timely and coordinated view of critical financial management information. The system will also facilitate shared services among the OPDIVs and thereby help management reduce substantially the cost of providing accounting service throughout HHS. Similarly, UFMS, by generating timely, reliable and consistent financial information, will enable the component agencies and program administrators to make more timely and informed decisions regarding their operations. OCR requests \$87,090 to support this effort in FY 2005.

### *Information Technology*

OCR's request includes funding to support the President's Management Agenda E-Gov initiatives and Departmental enterprise information technology initiatives identified through the HHS strategic planning process. Agency funds will be combined with resources in the

Information Technology Security and Innovation Fund to promote collaboration in planning and project management and to achieve common goals such as secure and reliable communication and lower costs for the purchase and maintenance of hardware and software. The enterprise IT investments enable HHS programs to carry out their missions more securely and at a lower cost. Examples of HHS enterprise initiatives currently being funded are Enterprise E-mail, Network Modernization, and Public Key Infrastructure.

**OFFICE FOR CIVIL RIGHTS  
DETAIL OF FULL-TIME EQUIVALENT (FTE) EMPLOYMENT**

	<u>2003 Actual</u>	<u>2004 Estimate</u>	<u>2005 Estimate</u>
Headquarters:			
Office of the Director and Deputy Director <sup>8</sup> .....	24	29	30
Office of the General Counsel (Civil Rights) <sup>9</sup> .....	8	10	10
Program, Policy and Training Division.....	21	22	21
Resource Management Division.....	11	13	12
Voluntary Compliance and Outreach Division.....	8	8	8
Regional Offices.....	<u>172</u>	<u>185</u>	<u>186</u>
Total, OCR <sup>10</sup> .....	244	267	267

Average GS Grade

2000.....	11.5
2001.....	11.6
2002.....	11.6
2003.....	11.6
2004.....	11.8

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<sup>8</sup> The FTE associated with HQ staff working on health information privacy are included in the Office of the OCR Deputy Director.

<sup>9</sup> Ten attorneys (one in each of OCR's Regional Offices) are included in the FTE for Regional Offices in FY 2003 through FY 2005. Together with the ten FTE in the headquarters Office of General Counsel (Civil Rights), OCR plans to allocate a total of 20 FTE to legal counsel in FY 2004 and FY 2005.

<sup>10</sup> The FTE level does not include one reimbursable FTE projected in each of FY 2004 and FY 2005.

**OFFICE FOR CIVIL RIGHTS  
DETAIL OF POSITIONS**

	2003 <u>Actual</u>	2004 <u>Estimate</u>	2005 <u>Estimate</u>
Executive Level I.....	---	---	---
Executive Level II.....	---	---	---
Executive Level III.....	---	---	---
Executive Level IV.....	---	---	---
Executive Level V.....	---	---	---
Subtotal.....	---	---	---
Total - Executive Level Salaries.....	---	---	---
ES-6.....	---	---	---
ES-5.....	---	---	---
ES-4.....	3	3	3
ES-3.....	---	---	---
ES-2.....	---	2	2
ES-1.....	---	---	---
Subtotal.....	3	5	5
Total - ES Salaries.....	\$423,703	\$680,732	\$695,638
GS-15.....	27	28	28
GS-14.....	26	32	31
GS-13.....	36	39	40
GS-12.....	88	92	94
GS-11.....	26	26	25
GS-10.....	3	3	2
GS-9.....	6	8	9
GS-8.....	7	6	7
GS-7.....	12	14	12
GS-6.....	3	3	3
GS-5.....	11	7	7
GS-4.....	3	2	3
GS-3.....	1	1	1
GS-2.....	---	1	---
GS-1.....	1	---	---
Subtotal.....	250 <sup>11</sup>	262	262
Total positions.....	253	267	267
Total FTE usage, end of year.....	244	267	267
Average ES level.....	4	3	3
Average ES salary.....	\$141,224	\$136,146	\$139,128
Average GS grade.....	11.6	11.8	11.8
Average GS salary.....	\$68,224	\$71,795	\$74,364
Average Special Pay.....	---	---	---

<sup>11</sup> Reflects the number of positions encumbered as of the end of FY 2003.





**DEPARTMENT OF HEALTH & HUMAN SERVICES**

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**OFFICE OF THE SECRETARY**

**Director**  
**Office for Civil Rights**  
**200 Independence Ave., SW Rm 506F**  
**Washington, DC 20201**

Dear Reader:

I am pleased to present the Office for Civil Rights (OCR) Final FY 2005 Annual GPRA Plan, Revised Final FY 2004 GPRA Annual Performance Plan, and FY 2003 GPRA Annual Performance Report, as required by the Government Performance and Results Act (GPRA) of 1993. OCR's GPRA plan and report are consolidated and submitted as part of our FY 2005 Justification of Estimates for Appropriations Committees. This document links our budget request to the compliance outcomes the public should expect of OCR's civil rights and Privacy Rule casework, public education, outreach and technical assistance.

OCR's civil rights and health information privacy activities support Administration initiatives focused on expanding opportunities and freedom for all Americans and ensuring the privacy of protected health information. OCR's GPRA objectives support Department of Health and Human Services (HHS) goals for improving the health and well-being of the public, including: increasing access to health services, improving the quality of health care, working toward independence, leaving no child behind, protecting and effectuating the rights of vulnerable populations, and minimizing health differences and disparities.

OCR's compliance work during FY 2005 will continue to concentrate on: (1) increasing access to and receipt of nondiscriminatory quality health care and treatment and social services, while protecting the integrity of HHS Federal financial assistance; and (2) ensuring understanding of and compliance with the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule.

Our FY 2005 Annual GPRA Plan shows how we will use our resources to effectively and efficiently achieve results in support of our nondiscrimination and Privacy Rule compliance mission. OCR has made considerable progress in achieving results to support HHS-wide initiatives to improve the health and well-being of the public. To keep up this momentum during FY 2004 and FY 2005, individual performance plans at all levels of OCR's leadership and staff will be focused on achieving the goals and objectives set out in our GPRA plan. In this way, everyone in OCR will be working together to achieve our shared objectives for protecting civil rights and the privacy of health information.

**OFFICE FOR CIVIL RIGHTS  
GOVERNMENT PERFORMANCE AND RESULTS ACT (GPRA)  
FY 2005 GPRA ANNUAL PERFORMANCE PLAN,  
REVISED FINAL FY 2004 GPRA ANNUAL PERFORMANCE PLAN, AND  
FY 2003 GPRA ANNUAL PERFORMANCE REPORT**

**I. EXECUTIVE SUMMARY/OVERVIEW**

The Office for Civil Rights (OCR) has combined the FY 2005 Government Performance and Results Act (GPRA) Annual Performance Plan, Revised Final FY 2004 GPRA Annual Performance Plan, and FY 2003 GPRA Annual Performance Report into a single document.

**A. Agency Mission**

The Department of Health and Human Services (HHS), through OCR, promotes and ensures that people have equal access to and opportunity to participate in and receive services in all HHS programs without facing unlawful discrimination, and that the privacy of their health information is protected while ensuring access to care. Through prevention and elimination of unlawful discrimination and by protecting the privacy of individually identifiable health information, OCR helps HHS carry out its overall mission of improving the health and well-being of all people affected by its many programs.

By statute and regulation, OCR has the responsibility to be a key steward of the integrity of any HHS program for which Federal financial assistance has been authorized, to ensure that such funds do not support unlawful discrimination. HHS administers a greater than \$500 billion budget from which Federal financial assistance is provided to a vast array of health and human service programs. Under the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, OCR has additional responsibility for several million health care providers, plans, and clearinghouses, including those that receive Federal financial assistance through HHS. HHS programs are administered by and through a wide array of government, non-profit, and private entities. These programs and services affect the quality of life and well-being of virtually everyone in the United States. Within this context, OCR's mission and responsibilities are broad and inclusive and, necessarily, its activities involve many dimensions and challenges given the number of authorities for which OCR has enforcement responsibility and the difficulty of the civil and privacy rights issues we face today.

**B. Overview of Plan and Performance Report**

Given OCR's broad and inclusive mission and responsibilities and the number of authorities for which it has enforcement responsibility, OCR's annual plan and performance report is organized around the agency's two strategic goals:

- Goal I - To increase nondiscriminatory access and participation in HHS programs and protect the privacy of protected health information.
- Goal II - To enhance operational efficiency.

Over the years, OCR has made several refinements to its GPRA performance plan to capture more of OCR's results from a broader array of compliance activities and directly link the budget request to accomplishments. The bullets below describe the most recent refinements made to the GPRA plan from FY 2003 to FY 2005 (See section IV.B. Changes/Improvements over Previous Years in the Appendix for a detailed discussion of changes made prior to FY 2003).

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### **Background to OCR Annual Performance Plans**

In the Final FY 2003 GPRA Annual Performance Plan, OCR restructured the goals and measures in the agency's annual performance plan to: (1) add as a developmental objective OCR's new responsibility to enforce the Privacy Rule under HIPAA; (2) better align with and support the HHS Strategic Plan, and the "One HHS" Department-wide outcome goals; (3) establish long-term mission-critical outcome goals that capture more of OCR's results from a broader array of compliance activities; and, (4) continue to focus activities on the key objectives toward achieving the overall goals. The restructuring resulted from OCR's review of prior year plans to find ways to emphasize outcomes, focus on civil rights compliance work directly related to OCR's mission, and make the plan more useable by managers and policy decision-makers. Prior year plans had included some objectives that focused on legal authorities, while others focused on programs or specific issues. In addition, achievement of several of the measures in those prior year plans could not distinguish the effect of OCR's work from other contributing factors.

The restructured FY 2003 performance plan for which we are reporting results covers a broader array of OCR's compliance responsibilities (*e.g.*, civil rights statutory authorities, related program issues, program services and providers of such services funded by HHS, as well as covered entities under the Privacy Rule, not all of which receive Federal financial assistance). The restructured plan also addresses a broader range of beneficiaries of HHS-funded services as well as a greater number of potential barriers to services. Further, the performance indicators directly measure the results of OCR's compliance work by distinguishing the effect of OCR's work from other contributing factors. The restructured performance objectives under Goal I were:

- A. To increase access to and receipt of nondiscriminatory quality health care and treatment, while protecting the integrity of HHS Federal financial assistance.
- B. To increase access to and receipt of nondiscriminatory social services, while protecting the integrity of HHS Federal financial assistance.
- C. To increase access to and receipt of community-based services and nondiscriminatory treatment for persons with disabilities, while protecting the integrity of HHS Federal financial assistance.
- D. To increase understanding of and compliance with the Privacy Rule under HIPAA (developmental).

The performance objectives under Goal II are structured to focus on program efficiency as follows:

- A. Increase the efficiency of case processing.

The performance objective under Goal II focuses on enhancing operational efficiency. This objective is a revised version of the prior year objective that addressed organizational efficiency and the President's Management Agenda workforce restructuring and human capital investment objective. Given the greater inclusiveness of the overall program objectives in the restructured plan, the revised efficiency objective addresses the efficiency of all of OCR's case processing rather than focusing on increasing the percentage of resources dedicated to high-priority issues. In 2002 OCR completed the organizational streamlining sub-

objective of the initial FY 2003 operational efficiency goal and achieved the planned streamlining of regional management to increase staff to supervisory ratios. Therefore, the organizational streamlining objective is not included in the FY 2004 and FY 2005 annual plan.

### **Modification of the Revised Final FY 2004 GPRA Annual Performance Plan**

As part of OCR's ongoing effort to find ways to emphasize outcomes and directly link all of its performance objectives to its budget requests, as well as to improve OCR's ability to set targets and show results for the vast majority of its work, OCR has modified its FY 2004 GPRA Plan to:

- (1) Measure results related to the protection of the privacy of personally identifiable health information by incorporating into the health care what had been a developmental objective D - *Increase understanding of and compliance with the Health Information Privacy Rule*, associated with OCR's new responsibility to enforce the Privacy Rule under HIPAA. We believe that OCR's work to ensure that the privacy of health information is protected, while continuing to ensure access to services, is comparable to OCR's work to ensure access to services under its non-discrimination authorities, and this change will allow OCR to capture immediately the results from the significant number of activities (i.e., corrective actions, no violation findings, and outreach) that OCR has conducted in the broadening array of its HIPAA compliance activities. As a result of revising Objective A, OCR has reduced its performance objectives under Goal I from four objectives in FY 2003 (one developmental) to three objectives for which measures and targets have been set. The objectives are:
  - A. To increase access to and receipt of nondiscriminatory quality health care and treatment and to protect the privacy of personally identifiable health information, while protecting the integrity of HHS Federal financial assistance.
  - B. To increase access to and receipt of nondiscriminatory social services, while protecting the integrity of HHS Federal financial assistance.
  - C. To increase access to and receipt of community-based services and nondiscriminatory treatment for persons with disabilities, while protecting the integrity of HHS Federal financial assistance.
- (2) Include OCR's Medicare certification and technical assistance activities in the health care and disability objectives to include the two to three thousand pre-grant certification reviews of compliance in OCR's plans and results in FY 2004 and FY 2005. For a facility to participate as a provider of services in the Medicare Part A program, it must meet certain requirements. In coordination with the Centers for Medicare and Medicaid Services (CMS), OCR reviews applicants for Medicare certification to determine its compliance with civil rights requirements. OCR's pre-grant review process is an important part of OCR's preventive civil rights enforcement strategy, and its audit and technical assistance work to secure voluntary compliance through this method should be added to the post-grant investigation, review and outreach work previously included in Objectives A and C.
- (3) Focus attention on those measures for which targets can and have been set, thereby reducing the number of measures in its plan from 17 to four. OCR has done this by: a) separately identifying (see pages 65-67) three developmental measures for future consideration in each of its three objectives (A-C); b) incorporating one of two developmental measures for Privacy Rule (HIPAA) activities into the single program measure for objective A (health care access) for which OCR has set a target; c) incorporating a second developmental measure for the Privacy Rule into one of the

three developmental measures for Objective A, and d) retaining a single measure for the operational efficiency objective by eliminating two operational efficiency measures from among three such measures in its FY 2003 plan because OCR has completed the actions for which the two measures were developed (streamlining its regional management structure and reducing staff to supervisor ratios nationwide).

Over the next few years, as OCR conducts its compliance activities and continues to refine its management information systems, OCR will determine the feasibility of collecting and analyzing the data needed to develop baselines for the potential measures that may serve as further indicators of the outcomes of OCR's work, program effectiveness, quality of customer service, and the impact of the program on vulnerable populations. As a result of this shift of developmental measures, the charts for each objective in the modified revised Final FY 2004 Plan and the Final FY 2005 Plan reflect a single program measure for which OCR can currently collect data and report on accomplishments.

### **C. Contact Person**

Marva Street at (202) 619-2420 is OCR's contact person for information regarding OCR's Final FY 2005 GPRA Annual Performance Plan, Revised Final FY 2004 GPRA Annual Performance Plan, and FY 2003 GPRA Annual Performance Report.

## **II. Performance Plan and Report/Budget Linkages**

### **A. Introduction**

1. OCR conducts public education, outreach, complaint investigation and resolution, and other compliance activities to prevent and eliminate discriminatory barriers, to ensure the privacy of protected health information, and to enhance access to quality HHS-funded programs. OCR's activities concentrate on ensuring integrity in the expenditure of Federal funds by making certain that such funds support programs that ensure access by intended recipients of services free from discrimination on the basis of race, national origin, disability, age, and gender; and maintain public trust and confidence that the health care system will maintain the privacy of protected health information while ensuring access to care. In doing so, OCR's activities enhance the quality of services funded by the Department and the benefit of those services, by working with covered entities to identify barriers and implement practices that can avoid potentially discriminatory impediments to quality services and privacy breaches. The Department's goal of providing quality health and human services cannot be met when individuals in need of services do not receive them as a result of practices that violate their fundamental rights of nondiscrimination or privacy. OCR is comprised of a compliance staff to enforce non-discrimination laws on the basis of race, national origin, disability, age, and gender, and the Privacy Rule; a legal counsel staff; and a program management component.
2. OCR exceeded targets set in its three program objectives and in its operational efficiency objective. With respect to the President's Management Agenda objective for workforce restructuring and human capital investment that was in the FY 2003 plan, OCR completed and met in 2002 both of the targets under Goal II, Objective B to streamline its regional management structure nationwide. Because the objective has been met, it is no longer included in the FY 2004 and FY 2005 plans.

The Program Performance Report Summary Table below shows that, since FY 2000, as a result of the broader conceptual framework of OCR’s restructured objectives and measures, we have reduced the number of performance measures for reporting accomplishments by 87 percent, thereby concentrating efforts on those measures that can be attributed directly to OCR’s resources and activities.

**Program Performance Report Summary of Measures Table <sup>12</sup>**

	Total Measures in Plan	Outcome Measures	Output Measures	Efficiency Measures	Results Reported	Results Met	Results Not Met
FY 1999	31 (21)	11 (11)	16 (9)	4 (1)	10	6	4
FY 2000	31 (12)	11 (11)	16 (1)	4	19	9	10
FY 2001	22 (16)	14 (14)	4	2	6	4	2
FY 2002	22 (18)	12 (12)	4	2	4 <sup>13</sup>	3	1
FY 2003	17 (11)	14 (11)	---	3	4	4	0
FY 2004	4	3	---	1	data in late Fall 04	data in late Fall 04	data in late Fall 04
FY 2005	4 <sup>14</sup>	3	0	1	data in late Fall 05	data in late Fall 05	data in late Fall 05

3. This report is organized around OCR’s two overarching strategic goals. Under Goal I, there are three program objectives that support the broad and inclusive program goal of increasing nondiscriminatory access and participation in HHS programs and protecting the privacy of protected health information. Under Goal II, the objective supports the goal of enhancing operational efficiency. Under each goal there is an overview discussion giving the program context for each objective followed by a table that shows performance goals and measures, targets for FY 2003 through FY 2005, actual performance, and relevant references to the budget narrative. Also, within each table is a section that provides an estimate of the total program funding for each objective. Following the table is a measure-by-measure overview discussion of the outcomes that, when viewed together, are indices of accomplishment of the objective. With respect to targets and accomplishments, OCR’s FY 2004 Final Revised Plan reflects the transition from the targets set for the measures under the objectives in prior year plans to the new measures under the restructured Objectives A-C in FY 2004 and FY 2005.

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<sup>12</sup> The numbers in parentheses are the numbers of developmental measures for which baseline data were not available and targets, therefore, had or have not been set.

<sup>13</sup> In FY 2001, in each programmatic objective, OCR consolidated several measures into a single indicator and reported on the consolidated measures in FY 2002. In the FY 2004 Plan, OCR consolidated objectives into broader categories for both the Final FY 2003 Plan and the FY 2004 Plan resulting in a further reduction in measures.

<sup>14</sup> See discussion on pages 52-53 concerning the reduction in measures from the Final FY 2003 Plan.

4. In all Federally-funded health care and social services -- from hospitals and nursing homes to Head Start centers and senior centers -- the public expects to receive high quality services without regard to race, color, national origin, disability, age, sex, and religion. Further, the public also expects that the privacy of personal health information will be appropriately protected. OCR's civil rights and health information privacy compliance objectives and cooperative activities within the Department play a crucial role in support of seven of the eight goals in the HHS Strategic Plan, which has, as a core value, "to focus on health promotion and the prevention of disease and social problems, including the prevention and correction of unlawful discrimination in the provision of health and human services." (See the appendix for OCR's work in support of the HHS Strategic Plan's goals and objectives). The protection of civil rights and protected health information advances, and is integral to, the achievement of a wide spectrum of HHS objectives including, but not limited to: assisting families to achieve economic self-sufficiency and independence; improving long-term care; improving the stability and development of our Nation's children and youth; protecting and empowering specific populations (e.g., community integration and self-sufficiency for persons with disabilities); and realizing the possibilities of 21st century health care.

In addition, OCR's activities support Presidential initiatives focusing on expanding opportunities and freedom for all Americans, ensuring the privacy of protected health information and improving the health of the public through the Healthy People 2010 agenda for the nation. In relation to the latter initiative, OCR's non-discrimination and Privacy Rule activities aim to maintain and increase access to health care and improve the quality of life and eliminate health disparities among different segments of the population.

## **B. Discussion and Performance Analysis**

### **1. Program Description and Context**

OCR's single program activity is to ensure compliance with civil rights and health information privacy laws and regulations. As the primary defender of the public's right to nondiscriminatory access to and receipt of health and human services from hospitals and nursing homes to Head Start centers and senior centers, OCR works to ensure equal opportunity for all to access such services. In addition, OCR has responsibility for the health information privacy requirements of HIPAA. OCR assesses compliance with nondiscrimination and Privacy Rule requirements by processing and resolving discrimination complaints. In addition OCR also conducts pre-grant reviews and preventative compliance reviews; monitoring corrective action plans; and carrying out public education, outreach, voluntary compliance, training, technical assistance, and consultation activities as additional means of assessing compliance with nondiscrimination requirements.

OCR is comprised of compliance, legal counsel, and program management staff. The FY 2005 budget request supports 267 FTE<sup>15</sup> on an annualized basis. As we have implemented the new HIPAA Privacy Rule authority, an increasing proportion of total resources (estimated at just under one-quarter in FY 2004 and FY 2005) have been projected to be allocated to Privacy Rule public education, outreach, and other compliance activities. The majority of OCR's staff works on frontline

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<sup>15</sup> Excludes reimbursable funding and FTE as follows: FY 2003: \$110,000 and one FTE; FY 2004: \$112,000 and one FTE; FY 2005: \$115,000 and one FTE.

nondiscrimination and Privacy Rule compliance activities, largely in OCR's regional offices. Program and policy coordination and support is provided by a cadre of headquarters analysts.

OCR allocates staff time to complaints, pre-grant reviews, and OCR-initiated compliance activities (e.g., compliance reviews, public education, outreach, voluntary compliance, and technical assistance). The issues raised in complaints and pre-grants often entail routine civil rights concerns that are not focused on high priority activities. In contrast, staff time allocated to OCR-initiated compliance activities focuses on high priority issues identified by OCR and addresses systemic problems that will benefit the largest number of people. Investigations of compliance, public education, outreach, voluntary compliance, technical assistance, training, consultation, and collaborative project activities are each equally significant methods by which OCR achieves correction and prevention of unlawful discrimination and privacy Rule non-compliance. OCR uses these methods interchangeably and with flexibility to address the unique compliance circumstances facing individual HHS grantees, service providers, and other covered entities, with an emphasis on prevention and voluntary compliance. In some cases, public education and outreach may better serve the purpose of achieving compliance than a review/audit activity. In other cases, an investigation or review may be deemed to be the best means for achieving a positive compliance outcome. Each of the activities that are identified as results/indicators in this report are planned, substantive, and part of an overall compliance strategy that requires significant staff time and other resources.

## **2. Performance Analysis**

OCR's new responsibility to enforce the Privacy Rule under HIPAA and the three broad goals established in OCR's Strategic Plan are the focal point of its compliance activities. These goals are to: 1) provide leadership in the creation and evolution of a Department-wide civil rights program; 2) increase nondiscriminatory access to and participation in HHS programs and protect the privacy of personally identifiable health information, while protecting the integrity of HHS Federal financial assistance; and 3) redevelop OCR's infrastructure and invest in its staff. In FY 2005, OCR will continue to address, within the broad and inclusive objectives of the restructured GPRA plan, high priority areas -- nondiscrimination in adoption, Temporary Assistance for Needy Families (TANF), nondiscriminatory quality health care, enhancing provision of appropriate services in the most integrated setting for individuals with disabilities, and ensuring understanding of and compliance with the HIPAA Privacy Rule. These issues have been consistently at the forefront of heightened Congressional, Departmental, and public interest during the past several years. In addition, Presidential and Secretarial priorities, continuing changes in health care delivery systems, recent research findings, media reporting, information from community-based organizations, and ongoing OCR compliance activities confirm that it is important that OCR continue, within a broadly-based civil rights compliance program, to address these key areas where substantial information indicates a high incidence of possible discrimination.



## **Program Targets and Actual Performance**

In the Final Revised FY 2003 Plan, OCR consolidated civil rights program objectives and measures into three objectives (Health Care, Social Services, and Community-Based Services/Disability). Pursuant to this consolidation, for FY 2003, OCR will report on a substantial proportion of its complaint, review, outreach, public education, and technical assistance/consultation work, rather than on smaller issue-specific subsets. Further, for the Revised Final FY 2004 Plan, OCR is adding Privacy Rule and Medicare pre-grant certification work to the Health Care objective and adding pre-grant work to the disability objective as well. Therefore, for FY 2004 and the initial FY 2005 plan, OCR will report on the entirety of its traditional civil rights and privacy complaint, pre- and post-grant review, outreach, public education, technical assistance/consultation work, thereby including measures and targets that are supported by associating the full cost of the program to approximately 93 percent of OCR's funds. The remaining workload for which measures have not been set are activities associated with referrals to other agencies and the monitoring of corrective action plans.

With respect to targets, the chart on the next page shows the targets set for the three more inclusive program areas for FY 2003, modified targets set for FY 2004, and newly established targets for FY 2005. Aggregated into the modified health care targets set for FY 2004 and the revised initial FY 2005 plan are sub-set targets for the Privacy Rule (shown on the chart). The targets set for the new HIPAA compliance program are based on OCR's experience during the first eight months of Privacy Rule compliance work to date. Although OCR has set initial sub-set targets projected for privacy for FY 2004 and FY 2005 because OCR believes it is important to measure and report on achievements in implementing this new authority, these targets may yet be subject to considerable change. In FY 2004 and FY 2005, OCR will assess data in this arena and modify measures and targets, as appropriate.

To continue to track the consolidations and modification OCR has made over time, the chart on the following page serves as a crosswalk to compare the targets for the new broad health care and social services nondiscrimination objectives with the targets and accomplishments under OCR's former more narrowly-focused program objectives.

## Goal I - Targets & Accomplishments for FY 01 - FY 03 and Plans for FY 04 & FY 05

Objectives	FY 01		FY 02		FY 03		FY 04		FY 05	
	Target	Actual	Target	Actual	Target	Actual	Target	Actual	Target	Actual
FY 2002 Plan										
Adoption	42	72	44	48	46	---				
Managed Care	87	83	80	42	80	---				
LEP	413	589	485	532	500	---				
TANF	135	165	139	180	143	---				
MIS	Dev.	---	Dev.	234	Dev.	---				
Health Disparities	Dev.	---	Dev.	163	Dev.	---				
Total Targets and Accomplishments	677	909	748	802* 1199*	769	---				
FY 04 and FY 05 Plans										
A. Health Care			752	1194	770	783	6500 CR <sup>16</sup> :1470 P <sup>17</sup> : 5030	— CR: P:	6600 CR: 1500 P: 5100:	— CR: P:
B. Social Services			598	691	614	617	295	---	295	---
C. Community-based Services/Disability			251	250	258	491	1265	---	1275	---
Total Revised Targets and Accomplishments			1600	2135	1642	1897	8060	---	8170	---

\* 802 does not include health disparities and MIS activities. 1,199 includes these activities in FY 2002.

Fiscal 2003 year-end data indicate that OCR exceeded the targets for each of the three traditional civil rights objectives -- health care, human services, and disability (community-based services and other disability work). As a composite, OCR achieved 116 percent of its civil rights objectives. OCR's compliance activities accomplishments include closures of complaints and conduct of reviews and an extensive array of outreach projects. Many of these latter projects have multiple subset activities phases that include discrete activities such as training, technical, consultative/cooperative projects, and other activities.

With respect to the newly established targets for FY 2004 and FY 2005, as noted in OCR's budget narrative, implementation of the Privacy Rule to this point has required the allocation of some staff from traditional civil rights activities to address the initial and currently projected volume of complaints. The targets for two of the three GPRA program objectives in FY 2004 and FY 2005 are significantly higher than prior year achievements because for the first time they include casework not previously included in prior year targets. These include Privacy Rule telephone technical assistance contacts under Objective A

<sup>16</sup> CR = Civil Rights Nondiscrimination

<sup>17</sup> P = HIPAA Privacy Rule

(health care) and half of OCR's projected pre-grant closures under each of Objectives A and C (MIS and disability).

The targets for the third program objective (social services - Objective B) have been set below accomplishments of prior years in anticipation of greater voluntary compliance with civil rights laws due to state and local experience in working under the now more than eight year old TANF program coupled with intensive OCR prevention and enforcement actions described on page 59. In addition, the immediate and projected need to process the unprecedented influx of Privacy Rule complaints following the April 14, 2003 compliance date and the unexpected and significantly higher percentage of these complaints requiring investigation (as detailed on pages 16-17, 29, and 31-32 of the budget justification) have led to allocating some of the resources previously anticipated for traditional compliance workload, affecting target setting under each of the objectives. The effect on social service targets is considerable, in comparison to the other objectives, because civil rights pre-grant certification audits and technical assistance have been added to Objectives A and C but are not applicable in the social services context.

## **Goal II - Operational Efficiency - Targets and Accomplishments - FY 2003 Plan**

In FY 2003, OCR's performance objective under Goal II focused on enhancing operational efficiency and on the President's Management Agenda objective for workforce restructuring and human capital investment. Including all civil rights casework including pre-grant certification reviews, OCR exceeded its efficiency objective for the average age of closed cases by 123 days, or by nearly one-third. Further, the median age of all closed complaint and post-grant reviews of compliance was 322 days (15.3 percent below the target average of 380 days).

With respect to the President's Management Agenda objective for workforce restructuring and human capital investment, in 2002 OCR completed and met both of the targets under Goal II - Objective B to streamline its regional management structure nationwide and increase the nationwide staff to supervisor ratio. This report on FY 2003 accomplishments and the plans for FY 2004 and FY 2005 have eliminated this objective because it was achieved in FY 2002. In summary, looking at all of the targets under Goals I and II in the FY 2003 Plan, OCR met or exceeded targets in each of its total of four program and operational efficiency objectives.

## **Performance Goals and Measures**

The following **Program Performance Tables** show OCR's overall goals, and objectives for each goal. Under each objective, the table shows performance goals and associated measures, targets, actual performance, total program funding, relevant references to the budget narrative, and symbols in the reference columns to *Healthy People 2010*, the President's Management Agenda, or the HHS Strategic Plan. Following the table is a narrative section that discusses each measure. In the measure-by-measure narrative section, there is a discussion that includes information regarding: (1) why the measure is meaningful to OCR's program; (2) the strategies for achieving the measure; (3) the relationship between the measure and expected results; and, (4) key factors influencing performance.

**Goal I: To increase nondiscriminatory access and participation in HHS programs while protecting the privacy of protected health information.**

**Program Performance Table - Objective A:** To increase access to and receipt of nondiscriminatory quality health care and treatment, and protect the privacy of personally identifiable health information, while protecting the integrity of HHS Federal financial assistance

Performance Goals and Measures	Targets	Actual Performance	Reference
<i>Measures for FY 2004 and 2005 Objective A:</i> To increase access to and receipt of nondiscriminatory quality health care and treatment and to protect the privacy of personally health information, while protecting the integrity of HHS Federal financial assistance.			Budget Pages 16-17, 20-22, 24-26, 28-29, 31-32, 38-40, and 42-43
1. Increased # corrective actions, no violation findings, reviews, outreach, consultations, technical assistance, and collaborative activities. (C = Civil Rights, P = Privacy)	FY 05: 6600  (CR: 1500) (P: 5100)  FY 04: 6500  (CR: 1470) (P: 5030)  FY 03: 770 (CR only)	FY 05:  (CR: ) (P: )  FY 04:  (CR: ) (P: )  FY 03: 783 FY 02: 1,194 FY 01: 945 FY 00: 992 FY 99: 720	"One" HHS Outcome Goals 1, 5, and 6
Total Program Funding (\$ in 000's)	FY 05: \$18,654 FY 04: \$17,606 FY 03: \$9,342		

**Program Overview of Objective A**

Objective A is mission-oriented and broadly inclusive of the full range of issues, health care programs and provider settings in which OCR acts to ensure nondiscriminatory access to and receipt of services and the protection of the privacy of health information. OCR activities support Objective A by focusing resources on correcting discriminatory barriers that prevent equal access to services for minorities and persons with disabilities, including children, and on protecting the privacy of personally identifiable health information.

As part of its civil rights workload, under this objective, OCR will address civil rights compliance and racial and ethnic health disparities. Research and reports on differences in health outcomes for racial and ethnic minorities, including an Institute of Medicine and Commonwealth Fund report<sup>18</sup>, have noted areas in which potential discrimination in practitioners' and institutions' practices, including referral and treatment patterns, may affect the quality of health care provided to minorities.

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<sup>18</sup> *Unequal Treatment: Confronting Racial and Ethnic Disparities in Health Care*, (Institute of Medicine, National Academy of Sciences, copyright 2002); and, *Diverse Communities, Common Concerns: Assessing Health Care Quality for Minority Americans - Findings from the Commonwealth Fund 2001 Health Care Quality Survey*, March 2002.

**Overview of the Revised Goal I. Objective A. Measure**

**1: Increased # corrective actions, no violation findings, reviews, outreach, consultations/technical assistance, and collaborative activities.**

**Performance:** OCR exceeded its target of 770 by 13 (+17 percent). This outcome measure will be the same in the FY 2004 and FY 2005 plan as it was in FY 2003. However the scope has changed given the inclusion in the targets set under this objective for FY 2004 and FY 2005 of Privacy Rule and civil rights complaints, public education and outreach, and handling several thousand Privacy Rule hotline and other telephone inquiries for technical assistance and other guidance. The targets also include half of OCR’s GPRA target for pre-grant closures with the other half included under Objective C (disability) because pre-grants address compliance with reasonable accommodations and other issues related to services to persons with disabilities as well as other civil rights authorities. This single composite outcome indicator reflects OCR’s flexible approach to increasing compliance (preventing and correcting unlawful discrimination or noncompliance with the Privacy Rule), by tailoring its activities to address the unique circumstances of covered entities.

**Program Performance Table - Objective B: To increase access to and receipt of nondiscriminatory social services, while protecting the integrity of HHS Federal financial assistance.**

Performance Goals and Measures	Targets	Actual Performance	Reference
<i>Measures for FY 2005 Objective B: To increase access to and receipt of nondiscriminatory social services, while protecting the integrity of HHS Federal financial assistance.</i>			Budget Pages 22, 23, 27-28, 30, 33-35, 40, and 42
1. Increased # corrective actions, no violation findings, reviews, outreach, consultations, technical assistance, and collaborative activities.	FY 05: 295 FY 04: 295  FY 03: 614	FY 03: 617 FY 02: 691 FY 01: 653 FY 00: 522 FY 99: 302	“One” HHS Outcome Goals 1, 5 and 6
Total Program Funding (\$ in 000's)	FY 05: \$4,899 FY 04: \$4,588 FY 03: \$5,188		

**Program Overview of Objective B**

Objective B is mission-oriented and broadly inclusive of the full range of issues, social services programs, and provider settings in which OCR acts to ensure nondiscriminatory access to and receipt of services. OCR activities support this objective by focusing resources on correcting discriminatory barriers that prevent equal access to services for minorities and persons with disabilities, including children. OCR activities in support of this objective, for example, will include initiatives focused on nondiscrimination in adoption or foster care placements (Multi-Ethnic Placement Act of 1996/Section 1808) and on ensuring equal access to TANF welfare reform programs. Working with the Administration for Children and Families (ACF) and others, OCR will ensure that child welfare and TANF programs are implemented in a nondiscriminatory manner.

## **Overview of the Revised Goal I. Objective B. Measures**

### **1. Increased # corrective actions and no violation findings, reviews, outreach, consultations, technical assistance, and joint projects.**

**Performance:** OCR exceeded its target of 614 by three (+0.5 percent). The targets have been set below accomplishments of prior years in anticipation of greater voluntary compliance with civil rights laws due to state and local experience in working under the now more than eight year old TANF program coupled with intensive OCR prevention and enforcement activities through outreach, technical assistance, and complaint and review resolution in high visibility cases involving HHS-funded social services. For example, during 2003, the OCR Director and Assistant Secretary for ACF provided each of the 50 states and the District of Columbia with a self-assessment tool to use in evaluating and ensuring compliance with civil rights laws in their adoption and foster care programs. During the past year, OCR completed a major investigation of a state and local adoption and foster care program and the violation findings and formulation of corrective actions in collaboration with ACF will serve as preventative models for other jurisdictions. (See discussion of Hamilton County on pages 33 and 34 of the budget justification).

OCR also has promulgated extensive guidance on general civil rights compliance and compliance with disability rights laws for TANF agencies and has provided training with ACF to state and local agencies on this guidance. During 2003, OCR entered into a comprehensive settlement with the Los Angeles Department of Human Services, the nation's third largest human services agency, setting forth the steps that it will take to achieve compliance with Title VI of the Civil Rights Act. This settlement, as well, serves as a proactive, preventive approach for other jurisdictions to take voluntary steps without the need for OCR involvement.

In addition, the immediate and projected need to process the unprecedented influx of Privacy Rule complaints following the April 14, 2003 compliance date and the unexpected and significantly higher percentage of these complaints requiring investigation (as detailed on pages 31-32 of the budget justification) have led to allocating some of the resources previously anticipated for traditional compliance workload, affecting target setting under each of the objectives. The effect on social service targets is considerable, in comparison to the other objectives, because civil rights pre-grant certification audits and technical assistance have been added to Objectives A and C but are not applicable in the social services context.

**Program Performance Table - Objective C:** To increase access to and receipt of community-based services and nondiscriminatory treatment for persons with disabilities, while protecting the integrity of HHS Federal financial assistance.

Performance Goals and Measures	Targets	Actual Performance	Reference
<i>Measures for FY 2005 Objective C: To increase access to and receipt of community-based services and nondiscriminatory treatment for persons with disabilities, while protecting the integrity of HHS Federal financial assistance.</i>			Budget Pages 18-20, 27-28, 30, 34-35, 38 and 42
1. Increased # corrective actions, no violation findings, reviews, outreach, consultations, technical assistance, and collaborative activities.	FY 05: 1275 FY 04: 1265 FY 03: 258	FY 03: 491 FY 02: 138 FY 01: 244 FY 00: 117	“One” HHS Outcome Goals 2, 5, & 8
Total Program Funding (\$ in 000's)	FY 05: \$9,345 FY 04: \$9,554 FY 03: \$9,158		

### Program Overview of Objective C

Since the June 1999 Supreme Court decision in the *Olmstead* case, OCR has been working with states to develop state-level comprehensive, effectively working plans to integrate persons with disabilities into communities. Further, HHS, with OCR’s involvement, has taken the lead in implementation of the President’s New Freedom Initiative that has identified barriers to community-based services for persons with disabilities and developed a blueprint for change. OCR has included this population-focused programmatic objective in this plan in support of the President’s and the Secretary’s commitment to addressing this high visibility issue. The full range of OCR’s compliance work supports this objective, including Medicare pre-grant certification compliance. As noted below, inclusion of pre-grants under this objective will increase program targets in FY 2004 and FY 2005.


#### Revised Goal I. Objective C. Measures

#### **1. Increased # corrective actions and no violation findings, reviews, outreach, consultations, technical assistance, and joint projects.**

**Performance:** OCR exceeded the target of 258 for this objective by 223 (+90 percent). The target for this objective in FY 2004 and FY 2005 is substantially higher than prior year achievements because for the first time it includes casework not previously included in prior year targets (half of OCR’s projected pre-grant closures).

**Goal II: TO ENHANCE OPERATIONAL EFFICIENCY**

**Program Performance Table - Objective A: Increase the Efficiency of Case Processing**

Performance Goals and Measures	Targets	Actual Performance	Reference
<i>Measure for revised/new Objective A: Increase the Efficiency of Case Processing</i>			
1. Decrease average age of all case closures.	FY 05: 250 FY 04: 255 FY 03: 380	FY 03: 257 FY 02: 399 FY 01: 388 FY 00: 308 FY 99: 247 FY 98: 244	Budget - Pages 32 and 36
Total Program Funding (\$ in 000's)	FY 05: \$25,218 FY 04: \$25,102 FY 03: \$16,764		

In FY 2002 and earlier, this operational efficiency measure was predicated on allocating staff and other resources to high priority civil rights issues. While this continued in FY 2003, OCR has included pre-grant reviews for the first time in this measure because they cross-cut civil rights authorities and issues, including language access and non-discriminatory quality health care. In FY 2004 and continuing with the FY 2005 Plan, the operational efficiency objective also will include the processing of Privacy Rule complaints which are expected to take less time to process than many more complex civil rights complaints. This measure will indicate how efficiently staff are processing all complaints including Privacy complaints and the extent to which staff are becoming increasingly familiar with the Rule. Further, OCR has committed and will continue to expend considerable energy to streamlining case processing, and developing guidance for and training of investigators. All of these activities are aimed at increasing OCR's ability to better serve its customers by increasing the efficiency of case processing overall as shown by decreasing the average age of *all* case closures.

**Revised Goal II. Objective A Measure:**

**1. Decreased average age of all case closures**

**Performance:** In FY 2003, OCR exceeded its goal of 380 days for the average age of case closures by 123 days (exceeding the measure by one-third).

In FY 2004 and FY 2005, OCR, as noted above, will include all civil rights casework other than monitoring and all Privacy Rule complaints in measuring case processing efficiency. OCR selected this performance measure because it indicates how efficiently staff are processing cases and the extent to which staff are becoming increasingly familiar with the array of issues raised in these cases.



## Full Cost Table

In FY 2003, 72 percent of OCR's actual obligations were associated with measures and targets in the three program objectives. Approximately 93 percent of the FY 2004 budget and FY 2005 budget request will be associated with the program objectives.

Full Costs & Annual Measures (\$ in millions)		FY 03		FY 04		FY 05	
<b>Full Cost Goal I : To increase nondiscriminatory access and participation in HHS programs while protecting the privacy of protected health information.</b>		<b>\$22,688</b>	<b>71.8%</b>	<b>\$31,742</b>	<b>93.6%</b>	<b>\$32,898</b>	<b>93.0%</b>
<i>Sub-total for Objective A which incorporates measures:</i>	<i>To increase access to and receipt of nondiscriminatory quality health care and treatment and to protect the privacy of personally identifiable health information, while protecting the integrity of HHS Federal financial assistance.</i>	\$9,3425	28.3%	\$17,606	51.9%	\$18,654	52.8%
<i>Sub-total for Objective B which incorporates measures:</i>	<i>To increase access to and receipt of nondiscriminatory social services, while protecting the integrity of HHS Federal financial assistance.</i>	\$5,188	15.7%	\$4,581	13.5%	\$4,899	13.9%
<i>Sub-total for Objective C which incorporates measures:</i>	<i>To increase access to and receipt of community-based services and nondiscriminatory treatment for persons with disabilities, while protecting the integrity of HHS Federal financial assistance.</i>	\$9,158	27.8%	\$9,554	28.2%	\$9,345	26.4%
<b>Full Cost Goal II - To Enhance Operational Efficiency</b>							
<i>Sub-total for Objective A</i>	<i>Increase the efficiency of case processing.</i>	\$16,764	50.8%	\$25,102	74.0%	\$25,218	71.3%

### Discussion of Developmental Measures OCR May Consider for Future Adoption

For OCR's Revised Final FY 2004 GPRA Annual Performance Plan, OCR has shifted 10 developmental measures from its plan to be evaluated on a pilot basis for inclusion in future GPRA performance plans. Over the next few years, as OCR conducts its compliance activities and continues to refine its operations, staff will collect data to assess the feasibility of including the developmental measures described below in the GPRA performance plan. OCR will assess if these data are useful as additional indicators of the direct effect of OCR's work, program effectiveness, quality of customer service, and the impact of its program on vulnerable populations. However, to have an evidence-based foundation upon which to make a determination that a developmental indicator in fact directly measures the results of OCR's compliance work, OCR must be able to address the multiple challenges associated with the identification, collection and analysis of valid data and use it effectively in measuring the results of its compliance work. OCR's early efforts to collect data for these measures were met with challenges associated with either: (1) acquiring data that would allow OCR to distinguish the effect of its compliance work from other contributing factors; and, (2) accessing needed data from various internal and external sources in a form that would enable OCR staff to analyze the data and use it effectively in measuring the results of compliance work. Further, OCR likely will continue these measures as

developmental for the next two to three years as it continues to develop and refine the Program Information Management System (PIMS). The PIMS system is key to improving/modernizing OCR's knowledge and information management processes. However, a variety of technical, skill, and non-technical issues have arisen that warrant further refinement of the system design and framework. The developmental measures for future consideration are listed below along with a brief overview of how the measure will help OCR to demonstrate the results of its work.

**1. Number of actions taken by recipient/covered entities to reduce barriers. (Applicable to Goal I, Objectives A, B, and C)**

This indicator would directly measure the results of OCR's compliance work. For this measure, OCR would count the number of outcomes (*e.g.*, new policies put into place, the number of training programs instituted, the number of new forms, publications in other languages produced and/or other institutional changes that were made). These outcomes can be directly associated with changes that result from OCR's involvement and that ultimately will result in greater access or quality of service received. In other words, as a result of OCR's work, beneficiaries will get appropriate services from which they have an equal opportunity to benefit.

An action to remove barriers that could be a result of OCR's involvement would be a case in which, following an OCR investigation and/or technical assistance, a hospital puts into place communication policies that provide for interpreters and auxiliary aids so that persons with limited English proficiency or deaf people can communicate effectively with medical staff. Or, in the human services area, an example would be, if, as a result of OCR's involvement, a TANF program put into place communication policies that provide for interpreters and auxiliary aids so that LEP persons can communicate effectively with job development and placement counselors. In OCR's Privacy Rule work, this measure could include actions taken by covered entities, following OCR involvement, such as putting new policies into place, providing training, and changing processes or systems to protect the privacy of health information.

**2. The amount of HHS funding received by covered entities that have been found to be in compliance, or have made changes to come into compliance on issues that have been investigated by OCR. (Applicable to Goal I, Objectives A, B, and C)**

By statute and regulation, OCR has the responsibility to be a key steward of the integrity of any HHS program for which Federal financial assistance has been authorized. That is, to ensure that such funds do not support unlawful discrimination. We anticipate that this measure would enable OCR, over time, to report on the amount of Federal financial assistance flowing to entities for which OCR has determined compliance on one or more issues raised during investigations or reviews of compliance. OCR would collect data on the amount of HHS funding received by the covered entity. In the aggregate, these data will enable a determination of the "return on investment" in civil rights investigations and reviews. In other words, OCR's compliance activities simultaneously protect the rights of HHS beneficiaries and the integrity of programs and services financed by HHS.

Because OCR compliance activities do not result in findings or changes in every aspect of a covered entity's program, OCR would not be giving a clean bill of health to all "four corners" of an entity's program or services. However, with respect to specific issues addressed in an investigation or review, OCR can legitimately report that every dollar flowing to the entity is supporting discrimination-free services. The PIMS data base should facilitate data collection, generation, and analysis capabilities. However, before this can become a measure for which OCR can set targets, it will be necessary to address several issues associated with

identifying necessary information in HHS systems and improving OCR's ability to systematically collect financial data on the flow of Federal funds to the universe of HHS program providers.

**3. Increased number of minority persons and persons with disabilities provided access to, nondiscriminatory treatment in, and equal opportunity to benefit from programs or services in compliance with Title VI and the Americans with Disabilities Act and/or Section 504 of the Rehabilitation Act of 1973, as amended, respectively (Applicable to Goal I. Objectives A, B, and C<sup>19</sup>)**

OCR anticipates that this measure would directly relate the outcome of compliance work to the requirements of Title VI of the Civil Rights Act of 1964 and the Americans with Disabilities Act/Section 504. It is a measure of how well OCR is doing its work and distinguishes the effect of OCR's work from other contributing factors. Under this measure, for example, OCR will be able to work with providers to assist them to determine whether, and if so, to what extent they should provide language interpreter services (including sign language) and translations. Through outreach, public education, technical assistance and investigations as necessary, OCR will assist providers in applying the four factor analysis incorporated in the August 2003 HHS LEP guidance. The application of this analysis by covered entities may result in their taking steps to ensure that they have an adequate number of interpreters, documents, and other language aids that can assist LEP individuals to effectively access and benefit from services. With such a measure, OCR also will be able to report on the extent to which OCR's activities have resulted in increased access for persons with disabilities who may have faced both physical and communications barriers to access and receipt of health care services.

OCR anticipates that this measure also would indicate whether compliance activities have resulted in increased nondiscriminatory access to community-based and other services for persons with disabilities. In the *Olmstead* and "New Freedom" context, OCR is working to address circumstances in which persons with disabilities may be inappropriately provided services in institutional settings or be at risk of institutionalization, and in which determinations should be made concerning placements in the most integrated setting appropriate to their needs. Further, persons with disabilities may be denied equal opportunity to services in a variety of settings, not only in community-based care and services settings. In either the *Olmstead* context or in other cases in which OCR's involvement results in changes in policies or practices with respect to persons with disabilities, OCR will endeavor to determine how many persons with disabilities have been moved from institutional to community-based services or have received other services as a result of its work.

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<sup>19</sup> This measure will apply for both minority persons and persons with disabilities under Objectives A and B and will apply only for persons with disabilities under Objective C which focuses on community-based services and other disability issues.

## **IV. Appendix to the Performance Plan**

### **A. Linkage to HHS and Agency Strategic Plans**

OCR will continue to use outcomes to measure performance during FY 2005. OCR's performance plan is aligned with and supports the HHS Strategic Plan (see "Performance Measurement Linkages" chart on page 73), the "One HHS" 10 Department-wide outcome goals, and OCR's Strategic Plan. The measures and targets for FY 2004 and FY 2005 add OCR's new responsibility to enforce the Privacy Rule under HIPAA.

### **B. Changes/Improvements over Previous Year**

Since FY 2000, as a result of the broader conceptual framework of OCR's restructured objectives and measures, OCR has reduced the number of performance measures for reporting accomplishments by 87 percent.

As part of this reduction in performance measures, in FY 2005, OCR has removed eleven developmental measures from what was included in the FY 2003 and FY 2004 Performance Plans so that the actual FY 2005 Plan will reflect only those measures for which OCR can currently collect data and report on accomplishments. One of these measures (HIPAA Privacy Rule) has been incorporated in the health care access objective (Objective A), while the other ten have been highlighted in a separate section of the plan so that the tables accompanying each objective include only those measures for which targets can be and have been set.

OCR is working to continuously improve its new web-based Program Information Management system (PIMS) that was implemented at the start of FY 2003. The data to measure the results of compliance activities is derived from PIMS and includes document, knowledge, and workflow management/staff resource capabilities and a data base in a relational format in which an underlying table structure will enable greater ease of data generation and analysis. As noted in the body of the plan, the PIMS system is key to improving/modernizing OCR's knowledge and information management processes. However, a variety of technical, skill, and non-technical issues have arisen that warrant further refinement of the system design and framework. For example, PIMS represents a new and complex learning and work environment for staff, and OCR has implemented an aggressive training program for system users on the management of knowledge and case information.

Most importantly, OCR has developed a new set of civil rights compliance outcomes that are being captured in PIMS. The system includes case and outreach-related outcome data fields that should enable more effective assessment of potential new measures of OCR's efficiency and effectiveness. OCR also will continue, and improve, data quality assurance audits to verify the accuracy of information being entered into PIMS that is related to the following measures:

- ▶ increased number of reviews conducted;
- ▶ increased number of corrective actions and no violation findings from review and complaint investigations;
- ▶ increased number of consultations/technical assistance provided (*e.g.*, either case-related or responses to requests for specific assistance in avoiding or resolving potential civil rights problems);
- ▶ increased number of collaborative efforts (*e.g.*, coordinated projects planned with other HHS agencies, states, local governments, providers, and community-based and other organizations in which shared objectives are set and implemented); and

- ▶ increased number of public education and outreach activities conducted (*e.g.*, special projects or significant planned activities focused on the compliance needs of states, local governments, providers, and community-based and other organizations).

These measures are part of a single target that reflects OCR's flexible outcome-based approach to increasing compliance (preventing and correcting unlawful discrimination), by tailoring its activities to address the unique circumstances of HHS grantees/providers, rather than adhering to a strictly prescribed set of methods or activities. Consultation/technical assistance, joint efforts, and outreach activities all involve planned and coordinated efforts that are part of an overall strategic approach to resolving potential civil rights or Privacy Rule problems. Although all of the activities noted above are not exactly comparable, each can be equally effective in reaching compliance. Each requires a considerable level of effort in working with recipients of Federal financial assistance and others to prevent or correct discriminatory policies or practices or to ensure compliance with the Privacy Rule.

OCR has determined that the consolidated outcome measure will prove a better indicator of its success in educating providers, community-based and other organizations, and program beneficiaries about civil rights requirements and responsibilities, and covered entities about responsibilities under the Privacy Rule. Public knowledge of these requirements and responsibilities is a major factor in ensuring compliance. Elements of the consolidated indicator, such as the number of collaborative activities, consultations, technical assistance, and outreach activities reflect the extent of OCR's coverage of the wide network of providers and users of HHS-funded services and the larger universe of covered entities under the Privacy Rule. The number of reviews and the number of corrective actions or "no violation" findings in OCR's casework are measures both of the scope of OCR's coverage of HHS grantees and of OCR's success in achieving civil rights compliance through outreach, collaborative activities, technical assistance, and investigative activities. The inter-related set of compliance activities is integral to OCR's flexible approach to working with and responding to the diverse needs of OCR's stakeholders.

### **C. Partnerships and Coordination**

Through consultations, technical assistance, and other outreach activities, OCR will continue to educate covered entities to ensure adherence to civil rights and Privacy Rule requirements. OCR will work with such entities, including regionally-based task forces that have been established as part of OCR's discrimination and racial and ethnic health disparities activities, to identify possible compliance problems, and where appropriate, conduct joint activities to ensure nondiscriminatory access to services. For example, OCR continues to work with ACF in the areas of adoption and welfare reform to ensure that the provisions of the Small Business Job Protection Act of 1996 and TANF are implemented in a nondiscriminatory manner.

In the LEP area, OCR coordinates with HHS agencies (notably CMS and ACF), and other government agencies such as the Department of Justice (DOJ) and the Executive Office of the President. OCR also works with other organizations, including health care organizations, to help their membership understand and use the LEP policy guidance to assess what steps they may need to take to comply with Title VI of the Civil Rights Act of 1964. Such efforts may include working with state agencies and community groups to conduct outreach and training to showcase promising practices with regard to providing interpreter services. OCR is also an active participant in the government-wide LEP work group convened by DOJ.

In addition, in the area of TANF, OCR has been providing technical assistance to covered entities such as states, providers, and vendors involved in administering TANF programs to help them recognize potential civil rights issues and prevent problems from occurring as they carry out welfare-to-work programs.

Also, in the disability (most integrated setting) area, OCR will continue to work jointly with HHS components and other federal agencies as well as states to help them carry out the requirements of the Supreme Court's *Olmstead* decision and the President's New Freedom Initiative. OCR has been working with states and other interested parties in the development of *Olmstead* planning coalitions to develop state comprehensive working plans to serve people with disabilities in the most integrated setting appropriate for them.

Further, in its nondiscrimination and racial and ethnic disparities work, OCR coordinates with other agencies including the Office of Minority Health, Centers for Disease Control and Prevention, the Agency for Healthcare Research and Quality, HUD, DOJ, state agencies, and local task forces. These local task forces are composed of medical providers, representatives of academia including medical and other health care professional school faculty, government agencies, the faith community, professional associations, hospital societies, and others in each region. OCR will involve them directly in education, technical assistance, and other outreach activities and to use their expertise as OCR implements a variety of compliance activities.

Finally, with its new responsibilities under the Privacy Rule, OCR will continue to coordinate with other HHS components through the Department's Privacy Council and with a wide array of covered entities, representative organizations, and the public. This will entail providing technical assistance to HHS components which are covered entities or which provide grants to or partner with covered entities to ensure compliance with the Privacy Rule and consistency in its implementation and interpretation.

#### **D. Data Verification and Validation**

OCR has implemented a systems modernization beginning October 1, 2002, by bringing on line a new web-based information management system (PIMS) that will include document, knowledge, and workflow management capabilities and a data base in a relational format in which an underlying table structure will enable greater ease of data generation and analysis. The system also will collect staff resource and other resource inputs (*e.g.*, travel, expert consultants).

Briefly, as background of its data collection efforts, OCR established initial FY 1998 baseline data for the majority of its case-related outcome measures. Because FY 1998 data on outreach activities, collaborative activities, consultations, and technical assistance provided were inadequate to establish baselines, OCR used FY 1999 data to establish baselines for these latter activities. In FY 2000, OCR established a baseline for the one remaining case-related outcome measure (managed care reviews) for which a baseline had not been set under the first four priority areas. In FY 2001, OCR combined several outcome measures into a consolidated measure that enables greater flexibility in compliance program design and greater ability to tailor its activities to address the specific circumstances of individual covered entities (customers). In the FY 2004 GPRA Plan, OCR restructured its plan and established a new developmental Objective D - To increase understanding of and compliance with the Health Information Privacy Rule (HIPAA). This developmental objective has been incorporated into the health care access objective (Objective A) as it is essential to begin immediately to measure all of our work that can maintain or enhance access to quality health care that is free from discrimination or inappropriate disclosure of protected health information.

OCR uses a number of techniques to validate data collected. These include conducting additional on-site compliance activities, examining files and other records, and analyzing data from independent sources such as other HHS components, state or local governmental agencies, or other organizations. Data on the number of reviews, corrective actions and no violation findings, outreach activities, other collaborative activities, the number of consultations/technical assistance provided, and other counts of OCR contacts/projects are reported by each region to OCR headquarters. Where there are variances from what is expected, OCR program operations staff contact the regions to verify such differences. Where data reported for comparable activities

across several regions appear to be skewed in a given region or two, program staff follows up to identify reasons for such variances. In addition, OCR will continue to validate all data as it has in the past through periodic management reviews or evaluations of civil rights program implementation. In addition, there is close monitoring of data reported in its tracking system. When data appear to be inconsistent, headquarters staff notifies regional staff to check the data, verify accuracy, and make changes as necessary. In an effort to ensure that data input into the system are accurate, headquarters staff provided on-site training to all staff in six regional offices, while working with the remaining four regions on a monthly basis to assist them in collecting and entering valid data.

One factor that may affect OCR's setting of targets and subsequently reporting on the potential developmental performance measures noted in the body of the plan involves limitations of data. For example, although the PIMS data base should facilitate data collection, data generation, and analysis capabilities, before OCR can set a fiscal integrity measure (*i.e.*, amount of funds being spent in a nondiscriminatory program) we have to address several issues associated with identifying necessary information in HHS systems and improving OCR's ability to systematically collect financial data on the flow of Federal funds to the universe of HHS program providers. OCR will assess each of the potential developmental measures and attendant data collection requirements prior to including any such measure in the Results Act plan. In this context, for entry into PIMS, OCR has developed a set of compliance outcomes that are a direct result of OCR's compliance work. These outcomes will not require recipients to provide any more data than is necessary for OCR to make a compliance determination. OCR's modified outcomes should eliminate what otherwise could have been burdensome and/or duplicate reporting by covered entities.

As noted in the main body of this plan, OCR will determine, at a later date, which, if any, of the developmental measures to adopt in any future GPRA Plans. The determination may depend on access to HHS-wide data and on improvement in OCR's PIMS and in analytical uses of data in the system. The determination of whether it is possible to capture data sufficient to establish baselines for several of OCR's developmental measures and whether such measures should be included in the Plan may be delayed for several years. The use of additional or new outcome measures will be dependent upon data availability as well as on refinement of basic data and data validation standards in PIMS.

External factors that may affect OCR's proposed outcomes include:

- ▶ Legislation, Administrative Action, and Court Decisions: Federal or state administrative action, court actions, or changes in laws may affect OCR's ability to achieve its outcomes. For example, litigation about the ADA, Title VI, or the Privacy Rule and ensuing court decisions could change OCR's ability to conduct enforcement activities in certain areas.
- ▶ Fiscal Availability: Significant cuts in funding for state and local programs' budgets would have a deleterious effect on proposed outcomes. Cuts in services in state and local programs would result in fewer minorities and disabled people being served. Additionally, if community-based groups and other organizations experience cuts in foundation, government, and private funding, OCR may not be able to work as effectively with these groups as envisioned by the plan.
- ▶ Economy and Demographics: Changes in the economy may have an affect on OCR's meeting its outcomes. For example, if unemployment increases significantly, there may be a smaller pool of available adoptive parents. If that were the case, there would probably be an increase in the time all children, including minority children, would have to wait to be adopted. Also, changes in the demographics of program participants due to a variety of factors could cause OCR to modify program objectives related to minority access to services. An example of circumstances in which an objective may have to be changed

would be if the number of minority participants in a welfare-to-work program decreases due to successful job placements.

**E. Performance Measurement Linkages**

All of the performance objectives are directly linked to OCR’s FY 2005 budget request. OCR’s FY 2005 budget request of \$35,357,000 reflects a solid commitment to the HHS civil rights and Privacy Rule compliance program. OCR resources will support: development of comprehensive, effectively working plans for provision of services to persons with disabilities in the most integrated setting possible (*Olmstead*); outreach and other compliance activities related to welfare reform and civil rights; nondiscriminatory quality health care focused on racial and ethnic disparities in health care and health status; language access, including immigrant access to benefits for which they are eligible; and Privacy Rule compliance.

With respect to human resources planning, OCR submitted a workforce plan to the former ASMB and the Immediate Office of the Secretary in March 2001 with addendums in April and November of 2001. The plan assessed various staffing and skill needs associated with civil rights and privacy rights issues. Further, the plan noted that in FY 2001, OCR had reorganized its headquarters operation to increase the span of control while reducing management layers in an effort to ensure that expert consultation on civil rights authorities is readily available to frontline staff. In FY 2003 - FY 2005, OCR will build on this refocusing of staff expertise and on continuing training and capacity-building activities.

**F. Summary of Full Cost of Performance Program Areas (\$ in millions)**

<b>Performance Program Area</b>	<b>FY 2003</b>	<b>FY 2004</b>	<b>FY 2005</b>
Civil Rights Compliance <sup>20</sup> - Total Full Cost	\$23.7	\$31.7	\$32.9
<b>Civil Rights Compliance - Total Budget</b>	\$33.0	\$33.9	\$35.4

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<sup>20</sup> Includes civil rights nondiscrimination and Privacy Rule compliance.



## Performance Measurement Linkages

HHS STRATEGIC OBJECTIVE	OCR GPRA GOALS/OBJECTIVES				
	Goal 1: To increase nondiscriminatory access and participation in HHS programs and protect the privacy of protected health information				Goal 2: To Enhance Operational Efficiency
	Objective A:	Objective B:	Objective C:	Objective D:	Objective A:
	To increase access to and receipt of nondiscriminatory quality health care and treatment and to protect the privacy of personally identifiable health information, while protecting the integrity of HHS Federal financial assistance.	Increase access to and receipt of nondiscriminatory social services, while protecting the integrity of HHS Federal financial assistance.	Increase access to and receipt of community-based services and nondiscriminatory treatment for persons with disabilities, while protecting the integrity of HHS Federal financial assistance.	Increase understanding of and compliance with the Health Information Privacy Rule (HIPAA).	Increase % of resources focused on high priority issues.
Goal 1: Reduce the major threats to the health and well-being of Americans.	X				
Goal 2: Enhance the ability of the Nation's health care system to effectively respond to bioterrorism and other public health challenges.	X				
Goal 3: Increase the percentage of the Nation's children and adults who have access to health care services, and expand consumer choices.	X		X	X	*
Goal 5: Improve the quality of health care services.	X			X	*
Goal 6: Improve the economic and social well-being of individuals, families and communities, especially those most in need.		X	X		*
Goal 7: Improve the stability and healthy development of our Nation's children and youth.		X	X		*
Goal 8: Achieve excellence in management practices.					X

\* This GPRA objective is focused on improving operational efficiency and therefore increasing the proportion of resources being devoted to all issues. Therefore, in some sense, the operational efficiency goal supports all of the HHS Strategic Plan objectives noted above because success under OCR's efficiency goal will result in increased resources focused on priority issues that address the HHS goals and other initiatives such as: improved human capital management, improved financial management, and integrating budget and performance information.

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