



**DEPARTMENT
of HEALTH
and HUMAN
SERVICES**

Fiscal Year

2006

Office for Civil Rights

*Justification of
Estimates for
Appropriations Committees*



DEPARTMENT OF HEALTH & HUMAN SERVICES

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OFFICE OF THE SECRETARY

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) FY 2006 Congressional Justification. Consistent with the Secretary's policy guidance, this budget request continues support for the President's and Secretary's priority initiatives and reflects the goals and objectives in the Department's FY 2004-2009 Strategic Plan.

This justification includes OCR's performance goals and targets for FY 2005 and FY 2006 and the FY 2004 Annual Performance Report as required by the Government Performance and Results Act of 1993 (GPRA). 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 performance 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, protecting and effectuating the rights of vulnerable populations, and minimizing health differences and disparities.

OCR's Detail of Performance Analysis shows how we will use our resources to effectively and efficiently achieve results in support of our mission to ensure nondiscrimination and to protect the privacy of individuals' health information. 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 2006, 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 performance analysis. 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.

Richard M. Campanelli, J.D.
Director

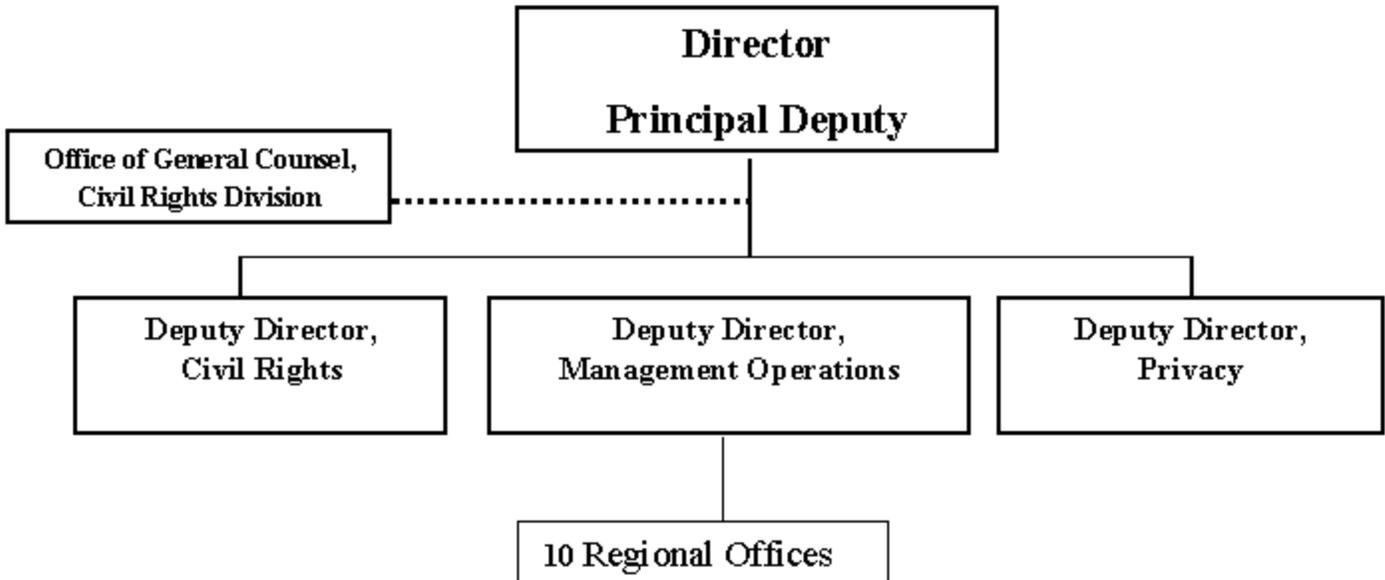
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**DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE FOR CIVIL RIGHTS**

<u>FY 2006 Budget</u>	<u>Page</u>
Letter from OCR Director	1
Organization Chart	4
Performance Budget Overview	
Statement of Mission	5
Discussion of Strategic Goals	5
Overview of Performance	7
Overview of Budget Request	8
Appropriation Language	9
Amounts Available for Obligation	10
Summary of Changes	11
Budget Authority by Activity	12
Budget Authority by Object	13
Salaries and Expenses	14
Significant Items in Committee Reports	15
Authorizing Legislation	16
Appropriations History Table	17
Budget Narrative	
Statement of the Budget	19
Program Description	19
Performance Analysis	20
Rationale for the Budget Request	20
Detail of Full-Time Equivalent (FTE) Employment	55
Detail of Positions	56
Budget and Performance Crosswalk	57
Detail of Performance Analysis	58
Summary of Full Cost	58
Changes and Improvements over Previous Years	68
Links to HHS and OCR Strategic Plans	73
Partnerships and Coordination	74
Data Verification and Validation	75
Performance Measurement Linkages	76
Summary of Measures Table	77

Department of Health and Human Services

Office for Civil Rights



PERFORMANCE BUDGET OVERVIEW

Mission Statement

The Department of Health and Human Services (HHS), through the Office for Civil Rights (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 budget in excess of \$500 billion 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. Necessarily, its activities involve many dimensions and challenges, given the number of authorities for which OCR has enforcement responsibility and the complexity of the civil and privacy rights issues that arise.

Discussion of Strategic Goals

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." 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 the 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.

The table on "Links to HHS and OCR Strategic Plan" on page 73 shows how the two goals and the three program objectives in OCR's Detail of Performance Analysis (see pages 58 - 68) contribute outcomes in support of seven of the eight HHS Strategic Objectives focused on protecting and improving the health and well-being of the American public. This information

may also be found in the Detail by Strategic Goals table included in the FY 2006 HHS Annual Plan. OCR's new responsibility to enforce the Privacy Rule under HIPAA and the two broad goals with four specific objectives 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 personal 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 2006, within the broad and inclusive objectives of the Government Performance and Results Act (GPRA), OCR will continue to address "One HHS" program goals, OCR's Strategic Plan goals, and 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 compliance program, to address these key areas where substantial information indicates a high incidence of possible discrimination or the need for technical assistance on the Privacy Rule.

Further, 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.

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 nondiscrimination 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.

Overview of Performance

Over the years, OCR has made several refinements to its Results Act Plan. A full discussion of these changes and refinements to OCR's plan is included in the "Changes and Improvements Over Previous Year" section on pages 68 to 72. With these refinements, OCR is now in a far better position to capture results from all of the compliance activities associated with OCR's broad and inclusive mission and responsibilities and the number of authorities for which it has enforcement responsibility, and directly link budget resources to accomplishments. In light of OCR's role as the primary defender of the public's right to nondiscriminatory access to and receipt of health and human services from programs funded by HHS, and to ensure the privacy of protected health information, OCR has organized its performance measures around the two overarching strategic goals that directly support the HHS Strategic Plan, the President's Management Agenda, and OCR's Strategic Plan:

- 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.

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:

- A. To increase access to and receipt of nondiscriminatory quality health care and treatment and to protect the privacy of personal 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.

Under Goal II, the objective supports the goal of enhancing operational efficiency. In the Detail of Performance Analysis section on pages 58 to 68, for 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 2001 through FY 2006, 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.

For accountability purposes, OCR has taken steps to link individual performance directly to OCR's performance goals. These steps include: (1) incorporating organizational goals into performance plans for senior executives and regional managers; and (2) setting regionally- and Headquarters component-specific targets that support and effectuate these goals.

Further, during the past several years, 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 to four measures. For FY 2006, as in FY 2005, OCR is reporting on only those measures for which OCR can currently collect data and report accomplishments. OCR activities supporting the Privacy Rule are incorporated in the health care access objective (Objective A). OCR has measures and performance targets for all OCR work, other than non-jurisdictional civil rights complaints. This means that performance measurement reflects 92 percent of OCR's budgeted activities (see Full Cost Table on 58).

With respect to targets and accomplishments, OCR's FY 2004 Final Revised Performance 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 through C in FY 2004 and FY 2005.

Overview of OCR Budget Request

The Office for Civil Rights' FY 2006 budget level, as represented in this submission, is \$34,996,000, a decrease of \$18,000 from the FY 2005 enacted level of \$35,014,000. This budget maintains the same programmatic focus as provided in the FY 2005 President's Budget.

During the past several years, OCR has played a key role in implementing critical initiatives that will continue in FY 2006. For example, over the past two years, OCR has implemented the HIPAA Privacy Rule and will continue in FY 2006 to focus heavily on investigating noncompliance allegations and conducting education and technical assistance efforts to prevent violations of the Rule. In the civil rights nondiscrimination arena, 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. In FY 2006, OCR's outreach will address many of the priority health areas identified by HHS on which to focus activities for the purpose of reducing health disparities for racial and ethnic minorities. OCR's Title VI access initiatives also will include working to ensure nondiscriminatory access to health benefits and services, access to programs funded under the TANF program designed to provide welfare-to-work services to families, and nondiscrimination in adoption. OCR will continue to address through its Title VI compliance activities the unique needs associated with an increasingly diverse population, including racial and ethnic minorities and individuals who are Limited English-proficient.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

OFFICE FOR CIVIL RIGHTS

For expenses necessary for the Office for Civil Rights, [\$31,726,000] \$31,682,000, together with not to exceed [\$3,288,000] \$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. (*Omnibus Appropriations Act, 2005, P.L. 108-447*).

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

Amounts Available for Obligation¹

	<u>2004 Actual</u>	<u>2005 Appropriation</u>	<u>2006 Estimate</u>
<u>Appropriation:</u>			
Annual	\$30,936,000	\$32,043,000	\$31,682,000
Enacted rescission	-133,000	---	---
Enacted rescission	-182,000	---	---
Enacted rescission	---	-61,000	---
Enacted rescission	---	-256,000	---
Subtotal, adjusted appropriation	30,621,000	31,726,000	31,682,000
Transfer to GDM for consolidation of administrative functions	<u>---</u>	<u>---</u>	<u>---</u>
Subtotal, adjusted budget authority	30,621,000	31,726,000	31,682,000
<u>Trust funds:</u>			
Annual appropriation	3,314,000	3,314,000	3,314,000
Enacted rescission	-14,000 -19,000	---	---
Enacted rescission	---	-26,000	---
Subtotal, adjusted trust funds	3,281,000	3,288,000	3,314,000
<u>Total Budget Authority</u>	33,902,000	35,014,000	34,996,000
Unobligated balance lapsing	<u>- 70,000</u>	<u>---</u>	<u>---</u>
Total obligations	\$33,832,000	\$35,014,000	\$34,996,000

¹ Excludes the following amounts for reimbursable activities carried out by this account:
FY 2005 \$115,000, FY 2006 \$117,000.

**OFFICE FOR CIVIL RIGHTS
SUMMARY OF CHANGES**

2005 Appropriation	\$31,726,000
Trust fund transfer	3,288,000
Total estimated budget authority	\$35,014,000
2006 Estimate - General funds	\$31,682,000
Trust funds transfer	<u>3,314,000</u>
Total estimated budget authority	\$34,996,000
Net Change	-18,000



	<u>2005 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)	\$25,922,000	(267)	+\$224,000
2. Effect of January 2005 pay raise	(267)	25,922,000	(267)	+441,000
3. Within-grade increases	<u>(267)</u>	25,922,000	<u>(267)</u>	+302,000
4. Increase in rental payments to GSA; and Unified Financial Management System, Information Technology Service Center, and other built-in cost increases	(267)	<u>9,092,000</u>	(267)	<u>+325,000</u>
Total Increases				\$1,292,000
B. <u>Program:</u> None				
Decreases:				
A. <u>Built-in:</u>				
1. One day less pay	(267)	25,922,000	(267)	-100,000
2. Reduction in other expenses	(267)	35,014,000	(267)	<u>-1210,000</u>
Total Decreases	(267)	35,014,000	(267)	-1,310,000
Net Change	(267)	35,014,000	(267)	-\$18,000

OFFICE FOR CIVIL RIGHTS
BUDGET AUTHORITY BY ACTIVITY²
(Dollars in Thousands)

	<u>2004</u>		<u>2005</u>		<u>2006</u>	
	<u>Actual</u>		<u>Final Appropriation</u>		<u>Estimate</u>	
	<u>FTE</u>	<u>Amount</u>	<u>FTE</u>	<u>Amount</u>	<u>FTE</u>	<u>Amount</u>
Compliance Activities..	206	\$29,322	231	\$30,296	231	\$30,136
Legal Services.....	20	2,544	20	2,621	20	2,700
Program Management..	<u>18</u>	<u>2,035</u>	<u>16</u>	<u>2,097</u>	<u>16</u>	<u>2,160</u>
Total Budget Authority	244	\$33,902	267	\$35,014	267	\$34,996
General funds.....		\$30,621		\$31,726		\$31,682
HI/SMI trust funds.....		<u>3,281</u>		<u>3,288</u>		<u>3,314</u>
Total Budget Authority		\$33,902		\$35,014		\$34,996

² Excludes the following projected amounts for reimbursable activities carried out by this account: FY 2005 \$115,000 and one FTE; FY 2006 \$117,000 and one FTE.

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

	2005 <u>Appropriation</u>	2006 <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.....	\$121,070	\$134,303	+\$13,233
Average GS grade.....	11.8	11.8	---
Average GS salary.....	\$75,312	\$77,670	+\$2,358
<hr/>			
Personnel compensation:			
Full-time permanent.....	\$19,971,000	\$20,641,000	+\$670,000
Other than full-time permanent.....	366,000	380,000	+14,000
Other personnel compensation.....	314,000	108,000	-206,000
Total, Personnel Compensation.....	20,651,000	21,129,000	+478,000
Civilian personnel benefits.....	5,249,000	5,431,000	+182,000
Benefits to Former Personnel.....	22,000	23,000	+1,000
Subtotal, Pay Costs.....	25,922,000	26,583,000	+661,000
Travel.....	346,000	200,000	-146,000
Transportation of Things.....	36,000	17,000	-19,000
Rental payments to GSA.....	3,000,000	3,100,000	+100,000
Rental payments to others.....	87,000	25,000	-62,000
Communications, utilities, and others.....	357,000	403,000	+46,000
Printing and Reproduction.....	59,000	45,000	-14,000
Services from the Private Sector.....	834,000	555,000	-279,000
Purchases of goods and services from other government accounts.....	2,711,000	2,482,000	-229,000
(Service and Supply Fund payment).....	(1,745,000)	(1,771,000)	(+26,000)
Operation and Maintenance of Facilities.....	93,000	94,000	+1,000
Operation and Maintenance of Equipment.....	995,000	1,169,000	+174,000
Subtotal Other Contractual Services.....	4,633,000	4,300,000	-333,000
Supplies and Materials.....	270,000	274,000	+4,000
Equipment.....	304,000	49,000	-255,000
Subtotal, Non-Pay Costs.....	9,092,000	8,413,000	-679,000
Total Budget Authority by object class.....	\$35,014,000	\$34,996,000	-\$18,000

**OFFICE FOR CIVIL RIGHTS
SALARIES AND EXPENSES**

	2005 <u>Appropriation</u>	2006 <u>Estimate</u>	Increase or <u>Decrease</u>
Personnel compensation:			
Full-time permanent (11.1).....	\$19,971,000	\$20,641,000	+\$670,000
Other than full-time permanent (11.3).....	366,000	380,000	+14,000
Other personnel compensation (11.5).....	314,000	108,000	-206,000
Total, Personnel Compensation (11.9).....	20,651,000	21,129,000	+478,000
Civilian personnel benefits (12.1).....	5,249,000	5,431,000	+182,000
Benefits to Former Personnel (13.1).....	22,000	23,000	+1,000
Subtotal Pay Costs	25,922,000	26,583,000	+661,000
Travel (21.0).....	346,000	200,000	-146,000
Transportation of Things (22.0).....	36,000	17,000	-19,000
Rental payments to others (23.2).....	87,000	25,000	-62,000
Communications, utilities, and others (23.3).....	357,000	403,000	+46,000
Printing and Reproduction (24.0).....	59,000	45,000	-14,000
<u>Other Contractual Services:</u>			
Other Services (25.2).....	834,000	555,000	-279,000
Purchases of goods and service from other government accounts (25.3).....	2,711,000	2,482,000	-229,000
Operation and Maintenance of Facilities (25.4).....	93,000	94,000	+1,000
Operation and Maintenance of Equipment (25.7).....	995,000	1,169,000	+174,000
Subtotal Other Contractual Services	4,633,000	4,300,000	-333,000
Supplies and Materials (26.0).....	270,000	274,000	+4,000
Subtotal, Non-Pay Costs	5,788,000	5,264,000	-524,000
Total Salaries and Expenses.....	\$31,710,000	\$31,847,000	+\$137,000

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

The following section represents FY 2005 Congressional requirements for reports and significant items derived from House Report 108-636 (Labor, Health and Human Services, and Education).

Item

781. ***Privacy regulations*** - The Committee believes that the Health Insurance Portability and Accountability Act (HIPAA) is a valuable tool in protecting individuals' medical privacy. The Committee is also aware of concerns that overly broad interpretations and misinterpretations of HIPAA have deprived communities of information that affects their well-being and limits their ability to take informed action in response to local health and safety conditions. The Committee urges the Secretary of Health and Human Services to provide additional written guidance within 120 days on how covered and non-covered entities can best apply HIPAA so as to permit journalists to report on newsworthy events to the fullest possible extent.

Action taken or to be taken

The Department of Health and Human Services shares the Committee's concern that the HIPAA Privacy Rule be clearly understood and correctly implemented. The Department's Office for Civil Rights (OCR), which is responsible for administering and enforcing the HIPAA Privacy Rule, has undertaken expansive outreach efforts to educate covered entities about the Rule and the public about their new rights under the Rule. OCR develops and broadly disseminates guidance on an ongoing basis in targeted areas on its website at www.hhs.gov/ocr/hipaa, participates in hundreds of conferences and speaking events across the country, and makes thousands of individual contacts yearly to clarify the Rule as needed. Through these efforts, HHS demonstrates its commitment to strong and effective patient privacy protections that are appropriately balanced so as not to unnecessarily interfere with access to quality health care or other important public benefits and national priorities. OCR also partners with sister HHS divisions to provide guidance to a broad range of covered entities. For example, together with the Department's Centers for Disease Control, OCR has published extensive guidance on its website on the balances in the Privacy Rule that permit covered entities to disclose protected health information for important public health purposes, such as reporting disease, injury, vital events; conducting public health surveillance, investigations, and interventions; and, when authorized by law to do so, notifying persons at risk of contracting or spreading a disease or condition. More recently, in August 2004, OCR published on its website an Answer to a Frequently Asked Question to address concerns about how the HIPAA Privacy Rule relates to various state public records laws relied on by journalists and others to obtain the release of information by police and fire departments and other state agencies. In the Answer, OCR clarified that the HIPAA Privacy Rule does not apply to state agencies that are not covered entities and that, even if the state agency was a covered entity, where the state public records law mandates the disclosure of information, the Privacy Rule permits the covered entity to disclose protected health information, provided the disclosure complies with, and is limited to, the relevant requirements of the public records law. OCR and the Department will continue to work with covered entities, the public, and others, to ensure that the HIPAA Privacy Rule is properly understood and interpreted so as to achieve the privacy protections afforded by the Rule efficiently and effectively, and without impeding access to personal health information when needed for patient care and other important purposes.

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

	2005 Amount <u>Authorized</u>	2005 <u>Budget</u>	2006 Amount <u>Authorized</u>	2006 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	\$35,014,000	Indefinite	\$34,996,000

**OFFICE FOR CIVIL RIGHTS
APPROPRIATIONS HISTORY TABLE**

	<u>Budget Estimate to Congress</u>	<u>House Allowance</u>	<u>Senate Allowance</u>	<u>Appropriation</u>
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	32,042,000	32,042,000	32,042,000	32,043,000
Rescission	---	---	---	-61,000
Rescission	---	---	---	-256,000
Trust Funds	3,314,000	3,314,000	3,314,000	3,314,000
Rescission	---	---	---	-26,000
2006				
Appropriation	31,682,000			
Trust Funds	3,314,000			

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

	2004 <u>Actual</u>	2005 <u>Appropriation</u>	2006 <u>Appropriation</u>	Increase or <u>Decrease</u>
Budget Authority	\$33,902,000	\$35,014,000	\$34,996,000	-\$18,000
FTE	244	267	267	---

Note: FTE level does not include one reimbursable FTE in FY 2005 and FY 2006.

The President's appropriation request of \$34,996,000 for this account represents current law requirements. No proposed law amounts are included. 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.

Program Description

OCR is responsible for ensuring 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 complaints. In addition OCR also conducts pre-grant reviews and preventative compliance reviews; monitors corrective action plans; and carries out public education, outreach, voluntary compliance, training, technical assistance, and consultation activities as additional means of assessing compliance with nondiscrimination and privacy requirements.

OCR is comprised of compliance, legal counsel, and program management staff. The majority of OCR's staff works on front-line 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 mandated complaint investigations and 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

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.

Funding levels and FTE for OCR (including amounts available for obligation from the 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>
2001	\$27,983,000	223
2002	31,430,000	246
2003	33,038,000	244
2004	33,902,000	244
2005	35,014,000	267

Performance Analysis

With respect to program targets and actual performance for FY 2004, pursuant to OCR's consolidation of the civil rights program objectives and measures into three objectives (Health Care, Social Services, and Community-Based Services/Disability), in FY 2006, OCR will report on 92 percent of its compliance activities covering a substantial proportion of its complaint, review, outreach, public education, and technical assistance/consultation work.

Rationale for the Budget Request

Privacy Rule

As OCR has continued to implement the new HIPAA Privacy Rule in FY 2004, Privacy Rule complaints substantially exceeded OCR's projections in the 2005 President's Budget for the first full year of Privacy Rule compliance/enforcement (post-April 14, 2003). In FY 2004, OCR received 6,473 Privacy Rule complaints, or 24 percent more than the 5,232 anticipated in the FY 2005 President's Budget. OCR conservatively projects that Privacy complaints will continue to grow at a rate of two to three percent per year, and that at this rate, given the volume of complaints and the backlog of Privacy complaints, the backlog will continue to grow at over 30 percent per year.

Complaint Workload – Privacy

	Actual FY 2004	Projected FY 2005	Projected FY 2006
Beginning Inventory	1,468	3,487	4,820
Complaints Received	6,473	6,602	6,735
Total Workload	7,941	10,089	11,555
Complaints Closed	4,454	5,269	5,347
Ending Inventory	3,487	4,820	6,208

Civil Rights

Civil Rights complaint cases increased 9.3 percent in FY 2004 from FY 2003. OCR estimates the growth rate will continue at approximately the same rate in FY 2005 and 2006.

Complaint Workload - Civil Rights

	Actual FY 2004	Projected FY 2005	Projected FY 2006
Beginning Inventory	1,518	1,642	2,232
Complaints Received	2,716	2,960	3,227
Total Workload	4,234	4,602	5,459
Complaints Closed	2,592	2,370	2,367
Ending Inventory	1,642	2,232	3,092

In the face of increasing workload in the traditional civil rights area, and the new and growing caseload in the Privacy Rule compliance area, OCR has allocated its resources to achieve an approximate level of parity between its civil rights authorities and its responsibility for ensuring Privacy Rule compliance as measured by the closure rate for complaint workload (cases carried into the year plus allegations newly received in each year). In the ten year period from 1994 - 2003, prior to the implementation of the Privacy Rule, OCR closed, on average, just under 70 percent of each year's complaint workload. Because of the necessary shift in resources to handle its increased responsibilities for complaints and outreach activities for the Privacy Rule, in FY 2004 OCR's overall closure rate decreased to just under 58 percent, with the closure rate for civil rights complaints at 61 percent in FY 2004, and the closure rate for Privacy Rule complaints at 56 percent.

Impact of OCR Priority Initiatives

During the past four years, OCR has played a key role in implementing critical initiatives that will continue in FY 2006, 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 American with Disabilities Act (ADA) through investigations, complaint resolution, and the use of alternative dispute resolution.

As part of the Executive Order, the President directed the Secretary of HHS 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 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. Based on these successes, in FY 2004, OCR expanded this pilot with DOJ to include additional complaints in the alternative dispute resolution process through DOJ's ADA mediation project.

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 accommodation 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 E.O. 13217 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 to work with the HHS Office on Disability (OD), created by HHS in 2002 as part of the Department's commitment to the President to facilitate the community integration of people with disabilities. Through various methods, OCR has supported OD's coordination and leadership of HHS disability-related activities, including by consulting with OD staff on matters with possible civil rights implications, attending Department-wide meetings convened by OD and participating on OD-initiated subcommittees to devise solutions to barriers to community integration posed by inadequate housing and employment opportunities, and to raise public awareness of health-related problems faced by individuals with disabilities. OCR will also continue to participate in other HHS activities related to the New Freedom

Initiative and E.O. 13217, including efforts to support and implement Federal agencies' response to the recommendations of the New Freedom Commission on Mental Health. OCR serves on the Federal steering committee convened by the Substance Abuse and Mental Health Services Administration (SAMHSA) to develop and implement the Commission's recommendations through an interagency action plan.

During FY 2006, 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

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.

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 conducted a workshop for state officials,

community and migrant health center workers, and advocates on issues affecting national origin minority access to HHS-funded health care and social services, at the National Farmworker Health Conference. OCR is a key part of the Department's health disparities initiative, serves on the Secretary's Health Disparities Council, and has conducted civil rights sessions at regional and HHS National Leadership Summits on Eliminating Racial and Ethnic Disparities in Health. OCR's Director has made a number of keynote addresses on its activities in this area at major national conferences.

In FY 2006, 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 2006, 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 Illinois, New Mexico, Florida, and other states to develop coordinated, local strategies for reducing health disparities, to enhance HIV/AIDS prevention education and treatment in Native American communities, and to focus attention on the role of community organizations and leaders in eliminating 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 2006, OCR's nondiscrimination activities will address many of these areas. For example, in the area of improving outcomes for persons with HIV and AIDS, OCR Region VI has initiated a disparities outreach partnership with the regional Public Health Service Office of Minority Health (OMH) to plan conferences and other activities focusing on HIV/AIDS in minority communities in all five states in the region, beginning with the first conference in New Mexico. OCR and its Federal partners will work with providers and consumer groups, including faith-based organizations in those states, to inform minorities of their rights to nondiscriminatory access to prevention education and treatment, and to address social, cultural, and other potential barriers to access. OCR will continue its enforcement component, working with HHS-funded HIV/AIDS prevention and treatment programs to ensure that such programs are operated in a nondiscriminatory manner.

In FY 2006, 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 OCR's response to the Surgeon General's August 2001 report *Mental Health: Culture, Race, and Ethnicity* and the New Freedom Initiative's Mental Health

Commission's 2003 report. As set forth in those reports, 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 TANF program designed to provide 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 (LEP) 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 IV has worked with the Office for Children with Special Needs in one state, and the agency for Families and Children in another state, and a county health department in a third state, to ensure nondiscriminatory access of eligible children in immigrant families to TANF, Medicaid, SCHIP, and other HHS-funded programs. OCR's technical assistance helps to make benefits application forms and procedures more accessible to national origin minorities, and advises on modification of policies and procedures and training of front-line caseworkers to remove barriers faced by national origin minority children.

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 2006 budget 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. For example, OCR and ACF have jointly issued the *Multi-Ethnic Placement Act/Section 1808 (MEPA) Internal Evaluation Instrument*. This voluntary instrument is designed to assist states and other entities involved in adoption and foster care assess their compliance with the Section 1808 and MEPA. The instrument is also useful as a self-assessment of compliance with Title VI in this area, because a violation of MEPA or Section 1808 constitutes a violation of Title VI.

During FY 2006, 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 the Nation's children and youth.

Limited English-Proficiency (LEP)

Among the issues that OCR will continue to address through its Title VI compliance activities are the unique needs associated with an increasingly diverse population. This includes racial and ethnic minorities and individuals who are 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 2006 budget - addressing health disparities and nondiscrimination in TANF programs.

On August 8, 2003, HHS published 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, Health Resources and Services Administration (HRSA), and 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 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. OCR is leveraging its available resources through partnerships with other Federal agencies involved in Title VI and other language access activities. For example, OCR collaborated with the DOJ and the Department of Agriculture (USDA) to develop and produce an educational video on the rights of LEP individuals. The 25 minute video is being dubbed in Spanish and Vietnamese and subtitled in Chinese and Korean for use in reaching out to those LEP communities as well as for use in outreach to recipients and the general public. OCR also collaborated with DOJ and USDA to produce a consumer LEP brochure which has been translated into multiple languages.

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 provides technical assistance to states in eliminating those barriers. In a recent example involving Kansas' statewide joint application for TANF, Medicaid, and SCHIP, the state incorporated OCR's recommendations into a revised application, following an OCR presentation and question and answer session regarding elimination of access barriers. OCR promotes portions

of the revised Kansas application as a promising practice for use by other states in the region that are considering similar application reforms. The revised forms no longer contain sensitive and unnecessary questions about non-applicant family members, which may deter application for benefits to which a LEP person is lawfully entitled, and now offer assistance to LEP and disabled applicants, as well as inform applicants of civil rights complaint procedures. OCR has also provided broader education on application barriers through workshops addressing relevant civil rights protections in access to health care to Kansas and Missouri community- and faith-based organizations, medical and social service providers, and government employees at regional conferences such as the Latino Civil Rights Summit.

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 Rule provides individuals, for the first time, with Federal protection against the inappropriate use and disclosure of personal health information.

FY 2004 was the first full year during which OCR received and investigated complaints under the Privacy Rule. Because HIPAA does not provide a private right of action, OCR is 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).

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. OCR will also undertake efforts to educate health care recipients about their rights under the Rule. To the extent that covered entities understand their obligations, the need for enforcement will be minimized. OCR continues to receive multiple requests to meet with covered entities and to speak at national conferences. OCR will be targeting its public education to ensure that it is maximizing 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 since the April 14, 2003 compliance date:

- Toll-Free Assistance. The Department offers a free call-in line, 1-866-627-7748, 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 September 2004, over 32,000 phone inquiries concerning the Privacy Rule were handled, including over 19,000 by Call Center operators and over 13,000 by OCR headquarters and regional staff.
- Speaking Engagements. OCR has made our senior experts available on a regional and national basis for presentations at hundreds of conferences and seminars that were attended by all sectors of the healthcare industry. During FY 2004 OCR presented at 116 speaking engagements across the country (234 engagements during calendar year 2003), out of 186 speaking engagement requests received. Presentations are typically at national healthcare associations – both providers and health plans – as well as at state and local bar associations, medical societies, and universities. They are also often in partnership with other Federal, state, or local agencies. OCR has partnered with other HHS operating divisions as well, including teleconferences sponsored by CMS and conferences sponsored by the National Institute of Health (NIH) and the Centers for Disease Control and Prevention (CDC).
- Publications. From April 2003 through September 2004, OCR had nearly 1,400,000 visits to its Privacy web pages and also had over 2.6 million 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 NIH, CDC, and the SAMHSA 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 small providers and other smaller entities subject to the Privacy Rule had to comply with the April 14, 2003 compliance date, OCR especially sought to ensure that these guides and materials were 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. In addition, in anticipation of the April 14, 2004 small health plan compliance date, OCR published new FAQs targeted to small health plans, particularly group health plans. 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 its website 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 (FAQ)* 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 July 31, 2004, 2,100,000 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/hipaa/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 HHS SAMHSA Guidance, "*The Confidentiality of Alcohol and Drug Abuse Patient Records Regulation and the HIPAA Privacy Rule: Implications for Alcohol and Substance Abuse Programs.*"
- New Consumer Fact Sheets, "*Privacy and Your Health Information*" is a general overview of the Rule, explaining that the Privacy Rule gives individuals rights over their health information, sets rules and limits on how information can be used and disclosed, and requires covered entities to take steps to protect health information. The second Fact Sheet, entitled, "*Your Health Information Privacy Rights,*" focuses on each of the privacy rights individuals have under the Privacy Rule.

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. Consumer documents have been translated into Spanish.

- Correspondence. Between April 14, 2003 and the end of FY 2004, OCR received nearly 1,100 written inquiries about the Privacy Rule. Writers have included consumers; covered entities, third parties, associations; Federal, state and local governmental bodies; and members of the Senate and Congress. In answering letters, OCR often explains or clarifies particular provisions of the Privacy Rule.
- Listserv. OCR has recently established a listserv to distribute announcements, notices of available resources, and other educational information about the HIPAA Privacy Rule. As new guidance and FAQs have been published, OCR has used the listserv to notify the public that such information is available. Within the first few weeks of its existence, over 15,000 subscribers signed up to join the Privacy listserv.
- Participation in HHS Departmental IT activities. HHS has embarked on a variety of initiatives to support efforts across government and in the private sector to develop the standards and infrastructure to allow more effective use of information technology to promote higher quality care and reduce health care costs. OCR is working collaboratively with those responsible for these initiatives to ensure these efforts protect individually identifiable health information.

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, OCR 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. OCR will continue to provide advice on the Rule in response to these requests during FY 2005 and FY 2006 to facilitate compliance.

OCR's FY 2005 and FY 2006 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 2006, OCR will build on work done in previous fiscal years focused on nondiscrimination in TANF programs. In FY 2006, 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.³ OCR's work is responsive to the recommendation of the Government Accountability Office that HHS serve as a focal point to coordinate Federal Government research and technical assistance on "hard to serve" TANF beneficiaries,⁴ consistent with ongoing state efforts to identify and respond to disability- or language-related barriers to self-sufficiency in the TANF population.⁵ 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 LEP equal access to the range of TANF opportunities, or failing to ensure that TANF programs and materials are accessible to LEP individuals; 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 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.

³ 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.)

⁴ 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).

⁵ See State Strategies, at 7-16.

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/Monitoring
- Preventative Compliance Reviews/Monitoring
- Public Education, Outreach, and Voluntary Compliance

In FY 2006, OCR estimates that of the total 267 FTE, 251 FTE (94 percent) will be allocated to compliance, education, and outreach activities, including health information privacy activities, and legal advisory support to these programs. A total of 16 FTE will be allocated to compliance program management.

COMPLAINT PROCESSING

OCR is responsible for investigating complaints of discrimination within its 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.
- OCR brought together a partnership of Federal and state agencies, including OCR, CMS, the Oklahoma Department of Human Services (ODHS), and the Long Term Care Authority (LTCA), which is ODHS' contract Medicaid agency, in order to address the allegations of a complaint alleging that ODHS was denying community-based assistance to a person because of her race, African American, and her disability, quadriplegia. This collaboration resulted in the affected party being able to live in her own home and receive services through Oklahoma's client-directed waiver. The affected party hires and trains her personal care attendants. The ODHS and LTCA partners continue to monitor the affected party's service delivery to ensure that she is receiving the comprehensive services outlined in her service plan.
- OCR's Region VI intervened to resolve a complaint filed by ADAPT on behalf of an affected party who was residing in a nursing home and had been denied participation in the Community Based Alternative (CBA) Waiver by the Texas Department of Human Services (TDHS). The affected party uses a wheelchair who has several conditions including incontinence, Dysplasia, asthma, anemia, GERD, DJD, Angina, HIV, and depression. Region VI secured involvement of the TDHS caseworker, regional attorney, and Civil Rights staff, as well as the caseworker for the TDHS contract Medicaid administrator for Medical eligibility, and as a result, the affected party was approved for the CBA Waiver and moved from the nursing home to her own home.
- OCR's Region VI intervened to resolve a complaint based upon the state's actions to satisfy the complainant's request for services for a 14 year-old affected party with Down's syndrome. The state is now providing the affected party with respite care services under Louisiana's Children's Choice Waiver and 19 hours of community-based services per week for critical services such as bathing and dressing.

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 its 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.
- The following case is an example of OCR's ability to apply a legal requirement to socially sensitive issues and to achieve an outcome that improved the stability of a child and, at the same time, provided technical assistance and training to enable a provider to operate its program in compliance with the applicable law. In a MEPA/Section 1808 case, OCR investigated allegations of race discrimination in the adoption proceedings of an African American child and a white foster care family. During the investigation agency workers indicated that it was a practice within the agency to facilitate "cultural" matches if at all possible. Some staff admitted that it was customary to consider race in transracial placements and to facilitate "cultural matches" when children of color are involved. OCR concluded that those families attempting to foster or adopt transracially were subjected to disparate treatment. As a result of the investigation, Region III conducted training for 110 case workers in Fairfax County Virginia on the requirements of MEPA/Section 1808. In addition to the complainant successfully adopting an African American child, the County Department modified its policies and procedures to ensure that it would operate its program in conformance with the provisions of Title VI and MEPA/Section 1808.

TANF/LEP

An example of how OCR's work has systemic impact is the October 23, 2003, Resolution Agreement OCR entered into with the Los Angeles County Department of Public Social Services (LADPSS) to resolve a complaint of discrimination filed December 17, 1999, by the Asian Pacific American Legal Center, the Western Center on Law and Poverty, the Legal Aid Foundation of Los Angeles, and San Fernando Valley Neighborhood Legal Services. The complaint was filed on behalf of LEP participants, and low-income communities in Los Angeles county. OCR and LADPSS entered into a Voluntary Resolution Agreement that will result in enhanced efforts to provide meaningful access to individuals seeking LADPSS services who have LEP. LADPSS is the county agency responsible for administering public assistance programs, including CalWORKs (California's TANF program). The Agreement, which resolves a complaint filed on behalf of LEP individuals, is significant because of the large and diverse population of Los Angeles County, the large size of LADPSS' caseload (more than 1.9 million individuals), and because more than 40 percent of the population served by LADPSS identifies a

language other than English as their primary language. Under the terms of the Agreement, LADPSS will ensure the existence and implementation of comprehensive policies and procedures so that LEP persons have meaningful access to all LADPSS-administered and contracted programs and services. LADPSS also agreed to undertake various specific actions to facilitate meaningful access, including: establishing an LADPSS office to ensure that appropriate language assistance is provided to LEP persons who apply and participate in CalWORKs and to monitor LADPSS compliance with Title VI and the Agreement; ensuring accurate identification of the primary language of program applicants and participants; actively recruiting and making a good faith effort to employ bilingual staff; ensuring that all interpreters are competent to interpret; and notifying LEP applicants and participants of the availability of free language assistance and providing training to LADPSS public contact staff and their managers on civil rights issues affecting LEP persons.

LEP

OCR secured a signed Resolution Agreement that resolves a complaint filed against Catholic Charities Maine (CCME) alleging that CCME's Home and Family Program failed to provide interpreters for LEP clients speaking Somali, Vietnamese and Cambodian. CCME had a contract with Maine Department of Human Services (ME DHS) to provide home services to LEP families for child protective services, including parenting skills training to LEP individuals and refugee resettlement assistance.

OCR's Region I office investigated these allegations and worked with CCME and ME DHS representatives to address OCR's concerns identified during the investigations. OCR and CCME resolved the issues through a Resolution Agreement, in which CCME agreed to implement a new Language Assistance policy and to take additional steps to ensure that LEP persons are provided meaningful access to all of its more than 40 programs in over 15 locations throughout the state. The services include senior services; children and youth services; substance abuse and mental health services; refugee and immigrant services; and dental and pregnancy services. CCME also developed an interpreter services program to provide written and oral language services for hospitals and other service providers in Maine since the filing of this complaint. Their staff interpreters provide language services for over 25 different languages. The interpreters are recruited from the community they serve, have received appropriate training in interpreting techniques, ethics and protocol, and will provide useful linguistic and cultural clarification for both the client and the provider.

In another case, OCR secured a signed Resolution Agreement that resolves an LEP complaint against Yale-New Haven Hospital (YNHH), an acute care provider in southern Connecticut and one of the northeast's major referral centers and the primary teaching hospital for Yale University School of Medicine. In FY 2003, YNHH provided services for approximately 447,350 individuals as outpatients (outpatient visits) and 45,349 individuals as hospital patients (hospital discharges). OCR's Region I office investigated the complaint allegations and identified concerns about the implementation of YNHH's interpreter services policy. In the

Resolution Agreement, YNHH agreed to implement its current interpreter services policy and take additional steps to ensure meaningful access to its services by LEP patients.

Privacy Rule

Covered entities (other than small health plans) were required to comply with the Privacy Rule as of April 14, 2003. On that date, OCR began accepting complaints against covered entities (large health plans, health care providers that engage in electronic transactions, and health care clearinghouses). From April 14, 2003 through the end of FY 2004, OCR had received a total of 8,740 complaints, 6,473 of them in FY 2004. By the close of FY 2004, OCR had resolved 56 percent of those cases. Case closures include those where OCR lacks jurisdiction under HIPAA – such as a complaint alleging a violation prior to the compliance date; alleging a violation by an entity not covered by the Privacy Rule; where the activity alleged does not violate the Rule – such as when the covered entity has declined to disclose protected health information in circumstances where the Rule would permit such a disclosure; and where the matter has been satisfactorily resolved through voluntary compliance – for example, where an individual is provided access to their medical record based on a complaint that such access had been previously denied.

The allegations raised most frequently in the complaints are: (1) the impermissible use or disclosure of an individual's identifiable health information; (2) the lack of adequate safeguards to protect identifiable health information; (3) refusal or failure to provide the individual with access to or a copy of his or her records; (4) the disclosure of more information than is minimally necessary to satisfy a particular request for information; and (5) failure to obtain an individual's written authorization for a disclosure requiring such authorization. Complaints are most often filed against the following types of covered entities: (1) private health care practices; (2) general hospitals; (3) pharmacies; (4) outpatient facilities; and (5) group health plans.

Summary - Complaints

As noted in the budget overview and earlier in this rationale for the budget submission, OCR has experienced a significantly higher rate of Privacy Rule complaint receipts in FY 2004 than had been projected in the 2005 President's Budget. OCR received 6,473 Privacy Rule complaints in FY 2004, compared to the 5,232 projected in the FY 2005 President's Budget for that year, and it projects Privacy Rule complaints growing at two to three percent in FY 2005 and FY 2006.

Civil Rights complaint cases increased 9.3 percent in FY 2004 from FY 2003. OCR estimates the growth rate will continue at approximately the same rate in FY 2005 and 2006.

Based on actual data for cases closed in FY 2004, OCR currently projects that 25 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 75 percent will be susceptible to closure on or shortly after intake because the alleged

violation requires limited involvement for OCR to appropriately resolve, including lack of jurisdiction, withdrawal of the complaint, or other factors.

The data concerning complaint workload and closures reflect 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 25 percent of Privacy Rule complaints noted above that require complex investigation or technical assistance more frequently allege violations of specific or detailed sections of the Privacy Rule, and thus are more susceptible to being resolved using less staff time in the provision of technical assistance than the average civil rights case. In FY 2005, OCR estimates that to complete the average civil rights complaint investigation will require at least twice the staff effort compared to Privacy Rule complaints.

PREVENTATIVE COMPLIANCE REVIEWS

Currently, OCR does not plan to conduct Privacy Rule compliance reviews through 2006, 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 its 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, another type of preventative review of civil rights compliance, 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

As a result of a story in the major metropolitan newspaper, Region I initiated a review to determine whether Visiting Nurses Association of Boston (VNAB) policies which outline different procedures for servicing patients due to different levels of security assigned to different communities as identified by U.S. Census tract numbers failed to provide full and equal access to all services for all patients in Violation of Title VI. VNAB's policies of designating certain communities security areas are based on crime data and reports from VNAB clinicians of dangerous incidents in the field. VNAB utilizes U.S. Census tract numbers to identify communities. VNAB reports that it does not consider demographic information such as race, ethnicity, or national origin in assigning security designations. Despite VNAB's basis for its security designations, the communities designated as such are comprised of high concentrations of persons of color and new immigrants. As such, restricting access to services in designated security areas may disproportionately adversely impact persons of a particular race, ethnicity, or national origin which is prohibited under Title VI. As a result of OCR's intervention, VNAB has modified its policies to allow for full access and to provide for "police escorts" to security areas and procedures for assessing the feasibility of VNAB staff to make night visits.

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

OCR and ACF entered into an agreement with the Ohio Department of Job and Family Services and the Hamilton County Job and Family Services to resolve civil rights violations identified by OCR and ACF regarding discrimination on the basis of race in adoption placements. OCR had determined that Ohio and Hamilton County violated Title VI of the Civil Rights Act of 1964, as well as provisions of MEPA and Section 1808 of the Small Business Job Protection Act of 1966, by making adoption determinations on the basis of race, rather than on the basis of the individual needs of children. Through its authority as administrator of foster care and adoption assistance programs under the Social Security Act, ACF determined that Ohio violated Section 1808, and initiated the assessment of financial penalties against the state. Both OCR and ACF identified steps that Ohio and Hamilton County must make to come into compliance with Federal nondiscrimination mandates. Neither Ohio nor Hamilton County admitted that it violated the law.

Ohio agreed to take numerous actions designed to avoid discriminatory practices, including promulgating revised State administrative rules and policies regarding adoption and foster care, enhancing State monitoring and oversight of Ohio counties and private agencies who contract with counties to provide certain child welfare services, and providing Statewide training for child welfare staff on compliance with Section 1808, Title VI and other relevant Federal and state laws, administrative rules, policies and practices. Hamilton County agreed to be subject to continued monitoring to ensure its compliance with Title VI, Section 1808 and the agreement. In addition to complying with statewide regulations and policies required by the agreement, Hamilton County will revise certain of its child welfare policies and practices and conduct annual audits of adoption subsidies provided to adoptive families to help ensure these subsidies are not provided in a racially discriminatory manner. Several specific obligations in the agreement were satisfied by January 21, 2005. Other obligations, including monitoring and periodic reporting requirements, continue for five years.

This matter was the first in which OCR issued a MEPA/Section 1808 Letter of Findings that the civil rights of individual children or prospective adoptive or foster parents were violated. This was also the first time ACF imposed monetary penalties, which are being challenged by the state, for violations 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.

The following cases are examples of efforts during FY 2004 by one of OCR's regions to resolve barriers faced by national origin minorities in seeking access to important public benefit programs. In FY 2004, OCR's Region IV:

- resolved a compliance review addressing the application policies and procedures of the Georgia Office of Children with Special Needs which were incorrectly denying eligible immigrant applicants and were shown to have a disparate impact on the Latino population in Georgia. In response to OCR's findings, State agency officials modified its policies/procedures manual with input and technical assistance from OCR. The State office also directed all local offices to make changes in all applications and forms to comply with the modified policies and procedures manual. The State office also provided intensive training to all 19 health districts on the new policies and procedures. Following

the training, each local office received a follow-up visit to monitor progress and provide additional technical assistance. As a result of OCR's actions and involvement immigrant applicants across the State are no longer being improperly denied benefits available under this program.

- In Kentucky, Region IV concluded a review initiated to determine if the applications regarding certification and eligibility forms and procedures used by the Kentucky Cabinet for Families and Children in its TANF, Medicaid, and SCHIP programs discriminate on the basis of national origin. In response to OCR's review of the eligibility forms and procedures and the provision of technical assistance, KCFC took several significant remedial steps, including: revising application forms and application processes to remove barriers to immigrants; forming a work group to review and address potential barriers; developing a policy letter to promote awareness of immigrant issues relating to social security numbers, immigration status, reporting of undocumented immigrants, and public charge determinations; and revising policies clarifying the status of non-applicant household members. Because of OCR's efforts, national origin minorities throughout Kentucky no longer face barriers in seeking access to important public benefit programs.
- In Tennessee, Region IV concluded a review focusing on whether the Madison County Health Department screened applicants for immigration status and social security numbers and reported undocumented immigrants to the Immigration Naturalization Service in ways that violated Title VI. After receiving technical assistance from OCR the Health Department took several important steps, including; agreeing not to screen applicants for immigration status or social security numbers, and posting a notice in its lobby, in English and Spanish, that clarified its policy toward requesting proof of immigration status or social security numbers; and training staff regarding the requirements of Title VI and the measures taken in response to OCR's review. As a result of OCR's involvement, eligible immigrant households are no longer improperly barred from receiving public benefits provided by the Madison County Health Department.

TANF - State Agency

The following compliance reviews are recent examples of OCR's work with TANF 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.

The Oregon Department of Human Services entered into a Voluntary Compliance Agreement with OCR to address issues regarding equal access and nondiscriminatory treatment for Oregon TANF clients with disabilities. The Agreement resolved an OCR compliance review of the Oregon TANF program's compliance with Title II of the ADA and Section 504 of the Rehabilitation Act. Oregon agreed to: develop policies and procedures to screen all TANF clients for disabilities and provide the opportunity for a more in-depth assessment when screening indicates possible disability; develop procedures to ensure that caseworkers have the support they need to provide reasonable accommodations to clients who are identified as having disabilities; incorporate into existing client sanction procedures the consideration of disability as a potential reason for client non-compliance with TANF program requirements; develop policies and procedures to ensure that the State adequately monitors compliance with the agreement by State and contracted staff; and train TANF caseworkers and contract staff about the nature of various disabilities, conducting disability screening and assessment, providing reasonable accommodations, and appropriate follow-up for clients identified as having disabilities.

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.

Disability/HIV

OCR used alternative dispute resolution to resolve a complaint that alleged denial of nursing home admission to an individual based on his disability, HIV. As a result, the individual was admitted to the facility, and the complaint was withdrawn.

Summary - Preventative Compliance Reviews

OCR currently conducts preventative compliance reviews for its traditional civil rights authorities only. OCR estimates that a total of 5,359 compliance reviews will be conducted in FY 2006, 96 percent of which will be pre-grant reviews.

The table below summarizes the total projected preventative compliance review workload for FY 2004 - FY 2006:

Preventative Compliance Reviews Workload

Status/Activity	<u>Actual FY 2004</u>	<u>Projected FY 2005</u>	<u>Projected FY 2006</u>
Beginning Inventory	2026	2464	2645
New Reviews	2845	2559	2610
Total Workload	4871	5023	5255
Complaints Closed	2407	2378	2578
Ending Inventory	2464	2645	2677

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 approximately 460 cases in both FY 2005 and FY 2006.

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. 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 FAQ for the OCR website; provision of public education and information documents targeted to specific health care service providers 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 and 2004 illustrates OCR's training/public education efforts that include a variety of activities. OCR cosponsored these conferences in each year in conjunction with the Georgia Department of Human Resources and USDA to provide training and education regarding the rights and obligations arising under the authorities enforced by OCR. Caseworkers, supervisors, advocates, community representatives, consumers, and other interested parties attended. The conferences 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. Many of the workshops were developed and conducted by OCR staff addressing OCR's priority areas, including the Privacy Rule. The Director of OCR was the keynote speaker for the conference. The information and training provided at the conference enabled 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 2006 budget submission 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. Examples of OCR's work with other Federal agencies and state and local organizations and groups include:

- Due to efforts by OCR and advocacy groups, a freeze in Michigan's primary program used to place disabled persons in the community placement was lifted in November 2003. If this freeze had been implemented, hundreds of disabled persons annually would have had no option but to be institutionalized contrary to the "integration mandate" of Title II of the ADA (*Olmstead* decision).
- Working with OCR and CMS in an attempt to implement the *Olmstead* decision, Wisconsin took receivership of an Immediate Care Facility for People with Mental Retardation Program (ICF/MR) in Milwaukee, closed the facility, and moved over 90 percent of the residents to the community. Further, in continuing *Olmstead* efforts by decreasing institutionalization and increasing community placement, Wisconsin began downsizing one of the three state Developmental Disability Centers.

- OCR joined the CMS Associate Regional Administrator to reach over 200 advocates through presentations at the New Mexico Freedom Day event. OCR discussed the status of State *Olmstead* planning and implementation, and CMS talked about CMS grant opportunities in home and community-based services including "Money Follows the Person."

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 Jersey Department of Health and Senior Services, Office of Minority and Multi-cultural Health to engage in training and outreach with State policy leaders and other stakeholders on health disparities research and community-based promising practices, including co-sponsoring and presenting at a conference on Minority and Health Data, "Using Data to Tell Your Story."
- OCR's Region IV office in Atlanta collaborated with the National Conference for Community and Justice, the Aetna Foundation, Inc., Pfizer Foundation, Inc., Florida Department of Health, North Broward Hospital District, Holy Cross Hospital, and Nova Southeastern University to co-sponsor a 2004 health disparities conference with the theme, "Closing the Disparities Gap in Healthcare: The Role of Community Organizations and Leaders." OCR staff conducted workshops at the conference, which was attended by over 300 representatives from faith-based groups, local organizations, advocacy groups, and health care providers.
- In Illinois, OCR's Region V office, in partnership with CMS, HRSA, the HHS Office of Minority Health, Illinois Department of Public Health, Illinois Health Care Consortium, and the Health and Medicine Policy Research Group, hosted a "Zero Health Disparities: Building Capacity Through Partnership" conference in 2004 to educate diverse stakeholders throughout the city of Chicago about health disparities and the barriers to equal access and outcomes to health care.
- OCR's Region VI conducted workshops on the interplay of civil rights laws with HIV/AIDS issues faced by Native Americans at the Circle of Harmony Conference hosted by the Albuquerque Area Indian Health Board in New Mexico, attended by people living with HIV/AIDS, policymakers, and other public officials and leaders.

- OCR's Region IV joined the Mississippi Department of Health and Jackson State University, and Historically Black College and University (HBCU), to co-sponsor "Eliminating Health Disparities in Mississippi: Concepts and Measures." OCR organized and facilitated a plenary session and conducted three of the eight workshops at the two-day event, attended by 360 community representatives, researchers, policymakers, administrators, and students.
- In 2004, OCR's Region III office co-sponsored the Fourth Summit on Eliminating Racial and Ethnic Health Disparities with the Center for Minority Health at the University of Pittsburgh's Graduate Center of Public Health, the Veterans Administration, and the Maurice Falk Medical Fund. The two-day event, well attended by many health care providers, included valuable discussion of the roles providers play in health disparities.
- Region I staff participated in a Regional Tribal Consultation in conjunction with the Regional Director and his staff. Staff provided general information about OCR and civil rights to tribal representatives, visited the Maine Tribes on the reservations, and participated in subsequent conference calls with the Tribes to discuss potential civil rights issues. Region I has followed up on several issues brought forth by the Tribes, including providing Privacy Rule technical assistance and information about potential civil rights violations in the administration of the uncompensated care pool/charity care in Maine and Massachusetts.
- 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.
- OCR Region X staff presented an exhibition of information materials at the annual "Wellness Village" meeting hosted by the African American Health Coalition in Portland, Oregon on October 18, 2003 in cooperation with the U.S. Public Health Service Office of Minority Health. The African American Health Coalition, Inc. is a nonprofit organization that provides health education and promotion activities in the Portland area and is actively involved in advocacy and research, with a focus on racial health disparities issues. This effort allowed OCR to expand its outreach regarding health disparities to the African American community in the largest metropolitan area in Oregon.

Outreach - MEPA/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 its 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 is an example of OCR's outreach and technical assistance efforts in this area:

- 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 plan to conduct similar training in Washington and Oregon in this fiscal year.

LEP Education/Outreach

OCR has conducted numerous public education and awareness outreach activities to educate LEP 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 collaboration with the South Carolina Hospital Association, beginning in July 2003, over 30 of the Association's 97 members have agreed voluntarily to work with OCR to develop language assistance programs and procedures to ensure the provision of effective language assistance for LEP patients and their families. OCR is providing technical assistance to each member hospital participating in this initiative, and will assist them in developing and implementing appropriate language assistance programs and policies.
- HRSA, OMH, and OCR jointly presented a satellite broadcast titled, "Cross-Cultural Communication in Health Care: Building Organization Capacity." The satellite broadcast brought together national experts from organizations recognized for their promising practices in delivering linguistic services. The broadcast provided a guide for organizations planning and delivering linguistically competent care and covered successful approaches, resources, and tools. The broadcast reached more than 400 sites.
- 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 of Virginia 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.

The following are examples of the variety of methods OCR uses in its outreach efforts:

- In Region I, OCR staff helped plan, and were panelists, for the Lowell Institute Asian American Forum sponsored by the South Cove Community Health Center on "Civil Rights and Asian Americans." The focus of OCR's presentation was on Title VI, LEP Guidance, and Health Disparities. An OCR panelist also responded to many questions from the audience in three Chinese dialects (Cantonese, Mandarin, Toishanese) and English. The forum was well publicized, including placement of bilingual advertisements and press releases in Chinese language news media. The event was also prominently covered in these outlets with pictures and in-depth articles. Other speakers focused on employment, health and safety, and immigration rights and advocacy. Over 100 social service workers, health and mental health providers, community leaders, advocates, and persons with LEP who were of Asian or Chinese ethnicity attended.
- Region I staff participated in a broadcast radio interview on LEP issues at Spanish radio station Poder 1110-AM in Providence, RI. This is one of the largest Spanish radio stations in the region. The station estimated that the audience for this program was 50,000 to 60,000 listeners. A bilingual Region I staff member informed the Latino listeners about their rights under Title VI and provided information about interpreter services available in the area when they are seeking health care. According to market research conducted by the radio station, there are approximately 75,000 to 100,000 Latinos currently living in Rhode Island. They estimate that 72 percent of them listen to Poder 1110-AM on a regular basis. Region I has already received several inquiries as a result of this program.

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.

OCR has engaged in many outreach and technical assistance activities for TANF agencies, other providers and advocacy organizations. For example, OCR worked with ACF and the National Institute for Literacy to film a videotaped presentation about OCR's guidance on TANF and disability issues. The videotape will be distributed throughout the country to adult basic education and literacy providers, who often provide services to TANF clients.

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 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. OCR also will continue to operate a toll-free call center to answer public inquiries about the Rule.

The table below summarizes the projected FY 2004 to FY 2006 public education, outreach, and voluntary compliance workload which reflects both Privacy Rule outreach and individual civil rights projects with recipients, providers, and other organizations. The number of civil rights outreach activities shown in the table decreases between FY 2004 and the subsequent two fiscal years, in part because OCR's strategy is increasingly to develop a more comprehensive approach to civil rights outreach, counting as a single unit projects that may include several inter-related public education and technical assistance activities which previously would have been counted independently.

Public Education, Outreach, and Voluntary Compliance

	<u>Actual FY 2004</u>	<u>Projected FY 2005</u>	<u>Projected FY 2006</u>
Outreach Activities Civil Rights	490	390	390
Outreach Activities Privacy	260	260	260

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. From April 2003 through the end of FY 2004, over 32,000 phone inquiries concerning the Privacy Rule were handled, including over 19,000 by Call Center operators and over 13,000 by OCR headquarters and regional staff. Based on sampling in the Spring of 2004, OCR estimates that it also receives as many as 20,000 calls per year to its toll-free civil rights phone line. The number of outreach activities in the table above reflects only speaking engagements and public education and outreach projects. It does not include the phone calls noted above.

COMPLIANCE LEGAL COUNSEL - OGC (CIVIL RIGHTS)

OCR's budget submission 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 civil rights laws, the Privacy Rule, 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 2006. This 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 2006, 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 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 2006, the same number of FTE as projected in FY 2004 and FY 2005. 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 further 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 agencies 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 component agencies and program administrators to make more timely and informed decisions regarding their operations. OCR will spend \$195,000 to support these efforts in FY 2006.

The Program Management Office (PMO) and the Program Support Center (PSC) have commenced operations and maintenance (O&M) activities for UFMS in FY 2004. The PMO and the PSC will provide the O&M activities to support UFMS. The scope of proposed O&M services includes post-deployment support and ongoing business and technical operations services. Post-deployment services include supplemental functional support, training, change management and technical help-desk services. Ongoing business operation services involve core functional support, training and communications, and help-desk services. Ongoing technical services include the operations and maintenance of the UFMS production and development environments, ongoing development support, and backup and disaster recovery services. OCR will spend \$80,000 to support these efforts in FY 2006.

Enterprise Information Technology Fund

OCR's request includes funding to support the President's Management Agenda expanding E-Gov initiatives and Departmental enterprise information technology initiatives. Agency funds will be combined with resources in the Information Technology Security and Innovation Fund to finance specific information technology initiatives identified through the HHS strategic planning process and approved by the HHS IT Investment Review board. These enterprise information technology initiatives promote collaboration in planning and project management and achieve common goals such as secure and reliable communications and lower costs for the purchase and maintenance of hardware and software. Examples of HHS enterprise initiatives currently being funded are Enterprise Architecture, Enterprise E-mail, Network Modernization, and Public Key Infrastructure.

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

Prior to Reorganization

	<u>2004 Actual</u>
Headquarters:	
Office of the Director and Deputy Director	24
Office of the General Counsel (Civil Rights Division)	8
Program, Policy and Training Division.	21
Resource Management Division	11
Voluntary Compliance and Outreach Division	8
Regional Offices	<u>172</u>
Total, OCR	244

After Reorganization

	<u>2005 Estimate</u>	<u>2006 Estimate</u>
Headquarters:		
Office of the Director and Principal Deputy	6	6
Office of the General Counsel (Civil Rights)	9	9
Civil Rights Division	27	27
Management Operations Division.	24	24
Privacy Division	19	19
Regional Offices	<u>182</u>	<u>182</u>
Total, OCR ⁶	267	267

Average GS Grade

2001.....	11.6
2002.....	11.6
2003.....	11.6
2004.....	11.8
2005.....	11.8

OCR completed a reorganization of the headquarters in January 2005 to streamline operations and align staff with the Civil Rights and HIPAA Privacy Rule programs. The restructuring that occurred prior to the reorganization resulted in vacancies not being filled for much of the FY 2004, but OCR is now aggressively hiring to fill vacancies in the new organizational structure.

⁶The FTE level does not include one reimbursable FTE projected in each of FY 2005 and FY 2006.

**OFFICE FOR CIVIL RIGHTS
DETAIL OF POSITIONS**

	2004	2005	2006
	<u>Actual</u>	<u>Estimate</u>	<u>Estimate</u>
Executive Level I.....	---	---	---
Executive Level II.....	---	---	---
Executive Level III.....	---	---	---
Executive Level IV.....	---	---	---
Executive Level V.....	---	---	---
Subtotal.....	---	---	---
Total - Executive Level Salaries.....	---	---	---
Total - SES.....	4	5	5
Total - SES Salaries.....	<u>\$457,945</u>	<u>\$605,348</u>	<u>\$671,514</u>
GS-15.....	21	28	28
GS-14.....	30	31	31
GS-13.....	35	40	40
GS-12.....	85	94	94
GS-11.....	26	25	25
GS-10.....	1	2	2
GS-9.....	11	9	9
GS-8.....	7	7	7
GS-7.....	9	12	12
GS-6.....	3	3	3
GS-5.....	7	7	7
GS-4.....	2	3	3
GS-3.....	3	1	1
GS-2.....	---	1	1
GS-1.....	---	---	---
Subtotal.....	<u>240⁷</u>	<u>262</u>	<u>262</u>
Total - GS Salary.....	\$18,442,403	\$19,731,652	\$20,349,486
<hr/>			
Average GS grade.....	11.6	11.8	11.8
Average GS salary.....	\$74,843	\$75,312	\$77,670
Average Special Pay.....	---	---	---

⁷ Reflects the number of positions encumbered as of the end of FY 2004.

BUDGET AND PERFORMANCE CROSSWALK
(Dollars in Thousands)

Performance Program Area	Budget Activity	FY 2004 Enacted	FY 2005 Appropriation	FY 2006
Civil Rights and Privacy Rule Compliance	Access to nondiscriminatory health care (page 62)	\$19,776	\$17,817	\$17,802
	Access to nondiscriminatory social services (page 64)	\$3,390	\$4,124	\$4,122
	Access to community-based services and nondiscriminatory treatment for persons with disabilities (page 65)	\$8,239	\$10,248	\$10,177
Total		\$31,405	\$32,195	\$32,105

Detail of Full Cost

In FY 2004, 93 percent of OCR's actual obligations were associated with measures and targets in the three program objectives. Approximately 92 percent of the FY 2005 budget and the projected FY 2006 budget will be associated with the program objectives. The slight drop from 93 percent in FY 2005 and the proportion projected for FY 2006 is attributed to the rise in the uninvestigated complaint workload which has not been included in any of the program objectives for any year. However, OCR remains well above the 72 percent of OCR's actual obligations associated with measures and targets in the three program objectives for FY 2003.

See the table on the following page for a summary of full cost by objectives.

Full Cost Table
(Dollars in Millions)

Performance Program Area	FY 2004	FY 2005	FY 2006
Civil Rights and Privacy Rule Compliance			
Measure 1A: Number of corrective actions, no violation findings, reviews, outreach, consultations, technical assistance, and collaborative activities addressing access to and receipt of nondiscriminatory quality health care and treatment, while protecting the integrity of HHS Federal financial assistance, and protecting the privacy of health information.	\$19.8	\$17.8	\$17.8
Measure 1B: Number of corrective actions, no violation findings, reviews, outreach, consultations, technical assistance, and collaborative activities addressing access to and receipt of nondiscriminatory social services, while protecting the integrity of HHS Federal financial assistance.	\$3.4	\$4.1	\$4.1
Measure 1C: Number of corrective actions, no violation findings, reviews, outreach, consultations, technical assistance, and collaborative activities addressing access to and receipt of community-based services and nondiscriminatory treatment for persons with disabilities, while protecting the integrity of HHS Federal financial assistance.	\$8.2	\$10.2	\$10.2
Total of Full Cost	\$31.4	\$32.1	\$32.1

Summary of Full Cost of Performance Program Areas (Dollars in Millions)

Performance Program Area	FY 2003	FY 2004	FY 2005	FY 2006
Compliance ⁸ - Total Full Cost	\$23.7	\$31.4	\$32.1	\$32.1
Compliance - Total Budget	\$33.0	\$33.9	\$35.0	\$35.0

Detail of Performance Analysis

In the Final Revised FY 2003 Performance 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 2004, OCR is reporting on a substantial proportion of its complaint, review, outreach, public education, and technical assistance and consultation work, rather than on smaller issue-specific subsets. Further, for the Revised Final FY 2004 Plan, OCR added Privacy Rule and Medicare pre-grant certification work to the Health Care objective and added pre-grant work to the disability objective as well. Therefore, for FY 2004 and initially for FY 2005 and FY 2006, OCR will report on the entirety of its traditional civil rights and privacy complaints, pre- and post-grant review, outreach, public

⁸ Includes civil rights nondiscrimination and Privacy Rule compliance.

education, and technical assistance/consultation work, thereby including measures and targets that are supported by associating the full cost of the program to approximately 92 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 modified targets set for FY 2004, FY 2005, and the initial FY 2006 targets. As mentioned above, aggregated into the modified health care targets set for FY 2004, FY 2005, and FY 2006 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 18 months of the Privacy Rule compliance program. OCR has set initial sub-set targets projected for privacy for FY 2004, FY 2005, and FY 2006 because OCR believes it is important to measure and report on achievements in implementing this new authority. However, the targets for FY 2005 and FY 2006 may yet be subject to considerable change. In FY 2005 and FY 2006, 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: TO INCREASE NONDISCRIMINATORY ACCESS AND PARTICIPATION IN HHS PROGRAMS AND PROTECT THE PRIVACY OF PROTECTED HEALTH INFORMATION

Targets & Accomplishments for FY 01 - FY 04 and Plans for FY 05 Through FY 06 ⁹

Objectives	FY 01		FY 02		FY 03		FY 04		FY 05		FY06	
	Target	Actual	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 and FY 06 Plans												
A. Health Care			752	1194	770	783	6500 CR ¹⁰ :1470 P ¹¹ : 5030	12725 CR: 2191 P: 10534	6600 CR: 1500 P: 5100	— CR: P:	6766 CR: 1538 P: 5228	—
B. Social Services			598	691	614	617	295	426	400	---	400	---
C. Community-based Services/ Disability			251	250	258	491	1265	1474	1432	---	1432	---
Total Revised Targets and Accomplishments			1601	2135	1642	1891	8060	14625	8432	---	8598	--

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

OCR's actual results for FY 2004 were increased as a result of the implementation of the HIPAA Privacy Rule in April 2003. Telephone technical assistance concerning the Rule totaled 6,008 in FY 2004, and is included in the results for objective A. To respond to the large number of calls from consumers and health care providers, OCR dedicated considerable resources to these activities following the implementation of the Privacy Rule. OCR's experience in the last quarter of the fiscal year leads to the conclusion that the number of calls will decline over the course of

⁹ The shaded areas in this table represent the fact that after FY2003, OCR's measures changed, subsuming the measures under OCR's former more narrowly-focused program objectives in the upper left-hand quadrant of the table into the new broad health care and social services nondiscrimination objectives in the bottom half of the table.

¹⁰ CR = Civil Rights Nondiscrimination

¹¹ P = HIPAA Privacy Rule

FY 2005 while the number of complaint cases will grow at roughly three to five percent. The decrease in telephone inquiries will allow OCR to concentrate on the growing backlog of complex cases requiring investigation. Although OCR is estimating that the total number of transactions will decrease from actual FY 2004 results, the average time spent per transaction will increase as our investigators spend more time on complex investigations and less time on routine calls.

The targets in FY 2005 and FY 2006 for the third program objective (social services - Objective B) have been set below accomplishments in 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. In addition, the continuing need to process the unprecedented influx of Privacy Rule complaints following the April 14, 2003 compliance date has resulted in allocating resources previously anticipated for the traditional civil rights compliance workload, thereby 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 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: To increase access to and receipt of nondiscriminatory quality health care and treatment and protecting the privacy of personally identifiable health information, while protecting the integrity of HHS Federal financial assistance.</i>			Budget - Pages 24-32, 36-37, 39-50
1. Number of corrective actions, no violation findings, reviews, outreach, consultations, technical assistance, and collaborative activities. (CR = Civil Rights, P = Privacy)	FY 06: 6766 (CR: 1538) (P: 5228) FY 05: 6600 (CR: 1500) (P: 5100) FY 04: 6500 (CR: 1470) (P: 5030) FY 03: 770 (CR only)	FY 06: (CR:) (P:) FY 05: (CR:) (P:) FY 04: 12725 (CR: 2191) (P: 10534) 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 06: \$17,802 FY 05: \$17,817 FY 04: \$19,776 FY 03: \$9,342		HP: Eliminate Health Disparities # 1, 2, 3, 5, and 7: HHS Strategic Goal

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 IOM and Commonwealth Fund report¹², 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.

Overview of the Revised Goal I. Objective A. Measure

1: Number of corrective actions, no violation findings, reviews, outreach, consultations/technical assistance, and collaborative activities.

Performance: *OCR exceeded its target of 6,500 by 12,725.* This outcome measure is the same in FY 2004 through FY 2006, as it was in FY 2003. However, the scope has changed given the inclusion in the targets set under this objective for FY 2004 through the FY 2006 of Privacy Rule and civil rights complaints, public education and outreach, and the handling of several thousand Privacy Rule hotline and other telephone inquiries for technical assistance and guidance. The targets also include half of OCR's performance 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.

¹² *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.

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 26-28, 31-32, 35-37, 40-45, 48-50
1. Number of corrective actions, no violation findings, reviews, outreach, consultations, technical assistance, and collaborative activities.	FY 06: 400 FY 05: 400 FY 04: 295 FY 03: 614	FY 06: FY 05: FY 04: 426 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 06: \$4,122 FY 05: \$4,124 FY 04: \$3,390 FY 03: \$5,188		# 6 and 7: HHS Strategic Goals

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 (MEPA/Section 1808) and on ensuring equal access to TANF welfare reform programs. Working with 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. Measure

- 1. Number of corrective actions and no violation findings, reviews, outreach, consultations, technical assistance, and joint projects.**

Performance: *OCR exceeded its target of 295 by 131.* 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. Last 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 page 39 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.

In addition, as noted previously, the continuing need to process the unprecedented influx of Privacy Rule complaints following the April 14, 2003 compliance date has resulted in allocating resources previously anticipated for the traditional civil rights compliance workload, thereby affecting target setting under each of the objectives. The effect on social service targets is considerable.

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 22-24, 33-34, 41-46, and 50
1. Number of corrective actions, no violation findings, reviews, outreach, consultations, technical assistance, and collaborative activities.	FY 06: 1432 FY 05: 1432 FY 04: 1265 FY 03: 258	FY 06: FY 05: FY 04: 1474 FY 03: 491 FY 02: 138 FY 01: 244 FY 00: 117	“One” HHS Outcome Goals 2, 5, and 8
Total Program Funding (\$ in 000's)	FY 06: \$10,177 FY 05: \$10,248 FY 04: \$8,239 FY 03: \$9,158		# 3 and 6 : HHS Strategic Goal

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 through FY 2006.

Overview of the Revised Goal I. Objective C. Measure

1. Number of corrective actions and no violation findings, reviews, outreach, consultations, technical assistance, and joint projects.

Performance: *OCR exceeded the target of 1,265 for this objective by 209.* The target for this objective in FY 2004 through FY 2006 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. Eighty-five percent of cases closed in FY 2005 and 2006 will be closed within the number of days specified in the target. 1. Average age of all case closures.	FY 06: 170 FY 05: 170 FY 04: 255 FY 03: 380	FY 06: FY 05: FY 04: 172 FY 03: 257 FY 02: 399 FY 01: 388 FY 00: 308 FY 99: 247 FY 98: 244	Budget - Pages 20-21, 37-38, 43, and 51-52
Total Program Funding (\$ in 000's)	FY 06: \$27,000 FY 05: \$27,000 FY 04: \$27,348 FY 03: \$16,764		 # 8: HHS Strategic Goal

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, in FY 2004 through FY 2006, OCR has included pre-grant reviews 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 through the FY 2006 Plan, the operational efficiency objective also includes the processing of Privacy Rule complaints which are expected to take less time to process than many more complex civil rights complaints. OCR will use as its efficiency measure that 85 percent of all cases closed in FY 2005 and FY 2006 will be closed within the number of days specified in the target. This goal has been changed for FY 2005 and FY 2006 because OCR is placing greater emphasis on resolving older cases, which tend to skew the results. 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. Average age of all case closures

Performance: *For cases that OCR closed in FY 2004, the average case age was 172 days at the time of closure.* For FY 2004 through FY 2006, OCR includes all closed civil rights complaints (other than monitoring), pre-grant reviews, 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.

Changes and Improvements Over Previous Year

FY 2005 and FY 2006 performance measurement is based on changes made in the plan in FY 2004 that were a continuation of the refinements made in FY 2003. Below is a chronological discussion of the changes made from FY 2003 to FY 2004.

In the Final FY 2003 Annual Performance Plan, OCR restructured the goals and measures in the agency's annual 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 covered 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 for FY 2004 through FY 2006.

Modification of the Revised Final FY 2004 Performance Annual 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, as well as to improve OCR's ability to set targets and show results for the vast majority of its work, OCR has for FY 2004 and will continue for FY 2005 and FY 2006 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. OCR believes that its 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 nondiscrimination 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 personal 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 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 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, the Final FY 2005 Plan, and the FY 2006 Plan reflect a single program measure for which OCR can currently collect data and report on accomplishments.

OCR is working to continuously improve its 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, PIMS 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 novel and complex learning and work environment for staff, and OCR has continued an aggressive training program for system users on the management of knowledge and case information.

OCR also has developed a 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:

- ▶ number of reviews conducted;
- ▶ number of corrective actions and no violation findings from review and complaint investigations;
- ▶ 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);
- ▶ 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
- ▶ 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 is 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.

Links to HHS and OCR Strategic Plan

OCR's Results Act Plan is aligned with and supports the HHS Strategic Plan (see chart below), the "One HHS" ten Department-wide outcome goals, and OCR's Strategic Plan.

HHS STRATEGIC OBJECTIVE	OCR PERFORMANCE 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: Increase access to and receipt of nondiscriminatory quality health care and treatment and protection of the privacy of personally-identifiable health information, while protecting the integrity of HHS Federal financial assistance.	Objective B: Increase access to and receipt of nondiscriminatory social services, while protecting the integrity of HHS Federal financial assistance.	Objective C: 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.	Objective A: 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	*
Goal 5: Improve the quality of health care services.	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 performance 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.

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 SMJPA 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 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 OMH, CDC, the Agency for Healthcare Research and Quality, the Department of Housing and Urban Development, 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-based 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.

Data Verification and Validation

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

Briefly, as background of its data collection efforts, OCR established initial FY 1998 baseline data for the majority of its case-related outcome measures and has updated these measures each year. 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 initial 2004 Performance 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 now is part of the health care access objective (Objective A) in the plans for FY 2004 through FY 2006, as noted previously, as it is essential to measure all of its 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 run daily reports and verify closure data each month by reviewing inconsistencies in the data and information in closure letters. Weekly conference calls inform the regional staff of reports to run to verify their own data, provide checklists for validating data and discuss additional edit checks that have been or should be put into the system.

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) it has 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 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.

OCR will determine, at a later date, which, if any, of the developmental measures to adopt in the future. 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 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.

Performance Measurement Linkages

All of the performance objectives are directly linked to OCR's FY 2006 budget. All of the performance-related charts in the supporting materials for this submission reflect a budget level of \$34,996,000. 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 cost accounting, as noted in the previous section on data verification and validation, OCR projects adding a resource entry module into PIMS to enable entry by staff of time and resources expended on individual compliance transactions. This pilot is pending consultation with the Union. Once this system is in place, OCR management will be able to review actual time and resources used per transaction on a comparative basis nationwide and make decisions concerning training needs, assignment of work, changes in processes, and allocation of resources.

Summary of Measures Table ¹³

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, OCR has 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.

	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 ¹⁴	3	1
FY 2003	17 (11)	14 (11)	---	3	4	3	1
FY 2004	4	3	---	1	4	4	0
FY 2005	4 ¹⁵	3	0	1	data in late Fall 05	data in late Fall 05	data in late Fall 05
FY 2006	4	3	0	1	data in late Fall 06	data in late Fall 06	data in late Fall 06

¹³ 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.

¹⁴ 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.

¹⁵ See discussion on pages 68-72 concerning the reduction in measures from the Final FY 2003 Plan.

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