



**DEPARTMENT
of HEALTH
and HUMAN
SERVICES**

Fiscal Year

2007

Office for Civil Rights

*Justification of
Estimates for
Appropriations Committees*



DEPARTMENT OF HEALTH & HUMAN SERVICES OFFICE OF THE SECRETARY

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

Dear Reader:

I am pleased to present the Office for Civil Rights' (OCR) performance-based Fiscal Year 2007 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 2005-2010 Strategic Plan. This justification includes the FY 2007 Annual Performance Plan and FY 2005 Annual Performance Report as required by the Government Performance and Results Act of 1993, along with a direct link of the budget discussion with program performance.

OCR's requested budget will ensure our ability to protect the public's right to equal access and opportunity to participate in and receive services in all the Department of Health and Human Services' (HHS) programs without facing unlawful discrimination, and to protect the privacy of individuals with respect to their personal health information. OCR's performance objectives are in line with HHS's objectives for transforming the healthcare system and protecting life, family, and human dignity, including: increasing access to high quality, effective health care; promoting the economic self-sufficiency and well-being of vulnerable families, children and individuals; and reducing disparities in ethnic and racial health outcomes.

Lastly, our Program Assessment Rating Tool (PART) submission to the Office of Management and Budget demonstrates our continued commitment to effectively and efficiently use our human capital to achieve results in support of our nondiscrimination and privacy compliance mission. OCR has made considerable progress in achieving results to support HHS-wide initiatives to improve the health and well-being of the public. To keep up this momentum during FY 2006 and FY 2007, as in FY 2005, individual performance plans at all levels of OCR's leadership and staff will be focused on achieving the goals and objectives set out in our performance plan and PART submission. In this way, everyone in OCR will be working together to achieve our shared objectives in protecting civil rights and the privacy of health information.

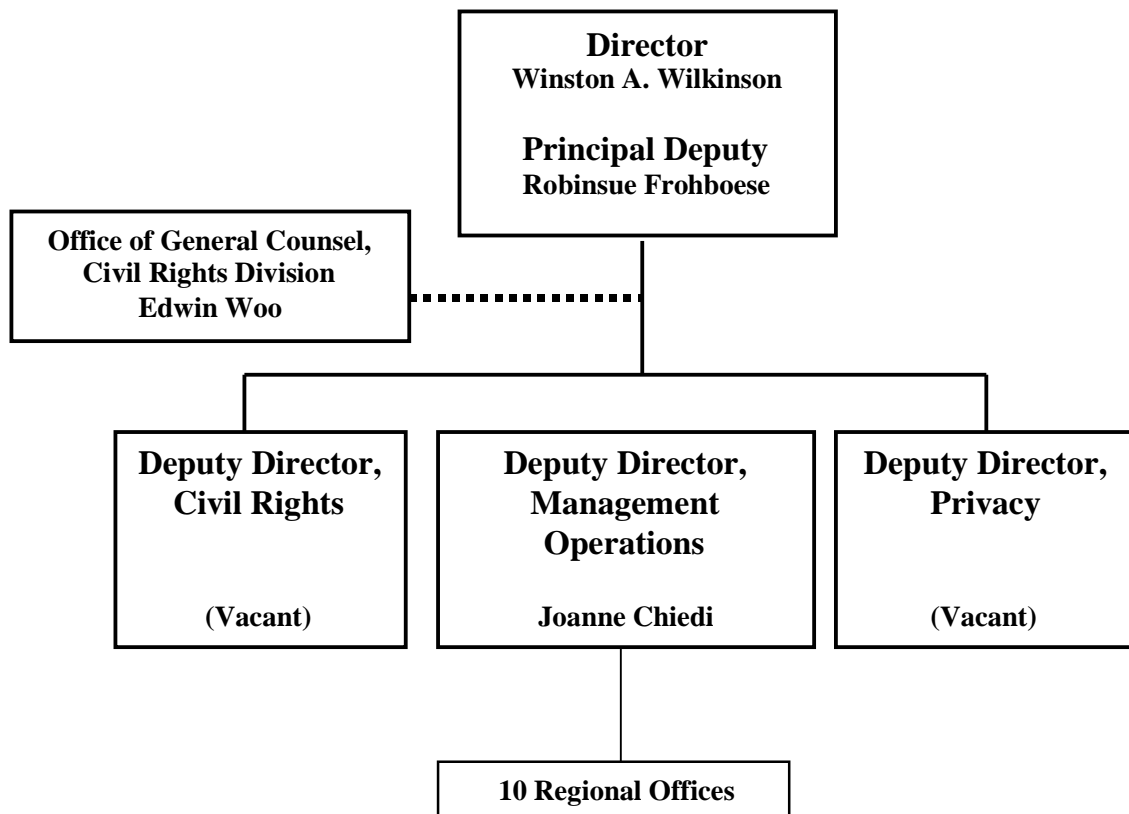
Winston Wilkinson, J.D.
Director

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

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Department of Health and Human Services Office for Civil Rights



PERFORMANCE BUDGET OVERVIEW

Statement of Mission

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 from 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 nearly \$640 billion budget from which Federal financial assistance is provided to a vast array of health and human service programs. 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. In addition, under the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, OCR has responsibility for ensuring the privacy practices of several million health care providers, plans, and clearinghouses, including those that receive Federal financial assistance through HHS, adhere to federal privacy requirements. Within this context, OCR's mission and responsibilities are broad and inclusive and, necessarily, its activities involve many dimensions and challenges given the number of authorities for which OCR has enforcement responsibility.

Discussion of Strategic Plan

OCR's civil rights and health information privacy compliance objectives and cooperative activities within the Department play a crucial role in support of all eight goals of 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 individually identifiable health information advances, and is integral to, the achievement of a wide spectrum of the HHS strategic goals 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. OCR also supports a majority of the HHS Twenty Department-wide Objectives including, but not limited to: increasing access to high quality, effective health care; promoting the economic self-sufficiency and well-being of vulnerable families, children and individuals; and reducing disparities in ethnic and racial health outcomes.

As stated in OCR's Program Assessment Rating Tool (PART) submission to the Office of Management and Budget (OMB), OCR has two strategic goals to accomplish its mission. OCR's first strategic goal is to ensure compliance and to increase awareness and understanding

of Federal laws requiring nondiscriminatory access to HHS programs and protection of the privacy of individually identifiable health information. This goal has two long-term measures and targets: (1) to increase the rate of resolution for civil rights and privacy cases and new Medicare application reviews to 100 percent of cases received per year by end of FY 2012 and (2) to increase the number of covered entities that make substantive policy changes as a result of OCR intervention. This goal also has an annual target: to provide information and training to 31,250 individuals per year. OCR's second goal addresses efficiency by increasing the number of cases / reviews resolved per FTE assigned. The table entitled "Links to HHS Strategic Plan" on page eight shows how the two goals and four program objectives and one management objective in OCR's Performance Plan support all eight "One HHS" program goals focused on protecting and improving the health and well-being of the American public.

Moreover, OCR's strategic goals, and its performance budget, also support all major priorities outlined in the Secretary's 500-Day Plan. In particular, by ensuring that people have equal access to and the opportunity to participate in and receive services from all HHS programs without facing unlawful discrimination, and that the privacy of their health information is protected while ensuring access to care, OCR supports the Secretary's goals of: transforming the health care system; modernizing Medicare and Medicaid; advancing medical research; securing the homeland; protecting life, family and human dignity; and improving the human condition around the world. The table titled "Links to Secretary Leavitt's 500-Day Plan" on page nine shows how the two goals and four program objectives and one management objective in OCR's Results Act Plan contribute to the above-stated goals in the Secretary's 500-Day Plan.

In FY 2007, within the broad and inclusive objectives of the Government Performance and Results Act (GPRA), OCR will continue to address "One HHS" program goals and high priority areas – nondiscrimination in health services programs, 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 individually identifiable health information while ensuring access to care. In doing so, OCR's activities enhance the quality of services funded by the Department and the benefit of those services, by working with covered entities to identify barriers and implement practices that can avoid potentially discriminatory impediments to quality services and privacy breaches. The Department's goal of providing quality health and human services cannot be met when

individuals in need of services do not receive them as a result of practices that violate their fundamental rights of nondiscrimination or privacy.

OCR's activities support initiatives focusing on expanding opportunities and freedom for all Americans, ensuring the privacy of individually identifiable health information, and improving the health of the public through the HHS Strategic Plan and Secretary Leavitt's 500-Day Plan. In relation to the latter initiative, OCR's non-discrimination and Privacy Rule activities aim to maintain and increase access to health care, improve the quality of life, and eliminate health disparities among different segments of the population.

Links to HHS Strategic Plan

OCR's performance plan and PART are aligned with and support the HHS Strategic Plan (see chart below).

HHS STRATEGIC GOAL	OCR PERFORMANCE GOALS/OBJECTIVES				
	Goal 1: To ensure compliance and to increase awareness and understanding of Federal laws requiring nondiscriminatory access to HHS programs and protection of the privacy of individually identifiable health information.				Goal 2: To enhance operational efficiency
	Objective A: To increase access to and receipt of nondiscriminatory quality health and human services while protecting the integrity of HHS Federal financial assistance.	Objective B: To protect the privacy of personally identifiable health information for healthcare consumers.	Objective C: To provide information and training to representatives of health and human service providers, other interest groups, and consumers.	Objective D: To increase the number of covered entities which make substantive policy change as a result of intervention and / or review.	Objective: To increase the number of cases / reviews resolved per FTE assigned. (See note at the top of the following page.)
Goal 1: Reduce the major threats to the health and well-being of Americans.	X	X	X		X
Goal 2: Enhance the ability of the Nation's health care system to effectively respond to bioterrorism and other public health challenges.	X	X	X		X
Goal 3: Increase the percentage of the Nation's children and adults who have access to health care services, and expand consumer choices.	X	X	X	X	X
Goal 4: Enhance the capacity and productivity of the Nation's health science research enterprise.	X	X	X		X
Goal 5: Improve the quality of health care services.	X	X	X	X	X
Goal 6: Improve the economic and social well-being of individuals, families and communities, especially those most in need.	X	X	X	X	X
Goal 7: Improve the stability and healthy development of our Nation's children and youth.	X	X	X	X	X
Goal 8: Achieve excellence in management practices.	X	X	X	X	X

The PART Goal 2 objective focuses on improving operational efficiency and therefore increases the proportion of resources being devoted to all issues. As such, the operational efficiency goal supports the entire HHS Strategic Plan goals, noted above, because success under this 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.

Links to Secretary Leavitt’s 500-Day Plan

OCR’s performance plan and PART submission are aligned with and support Secretary Leavitt’s 500-Day Plan (see chart below).

SECRETARY’S 500 DAY PLAN OBJECTIVES	OCR’S PERFORMANCE GOALS/OBJECTIVES				
	Goal 1: To ensure compliance and to increase awareness and understanding of Federal laws requiring nondiscriminatory access to HHS programs and protection of the privacy of individually identifiable health information.				Goal 2: To enhance operational efficiency
	Objective A: To increase access to and receipt of non-discriminatory quality health and human services while protecting the integrity of HHS Federal financial assistance.	Objective B: To protect the privacy of personally identifiable health information for healthcare consumers.	Objective C: To provide information and training to representatives of health and human service providers, other interest groups, and consumers.	Objective D: To increase the number of covered entities which make substantive policy change as a result of intervention and / or review.	Objective: To increase the number of cases / reviews resolved per FTE assigned.
Transform the Healthcare System.	X	X	X	X	X
Modernize Medicare and Medicaid.	X	X	X	X	X
Advance Medical Research.	X	X	X		
Secure the Homeland.	X	X	X		
Protect Life, Family and Human Dignity.	X	X	X	X	X
Improve the Human Condition Around the World.	X	X	X	X	X

Overview of Performance

As a result of the PART process, OCR recast the agency's performance measures to enhance its focus on performance-oriented goals. This refinement of OCR's performance measures will allow OCR to more consistently measure the effectiveness of its program annually and over the long-term. OCR's internet-based Program Information Management System (PIMS), an automated case management system, captures data in real-time related to complaint processing, Medicare application reviews, outreach and technical assistance. Therefore, OCR can crosswalk measures reported previously, to its current, consolidated PART framework.

In FY 2004, OCR consolidated its reporting into three objectives (Health Care, Social Services, and Community-based Services/Disability). OCR now further refines these measures to capture results on the entirety of its complaint mission areas in a more comprehensive manner. This refinement reflects OCR's commitment to implement the President's Management Agenda, and particularly the priority for increased budget and performance integration.

OCR has organized its PART submission around two overarching strategic goals that directly support the HHS Strategic Plan and the Secretary's 500-Day Plan:

- Goal I To ensure compliance and to increase awareness and understanding of Federal laws requiring nondiscriminatory access to HHS programs and protection of the privacy of individually identifiable health information.

- Goal II To enhance operational efficiency

While this section highlights some prior measures, baselines, and targets, for a complete list of PART goals, measures, and targets see the Detail of Performance Analysis starting on page 53.

* * *

OCR's first strategic goal is to ensure compliance and to increase awareness and understanding of Federal laws requiring nondiscriminatory access to HHS programs and protection of the privacy of individually identifiable health information. Under Goal I, there are four program objectives that support the broad and inclusive program goal of increasing nondiscriminatory access and participation in HHS programs and protecting the privacy of individually identifiable health information:

- Objective A To increase access to and receipt of nondiscriminatory quality health and human services while protecting the integrity of HHS Federal financial assistance

- Objective B To protect the privacy of personally identifiable health information for healthcare consumers

- Objective C To provide information and training to representatives of health and human service providers, other interest groups, and consumers

Objective D To increase the number of covered entities that make substantive policy changes or develop new policies as a result of intervention and / or review

OCR's first strategic goal has a long-term consolidated output measure and target: to increase the rate of resolution for civil rights and privacy cases and new Medicare application reviews to 100 percent of cases received per year by the end of FY 2012. That is, OCR will resolve as many cases / reviews as received each year. The average age of all open cases will be less than one year, excluding those requiring long-term monitoring and those in litigation or administrative enforcement. The actual target is on a graduated scale, which means that the annual improvement rate will decrease over time. The baseline in FY 2003 was 68.2 percent of cases resolved. In FY 2004, OCR slightly exceeded the target for that year of 78 percent. In FY 2005, OCR achieved a rate of 100.4 percent, significantly above the target for that year of 82 percent. In FY 2005, OCR hired temporary employees to assist in the review of new Medicare applications, freeing OCR's Equal Opportunity Specialists to apply greater effort toward reducing the backlog of civil rights complaints. The backlog of new Medicare applications is now at a more manageable level.

OCR has two output measures that support this long-term goal and its related performance target. The first measure is the percentage of civil rights cases and new Medicare application reviews resolved to cases received. The baseline in FY 2003 was 85.1 percent of civil rights cases and reviews resolved. In FY 2004, OCR achieved a rate of 89.1 percent, 3.6 percentage points above the target of 85.5 percent for that year. In FY 2005, OCR achieved a rate of 125.7 percent, 35.8 percentage points above the target of 89.9 percent for that year. The second measure is the percentage of privacy cases resolved to cases received. The baseline is 68.8 percent of privacy cases resolved in FY 2004 because FY 2004 was the first full year since implementation of the Privacy Rule. In FY 2005, OCR achieved a rate of 79.7 percent, 5.5 percentage points above the target of 74.2 percent for that year.

Objective C has an annual output measure and target: to provide information and training to 31,250 individuals per year. The baseline in FY 2005 was 33,118.

OCR's long-term outcome measure tied to Objective D is the number of covered entities that make substantive policy changes or develop new policies as a result of OCR intervention. OCR's performance target for this measure is to increase this number by approximately 5.0 percent per year over the FY 2005 baseline of 1,019.

* * *

OCR's management goal, Goal II as submitted in PART, is to enhance operational efficiency. The long-term measure is to increase the number of cases resolved per assigned FTE. The annual effort towards achieving this measure is designed to meet the HHS Departmental goal of a 10 percent overall program improvement over three years. The target of OCR's management goal is to enhance operational efficiency and is directly tied to OCR's efficiency measure, to resolve 50 cases each year per FTE assigned by the end of FY 2012.

The table on “Links to HHS Strategic Plan” on page eight shows how the two goals and four program objectives and one management objective contribute to outcomes in support of all eight “One HHS” program goals focused on protecting and improving the health and well-being of the American public.

Further, for accountability purposes, OCR is taking steps to link individual performance directly to OCR’s established goals. OCR has incorporated organizational goals in all OCR leadership plans at the GS-15 level and above, and in FY 2006 will cascade these organizational goals into the performance plans for all staff.

The Detail of Performance Analysis on page 53 sets forth all the measures and targets for the relevant past, present, and future fiscal years.

Overview of Budget Request

The Office for Civil Rights requests \$36,283,000 in FY 2007. This is an increase of \$1,637,000 over the FY 2006 Appropriation of \$34,646,000. The requested funding will allow OCR to maintain staffing at approximately 259 FTE, the same level of staffing as provided in the FY 2006 Appropriation, or 8 FTE under OCR's FY 2005 authorized ceiling of 267 FTE. Other increases in the FY 2007 request over the FY 2006 Appropriation level are for rental cost increases and increases in shared costs; all other spending categories reflect no increases over the FY 2006 Appropriation level. This budget maintains the same programmatic focus as provided in the FY 2006 Appropriation.

Specifically, the FY 2007 requested amount of \$36,283,000 would enable OCR to:

- Continue to address key nondiscrimination issues, including the President's New Freedom Initiative, community-based services for persons with disabilities, racial and ethnic health disparities, and Title VI and language access, while continuing to improve responsiveness to the public's questions about, and allegations of non-compliance with, the Privacy Rule.
- Promote privacy protection in the implementation of initiatives to create integrated and interoperable electronic networks for sharing health information, consistent with Secretary Leavitt's 500-day vision for transforming the U.S. health care system.
- Meet annual targets stated in PART and remain on schedule to meet OCR's long-range goal of matching the rate of case resolutions to complaint receipts in the year 2012.

Program Assessment Rating Tool Summary
FY 2006 - 2007
(Dollars in Millions)

Program	FY 2006 Enacted	FY 2007 Request	FY 2006 +/- FY 2007	Narrative Rating
FY 2007 PART				
Office for Civil Rights (OCR)	\$34.65	\$36.28	+\$1.63	Moderately Effective

In FY 2005, OCR underwent the PART process and presented its performance results to OMB. As reflected on the performance reporting web site, www.ExpectMore.gov, OCR earned a PART rating of “Moderately Effective.” The PART process allowed OCR an opportunity to recast its outcome goals and performance measures to more accurately reflect its results-oriented focus. Although some of the newly revised outcome goals and performance measures presented in this submission are refinements of those stated in previous submissions, OCR will continue to use the revised PART-established framework to further refine its performance measures. Based on the FY 2007 PART goals and measures, OCR exceeded its performance targets for FY 2005. Given the 2005 performance, OCR will adjust its targets to ensure they are sufficiently challenging and support continuous improvement. OCR’s PART findings concluded that OCR has a strong purpose and design, is well-managed, and that independent evaluations indicate that OCR is effective and achieving results. OCR will undertake stronger efforts to demonstrate the use of performance information in day-to-day decision-making, including partnership agreements.

OCR is taking the following actions to improve performance:

- Revising performance goals to ensure they are sufficiently ambitious.
- Considering projected performance when making funding decisions.
- Ensuring partnership agreements with other offices of Health and Human Services and other Federal agencies include attainment of long-term and annual measures.

In order to meet the goals set forth in OCR’s PART submission, OCR is requesting \$36,283,000 for FY 2007.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

OFFICE FOR CIVIL RIGHTS

For expenses necessary for the Office for Civil Rights, [\$31,682,000] \$32,969,000 together with not to exceed \$3,314,000 to be transferred and expended as authorized by section 201(g)(1) of the Social Security Act from the Hospital Insurance Trust Fund and the Supplemental Medical Insurance Trust Fund. (*Department of Health and Human Services Appropriations Act, 2006*).

OFFICE FOR CIVIL RIGHTS
AMOUNTS AVAILABLE FOR OBLIGATION¹

	<u>2005 Actual</u>	<u>2006 Appropriation</u>	<u>2007 Estimate</u>
<u>Appropriation:</u>			
Annual	\$32,043,000	\$31,682,000	\$32,969,000
Enacted rescission	-61,000	---	---
Enacted rescission	-256,000	---	---
Enacted rescission	---	-317,000	---
Subtotal, adjusted appropriation	31,726,000	31,365,000	32,969,000
Subtotal, adjusted budget authority..	31,726,000	31,365,000	32,969,000
<u>Trust funds:</u>			
Annual appropriation	3,314,000	3,314,000	3,314,000
Enacted rescission	-26,000	---	---
Enacted rescission	---	-33,000	---
Subtotal, adjusted trust funds	3,288,000	3,281,000	3,314,000
<u>Total Budget Authority</u>	35,014,000	34,646,000	36,283,000
Unobligated balance lapsing	<u>- 61,000</u>	<u>---</u>	<u>---</u>
Total obligations	\$34,952,000	\$34,646,000	\$36,283,000

¹ Excludes the following amounts for reimbursable activities carried out by this account:
FY 2006 \$400,000, FY 2007 \$575,000.

**OFFICE FOR CIVIL RIGHTS
SUMMARY OF CHANGES**

2006	Appropriation.....	\$31,365,000
	Trust funds transfer.....	3,281,000
	Total estimated budget authority.....	\$34,646,000
2007	Estimate – General funds.....	\$32,969,000
	Trust funds transfer.....	3,314,000
	Total estimated budget authority.....	\$36,283,000
	Net Change.....	+\$1,637,000

	<u>2006 Current Budget Base</u>		<u>Change from Base</u>	
	(FTE)	Budget <u>Authority</u>	(FTE)	Budget <u>Authority</u>
Increases:				
A. <u>Built-in:</u>				
1.	(259)	\$25,607,000	(259)	+\$200,000
2.	(259)	\$25,607,000	(259)	+\$425,000
3.	(259)	\$25,607,000	(259)	+\$491,000
4.	(259)	\$9,039,000	(259)	+\$521,000
	(259)	\$34,646,000	(259)	+\$1,637,000
Total increases.....				
B. <u>Program:</u> None				
Decreases: None				
Net Change.....	(259)	\$34,646,000	(259)	+\$1,637,000

OFFICE FOR CIVIL RIGHTS
BUDGET AUTHORITY BY ACTIVITY¹
(Dollars in Thousands)

	<u>2005</u> <u>Actual</u>		<u>2006</u> <u>Final Appropriation</u>		<u>2007</u> <u>Estimate</u>	
	<u>FTE</u>	<u>Amount</u>	<u>FTE</u>	<u>Amount</u>	<u>FTE</u>	<u>Amount</u>
Compliance Activities..	214	\$30,339	224	\$29,964	224	\$31,380
Legal Services.....	18	2,550	19	2,542	19	2,662
Program Management..	<u>15</u>	<u>2,125</u>	<u>16</u>	<u>2,140</u>	<u>16</u>	<u>2,241</u>
Total Budget Authority	247	\$35,014	259	\$34,646	259	\$36,283
General funds.....		\$31,726		\$31,365		\$32,969
HI/SMI trust funds.....		<u>3,288</u>		<u>3,281</u>		<u>3,314</u>
Total Budget Authority		\$35,014		\$34,646		\$36,283

¹ Excludes the following projected amounts for reimbursable activities carried out by this account:
FY 2006 \$400,000 and two FTE; FY 2007 \$575,000 and two FTE.

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

	2006 <u>Appropriation</u>	2007 <u>Estimate</u>	Increase or <u>Decrease</u>
Full-time equivalent employment.....	259	259	--
Average SES salary.....	\$138,873	\$141,165	+\$2,292
Average GS grade.....	11.8	11.9	---
Average GS salary.....	\$78,313	\$80,691	+\$2,378
<hr/>			
Personnel compensation:			
Full-time permanent.....	\$19,666,000	\$20,559,000	+\$893,000
Other than full-time permanent.....	840,000	574,000	-266,000
Other personnel compensation.....	200,000	300,000	+100,000
Military personnel.....	71,000	73,000	+2,000
Total, Personnel Compensation.....	20,777,000	21,506,000	+729,000
Civilian personnel benefits.....	4,791,000	5,178,000	+387,000
Military personnel benefits.....	18,000	18,000	---
Benefits to Former Personnel.....	21,000	21,000	---
Subtotal, Pay Costs.....	25,607,000	26,723,000	+1,116,000
Travel.....	300,000	300,000	---
Transportation of Things.....	17,000	17,000	---
Rental payments to GSA.....	3,600,000	3,676,000	+76,000
Rental payments to others.....	27,000	27,000	---
Communications, utilities, and others.....	403,000	403,000	---
Printing and Reproduction.....	45,000	45,000	---
Services from the Private Sector.....	687,000	687,000	---
Purchases of goods and services from other government accounts.....	2,339,000	2,784,000	+445,000
(Service and Supply Fund payment).....	(1,694,000)	(1,730,000)	(+36,000)
Operation and Maintenance of Facilities.....	150,000	150,000	---
Operation and Maintenance of Equipment.....	1,148,000	1,148,000	---
Subtotal Other Contractual Services.....	4,324,000	4,769,000	+445,000
Supplies and Materials.....	274,000	274,000	---
Equipment.....	49,000	49,000	---
Subtotal, Non-Pay Costs.....	9,039,000	9,560,000	+521,000
Total Budget Authority by object class.....	\$34,646,000	\$36,283,000	+1,637,000

**OFFICE FOR CIVIL RIGHTS
SALARY AND EXPENSES**

<u>Object Class</u>	2006 <u>Appropriation</u>	2007 <u>Estimate</u>	Increase or <u>Decrease</u>
Personnel compensation:			
Full-time permanent (11.1).....	\$19,666,000	\$20,559,000	+\$893,000
Other than full-time permanent (11.3).....	840,000	574,000	-266,000
Other personnel compensation (11.5).....	200,000	300,000	+100,000
Military personnel (11.7).....	71,000	73,000	+2,000
Total, Personnel Compensation.....	20,777,000	21,506,000	+729,000
Civilian personnel benefits (12.1).....	4,791,000	5,178,000	+387,000
Military personnel benefits (12.2).....	18,000	18,000	---
Benefits to Former Personnel (13.0).....	21,000	21,000	---
Subtotal, Pay Costs.....	25,607,000	26,723,000	+1,116,000
Travel (21.0).....	300,000	300,000	---
Transportation of things (22.0).....	17,000	17,000	---
Rental payments to others (23.2).....	27,000	27,000	---
Communications, utilities, and others (23.3).....	403,000	403,000	---
Printing and Reproduction (24.0).....	45,000	45,000	---
Services from the Private Sector (25.2).....	687,000	687,000	---
Purchases of goods and services from other			
government accounts (25.3).....	2,339,000	2,784,000	+445,000
(Service and Supply Fund payment).....	(1,694,000)	(1,730,000)	(+36,000)
Operation and Maintenance of Facilities (25.4).....	150,000	150,000	---
Operation and Maintenance of Equipment.(25.7).....	1,148,000	1,148,000	---
Subtotal Other Contractual Services.....	4,324,000	4,769,000	+445,000
Supplies and Materials (26.0).....	274,000	274,000	---
Subtotal, Non-Pay Costs.....	5,390,000	5,835,000	+445,000
Total Salary and Expenses.....	\$30,997,000	\$32,558,000	+1,561,000
Direct FTE.....	259	259	---

**OFFICE FOR CIVIL RIGHTS
AUTHORIZING LEGISLATION**

	2006 Amount <u>Authorized</u>	2006 <u>Appropriation</u>	2007 Amount <u>Authorized</u>	2007 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	\$34,646,000	Indefinite	\$36,283,000

**OFFICE FOR CIVIL RIGHTS
APPROPRIATIONS HISTORY TABLE**

	<u>Budget Estimate to Congress</u>	<u>House Allowance</u>	<u>Senate Allowance</u>	<u>Appropriation</u>
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	---	---	---	-255,000
Trust Funds	3,314,000	3,314,000	3,314,000	3,314,000
Rescission	---	---	---	-27,000
2006				
Appropriation	31,682,000	31,682,000	31,682,000	31,682,000
Rescission	---	---	---	-317,000
Trust Funds	3,314,000	3,314,000	3,314,000	3,314,000
Rescission	---	---	---	-33,000
2007				
Appropriation	32,969,000			
Trust Funds	3,314,000			

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

	<u>2005 Actual</u>	<u>2006 Appropriation</u>	<u>2007 Request</u>	<u>Increase or Decrease</u>
Budget Authority	\$35,014,000	\$34,646,000	\$36,283,000	\$1,637,000
FTE	247	259	259	---

Note: FTE level does not include two reimbursable FTE in FY 2006 and FY 2007.

Statement of Budget Request

The President's appropriation request of \$36,283,000 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 individually identifiable health information, and to enhance access to quality HHS-funded programs.

Program Description

As the primary defender of the public's right to nondiscriminatory access to and receipt of federally funded health and human services, OCR works to ensure equal opportunity for all to access the wide range of services available 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 the Department's many programs. OCR assesses compliance with nondiscrimination and Privacy Rule requirements by processing and resolving complaints. In addition, OCR also conducts pre-grant and preventative compliance reviews; monitoring of corrective action plans; and public education, outreach, voluntary compliance, training, technical assistance, and consultation activities as additional means of achieving compliance with nondiscrimination and Privacy Rule requirements.

OCR is comprised of compliance, policy, legal counsel, and program management staff. The majority of OCR's staff works on frontline civil rights nondiscrimination and Privacy Rule compliance activities, largely in OCR's regional offices. In support, a cadre of headquarters analysts provides program and policy coordination and initiatives to enhance program effectiveness and efficiency.

OCR allocates staff time to mandated complaint investigations, Medicare pre-grant reviews, and OCR-initiated compliance activities (e.g., compliance reviews, public education, outreach, voluntary compliance, and technical assistance). Staff time spent on OCR-initiated compliance activities focuses on particularly compelling, high profile, or systemic issues that benefit the greatest number of people possible. The issues surfaced in complaints and pre-grants also address public civil rights and privacy concerns.

Investigations of compliance, public education, outreach, voluntary compliance, technical assistance, training, consultation, and collaborative project activities are each equally significant methods by which OCR achieves corrective action 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 or audit activity. In other instances, an investigation or review may be deemed the best means for achieving a positive compliance outcome. Each of the activities that are identified as results or indicators in this report are planned, substantive, and part of an overall compliance strategy that requires significant staff time and resources.

Performance Analysis

For each objective in the FY 2007 performance plan, OCR set targets for each of the measures in relation to this FY 2007 President's Budget request. If OCR receives funding below this level, it will adjust its targets accordingly.

Increase the rate of resolution for civil rights and privacy cases and new Medicare application reviews received each year to 100% per year by the end of FY 2012.	OCR has met or exceeded its annual target since establishing the baseline in FY 2003 and is on schedule to achieve this goal in the timeframe specified.	As the Department's law enforcement agency responsible for resolving complaints of non-compliance, OCR's performance measures are the rate of civil rights and privacy complaint cases resolved and new Medicare application reviews completed each year to cases / reviews received. Output measures are appropriate for OCR since its functions are primarily investigating and resolving complaints and ensuring compliance with privacy and civil rights laws.
Increase the number of individuals who are, or represent, health and human service providers, other interest groups, and consumers to whom OCR provides information and training.	OCR has established 31,250 as its annual target for this measure and is on schedule to achieve the goal in this and subsequent fiscal years.	From FY 2005 through FY 2012, OCR will provide information and training to 31,250 individuals annually, who are, or represent, health and human services providers, other interest groups, and consumers.
Increase the number of covered entities that make a substantive policy change or develop new policies as a result of OCR intervention and/or review.	OCR established the baseline in FY 2005 (1,019 covered entities) and developed ambitious future targets according to the framework developed in OCR's PART.	By increasing the number of covered entities that make substantive policy changes or develop new policies as a result of OCR intervention, OCR has a measurable outcome to assess its impact on the population it serves.

Rationale for Budget Request

Since implementation of the Privacy Rule in 2003, which more than tripled the number of complaints filed with OCR, case resolution has not been able to keep pace with the receipt of new health information privacy and civil rights' complaint receipts. Although the backlog of unresolved complaints will continue to grow in the short term, OCR's ambitious achievement of its PART goals will enable it to reduce the growing backlog in future years with a goal of finally eliminating it.

The following tables illustrate OCR's projected receipt and complaint resolution workload for Privacy Rule and civil rights discrimination complaints, along with preventative compliance review workload (primarily new Medicare application reviews) from FY 2005 through FY 2007.

Complaint Workload – Privacy Rule

	FY 2005 Actual	FY 2006 Projected	FY 2007 Projected
Beginning Inventory	3,482	4,853	5,963
Complaints Received	6,756	6,750	6,750
Total Workload	10,238	11,603	12,713
Complaints Resolved	5,385	5,640	5,810
Ending Inventory	4,853	5,963	6,903

Complaint Workload – Civil Rights

	FY 2005 Actual	FY 2006 Projected	FY 2007 Projected
Beginning Inventory	1,655	1,663	2,038
Complaints Received	3,046	3,100	3,150
Total Workload	4,701	4,763	5,188
Complaints Resolved	3,038	2,725	2,815
Ending Inventory	1,663	2,038	2,373

Workload – New Medicare Application Reviews (Pre-Grants)

	FY 2005 Actual	FY 2006 Projected	FY 2007 Projected
Beginning Inventory	2,429	1,005	745
New Reviews	2,466	2,550	2,600
Total Workload	4,895	3,555	3,345
Reviews Resolved	3,890	2,810	2,890
Ending Inventory	1,005	745	455

As OCR reported in its FY 2006 Congressional Justification, Privacy Rule complaints since implementation of the Rule in April 2003 have far exceeded original expectations. Complaints received in FY 2004 and FY 2005, the first two full years since implementation of the Privacy Rule, together totaled 13,173, or 25 percent more than forecasted at the time the Rule was implemented. In its FY 2006 Congressional Justification, OCR projected a gradual leveling off of Privacy Rule complaints in FY 2005 and FY 2006 to 6,602 and 6,735 per year respectively. An analysis of OCR's Privacy Rule complaint receipt data over the past twelve months confirms a leveling off of complaint volume to approximately 6,750 per year in the FY 2005 – FY 2007 period.

OCR has also experienced a greater than anticipated increase in receipts of civil rights complaints since FY 2004. In its FY 2006 Congressional Justification, OCR noted that the number of civil rights complaints received in FY 2004 and FY 2005 was 21 percent and 19 percent higher per year respectively than was projected in the FY 2005 Congressional Justification. Nonetheless, OCR's increased projections of civil rights complaints in the FY 2006 Congressional Justification have proven conservative for FY 2005, as current data show that complaint volume for FY 2005 was almost 3 percent greater than had been forecasted. This contrasts with the data for FY 2006, however, where the volume for civil rights complaint receipts is now projected to be 4 percent less than anticipated in the FY 2006 Congressional Justification. OCR's analysis of the last twelve months' data suggests that while the volume of civil rights complaints will continue to increase at a higher rate than Privacy Rule complaints, the rate of increase is slowing considerably. OCR projects a 1.6 percent increase from FY 2006 to FY 2007 in civil rights complaint receipts.

As a result of the increased complaint receipt volume for both Privacy Rule and civil rights complaints over the past two years, case resolution has not kept pace with the increased volume of complaint receipts. In the ten year period from 1994-2003, prior to implementation of the Privacy Rule, OCR resolved on average just under 70 percent of each year's complaint workload (cases carried into the year plus allegations newly received in each year). In FY 2005, OCR's resolution rate against total workload was 62 percent, and current projections indicate the rate may fall below 60 percent in both FY 2006 and FY 2007.

Because complaint resolution has not kept pace with increases in complaint receipts, the percentage of OCR's workload that is composed of older unresolved complaints has continued to increase. In FY 2005, 38 percent of the year's total workload was composed of backlogged complaints compared to 30 percent in FY 2004. Based on current projections, this rate will exceed 40 percent in FY 2006 and FY 2007. By the end of FY 2007 OCR anticipates a backlog of over 9,000 combined Privacy and civil rights complaints and new preventative compliance Medicare application reviews (pre-grants).

In addressing this challenge, OCR anticipates achieving greater efficiencies in case resolution due to its FY 2004 reorganization and improved case management techniques. In FY 2007 OCR will identify competency gaps in critical positions to enhance staff performance and serve as a tool for management to remedy gaps in skill sets and to more efficiently deploy appropriate staff resources. OCR will continue to focus on other ways to enhance efficiencies, for example, in the summer of FY 2005, OCR hired temporary employees to assist in the resolution of preventative compliance reviews, freeing OCR's Equal Opportunity Specialists to apply greater effort toward reducing the backlog of civil rights complaint receipts. This resulted in a reduction in the backlog of 400 civil rights complaints. To do so, OCR applied FTEs and associated funding for positions not yet filled after staff departures due to a buy-out opportunity associated with a reorganization in late FY 2004 and early FY 2005. This effort allowed OCR to achieve the 56.4 percent resolution rate for FY 2005 cited above.

Through these efforts, and in the context of the anticipated leveling off in the volume of new complaints as described above, OCR has established an output measure and target for FY 2007, as reported in this budget submission and in OCR's FY 2007 PART submission, to achieve a

receipt to resolution ratio for aggregated complaints and new Medicare application reviews of 92 percent, with a long-term goal, factoring in a 3.3 percent productivity rate increase each year, to achieve a 100 percent equilibrium between receipts and resolutions / reviews by the end of 2012. The requested funding level will sustain OCR's efforts to achieve this equilibrium by the target date. Achieving this long-term performance goal is critical to OCR's efforts to apply resources to reduce and finally eliminate the currently growing backlog of complaints and preventative compliance reviews.

The following section highlights some of OCR's successes resulting from the wide range of activities in which OCR is involved in its efforts to ensure compliance with federal laws requiring nondiscrimination and the protection of individually identifiable health information.

OVERVIEW OF OCR ACTIVITIES

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

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

In addition, OCR will ensure the integrity and efficiency of its compliance activities by conducting:

- Policy-making and Coordination
- Legal Advisory Support for Policy
- Program Management and Operations Support

COMPLIANCE ACTIVITIES

COMPLAINT PROCESSING

OCR is responsible for investigating complaints of civil rights discrimination or noncompliance with privacy regulations 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 Department of Justice (DOJ) coordinating regulations requiring compliance agencies, such as OCR, to establish procedures for the prompt processing and disposition of complaints alleging discrimination. It also derives from numerous other statutory and regulatory authorities including the Americans with Disabilities Act (ADA) regulations and the Privacy Rule pursuant to HIPAA.

I. Civil Rights

A. Disabilities

1. *The Americans with Disabilities Act (ADA), Olmstead, and the New Freedom Initiative*

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 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 ADA regulation requiring that qualified individuals with disabilities be provided with services "in the most integrated setting appropriate to their needs," as interpreted by the U.S. Supreme Court in *Olmstead v. L.C.* The Executive Order calls for swift implementation of the *Olmstead* decision and full enforcement of Title II of the ADA through investigations, complaint resolution, and the use of alternative dispute resolution.

As part of the Executive Order, the President directed the Secretary of 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. OCR, on behalf of the Department, has sole responsibility for fulfilling certain specific commitments in *Delivering on the Promise*.

Since 1999, when the *Olmstead* decision was issued, OCR has received approximately 700 complaints and resolved approximately 500 complaints filed by individuals and organizations alleging individual and systemic violations of the Title II integration regulation of the ADA. OCR has successfully resolved a number of these complaints by working extensively with states to assist them in complying with the requirements of the ADA. The work of OCR has helped move individuals from institutional to community settings and has helped others avoid institutionalization. During FY 2007, OCR's investigation and resolution of *Olmstead*-related complaints as well as its public education and direct technical assistance to the states will continue to underscore the Administration's commitment and the Department's Federal Government leadership and coordinating role of improving access to community-based services for people with disabilities.

The following are specific examples of OCR *Olmstead* complaint investigation outcomes and their impact.

- Delaware Department of Health and Social Services and Delaware Psychiatric Center - An advocacy group filed a complaint, alleging that psychiatric hospital residents who sought discharge and whose treating professionals had determined that they could appropriately be served in the community were being inappropriately institutionalized. Through nearly four years of OCR intervention and assistance, the State took actions to address the individual and systemic issues involved in this complaint. As an outgrowth of OCR's investigation, the State identified individuals ready for discharge from the institution, and worked with OCR to place more than 50 of these individuals into the community.
- Montana Department of Public Health and Human Services - OCR worked with the State, the complainant, and advocates to resolve a complaint filed on behalf of an individual with several mental and physical disabilities. The complainant alleged that she was not placed in the most integrated setting appropriate for her needs when she was moved from the community to an institutional setting. OCR initially met with State officials to assist with the development of the State's *Olmstead* Plan and provided *Olmstead* related training to the State legislature. Once the complainant was certified as eligible for treatment in the community, OCR worked with the State and advocates to identify potential placement options for the complainant and explore the possibility of adapting the State's community services program to meet the needs of the complainant. The complaint was ultimately resolved through the complainant's placement in the community where she receives support services.
- Kansas Department of Social and Rehabilitation Services (KS-SRS) - During FY 2005, OCR's Region VII office received twenty-three *Olmstead* complaints against KS-SRS. OCR provided significant technical assistance to the agency and secured relief to all complainants, who received the home and community based waiver services they had requested.
- Oregon Department of Human Services - OCR's Region X staff worked with a complainant's advocate and representatives of the Oregon Department of Human Services, county, and contractor entities to facilitate creation of an innovative duplex-based housing and services plan. Prior to OCR's involvement, the complainant was at risk of institutionalization due to inadequate supported housing resources in the existing mental health services delivery system. The stable, supported housing/services arrangement created to resolve the complaint removes the possibility of eviction/homelessness and resulting institutionalization. The complainant's advocate reports that the complainant is now making remarkable developmental progress due to her stable situation. Based on this experience, Oregon officials have asked OCR to participate in future *Olmstead* work group sessions to foster inter-agency communications and cooperation.
- State of Tennessee - OCR worked with the State to resolve a complaint filed by a woman with cerebral palsy, who had resided in a nursing home for three years. She was approved for 12 hours/day of personal support services and moved to an apartment in the community.

2. Other OCR Activities to Ensure Non-Discriminatory Treatment of Individuals with Disabilities: HIV/AIDS, Accessibility, and Effective Communication

In addition to enforcing Title II of the ADA, OCR enforces Section 504 of the Rehabilitation Act of 1973, which prohibits recipients of Federal financial assistance from discriminating against qualified individuals on the basis of disability. HHS recipients subject to Section 504 include many hospitals, nursing homes, mental health centers, medical providers, and human services programs.

OCR is continuing its long history of using Section 504, along with other non-discrimination authorities, to respond to the HIV/AIDS epidemic and the continuing stigma and discrimination faced by some persons living with HIV and AIDS. For example, OCR works to ensure that providers who participate in the Medicaid program do not unlawfully refuse to treat persons with HIV infection who are protected by Section 504 and/or Title II of the ADA. Minorities bear a disproportionate share of the burden of these new HIV infections each year, bringing to bear OCR's commitment to reducing health disparities in addition to our focus on disability rights and our efforts to protect the privacy of health information so important to persons with HIV. In 2005, OCR mounted a national OCR HIV/AIDS in-service Training and Conference for our staff. OCR and CDC trainers provided updates on legal authorities and new tools for investigative and outreach activity. In FY 2006 and 2007, OCR will use new tools for HIV/AIDS work developed in 2005 in conjunction with this training such as an analytic investigatory guide, a review of pertinent case law, a PowerPoint outreach presentation for lay audiences, a revised fact sheet on HIV/AIDS discrimination, and resource and referral information posted on OCR's website.

OCR's investigative activities in this area have resulted in health care providers modifying their practices and policies to afford equal access to individuals with HIV infection. Other 504 cases have resulted in facilities establishing telecommunications services for the deaf, and making facilities more accessible. The following are a sample of OCR complaints concerning Section 504 of the Rehabilitation Act:

- Oakwood Annapolis Hospital in Wayne, MI - The complainant alleged that Oakwood Annapolis Hospital discriminated against him on the basis of his disability as an HIV+ individual. Specifically, the complainant was told by the Hospital when he arrived for a scheduled surgery that his surgery could not be performed at the time scheduled because the staff was not previously aware that he had AIDS and was now required to conduct certain sterilization preparations. OCR's investigation revealed that the Hospital's protocol to apply standard precautions consistently in the care of all patients in all patient care settings had not been properly followed. The Hospital voluntarily took corrective actions to avoid future incidents of this type by counseling staff members to consistently use a high level disinfectant that satisfies Universal Precautions protocol. The Hospital also purchased additional equipment to prevent delays associated with cleaning and disinfecting equipment.
- Sinai-Grace Hospital (SGH) in Detroit, MI - As a result of a complaint that alleged that SGH discriminated on the basis of disability (deafness) by failing to provide a qualified sign language interpreter as an auxiliary aid and thereby denying equal opportunity to benefit

from high quality health care, a systemic change was made. SGH is owned by the Detroit Medical Center (DMC), which also operates six other hospitals. As result of OCR's technical assistance efforts, DMC revised, augmented, and refined its admissions and assessment policies and procedures to achieve effective communication with all patients and their families, including: assessment and accommodation of the needs and preferred method of communication for the patient, family member, or concerned individual who is deaf or hard of hearing and provision of qualified sign language interpreters free of charge, with a very short turn-around time, even during the middle of the night or on weekends. The DMC also ensured that brochures were made available and signs that include sign language symbols were posted that describe auxiliary aid rights; additional TTY devices were installed; and the Section 504 coordinator for each facility was identified to enable consultation and assistance. Further, DMC conducted a systems-wide in-service training program in effective communication and auxiliary aids, reaching all seven hospitals and 712 nurses at Sinai-Grace. Such training will be repeated annually and for all newly hired employees. Staff members who routinely answer telephone calls from the public were trained on how to respond to calls from deaf individuals using the "relay" calls.

- Elmhurst Medical Center of the New York City Health and Hospital Corporation - OCR's Region II office resolved a complaint against Elmhurst Medical Center of the New York City Health and Hospital Corporation alleging that an American Sign Language interpreter was not provided to a patient at the Psychiatric Center's Emergency Department and during transfer to New York Presbyterian/Weill Cornell University Hospital. OCR's investigation resulted in the Hospital's installing a comprehensive and wide-reaching telecommunication system, "Deaf Talk," which will greatly facilitate the prompt delivery of services to the deaf and hard of hearing. OCR's resolution of this complaint also resulted in the hiring of two staff interpreters and a commitment by the Center to improve its record-keeping of communication assessments of patients at the Center. These actions will significantly enhance the provision of language services.
- Utah Valley Regional Medical Center (UVRMC) - As a result of a complaint about lack of accommodation for sight-impaired persons, OCR worked with UVRMC to implement a number of corrective measures. During OCR's investigation, UVRMC appointed a Section 504 Coordinator and developed policies regarding provision of services to sight-impaired persons, including availability of the most commonly needed forms, such as consent forms, on audiotape, in Braille, and in large print. During OCR's investigation, UVRMC inquired about interpreter services for Limited English Proficient (LEP) persons. In response, OCR provided technical assistance. UVRMC has now set up an interpreter service within the facility, and the hospital is working on training and certification of staff as interpreters. The hospital is also writing a grant for a "tele-monitor" to facilitate provision of sign language interpreting.

B. 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.

1. Limited English Proficiency (LEP)

On August 8, 2003, HHS published revised LEP guidance in the Federal Register. Following its publication, OCR has focused on developing technical assistance. OCR continues to be a leading member of the Federal Interagency LEP working group that is also coordinating and developing resources for recipients across Federal agencies, including use of a centralized website (www.LEP.gov). For example, a 35 minute educational video on Title VI and the rights of LEP individuals and multilingual brochures were produced by OCR in collaboration with the Departments of Justice (DOJ) and Agriculture (USDA) and are used by OCR at conferences and meetings with providers and community-based organizations serving LEP populations. The video is dubbed in Spanish and Vietnamese and subtitled in Chinese and Korean for use in reaching out to LEP communities as well as for use in outreach to recipients and the general public.

OCR continues to leverage its available resources through partnerships with other Federal agencies involved in Title VI and other language access activities. OCR works with other HHS offices and agencies, particularly the Office on Minority Health, the Centers for Medicare and Medicaid Services (CMS), Administration on Children and Families (ACF), Health Resources and Services Administration, and the Substance Abuse and Mental Health Services Administration 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.

In FY 2007, OCR will continue to work with health care and social service 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).

The following are specific examples of OCR LEP complaint investigation outcomes and their impact:

- Erie County Medical Center Psychiatric Department - OCR's Region II resolved with positive change a complaint regarding a 63 year old homeless Spanish speaking person against Erie County Medical Center Psychiatric Department (Center). The individual's language barrier limited medical staff from performing various psychological assessments. OCR's investigation found that the individual did not receive consistent interpretation services during his 150 day stay at the Center. As a result of OCR's intervention, the Center made systematic changes to its policies, procedures and practices for ensuring early identification of interpretation needs to

ensure appropriate provision of service. The Center developed a “clinical alert” system to prompt an objective assessment of the timeliness and quality of service based on the patient’s need.

- New York City Human Resources Administration (NYC HRA) - OCR’s Region II secured a system-wide change for several thousand clients who are eligible to receive benefits and from the NYC HRA and an agency with which it contracts to conduct assessments for persons with mental and physical disabilities, Health Services Systems (HSS). HSS expanded its communication assistance to clients by utilizing the Language Line, a telephonic interpreter service to provide interpreter services for languages not spoken by HSS staff. As a result of OCR’s intervention, approximately 124,230 clients, 42 percent of whom are LEP, will be notified of the opportunity to access translation and interpretation services. The revision of policy and training of HSS staff will assist them in better identifying and serving their clients who speak different languages.
- PA Department of Public Welfare (PA DPW) - OCR’s Region III office resolved a complaint filed by Community Legal Services on behalf of the Refugee Communities Coalition of Philadelphia, alleging that the PA DPW discriminates against LEP persons on the basis of their national origin by failing to provide the language assistance necessary in the provision of employment and training services by the Bureau of Employment and Training Programs (BETP) and agencies under contract with DPW. As a result of OCR’s investigation and subsequent technical assistance, DPW/BETP has taken the following primary actions: BETP expanded the standards in its Employment and Training Master Guidelines requiring that its various contractors be able to provide all services and activities to LEP individuals; BETP encourages its contractors to sub-contract with organizations prepared to provide linguistic and employment and training services to LEP persons; BETP has translated a variety of forms and general information into Spanish, with efforts being made to translate materials in other non-English languages; BETP developed monitoring tools to determine contractors’ ability to identify language needs and to provide language assistance to LEP persons; BETP has agreed to add a standard to its Master Guidelines requiring that contractors provide LEP training to their sub-contractors and that sub-contractors provide the language assistance needed to ensure meaningful access to LEP persons; and BETP incorporated an LEP component to its training program that is provided to its contractors on an annual basis. BETP requested OCR’s participation in the training and OCR provided LEP training sessions to BETP’s contractors. The PA DPW, BETP will continue its efforts to address potential barriers and take appropriate steps to ensure that LEP TANF beneficiaries have meaningful access to employment and training programs and services.
- Marin General Hospital (MGH), Kentfield, CA - A community advocate on behalf of a Spanish-speaking LEP person filed this complaint against MGH. Marin County has a substantial LEP Latino population. The complaint alleged that MGH discriminated against an LEP individual on the basis of his national origin by failing to provide him with an interpreter during his hospital stay and when given discharge instructions, and that MGH’s failure to provide language assistance to LEP persons denied them an equal opportunity to access MGH’s services. OCR’s investigation substantiated the allegations in the complaint and as a result of our investigation, MGH has taken substantial action steps to augment

services to its LEP patients. In response to OCR's finding, MGH took the following actions: formed an Interpreter Task Force to enhance its services to LEP patients and visitors; revised its policy on providing language assistance to LEP persons; provided OCR with information on a new program offered by MGH's parent corporation that determines if willing MGH employees can provide basic and/or medical interpretation for LEP patients and visitors; contracted with a service to provide telephonic interpretation for LEP patients; appointed a translation services coordinator to oversee the facility's interpretation and translation services; and began monthly training of all new hospital employees on its translation services programs and MGH's LEP policies and procedures. Importantly, MGH now determines if a patient is LEP during the admitting process and regularly translates discharge instructions into Spanish for its Spanish-speaking patients. MGH also provided OCR with documentation of multilingual posters; interpreter services notices, and hospital signage available in Spanish.

- Madison Early Childhood Center, Loveland, CO - As a result of OCR's investigation and intervention, a head start program stopped its practice of placing non-English speaking children in classes with an English-only speaking teacher. Now, bilingual aides are placed in the classes with the teacher so there is more effective communication between the teacher and students. This change will affect approximately 105 students each year.

2. 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 and access to care experienced by members of minority 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 inferior 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. HHS has identified six priority health areas on which to focus health disparity activities (cancer screening and management, cardiovascular disease, diabetes, HIV infection/AIDS, immunizations, and infant mortality).

OCR is a key participant in the Department's health disparities initiative, has conducted civil rights sessions at regional and HHS National Leadership Summits on Eliminating Racial and Ethnic Disparities in Health, and has partnered with the Office of Minority Health on activities geared toward the elimination of racial and ethnic health disparities. OCR's Director has made a number of keynote addresses on its activities in this area at national conferences. In FY 2007, OCR will continue to focus on a broad range of Title VI access issues including disparities in access, quality, and availability of health services.

The following is an example of OCR's compliance activity in this area:

- San Francisco Department of Public Health (SFDPH), San Francisco, CA - Two separate complaints were filed alleging that SFDPH changed the admission policy at Laguna Honda Hospital to limit admissions to patients. The complaints alleged that this policy would have a disparate impact on persons who are Chinese by denying them admission to LHH in larger proportions than other groups. After OCR began its investigation, SFDPH reconsidered and rescinded its new limited admissions policy, returning to its previous policy.

C. Non-Discrimination in Adoption and Foster Care

OCR will continue to address race, color, and national origin discrimination in the context of strengthening families by promoting adoption and foster care. For example, the requested FY 2007 budget will enable OCR to further its implementation of Congressional mandates to eliminate delays and denials of foster and adoptive placements on the basis of race, color or national origin, 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 (MEPA) / Section 1808 Internal Evaluation Instrument*. This voluntary instrument is designed to assist states and other entities involved in adoption and foster care to 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.

The following are typical examples of how OCR's work in this area is helping to facilitate non-discriminatory placement of children:

- Hamilton County Department of Job and Family Services (HCJFS) vs. Ohio Department of Job and Family Services (ODJFS) - Currently, ODJFS and HCJFS are in the process of implementing an agreement with OCR and ACF to remedy violations of Section 1808 and Title VI. ACF and OCR believe that once the provisions outlined in these documents are completed, the quality of public child welfare services in Ohio will be substantially improved and many of the means by which discriminatory acts took place against children and families will be removed.
- Complaint against Kansas Department of Social and Rehabilitation Services (KS-SRS) through the Kansas Children's Service League (KCSL) - The complainant alleged that she was denied custody of her granddaughter, who is biracial, because of the complainant's race. Region VII worked with the state and provided technical assistance that resulted in KS-SRS' establishing a plan to return the complainant's granddaughter to her home and to provide the complainant with necessary supports in caring for the child.

D. Age Discrimination Act of 1975

OCR enforces the Age Discrimination Act of 1975, which is a national law that prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. It applies to persons of all ages. The Age Discrimination Act and HHS implementing regulation apply to each HHS recipient. OCR also plays a unique role with respect to the Age Discrimination Act as it has primary responsibility for compiling an annual report to Congress as well as determining what each of twenty-six Federal agencies has done to eliminate age discrimination government-wide. HHS and the Office of the General Counsel (OGC) review all proposed and final Federal agency regulations pursuant to the Age Discrimination Act prior to publication in the Federal Register. A memorandum is prepared to the agency with OGC and HHS' recommendations prior to publishing the regulations.

OCR screens all complaints upon receipt and refers those that describe actions covered by the Age Discrimination Act to the Federal Mediation and Conciliation Service (FMCS). Complainants and recipients are required to participate in an effort to reach a mutually satisfactory mediated settlement of the complaint. OCR investigates complaints that are unresolved by the FMCS or when cases are reopened because the mediation agreement is violated. The following is an example of OCR's work in this area:

- Complaint against Texas Medicaid Program (STAR/STAR+PLUS) - The complainant alleged that the Texas Medicaid Program denied her prescription medication based on her age and disability. OCR referred the complaint to the FMCS for resolution in accordance with the requirements of the Age Discrimination Act. A mediation session was held, and the complainant notified the FMCS that she considered the case resolved.

II. Privacy

OCR enforces the Privacy Rule issued pursuant to HIPAA. The Privacy Rule established for the first time a Federal foundation to protect the privacy of medical information and to provide rights to individuals with respect to that information, including access and notice. 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 these entities, which include large health plans, health care providers that engage in electronic transactions, and health care clearinghouses.

As of the end of FY 2005, OCR has reviewed 15,475 complaints. Case resolutions include those where corrective action or compliance is achieved or where OCR lacks jurisdiction under HIPAA, such as complaints alleging violations prior to the Privacy Rule's compliance date, complaints alleging violations by entities not covered by the Rule, or where the activities alleged do not violate the Rule.

The allegations raised most frequently in the complaints are:

- 1) impermissible use or disclosure of an individual's identifiable health information
- 2) lack of adequate safeguards to protect identifiable health information
- 3) various types of outpatient facilities

