



**DEPARTMENT
of HEALTH
and HUMAN
SERVICES**

**Fiscal Year
2009**

Office for Civil Rights

*Justification of
Estimates for
Appropriations Committees*



DEPARTMENT OF HEALTH & HUMAN SERVICES

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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 2009 Justification of Estimates for Appropriations Committees. 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 Strategic Plan. This justification includes the FY 2009 Annual Performance Plan and FY 2007 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 non-discrimination 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 2008 and FY 2009, as in FY 2007, 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.

A handwritten signature in black ink that reads "Winston Wilkinson".

Winston Wilkinson, J.D.
Director

Introduction

The FY 2009 Congressional Justification is one of several documents that fulfill the Department of Health and Human Services' (HHS') performance planning and reporting requirements. HHS achieves full compliance with the Government Performance and Results Act of 1993 and Office of Management and Budget Circulars A-11 and A-136 through HHS agencies' FY 2009 Congressional Justifications and Online Performance Appendices, the Agency Financial Report and the HHS Performance Highlights. These documents can be found at <http://www.hhs.gov/budget/docbudget.htm> and <http://www.hhs.gov/afr/>.

The Performance Highlights briefly summarizes key past and planned performance and financial information. The Agency Financial Report provides fiscal and high-level performance results. The FY 2009 Department's Congressional Justifications fully integrate HHS' FY 2007 Annual Performance Report and FY 2009 Annual Performance Plan into its various volumes. The Congressional Justifications are supplemented by the Online Performance Appendices. Where the Justifications focus on key performance measures and summarize program results, the Appendices provide performance information that is more detailed for all HHS measures.

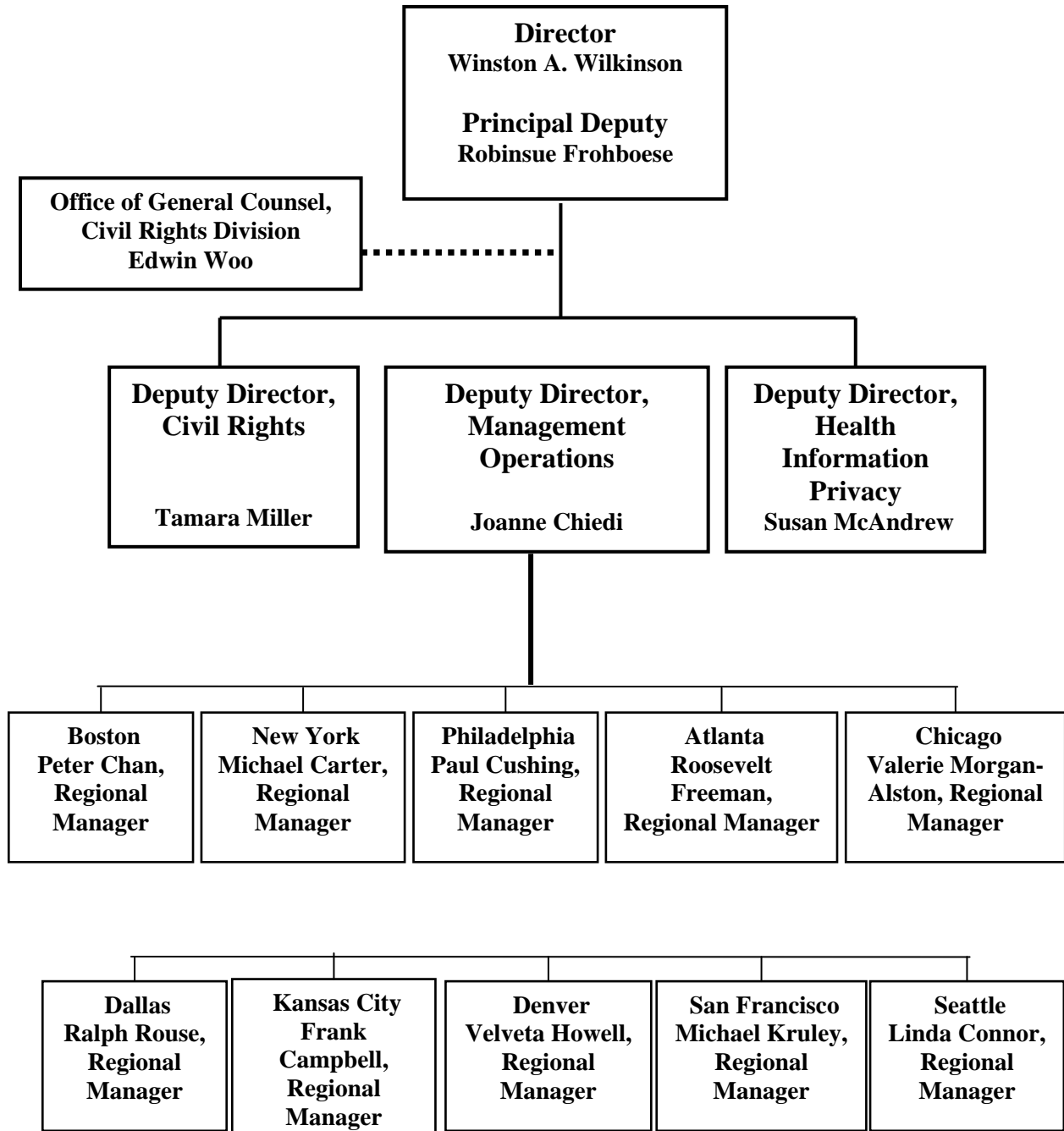
The Office for Civil Rights' Congressional Justification and Online Performance Appendix can be found at <http://www.hhs.gov/ocr/aboutocr.htm>.

**DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE FOR CIVIL RIGHTS (OCR)**

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Department of Health and Human Services

Office for Civil Rights



**Department of Health and Human Services
Office for Civil Rights**

Executive Summary

Agency 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 the opportunity to participate in and receive services from all HHS-funded programs without facing unlawful discrimination, and that the privacy of their health information is protected. 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.

Vision

Through investigations, voluntary dispute resolution, enforcement, technical assistance, policy development and information services, OCR will protect the civil rights of all individuals who are subject to discrimination in health and human services programs and protect the health information privacy rights of consumers.

Mission

As the Department's civil rights and health privacy rights law enforcement agency, OCR investigates complaints, enforces rights, and promulgates regulations, develops policy, and provides technical assistance and public education to ensure understanding of and compliance with non-discrimination and health information privacy laws, including:

- Ensuring that the privacy practices of several million health care providers, plans, and clearinghouses adhere to Federal privacy requirements under the Health Insurance Portability and Accountability Act (HIPAA).
- Ensuring that the more than 245,000 recipients of Federal financial assistance comply with the nation's civil rights laws.
- Annually resolving more than 10,000 citizen complaints alleging discrimination or a violation of HIPAA.
- Annually certifying more than 2,000 new Medicare applications for compliance with the nation's civil rights laws.

Overview of Budget Request

The FY 2009 President’s Budget request for OCR is \$40,099,000 – an increase of \$5,800,000 above the FY 2008 enacted level. This budget maintains the same essential programmatic focus as provided in the FY 2008 President’s Budget, while increasing the resources available for OCR’s ongoing HIPAA compliance and enforcement activities. The budget also provides funding for a new national education campaign to improve the public’s understanding of the HIPAA Privacy Rule.

Program Increases:

Improving Citizen Confidence in Government Protection of Health Privacy Initiative (+\$2.051 million).

The Improving Citizen Confidence Initiative will improve OCR’s critical HIPAA compliance and enforcement operations. Included in the requested level are funds for an additional 13 FTE that will increase OCR’s ability to respond promptly to the more than 7,900 Privacy complaints that are received annually. Funding also supports the Secretary’s priorities on Information Technology, Personalized Health Care, and Prevention and will enable OCR to contribute fully to the critical policy development of a key Administration priority in Health Information Technology.

Improving Protection by Improving Understanding Initiative (+\$.331 million).

The Improving Understanding Initiative will support a national education campaign to improve the public’s understanding of the HIPAA Privacy Rule, targeting areas identified during OCR’s enforcement activities and addressing recommendations by the Government Accountability Office and studies such as the June 2007 “Report to the President on Issues Raised by the Virginia Tech Tragedy.” Included in the requested level are funds for an additional two FTE. The successful implementation of a national public education campaign is a critical component of several of the Secretary’s priorities, including Information Technology, Personalized Health Care, and Preparedness.

Office for Civil Rights Discretionary All-Purpose Table (Dollars in Thousands)

	FY 2007 Actual	FY 2008 Enacted	FY 2009 Estimate	FY 2009 +/- FY 2008
Civil Rights and Health Information Privacy Rule Compliance	\$34,909,000	\$34,299,000	\$40,099,000	+\$5,800,000
FTE	240	240	255	+15

Note: FTE levels include four reimbursable FTE in each of FY 2007, FY 2008, and FY 2009.

**Department of Health and Human Services
Office for Civil Rights**

Appropriations Language

For expenses necessary for the Office for Civil Rights, [~~\$31,628,000~~] **\$36,785,000** together with not to exceed [~~\$3,281,000~~] **\$3,314,000** to be transferred and expended as authorized by section 201(g)(1) of the Social Security Act from the *Federal* Hospital Insurance Trust Fund¹ and the *Federal* [~~Supplemental~~] *Supplementary* Medical Insurance Trust Fund².

**Office for Civil Rights
Language Analysis**

Language Provision	Explanation
¹ Federal Hospital Insurance Trust Fund	Corrects title of the Trust Fund
² Federal Supplementary Medical Insurance Trust Fund	Corrects title of the Trust Fund

**Office for Civil Rights
Amounts Available for Obligation**

	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
<u>General Fund Discretionary Appropriation:</u>			
L/HHS, Office for Civil Rights.....	\$31,628,000	\$31,628,000	\$36,785,000
Across-the-board reductions		-552,541	
Subtotal, L/HHS, Office for Civil Rights.....	31,628,000	31,075,459	36,785,000
Rescission	--	--	--
Subtotal, adjusted appropriation.....	\$31,628,000	\$31,075,459	\$36,785,000
 <u>Trust Fund Discretionary Appropriation:</u>			
Appropriation Lines.....	\$3,281,000	\$3,281,000	\$3,314,000
Across-the-board reductions.....		-57,319	
Subtotal, L/HHS, Office for Civil Rights.....	\$3,281,000	3,223,681	3,314,000
Rescission.....	--	--	--
Subtotal, adjusted trust fund discr. appropriation.....	\$3,281,000	\$3,223,681	3,314,000
 Total, Discretionary Appropriation.....	 \$34,909,000	 \$34,299,140	 \$40,099,000
 Unobligated balance, start of year.....	 --	 --	 --
Unobligated balance, end of year.....	72,000	--	--
Unobligated balance, lapsing.....	72,000	--	--
	<hr/>	<hr/>	<hr/>
 Total obligations.....	 \$34,837,000	 \$34,299,140	 \$40,099,000

Excludes the following amounts for reimbursable activities carried out by this account:
2007 \$655,535; FY 2008 \$590,000; FY 2009 \$400,000

**Office for Civil Rights
Summary of Changes**

2008	Total estimated budget authority.....	\$34,299,000
2009	Total estimated budget authority.....	<u>\$40,099,000</u>
	Net Change.....	\$5,800,000

	2008 Estimate		Change from Base	
	<u>FTE</u>	<u>Budget Authority</u>	<u>FTE</u>	<u>Budget Authority</u>
Increases:				
A. Built-in:				
1. Annualization of January 2008 pay raise.....	240	\$26,087,000	240	\$225,000
2. Effect of January 2009 pay raise.....	240	\$26,087,000	240	\$570,000
3. Increase in rental payments to GSA and other mandatory charges.....	240	<u>\$8,212,000</u>	240	<u>\$1,150,000</u>
Subtotal, Built-in Increases.....	240	\$34,299,000	240	\$1,945,000
A. Program:				
1. Increasing HIPAA compliance and enforcement	240	\$34,299,000	13	\$2,051,000
2. HIPAA educational campaign.....	240	\$34,299,000	2	331,000
3. Compliance activities support	240	<u>\$34,299,000</u>	--	<u>1,573,000</u>
Subtotal, Program Increases.....			15	\$3,955,000
Total Increases.....			15	\$5,900,000
Decreases:				
A. Built-in:				
1. One day less pay.....	240	\$26,087,000	240	\$100,000
Subtotal, Built-in Decreases.....	240	<u>\$26,087,000</u>	--	<u>\$100,000</u>
Total Decreases.....			--	\$100,000
Net Change.....			15	\$5,800,000

Office for Civil Rights
Budget Authority by Activity¹
(Dollars in Thousands)

	<u>2007</u>		<u>2008</u>		<u>2009</u>	
	<u>FTE</u>	<u>Amount</u>	<u>FTE</u>	<u>Amount</u>	<u>FTE</u>	<u>Amount</u>
Compliance Activities.....	202	\$30,818	202	\$30,086	217	\$35,760
Legal Services.....	18	2,331	18	2,401	18	2,473
Program Management....	<u>16</u>	<u>1,760</u>	<u>16</u>	<u>1,812</u>	<u>16</u>	<u>1,866</u>
Total Budget Authority	236	\$34,909	236	\$34,299	251	\$40,099
General funds.....		\$31,628		\$31,075		\$36,785
HI/SMI trust funds.....		<u>3,281</u>		<u>3,224</u>		<u>3,314</u>
Total Budget Authority		\$34,909		\$34,299		\$40,099

¹ Excludes the following projected amounts for reimbursable activities carried out by this account: FY 2007 \$646,000 and four FTE; FY 2008 \$390,000 and four FTE; FY 2009 \$400,000 and four FTE.

**Office for Civil Rights
Authorizing Legislation**

	2008 Amount <u>Authorized</u>	2008 Budget <u>Estimate</u>	2009 Amount <u>Authorized</u>	2009 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;				
P.L. 109-41	Indefinite	\$34,299,000	Indefinite	\$40,099,000

Office for Civil Rights Appropriations History Table

	Budget Estimate to Congress	House Allowance	Senate Allowance	Appropriation
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
CMS Transfer	---	---	---	-24,000
2007				
General Funds	32,696,000	31,365,000	31,365,000	31,628,000
Trust Funds	3,314,000	3,281,000	3,281,000	3,281,000
2008				
Appropriation	33,748,000	33,748,000	33,748,000	31,628,000
Rescission	---	---	---	-553,000
Trust Funds	3,314,000	3,314,000	3,314,000	3,281,000
Rescission	---	---	---	-57,000
2009				
General Funds	36,785,000	---	---	---
Trust Funds	3,314,000	---	---	---

**Department of Health and Human Services
Office for Civil Rights**

Budget Narrative

Civil Rights and Health Information Privacy Rule Compliance

	FY 2007 Actual	FY 2008 Enacted	FY 2009 Estimate	FY 2009 +/- FY 2008
Budget Authority	\$34,909,000	\$34,299,000	\$40,099,000	+\$5,800,000
FTE	240	240	255	+15

Note: FTE levels include 4 reimbursable FTE in each of FY 2007, FY 2008, and FY 2009.

Authorizing Legislation:

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- 48, 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, P.L. 109-41

FY 2009 Authorization Indefinite

Allocation Method.....Direct Federal/Intramural

Program Description and Accomplishments

The Office for Civil Rights (OCR) is the primary defender of the public's right to privacy of protected health information and the public's right to non-discriminatory access to and receipt of Federally funded health and human services. 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 non-discrimination and Privacy Rule requirements by processing and resolving complaints. OCR's Civil Rights Division also oversees and coordinates a nationwide civil rights pre-grant review program for new Medicare applicants, to ensure compliance with civil rights laws and regulations. OCR conducts preventive compliance reviews, monitors corrective action plans, and engages in public education and technical assistance activities as additional means of achieving compliance with non-discrimination and Privacy Rule requirements. Finally, OCR headquarters staff are responsible for policy development and rule-making activities, including analyzing the need for modifications to civil rights and privacy regulations and proposing regulatory modifications when necessary.

Several key issues have increased the impact and visibility of OCR's work over the past several years. These issues include a growing recognition of the need to address privacy concerns and the inclusion of persons with disabilities and other members of special needs populations in planning for national emergencies, natural disasters and bioterrorism, and the importance of

continued demonstrated commitment to privacy in the context of the Department's significant health information technology initiatives. For example, OCR's Privacy Rule expertise was instrumental in ensuring the appropriate flow of health information following Hurricane Katrina and continues to be critical in planning for a flu pandemic. Similarly, in FY 2006 the Secretary gave OCR responsibility to develop and issue standards, policies, and regulations for enforcing the Federal privilege and confidentiality protections of Section 922 of Title IX of the Public Health Service Act, as amended by the Patient Safety and Quality Improvement Act of 2005. OCR continues to be a major contributor to the President's New Freedom Initiative in response to President Bush's Executive Order calling upon HHS for "swift implementation" of the Americans with Disabilities Act (ADA) and the Supreme Court's June 1999 ADA decision in the *Olmstead* most-integrated setting case. OCR provides key support to the Secretary's priorities, the HHS Strategic Plan and Objectives, and numerous high-level activities, including: the Department's American Health Information Community Workgroup, the New Freedom Initiative Workgroup, the Steering Committee for the Federal Partners Mental Health Action Agenda, the Minority Health and Health Disparities Steering Committee, and the Inter-agency Limited English Proficiency Workgroup.

OCR compliance staff provides the mission-critical function of conducting investigations to resolve complaints from the public concerning allegations of civil rights violations and HIPAA Privacy Rule violations. OCR ensures that HHS-funded programs do not support unlawful discrimination and that the privacy of medical records is protected. The compliance staff also develops technical assistance and conducts public education events to prevent discrimination and privacy violations. In addition, compliance staff at OCR headquarters provides major input to the development of compliance and enforcement strategies as well as expert advice to regional staff in their formulation of investigative plans, letters of investigative findings, and resolution agreements for compliance reviews and complaint investigations.

OCR operates a nationwide civil rights pre-grant review program for new Medicare applicants to ensure compliance with civil rights laws and regulations, including Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. OCR provides technical assistance to Medicare applicants, reviews health care facilities' policies and procedures for civil rights compliance, and sends clearance letters to the facilities after they have demonstrated compliance.

In support of its mission, OCR has as a primary strategic objective to ensure compliance with, and to increase awareness and understanding of, Federal laws requiring non-discriminatory access to HHS programs and protection of the privacy of individually identifiable health information. Two long-term outcome measures support this objective: (1) increase the rate by which OCR resolves civil rights and privacy cases and new Medicare application reviews to 100 percent of cases received per year and (2) increase the number of covered entities that make substantive changes as a result of OCR intervention. OCR also has established a management objective of enhancing operational efficiency, represented by increasing over time the number of cases that can be resolved per assigned staff member.

OCR's performance efforts were reviewed by the Office of Management and Budget through the Performance Assessment Rating Tool (PART) in 2005, and earned a Moderately Successful

rating. The PART findings concluded that OCR has strong purpose and design and is well-managed. Independent evaluations indicate that the organization is effective and achieving results. Through the PART process, OCR consolidated its performance measures in FY 2005, moving away from issue-specific goals that might be more subject to change from year to year, and adding two new outcome-related measures. OCR uses PART goals and measures to manage its resource allocations across the organization, using an internal scorecard and regular headquarters and regional teleconferences to track operational efficiency and to ensure alignment with PART goals. OCR holds staff accountable for supporting and achieving Departmental and organizational programmatic and management goals by cascading the Director's annual performance contract objectives, including OCR's program objectives as reflected in PART, to all managers and program staff. For more information on this and other programs that have been evaluated based on the PART process, see www.ExpectMore.gov.

Key Performance Measures:

- In FY 2007, OCR compliance staff resolved 10,053 civil rights and health information privacy complaints filed by the public, and completed 2,306 new Medicare application reviews, for a total of 12,359 cases resolved. OCR's overarching PART goal for FY 2007 was to resolve 90.0 percent of the number of new cases received or initiated in the year. The 12,359 closed cases represents 90.4 percent of the new workload in FY 2007, and therefore OCR slightly exceeded this goal. Over the past four years, OCR has seen a seven percent average yearly increase in the number of new complaints and new Medicare applications received. It is expected that this rate of increase will continue for the next several years. Over the same four year period, OCR has implemented organization improvements, such as transferring cases among regions, which have resulted in a 33 percent increase in productivity. However, this increase has not been sufficient to keep up with the volume of new work given the reduction in staff that has been experienced during this period. At the level of funding requested in this budget submission, OCR will be able to achieve its long-term measure – increasing the resolution rate of civil rights and privacy cases and new Medicare application reviews to 100 percent of new cases/reviews received per year – in 2012.
- In FY 2007, OCR provided training and technical assistance to 61,086 individuals through its public education and compliance activities. OCR's PART goal for FY 2007 was to reach 75,000 individuals, and therefore OCR fell short of its target by nearly 20 percent. Budget reductions resulting from receiving funds at the year-long Continuing Resolution level necessitated that OCR reduce travel costs, and therefore OCR could not maintain its public information program at the level desired. The FY 2007 actual result was slightly better than expected on a ratio of funds available to individuals touched by OCR. OCR's training and technical assistance activities are more susceptible to budget reductions because OCR endeavors to protect its core compliance activities when funded at a level below the President's request. OCR anticipates that the level of funding requested in this budget submission will allow OCR to meet its target of reaching 81,000 individuals in FY 2009.

- In FY 2007, the number of covered entities that made substantive policy changes as a result of OCR intervention and/or review was 2,068, nearly nine percent higher than the FY 2007 target of 1,900 covered entities. This measure was first established in FY 2005, at 1,019 covered entities. In FY 2006, the number of covered entities that made substantive policy changes was 2,466 -- better than twice the target of 1,070, resulting in OCR's increasing its FY 2007 target level. Given the importance of assuring that covered entities comply with the laws that OCR enforces, OCR has steadily increased its actual performance on this measure in spite of resource reductions. However, sustaining these increases depends upon the number of cases that OCR is able to resolve in a given year since policy changes are a direct result of OCR's compliance activities. Based on the funding requested in President's Budget OCR has increased its target for this measure to 2,175 in FY 2009.
- The annual effort towards achieving OCR's long-term efficiency measure is designed to meet the HHS Departmental goal of a ten percent overall program improvement over three years. The target of OCR's management goal is to resolve 61.9 cases each year per FTE assigned by the end of FY 2012. In FY 2007, OCR exceeded its target of 49.60 cases per FTE by resolving 51.28 cases per FTE. OCR's management objective of enhancing operational efficiency is critical for achieving each of the previously discussed performance goals. In the past several years, OCR has employed numerous strategies to increase efficiency, including implementing a case transfer program that transferred cases from regional offices that received a high number of cases to those regions that have received a lighter caseload. Another OCR strategy to increase efficiency is the implementation of a comprehensive training and workforce development program. These efforts showed positive improvements in operational efficiency in FY 2007. Although OCR experienced a 7.5 percent reduction in staff this fiscal year from the FY 2007 President's Budget request, OCR was still able to achieve a two percent increase in the number of cases resolved per FTE. Restoring OCR's FTE level to that provided when OCR first assumed responsibility for the Privacy Rule would significantly impact the achievement of all of OCR's performance goals. This budget request provides for OCR's resolving 54.1 cases per FTE in FY 2009 while bringing OCR's staffing level to 251 directly funded FTE.

Other accomplishment highlights for FY 2007 include:

- Through resolution of HIPAA Privacy Rule complaints, OCR effected systemic changes in the health care privacy practices of over 1,380 health care providers, including a large Medicaid plan that corrected a vulnerability that resulted in wrongful disclosure, a national health maintenance organization that corrected a computer flaw that caused the mailing of explanation of benefits to the wrong persons, and several national pharmacy chains that instituted new safeguards for protected health information and corrected impermissible disclosure practices.
- OCR is working in partnership with the American Hospital Association and state hospital associations to apprise hospitals of their responsibilities under civil rights laws, and

provide technical assistance to achieve effective communications with persons with disabilities and limited English proficiency.

- OCR negotiated a compliance agreement with the South Carolina Department of Social Services, ensuring that the 53 state offices serving over 5,000 children in foster care will not deny or delay placement of children into foster or adoptive homes, or deny parents the opportunity to foster or adopt children, because of race, color, or national origin.
- Temporary Assistance for Needy Families (TANF) beneficiaries with learning disabilities in Massachusetts will have the opportunity to acquire the basic skills, education, and support services needed to find and retain jobs due to a resolution agreement entered between OCR and the Massachusetts Department of Transitional Assistance (DTA). Through effective screening and assessment programs now required of all 28 DTA offices, OCR has achieved statewide reform of TANF agency practices affecting services to more than 400,000 needy families and individuals across the state.

Funding History

The following table displays OCR's actual funding levels from FY 2004 through FY 2008, factoring in transfers and rescissions as appropriate.

FY 2004	\$33,902,000
FY 2005	\$35,014,000
FY 2006	\$34,622,000
FY 2007	\$34,909,000
FY 2008	\$34,299,000

Budget Request

Activities funded by the Office for Civil Rights' request for \$40,099,000 in FY 2009 include:

- Complaint investigation, resolution, and corrective action monitoring;
- Public education;
- Technical assistance and compliance reviews, including civil rights pre-grant reviews of new Medicare applicants.

The FY 2009 request includes two essential programmatic enhancements:

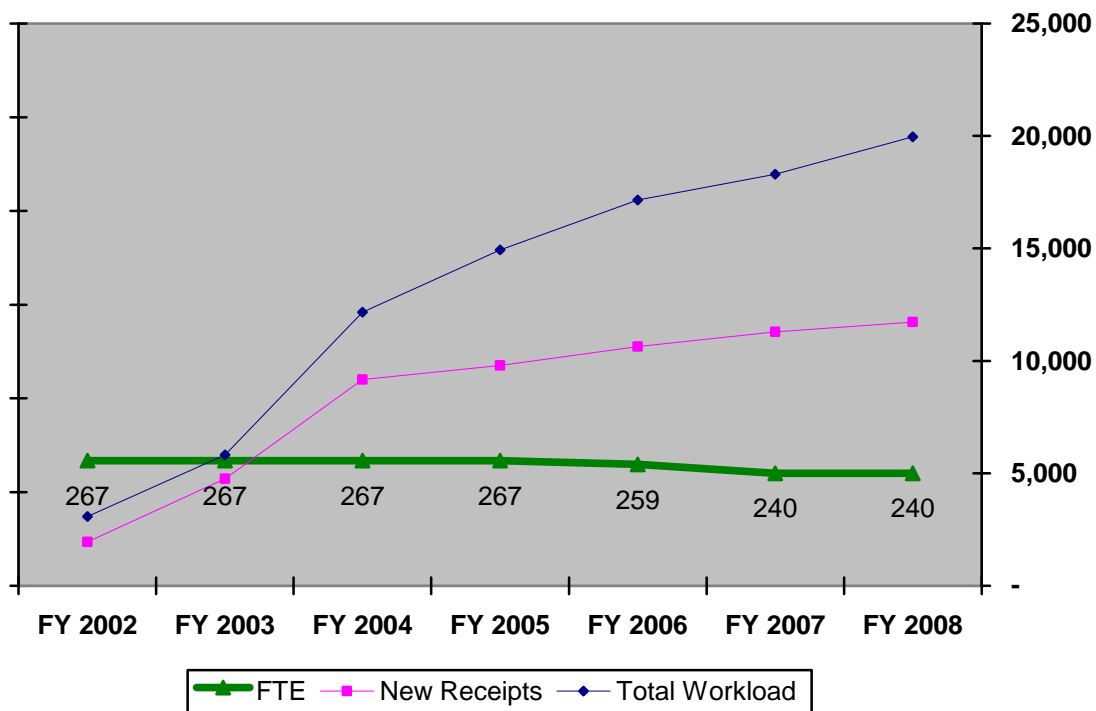
- \$2,051,000 and 13 FTE will improve OCR's critical HIPAA compliance and enforcement operations.
- \$331,000 and 2 FTE will support a national education campaign to improve the public's understanding of the HIPAA Privacy Rule.

The FY 2009 request will enable OCR to continue to address key non-discrimination issues, including the President's New Freedom Initiative (community-based services for persons with disabilities), inclusion of persons with disabilities and other members of special needs populations in planning for national emergencies, 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.

Since implementation of the Privacy Rule in 2003, the number of civil rights and health information privacy complaints filed with OCR per year has grown more than five-fold, from 1,948 in FY 2002 to more than 11,000 in FY 2007.¹ The staffing resources available to address the public's expectations, however, not only have not kept pace with this dramatic workload increase, but instead have declined significantly. In the same FY 2002 to FY 2007 period of a greater than five-fold increase in complaint receipts, OCR's staffing level fell from a level of 267 FTE in FY 2002 to 240 FTE in FY 2007, and FTE levels are projected to remain at 240 in FY 2008. The precipitous drop in FTE from FY 2006 to FY 2007 was the direct result of being funded at the full-year CR level in FY 2007. The full year CR level was \$1,374,000 below the FY 2007 President's Budget request.

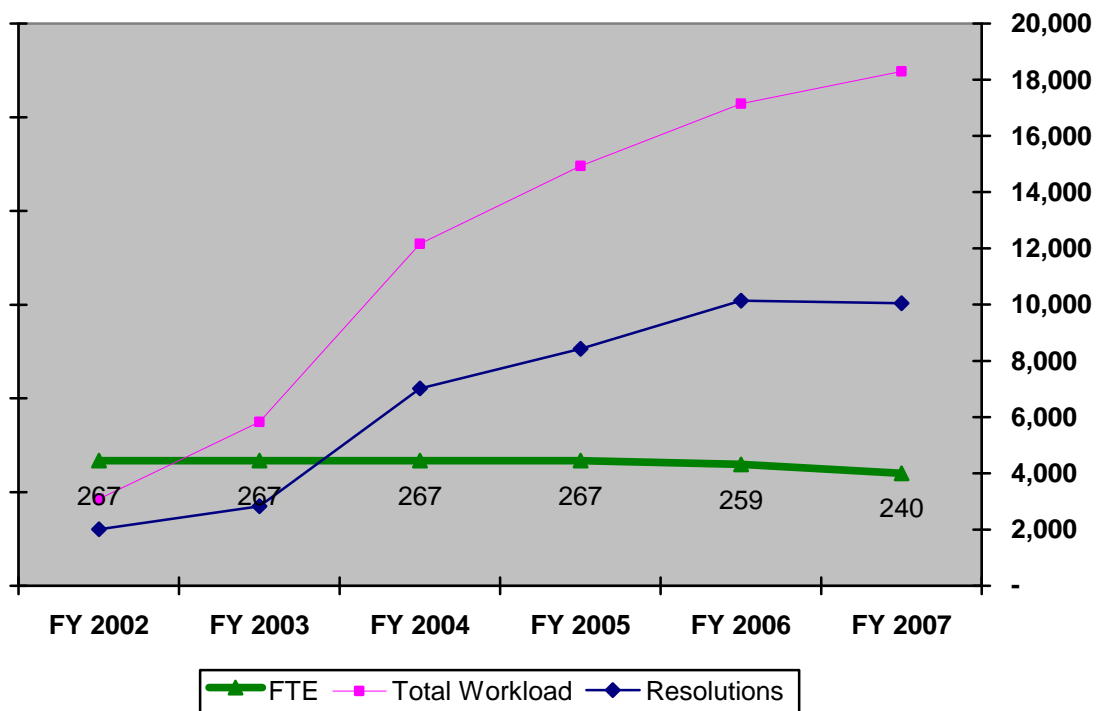
The graph on the following page illustrates OCR staffing levels compared to the actual growth of civil rights and health information privacy complaint receipts, and accompanying workload totals, from FY 2002 through FY 2007 and projects for continued growth in FY 2008.

¹ In addition to complaints, OCR receives more than 2,000 new Medicare applicant reviews each year, bringing the total to more than 13,000 in FY 2007.



In an effort to keep pace with an ever increasing case workload, OCR instituted a number of efficiencies from FY 2002 through FY 2007, including a multi-year reorganization effort, improved staff skill sets, and ongoing improvements in case management techniques, which have produced an extraordinary, 300-plus percent increase in the number of cases resolved per year. These management efficiencies have not been sufficient to fully offset the robust growth in complaint receipts. This fact is reflected in the accelerating increase in the number of cases carried over into the following year and the increasing age of cases. Currently, approximately 2,200, or about 38 percent, of OCR's open health information privacy cases are already more than a year old.

The graph on the following page illustrates how OCR's increase in the number of cases resolved per year has been unable to keep pace with the growth in total workload.



OCR anticipates that growth in the receipt of both civil rights complaints and health information privacy complaints will continue in the FY 2007 – FY 2009 period, at about a one percent annual growth rate for civil rights cases and a greater than five percent annual growth rate for health information privacy complaints. OCR anticipates that with funding provided in this budget request, continued operational efficiency efforts will result in an increase in the number of cases resolved per FTE assigned from 52.2 in FY 2008 to 54.1 in FY 2009. (See the Outputs and Outcomes Table on page 20.)

The following table provides a consolidated FY 2006 through FY 2009 summary of OCR’s projected receipt and resolution workload for health information Privacy Rule and civil rights discrimination complaints, and preventive compliance reviews (primarily new Medicare application reviews).

Total Workload

	FY 2006 Actual	FY 2007 Actual	FY 2008 Projected	FY 2009 Request
Beginning Inventory	7,107	7,513	8,826	10,446
New Receipts/Reviews	13,491	13,672	14,020	14,595
Total Workload	20,598	21,185	22,846	25,041
Receipts/Reviews Resolved	13,085	12,359	12,400	13,915
Ending Inventory	7,513	8,826	10,446	11,126

This budget request for FY 2009 provides increased resources to bring OCR's staffing level to 251 directly funded FTE. Together with four reimbursable FTE representing OCR's health information privacy policy support for enforcement of the Patient Safety and Quality Improvement Act of 2005, OCR's FTE level for FY 2009 will total 255 FTE, an increase of 15 FTE over the FY 2008 budget level. This critical restored capacity will allow OCR to:

- Immediately slow and, after fully annualizing the FTE increase beginning in FY 2010, ultimately manage the growth in receipts and backlog of health information privacy complaints so that OCR will achieve its original PART goal of processing as many civil rights and Privacy Rule cases each year as received by 2012. Specifically, in FY 2009, OCR anticipates closing over 13,500 complaints and new Medicare application reviews, a ten percent improvement over FY 2008. The resolution rate of civil rights and Privacy cases and new Medicare application reviews to new cases/reviews received in the year will increase from 91.5 percent in FY 2008 to 95 percent in FY 2009. (See Outputs and Outcomes Table on page 20.)
- Initiate a comprehensive national educational campaign to improve the public's understanding of the Privacy Rule, targeting areas identified during OCR's enforcement activities and addressing recommendations by the Government Accountability Office and studies such as the June 2007 "Report to the President on Issues Raised by the Virginia Tech Tragedy." Utilizing methodology informed by existing studies and a review of OCR complaint investigations, OCR will contract for surveys to ascertain knowledge gaps for targeted populations, including state mental health providers and educators, Federal, State, and local law enforcement officials, and other covered entities or health industry stakeholders. OCR will develop, distribute, and provide training to the target audiences, and conduct follow-up surveys to measure the effectiveness of OCR's education campaign.
- Continue to support fully the Secretary's priorities by ensuring that HIPAA Privacy considerations are part of critical policy development in these areas.
- Continue to address key non-discrimination issues, including the President's New Freedom Initiative (community-based services for persons with disabilities), inclusion of persons with disabilities and other members of the special needs populations in planning for national emergencies, racial and ethnic health disparities, and Title VI and language access.

Outputs / Outcomes Table

#	Key Outputs	FY 2004 Actual	FY 2005 Actual	FY 2006		FY 2007		FY 2008 Target	FY 2009 Target	Out-Year Target
				Target	Actual	Target	Actual			
Long-Term Objective 1: To ensure compliance, to increase awareness, and to increase understanding of Federal laws requiring non-discriminatory access to HHS programs and protection of the privacy of protected health information										
1	Rate of closure for civil rights and privacy cases and new Medicare application reviews per cases/review received	78.0	100.4	87.0	96.6	90.0	90.4	91.5	95.0	98.7 (2010)
2	Percent of civil rights cases and new Medicare application reviews resolved per cases/reviews received	89.1	125.7	91.2	102.0	93.0	94.5	95.0	96.0	96.5 (2010)
3	Percent of privacy cases resolved per cases received	68.8	79.7	81.2	91.8	88.0	87.4	89.0	95.0	99.0 (2010)
4	Increased awareness of Federal laws requiring non-discriminatory access to HHS programs and protection of the privacy of protected health information through the provision of information and training to individuals	--	72,000	74,160	74,313	75,000	61,086	78,000	81,000	83,430 (2010)
5	The number of corrective actions that covered entities take as a result of OCR intervention	--	1,644	1,725	3,352	3,060	3,007	3,100	3,175	3,250 (2010)
6	The number of covered entities that make substantive policy changes as a result of OCR intervention and/or review	--	1,019	1,070	2,466	1,900	2,068	2,125	2,175	2,225 (2010)
Long-Term Objective 2: To enhance operational efficiency										
7	Rate of closure for civil rights and privacy cases and new Medicare application reviews per FTE	38.7	49.85	41.30	50.32	49.60	51.28	52.20	54.10	59.50 (2010)
Appropriated Amount (\$ Million)		\$34	\$35	\$35	\$35	\$36	\$35	\$34	\$40	

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**Office for Civil Rights
Budget Authority by Object**

	2008 Estimate	2009 Estimate	Increase or Decrease
<u>Personnel compensation:</u>			
Full-time permanent (11.1).....	20,300,000	21,653,000	1,353,000
Other than full-time permanent (11.3).....	560,000	575,000	15,000
Other personnel compensation (11.5).....	--	575,000	575,000
Military personnel (11.7).....	104,000	107,000	3,000
Special personnel services payments (11.8).....	--	--	--
Subtotal personnel compensation.....	20,964,000	22,910,000	1,946,000
Civilian benefits (12.1).....	5,070,000	5,510,000	440,000
Military benefits (12.2).....	32,000	33,000	1,000
Benefits to former personnel (13.0).....	21,000	21,000	--
Total Pay Costs.....	26,087,000	28,474,000	2,387,000
Travel and transportation of persons (21.0).....	280,000	400,000	120,000
Transportation of things (22.0).....	18,000	25,000	7,000
Rental payments to GSA (23.1).....	2,780,000	3,300,000	520,000
Communication, utilities, and misc. charges (23.3)..	347,000	371,000	24,000
Printing and reproduction (24.0).....	40,000	75,000	35,000
<u>Other Contractual Services:</u>			
Advisory and assistance services (25.1).....	--	--	--
Other services (25.2).....	410,000	2,159,000	1,749,000
Purchase of goods and services from government accounts (25.3).....	1,785,000	2,325,000	540,000
Operation and maintenance of facilities (25.4)....	810,000	830,000	20,000
Research and Development Contracts (25.5).....	--	--	--
Medical care (25.6).....	--	--	--
Operation and maintenance of equipment (25.7)..	1,450,000	1,510,000	60,000
Subsistence and support of persons (25.8).....	--	--	--
Subtotal Other Contractual Services.....	4,455,000	6,824,000	2,369,000
Supplies and materials (26.0).....	232,000	505,000	273,000
Equipment (31.0).....	60,000	125,000	65,000
Land and Structures (32.0).....	--	--	--
Investments and Loans (33.0).....	--	--	--
Grants, subsidies, and contributions (41.0).....	--	--	--
Interest and dividends (43.0).....	--	--	--
Refunds (44.0).....	--	--	--
Total Non-Pay Costs.....	8,212,000	11,625,000	3,413,000
Total Budget Authority by Object Class.....	34,299,000	40,099,000	5,800,000

**Office for Civil Rights
Salaries and Expenses**

	2008 Estimate	2009 Estimate	Increase or Decrease
<u>Personnel compensation:</u>			
Full-time permanent (11.1).....	20,300,000	21,653,000	1,353,000
Other than full-time permanent (11.3).....	560,000	575,000	15,000
Other personnel compensation (11.5).....	--	575,000	575,000
Military personnel (11.7).....	104,000	107,000	3,000
Special personnel services payments (11.8).....	--	--	--
Subtotal personnel compensation.....	20,964,000	22,910,000	1,946,000
Civilian benefits (12.1).....	5,070,000	5,510,000	440,000
Military benefits (12.2).....	32,000	33,000	1,000
Benefits to former personnel (13.0).....	21,000	21,000	--
Total Pay Costs.....	26,087,000	28,474,000	2,387,000
Travel and transportation of persons (21.0).....	280,000	400,000	120,000
Transportation of things (22.0).....	18,000	25,000	7,000
Communication, utilities, and misc. charges (23.3)..	347,000	371,000	24,000
Printing and reproduction (24.0).....	40,000	75,000	35,000
<u>Other Contractual Services:</u>			
Advisory and assistance services (25.1).....	--	--	--
Other services (25.2).....	410,000	2,159,000	1,749,000
Purchase of goods and services from government accounts (25.3).....	1,785,000	2,325,000	540,000
Operation and maintenance of facilities (25.4)....	810,000	830,000	20,000
Research and Development contracts (25.5).....	--	--	--
Medical care (25.6).....	--	--	--
Operation and maintenance of equipment (25.7)..	1,450,000	1,510,000	60,000
Subsistence and support of persons (25.8).....	--	--	--
Subtotal Other Contractual Services.....	4,455,000	6,824,000	2,369,000
Supplies and materials (26.0).....	232,000	505,000	273,000
Total Non-Pay Costs.....	5,372,000	8,200,000	2,828,000
Total Salaries and Expenses.....	31,459,000	36,674,000	5,215,000
Direct FTE.....	236	251	15

**Office for Civil Rights
Detail of Full-Time Equivalents (FTE)**

	2007 <u>Actual</u>	2008 <u>Estimate</u>	2009 <u>Estimate</u>
Headquarters:			
Office of the Director and Principal Deputy	6	6	5
Office of the General Counsel (Civil Rights)	8	8	8
Civil Rights Division	22	22	22
Management Operations Division.	21	21	21
Health Information Privacy Division.....	16	16	19
Regional Offices	<u>167</u>	<u>167</u>	<u>180</u>
Total, OCR ¹	240	240	255

- Office of the Director and Principal Deputy:
Decrease of 1 FTE representing lapsed salary for anticipated transition as a result of new Presidential Administration.
- Health Information Privacy Division: Increase of 3 FTE, 2 of which are directly associated with the initiative to improve public understanding of privacy rights. New FTE will support the design and initiation of a national education campaign for this purpose.
- Regional Offices: Increase of 13 FTE associated with the initiative to improve citizen experience. New FTE will be assigned to HIPAA compliance and enforcement operations, including complaint processing and technical assistance.

Average GS Grade

2004.....	11.8
2005.....	11.7
2006.....	11.7
2007.....	11.8
2008.....	11.7

¹ The FTE level includes four reimbursable FTEs in FY 2007 and four reimbursable FTEs projected in FY 2008, and FY 2009.

**Office for Civil Rights
Detail of Positions**

	2007 <u>Actual</u>	2008 <u>Estimate</u>	2009 <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.....	6	6	5
Total - SES Salaries.....	<u>\$851,174</u>	<u>\$933,065</u>	<u>\$966,963</u>
GS-15.....	25	24	25
GS-14.....	39	37	38
GS-13.....	29	27	27
GS-12.....	93	90	92
GS-11.....	9	9	14
GS-10.....	---	---	---
GS-9.....	14	20	22
GS-8.....	3	3	3
GS-7.....	4	10	16
GS-6.....	3	2	2
GS-5.....	3	2	4
GS-4.....	5	8	9
GS-3.....	2	4	3
GS-2.....	---	2	2
GS-1.....	---	---	---
Subtotal.....	<u>229¹</u>	<u>238</u>	<u>257</u>
Total - GS Salary.....	\$20,133,826	\$20,420,935	\$21,838,037
<hr/>			
Average SES salary.....	\$141,862	\$155,511	\$182,445
Average GS grade.....	11.8	11.7	11.6
Average GS salary.....	\$86,042	\$87,269	\$87,352
Average Special Pay.....	---	---	---

¹ Reflects the number of positions encumbered as of the end of FY 2007.

Unified Financial Management System Operations and Maintenance (UFMS O&M)

UFMS has now been fully deployed. The Program Support Center, through the Service and Supply Fund, manages the ongoing Operations and Maintenance (O & M) activities for UFMS. The scope of O & M services includes post deployment support and ongoing business and technical operations services, as well as an upgrade of Oracle software from version 11.5.9 to version 12.0. OCR will use \$175,203 for these O & M costs in FY 2009.

HHS Consolidated Acquisition System

The HHS Consolidated Acquisition System (HCAS) initiative is a Department-wide contract management system that will integrate with the Unified Financial Management System (UFMS). The applications within the HCAS are Compusearch PRISM and a portion of the Oracle Compusearch Interface (OCI). PRISM is a Federalized contract management system that streamlines the procurement process. The implementation of PRISM includes the functionality of contract writing, simplified acquisitions, electronic approvals and routing, pre-award tracking, contract monitoring, post-award tracking, contract closeout and reporting. Major HCAS functions once integrated with UFMS include transfer of iProcurement requisition for commitment accounting and funds verification to PRISM and transmission of the award obligation from PRISM to Oracle Financials. OCR requests \$9,477 to support these efforts in FY 2009.

FY 2009 HHS Enterprise Information Technology Fund-PMA e-Gov Initiatives

OCR will apply \$40,540 of its FY 2009 budget to support Department enterprise information technology initiatives as well as the President's Management Agenda (PMA) Expanding E-Government initiatives. Operating Division contributions are combined to create an Enterprise Information Technology (EIT) Fund that finances both the specific HHS information technology initiatives identified through the HHS Information Technology Capital Planning and Investment Control process and the PMA initiatives. These HHS enterprise initiatives meet cross-functional criteria and are approved by the HHS IT Investment Review Board based on funding availability and business case benefits. Development is collaborative in nature and achieves HHS enterprise-wide goals that produce common technology, promote common standards, and enable data and system interoperability. The HHS Department initiatives also position the Department to have a consolidated approach, ready to join in PMA initiatives.

Of the amount specified above, \$5,393 is allocated to support the President's Management Agenda Expanding E-Government initiatives for FY 2009. This amount supports the PMA E-Government initiatives as displayed in the table on the following page:

PMA e-Gov Initiative	FY 2009 Allocation
Business Gateway	\$0
E-Authentication	\$0
E-Rulemaking	\$0
E-Travel	\$0
Grants.Gov	\$0
Integrated Acquisition	\$0
Geospatial LOB	\$0
Federal Health Architecture LoB	\$4,670
Human Resources LoB	\$541
Grants Management LoB	\$0
Financial Management LoB	\$182
Budget Formulation & Execution LoB	\$0
IT Infrastructure LoB	\$0
Integrated Acquisition – Loans and Grants	\$0
Disaster Assistance Improvement Plan	\$0
TOTAL	\$5,393

Prospective benefits from these initiatives are:

Lines of Business-Federal Health Architecture: Creates a consistent Federal framework that improves coordination and collaboration on national Health Information Technology (HIT) Solutions; improves efficiency, standardization, reliability and availability to improve the exchange of comprehensive health information solutions, including health care delivery; and, to provide appropriate patient access to improved health data. HHS works closely with Federal partners, state, local and tribal governments, including clients, consultants, collaborators and stakeholders who benefit directly from common vocabularies and technology standards through increased information sharing, increased efficiency, decreased technical support burdens and decreased costs.

Lines of Business-Human Resources Management: Provides standardized and interoperable HR solutions utilizing common core functionality to support the strategic management of Human Capital. HHS has been selected as a Center of Excellence and will be leveraging its HR investments to provide services to other Federal agencies.

Lines of Business-Financial Management: Supports efficient and improved business performance while ensuring integrity in accountability, financial controls and mission effectiveness by enhancing process improvements; achieving cost savings; standardizing business processes and data models; promoting seamless data exchanges between Federal agencies; and, strengthening internal controls.