



**DEPARTMENT
of HEALTH
and HUMAN
SERVICES**

Fiscal Year

2012

Office for Civil Rights

*Justification of
Estimates for
Appropriations Committees*



DEPARTMENT OF HEALTH & HUMAN SERVICE

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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 2012 Justification of Estimates for Appropriations Committees. This budget request provides support for the Administration's priority initiatives and reflects the goals and objectives in the Department's Strategic Plan. This justification includes the FY 2012 Annual Performance Plan 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 support our ability to protect the public's right to equal access and opportunity to participate in and receive services from all the Department of Health and Human Services' (HHS) programs without facing unlawful discrimination, and to protect the privacy and security of individuals with respect to their personal health information. OCR's performance objectives are in line with HHS' objectives for transforming the healthcare system, 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, a recent program assessment demonstrated our continued commitment to use our human capital effectively and efficiently to achieve results in support of our non-discrimination and privacy compliance mission. OCR has made progress in achieving results to support HHS-wide initiatives to improve the health and well-being of the public. To ensure continued results, individual performance plans at all levels of OCR's leadership and staff are focused on achieving the goals and objectives set out in our organizational performance plan. In this way, all OCR staff are working together to achieve our shared objectives in protecting civil rights and the privacy and security of health information.

/s/

Georgina C. Verdugo

Director

Office for Civil Rights

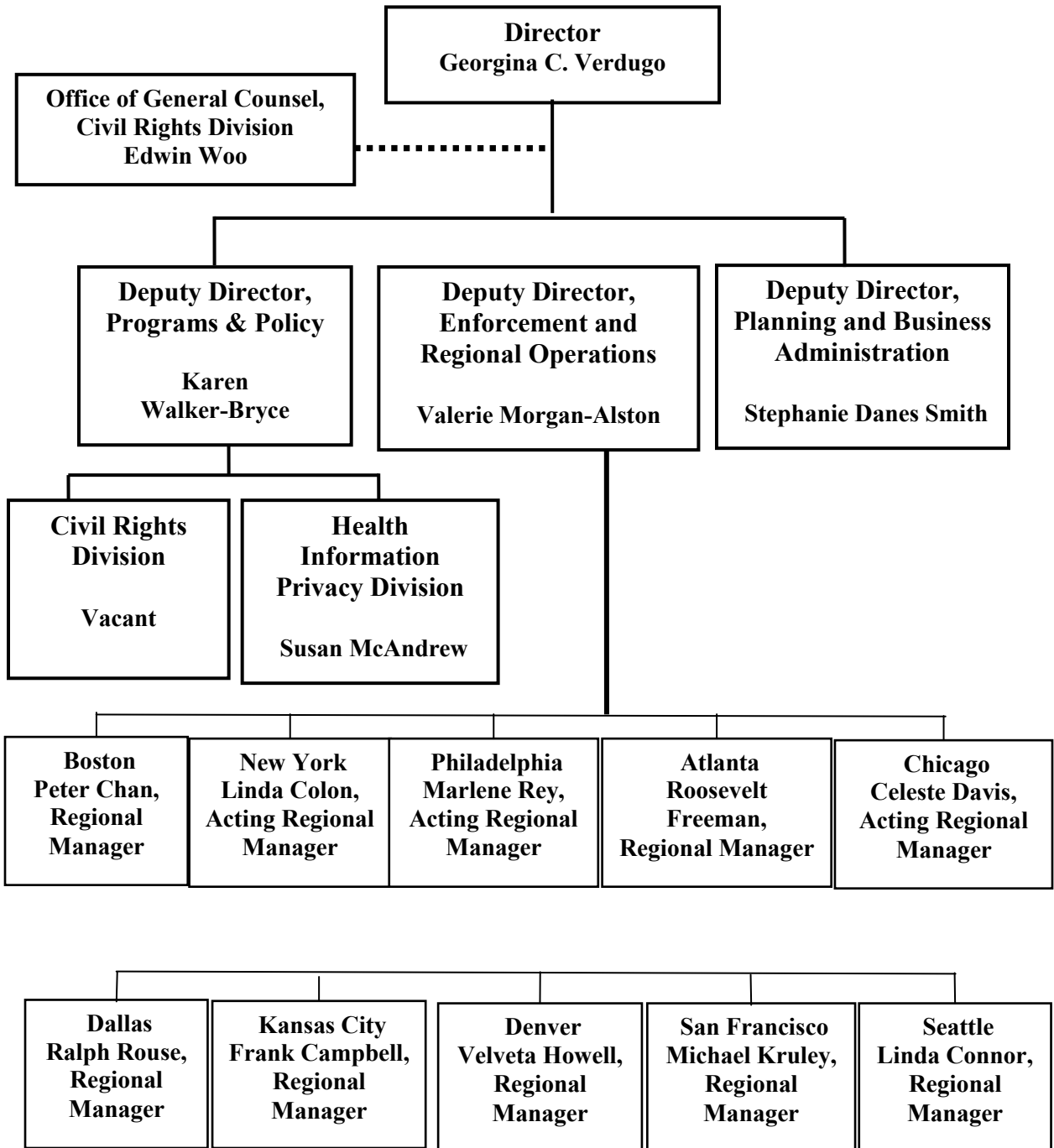
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Department of Health and Human Services

Office for Civil Rights



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

Executive Summary

The FY 2011 figures displayed throughout this document represent the annualized Continuing Resolution level. Allocation of funds to programs and activities represent policies in the enacted FY 2010 appropriations.

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 and security of their health information is protected. Through prevention and elimination of unlawful discrimination and by protecting the privacy and security 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 and security rights of consumers.

Meeting OCR's Mission and Vision

As the Department's civil rights and health information privacy and security protection law enforcement agency, OCR:

- Ensures that the estimated 4,500,000 recipients of Federal financial assistance comply with our Nation's civil rights laws.
- Enforces the civil rights protections of Title VI of the Civil Rights Act of 1964 (Title VI); Section 504 of the Rehabilitation Act of 1973 (Section 504); Title II of the Americans with Disabilities Act of 1990 (Title II); Titles VI and XVI of the Public Health Service Act (Hill-Burton Act); the Multi-Ethnic Placement Act (MEPA); the Age Discrimination Act of 1975 (Age Act); Title IX of the Education Amendments of 1972 (Title IX); and the Church Amendments, Section 245 of the Public Health Service Act and the Weldon Amendment (which prohibit discrimination against those who decline to participate in abortions or sterilization procedures).
- Ensures the practices of several million health care providers, health plans, healthcare clearinghouses, and their business associates adhere to Federal privacy and security requirements under the Health Insurance Portability and Accountability Act (HIPAA).
- Implements and enforces the privacy protections under the Genetic Information Nondiscrimination Act of 2008; the privacy and security provisions of the Health Information Technology for Economic and Clinical Health (HITECH) Act, contained in the American Recovery and Reinvestment Act of 2009 (ARRA); and the confidentiality restrictions under the Patient Safety and Quality Improvement Act of 2005.
- Annually resolves more than 10,000 citizen complaints alleging discrimination or a health information privacy or security violation.

- Annually conducts reviews of more than 2,000 new Medicare provider applicants to determine their compliance with our Nation's civil rights laws.

Overview of Budget Request

The Office for Civil Rights requests \$46,717,000 in FY 2012, an increase of \$5,618,000 over the FY 2010 enacted level of \$41,099,000. OCR's FY 2012 request supports OCR's activities as the primary defender of the public's right to nondiscriminatory access to and receipt of Federally funded health and human services. In addition, the budget supports OCR's significantly expanded compliance responsibilities that protect individuals' personal health information under the Privacy and Security Rules issued pursuant to the Health Insurance Portability and Accountability Act (HIPAA).

Program increases:

Regional Office Privacy Advisors (+\$2.283 million)

Section 13403(a) of the HITECH Act requires the Secretary of HHS to designate Privacy Advisors in each of OCR's ten regional offices to offer guidance and education to covered entities, business associates, and individuals on their rights and responsibilities related to Federal privacy and security requirements for protected health information. An increase of \$2,283,000 and 10 FTE is requested to fund this responsibility.

Enforcement of the HIPAA Security Rule (+\$1 million)

This increase will support OCR's delegated authority for the administration and enforcement of the Security Standards for the Protection of Electronic Protected Health Information (HIPAA Security Rule). Combining the authority for administration and enforcement of the Federal standards for health information privacy and security called for in HIPAA will improve HHS' ability to protect individuals' health information.

Investigation of the HITECH Breach Reports (+\$1.335 million)

This increase will support OCR's activities to begin to investigate the HIPAA breach reports received since new regulations mandated by the HITECH Act went into effect on September 23, 2009, and to establish the staffing resources necessary to begin to investigate subsequent breach reports. Section 13402 of the HITECH Act created a requirement for HIPAA covered entities to report to the Secretary any breaches of unsecured protected health information. As of September 30, 2010, OCR has received a total of 9,300 breach reports (191 impact more than 500 individuals and 9,109 impact less than 500 individuals). Current OCR practice is to validate, post to the HHS website, and subsequently investigate all breach reports that impacted more than 500 individuals. Breach reports that impacted fewer than 500 individuals are compiled for future reporting to Congress; however they are treated as discretionary and only investigated if resources permit. Based on OCR's current HIPAA case load, almost all breach reports that impact less than 500 individuals are not investigated. Accordingly, OCR requires additional FTE and resources to ensure it is able to conduct investigations of potential small- and mid-sized breaches.

Compliance Review Program (+\$1 million)

This increase will support OCR's establishment of a compliance review program designed to evaluate, educate, and ensure compliance within a sample of the expanded covered programs and providers each year. OCR anticipates that FY 2012 will be the starting point for a steady increase in civil rights complaints requiring investigation and compliance reviews.

Overview of Performance

OCR has organized its performance measures around the two overarching strategic goals that directly support the Secretary's Strategic Initiatives and the HHS Strategic Plan:

Goal I 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 and security of protected health information.

Goal II To enhance operational efficiency

OCR's first strategic goal is 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 and security of protected health information. Under Goal I, there are four program objectives that support the broad and inclusive program goal of increasing non-discriminatory access and participation in HHS programs and protecting the privacy and security of individually identifiable health information:

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 and security 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 programs and providers that take corrective action, including making substantive policy changes or developing new policies, as a result of intervention and/or review

OCR's Objective A primarily supports HHS strategic goal 1: To Transform Health Care, as well as strategic goal 3: To Advance the Health, Safety, and Well-Being of Our People, through OCR's major civil rights activities. Specifically, OCR's Objective A advances HHS strategic objective 1.E (to ensure access to quality, culturally competent care for vulnerable populations), through OCR's Title VI civil rights enforcement and public education activities; strategic objective 3.B (to promote economic and social

wellbeing for families and communities), by ensuring nondiscriminatory access to the Temporary Assistance for Needy Families (TANF) program; and strategic objective 3.C (to improve the accessibility and quality of services for people with disabilities and older adults), through OCR's Section 504, American's with Disabilities Act (ADA), and *Olmstead* activities.

OCR's Objective B primarily supports HHS strategic goal 1: To Transform Health Care through OCR's HIPAA Privacy and Security rule activities. Specifically, OCR's Objective B advances HHS strategic objective 1.E (to ensure access to quality, culturally competent care for vulnerable populations) through HIPAA enforcement. HIPAA enforcement is also critical to advancing HHS strategic objective 1.F to transform health care through the adoption of health information technology and the promotion of the meaningful use of such technology by ensuring consumers that their information in such systems remains private and secure.

OCR's Objective C primarily supports HHS strategic goal 1: To Transform Health Care, as well as strategic goal 3: To Advance the Health, Safety, and Well-Being of Our People, through OCR's major civil rights and health information privacy mission activities noted above.

OCR's Objective D supports HHS strategic objective 1.E (to ensure access to quality, culturally competent care for vulnerable populations), through OCR's enforcement activities.

OCR's first long-term performance goal is 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 and security of individually identifiable health information. OCR's first long-term goal has a long-term outcome measure: the number of covered programs and providers that take corrective actions as a result of OCR intervention per year. In FY 2010, the number of covered programs and providers that took corrective actions as a result of OCR intervention was 4,102. This outcome just exceeded OCR's stated target of 4,100. OCR estimates that in both FY 2011 and FY 2012, the number of covered programs and providers that take corrective actions as a result of OCR intervention will increase to 4,200 and 4,300, respectively. OCR has a related performance measure that tracks policy changes—a type of corrective action. The number of covered programs and providers that made substantive policy changes as a result of OCR intervention and/or review in FY 2010 was 2,607. This outcome did not meet OCR's stated target of 2,700 covered programs and providers. Meeting OCR's targets in the future depends upon the number of cases that OCR is able to resolve in a given year, since corrective actions and policy changes are a direct result of OCR's compliance activities. OCR estimates that in both FY 2011 and FY 2012, the number of covered programs and providers that make policy changes as a result of OCR intervention will increase slightly to 2,750 and 2,800, respectively.

In FY 2010, OCR compliance staff resolved 12,350 civil rights and health information privacy complaints filed by the public and completed 1,858 new Medicare application

reviews for a total of 14,208 cases resolved (resolved cases come from new cases received in FY 2010 as well as cases in the inventory at the start of the fiscal year). OCR's overarching program goal for FY 2010 was to resolve sufficient cases to be equivalent to 106 percent of the number of new cases received or initiated in the year. OCR missed this goal by 1.1 percentage points. OCR's supporting measure, "Percent of civil rights cases and new Medicare application reviews resolved per cases/reviews received," had an FY 2010 target of 104 percent. OCR achieved a resolution rate of 94.7 percent. OCR's other supporting measure, "Percent of privacy cases resolved per cases received," had an FY 2010 target of 107 percent, and OCR achieved a resolution rate of 111.1 percent. OCR continuously monitors case receipts and performance through the use of an internal monthly scorecard, which is one of the tools used to aid in the evaluation of investigators' successful performance in achieving OCR goals.

OCR's objective to increase awareness of Federal laws requiring non-discriminatory access to HHS programs and protection of the privacy and security of protected health information through the provision of information and training to individuals has a long-term output measure: the number of people made aware of federal laws requiring non-discriminatory access to HHS programs and protection of the privacy and security of protected health information through the provision of information and training to individuals per year. OCR provided training and technical assistance to nearly 56,000 individuals through its public education and compliance activities in FY 2010. This level fell short of OCR's target of 98,200 individuals. Given the nature of OCR's mission, resources are devoted primarily to the resolution of citizen complaints and the active enforcement of the laws and regulations over which OCR has purview. Public education activities are important to make people aware of their rights to protection against discrimination and for the privacy and security of their health information. In addition, health care providers and practitioners are educated on their responsibilities or learn about best practices in providing quality care that is free from discrimination and protects individuals' health information. Most recently, the HITECH Act charged OCR to even more significantly expand its outreach efforts by implementing a comprehensive national education initiative to enhance public transparency regarding the uses of protected health information and the rights of individuals with respect to those uses. In the FY 2011 President's Budget Request, OCR included funding for the statutorily-mandated regional office privacy advisors and this resource increase is estimated to help OCR provide training and/or assistance to more than 200,000 individuals annually. At the requested level for FY 2012, OCR has a target for this measure of 213,500.

OCR strives to improve responsiveness to the public. To help improve responsiveness, OCR added measures, with baselines established in 2008, concerning the percentage of complaints that require a formal investigation that are resolved within 365 days of receipt, and the percentage of complaints that do not require a formal investigation that are resolved within 180 days of receipt. OCR's long-term goal is to resolve 90 percent of complaints that require a formal investigation within 365 days of receipt and to resolve 90 percent of complaints that do not require a formal investigation within 180 days of receipt. It is anticipated that results will be modest in the initial years of these measures as OCR focuses on resolving a number of older cases in its inventory. To help meet the stated goal, these measures have been incorporated into OCR investigative staff's

performance plans and results will be measured through OCR's monthly scorecards. The first new measure is the percentage of civil rights complaints that require formal investigation, resolved within 365 days. In FY 2010, OCR had a target of 30 percent, and achieved a resolution rate of 32 percent. OCR estimates that in FY 2011 and FY 2012 the rates will be 40 percent and 42 percent, respectively.

The second measure is the percentage of civil rights complaints that do not require formal investigation, resolved within 180 days. In FY 2010, OCR had a target of 74 percent, and achieved a resolution rate of 83 percent. OCR estimates that in FY 2011 and FY 2012, the rates will be 79 percent and 81 percent, respectively.

The third measure is the percentage of privacy complaints that require formal investigation, resolved within 365 days. In FY 2010, OCR had a target of 40 percent and achieved a resolution rate of 56 percent. OCR estimates that in FY 2011 and FY 2012, the rates will be 50 percent and 52 percent, respectively.

The fourth measure is the percentage of privacy complaints that do not require formal investigation, resolved within 180 days. In FY 2010, OCR had a target of 68 percent and achieved a resolution rate of 67 percent. OCR estimates that in FY 2011 and FY 2012, the rates will be 69 percent and 72 percent, respectively.

OCR's second strategic goal focuses on improving operational efficiency and therefore increasing the proportion of resources being devoted to all issues. As such, the operational efficiency goal supports the entire HHS Strategic Plan goals and objectives, noted below, 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.

The long-term measure is to increase the number of cases resolved per assigned FTE. In FY 2010, OCR resolved 57.5 cases per FTE, which was short of its target of 66.5 cases per FTE. OCR's management objective of enhancing operational efficiency is critical for achieving each of the previously discussed performance goals. At the level of funding requested in this budget submission for FY 2012, OCR has set a target of 67.5 cases per FTE.

OCR's program assessment 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 program assessment process, OCR consolidated its performance measures, moving away from issue-specific goals that might be more subject to change from year to year, and added two outcome-related measures to accompany its output measures. OCR uses goals and measures developed as part of this program assessment 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 performance goals. OCR holds staff accountable for supporting and achieving Departmental and organizational programmatic

and management goals by cascading annual performance contract objectives, including OCR's program objectives, to all managers and program staff.

The Summary of Targets and Results Table provides an overview of all targets established for each corresponding fiscal year.

Summary of Targets and Results Table

Fiscal Year	Total Targets	Targets with Results Reported	Percent of Targets with Results Reported	Total Targets Met	Percent of Targets Met
2007	7	7	100%	4	57%
2008	7	7	100%	7	100%
2009	11	11	100%	5	45%
2010	11	11	100%	5	45%
2011	11	Nov 2011	Nov 2011	Nov 2011	Nov 2011
2012	11	Nov 2012	Nov 2012	Nov 2012	Nov 2012

Discretionary All-Purpose Table
(Dollars in Thousands)

	FY 2010 Enacted	FY 2011 Continuing Resolution	FY 2011 House	FY 2011 Senate	FY 2012 Request
Program Civil Rights Compliance and Enforcement	15,701	15,701	15,962	15,962	16,962
Health Information Privacy and Security Rule Compliance and Enforcement	19,857	19,857	22,787	22,787	24,122
Operations	5,541	5,541	5,633	5,633	5,633
Subtotal, Reg. Appropriation	41,099	41,099	44,382	44,382	46,717
Secretary's Transfer	\$ -6	--	--	--	--
Total, Office for Civil Rights	41,093	41,099	44,382	44,382	46,717
FTE	230	266 ¹	270	270	280 ¹

¹ FY 2011 and FY 2012 FTE numbers include Office of the General Counsel / Civil Rights Division staff.

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

For expenses necessary for the Office for Civil Rights, ~~[\$41,099,000]~~ \$46,717,000 [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 Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund]1.

**Office for Civil Rights
Appropriations Language Analysis**

Language Analysis

Language Provision	Explanation
<p>1-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 Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund”</p>	<p>HHS proposes that annual Trust Fund transfers from CMS be deleted from OCR (and GDM) appropriation language, and that the Trust Funds amount be replaced by regular Budget Authority, so that OCR’s bottom-line total is not reduced. The numerous accounting intricacies associated with these Trust Fund transfers now outweigh whatever benefit may have been present when the transfers were initiated years ago. HHS is not aware of any legislative requirement mandating these transfers, or of any prohibition against ending them. Deleting the transfers should also make appropriations scorekeeping easier for Congressional staff.</p>

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

	<u>FY 2010 Actual</u>	<u>FY 2011CR</u>	<u>FY 2012 PB</u>
<u>General Fund Discretionary Appropriation:</u>			
L/HHS, Office for Civil Rights.....	\$37,785,000	\$37,785,000	\$46,717,000
Across-the-board reductions	--	--	--
Subtotal, L/HHS, Office for Civil Rights.....	37,785,000	37,785,000	46,717,000
Secretary's Transfer.....	6,000	--	--
Subtotal, adjusted appropriation.....	\$37,779,000	\$37,785,000	\$46,717,000
 <u>Trust Fund Discretionary Appropriation:</u>			
Appropriation Lines.....	\$3,314,000	\$3,314,000	
Across-the-board reductions.....	--	--	
Subtotal, L/HHS, Office for Civil Rights.....	3,314,000	3,314,000	
Rescission.	--	--	
Subtotal, adjusted trust fund discr. appropriation.....	3,314,000	3,314,000	
 Total, Discretionary Appropriation	 \$41,093,000	 \$41,099,000	 \$46,717,000
 Unobligated balance, start of year....	 --	 --	 --
Unobligated balance, end of year...	\$43,000	--	--
Unobligated balance, lapsing.....	\$43,000	--	--
	<hr/>	<hr/>	<hr/>
 Total obligations.....	 \$41,050,000	 \$41,099,000	 \$46,717,000

Excludes the following amounts for reimbursable activities carried out by this account:
FY 2010 \$278,000; FY 2011 \$278,000; FY 2012 \$290,000.

SUMMARY OF CHANGES

2010 General Funds appropriation	\$37,785,000
HI/SMI trust funds transfer	\$3,314,000
Total adjusted budget authority	\$41,099,000
2012 Request - General Funds	\$46,717,000
Request - HI/SMI trust funds Transfer	\$0
Total estimated budget authority	\$46,717,000
Net Changes	5,618,000

	<u>FY 2012 Estimate</u>		<u>Change from Base</u>	
	(FTE) ¹	<u>Budget Authority</u>	(FTE)	<u>Budget Authority</u>
<u>Increases:</u>				
<u>A. Built-In:</u>				
1. Costs of pay adjustments	280	\$27,742,000	50	\$4,905,000
2. Benefits for former personnel	280	\$21,000	50	\$0
3. Land and Structures	0	\$0	0	\$0
4. Personnel benefits	280	\$6,449,000	50	\$907,000
5. Travel and transportation of persons	280	\$365,000	50	\$25,000
6. Transportation of things	280	\$25,000	50	\$5,000
7. Increase in Rental Payments to GSA	280	\$3,267,000	50	\$109,000
8. Communications, utilities, and miscellaneous charges	280	\$372,000	50	\$13,000
9. Printing and reproduction	280	\$55,000	50	\$5,000
10. Advisory and assistance services	0	\$0	0	\$0
11. Other services	280	\$1,535,000	50	-\$587,000
12. Working Capital Fund	0	\$0	50	\$0
13. Operation and maintenance of facilities	280	\$1,266,000	50	\$18,000
14. Job Corps FECA	0	\$0	0	\$0
15. Operation and maintenance of equipment	280	\$1,638,000	50	\$38,000
16. Supplies and materials	280	\$250,000	50	\$25,000
17. Equipment	0	\$0	0	-\$75,000
18. Research & Development Contracts	0	\$0	0	\$0
19. Grants, subsidies, and contributions	0	\$0	0	\$0
Subtotal, Built-In Increases	280	+\$42,985,000	50	+\$5,388,000
<u>B. Programs:</u>				
Subtotal Program Increases	280	+\$3,732,000	50	+\$230,000
Total Increases	280	+\$46,717,000	50	+\$5,618,000
<u>Decreases:</u>				
<u>B. Programs:</u>				
Subtotal Program Decreases			0	\$0
Total Decreases	0	\$0	0	\$0
Net Change	280	+\$46,717,000	50	+\$5,618,000

¹ FY 2012 FTE numbers include Office of the General Counsel / Civil Rights Division staff

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

	<u>2010 Actual</u>		<u>2011 CR</u>		<u>2012 PB</u>	
	<u>FTE</u>	<u>Amount</u>	<u>FTE</u>	<u>Amount</u>	<u>FTE</u>	<u>Amount</u>
Civil Rights Compliance.....	82	\$15,701	102	\$15,701	102	\$16,962
Health Information Privacy and Security Rule Compliance.....	112	19,857	128	19,857	142	24,122
Operations....	<u>36</u>	<u>5,541</u>	<u>36</u>	<u>5,541</u>	<u>36</u>	<u>5,633</u>
Total Budget Authority	230	\$41,099	266¹	\$41,099	280¹	\$46,717
General funds.....		\$37,785		\$37,785		\$46,717
HI/SMI trust funds.....		<u>3,314</u>		<u>3,314</u>		--
Total Budget Authority		\$41,099		\$41,099		\$46,717

¹ FY 2011 and FY 2012 FTE numbers include Office of the General Counsel / Civil Rights Division staff

Authorizing Legislation:

	2011 Amount Authorized	2011 CR	2012 Amount Authorized	2012 President's Budget
Office for Civil Rights:	Indefinite	\$41,099,000	Indefinite	\$46,717,000
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; P.L. 110-233; P.L. 111-5 P.L. 111-148				

FY 2010 Authorization Indefinite

Allocation Method.....Direct Federal/Intramural

APPROPRIATION HISTORY				
(Dollars in Thousands)				
	Budget Estimates to Congress	House Allowance	Senate Allowance	Appropriations
2002	\$32,011	\$32,011	\$32,011	\$31,431
2003	\$35,576	\$35,576	\$35,576	\$33,040
2004	\$34,255	\$34,255	\$34,255	\$33,909
2005	\$35,369	\$35,369	\$35,369	\$35,019
2006	\$35,001	\$35,001	\$35,001	\$34,651
2007	\$36,281	\$36,281	\$36,281	\$34,909
2008	\$37,061	\$37,061	\$37,061	\$34,299
2009	\$40,099	\$40,099	\$40,099	\$40,099
2010	\$41,099	\$41,099	\$41,099	\$41,093
2011	\$44,382	\$44,382	\$44,382	\$41,099

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

	FY 2010	FY 2011	FY 2012 President's	FY 2012 +/-
	<u>Appropriation</u>	<u>CR</u>	<u>Budget Request</u>	<u>FY 2010</u>
Budget Authority	41,099,000	41,099,000	46,717,000	5,618,000
FTE	230	266 ¹	280 ¹	50

¹ FY 2011 and FY 2012 FTE numbers include Office of the General Counsel / Civil Rights Division staff.

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, P.L. 110-233, P.L. 111-5

FY 2010 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 and security of protected health information and the public's right to non-discriminatory access to Federally-funded health and human services. Through prevention and elimination of unlawful discrimination and by protecting the privacy and security 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.

As HHS' civil rights and health information privacy and security law enforcement agency, OCR's key priorities in FY 2011 and FY 2012 are: ensuring understanding of and compliance with the HIPAA Privacy and Security Rules; implementing statutory privacy protections for genetic information; implementing the enhancements to and expansions of the HIPAA Privacy and Security Rules required by the Health Information Technology for Economic and Clinical Health (HITECH) Act; promoting adequate privacy and security protections in the use of health information technology; enforcing the confidentiality protections afforded to patient safety information; promulgating regulations for and implementing Section 1557 of ACA; increasing non-discriminatory access to quality health care and human services, including adoption, foster care, and TANF; promoting best practices for effective communication in hospital settings with individuals who are deaf or hard of hearing and limited English proficient persons; strategically disseminating an OCR-developed Federal civil rights curriculum for medical schools to help narrow disparities in health care quality, access and patient safety; supporting appropriate services in the most integrated setting for individuals with disabilities; and promoting non-discrimination and privacy and security protections in emergency preparedness and response activities.

Through these varied efforts, OCR promotes integrity in the expenditure of Federal funds by ensuring that these funds support programs which provide access to services free from discrimination on the basis of race, color, national origin, disability, age, religion and sex. OCR's efforts also promote public trust and confidence that the health care system will maintain the privacy and security of protected health information, while ensuring access to care.

Civil Rights Compliance

OCR civil rights compliance staff provides the mission-critical function of conducting investigations to resolve complaints from the public concerning allegations of civil rights violations. The compliance staff also develops technical assistance tools and conducts public education events to prevent discrimination. In addition, OCR headquarters staff members provide significant input to the development of compliance and enforcement strategies as well as expert advice to regional staff in their formulation of investigative plans for complaints and compliance reviews, corrective action closure letters, voluntary compliance agreements, violation letters of finding, settlement agreements and enforcement actions.

OCR's Civil Rights Division oversees a nationwide civil rights pre-grant review program for new Medicare applicants to ensure their compliance with Federal civil rights laws, including Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.¹ Through this program, OCR provides technical assistance to new Medicare providers and existing Medicare providers under new ownership, reviews health care facilities' policies and procedures for civil rights compliance, and sends clearance letters to the facilities after they have demonstrated compliance. OCR also enters into civil rights corporate agreements with major health care corporations to develop model civil rights policies and procedures at all facilities under corporate ownership and control, extending their reach to facilities beyond the scope of Medicare Part A program requirements. In this way, OCR is achieving voluntary compliance with health care organizations on a large scale, maximizing its impact and civil rights compliance efforts within the Medicare provider community. Finally, OCR is the Departmental leader in ensuring the protection of the civil rights of persons with disabilities and other underserved populations in emergency preparedness, response, and recovery activities.

Highlights of OCR's civil rights compliance accomplishments over the last eighteen months include:

- In April 2010, OCR entered into a Voluntary Compliance Agreement with the Wisconsin Department of Children and Families (DCF). Under the agreement,

¹ The HHS Centers for Medicare and Medicaid Services require that health care providers participating in the Medicare Part A program do not deny benefits or services to qualified persons based on race, color, national origin, disability, or age. OCR's pre-grant review process certifies civil rights compliance, as appropriate, and serves as an effective means of promoting voluntary compliance by health care providers, thus helping them prevent future civil rights compliance problems.

DCF will ensure that when Wisconsin families seek income assistance and help finding employment, they will have an equal opportunity to participate in the Temporary Assistance for Needy Families (TANF) program. Pursuant to Title VI, DCF will ensure that sanctions (i.e., reductions in income assistance) are not applied to TANF participants in a discriminatory manner based on race, color, or national origin (including limited English proficiency). Under Section 504 and Title II of the ADA, DCF will screen and assess TANF applicants and participants to ensure that qualified individuals with disabilities receive reasonable accommodations, which may include sign language interpreters, job training and supports for a longer time period than what is typically afforded, or in-depth services from the Wisconsin Division of Vocational Rehabilitation.

- The Windsor Rosewood Care Center, LLC (WRCC), located in Contra Costa County, California, has agreed to provide individuals with HIV/AIDS equal access to its skilled nursing facility, as required by Section 504, under a March 2010 OCR Settlement Agreement. This settlement resulted from a discrimination complaint filed by the Contra Costa HIV Legal Services Project. After investigating the complaint, OCR issued a Violation Letter of Findings to WRCC, concluding that when it was owned and operated by Helios Healthcare, LLC, the skilled nursing facility violated Section 504 by denying admission to a Medicaid beneficiary because he was HIV-positive. Under the settlement agreement, WRCC will establish non-discrimination, reasonable accommodation, and universal precautions policies; implement patient grievance procedures; and inform patients of their right to file with OCR and have their discrimination complaints investigated. Maximizing Departmental resources, OCR arranged for the HRSA-funded Pacific AIDS Education and Training Center to provide comprehensive training to the WRCC supervisory staff, pursuant to the Ryan White HIV/AIDS Treatment Extension Act of 2009.
- In January 2010, OCR entered into a Resolution Agreement with the University of Utah Hospitals and Clinics (UUHC), which includes four hospitals, seven specialty centers, and ten community clinics. Under the agreement, UUHC will ensure that patients with hearing, vision, or speech disabilities are screened and provided with auxiliary aids and services, including sign language interpreters, as required by Section 504 and Title II of the ADA. UUHC also will develop improved notices to patients of available auxiliary aids and services, new policies and procedures, comprehensive records to ensure provision of appropriate aids and services at follow-up appointments, and extensive training of personnel. The UUHC healthcare system, located in Salt Lake, Davis, Wasatch, Tooele, and Utah Counties, provides care for residents of Utah and five surrounding states, serving more than 850,000 patients annually.
- OCR entered into a January 2010 state-wide settlement agreement with the Florida Department of Children and Families (DCF). As required by Section 504 and Title II of the ADA, DCF will provide qualified sign language interpreters and other auxiliary aids and services to deaf and hard-of-hearing persons using its

programs across the State. After a complaint investigation, OCR issued a Violation Letter of Finding to DCF, concluding that the State agency had failed to provide interpreters to deaf patients in critical situations, such as during child protective services investigations and treatment in State mental health facilities. DCF employs 14,000 individuals statewide to deliver a variety of health and human services programs, including adoption, child and adult protective services, and TANF, as well as mental health and substance abuse treatment. These programs and services are available to an estimated total state population of three million deaf or hard-of-hearing residents.

- In October 2009, the Montgomery County Department of Social Services (MCDSS) in New York entered into a Voluntary Resolution Agreement with OCR to ensure that the language assistance needs of their clients are properly assessed and that competent, timely language assistance services are provided to limited English proficient individuals. MCDSS also agreed to ensure effective communication during home visits and evaluations; notify limited English proficient clients of the availability of free language assistance; translate vital documents; and establish mandatory staff training. MCDSS provides or administers a wide range of publicly funded social services and cash assistance programs, including Medicaid, personal care services, TANF, food stamps, emergency assistance, and general relief. MCDSS programs reach approximately 28,000 people each year.
- In collaboration with the American Hospital Association (AHA), OCR has accomplished significant health provider outreach through its national initiative to provide technical assistance and share resources to help hospitals communicate effectively with individuals who are deaf or hard of hearing and limited English proficient persons. Currently, OCR is engaged in partnership activities with 15 hospital associations in 14 states. Through this initiative, OCR has trained hospital administrators and staff in Arizona, Colorado, Idaho, Kentucky, Missouri, New York, New Jersey, Oklahoma, Oregon, Rhode Island, Pennsylvania, Texas, Utah and Washington on applicable Federal anti-discrimination laws, and provided technical assistance to numerous hospitals on specific issues that they raised about their language services programs. OCR also has developed a dedicated webpage that provides various resources and tools to facilitate effective communication between hospitals and the target populations. Among other accomplishments achieved through the Initiative: 122 hospitals in Kentucky now have access to a contract for telephonic interpretation services that offers a volume-based discount rate at a substantially lower cost than could be obtained through individual contracts; 230 hospitals in Missouri now have free access to a formerly fee-for-service web-based library of over 650 translated health care resources; and five of six hospitals that participated in a pilot project to incorporate patient communication alerts into patient hand-off procedures decided to institutionalize the practice at the conclusion of the pilot project. In addition, OCR has conducted outreach to community-based and advocacy organizations.

- OCR partnered with the National Consortium for Multicultural Education, comprised of 18 medical schools awarded five-year grants by the National Institutes of Health, to create and deploy a first of its kind, scenario-based curriculum on health disparities and cultural competency in medicine to educate health care providers, medical educators, and student physicians on their civil rights obligations under Title VI of the Civil Rights Act of 1964 and other civil rights laws. The curriculum ensures that medical students and other health care professionals understand that some aspects of “culturally competent” care, including access for individuals with limited English proficiency and non-discrimination in health care on the basis of race, color and national origin, are not only tools for effective medical practice, but also may be legally required. Published by the American Association of Medical Colleges (AAMC) on its “MedEdPORTAL” (Pub ID #7740),” the curriculum has been presented at Wake Forest University School of Medicine in Winston-Salem, North Carolina; the University of Kansas School of Medicine in Kansas City, Kansas; Morehouse School of Medicine in Atlanta, Georgia; the AAMC annual meeting in Washington, DC; the Health Resources Services Administration’s Bureau of Health Professions All Programs Meeting in Washington, DC; and the Office of Minority Health’s Third National Leadership Summit on Eliminating Racial and Ethnic Disparities in Health, in National Harbor, Maryland.

Health Information Privacy and Security Rule Compliance

OCR’s Health Information Privacy and Security compliance staff conducts investigations to resolve complaints from the public concerning allegations of HIPAA Privacy and Security Rules violations, develops technical assistance tools, and conducts public education events to prevent privacy and security violations. In addition, OCR headquarters staff members provide significant input into 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 following compliance reviews or complaint investigations. OCR’s Health Information Privacy Division also monitors corrective action agreements, and engages in public education and technical assistance activities as means of achieving compliance with Privacy and Security Rule requirements.

OCR headquarters’ staff is responsible for policy development and rule making activities, including analyzing the need for modifications to privacy, security, and confidentiality regulations, proposing regulatory modifications when necessary, and promulgating regulations for new statutory authorities, such as the Genetic Information Nondiscrimination Act of 2008 (GINA) and the Health Information Technology for Economic and Clinical Health Act (HITECH) contained in the American Recovery and Reinvestment Act of 2009 (ARRA). OCR’s Health Information Privacy Division is also responsible for national policy on the confidentiality of information related to patient safety events and for the enforcement of those confidentiality protections under the Patient Safety and Quality Improvement Act of 2005.

OCR plays a leading role in other health reform efforts, including patient safety and in personalized medicine based on genetic breakthroughs. For example, in FY 2008, OCR issued and implemented standards, policies, and regulations for enforcing the Federal privilege and confidentiality protections of the Patient Safety and Quality Improvement Act of 2005, and, during FY 2009 and FY 2010, is responsible for rulemaking responsibilities under GINA. Finally, OCR is the Departmental leader in ensuring the appropriate flow of health information under the HIPAA Privacy and Security Rules in emergency preparedness and response activities.

Highlights of OCR's accomplishments in HIPAA Privacy and Security Rule compliance include:

- Rite Aid will pay a \$1 million settlement and take corrective action to ensure it does not violate the privacy of its millions of patients when disposing of identifying patient information such as pill bottle labels. In a coordinated action, Rite Aid has also signed a consent order with the Federal Trade Commission (FTC) to settle potential violations of the FTC Act. This is the second joint investigation and settlement conducted by OCR and FTC.
- Following up on media reports alleging that the CVS pharmacy chain had disposed of patient information in unsecured industrial trash containers, OCR conducted an investigation of CVS' compliance with the Privacy Rule. At the same time, the FTC opened an investigation of CVS for potential violations of the FTC Act, making this the first case in which OCR has coordinated investigation and resolution of a case with the FTC. The reviews by OCR and the FTC indicated that CVS had failed to implement adequate policies and procedures to appropriately safeguard patient information during the disposal process and had failed to adequately train employees on how to dispose of such information properly. As part of a Resolution Agreement reached in January 2009, CVS agreed to pay \$2.25 million² and to implement a robust correction action plan that requires Privacy Rule compliant policies and procedures for safeguarding patient information during disposal, employee training, and employee sanctions for noncompliance. In a coordinated action, CVS Caremark Corporation, the parent company of the pharmacy chain, signed a consent order with the FTC to settle consumer protection violations.
- OCR has completed the transition of the Security Rule from CMS, pursuant to the Secretary's July 2009 delegation, and increased enforcement efforts in this area. In November 2009, OCR conducted extensive, in-person Security Rule training of key regional staff. This has permitted OCR to leverage its regional investigators to expand enforcement of the Security Rule by better integrating Privacy and Security Rule complaint investigations. In April 2010, OCR worked with the National Institute of Standards and Technology to host a conference on HIPAA

² Prior to the effective date of section 13410(c) of the American Recovery and Reinvestment Act of 2009 on February 18, 2010, OCR was not authorized to retain settlement agreement amounts. Therefore, this settlement amount was deposited into the Treasury General Fund.

Security. The conference was well attended and received significant positive press. For example, an article on www.healthleadersmedia.com praised OCR's efforts with respect to the Security Rule and HITECH, citing OCR's "proactive" approach and transparency.

Recovery Act Responsibilities and Accomplishments

OCR has an important role under the HITECH Act contained in the American Recovery and Reinvestment Act of 2009 to strengthen HIPAA Privacy and Security protections, enhance enforcement efforts, and provide public education about privacy protections.

Section 13403(a) of the HITECH Act requires that not later than six months after the date of the enactment of the Act, the Secretary shall designate an individual in each regional office of the Department to offer guidance and education to covered programs and providers, business associates, and individuals on their rights and responsibilities related to Federal privacy and security requirements for protected health information. The Secretary delegated this responsibility to OCR on July 27, 2009, and this budget will enable OCR to maintain regional office privacy advisors in six of OCR's ten regional offices. In addition to performing as regional office experts on HIPAA privacy and security, these regional privacy advisors will be critical contributors to OCR's mandated national public education initiative.

In addition to the regional office privacy advisors, section 13403(b) of the HITECH Act requires that not later than 12 months after enactment, OCR will develop and maintain a multi-faceted national education initiative to enhance public transparency regarding the uses of protected health information. The Act requires that the education initiative will be conducted in a variety of languages and will present information in a clear and understandable manner. The HITECH requirement not only expands the regulated community to include business associates but also mandates that OCR educate individuals about the potential uses of their protected health information, the effects of such uses, and the rights of individuals with respect to such uses. To meet this challenge, OCR is currently working with the Office of the National Coordinator for Health Information Technology (ONC) to use ARRA funding to design and roll out the initial public education campaign during FY 2010 and FY 2011.

Finally, section 13411 of the HITECH Act requires the Secretary to provide for periodic audits to ensure that covered entities and business associates are in compliance with the law's requirements. As the Secretary has delegated to OCR the responsibility for enforcing the privacy provisions of HIPAA, and with the re-delegation of the Security Rule responsibility, OCR will be required to develop an audit program to ensure compliance by covered entities and business associates. OCR is working with ARRA funding provided via ONC to conduct a study to determine the most effective means of performing these audits as well as to develop audit protocols to govern the audit program. Upon OCR's completion of these tasks in the summer of FY 2010, additional ARRA funding will be released for the initial round of audits in FY 2011 and FY 2012.

These activities directly support the President's goal of increasing the use of electronic health records and allow OCR to adhere to the statutory mandates of the HITECH Act. The mandated public education program (including regional office privacy advisors) coupled with audits of covered entities and business associates will increase Americans' confidence in the use of electronic health records and the privacy and security of their health information. The target population for the national public education campaign is all consumers of health care in this country, and the audit program will focus on the covered entity and business associate community. Further, OCR will work to increase the public's use of the web as the principal source for obtaining information about the potential uses of their protected health information, the effects of such uses, and their individual rights with respect to such uses.

Highlights of recent Recovery Act accomplishments include:

- In April 2009, in consultation with ONC and CMS, OCR published guidance on technologies and methodologies to secure protected health information from unauthorized persons and requested comments. The guidance was also posted on the OCR website to meet the HITECH Act requirement for issuance of guidance within 60 days of enactment.
- In August 2009, as required by the HITECH Act, OCR published an Interim Final Rule for Breach Notification for Unsecured Protected Health Information. The Breach Notification provisions required covered entities for the first time to provide notice to individuals affected by breaches of unsecured protected health information, including breaches at or by business associates, to report these breaches to the Secretary, and to report to the media when the breaches involve 500 or more individuals. Public comment closed October 23, 2009, and the Department is currently working on issuing a final rule to replace the interim rule.
- In February 2010, as required by the HITECH Act, OCR began posting on its website a list of the covered entities that reported to the Secretary breaches of unsecured protected health information affecting 500 or more individuals. The website is updated as OCR receives these reports.
- In October 2009, OCR published an Interim Final Rule to conform the HIPAA enforcement regulations to the statutory revisions made pursuant to section 13410(d) of the HITECH Act, which became statutorily effective on February 18, 2009. More specifically, the Interim Final Rule amended HIPAA's enforcement regulations, as they relate to the imposition of civil money penalties, to incorporate the HITECH Act's new categories of violations and tiered ranges of civil money penalty amounts.
- In March 2010, OCR held a two-day public workshop in Washington, DC on the HIPAA Privacy Rule's de-identification standard. The in-person workshop consisted of five panels. Each panel addressed a specific topic related to the Privacy Rule's de-identification methodologies and policies. OCR will synthesize the input from workshop panelists and general comments to incorporate into guidance required by the HITECH Act.

- In May 2010, OCR published a Request for Information to inform the Notice of Proposed Rulemaking it is drafting to implement section 13405(c) of the HITECH Act, which expands individuals' right to an accounting of disclosures of protected health information that are made by HIPAA covered entities and business associates to carry out treatment, payment and health care operations, if such disclosures are through an electronic health record. Public comment closed on May 18, 2010, and OCR is in the process of developing a notice of proposed rulemaking in this area.
- In July 2010, OCR published a Notice of Proposed Rulemaking to implement the HITECH Act provisions strengthening privacy and security protections in the HIPAA Privacy and Security Rules, which take effect in 2011. These provisions include extending security and privacy rule liability to business associates, new limitations on marketing and fundraising communications, a prohibition on the sale of protected health information, stronger rights to electronic access and to request restrictions, and additional enforcement improvements, including investigation of allegations of willful neglect.
- OCR and ONC awarded a contract of \$18.7 million in Recovery Act funds to Ketchum Inc., a national public relations firm, to develop and maintain a national public education campaign about the privacy and security of protected health information; the campaign will also include related activities for health care providers and the public to promote the adoption and meaningful use of health information technology. The initiative, required by the HITECH Act under the Recovery Act, is jointly led by OCR and ONC and will be managed on a daily basis by ONC. There are two option years on the contract for a total of \$6.9 million in non-Recovery Act funds.

Operations

OCR operates as a Staff Division within the Office of the Secretary and serves as the primary defender of the public's right to privacy and security of protected health information and the public's right to non-discriminatory access to Federally-funded health and human services. Through prevention and elimination of unlawful discrimination and by protecting the privacy and security 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.

To effectively achieve this mission, OCR's operations staff members are focused on continuous operational and process improvement. Several key initiatives designed to improve overall operational efficiency in FY 2010 and FY 2011 include centralized intake, targeted hiring designed to close skill gaps across the organization, development of enhanced programmatic training, along with upgrades to case management systems. With an emphasis on improving the level of service provided to the public these initiatives, coupled with programmatic enhancements to HIPAA compliance and enforcement operations have enabled OCR to make solid gains in reducing the inventory of open complaints. Funding at the requested level will allow OCR's compliance and

enforcement operations to continue this renewed focus on being more responsive to the American public.

In addition to these process improvements, OCR continuously works to improve budget and performance integration and increase performance accountability. Results-oriented performance plans are established for all employees with goals cascaded down from OCR's organization-wide performance objectives. By continuously evaluating performance against established measures and goals, OCR works to achieve maximum resource efficiencies.

Funding History

FY 2007	\$34,909
FY 2008	\$34,299
FY 2009	\$40,099
FY 2010	\$41,093
FY 2011	\$41,099

Budget Request

The Office for Civil Rights requests \$46,717,000 in FY 2012, an increase of \$5,618,000 over the FY 2010 enacted level of \$41,099,000. Activities funded in FY 2012 include:

- Complaint investigations; securing corrective action and voluntary compliance agreements; issuing violation letters of finding; entering into settlement agreements; and bringing enforcement actions;
- Public education;
- Technical assistance and compliance reviews, including civil rights pre-grant reviews of new Medicare applicants;
- Rulemaking and policy development and guidance.

The FY 2012 request will enable OCR to continue to address key non-discrimination issues, including ADA and *Olmstead* compliance to integrate persons with disabilities in communities instead of institutions; Title VI compliance to reduce disparities in health care access and quality for racial and ethnic minorities and other underserved populations, and to improve language access for limited English proficient persons; and the inclusion of persons with disabilities and other members of special needs populations in planning for national emergencies, while continuing to improve responsiveness to the public's questions about, and allegations of non-compliance with, the HIPAA Privacy and Security Rules.

Since implementation of the Privacy Rule in 2003, the number of complaints filed with OCR per year has grown six-fold, from 1,948 in FY 2002 to approximately 12,000 in

FY 2008.³ In an effort to keep pace with an ever increasing case workload, OCR instituted a number of efficiencies from FY 2002 through FY 2008, including a multi-year reorganization effort, improved staff skill sets, centralized intake, and ongoing improvements in case management techniques. These efficiency measures produced an increase in the number of cases resolved per FTE per year, although these measures did not fully offset the robust growth in complaint receipts.

Programmatic enhancements to OCR compliance and enforcement operations funded through OCR's FY 2009 appropriation resulted in a decrease in OCR's overall inventory of open complaints and has allowed OCR to continue to improve its responsiveness to the public by focusing on the timeliness of resolving complaints, as reflected in the performance measures found in the Outputs and Outcomes Table on page 35 (measures 1.1.7 through 1.1.10). The President's Budget request for FY 2012 will allow OCR's compliance and enforcement operations to continue this renewed progress in being more responsive to the American public.

At the requested level in FY 2012, OCR will build on the efforts outlined above, with an emphasis on continued robust enforcement of its civil rights and HIPAA responsibilities. Robust compliance activities, as well as regulations implementing the revised enforcement standards set forth in HITECH, are expected to be in place in FY 2012. This will result in an increase in both the number of complaints filed and the number of breach notifications. OCR's new initiatives are intended to address these increases and prepare for further increases in subsequent fiscal years. OCR will continue its collaboration with ONC to further expand its outreach efforts in support of the HITECH Act, with the goal of enhancing public transparency regarding the uses of protected health information and the rights of individuals with respect to those uses. OCR will also play a vital role in promoting access for underserved populations in health information technology initiatives by serving as an expert resource for the Secretary and other HHS components regarding equal access to health information technology, providing consultation on health information technology policy and programmatic initiatives, to promote civil rights and ensure accessibility for individuals with disabilities and limited English proficiency, and enforcing compliance with applicable Federal civil rights laws, through complaint investigations; compliance reviews; corrective action and voluntary compliance agreements; violation letters of finding; settlement agreements; and enforcement actions.

When the ACA was signed into law on March 23, 2010, the nondiscrimination requirements of Section 1557 immediately applied to large numbers of entities that were not previously covered under existing Federal civil rights laws. The Section 1557

³Exceptive of this long-term trend, OCR recorded fewer complaint receipts during FY 2009 (approximately 9,900) compared to FY 2008. Several studies, including a March 2009 article in the New England Journal of Medicine and a survey conducted in April 2009 by the Kaiser Family Foundation, indicate that the recession caused many Americans to limit their access to medical care, which would have a direct effect on the volume of alleged complaints filed. As the economy improves, OCR anticipates that the baseline of complaint receipts will not only return to pre-recession historical levels, but that the enhanced Privacy and Security Rule enforcement provisions mandated by the HITECH Act will very significantly boost the volume of HIPAA complaints received. Through the first half of FY 2010 OCR has seen a 9 percent increase in the volume of HIPAA complaints received compared to the same time period a year ago.

nondiscrimination requirements apply, for example, to any health program or activity which: (1) receives Federal financial assistance; or (2) is administered by an Executive Agency; or (3) is administered by an entity established under Title I of the ACA. Apart from Section 504 of the Rehabilitation Act, current civil rights laws do not include these last two categories of covered programs and providers. Also, Section 1557 identifies “credits, subsidies, or contracts of insurance” as Federal financial assistance. Under existing civil rights laws, neither entities receiving tax credits nor entities under contracts of insurance are considered Federal financial assistance. Consequently, OCR must ensure the compliance of millions of additional covered programs and providers with the nondiscrimination requirements of Section 1557.

New entities subject to Section 1557 compliance include: (1) recipients of tax credits – of up to 35% of health insurance premiums;⁴ (2) 50 state offices of health insurance consumer assistance that receive grants from the Department; and (3) new or substantially expanded covered programs and providers receiving Department funds under its high-risk pool program (including programs administered by 28 states) to help adults who are uninsured or have pre-existing conditions get health insurance.

In addition, Section 1557 marks the first time that Federal civil rights law prohibits discrimination on the basis of sex in health programs or activities, thus significantly expanding the protections afforded to individuals seeking and receiving health care and OCR’s jurisdiction to address discrimination against them.

Under the ACA, OCR’s new enforcement responsibilities are not limited to Section 1557. OCR is also responsible for enforcing Section 1553 of the ACA, which prohibits discrimination against health care entities and individuals who decline to provide assisted suicide services. Moreover, in the light of the President’s March 24, 2010 Executive Order stating that under ACA, “longstanding Federal laws to protect conscience (such as the Church Amendment, 42 U.S.C. 300a-7, and the Weldon Amendment, section 508(d)(1) of Public Law 111-8) remain intact,” OCR anticipates a substantial increase in the number of complaints received from health care workers asserting that they have suffered discrimination because they decline to participate in abortions or sterilization procedures.

As a result of the ACA, there will be an expansion of the covered entity community and a substantial increase in the number of individuals from underserved populations who secure health insurance and thus enter the health care system. This entry into the health care system, however, will not necessarily lead to unfettered access to affordable and high-quality health care. The Centers for Disease Control and Prevention, for example, have estimated that 1.1 million individuals are currently living with HIV and over 56,000 new infections occur each year. These HIV-positive individuals experience high levels

⁴ Under the ACA, entities receiving new forms of Federal financial assistance will be subject to the civil rights laws and regulations that OCR enforces. These entities represent a significant increase in the covered entity community that will now be subject to enforcement under Section 1557. In many cases, these businesses have never been required to comply with the civil rights laws and regulations enforced by OCR.

of discrimination when seeking access to health care.⁵ In addition, the Agency for Healthcare Research and Quality has estimated that 23 million people in the United States are limited English proficient. Under Section 1557, recipients of Federal financial assistance (and now Executive Agencies and entities created under Title I of the ACA) must take reasonable steps to provide meaningful access to limited English proficient individuals in their health programs. Also, there are one million functionally deaf individuals in the United States and 36 million individuals with some degree of hearing loss. These individuals must be provided reasonable accommodations, such as auxiliary aids and services, including sign language interpreters, in health programs or activities receiving Federal financial assistance, or administered by Executive Agencies or entities created under Title I of the ACA.

To meet these challenges – an expansion in the covered entity community and a substantial increase in underserved populations entering the health care system – OCR will establish a compliance review program designed to evaluate, educate and ensure compliance with Section 1557 by the newly covered programs and providers. The program will have the goal of performing 1,700 compliance reviews each year, including reviews of the 50 state offices of health insurance consumer assistance that receive grants from the Department; the new or substantially expanded covered programs and providers receiving Department funds under its high-risk pool program (including programs administered by 28 states and other covered entities).

In addition to reviewing a sample of the entities receiving new forms of Federal financial assistance, state high risk pool programs, and state offices of health insurance consumer assistance, OCR will focus on ensuring compliance in major statewide programs. OCR's on-going enforcement activities continue to uncover systemic problems with Federal civil rights compliance at the state level.

In many circumstances, states are not in full compliance with civil rights laws and regulations that all HHS-funded recipients must observe and are in need of additional oversight and technical assistance. In addition to entering into statewide agreements to ensure the widest possible distribution of positive outcomes for individuals who have alleged discrimination, it is imperative that OCR have the ability to ensure that the agreements are implemented by the state. OCR, for example, partnered with the Department of Justice to negotiate a consent decree with the State of Georgia to address *Olmstead* compliance issues and ensure that the State is serving individuals with mental illness and developmental disabilities in the most integrated settings appropriate to their needs. OCR utilized outside experts to evaluate Georgia's compliance with its original 2008 settlement agreement, and it was through the analysis provided by these experts that OCR determined that the State was in substantial non-compliance with the 2008 agreement. The nature of this work involves significant data collection and analysis because of the multiple facilities involved and the myriad policies and procedures

⁵ In recent years, OCR has entered into settlements with five nursing homes that allegedly refused to admit HIV-positive patients. Moreover, in 2006, the Williams Institute, at the University of California Los Angeles School of Law, sent testers to 131 nursing homes in Los Angeles County and found that 46% of the nursing homes would not admit HIV-positive patients.

requiring consideration. Moreover, as these statewide settlement agreements have become more complex and prevalent, they have strained the ability of OCR to rely on the OPDIVs to provide the type of expert assistance often required.

To ensure that states are in compliance with existing laws and regulations as well as the new requirements of the ACA, OCR proposes establishment of an investigative unit at the headquarters level to specifically investigate statewide compliance with existing Federal civil rights laws and Section 1557. This unit will initiate state level or significant impact investigations each year. Data will be culled from OCR's Program Information Management System (PIMS), as well as ongoing civil rights reviews of Medicare Part A Providers, State TANF Plans, and State SCHIP Plan Amendments, to identify trends that indicate programs and states that warrant the initiation of statewide compliance reviews.

In signing the ACA, the President has made it clear that ensuring access to high quality and affordable health care for all Americans is one of the central tenets of his domestic policy agenda. In addition, the Secretary's priorities include transforming healthcare and ensuring access to quality, culturally competent care for underserved populations. OCR is requesting these additional resources to ensure that existing Federal civil rights laws, the provider conscience protection statutes, Section 1553, and Section 1557 are aggressively enforced so that all Americans can participate in our Nation's health care system free from discrimination.

In addition, Section 13402 of the HITECH Act created a requirement for covered entities to report to the Secretary any breaches of unsecured protected health information. The Secretary delegated this responsibility to OCR and regulations were issued that went into effect on September 23, 2009. As of September 30, 2010 OCR has received a total of 9,300 breach reports (191 impact more than 500 individuals and 9,109 impact less than 500 individuals). Current OCR practice is to validate, post to the HHS website, and subsequently investigate all breach reports that impacted more than 500 individuals. Breach reports that impacted fewer than 500 individuals are compiled for future reporting to Congress, however they are treated as discretionary and only investigated if resources permit. Based on OCR's current HIPAA case load, almost all breach reports that impact less than 500 individuals are not investigated.

This issue creates a problem in that if these breach reports were submitted to OCR as complaints by members of the public they would be investigated; however, investigating these reports would result in a more than doubling of OCR's HIPAA workload. The breach reports received to date represents a 109 percent increase in total HIPAA workload. This new workload would be in addition to the nearly 9,400 HIPAA Privacy and Security Rule complaints that OCR received in FY 2010. Additional FTEs are critical if OCR is to successfully investigate the estimated 20,000 combined breach reports and HIPAA complaints that are anticipated to be received annually.

Marginal Cost Analysis

Below is a marginal cost summary for OCR's performance goals.

Performance <i>without</i> marginal investment			
Budget Scenario (\$000)	FY 2010	FY 2011 CR	FY 2012
Total Base Appropriation⁶	\$41,099	\$41,099	\$44,382
Performance Goal	Case Resolution Rate		
Percentage of civil rights complaints that require formal investigation, resolved within 365 days	30%	40%	42%
Percentage of civil rights complaints that do not require formal investigation, resolved within 180 days	74%	79%	84%
Percentage of privacy complaints that require formal investigation, resolved within 365 days	40%	50%	55%
Percentage of privacy complaints that do not require formal investigation, resolved within 180 days	68%	69%	74%
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 annually	98,200	201,200	161,200
Performance <i>with</i> marginal investment			
Budget Scenario (\$000)	FY 2010	FY 2011	FY 2012
Base Appropriation	\$41,099	\$41,099	\$44,382
Marginal Increase	NA	NA	\$2,335
Base + Marginal Increase	\$41,099	\$41,099	\$46,717
Performance Goal	Case Resolution Rate		
Percentage of civil rights complaints that require formal investigation, resolved within 365 days	30%	40%*	42%*
Percentage of civil rights complaints that do not require formal investigation, resolved within 180 days	74%	79%*	81%*
Percentage of privacy complaints that require formal investigation, resolved within 365 days	40%	50%*	52%*
Percentage of privacy complaints that do not require formal investigation, resolved within 180 days	68%	69%*	72%*
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 annually	98,200	201,200	213,500
Number of compliance reviews of new covered entities initiated each year	25	25	225
Number of statewide or similarly high impact investigations initiated each year	2	2	5
Number of statewide or other high impact settlement agreements placed into monitoring each year	2	2	4
The percentage of health information privacy breach reports that are investigated and resolved within 365 days of receipt	--	--	90%
Maintain the percentage of covered entities that take additional corrective action as a result of OCR's investigation	25%	25%	25%
Reduce the average cost of investigating a HIPAA breach report (baseline will be established in FY 2012)	--	--	Baseline

* An emphasis on resolving the older or more complex cases in OCR's open inventory in FY 2010 may result in a short-term increase in the average time required to resolve cases. This will result in a corresponding decrease in the timeliness targets in measures 1.1.7 – 1.1.10

⁶ Base appropriation assumes a 2.5% increase per fiscal year for inflation.

**Office for Civil Rights
Outputs and Outcomes Table**

Program: Performance Detail

Long Term Objective: 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 and security of protected health information

Measure	Most Recent Result	FY 2011 Target	FY 2012 Target	FY 2012+/- FY 2010
<u>1.1.1:</u> The number of covered entities that take corrective actions as a result of OCR intervention per year (<i>Outcome</i>)	FY 2010: 4,102 (Target: 4,100)	4,200	4,300	+200
<u>1.1.2:</u> The number of covered entities that make substantive policy changes as a result of OCR intervention and/or review per year (<i>Outcome</i>)	FY 2010: 2,607 (Target: 2,700)	2,750	2,800	+100
<u>1.1.3:</u> Rate of closure for civil rights and privacy cases and new Medicare application reviews per cases/review received (<i>Output</i>)	FY 2010: 104.9% (Target: 106%)	107%	108%	+2%
<u>1.1.4:</u> Percent of civil rights cases and new Medicare application reviews resolved per cases/reviews received (<i>Output</i>)	FY 2010: 94.7% (Target: 104%)	105%	105.5%	+1.5%
<u>1.1.5:</u> Percentage of privacy cases resolved per cases received (<i>Output</i>)	FY 2010: 111.1% (Target: 107%)	108%	109%	+2%
<u>1.1.6:</u> Number of individuals who are or represent health and human service providers, other interest groups, and consumers to whom OCR provides information and training annually (<i>Output</i>)	FY 2010: 55,975 (Target: 98,200)	201,200	213,500	+115,300
<u>1.1.7:</u> Percentage of civil rights complaints that require formal investigation, resolved within 365 days (<i>Output</i>)	FY 2010: 32% (30%)	40%*	42%*	+12%
<u>1.1.8:</u> Percentage of civil rights complaints that do not require formal investigation, resolved within 180 days (<i>Output</i>)	FY 2010: 83% (74%)	79%*	81%*	+7%
<u>1.1.9:</u> Percentage of privacy complaints that require formal investigation, resolved within 365 days (<i>Output</i>)	FY 2010: 56% (40%)	50%*	52%*	+12%
<u>1.1.10:</u> Percentage of privacy complaints that do not require formal investigation, resolved within 180 days (<i>Output</i>)	FY 2010: 67% (68%)	69%*	72%*	+4%

Long Term Objective: To enhance operational efficiency

Measure	Most Recent Result	FY 2011 Target	FY 2012 Target	FY 2012 +/- FY 2010
1.2.1: Rate of closure for civil rights and privacy cases and new Medicare application reviews per FTE (<i>Output</i>)	FY 2010: 57.5 cases (Target: 66.5 cases)	67 cases	67.5 cases	+1.0

* An emphasis on resolving the older or more complex cases in OCR's open inventory in FY 2010 may result in a short-term increase in the average time required to resolve cases. This will result in a corresponding decrease in the timeliness targets in measures 1.1.7 – 1.1.10.

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

	2010 Estimate	2012 Estimate	Increase or Decrease
<u>Personnel compensation:</u>			
Full-time permanent (11.1).....	22,837,000	27,742,000	4,905,000
Other than full-time permanent (11.3)....	555,000	654,000	99,000
Other personnel compensation (11.5)....	575,000	575,000	--
Military personnel (11.7).....	67,000	69,000	2,000
Special personnel services payments (11.8)..	--	-	--
Subtotal personnel compensation.	24,034,000	29,040,000	5,006,000
Civilian benefits (12.1).....	5,516,000	6,420,000	904,000
Military benefits (12.2).....	26,000	29,000	3,000
Benefits to former personnel (13.0).....	21,000	21,000	--
Total Pay Costs.....	29,597,000	35,510,000	5,913,000
Travel and transportation of persons (21.0).....	340,000	365,000	25,000
Transportation of things (22.0).....	20,000	25,000	5,000
Rental payments to GSA (23.1).....	3,158,000	3,267,000	109,000
Communication, utilities, and misc. charges (23.3)	359,000	372,000	13,000
Printing and reproduction (24.0).	50,000	55,000	5,000
Other Contractual Services:			
Advisory and assistance services (25.1).	--		--
Other services (25.2).....	2,122,000	1,535,000	(587,000)
Purchase of goods and services from government accounts (25.3).....	2,280,000	2,434,000	154,000
Operation and maintenance of facilities (25.4)	1,248,000	1,266,000	18,000
Research and Development Contracts (25.5)	--	-	--
Medical care (25.6).....	--	-	--
Operation and maintenance of equipment (25.7)	1,600,000	1,638,000	38,000
Subsistence and support of persons (25.8)....	--	-	--
Subtotal Other Contractual Services...	7,250,000	6,873,000	(377,000)
Supplies and materials (26.0).	250,000	250,000	
Equipment (31.0).....	75,000		(75,000)
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.....	11,502,000	11,207,000	(295,000)
Total Budget Authority by Object Class	41,099,000	46,717,000	5,618,000

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SALARIES AND EXPENSES

(Dollars in Thousands)

Object Class	FY 2010 Estimate	FY 2012 Estimate	Increase or Decrease
Personnel compensation:			
Full-time permanent (11.1).....	22,837	27,742	4,905
Other than full-time permanent (11.3).....	555	654	99
Other personnel compensation (11.5).....	575	575	0
Military personnel (11.7).....	67	69	2
Special personnel services payments (11.8).....			
Subtotal personnel compensation.....	24,034	29,040	5,006
Civilian benefits (12.1)..	5,516	6,420	904
Military benefits (12.2).....	26	29	3
Benefits to former personnel (13.0).....	21	21	0
Subtotal Pay Costs	29,597	35,510	5,913
Travel and transportation of persons (21.0)	340	365	25
Transportation of things (22.0).	20	25	5
Communication, utilities, and misc. charges (23.3)	359	372	13
Printing and reproduction (24.0).	50	55	5
Other Contractual Services:			
Advisory and assistance services (25.1).	--	--	--
Other services (25.2).....	2,122	1,535	-587
Purchase of goods and services from government accounts (25.3)	2,280	2,434	154
Operation and maintenance of facilities (25.4).	1,248	1,266	18
Research and Development Contracts (25.5)....	--	--	--
Medical care (25.6).....	--	--	--
Operation and maintenance of equipment (25.7)	1,600	1,638	38
Subsistence and support of persons (25.8).....	--	--	--
Subtotal Other Contractual Services.	8,019	7,690	-329
Supplies and materials (26.0)	250	250	0
Subtotal Non-Pay Costs.	8,269	7,940	-329
Total Salary and Expenses.....	37,866	43,450	5,584
Rental payments to GSA (23.1)	3,158	3,267	109
Total Salary, & Expenses and Rent.....	41,024	46,717	5,693

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Detail of Full Time Equivalents (FTE)

	2010 Actual Civilian	2010 Actual Military	2010 Actual Total	2011 Est. Civilian	2011 Est. Military	2011 Est. Total	2012 Est. Civilian	2012 Est. Military	2012 Est. Total
Office of the Director.....									
Direct:.....	5		5	5		5	5		5
Reimbursable:.....									
Recovery Act FTE (non-add)....									
Total:.....	5		5	5		5	5		5
Office of the General Counsel (Civil Rights)..									
Direct:.....				18		18	18		18
Reimbursable:.....									
Recovery Act FTE (non-add).....									
Total:.....				18		18	18		18
Civil Rights Division.....									
Direct:.....	22		22	27		27	27		27
Reimbursable:.....									
Recovery Act FTE (non-add).....							5		5
Total:.....	22		22	27		27	27		27
Health Information Privacy and Security Division.....									
Direct:.....	18		18	23		23	24		24
Reimbursable:.....	2		2	2		2	3		3
Recovery Act FTE (non-add).....							5		5
Total:.....	20		20	25		25	27		27
Planning and Business Administration Management.									
Direct:.....	17		17	17		17	19		19
Reimbursable:.....									
Recovery Act FTE (non-add).....									
Total:.....	17		17	17		17	19		19
Regional Offices.....									
Direct:.....	165	1	166	173	1	174	183	1	184
Reimbursable:.....									
Recovery Act FTE (non-add).....									
Total:.....	165	1	166	173	1	174	183	1	184
Total Recovery Act FTE (non-add)....							10		10
OCR FTE Total.....	229	1	230	265	1	266¹	279	1	280¹

Average GS Grade

FY 2007.....	12/9
FY 2008.....	13/4
FY 2009.....	13/5
FY 2010.....	13/2
FY 2011.....	13/2

¹ FY 2011 and FY 2012 FTE numbers include Office of the General Counsel / Civil Rights Division staff.

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	<u>2010</u> <u>Actual</u>	<u>2011</u> <u>Continuing Resolution</u>	<u>2012</u> <u>Estimate</u>
Executive level I			
Executive level II.....			
Executive level III			
Executive level IV.....			
Executive level V.....			
Subtotal			
Total - Exec. Level Salaries			
Subtotal	5	6	7
Total - ES Salary	\$ 1,056,886	\$ 1,233,034	\$ 1,233,034
GS-15.....	6	26	27
GS-14.....	29	38	39
GS-13.....	54	54	62
GS-12.....	60	66	67
GS-11.....	20	20	7
GS-10.....			
GS-9.....	26	32	46
GS-8.....	2	2	2
GS-7.....	14	14	15
GS-6.....	4	4	3
GS-5.....	4	4	5
GS-4.....	4	4	5
GS-3.....	2	2	2
GS-2.....			
GS-1.....			
Subtotal ¹	230	266	280
Total - GS Salary	\$21,911,202	\$22,741,172	\$23,836,117
Average ES level	5	5	5
Average ES salary.....	\$ 176,148	\$ 176,148	\$ 176,148
Average GS grade.....	13/2	13/2	13/4
Average GS salary....	\$ 82,997	\$ 83,169	\$ 85,129
Average Special Pay categories			

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Programs Proposed for Elimination

No programs are being proposed for elimination.

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**FY 2012 HHS Enterprise Information Technology and
Government-Wide E-Gov Initiatives**

STAFFDIV Allocation Statement:

The **OCR** will use **\$51,558.00** of its **FY 2012** budget to support Department-wide enterprise information technology and government-wide E-Government initiatives. Staff Divisions help to finance specific HHS enterprise information technology programs and initiatives, identified through the HHS Information Technology Capital Planning and Investment Control process, and the government-wide E-Government initiatives. The 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.

Of the amount specified above, **\$2,111.00** is allocated to developmental government-wide E-Government initiatives for **FY 2012**. This amount supports these government-wide E-Government initiatives as follows:

FY 2012 Developmental E-Gov Initiatives*	
Line of Business - Human Resources	\$452.00
Line of Business - Grants Management	\$0.00
Line of Business - Financial	\$925.00
Line of Business - Budget Formulation and Execution	\$689.00
Disaster Assistance Improvement Plan	\$0.00
Federal Health Architecture (FHA)	\$0.00
Line of Business - Geospatial	\$45.00
FY 2012 Developmental E-Gov Initiatives Total	\$2,111.00

* Specific levels presented here are subject to change, as redistributions to meet changes in resource demands are assessed.

Prospective benefits from these initiatives are:

Lines of Business-Human Resources Management: Provides standardized and interoperable HR solutions utilizing common core functionality to support the strategic management of Human Capital

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.

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Lines of Business-Budget Formulation and Execution: Allows sharing across the Federal government of common budget formulation and execution practices and processes resulting in improved practices within HHS.

Lines of Business-Geospatial: Promotes coordination and alignment of geospatial data collection and maintenance among all levels of government: provides one-stop web access to geospatial information through development of a portal; encourages collaborative planning for future investments in geospatial data; expands partnerships that help leverage investments and reduce duplication; and, facilitates partnerships and collaborative approaches in the sharing and stewardship of data. Up-to-date accessible information helps leverage resources and support programs: economic development, environmental quality and homeland security. HHS registers its geospatial data, making it available from the single access point.

In addition, **\$12,681.00** is allocated to ongoing government-wide E-Government initiatives for **FY 2012**. This amount supports these government-wide E-Government initiatives as follows:

FY 2012 Ongoing E-Gov Initiatives*	
E-Rule Making	\$12,681.00
Integrated Acquisition Environment	\$0.00
GovBenefits	\$0.00
Grants.Gov	\$0.00
FY 2012 Ongoing E-Gov Initiatives Total	\$12,681.00

* Specific levels presented here are subject to change, as redistributions to meet changes in resource demands are assessed.