

**U. S. Department of Justice**  
**FY 2011 PERFORMANCE BUDGET**  
**CIVIL RIGHTS DIVISION**  
**Congressional Submission**

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# Overview for the Civil Rights Division

## **1. Introduction**

In FY 2011, the Civil Rights Division (CRT) requests a total of \$161,885,000, 877 positions and 848 direct FTE, to enforce the country's civil rights laws in a fair and uniform manner.

## **2. Background**

CRT's enforcement mission has three significant prongs: (1) to fulfill the promise of Federal laws entitling all persons to basic civil rights protections as they engage in everyday conduct throughout the United States; (2) to deter illegal conduct through the successful judicial enforcement of these Federal laws; and (3) promoting voluntary compliance and civil rights protection through a variety of educational, technical assistance, and outreach programs. Each time compliance is achieved, a significant result has occurred.

Established in 1957 following enactment of the first civil rights statutes since Reconstruction, CRT is the sole program institution within the Federal Government responsible for enforcing Federal statutes prohibiting discrimination on the basis of race, sex, disability, religion, and national origin.

CRT's mission supports the Strategic Plan of the Department of Justice (DOJ); specifically Strategic Goal #2 – Prevent Crime, Enforce Federal Laws, and Represent the Rights and Interests of the American People. These laws influence a broad spectrum of conduct by individuals as well as public and private institutions. CRT enforces laws that prohibit discriminatory conduct in housing, employment, education, voting, lending, public accommodations, access to services and facilities, activities that receive Federal financial assistance, and the treatment of juvenile and adult detainees and residents of private institutions.

Within CRT, there are no regional offices; all Division employees are stationed in Washington, D.C. Since litigation activities occur in all parts of the United States nearly all CRT attorneys and, occasionally, some paralegal and clerical personnel are required to travel. This allows CRT employees to be deployed quickly to the areas requiring attention.

## **3. Challenges**

DOJ is the protector of the rule of law within the Executive Branch of government. Fair and uniform enforcement of Federal laws is crucial to the public's trust of government and law enforcement. DOJ now includes numerous issues of national attention, including the trafficking of persons, racially motivated murders from the civil rights era, the treatment of juvenile and adult detainees as well as residents of public institutions, official misconduct by law enforcement personnel, and bias motivated crimes. These unpredictable events require DOJ to respond both appropriately and creatively.

These and CRT's traditional responsibilities for fighting discrimination in housing, mortgage lending, employment, voting, bias-motivated crimes, public accommodations,

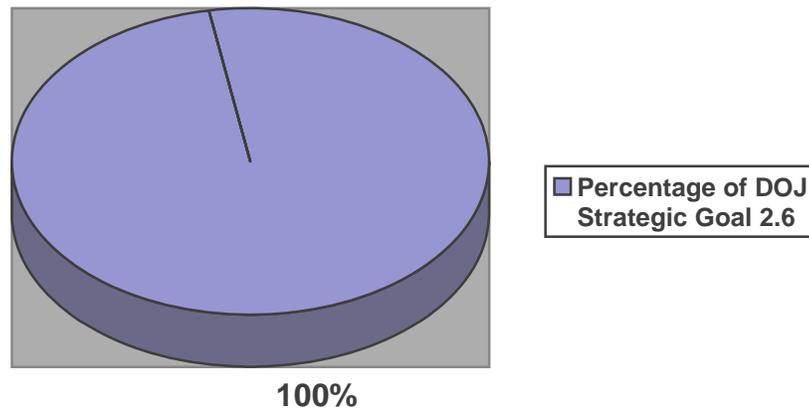
access by the disabled to services and facilities, and education will continue to be high priorities in FY 2011.

## **FY 2011 Total Civil Rights Request by DOJ Strategic Goal**

Following is a brief summary of the DOJ's Strategic Goal and Objective in which CRT plays a role:

### **DOJ Strategic Goal 2: Prevent Crime, Enforce Federal Laws and Represent the Rights and Interests of the American People (FY 2011 Request: \$161,885,000)**

- Uphold the civil and constitutional rights of all Americans (2.6)



#### **4. Full Program Costs**

CRT's budget is integrated with its own priorities as well as the DOJ's Strategic Goal and Objective; therefore, each performance objective is linked with the costs of critical strategic actions.

CRT is requesting 877 permanent positions, 848 direct FTE, and \$161,885,000, to support DOJ's Strategic Goals.

Resources for each Strategic Goal and Objective that CRT supports are provided under each programmatic area. The total costs include the following:

- The direct costs of all outputs
- Indirect costs
- Common administrative systems

Both performance and resource tables define the total costs of achieving the strategies CRT will implement in FY 2011. The various resource and performance charts incorporate the costs of numerous strategies, which also contribute to the achievement of CRT's objectives. Also included are the indirect costs for continuing activities, which are central to the operation of CRT.

## 5. Performance Challenges

DOJ is the chief agency of the Federal Government charged with upholding the civil and constitutional rights of all Americans. Our objective also requires that we educate the public to promote voluntary compliance with civil rights laws.

Among the most important challenges facing CRT are:

- Enforcing compliance with civil rights laws in an increasingly complex and diverse society;
- Responding to high profile incidents resulting in media attention and community interest requiring prompt attention;
- Providing timely and adequate responses to the tens of thousands of complaints and other correspondence received each year.

The challenges that impede progress toward achievement of CRT's goals are complex and ever changing. Internal agency dynamics, technological developments, and compliance with civil rights statutes are only a few factors that can impact a litigating component's practices and pose challenges that demand attention. The following are challenges that CRT sees as potential obstacles.

### **External Challenges:**

- CRT's trafficking caseload has essentially tripled from FY 2001 – FY 2009. These cases are extremely labor intensive. The workload associated with the 42 anti-trafficking task forces, funded by the Bureau of Justice Assistance (BJA), is also having a substantial impact on the program's workload. These task forces have begun to produce high volume and complex trafficking cases, often involving multiple districts and requiring significant coordination efforts by the Criminal Section (CRM).
- Changes to the 2010 Census form and the subsequent data that will be released result in the program having to reevaluate the impact the changes have on the development of the Division's infrastructure needed to address the workload associated with the next redistricting cycle.
- CRT has limited control over the composition and size of its caseload. The Division has no control over the number of complaints it receives. Much of the work is defensive or based on referrals from other agencies. CRT's work is also closely related to the output of the U.S. Attorneys, Federal Bureau of Investigation (FBI) and other agencies. Its Supreme Court activity is dependent upon the number and types of cases that the Court decides to hear.
- CRT faces the challenge of enforcing the Fair Housing Act and the Equal Credit Opportunity Act at a time when national attention and resources are focused on recovering from the financial crisis and re-invigorating the housing and mortgage lending markets. As the Federal Government provides substantial funds for these efforts, the Division must conduct complex and resource-intensive investigations to ensure that loan modifications, refinances, home sales and rentals are all carried out in a non-discriminatory manner. These circumstances place a premium on CRT's continuing efforts to maximize the productivity and effectiveness of its fair housing and fair lending enforcement programs.

- The Supreme Court, court of appeals, and district courts determine the pace of the litigation when they set briefing schedules, oral arguments, and trial dates. CRT must abide by those schedules regardless of other cases, matters, or events. Absent CRT's timely and effective response, the government may face sanctions and default judgments. Alternatively, delayed resolution of cases may occur. Additionally, CRT continues to encounter uncooperative jurisdictions – necessitating initiation of lawsuits which require fiscal and human resources.
- The Department of Homeland Security's (DHS) work associated with sanctions to employers who hire undocumented workers has substantially increased the workload for CRT's Office of Special Counsel for Unfair Employment Practices (OSC). As a result, we anticipate that higher penalties and enhanced enforcement of those sanctions will lead to an increase in discrimination charges filed with the OSC, because employers will be more hesitant about hiring workers who look or sound "foreign."
- Millions of workers may receive legal status protected under the Immigration and Nationality Act's (INA) anti-discrimination provision under immigration reform proposals. Thus, a substantial number of new potential injured parties will be able to file charges with OSC.
- With the passage of the Emmett Till Unsolved Civil Rights Crime Act, the Division is tasked with addressing complex and resource-intensive cases regarding racially motivated murders from the civil rights era.
- In September 2004, DOJ entered into a Memorandum of Understanding (MOU) with the Department of Labor (DOL) for enforcement of the Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994. As more members of the National Guard and Reserve return from duty, complaints against employers are increasing. Since receiving this enforcement authority, CRT has received a considerable number of USERRA referrals from DOL. Assumption of this enforcement authority will continue to impact the workload of CRT in FY 2011 and into the immediate future.
- CRT faces the challenge of enforcing the Americans with Disabilities Act (ADA) at a time when national attention and resources must be focused on providing for the safety and well being of all citizens. State and local governments, as well as the business community, are burdened with monetary shortfalls that tend to place the correction of access violations at a lower priority. This places an increased premium on securing voluntary compliance.
- CRT, in its legal counsel capacity, faces the challenge of providing formal opinions and informal advice on legal and policy matters to CRT's Assistant Attorney General's Office, CRT's litigating sections, and the U.S. Attorneys Offices that continue to rely upon CRT in its role as the government's expert in court of appeals litigation.

### **Internal Challenges:**

- Law enforcement relies primarily on people. Civil rights law enforcement is no different. Expanding skills and expertise through positive managerial intervention in areas of training, and policies supporting career development and upward mobility programs will play a critical role. DOJ needs to continue its efforts to

attract the “best and brightest” of all talents, and should continue to provide an accessible, welcoming work environment that increases retention. Extensive training and development will be required for any new staff hired.

- Many of CRT’s responsibilities are not performed by any other Government agency. The loss of numerous senior staff has impacted CRT on many levels particularly in the loss of institutional memory, expertise and skill, all of which have been integral to our enforcement, training and outreach efforts. Although CRT received an enhancement in FY 2010, this issue will ultimately be addressed through expanding the skills of existing employees through internal training and career development.
- Training has increasingly become a challenge. While many of our incoming attorneys come to CRT with strong educational backgrounds, they have little or no litigation or substantive experience. The demands of our workload, which include investigations, negotiations, and litigation, require that attorneys broaden their skill sets. Similarly, we have stepped up our efforts to require increased accountability (both fiscal and programmatic) from all sectors of our Division.
- Many of CRT’s cases are extremely complex; requiring teams of two or three lawyers for each case. Such long-term efforts, which tie up lawyers and support personnel for months, challenge the remainder of the staff to "cover" for them.
- Several of CRT’s current cases involve large developers who have built multiple housing complexes that do not comply with the accessibility requirements. This has resulted in large, complex, resource-intensive cases.

## II. Summary of Program Changes

Item Name	Description				Page
		Pos.	FTE	Dollars (\$000)	
Combating Discrimination in Lending and Foreclosure	To combat discrimination in lending and foreclosure.	22	11	\$2,083	53
Employment Pattern and Practice and Defensive Litigation	Provide funding for substantial increase in litigation demands due to reinvigorating the pattern or practice program.	12	6	\$1,536	59
Voting Rights Enforcement and Defensive Litigation	Expand voting rights enforcement program.	14	7	\$1,236	63
Hate Crimes Enforcement	Increase investigations and prosecutions of bias-motivated crimes.	15	8	\$1,438	69

### III. Appropriations Language and Analysis of Appropriations Language

N/A

### IV. Decision Unit Justification

#### A. Civil Rights Division

Civil Rights Division TOTAL	Perm. Pos.	FTE	Amount
2009 Enacted with Rescissions	713	715	\$123,151,000
2009 Supplementals	0	0	0
2009 Enacted w/Rescissions and Supplementals	713	715	123,151,000
2010 Enacted	815	766	145,449,000
Adjustments to Base and Technical Adjustments	(1)	50	10,325,000
2011 Current Services	814	816	155,774,000
2011 Program Increases	63	32	6,283,000
2011 Offset: Adjust Travel Expenditures	0	0	(172,000)
2011 Request	877	848	\$161,885,000
<b>Total Change 2010-2011</b>	<b>62</b>	<b>82</b>	<b>\$16,436,000</b>

Civil Rights Division's IT infrastructure is funded through the Justice Consolidated Office Network (JCON).

#### 1. Program Description

An Assistant Attorney General, who is assisted by Deputy Assistant Attorneys General, heads CRT. They establish policy and provide executive direction and control over enforcement actions and the administrative management activities in CRT.

CRT is comprised of one decision unit and two programmatic areas: criminal and civil enforcement. These areas are broken down into ten program-related Sections and the Management and Administration (M&A) Section.

Following is a brief summary of the major programmatic responsibilities in enforcing the laws and regulations for which CRT is charged, and how these efforts tie to the strategic objectives in the DOJ Strategic Plan for its responsibilities in upholding the civil rights of all Americans.

#### **Criminal Enforcement (142 FTE; \$23,973,000)**

The Criminal Enforcement responsibilities of CRT frequently involve prosecuting significant cases; implicating violations of basic constitutional rights. These are invariably matters of intense public interest. CRT's caseload includes violations of human trafficking and involuntary servitude statutes, and acts of racial, ethnic, or religious violence such as cross burnings and church arsons. CRT also handles "color of law" offenses by local and Federal law enforcement officials, investigating and prosecuting allegations of excessive force, sexual assaults and other forms of official misconduct in violation of fundamental constitutional protections. Criminal

Criminal cases are investigated and prosecuted differently from civil cases. Additional and stronger evidence is needed to obtain a criminal conviction than to win a civil suit. Should the defendant be acquitted, the Government has no right of appeal.
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Enforcement's jurisdiction includes, as well, criminal violations of the Freedom of Access to Clinic Entrances (FACE) Act. The Federal criminal civil rights statutes also provide for prosecutions of conspiracies to interfere with Federally protected rights. CRT frequently prosecutes criminal statutes arising out of and related to civil rights investigations, such as obstruction of justice, weapons violations and immigration charges.

The Emmett Till Unsolved Civil Rights Crime Act directs the Division and the FBI to expeditiously investigate unsolved racially motivated murders from the civil rights era, which constitute some of the greatest blemishes upon our history.

The Trafficking Victims Protection Act (TVPA) of 2000 expanded the scope of Federal enforcement authority over human trafficking offenses. The law strengthened CRT's ability to investigate and prosecute modern day slavery offenses. The Act broadened the reach of servitude statutes to include psychological and non-violent forms of coercion. CRT works closely with the FBI, DOJ's Criminal Division, DHS, the U.S. Attorneys Offices, DOL, Non-governmental organizations (NGOs), and the 42 BJA-funded task forces to identify victims of illegal trafficking, many of whom are women and children.

Trafficking in humans stands among the most offensive moral scourges in America. It is a form of modern day slavery. Each year, an estimated 600,000 to 800,000 individuals around the world are trapped, tricked, bought, sold, or transported across international borders and held in sexual or labor servitude. There are estimates that 14,500 to 17,500 victims are trafficked into America annually.

The majority of the victims of human trafficking are female. Trafficking profits support organized crime. Trafficking has also been linked to other serious crimes including document fraud, money laundering, and migrant smuggling.





***U.S. v. Calimlim (E. D. Wisconsin): 3 defendants convicted, two defendants sentenced to four years imprisonment, and two defendants ordered to pay \$950,000 in restitution to Filipina victim from an impoverished rural village (1<sup>st</sup> picture above) whom the defendants held as a domestic servant in their suburban Milwaukee mansion (2<sup>nd</sup> picture below) for 19 years.***

In addition, working with DHS, DOL, and the Department of Health and Human Services (HHS), as well as State and local law enforcement and NGOs, DOJ has formed 42 anti-trafficking task forces across the country. Task forces have been established in

The anti-discrimination statutes enforced by the Civil Rights Division reflect one of America's highest aspirations: to become a society that provides equal justice under law. Our mission is clear: uphold the civil rights of all Americans.

Houston, Northern Virginia, New York, Los Angeles, Miami, the District of Columbia, and other locations. CRT also enforces several criminal statutes to uphold the civil rights of all Americans, reduce racial discrimination, and promote reconciliation through vigorous enforcement of civil right laws, including:

- Criminal provisions of the CRA of 1964 and 1968, which prohibit using force or threats of force to injure or intimidate any person involved in the exercise of certain Federal rights and activities because of that person's race, religion or ethnicity;
- The Church Arson Prevention Act of 1996, which amended 18 U.S.C. §247, strengthened the criminal law against church burning and desecration by broadening the interstate commerce nexus, adding a racial motive element, and eliminating the \$10,000 damage requirement; and
- Relevant provisions of the Partial Birth Abortion Ban Act of 2003, which bans partial birth abortions. The Act provides both criminal and civil penalties for individuals who perform such abortions. Immediately, after the Act was signed into law, Federal judges in California, Nebraska, and New York enjoined enforcement of the Act against abortion providers and their affiliates nationwide.

## **Performance and Resources Table – Criminal Enforcement**

The performance measures reflect the number of cases filed and defendants charged, by both trafficking of persons enforcement responsibilities and all criminal civil rights violations. The outcome measures reported are the percentage of criminal cases favorably resolved, and the number of trafficking victims successfully prosecuted. Accomplishments are described under section IVA3a Performance Plan and Report for Outcomes.

### **B. Civil Enforcement (706 FTE; \$137,912,000)**

The Civil Enforcement responsibilities of CRT encompass a vast array of responsibilities, including enforcement of the CRA of 1957, 1960, 1964, and 1968; the VRA of 1965, as amended through 1992; the Rehabilitation Act of 1973, as amended; the Fair Housing Amendments Act of 1988; the Equal Credit Opportunity Act; the ADA; the National Voting Registration Act (NVRA); the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA); the Voting Accessibility for the Elderly and Handicapped Act (VAEH); the Help American Vote Act (HAVA), and additional civil rights provisions contained in other laws and regulations. These laws prohibit discrimination on a variety of grounds including: disability; race; sex; national origin; and religion in areas such as education; employment; credit; housing; zoning and land use; public accommodations and facilities; State and local government offices; voting and certain federally funded and conducted programs.

CRT enforces the Civil Rights of Institutionalized Persons Act (CRIPA) of 1980, which authorizes the Attorney General to seek relief for persons confined in public institutions where conditions exist that deprive residents of their constitutional rights; the Religious Land Use and Institutionalized Persons Act (RLUIPA); the FACE, the Police Misconduct Provision of the Violent Crime Control and Law Enforcement Act of 1994; the pattern or practice provisions of the Omnibus Crime Control and Safe Streets Act of 1968; and Section 102 of the Immigration Reform and Control Act of 1986 (IRCA), as amended, which prohibits discrimination on the basis of national origin and citizenship status as well as documented abuse and retaliation under the INA.

The civil enforcement responsibilities also play an integral role in achieving the overall goals and mission of DOJ. CRT's civil enforcement responsibilities are reflected in the eight program areas and its Appellate Section. They perform civil responsibilities to uphold the civil rights of all Americans, reduce racial discrimination, and promote reconciliation through vigorous enforcement of civil rights laws. These program areas, listed below in alphabetical order, perform many integral responsibilities to protect the rights and interests of the American people by legal representation.

#### **Appellate Section (APP)**

APP has primary responsibility for handling civil rights cases in the courts of appeals and, in cooperation with the Solicitor General, in the Supreme Court. APP also provides legal counsel to other components of DOJ regarding civil rights law and appellate litigation.

Most of APP's appeals are from district court judgments in cases originally handled by trial sections within CRT. The appellate caseload is both affirmative and defensive. Thus, APP handles all appeals from both favorable and adverse judgments in which the government participates.

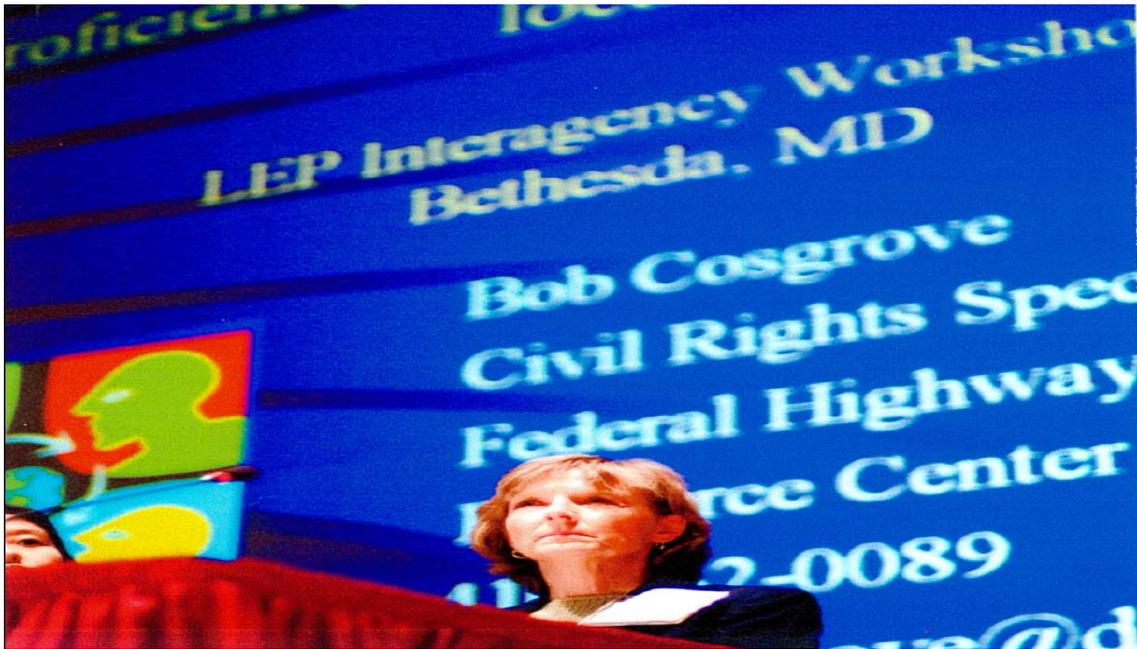
A significant proportion of APP's work involves participation as amicus curiae (friend of the court) or as intervener in cases that have the potential for affecting CRT enforcement responsibilities. In this capacity, APP closely monitors Federal court cases to which the United States is not a party. In many of these cases, especially those concerned with developing or problematic areas of civil rights law, APP uses the Federal Government's authority to file an amicus curiae brief to register the government's position. APP also intervenes in a substantial number of cases to defend the constitutionality of Federal statutes.

### **Coordination and Review (COR)**

COR operates a comprehensive, government-wide program of technical and legal assistance, training, interagency coordination, and regulatory, policy, and program review, to ensure that Federal agencies consistently and effectively enforce various landmark civil rights statutes and related Executive Orders that prohibit discrimination in federally assisted programs and in the Federal Government's own programs and activities.

Under Executive Order 12250, COR coordinates and ensures consistent and effective enforcement of Title VI of the CRA of 1964, which prohibits discrimination on the basis of race, color, or national origin in federally assisted programs; Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in federally assisted education and training programs; and other assistance-related statutes that prohibit discrimination on the basis of race, color, national origin, sex, or religion in federally assisted programs. The approximately 30 Federal agencies that provide Federal financial assistance are subject to these nondiscrimination statutes.

COR plays a central role in the Administration's priority of ensuring implementation and enforcement of civil rights laws affecting persons with Limited English Proficiency (LEP). COR has taken significant steps to implement Executive Order 13166, which mandates meaningful access for LEP individuals in Federal and federally funded programs. In addition, COR continues to work with approximately 80 Federal agencies to ensure that they produce plans to provide meaningful access to LEP individuals in their own conducted programs. COR provides a training and outreach program, which includes regular LEP presentations to recipients and other groups, as well as widespread distribution of LEP materials to DOJ recipients. COR also oversees the Interagency Working Group on LEP, which has active representation by more than 35 Federal agencies, as well as the Working Group's LEP website, [www.lep.gov](http://www.lep.gov), which is a prime source of LEP information for Federal agencies, recipients, and community groups.



### ***LEP Workshop in Bethesda, MD***

In order to ensure consistent and effective enforcement, COR engages in a wide variety of activities, including the development or review and approval of model regulations, policies, and enforcement standards and procedures. It also reviews plans and data submitted by all Federal funding agencies, which describe their civil rights enforcement priorities, activities, and achievements. It provides ongoing technical assistance to Federal agencies and, upon request, assists agencies in investigations of particular complaints and compliance reviews raising novel or complex issues.

COR also has an implementation and interagency coordination role with respect to Executive Order 13160, which applies to approximately 90 Federal agencies. It prohibits discrimination in federally conducted education and training programs on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, and status as a parent.

### **Disability Rights Section (DRS)**

The ADA extends the promise of equal access to everyday life to people with disabilities. Through its multi-faceted approach toward achieving compliance with the ADA, DRS works to make this promise a reality. DRS' enforcement, certification, regulatory, coordination, and technical assistance activities, required by the ADA, combined with an innovative mediation program, provide a cost-effective and dynamic approach for carrying out the ADA's mandates. DRS also carries out responsibilities under Section 504 of the Rehabilitation Act, the HAVA of 2002, the Small Business Regulatory Enforcement Fairness Act, Executive Order 13217, Community-based Alternatives for Individuals with Disabilities and Executive Order 12250. DRS activities affect more than seven million businesses and non-profit agencies, 80,000 units of State and local government, over 50 million people with disabilities, and more than 100 other Federal agencies and commissions in the Executive Branch.

A 31-page booklet giving an overview of the ADA's requirements for ensuring equal opportunity for persons with disabilities in employment, State and local government services, public accommodations, commercial facilities, and transportation, is available from the ADA Information Line 1-800-514-0301 or 1-800-514-0383 (TDD) or at [www.ada.gov](http://www.ada.gov)

DRS' wide variety of enforcement activities serves to encourage compliance with Titles I, II, and III of the ADA to advance the promise of the ADA and expand access and equality for people with disabilities in every facet of American life. CRT has pioneered a multi-track approach to advancing these important rights by: promoting increased opportunities through cooperative compliance assistance; providing technical assistance; and backing these up with a robust enforcement program.

DOJ's Project Civic Access (PCA) has worked cooperatively with local governments to expand access to public facilities, services, and programs. Since FY 2000, DOJ has signed 168 agreements with 154 communities under PCA. Through PCA, DOJ assesses entire towns and counties, providing local officials with a roadmap to bringing all of their facilities, services, and programs into compliance with Federal law. PCA settlement agreements cover important civic facilities such as town halls, courthouses, polling places, libraries, and police stations. They also include recreational facilities, sidewalks, parks, emergency services, and shelters. Participants, including both local officials and people with disabilities, have lauded DOJ for the access and opportunity the PCA program has brought to their communities.

DRS is the only government entity with authority to initiate litigation under Title I (Employment) against State and local government employers. Consequently, investigations and litigation have resulted in numerous formal and informal settlement agreements enforcing the ADA's employment provisions throughout the country. DRS has also made case law and achieved consent decrees, formal settlement agreements, and informal resolutions with respect to hundreds of complaints or compliance reviews under Titles II (State and local government programs) and III (public accommodations and commercial facilities).



DRS has built an impressive mediation program to assist with the disposition of the thousands of complaints received each year and the mediation program receives a portion of these to expeditiously address these issues. For FY 2009, the mediation program referred 364 matters, completed 268 of these matters and successfully resolved 79% of these cases.

The Technical Assistance Program, mandated under Section 506 of the ADA, provides answers to questions and free publications to businesses, State and local governments, people with disabilities, and the general public. The ADA Information Line and the ADA Website are utilized by millions of individuals each year, providing an unparalleled reference source on DOJ's enforcement and interpretation of the ADA. We expect that the demand for Technical Assistance, through the ADA Information Line, the ADA Website, speaking engagements, and development of new technical assistance documents will significantly increase for the foreseeable future following the adoption of the proposed final rules revising the title II and III regulations and the Standards for Accessible Design.

## Educational Opportunities Section (EOS)

The Supreme Court's landmark decision in *Brown v. Board of Education* held that the segregation of students on the basis of race in public schools was a violation of the U.S. Constitution. Subsequent Federal legislation and court decisions mandate that school officials not discriminate against students on the basis of race, color, national origin, sex, religion, language barriers, or disabilities. Thus, the work of the EOS covers a variety of legal issues involving both elementary and secondary schools and institutions of higher education.

Q: What is the relationship between the Department of Education's Office of Civil Rights (OCR) and CRT's Educational Opportunities Section (EOS)?

A: If OCR, after investigating a charge of discrimination determines that a violation of the law has occurred and conciliation efforts are unsuccessful, the Department of Education may refer the charge to EOS who, within its prosecutorial discretion, may initiate litigation.

EOS enforces Federal statutes that prohibit discrimination in public elementary and secondary schools and public colleges and universities. The laws enforced by EOS include Title IV of the CRA of 1964, and the Equal Educational Opportunities Act of 1974. EOS also initiates enforcement activities upon receiving a referral from other agencies to enforce Title VI of the CRA of 1964; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the ADA; and the Individuals with Disabilities Education Act. EOS may intervene in private lawsuits which allege violations of the Equal Protection Clause or the education related anti-discrimination statutes referred to above. EOS also participates as amicus curiae, addressing issues in which the government has an interest. EOS represents the Department of Education in certain types of suits filed against or on behalf of it.

Among EOS' most important priorities is its responsibility to monitor 308 school districts currently covered by desegregation orders in cases in which the United States is a party. To ensure that districts comply with their obligations, EOS routinely reviews matters relating to student assignment, faculty assignment and hiring, transportation policies, extracurricular activities, the availability of equitable facilities, and the distribution of resources. EOS also routinely responds to requests by other parties to modify court orders to reflect current circumstances. It also responds to requests by parties and courts regarding unitary status and the ultimate dismissal of the lawsuit. As a result of these activities, EOS obtained relief in a number of cases, including: improved facilities for minority students; the elimination of one-race classrooms and schools; consolidation of schools to ensure desegregation; the desegregation of faculty and recruitment of minority faculty and staff; more equitable transportation routes for minority students; the elimination of segregative transfers; and the elimination of racially dual awards. Also, where appropriate, EOS agreed that the desegregation process had been completed and agreed to declarations of unitary status.

Additionally, EOS is proactive in other important areas involving discrimination in schools. For instance, EOS reviews districts' compliance with their obligations to provide appropriate services to English Language Learner students under the Equal Educational Opportunities Act of 1974 (EEOA). EOS also participates in matters involving religious discrimination in schools, such as equal access and religious harassment. Further, EOS is expanding its role in investigating allegations of discrimination based on disability.

## **Employment Litigation Section (ELS)**

ELS enforces the provisions of Title VII of the CRA of 1964, as amended and related Federal laws such as the Crime Control Act prohibiting employment practices that discriminate on grounds of race, sex, religion, and national origin.

ELS initiates litigation under Title VII and other Federal laws in two ways. Under the statutes it enforces, the Attorney General has authority to bring suit where there is reason to believe that pattern or practice discrimination exists. Generally, these are factually and legally complex cases that seek to alter an employment practice, such as one involving recruitment, hiring, assignment or promotion, which has the purpose or effect of denying employment or promotional opportunities to a class of individuals. Under its pattern or practice authority, ELS typically obtains relief in the form of employment offers or promotion, back pay and other remedial relief for individuals who have been the victims of unlawful employment practices. These cases are frequently resolved by consent decree prior to trial.

ELS also files Title VII suits based upon individual charges of discrimination referred to it by the Equal Employment Opportunity Commission (EEOC). These charges are filed with the EEOC by individuals who believe that they were unlawfully denied an employment opportunity or otherwise discriminated against by a State or local government employer. If, after investigation, the EEOC determines that the charge has merit and efforts to obtain voluntary compliance are unsuccessful, the EEOC refers it to ELS. ELS may also intervene in Title VII lawsuits filed against public employers by private plaintiffs.

Enforcement authority for USERRA is the responsibility of ELS. USERRA complaints are initially filed with DOL. DOL investigates the complaints, makes determinations as to whether they have merit, and attempts to voluntarily resolve those that it determines have merit. If DOL does not resolve a complaint, it refers the complaint to DOJ upon the request of the service member who filed the complaint. Upon receipt of an unresolved USERRA complaint from DOL, ELS reviews DOL's investigative file accompanying the complaint and makes a determination as to whether to extend representation to the complainant. Under USERRA, DOJ has authority to appear on behalf of a claimant in a suit filed in Federal district court if it is satisfied that the claimant is entitled to the rights or benefits being sought. Since the transfer of USERRA enforcement authority in 2004, ELS has been actively reviewing complaints referred to it by DOL and has initiated several lawsuits on behalf of service members.

ELS also represents DOL, the Department of Transportation, and other Federal agencies when they are sued. In addition, ELS has authority to prosecute enforcement actions upon referral by DOL of complaints arising under Executive Order 11246, which prohibits discrimination in employment by Federal contractors.

## **Housing and Civil Enforcement Section (HCE)**

HCE enforces the Fair Housing Act (FHA), which prohibits discrimination in all types of housing transactions. FHA applies not only to actions by direct providers of housing such as landlords and real estate companies, but also to actions by local governments, banks, insurance companies, and other entities whose discriminatory practices make housing unavailable to persons because of their race, color, religion, sex, national origin, handicap, or familial status. The statute authorizes DOJ to bring lawsuits to address discriminatory policies or “patterns or practices.” It also creates a mechanism by which individuals may file a complaint with the Department of Housing and Urban Development (HUD), a process that sometimes results in a lawsuit brought by DOJ.

Section 2 of the Religious Land Use and Institutionalized Act (RLUIPA) of 2000 prohibits State and local governmental actions that discriminate on the basis of religion in land use and zoning practices or impose substantial burdens on religious exercise. HCE enforces the land use provisions of this Act.

HCE also enforces the prohibition against discrimination and segregation in public accommodations under Title II of the CRA of 1964, and public facilities under Title III of the CRA of 1964. The public accommodations cases include those involving claims of systemic discrimination by restaurants and hotels.

HCE enforces the Servicemembers Civil Relief Act, which provides for the temporary suspension of judicial and administrative proceedings and civil protections in areas such as housing and credit for military personnel while they are on active duty.

## **Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC)**

OSC enforces the anti-discrimination provision of the INA, which prohibits citizenship status and national origin discrimination with respect to hiring, firing and recruitment or referral for a fee, unfair documentary practices during the employment eligibility verification process, and retaliation. OSC receives discrimination complaints directly from the public, including U.S. citizens, lawful permanent residents, asylees and refugees, many of whom have limited English proficiency and are low wage workers. On its own initiative, OSC opens independent investigations where there is reason to believe that employers are engaging in a pattern or practice of discrimination. For meritorious claims, OSC brings litigation before administrative law judges if settlement discussions are not successful.

Congress created OSC based on concerns that employers subject to civil and criminal sanctions, for knowingly hiring individuals unauthorized to work in the U.S. might discriminate, either against those who look or sound "foreign", or against legal immigrants who are not U.S. citizens.

Through its employer and worker hotlines, OSC conducts informal telephone interventions with workers and employers to explain lawful employment practices. This is done promptly to prevent discrimination from occurring promptly and remedy unlawful practices. A large number of complaints are resolved each year through this process, generally resulting in the immediate return to work of the injured party and obviating the need for a formal charge. OSC also leverages its effectiveness through its public education grant program by awarding grants to organizations with ties to immigrant workers and employers. In addition, it cultivates a network of grantees and other nonprofit and government partners, who educate employers and workers on the

requirements of the INA and who, when appropriate, refer possible violations to OSC for review. OSC also conducts direct outreach throughout the country, providing speakers for presentations and distributing a large volume of outreach materials in several languages, upon request.

DHS's work associated with sanctions to employers who hire undocumented workers has substantially increased the workload for CRT's Office of Special Counsel for Unfair Employment Practices (OSC). In addition, the required use of E-Verify, an electronic employment eligibility verification system used by Federal contractors, has led to many employers using the system in a discriminatory manner. OSC anticipates that discrimination charges filed with OSC will increase significantly during FY 2010 and FY 2011 based upon a number of external factors that will impact OSC's enforcement and outreach work. These workload levels make it difficult to fill shortfalls in other areas.

### **Special Litigation Section (SPL)**

SPL protects the constitutional and Federal statutory rights of persons confined in certain institutions owned or operated by or on behalf of State and local governments. These institutions include: facilities for individuals with mental illness or developmental disabilities; nursing homes; juvenile justice facilities; and adult jails and prisons. SPL derives its primary authority in this area from CRIPA, enacted in 1980. CRIPA gives the Attorney General the authority to investigate institutional conditions and file suit against State and local governments for a pattern or practice of egregious or flagrant unlawful conditions. SPL also is responsible for enforcing Title III of the CRA of 1964, which prohibits discrimination in public facilities on the basis of race, religion, or national origin.

As a result of SPL's CRIPA efforts, tens of thousands of institutionalized persons who were living in dire, often life-threatening, conditions now receive adequate care and services. SPL's work in institutions has focused recently on abuse and neglect in nursing homes and facilities for persons with mental illness or developmental disabilities; abuse and victimization of juveniles; inadequate special education services in facilities serving children and adolescents; and the unmet mental health needs of inmates and pre-trial detainees.

SPL enforces the police misconduct provision of the Violent Crime Control and Law Enforcement Act of 1994, which authorizes the Attorney General to seek equitable and declaratory relief to redress a pattern or practice of illegal conduct by law enforcement agencies and agencies responsible for the administration of juvenile justice. SPL also enforces the pattern or practice provisions of the Omnibus Crime Control and Safe Streets Act of 1968, which authorizes the Attorney General to initiate civil litigation to remedy discrimination based on race, color, national origin, gender or religion involving services by law enforcement agencies receiving financial assistance from DOJ.

The civil provisions of the Freedom of Access to Clinic Entrance Act of 1994 (FACE) are also within the area of enforcement for the SPL. Its attorneys work closely with offices of the U.S. Attorneys and State Attorneys General by providing technical assistance and conducting joint FACE prosecutions.

RLUIPA was signed into law on September 22, 2000. SPL has enforcement responsibilities under Section 3 of the Act, which protects the rights to free exercise of

religion for institutionalized persons. Pursuant to this authority, SPL is authorized to investigate and bring civil actions for injunctive relief to enforce compliance with RLUIPA. The vast majority of these cases have led swiftly to local rules being changed to end the challenged discrimination.

### **Voting Section (VOT)**

VOT is responsible for the enforcement of VRA of 1965, NVRA of 1993, VAEH, UOCAVA, HAVA and other statutory provisions designed to safeguard the right to vote of racial and language minorities, disabled and illiterate persons, overseas citizens, and military personnel.

To carry out its mission, VOT brings lawsuits against States, counties, cities, and other jurisdictions to remedy violations of the above statutes. With respect to VRA, high priority has been given to enforcement of Section 203 of the Act to ensure that appropriate language assistance is provided to citizens who are limited English proficient. In addition, extensive activities have been taken to enforce Section 2 of the Act with respect to denials and abridgements of the right to vote on account of race, color, or membership in a language minority. VOT also defends lawsuits that the VRA authorizes to be brought against the Attorney General.

VOT also has extensive programs to enforce two other provisions of the VRA. First, it reviews changes in voting laws and procedures administratively under Section 5 of the VRA. Section 5 of the VRA of 1965 is one of the special provisions of the VRA that apply to nine States in their entirety and one or more counties in seven other States. Second, VOT has an extensive election monitoring program pursuant to Section 8 of the Act which authorizes the assignment of Federal observers to those jurisdictions certified by the Attorney General and through the assignment of staff to monitor elections in other parts of the country.

VOT is also responsible for enforcing the NVRA of 1993, UOCAVA, and HAVA. The HAVA, signed into law in October 2002, aims to improve the administration of elections in the United States, primarily by: 1) creating a new Federal agency to serve as a clearinghouse for election administration information; 2) providing funds to States to improve election administration and replace outdated voting systems; and 3) creating uniform and nondiscriminatory election technology and administration requirements that States must implement for all Federal elections. VOT has taken the lead in outreach and monitoring of this law. It also has ongoing outreach and monitoring efforts to ensure effective and timely implementation by the States.

## **2. Performance and Resource Tables**

The Performance and Resource Table reflects two programmatic activities (criminal and civil). The table displays performance, outcome, and efficiency measures associated with CRT's enforcement responsibilities. Accomplishments are described under section VA3a of the Performance Plan and Report for Outcomes.

**PERFORMANCE AND RESOURCES TABLE**

**Decision Unit:** Civil Rights Division

**DOJ Strategic Goal/Objective:** SG 2.6: Uphold the civil and Constitutional rights of all Americans.

WORKLOAD/ RESOURCES	Final Target		Actual		Projected		Changes		Requested (Total)			
	FY 2009		FY 2009		FY 2010 Enacted		Current Services Adjustments and FY 2011 Program Changes		FY 2011 Request			
Workload: Investigations/Technical Assistance/Mediation/Prosecution												
<b>Total Costs and FTE</b> (reimbursable FTE are included, but reimbursable costs are bracketed and not included in the total)	<b>FTE</b>	<b>\$000</b>	<b>FTE</b>	<b>\$000</b>	<b>FTE</b>	<b>\$000</b>	<b>FTE</b>	<b>\$000</b>	<b>FTE</b>	<b>\$000</b>		
	731	\$123,151 [\$5,754]	682	\$123,151 [\$5,754]	784	\$145,449 [\$5,922]	82	\$16,436 [\$194]	866	\$161,885 [\$6,116]		
TYPE/ STRATEGIC OBJECTIVE	PERFORMANCE		FY 2009		FY 2009		FY 2010 Enacted		Current Services Adjustments and FY 2011 Program Changes		FY 2011 Request	
Program Activity	Criminal		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
			100	\$13,953	100	\$13,953	117	\$18,616	25	\$5,357	142	\$23,973
<b>Performance Measure</b>	Number of criminal cases filed *		84		112		140		20			
<b>Performance Measure</b>	Number of defendants charged *		161		218		225		40			
<b>Performance Measure</b>	Number of trafficking cases filed *		24		43		52		12			
<b>Performance Measure</b>	Number of trafficking defendants charged *		67		108		118		36			
<b>OUTCOME</b>	% of criminal cases favorably resolved		80		88		80		0		80	
<b>OUTCOME</b>	Number of trafficking investigations initiated *		183		196		273		90			
<b>OUTCOME</b>	% of successful trafficking prosecutions		80		93		80		80		80	

\*These measures will not be tracked after FY 2010.

<b>PERFORMANCE AND RESOURCES TABLE</b>											
<b>Decision Unit:</b> Civil Rights Division											
<b>DOJ Strategic Goal/Objective:</b> SG 2.6: Uphold the civil and Constitutional rights of all Americans.											
<b>WORKLOAD/ RESOURCES</b>		<b>Final Target</b>		<b>Actual</b>		<b>Projected</b>		<b>Changes</b>		<b>Requested (Total)</b>	
		<b>FY 2009</b>		<b>FY 2009</b>		<b>FY 2010 Enacted</b>		<b>Current Services Adjustments and FY 2011 Program Changes</b>		<b>FY 2011 Request</b>	
Workload: Investigations/Technical Assistance/Mediation/Prosecution											
<b>Total Costs and FTE</b> (reimbursable FTE are included, but reimbursable costs are bracketed and not included in the total)		<b>FTE</b>	<b>\$000</b>	<b>FTE</b>	<b>\$000</b>	<b>FTE</b>	<b>\$000</b>	<b>FTE</b>	<b>\$000</b>	<b>FTE</b>	<b>\$000</b>
		731	\$123,151 [\$5,754]	682	\$123,151 [\$5,754]	784	\$145,449 [\$5,922]	82	\$16,436 [\$194]	866	\$161,885 [\$6,116]
<b>TYPE/ STRATEGIC OBJECTIVE</b>	<b>PERFORMANCE</b>	<b>FY 2009</b>		<b>FY 2009</b>		<b>FY 2010 Enacted</b>		<b>Current Services Adjustments and FY 2011 Program Changes</b>		<b>FY 2011 Request</b>	
<b>Program Activity</b>		<b>FTE</b>	<b>\$000</b>	<b>FTE</b>	<b>\$000</b>	<b>FTE</b>	<b>\$000</b>	<b>FTE</b>	<b>\$000</b>	<b>FTE</b>	<b>\$000</b>
	Civil	631	\$109,198 [\$5,754]	600	\$109,196 [\$5,754]	667	\$126,833 [\$5,922]	57	\$11,079 [\$194]	724	\$137,912 [\$6,116]
<b>Performance Measure</b>	Number of matters successfully resolved *	300		433		425		35			
<b>Performance Measure</b>	Number of successful mediations *	150		211		160		10			
<b>Efficiency Measure</b>	Percentage of matters successfully resolved through mediation	75		79		75		0		75	
<b>OUTCOME</b>	% of civil cases favorably resolved	80		100		80		0		80	
<b>OUTCOME</b>	% of civil matter successfully resolved **	80		95		80		0		80	

\*These measures will not be tracked after FY 2010.

\*\*This is a new measure.

<b>PERFORMANCE AND RESOURCES TABLE</b>
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<b>Decision Unit:</b> Civil Rights Division
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<b>DOJ Strategic Goal/Objective:</b> SG 2.6 Uphold the civil and Constitutional rights of all Americans.
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**Data Definition, Validation, Verification, and Limitations:**

All Workload and Performance Indicators: The data source for all indicators is the Civil Rights Division's Interactive Case Management (ICM) System.

**ISSUES AFFECTING SELECTION OF FY 2010 AND 2011 ESTIMATES:**

An entry of N/A reflects information that was not available at the time, for that specific measure.

**PERFORMANCE MEASURE TABLE**

**Decision Unit: Civil Rights Division**

Performance Report and Performance Plan Targets		FY2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009		FY 2010	FY 2011
		Actual	Actual	Actual	Actual	Actual	Actual	Actual	Target	Target	Target
<b>Performance Measure</b>	Number of criminal cases filed *	63	95	83	89	75	111	112	84	140	
<b>Performance Measure</b>	Number of criminal defendants charged *	126	151	157	200	120	194	218	161	225	
<b>Performance Measure</b>	Number of trafficking cases filed *	11	25	34	32	22	40	43	24	52	
<b>Performance Measure</b>	Number of trafficking defendants charged *	27	43	93	111	40	82	108	67	118	
<b>Performance Measure</b>	Number of civil matters successfully resolved *	429	341	399	385	300	351	433	300	425	
<b>Performance Measure</b>	Number of successful mediations *	212	170	184	183	150	178	211	150	160	
<b>Performance Measure</b>	Number of matters received *	3,990	3,615	3,626	2,989	3,500	2,978	2,660	2,500	3,000	
<b>Performance Measure</b>	Number of cases received *	213	260	403	331	280	273	312	250	300	
<b>Performance Measure</b>	Number of matters opened/pending *	6,076	5,518	5,714	5,215	6,200	5,796	6,003	5,200	5,000	
<b>Performance Measure</b>	Number of cases opened/pending *	1,276	1,149	1,148	1,211	1,200	1,196	1,187	1,200	1,300	
<b>Performance Measure</b>	Number of matters closed/resolved *	4,197	3,679	4,063	3,263	3,500	2,419	2,540	2,500	3,000	
<b>Performance Measure</b>	Number of cases closed/resolved *	340	261	346	340	300	291	330	320	340	
<b>Efficiency Measure</b>	Percentage of matters successfully resolved through mediation	N/A	74	78	82	75	80	79	75	75	75
<b>OUTCOME Measure</b>	% of criminal cases favorably resolved	96	87	94	92	80	97	88	80	80	80
<b>OUTCOME Measure</b>	# of trafficking victims successfully protected *	33	72	249	93	67	112	86	96	146	
<b>OUTCOME Measure</b>	% of civil cases favorably resolved	88	90	97	95	80	99	100	80	80	80
<b>OUTCOME Measure</b>	% of successful trafficking prosecutions	84	100	100	98	80	100	93	80	80	80
<b>OUTCOME Measure</b>	% of civil matters successfully resolved **	88	89	93	87	95	92	95	80	80	80

\* These measures will not be tracked after FY 2010.

\*\* This is a new measure.

### 3. Performance, Resources, and Strategies

#### a. Performance Plan and Report for Outcomes

Our Nation's civil rights laws prohibit discriminatory conduct in a wide variety of settings, such as housing, employment, voting, mortgage lending, education, public accommodations, access by the disabled to services and facilities, activities that receive Federal financial assistance, and the treatment of juvenile and adult detainees as well as residents of public institutions. The Federal civil rights laws also provide safeguards against criminal actions such as official misconduct by law enforcement personnel, trafficking in persons, and bias motivated crimes. DOJ ensures compliance with basic Federal civil rights protections through a multifaceted program of criminal and civil enforcement designed to target and deter discriminatory conduct. We also seek voluntary compliance with civil rights statutes through a variety of educational, technical assistance, and outreach programs.

**Strategies:** CRT intends to achieve its objective by fairly and evenhandedly enforcing each of the laws within the scope of its responsibility. The Division strives to make individualized litigation decisions based on the application of the law as to the facts of each case.

Among CRT's enforcement strategies are: (1) improving efforts to eradicate modern-day slavery of human trafficking, including the trafficking of women, children, and other vulnerable victims, through more vigorous and intensified enforcement efforts, interagency coordination, and continued efforts to rescue the victims of this atrocity; (2) combat discrimination in lending and foreclosure; (3) reinvigorating Title VII pattern or practice enforcement; (4) expanding efforts (a) to address voting rights violations, (b) to ensure access to the polls for all who qualify, (c) to protect the integrity of the ballot process, and (d) to promote voter confidence in our country's democratic system through activities such as vigorous election monitoring, outreach, and the Department's Ballot Access and Voting Integrity Initiative; (5) expand investigations and prosecutions of bias-motivated crimes; (6) implement infrastructure upgrades needed to process the 2010 Census data into a new database structure; (7) expanding the New Freedom Initiative for Project Civic Access to ensure that persons with disabilities have access to our nation's civic life in accordance with the ADA; (8) combating religious discrimination and promoting religious liberty for persons of all religious faiths and denominations; (9) enhance efforts to investigate unsolved civil rights era crimes involving racial or religious violence; (10) combating housing discrimination; (11) ensure the safety of fundamental life safety issues for persons in public residential facilities thru CRIPA enforcement efforts; and (12) strategic targeting of outreach programs, technical assistance, and training efforts that will promote voluntary compliance with our Nation's civil rights laws.

**Long-term outcome goals:** CRT will target specific actions through vigorous litigation as part of its comprehensive strategy to safeguard the civil rights of all persons residing in the United States. CRT also will continue to be vigilant and aggressive in its enforcement, outreach, and training efforts. These efforts span the full breadth of its' jurisdiction, from fair housing opportunities, equal access to the ballot box, and criminal civil rights prosecutions to desegregation in America's schools and protection of the

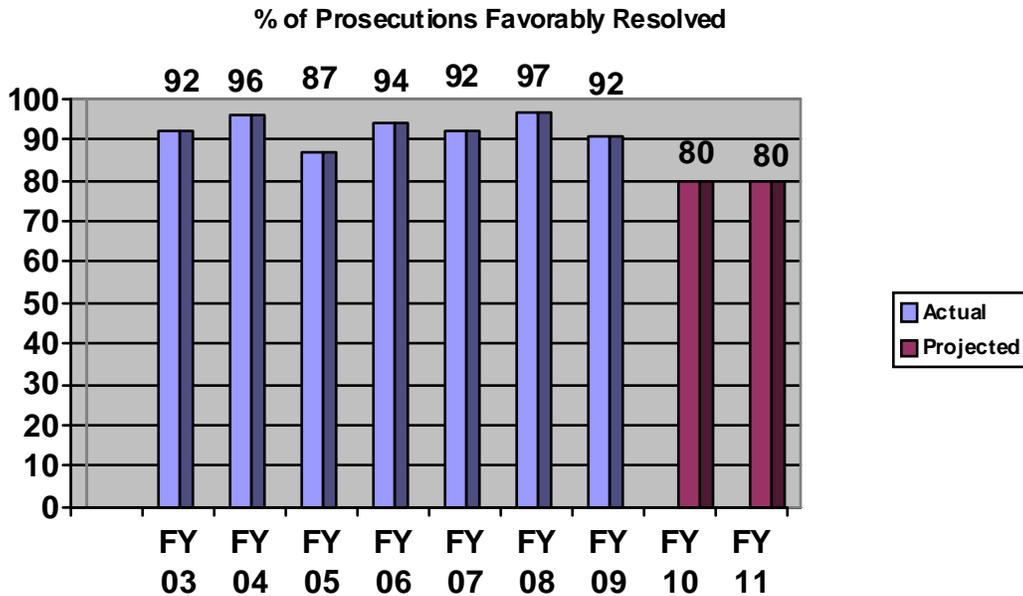
rights of the disabled. Additionally, CRT has worked swiftly and aggressively to pursue its newfound enforcement responsibilities over its expanded jurisdiction, including aggressive enforcement of USERRA, TVPA, and RLUIPA.

In the proceeding Performance and Resources Tables, CRT’s performance, resources and outcomes are illustrated by these two programmatic areas. CRT’s Interactive Case Management (ICM) System provides the data source for all indicators. The ICM System provides uniform guidance and reporting guidelines for the workload tracking system. A regular validation process is in place to ensure the system’s integrity.

The Criminal enforcement area includes performance measures to track enforcement efforts to protect victims from involuntary servitude and human trafficking, an important Attorney General initiative. CRT works closely with the FBI and DHS’s Immigration and Customs Enforcement (ICE) to identify victims, many of whom are women and children, of illegal trafficking.

In the area of DRS’ mediations program, the percentage of successful mediations has increased this fiscal year, despite the increasing complexity of matters referred. As of September 30, 2009, the mediation program referred 364 matters, completed 268 of these matters and successfully resolved 79% of these cases. The mediation program saves the tax payers a significant level of funding, versus these cases having to resort to costly litigation, while bringing the most expeditious resolution to the issues.

**Criminal Enforcement**



The career prosecutors in CRM have continued to achieve remarkable prosecution results, keeping on-pace with the record-setting levels of productivity and effectiveness that have been demonstrated in recent years. In FY 2009, total prosecution numbers surpassed the total prosecutions filed in FY 2008, which was a record-setting year for the Section. In addition, the Section’s hate crime and official misconduct prosecutions filed are increasing.

Each year, CRM receives more than 10,000 complaints alleging criminal interference with civil rights, with more than 1,200 requiring investigation by the FBI and other investigative agencies. As of September 30, 2009, 112 new cases were filed, more cases than ever before in the history of CRT, charging 218 defendants with civil rights violations, and 141 defendants have been convicted.

Allegations of police abuse and other official misconduct, which comprise the majority of complaints reviewed by CRM, continue to be a high priority. Through September 30, 2009, 57 law enforcement officers, including police officers, deputy sheriffs and State prison correctional officials, have been charged with having used their positions to deprive individuals of their constitutional rights, such as the right to be free from unwarranted assaults and illegal arrests and searches.

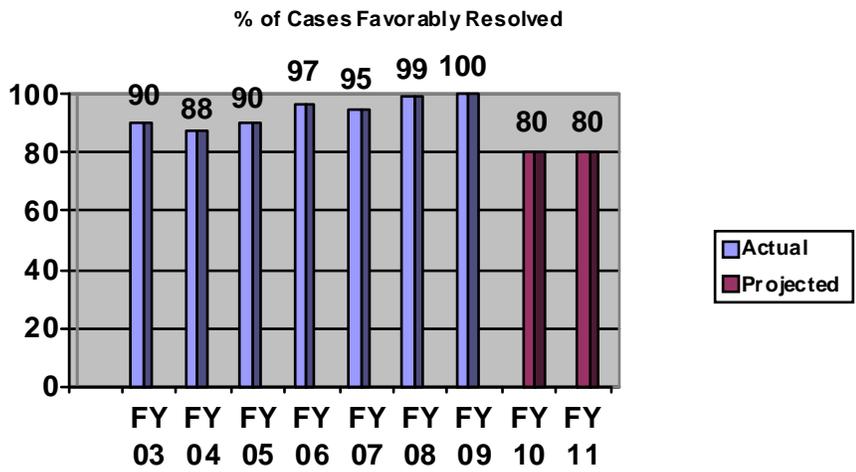
On August 20, 2009 in *United States v. Mendez, et al.* (M.D. Tenn.), defendant Cristina Perfecto is scheduled to be sentenced for her guilty plea to conspiring to force women into prostitution and two counts of sex trafficking. Previously, co-defendant Juan Mendez was sentenced to 50 years in prison, 10 years of supervised release and he was ordered to pay \$100,000 restitution, for his guilty plea to violating two counts of commercial sex trafficking. Defendant Mendez admitted to providing two women to engage in commercial sex acts through the use of force, fraud, and coercion and knowing that one of the victims was a juvenile. Additionally, co-defendants Raul Santillon-Leon, Fernando Reyes-Santillan, Cristobal Flores-Angeles, Rafael Cortes-Barrientos, Diego Cortes-Barrientos, Rodolfo Cortes-Barrientos, Eliseo Cortes-Barrientos and Martin Moreno were sentenced to terms of incarceration ranging from 7 to 60 months, following guilty pleas for their involvement in this Memphis sex trafficking ring. Defendant Ramiro Sanchez-Garcia, who pled guilty to failing to file a factual statement about alien individuals harbored for prostitution, is in fugitive status. One additional defendant, who is in fugitive status, remains charged with crimes including using force, fraud and coercion to make a juvenile girl and an adult woman engage in commercial sex acts in violation of 18 U.S.C. §1591. The defendants recruited a 13-year-old girl in Mexico to come to Tennessee to work as a waitress. Once in Tennessee, she was beaten and raped and forced to engage in prostitution. Additionally, the defendants forced another adult woman to engage in a commercial sex act.

On April 27, 2009, in *United States v. Mondragon, et al.* (S.D. Tex.), defendant Maximino Mondragon was sentenced to 156 months in prison to be followed by three years of supervised release and he was ordered to pay \$1,715,588 restitution to the victims. In January 2006, defendant Mondragon pled guilty to servitude/trafficking conspiracy and conspiracy to commit alien smuggling. Previously, co-defendants Walter Alexander Corea and Oscar Mondragon were sentenced to 180 months in prison while defendant Victor Omar Lopez was sentenced to 109 months in prison for their guilty pleas to these same charges. Defendants Corea and Omar Lopez were also ordered to pay \$1,715,000 restitution, jointly and severally with defendant Maximino Mondragon, and defendant Oscar Mondragon was ordered to pay \$1,187,000 restitution. Additionally, co-defendant Olga Mondragon was sentenced to 84 months in prison for her guilty plea to violating 13 counts including eight counts of holding young Central American women in a condition of forced labor, and a forced labor conspiracy, conspiracy to and smuggling Central American women into the United States for financial gain, and harboring illegal aliens; co-defendant Maria Fuentes was sentenced to time served, approximately 28 months, for her guilty plea to alien harboring; co-defendant Lorenza Reyes-Nunez was

sentenced to 19 months in prison for his guilty plea to obstructing justice in violation of 18 U.S.C. §1512; and co-defendant Kerin Silva was sentenced to three years probation, including one year home detention, after pleading guilty to alien smuggling. Women were trafficked into the United States from Honduras and El Salvador and forced to work in bars in Houston. The defendants threatened to harm the women and their families if they tried to escape or stop working in the bars.

Racial and religious violence incidents remain another priority area for prosecution. As of September 30, 2009, 46 defendants have been charged in connection with crimes such as cross burnings, arson, vandalism, shootings and assault. This number already surpasses the total number of defendants charged during FY 2008. As part of CRM’s hate crime enforcement responsibility and in support of the war on terrorism, it has spearheaded DOJ’s law enforcement response to address post-September 11th "backlash" violence and threats against Arabs, Muslims and South Asians. Federal charges have been brought in 35 cases against 48 defendants, yielding the convictions of 44 defendants.

**Civil Enforcement:**



This measure was established for reporting Department-wide targets for its legal components. The FY 2009 level of success is a phenomenal 100%. This includes enforcement responsibilities associated with eight of the programmatic areas within CRT.

A summary of significant civil programmatic accomplishments is included below:

**APP:** From October 1, 2008, through September 30, 2009, APP has filed 52 briefs and substantive papers in the Supreme Court, the courts of appeals, and the district courts. The Supreme Court reached the merits in nine cases, four of which were consistent with the government’s position. In one other case, the Court did not address the issue argued by the United States as amicus curiae. The courts of appeals rendered 34 merits decisions, 28 of which were in full or partial accord with CRT’s contentions, three of which were losses, and three of which were neither wins nor losses. The district courts rendered two merits decisions, both of which were consistent with our contentions.

In the Supreme Court, our recent successes include the following:

On June 22, 2009, the Supreme Court issued its decision in *Forest Grove School District v. T.A.*, No. 08-305. This case was brought under the Individuals With Disabilities Education Act (IDEA). Although the School District concluded that T.A., a student, had no covered disabilities after his private psychologist diagnosed him with multiple disabilities, his parents enrolled him in a private school for children with disabilities and sought State administrative remedies under the IDEA. The hearing officer found that T.A. was entitled to special education services under the IDEA and ordered the School District to reimburse T.A.'s parents for the cost of his private special education. The Supreme Court has twice held that the IDEA's broad remedial provision, 20 U.S.C. 1415(i)(2)(C)(iii), permitted this type of reimbursement. *School Comm. of the Town of Burlington v. Department of Educ.*, 471 U.S. 359, 369 (1985); *Florence County Sch. Dist. v. Carter*, 510 U.S. 7 (1993). The School District brought an action in Federal district court and argued that the 1997 amendments to the IDEA, which added a section addressing the standards to be followed when granting reimbursements, 20 U.S.C. 1412(a)(10)(C)(ii), in effect repealed *sub silentio* the pre-existing reimbursement remedies recognized by the Supreme Court except where the child had previously received special education services through the public school, which excluded T.A. The Department of Education (DOE) by regulation has rejected this interpretation. The district court accepted the School District's argument and held that T.A.'s parents were ineligible for reimbursement. A divided panel of the Ninth Circuit, agreeing with the Second Circuit, reversed, holding that the DOE's interpretation was the correct one. The United States argued as amicus curiae that, under the traditional canons of statutory interpretation, the DOE's interpretation is the correct one, and that, in any event, the Department's interpretation is entitled to *Chevron* deference. Agreeing with the United States' position, the Court held 6-3 that when a public school fails to provide special education services, the IDEA authorizes reimbursement for private special education services regardless of whether the child previously received special education services through the public school.

In the courts of appeals, our recent successes include the following:

On June 8, 2009, the Seventh Circuit issued its decision in *United States v. Bartlett, et al.*, Nos. 08-1196, 08-1197 & 08-1198. Appellants Jon Bartlett, Daniel Masarik, and Andrew Spengler were police officers in Milwaukee, Wisconsin. While off duty and attending a party at Spengler's home, they and others came to believe – incorrectly – that a group of individuals stole Spengler's police badge. In an effort to prevent the group from leaving, the officers, together with others, put themselves on duty, surrounded the group, and removed them from their vehicle. They cut one member of the group with a knife and severely beat another member of the group as they interrogated him regarding the location of the purportedly missing badge. They also deliberately vandalized two vehicles belonging to members of the group. Following trial in the Eastern District of Wisconsin, the officers were convicted of conspiracy against rights, in violation of 18 U.S.C. 241, and deprivation of rights under color of law, in violation of 18 U.S.C. 242. The district court sentenced Masarik and Spengler to 188 months' imprisonment and sentenced Bartlett to 208 months' imprisonment. The sentences imposed upon Bartlett and Spengler exceeded their advisory guideline ranges. On appeal, the former officers raised a number of arguments regarding their convictions and sentences, including challenges to: (1) the sufficiency of the evidence; (2) the district court's decision to exclude expert testimony; (3) the district court's exclusion of testimony from a prior State

trial; (4) the limitations the district court placed on the cross-examination of various witnesses; (5) the jury instructions; and (6) various procedural and substantive aspects of their sentences.

The Seventh Circuit affirmed the convictions of all three defendants, and affirmed the sentences imposed upon Masarik and Spengler. The court of appeals also held that Bartlett's 208-month sentence was substantively reasonable. However, the court vacated Bartlett's sentence and remanded the matter for a new sentencing hearing because it believed the district court was not sufficiently clear in stating its intent to impose an above-guidelines sentence on Bartlett.

On June 5, 2009, an evenly divided en banc court issued a per curiam decision in *United States v. Seale*, 07-60732 (5th Cir.). The 9-9 decision affirmed the district court's denial of the defendant's motion to dismiss the indictment based on the statute of limitations. In 2007, the defendant, James Ford Seale, was charged, prosecuted, and convicted under the Federal kidnapping statute, 18 U.S.C. 1201, for his role, as a member of the White Knights of the Ku Klux Klan of Mississippi, in abducting and killing two young, African-American men on May 2, 1964. At the time of the offense, kidnapping was a capital crime and thus subject to no limitation on prosecution. On September 9, 2008, the Fifth Circuit vacated the defendant's conviction on statute-of-limitations grounds. The panel held that the five-year statute of limitations applicable to non-capital cases barred prosecution of the defendant for his 1964 conduct because in 1972, Congress amended 18 U.S.C. 1201 to eliminate the death penalty. On November 14, 2008, the court granted the Division's petition for rehearing en banc. The Division argued that the 1972 amendment to 18 U.S.C. 1201, which repealed the death penalty but also enlarged the scope of Federal kidnapping, was a substantive amendment that applied prospectively only, and that it did not retroactively affect the statute of limitations applicable to the defendant's 1964 conduct. The en banc decision also returned the appeal to the panel for resolution of the remaining issues.

**COR:** COR is the only office within the Federal government with the authority and responsibility, under Executive Order 12250, to oversee and coordinate the civil rights enforcement by the 30 Federal agencies that provide Federal financial assistance (FFA) to State and local governments and community, nonprofit and other organizations nationwide. These 30 agencies are required to ensure that programs operated with their funds and other assistance comply with the provisions of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and similar program statutes that prohibit discrimination on the basis of race, color, national origin, sex, and religion. COR is also the only Federal office responsible for oversight of Executive Order 13166, which ensures meaningful access to persons who are limited English proficient (LEP) in federally assisted programs of the 30 agencies giving FFA and for guidance on the LEP requirements for meaningful access to the federally conducted programs of all 95 Federal agencies.

Beginning in FY 2009, in part due to the issuance of memorandum by the Acting Assistant Attorney General announcing DOJ's reinvigoration of Title VI and also in response to COR's Title VI Conference, COR's workload greatly increased with respect to incoming complaints and correspondence; requests for legal opinions, technical assistance, and training from Federal agencies; and requests/assignments to address numerous legally challenging issues. This trend will grow through FY 2010 and into

2011; especially as other Federal agencies work to improve their own civil rights programs under COR's guidance.

COR's reinvigoration efforts during FY 2010 and 2011 will be tailored to increase its effectiveness by: (1) targeting substantive areas and agencies where COR can be most effective through providing technical assistance; training, policy guidance, and oversight; and (2) engaging in activities that will benefit multiple agencies at the same time. Similarly, our implementation of EO 13160 and our administrative investigations program will also be focused on work that will have the broadest enforcement reach and the greatest impact.

During FY 2011, COR plans to update its Title VI, Title IX, and Investigation Procedures Manuals, which are used by DOJ for guidance to and training for by DOJ with all of the 30 Federal agencies that provide Federal Financial Assistance. COR also plans to develop an advanced class on Title VI/LEP/Title IX and investigation procedures for those who have taken our current two-day class. A major project is to update DOJ's Title VI Coordination regulation to reflect changes needed since its issuance in 1976 and to strengthen its LEP requirements. COR will also work with agencies that do not have Title VI regulations in developing them and those without LEP federally assisted and/or conducted guidance to complete those documents. COR also plans to establish a Federal Interagency Working Group on Title VI that will meet on an ongoing basis.

COR has been working with Federal agency partners and within DOJ to ensure Federal compliance with EO 13166 in both federally assisted and conducted programs, including updating DOJ's Language Access Plan. Other LEP projects for FY 2010 and 2011 include reviewing LEP guidance documents from several major agencies; working on technical assistance projects with Federal funders and recipients; developing a "Frequently Asked Questions" document; adding juvenile justice, courts, and emergency planning chapters to the "Tips and Tools" document; sending letters to courts as well as law enforcement, corrections, and juvenile justice agencies on LEP requirements; and, drafting additional articles on LEP for publication in trade magazines on corrections and courts.

COR is also preparing a letter to send to States and local jurisdictions with current or proposed English-only requirements advising them of the LEP requirements and offering technical assistance; this project will continue throughout FY 2011, as additional English-only ordinances are proposed around the nation. The LEP Community Partnership Initiative will develop and implement a plan to build working relationships with community and advocacy groups and a LEP Grants Initiative will develop a plan to work with funding components of DOJ and other Federal agencies to encourage them to provide grants that support the development of LEP technology, court interpreting programs, and monitoring capacity. These projects will continue throughout FY 2011.

Pursuant to Executive Order 12250, COR is preparing a report on the extent to which Federal agencies are meeting their obligations to ensure nondiscrimination in their federally assisted program. COR is preparing a guidance document for Federal agencies on how to develop and conduct an effective external civil rights program. The guidance document will be used to work with agencies to improve their civil rights enforcement programs.

COR plans to continue to work with the Equal Educational Opportunities Section, the Education Department, and other agencies to reinvigorate Title IX, including expanding the Title IX Working Group to all other agencies that have federally assisted education programs; working on how to proceed with respect to the 2006 amendment to the Title IX regulations by the DOE, which allows for greater flexibility in single-sex classes, extracurricular activities, and schools, but does not apply to any of the other 24 agencies (including DOJ); and assisting several agencies that do not have Title IX regulations to develop them. Most of these FY 2011 activities will require major rulemaking projects and extensive staff time.

COR maintains two websites, including COR's website and [www.LEP.gov](http://www.LEP.gov). The latter site serves as the main source for information on access for LEP individuals. Both websites focus on providing technical assistance and resources to Federal agencies, their recipients, and the public. Links to new resources are added almost daily. Through September 30, 2009, hits on [LEP.gov](http://www.LEP.gov) averaged 11,300 per week and on COR's website 59,300 per week, up from 7,500 and 20,000 hits per week, respectively, in FY 2008. COR has provided 24 training sessions as of September 30, 2009, of which 18 covered Title VI and LEP, two one covered Titles VI and IX, one covered Title VI, and one covered Title IX; two others addressed other topics. COR has sessions scheduled and additional requests for EO 12250, LEP, Title VI, and investigation procedures training into FY 2010 and expects requests for training to continue to grow in response to its initiatives and outreach throughout FY 2010 and 2011. COR will be working on the development of web-based strategies for LEP training for Federal agencies and recipients, including LEP training for the Justice Television Network in FY 2010 and 2011.

At the end of September 2009, COR had approximately 55 active investigations, 27 of which involved alleged discrimination based on national origin for denial of services to LEP individuals; the remaining matters involved other types of discrimination on the basis of race, color, national origin, sex, or religion. COR opened two major investigations, one of which is very high profile and is our first investigation being conducted jointly with the Special Litigation Section; at this writing, DOJ has been denied access to records and staff and the case appears to be headed to a fund termination hearing or litigation. COR continues to pursue negotiations with a number of police departments, courts, and corrections departments to resolve complaints against those recipients; especially in the area of LEP issues. During FY 2010 and FY 2011, COR expects to continue receiving and investigating complaints alleging discrimination on the bases we cover, but it will focus its investigative efforts on those cases that will result in the greatest impact on the civil rights compliance of DOJ recipients. Our investigations and resolutions on each of our cases have informed our compliance and technical assistance programs substantially.

**DRS:** In the past ten years, CRT has achieved results for people with disabilities in over 4,100 ADA actions including lawsuits, settlement agreements, and successful mediations. Examples of some of the most meritorious resolutions through September 30, 2009 include:

DOJ has signed 168 settlement agreements with 154 communities under its PCA initiative, a wide-ranging effort to ensure that cities, counties, towns, and villages throughout the United States comply with the ADA. These agreements with

communities in all 50 States and the District of Columbia improve access at town halls; police and fire stations; courthouses; recreation facilities and parks; as well as the accessibility of sidewalks; voting technology; disaster response planning; and government websites. Some of the communities recently reaching agreements with DOJ include New Orleans, LA, Harrison County, MS, Humboldt County, CA, Kanawha County (County Public Library Board), WV, Vian, OK, and Gadsden, AL.

The increased resource level in FY 2010 will be used to create a team dedicated solely to new PCA compliance reviews, developing and launching the proposed PCA training initiative, and providing the ongoing technical assistance and monitoring that is critical to the PCA process.

The additional resources will also be used to: develop an online database to improve the efficiency and effectiveness of monitoring compliance with PCA settlement agreements, and all other settlement agreements entered into by DRS; and to develop and implement a national training program that will provide hands-on instruction to State and local officials on the requirements of Title II and Section 504 and techniques for assessing and improving their own agencies' ADA and Section 504 compliance. In addition, these resources will also be used to create and maintain space on the Internet where State and local governments, and DRS staff can log into report and track progress in complying with PCA agreements, and to provide the print materials and facilities for the PCA training program.

The Department entered into a settlement agreement with the City of Philadelphia that will improve access to the City's 1,200 polling places; many of which are located in private homes, stores, and other small businesses. Inaccessible polling places make it impossible for voters with mobility disabilities to vote in person, forcing them to vote by absentee ballot or other means. Under the terms of the agreement, the City will hire an independent expert to survey the accessibility of nearly half of the polling places and make recommendations to make them accessible whenever elections are held. The Department will evaluate the accessibility of the remaining locations. If a polling place cannot be made accessible, the City is required to find an alternative accessible location.

The Department entered into a settlement agreement with Bio-Medics, which owns several plasma donation centers throughout the country that pays donors for their services, resolving a complaint alleging that Bio-Medics prohibited a man from donating plasma because he is blind. Under the settlement, the Orange, California company agreed to adopt policies to ensure that individuals with disabilities, including those who are blind or have low vision, are able to donate their plasma as long as they pass the mandatory physical required of all donors.

The U.S. Attorney's Office for the Southern District of New York recently settled lawsuits against the owners and operators of four Times Square Theater District hotels – the MODERNE, the Ameritania, the Amsterdam Court, and the Radio City Suites. Under the Consent Decrees, all four hotels agree to ensure that their main public entrances, the registration counters, and their public restrooms are accessible. In addition, all four hotels agree to change their policies and procedures to facilitate reservations by people with disabilities, allow service animals, and require hotel staff to assist people with disabilities. In addition, the MODERNE agreed to provide three rooms that are accessible to people with disabilities, all of which shall have roll-in showers, and

four rooms that are accessible to people who are deaf or hard of hearing. The Ameritania agreed to provide 10 rooms that are accessible to people with disabilities, seven of which shall have roll-in showers, and 17 rooms that are accessible to people who are deaf or hard of hearing.

The Amsterdam Court agreed to provide seven rooms that are accessible to people with disabilities, all of which will have roll-in showers, and 12 rooms that are accessible to people who are deaf or hard of hearing.

Finally, the Radio City Suites agreed to provide seven rooms that are accessible to people with disabilities, two of which will have roll-in showers, and 12 rooms that are accessible to people who are deaf or hard of hearing.

The owners and operators of each hotel agreed to pay a \$10,000 fine to the United States. The complaints grew out of the U.S. Attorney's office compliance review of almost 50 Theater District hotels. As a result of that review, the U.S. Attorney's Office has now finalized 17 voluntary compliance agreements and four consent decrees.

The Department entered into a settlement agreement with the District of Columbia to improve access for individuals with disabilities in the city's homeless shelter program. The settlement requires the District to develop a comprehensive plan to ensure that people with disabilities have equal access to homeless shelter facilities and programs, to hold at least one public hearing on the plan, and submit the plan to the Department for approval. This breakthrough agreement with the District of Columbia's shelter will serve as a model for shelter programs throughout the country.

The Department entered into a settlement agreement with Wal-Mart Stores, Inc., resolving a number of complaints alleging that Wal-Mart denied individuals with disabilities entry into the store or, if they were admitted, to shop without repeated challenges by Wal-Mart staff because they were accompanied by service animals. The agreement requires Wal-Mart to implement a policy to allow individuals with disabilities who use service animals to enter and move freely around the store, to modify policies to provide assistance to customers with disabilities who may need help locating and carrying items, and to implement an ADA training program for all Wal-Mart employees. Wal-Mart will pay \$150,000 to be used to compensate individuals who filed complaints, as well as \$100,000 to finance a public service announcement.

The Department reached an agreement with Medbrook Medical Associates, Inc., a private health care provider, resolving a complaint alleging failure to provide a sign language interpreter for the complainant who is deaf. The agreement requires Medbrook to adopt a policy for the provision of auxiliary aids and services, including sign language interpreters. Medbrook was required to pay a civil penalty of \$1,000 plus \$4,000 each in compensatory damages to the complainant and his wife.

The Department entered into a settlement agreement with Chatham University, a private college, under which the college will make its campus and services more accessible to individuals with disabilities. The agreement stems from an investigation during which the Department found violations of the ADA Standards for Accessible design in newly constructed buildings, architectural barriers in existing facilities, and inaccessible circulation paths throughout the campus.

DOJ's ADA Technical Assistance Program carries out a wide variety of activities to promote voluntary compliance with the ADA, providing free information and technical assistance directly to businesses, State and local governments, people with disabilities, and the general public. Highlights through September 2009 included:

- Answering more than 51,000 calls to the ADA Information Line by ADA Specialists who assisted callers in applying the ADA to their own unique situations. This was the highest number of calls answered since FY 2003.
- Access to the ADA Website which was visited more than 3.5 million times and its pages and graphics viewed more than 87.6 million times;
- Providing outreach through its ADA Business Connection, an initiative to help small businesses comply with the ADA. Three new documents in the *Expanding Your Market* series have been completed, addressing maintenance of accessible features in museum and in retail settings, and how to plan and conduct an accessible meeting;
- DRS has staffed its ADA exhibit booth at 12 national conferences and one State Fair, answering questions and disseminating information about the ADA to thousands of individuals across the United States and reaching an estimated audience of more than 130,000 individuals across the country

FY 2010 and FY 2011, CRT will continue its innovative and multi-faceted approach toward achieving compliance with the ADA. Activities will include:

- Adopting and publishing revised title II and title III regulations and ADA Standards for Accessible Design;
- Continuing its successful PCA initiative, including training local communities to conduct their own accessibility surveys, to ensure that cities, counties, towns, and villages throughout the United States comply with the ADA;
- Ensuring that new facilities are constructed in compliance with the ADA Standards for Accessible Design and that covered entities, including universities, hospitals, public transit systems, social service agencies, and sports and cultural establishments, meet all applicable accessibility obligations;
- Providing free information and technical assistance directly to businesses, State and local governments, people with disabilities, and the general public;
- Responding to States requesting that their accessibility codes be evaluated for consistency with ADA standards;
- Offering more complainants and respondents the opportunity to resolve complaints by participating in media

- Broadening its testing program to assess ADA compliance by businesses providing transportation, as well as other types of goods and services.

**EOS:** EOS monitors approximately 200 active school desegregation cases to which it is a party.

In the desegregation context, EOS has negotiated five court-ordered consent decrees, negotiated one out-of-court settlement, and obtained litigated relief in three cases. As a result of these efforts, desegregated opportunities were provided to students, including the elimination of one-race schools; schools and classrooms were desegregated; faculty was desegregated; and the practice of granting awards on a racially dual basis were eliminated. EOS worked with school districts to achieve unitary status, and as a result, 18 of the long-standing desegregation lawsuits were dismissed. In addition, in the context of racial discrimination, EOS opened six investigations.

Through September 30, 2009, to ensure equal educational opportunities for English Language Learners (ELL), EOS, as part of a nationwide effort, initiated seven new investigations and is actively pursuing ongoing investigations in school districts in California, Colorado, Connecticut, Illinois, Massachusetts, Oregon, New York, and Virginia. These districts have significant or new ELL populations. The purpose of the investigations is to ensure that ELL students are receiving appropriate language acquisition services to enable them to overcome language barriers that impede equal participation in the school districts' educational programs.

In three ELL matters, EOS has negotiated out-of-court settlement agreements addressing, among other things, the registering and identification of ELLs; ensuring timely services for ELLs; ensuring adequate and appropriate ELL services; providing translation services for parents and guardians; providing training for ELL teachers; providing appropriate materials for ELL classes; ensuring that special education students were not denied appropriate ELL services; and monitoring current and exited ELLs. EOS has also obtained litigated relief in one case.

In FY 2009, in three ELL matters, EOS has negotiated out-of-court settlement agreements addressing, among other things, the registering and identification of ELLs; ensuring timely services for ELLs; ensuring adequate and appropriate ELL services; providing translation services for parents and guardians; providing training for ELL teachers; providing appropriate materials for ELL classes; ensuring that special education students were not denied appropriate ELL services; and monitoring current and exited ELLs. EOS has also obtained litigated relief in one case.

Additionally, in FY 2009, in a three-week trial, EOS opposed the dissolution of a case where we determined the terms of the court order concerning ELLs were not being met. We are awaiting the court's ruling.

In FY 2009, EOS opened three investigations based on sex discrimination. In one Title IX case, as plaintiff-intervenor, we have conducted discovery and filed summary judgment papers in preparation for an upcoming trial. We also intervened in a Title IX case and filed an amicus brief in a Title IX case in the athletic context.

In the religious context, in FY 2009, we began two investigations and negotiated one out-of-court settlement addressing a school district's anti-harassment policies.

For the remainder of FY 2009, and in FY 2010 and FY 2011, EOS plans to continue to vigorously enforce Title IV, through both continued enforcement of its desegregation matters and through new investigations. EOS plans to initiate, through outreach, additional Title IV investigations in the areas of race, national origin, and sex. Particularly, EOS plans to further examine student discipline as it affects minorities and issues facing Native Americans. EOS plans to initiate new EEOA investigations at both the district and State level, and plans for some of these to target districts with substantial Native American populations.

Additionally, EOS plans to continue through amicus and intervention to ensure that the appropriate legal standards are applied for laws that we directly enforce, as well as laws that we enforce through referrals, including Title VI, Title IX, the ADA, and 504 of the Rehabilitation Act.

**ELS:** In FY 2009, ELS filed a total of 35 suits (10 § 706 suits, three § 707 suit, one combined §§ 706/707 suit, and 21 USERRA suits). Four of these suits alleged a pattern or practice of discrimination: *US v. City of Portsmouth* (§ 707; race/blacks; firefighter); *US v. Hendry County* (combined §§ 706/707; demotion; sex/women; pregnancy and limited duty); *US v. Bryan County Sheriff* (§ 707; sex/women; pregnancy); and *US v. Commonwealth of Massachusetts* (§ 707; corrections officer; sex/women; physical abilities test).

ELS obtained a total of 41 consent decrees or settlements, 17 under Title VII (12 § 706; three § 707; and two combined §§ 706/707); and 24 under USERRA. Five of the consent decrees obtained by ELS were in suits alleging a pattern or practice of discrimination, and provided significant relief: *US v. City of Dayton* (§ 707; race/blacks; police officer and firefighter), *US v. WMATA* (combined §§ 706/707; religious discrimination); *US v. City of Portsmouth* (§ 707; race/blacks; firefighter); *US v. Hendry County, FL* (combined §§ 706/707; demotion; sex/women; pregnancy and limited duty); and *US v. Bryan County Sheriff* (§ 707; sex/women; pregnancy).

ELS obtained a highly significant victory in *U.S. v. City of New York, NY* (a combined §§ 706/707 suit challenging the city's use of two written examinations for entry-level firefighters as having unlawful disparate impact upon blacks and Hispanics), when the district court in July 2009 granted summary judgment for the United States and plaintiffs-intervenors on the issue of liability, thereby paving the way for remedial relief for approximately 300 black and Hispanic victims of the challenged examinations.

ELS initiated 100 investigations, (24 under § 706, 10 under § 707, and 66 investigations on 175 complaints referred to us by the DOL under USERRA).

ELS actively monitored consent decree compliance in numerous Title VII, § 707 suits.

ELS represented Federal defendants in *Rothe v. Department of Defense, et al.*

ELS was engaged in contested litigation in numerous suits, including two § 707 pattern or practice suits, *US v. City of New York* (race/blacks and national origin/Hispanics);

entry-level firefighter exam); and *US v. New York City Transit Authority* (religious discrimination); six § 706 suits, *US v. City of Dallas* (race/black), *US v. Dona Ana County* (sex/women; sex harassment), *US v. City of Fort Pierce* (retaliation), *US v. Essex County* (religious discrimination), *US v. Luna Community College* (sex/women; harassment), and *US v. City of Bonita Springs* (race/black; hostile work environment); and seven USERRA suits, *Hogan v. United Parcel Service*, *US v. Alabama Department of Mental Health*, *Davis v. City of Marion*, *Lawton v. Newark Public Schools*, *Faapouli v. County of Fresno*, *Ellis v. Goodyear Tire & Rubber Co.*, and *Alston v. Hawthorne Paint*.

ELS filed 35 suits in FY 2009, the greatest number of suits filed by ELS during any fiscal year. Similarly, the number of consent decrees/settlements (41) obtained by ELS in FY 2009 significantly surpassed the number of decrees/settlements obtained during any prior fiscal year. Many of these FY 2009 gains are attributable to ELS' increased USERRA enforcement activity. During FY 2009, ELS filed 21 USERRA suits (almost double the 11 USERRA suits filed in FY 2008, and more than the combined 16 USERRA suits filed during the FY 2005 - FY 2007 period), and ELS obtained 24 USERRA consent decrees/settlements (more than double the eleven decrees/settlements obtained in FY 2008, and more than the combined 15 decrees/settlements obtained during the FY 2005 - FY 2007 period). However, even with this increased USERRA enforcement activity, ELS finished FY 2009 with more § 706 suits filed than during any prior fiscal year since FY 1993, and exceeded the number of § 707 suits filed during any fiscal year since FY 1995.

ELS will increase, during FY 2010 and FY 2011, the overall level of its Title VII and USERRA enforcement activity. ELS intends to increase, in particular, the number of its § 707 investigations and suits. Further, ELS intends to establish and maintain a productive working relationship with the EEOC, with the objective of trying to increase the quality of the EEOC's investigation of the charges the EEOC refers to us pursuant to § 706. Lastly, ELS intends to increase its outreach efforts to Title VII stakeholder organizations.

**HCE:** The Section continues to implement a fair housing initiative to increase and better target housing discrimination testing, and to expand public awareness efforts:

- In FY 2009, HCE filed one lawsuit alleging systemic housing discrimination based on evidence from the Section's testing program. As of January 11, 2010, HCE also has filed one lawsuit alleging systemic housing discrimination based on evidence from the Section's testing program in FY 2010 and has one additional such lawsuit in pre-suit negotiations.
- HCE continues to enhance its outreach efforts, including to private fair housing groups and government agencies that enforce State and local fair housing laws, by contacting those groups by mail and speaking at major fair housing conferences. HCE also conducts outreach to affected groups regarding its work in the areas of servicemembers' rights.

CRT's fair lending enforcement program has traditionally focused on suing lenders that "red-line" minority neighborhoods or discriminate by denying loans or charging higher interest rates. Investigating these lending issues is a labor intensive and time consuming process as voluminous documents, often including hundreds or thousands of loan files,

must be reviewed by attorneys and complex statistical analyses must be completed by the in-house economists and statistician.

HCE has continued to achieve major accomplishments in its enforcement efforts, including the following:

- *Fair Lending*: In September of 2008, HCE filed two pattern or practice fair lending lawsuits, along with simultaneous settlements. One case alleged race discrimination in setting interest rates for certain mortgages by an Alabama bank - the first case brought by the Department using the enhanced Home Mortgage Disclosure Act (HMDA) pricing data. Under the consent order, the bank will compensate African-American borrowers who were charged higher interest rates than similarly situated white borrowers. The second case alleged race and national origin discrimination by a lender that refused to finance car loans for customers living on Indian reservations in Utah and Nevada. Under the consent order, the defendants will compensate loan applicants who were denied loans by the company due to their residence (or the residence of their co-applicant) on an Indian reservation. Under both consent orders, the lenders will implement new policies, procedures and fair lending training.

In FY 2009, HCE filed two fair lending cases involving pricing discrimination and redlining. HCE also has ongoing investigations involving allegations of discriminatory loan pricing, predatory lending, redlining of majority-minority areas, and steering minority borrowers to higher priced loans; several of these investigations involve major national lenders. As of January 11, 2010, one fair lending lawsuit involving pricing discrimination is in pre-suit negotiations. We anticipate that the ongoing investigations will produce additional fair lending lawsuits in FY 2010 and FY 2011.

In addition, in response to the current subprime mortgage crisis, HCE is actively reviewing complaints that home owners who have difficulty making their mortgage payments are experiencing discriminatory treatment in the process of obtaining loan modifications or mortgage assistance.

Assisting homeowners who are in danger of losing their homes is a priority area. Specific activities related to CRT functions include the Federal government requiring lenders to modify certain subprime mortgages to help avoid massive foreclosures through programs such as Hope, Now, Hope for Homeowners, and the Making Home Affordable Program. As these programs are implemented, it is essential that the Division, through its HCE program, ensure that minority borrowers (and others in protected classes under both the Fair Housing Act and the Equal Credit Opportunity Act) receive equal opportunities to obtain better loans and/or avoid foreclosure.

HCE filed its most recent testing case in July 2009, alleging racial discrimination in the rental of apartments. A testing case alleging a pattern or practice of familial discrimination is in pre-suit negotiations. Currently, the vast majority of the Section's testing focuses on detecting discrimination in rentals. The additional resources will allow CRT to expand its testing efforts to help identify and eradicate discriminatory conduct in home sales and ensure funding for eight to ten additional contracts to provide critical local resources for our nationwide testing program. These additional funds will also enable HCE to continue to improve the quality of its paired tests. During FY 2010 and

FY 2011, HCE anticipates that these efforts will produce additional pattern or practice cases.

- *Fair Housing*: In April 2009, HCE settled a case alleging rental discrimination on the basis of race, national origin and religion for \$200,000 in monetary relief and various injunctive provisions. In February 2009, HCE resolved a case involving steering in home sales on the basis of race and national origin for \$120,000 in damages and fair housing training. In January 2009, HCE settled a case alleging race discrimination in the issuance of homeowner's and renter's insurance for \$225,000 in damages and a \$140,000 advertising campaign targeted at African-American neighborhoods. In September 2008, HCE settled a case involving systemic sexual harassment by a landlord for monetary relief of up to \$1 million and a case involving racially segregated public housing projects for up to \$490,000 in monetary relief. In May 2008, HCE settled a systemic race discrimination case for up to \$361,000 in monetary relief. In April 2008, HCE settled a case involving systemic sexual harassment of female tenants by a landlord for up to \$250,000. As of June 30, 2009, HCE has 16 Fair Housing Act cases scheduled for trial during FY 2010. We anticipate that several of these cases will settle and that others may proceed to trial during the fiscal year.
  - Fair Housing Testing Program: The additional resources received in FY 2010 will fund the expansion of an initiative designed to enhance enforcement of the Fair Housing Act, particularly through increased use of CRT's Fair Housing Testing Program.<sup>1</sup> During FY 2006-2009, CRT significantly increased its previous level of testing, including doubling the number of tests in FY 2007 and conducting a record number of tests in FY 2008. HCE achieved these results by re-allocating existing resources to establish an additional test coordinator position and a new legal assistant position and utilizing Division resources to fund contracts of approximately \$20-\$25,000 each (seven in FY 2006, 10 in FY 2007, eight in FY 2008 and six in FY 2009) with fair housing and other non-profit organizations that have assisted in our testing investigations by providing testers with specific characteristics in strategic locations across the country.

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<sup>1</sup> In 1991, the Division initiated a Fair Housing Testing Program in the Housing and Civil Enforcement Section ("Testing Program") to cover unlawful discriminatory practices in housing. The Testing Program identifies housing providers for testing, coordinates the testing and analyzes the results of the tests. The Division has filed 88 FHA and Title II cases based at least in part on evidence gathered through the Testing Program.

anticipates that these efforts will produce additional pattern or practice cases.

- *Group homes:* In March 2009, an HCE settlement of a case alleging that a town had refused to grant a variance to allow a homeowner to have an unrelated person with disabilities live with him required the town to pay a \$10,000 civil penalty. In March 2008, HCE obtained favorable judgments in two cases alleging that local governments imposed illegal restrictions on, or improperly denied permits for, groups homes for persons with disabilities. In October 2007, HCE and private plaintiffs settled a similar group home case, alleging discrimination based on disability, for \$760,000. In addition, in February 2009, HCE filed an amicus brief regarding legal issues in a group home case brought by private plaintiffs.
- *Housing Accessibility:* In May 2009, HCE settled a case alleging systemic violations of the FHA's multi-family housing accessibility requirements for up to \$130,000 in monetary relief and retrofitting of the inaccessible features. In April 2009, HCE settled another accessibility case for \$280,000 in monetary relief and retrofitting. In March 2009, HCE received a favorable court ruling, after filing an amicus brief, on the statute of limitations in private housing accessibility cases. HCE continues to monitor the creation of more than 15,700 new accessible housing opportunities in 27 States resulting from its settlements since October 2004. In addition, HCE continues its twice yearly Multi-Family Housing Access Forum, which educates housing professionals and establishes a dialogue about compliance with the FHA's accessibility requirements among housing professionals and disability advocates.
- *Religious Land Use and Institutionalized Persons Act (RLUIPA):* In January 2009, HCE settled a RLUIPA/FHA case requiring the local government to pay \$70,000 in damages, allow a religious substance abuse treatment program to operate and obtain training for nearly 100 zoning employees and officials on the requirements of the FHA and RLUIPA. Two RLUIPA cases are in litigation.
- *Servicemembers Civil Relief Act (SCRA):* In December 2008, HCE filed its first SCRA complaint and also resolved an investigation of a major lender with a favorable outcome. HCE is conducting investigations of several major national mortgage lenders and loan servicers for alleged violations of the SCRA provisions limiting interest rates and requiring pre-foreclosure court orders for active duty servicemembers. As of June 30, 2009, the trial in HCE's first SCRA case is scheduled to occur during FY 2010. During FY 2010 and FY 2011, we also anticipate filing additional SCRA cases, as well as resolving other SCRA investigations out of court.

**OSC:** Through September 2009, OSC received 259 charges filed by U.S. citizens and legal immigrants (or their representatives) alleging unlawful employment discrimination based upon citizenship status or national origin, unfair documentary practices during the employment eligibility process, or retaliation. During the period, OSC opened 173 investigations, issued letters of resolution or entered into settlement agreements in 46 charges, and recovered approximately \$228,060 in back pay for victims. Employers also

agreed to change discriminatory practices so that all U.S. workers, both U.S. citizens and legal immigrants, would not face unnecessary hurdles in seeking or retaining employment.

OSC's investigations covered the full gamut of employers, from the nation's largest employers to small businesses with only a few employees. Investigations also included a broad range of industries, including food processing, restaurant and hospitality, retail, information technology, and job referral agencies. OSC's successful resolutions included charges filed by U.S. citizens who alleged adverse treatment in favor of temporary visa holders or undocumented workers and by work authorized immigrants who were denied hire, or were fired, because of their legal status or discrimination in the employment eligibility verification process.

OSC has investigated charges filed by medical residency applicants alleging citizenship status discrimination in the residency selection process by numerous medical residency programs. These charges, arising in multiple jurisdictions, allege that the respondent programs prefer temporary visa holders to the exclusion of U.S. citizens and work authorized immigrants. In addition, OSC has received claims against the medical residency umbrella organizations that administer the medical residency application process alleging that these entities also engage in citizenship status discrimination. OSC is in the process of negotiating with these entities to clarify language regarding citizenship status on their applications and websites to prevent exclusion of protected individuals from the medical residency selection process.

OSC also conducts an extensive, nationwide public education campaign to teach workers, employers and concerned organizations about the anti-discrimination provision of the INA. An essential component of OSC's outreach includes its grant program. In 2009, OSC awarded grants to 12 organizations to educate workers and employers in areas with sizable and/or emerging immigrant populations about their rights and responsibilities under the INA. In FY 2009, directly and through its grantees, OSC participated in 701 public outreach sessions. OSC also handled approximately 8,000 calls through its employer and worker hotlines during 2009. OSC distributed more than 123,000 pieces of written educational materials to the public in FY 2009.

DHS is expected to continue to significantly expand its efforts to address the large number of undocumented workers in the United States, including heightened enforcement of employer sanctions. GAO has determined that employer sanctions have resulted in a widespread pattern of discrimination – primarily against Hispanics and Asians. Thus, heightened enforcement of employer sanctions is likely to lead to an increase in discrimination charges and hotline calls received by OSC.

The use by employers of computerized employment eligibility verification systems, such as DHS's E-Verify, allows an employer to confirm the employment eligibility of new hires online by comparing information from an employee's employment eligibility verification Form I-9 against Social Security Administration and DHS databases. Already, on average, 1,000 employers sign up for E-Verify each week, totaling more than 134,000 employers and representing more than half a million locations nationwide. Since October 1, 2008, E-Verify has processed more than six million queries. DHS-commissioned studies have concluded that use of E-Verify results in increased discrimination against workers who look or sound foreign.

OSC's plate is full in meeting its enforcement responsibilities and responding to E-Verify-related requests for assistance from workers and employers calling OSC's toll-free hotlines. Although E-Verify is administered by DHS, it does not offer a toll-free helpline for E-Verify assistance to workers. Consequently, calls to OSC's hotline about E-Verify have substantially increased. This demand will only increase as more States pass mandatory E-Verify legislation and in light of pending proposals to make E-Verify mandatory on a Federal level.

**SPL:** CRT continues to build on its impressive record of actively protecting the rights of institutionalized persons under CRIPA. These investigations involve a range of issues, including: abuse and neglect in nursing homes and facilities for persons with mental illness or developmental disabilities; abuse and victimization of juveniles; and the unmet mental health needs of inmates and pre-trial detainees; sexual misconduct; and the use of excessive force.

In FY 2009, SPL opened six new CRIPA investigations, and obtained ten settlement agreements involving 47 facilities, including one resolving a State-wide investigation of seven mental health hospitals in Georgia. SPL has also issued 11 findings letters involving 44 facilities. SPL conducted 144 investigative and compliance tours. In addition, SPL has filed nine complaints pursuant to CRIPA to address conditions at three jails, eight facilities for persons with mental illness, three nursing homes and 14 facilities for persons with developmental disabilities. SPL also continued its investigations of 89 facilities, and monitored the implementation of consent decrees, settlement agreements, memoranda of understanding and court orders involving 88 facilities. The Division also closed three investigations of three facilities and three CRIPA cases involving 32 facilities.

Regarding our police misconduct statutory authority, SPL continues to pursue all allegations of constitutional violations we receive to determine if a pattern or practice investigation is warranted. In FY 2009, CRT opened seven new police misconduct investigations and obtained a comprehensive consent decree with the Virgin Islands Police Department which will address constitutional deficiencies uncovered during CRT's investigation of that agency. During FY 2009, CRT continued to focus its resources on vigorously monitoring the enforcement of its six existing settlement agreements to ensure timely compliance with the terms of those agreements. Working in close partnership with these jurisdictions, and through the provision of cost-free technical assistance, we have been able to implement reform which has allowed us to return oversight to local control.

Additionally, SPL anticipates continuing in FY 2010 and FY 2011 to work cooperatively with police departments to implement widespread reforms, including training, supervising, and disciplining officers and implementing systems to receive, investigate, and respond to civilian complaints of misconduct. Similarly, based upon vigorous activity in FY 2009, SPL anticipates its renewed enforcement efforts regarding RLUIPA and the Freedom of Access to Clinic Entrances Act of 1994 (the FACE or Access Act) will continue to expand in FY 2010 and 2011. For example, in 2008-2009, the Section opened four RLUIPA investigations and launched several preliminary inquiries to determine if investigations are merited.

Regarding FACE, the Section has focused investigative efforts on addressing allegations regarding significant physical obstruction at reproductive health facilities involving multiple and national defendants, as well as serious threats of force where injunctive relief would be an appropriate remedy in FY 2009.

In FY 2010, SPL received additional funding to enable the Division to fulfill its mandate to enforce the CRIPA, 42 U.S.C. 1997. The resources will be used to fund a combination of consultants in the areas of protection from harm, general medical (including mental health) care, fire safety, police operations, education specialists, and correctional operations, among other areas. It is derived from the Division's existing caseload of matters for which funding is currently not available to address a cascading problem of backlogged cases and monitoring of consent decrees, pushed into subsequent fiscal years. Most of these cases involve issues of fundamental life safety, and delays in their prosecution have inhibited the imposition of basic remedial relief.

The Division's enforcement of the statute requires litigative consultants to identify deficient conditions and practices and assist in devising appropriate remedies.

This funding is allowing the Division to address its caseload more efficiently as the use of these "experts" enhances the Division's ability to settle more cases and more quickly rectify the deficiencies identified. Litigative consultant's duties entail performing facility tours, document reviews, policy reviews, and preparation of reports.

The work of SPL depends upon expert assessments as to whether conditions or practices depart from generally accepted professional standards. In fact, the cornerstone case for the Section's CRIPA work, *Youngberg v. Romeo*, 457 U.S. 307, compels such an analysis.

This Division's work in these areas has a national impact. The findings of conditions and remedial measures, and other technical assistance that the Division makes publicly available, are reviewed by State and local agencies throughout the United States. Often, agencies will attempt to correct their practices to avoid a review by the Department. Without these investigative tools -- enhanced by our consultants' credibility, experience and knowledge, we could not have the national impact we have.

**VOT:** In FY 2009, VOT continues to place major emphasis on the monitoring of elections. VOT monitored 87 elections in 77 political subdivisions in 23 States, using 800 Federal observers from the Office of Personnel Management (OPM) and 246 DOJ staff.

VOT's priority on enforcement of Section 203 and related statutes, which mandates that certain jurisdictions provide language assistance to affected language minority communities, will continue throughout FY 2011. In FY 2009, a case was filed against Fort Bend County, TX under Sections 4(f)(4) and 208 of the Voting Rights Act as well as the Help America Vote Act [HAVA]. Also in FY 2009, the court approved the extension of a prior consent decree in Sandoval County, NM. VOT also participated as amicus in a case in Volusia County, FL to ensure the protection of voting rights for Puerto Rican voters.

Enforcement of Section 2 of the VRA, which prohibits voting practices and procedures that are discriminatory in purpose or effect, remains a high priority. In FY 2009, Section

2 cases were filed against the Euclid City School District in Ohio and the Town of Lake Park, FL. In the Euclid school district the parties stipulated that the challenged method of election violated Federal law. The court then adopted the city's plan to remedy the violation. The case against the Town of Lake Park remains pending.

VOT also filed a complaint under Section 11(b) in the Eastern District of Pennsylvania alleging intimidation by the New Black Panther Party in the 2008 general election. Subsequently VOT dismissed a portion of that lawsuit, and the court entered injunctive relief on the remaining claim.

Lawsuits were filed against Virginia and New York under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) seeking relief to allow overseas voters sufficient time to vote; a consent decree was obtained in New York, and the Virginia case remains pending. VOT also participated as amicus curiae and filed a brief in a similar case against the State of Illinois for a special congressional election. In addition, suits were filed against Vermont and Alabama to enforce the data reporting requirements of UOCAVA. The court dismissed the cases in Vermont and Alabama after compliance was met; a Settlement Agreement was reached with the Commonwealth of Massachusetts.

Also in FY 2009, a Settlement Agreement was reached with the State of Illinois to ensure compliance with Section 7 of the National Voter Registration Act which requires that State offices which provide public assistance offer voter registration applications to clients and amended a consent decree with the State of Indiana under Section 8 of the NVRA.

With respect to Section 5 of the VRA, the Supreme Court upheld the constitutionality of Section 5 of the Voting Rights Act in the Northwest Austin Municipal Utility District case. The Court did find that all the roughly 12,000 governmental units subject to preclearance requirements of Section 5 of the VRA are also entitled to seek bailout under Section 4 of the Act. We also participated as amicus in a Section 5 enforcement action involving Georgia's voter verification procedures and filed Section 5 enforcement cases against Waller County, TX and the City of Calera, AL, both of which were resolved by consent decrees.

The level of Section 5 administrative submissions continues at a high rate. During FY 2011 and FY 2012, a major priority will be implementation of a major upgrade to the Submissions Tracking and Processing System (STAPS), (our first in over eight years) and the Geographic Information Systems (GIS) for use with the 2010 Census data and a major revision of the web based application that allows jurisdictions to make Section 5 submissions electronically.

Under its enforcement responsibility under Title III of HAVA, VOT continues to place priority on compliance with expansive requirements that went into effect in 2006 including integrated State voter registration lists and new accessible voting devices in polling places. VOT continues its multi-faceted approach to informing State and local officials of their obligations under the new law.

VOT anticipates an increased workload in FY 2011 for the following reasons:

VOT anticipates increasing activity under Section 2 as a result of its recent and ongoing initiative to identify procedures and election systems that may deny or abridge the right to vote in violation of Section 2. In addition, during these fiscal years, VOT expects to continue vigorous enforcement activity under Sections 203 and 208; increased litigation under the NVRA; the continued need for actions to enforce UOCAVA; increased HAVA litigation and a continued high level of election monitoring.

In addition, substantial resources will be devoted to preparing for and reviewing the large volume of Section 5 submissions of redistricting plans after the release of the 2010 Census.

The upcoming release of the Census data will result in the influx of redistricting plans and related changes affecting voting submitted to the Attorney General for review under Section 5. In addition, the recent Supreme Court decision in the Northwest Austin case will likely change the Section 5 litigation landscape. The decision greatly expands the number of jurisdictions in the country (to roughly 12,000) that are now eligible to file an action to bail out from coverage under Section 5. In short, the redistricting work and likelihood of a substantial increase in the number of bailout suits and declaratory judgment actions will result in a significant increase in VOT's Section 5-related workload.

Also, as an Administration priority, VOT is embarking on a comprehensive review of compliance with the voter registration requirements of Section 7 of the National Voter Registration Act, which requires that public assistance and disability service offices provide registration opportunities. A recent EAC Report on States' Section 7 activities indicates a need for investigations of many States, and a number are already underway. Significant resources will be needed to undertake these complex Statewide investigations, which may result in several resource-intensive law suits in the upcoming fiscal year.

In addition to the NVRA initiative, VOT will continue to place high priority on monitoring elections and vigorous enforcement of other Voting Rights Act provisions (Sections 2, 11b, 208, and the minority language provisions).

## **b. Strategies to Accomplish Outcomes**

In FY 2009 and continuing throughout FY 2010 and FY 2011, CRT will perform its mission of protecting the civil rights of all Americans by: (1) improving efforts to eradicate modern-day slavery of human trafficking, including the trafficking of women, children, and other vulnerable victims, through more vigorous and intensified enforcement efforts, interagency coordination, and continued efforts to rescue the victims of this atrocity; (2) combat discrimination in lending and foreclosure; (3) reinvigorating Title VII pattern or practice enforcement; (4) expanding efforts (a) to address voting rights violations, (b) to ensure access to the polls for all who qualify, (c) to protect the integrity of the ballot process, and (d) to promote voter confidence in our country's democratic system through activities such as vigorous election monitoring, outreach, and the Department's Ballot Access and Voting Integrity Initiative; (5) expand investigations and prosecutions of bias-motivated crimes; (6) implement infrastructure upgrades needed to process the 2010 Census data into a new database structure; (7) expanding the New Freedom Initiative for Project Civic Access to ensure that persons with disabilities have access to our nation's civic life in accordance with the ADA; (8) combating religious

discrimination and promoting religious liberty for persons of all religious faiths and denominations; (9) enhance efforts to investigate unsolved civil rights era crimes involving racial or religious violence; (10) combating housing discrimination; (11) ensure the safety of fundamental life safety issues for persons in public residential facilities through CRIPA enforcement efforts; and (12) strategic targeting of outreach programs, technical assistance, and training efforts that will promote voluntary compliance with our Nation's civil rights laws.

**Long-term outcome goals:** CRT will target specific actions through vigorous litigation as part of its comprehensive strategy to safeguard the civil rights of all persons residing in the United States. CRT also will continue to be vigilant and aggressive in its enforcement, outreach, and training efforts. These efforts span the full breadth of its jurisdiction, from fair housing opportunities, equal access to the ballot box, and criminal civil rights prosecutions to desegregation in America's schools and protection of the rights of the disabled. Additionally, CRT has worked swiftly and aggressively to pursue its newfound enforcement responsibilities over its expanded jurisdiction, including aggressive enforcement of USERRA, TVPA, and RLUIPA.

### **Other Initiatives:**

DOJ's PCA initiative will be one of the focal points for DRS. This initiative ensures that cities, counties, towns, and villages throughout the United States comply with the ADA. Pattern or practice cases will continue to be a high priority also, including a vigorous pursuit of access to transportation and travel (including mass transit and privately operated transportation services), gateways to economic self-sufficiency (higher education, child care, and employment), consumer access to the free market (health care, access for people with assistance animals, physical access to consumer goods), voting, and Olmstead issues (making sure people with disabilities can live and receive services in their own communities and with their own families).

In order to maximize voluntary compliance with the ADA, DOJ has launched the "ADA Business Connection" to bring together a community's senior business leaders and disability advocacy groups in order to build trust and understanding with regard to the needs of and challenges facing Americans with disabilities. DOJ has reached out specifically to small businesses.

Training is a vital tool to sharpen our enforcement efforts – both across the Department and within CRT. The Professional Development Office (PDO), created in November 2005, has spearheaded CRT's creation of two training conferences at the NAC this year. These national training seminars continue our mission of educating, encouraging, and working collaboratively with the U.S. Attorney's Offices in the vigorous enforcement of the civil rights laws; two training conferences were held this year. PDO also has created – for the first time in CRT's history – a formal program of training for new Division attorneys, as well as programs to provide continuing legal education for experienced Division attorneys.

CRT has resolved major police misconduct investigations with numerous police departments across the United States. This dramatic increase in successful resolutions reflects DOJ's innovative cooperative approach to such matters, focusing on fixing the problems, not the blame. Previously, DOJ approached such investigations with a purely

litigation mindset, which requires secrecy and creates adversaries. Rather, CRT has begun approaching these investigations with a cooperative model, with litigation held as a fallback position if cooperation does not work. This model is driven by the assumption that most, if not all, police departments want to comply with the law and provide quality public service in a constitutional manner. This cooperative approach has implemented more reform – faster, in more cities – than would have been possible solely through litigation. Moreover, ongoing monitoring and technical support enhances the success of these agreements and ensures their enforcement.

In other sections, to ensure the civil rights of children, EOS will continue in FY 2009 with its initiative begun in FY 2005 to ensure equal educational opportunities for ELL this is to ensure that immigrant children are receiving proper services to assist them in overcoming language barriers. Monitoring elections will continue as a priority for VOT to ensure compliance with Section 203 (which mandates that language assistance be provided), the UOCAVA, and Title III of HAVA.

Activities promise a continued mix of litigation, amicus briefs, formal and informal settlements, and mediated resolutions. Much of CRT's enforcement efforts will continue to focus on resolution without litigation. For example, under a contract, DOJ refers complaints to professional mediators who have been trained in the legal requirements of the ADA. Since January 2001, the mediation program has successfully resolved more than 1,600 complaints. The average cost of a successfully mediated case is about \$2,800 in mediation contractor costs, minimal when compared to the costs of investigating and litigating individual cases. The mediation program allows DOJ to rapidly resolve individual cases to achieve meaningful ADA compliance while utilizing fewer resources -- both in terms of cost and staff hours. It also has resulted in increased access for thousands of individuals throughout the country. This reflects CRT's commitment to linking resources and performance.

Outreach and technical assistance will continue to play a significant role in many of the programmatic areas to ensure compliance with the civil rights statutes. This will include operating a comprehensive, government-wide program of technical and legal assistance, training, interagency coordination, and regulatory, policy, and program review, to ensure that Federal agencies consistently and effectively enforce various landmark civil rights statutes and related Executive Orders.

CRT will provide technical assistance and speakers to educate immigrants, national origin minorities, State and local governments, and service providers to combat discrimination. Countless informal complaints will be resolved each year through this process, generally resulting in the immediate resolution to the issue, negating the need for a formal charge or litigation. For example:

- OSC will teach workers, employers, and concerned organizations about the anti-discrimination provision of the INA;
- CRM attorneys will participate in training and outreach programs relating to criminal civil rights enforcement, such as trafficking of persons, training Border Patrol Agents, lecturing at the FBI training center, etc;

- COR will provide technical assistance and training as requested by State and local recipients, Federal agencies, organizations and the public such that individuals from across the country can learn the importance of language access; and
- VOT will work with the United States Election Assistance Commission on voluntary guidance to jurisdictions on compliance with HAVA.

In the area of Human Capital Workforce Planning, specific activities and/or actions are planned include:

- Using the skills assessment study conducted by DOJ to determine employee development needs and targeting recruitment for employees to fill skills gaps;
- Improving recruitment and selection through improved productivity permitted by use of the Web based assessment system, AVUE;
- Continuing the use of digital fingerprinting of applicants to speed security approvals;
- Ensuring that all new supervisors have received appropriate training within the first three to six months after selection;
- Improving opportunities for, and completion of, training for attorneys to improve mission effectiveness; and
- Continuing to respond to DOJ initiatives to improve human resources management.

CRT continues to implement new measures to streamline operations and strengthen internal control processes. The Administrative Section created the position of Comptroller to restructure CRT's financial and business processes. This allows all financial activities to be managed uniformly. Sound financial management is the foundation of an effective organization.

In addition, CRT has implemented new automated tracking systems to help ensure timely, accurate, and reliable financial reports. Key performance information is carefully tracked to continually improve program performance and overall cost effectiveness. CRT continues to excel in its ratings on DOJ's financial audits.

## A. Funding and Costs

The Department of Justice participates in the following E-Government initiatives and Lines of Business:

Business Gateway	E-Travel	Integrated Acquisition Environment	Case Management LoB
Disaster Assistance Improvement Plan	Federal Asset Sales	IAE - Loans & Grants - Dunn & Bradstreet	Geospatial LoB
Disaster Assist. Improvement Plan - Capacity Surge	Geospatial One-Stop	Financial Mgmt. Consolidated LoB	Budget Formulation and Execution LoB
E-Authentication	GovBenefits.gov	Human Resources LoB	IT Infrastructure LoB
E-Rulemaking	Grants.gov	Grants Management LoB	

The Department of Justice e-Government expenses – i.e., DOJ’s share of e-Government initiatives managed by other Federal agencies – are paid from the Department’s Working Capital Fund (WCF). These costs, along with other internal e-Government related expenses (oversight and administrative expenses such as salaries, rent, etc.) are reimbursed by the components to the WCF. CRT’s reimbursement amount is based on the anticipated or realized benefits from an e-Government initiative. The table below identifies CRT’s actual or planned reimbursement to the Department’s WCF. As such, CRT’s - Government reimbursement to the WCF was \$62,420 for FY 2009. The anticipated CRT e-Government reimbursement to WCF is \$61,000 for FY 2010.

## B. Benefits

CRT established baseline cost estimates for each IT investment being (or planned to be) modified, replaced, or retired due to the Department’s use of an E-Government or Line of Business initiative. CRT is measuring actual costs of these investments on an ongoing basis. As CRT completes migrations to common solutions provided by an E-Government or Line of Business initiative, CRT expects to realize cost savings or avoidance through retirement or replacement of legacy systems and/or decreased operational costs.

**Based on the phased-in implementation of these initiatives, CRT will not realize any savings associated with these projects in FY 2011.**

## V. Program Increase by Item

**Item Name:** **Combating Discrimination in Lending & Foreclosures**

Budget Decision Unit: Civil Rights Division  
Strategic Goal & Objective: 2.6 Uphold the civil and constitutional rights of all Americans  
Organization Program: Civil Rights Division

Component Ranking of Item: 1 of 4

Program Increase: Positions 22, Agt/Atty 12, FTE 11, Dollars \$2,082,756

### Description of Item

Combating discrimination in lending and foreclosures is a priority for the Department of Justice. In recent years, the Department has brought, and resolved by consent order, cases involving discrimination in the pricing of home mortgage and auto loans, refusal to lend to borrowers who live on Indian reservations, redlining, and sexual harassment of female borrowers by a bank vice president. The current administration is committed to using all available means to uncover, investigate and litigate the enforcement actions needed to root out discrimination in all aspects of credit transactions.

As the Attorney General announced on April 6, 2009, the Department is taking a lead role in the multi-agency Federal and state effort to crack down on loan modification fraud, which includes reviewing loan servicing practices, loan modifications and foreclosures for possible discrimination. These types of fraud and discrimination can deprive persons of their homes and their life savings. Collectively, these types of abusive practices have substantially contributed to the current financial crisis, and, in turn, the crisis has increased the need for vigorous fair lending enforcement. Therefore, the Department seeks additional resources to address its fair lending enforcement responsibilities.

### Justification

The Housing and Civil Enforcement Section of the Civil Rights Division enforces the Fair Housing and Equal Credit Opportunity Acts (FHA and ECOA), each of which prohibits discrimination based on race, color, or national origin, as well as other prohibited bases, in home mortgage lending. Under the FHA and ECOA, the Department of Justice is the only Federal entity that can investigate and bring Federal litigation against *any* lender that engages in discriminatory credit transactions. This includes, but is not limited to, banks and non-depository institutions, mortgage companies and car dealerships.

Many of our current fair lending investigations are related to mortgage fraud and the subprime lending crisis, including investigations of predatory lending (fraudulent lending targeted at a protected class under the Fair Housing Act or ECOA); pricing discrimination matters involving allegations of potentially fraudulent behavior (*e.g.*, that borrowers in a protected class were not informed of favorable loan terms that should have been available to them); and redlining discrimination involving allegations that reputable lenders failed to provide loan opportunities on an equal basis in majority-minority neighborhoods leaving those markets open to fraudulent or predatory lenders.

The Housing and Civil Enforcement Section faces several simultaneous challenges in fully investigating and bringing fair lending lawsuits: (1) we are receiving an increasing number of referrals from bank regulatory agencies that deal with complex issues of race and national origin discrimination; (2) available Home Mortgage Disclosure Act (HMDA) data now allows us to identify possible discrimination by non-depository lenders that are not subject to regular Federal oversight, but this process is very resource intensive and public reports (including a forthcoming GAO report) note that hundreds of non-bank lenders with HMDA data indicating possible discrimination are not subjected to full Federal investigation every year;<sup>1</sup> and (3) media reports indicate a substantial increase in discrimination related to the subprime mortgage crisis, including discrimination in foreclosure practices and in loan modifications. Under the President's Making Home Affordable Program, loan servicers that participate in the administration's loan modification program are required to report data on the race, ethnicity and other personal characteristics of the borrowers. This data will soon become available to the Department for review and analysis to identify possible discrimination. While it will provide a rich source of information for detecting such discrimination, effective evaluation and utilization of the loan modification data, like the currently available HMDA data, will require significant, specialized resources.

Since January 20, 1993, the Civil Rights Division has filed 30 lawsuits involving allegations of "pattern or practice" lending discrimination. This is an average of about two such cases per year. As both the current crisis and the challenges outlined above make clear, we must do more. Therefore, the President has requested additional resources for fair lending enforcement in the FY 2010 budget,<sup>2</sup> and we are proposing an additional budget enhancement for FY 2011 to expand our resources for identifying, investigating and addressing discrimination in all aspects of the mortgage lending process. Additional resources are desperately needed to meet these challenges above.<sup>3</sup>

#### Current resources

In calendar year 2008, the Housing and Civil Enforcement Section was able to devote a total of approximately eight FTE's (16,000 hours) of attorney and professional time to investigating and prosecuting mortgage lending matters. Matters related to mortgage fraud and the subprime crisis are not reported separately, but we estimate that approximately 50% of these hours (4 FTE's) were spent on matters that are related to mortgage fraud, with roughly half to 2/3 of that as attorney time, and 1/3 to half as professional time (economists and statistician). The requested increase of four attorney positions for FY 2010 will allow us to begin to increase the resources devoted to these

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<sup>1</sup> We anticipate that the issue of the absence of systematic federal oversight for such non-bank lenders will be a key subject of the forthcoming GAO audit report on fair lending enforcement.

<sup>2</sup> For FY 2010, the President's budget requests four additional attorney positions for the Housing and Civil Enforcement Section to expand the fair lending enforcement program.

<sup>3</sup> Detail summaries regarding the requested additional positions are included as Attachment A.

matters, but those four positions are not nearly adequate to fully enforce the fair lending laws, given the nationwide scope of these problems.

**Housing and Civil Enforcement Section  
Mortgage Lending Workload Statistics**

<u>Fiscal Year</u>	<u>2008</u>	<u>2009</u>	<u>2010</u> <u>(est.)</u>	<u>2011</u> <u>(est.)</u>	<u>2012</u> <u>(est.)</u>
Atty & Prof FTEs (approx)	5	5	7	19	29
Matters Initiated <sup>2</sup>	26	28	35	56	90
Investigations Authorized	9	6	11	18	27
Cases Filed	2	2	4	7	12
Consent Decrees	2	3 <sup>3</sup>	4	5	8
Litigated Judgments	0	0	0	0	1

<sup>1</sup> FY 2007 and FY 2008 figures are actual levels. FY 2010 and FY 2011 figures are projections based upon requested enhanced staffing levels (4 attorneys for FY 2010 and 20 attorneys and professional (plus 2 clerical) being onboard for six months of each year. FY 2012 figures are projections based upon requested enhanced staffing levels for the full year.

<sup>2</sup> We project very significant increases in the number of new fair lending matters initiated, investigations authorized, and cases filed by the additional staff – tripling or more the current numbers by the end of FY 2012. These numbers will not increase directly proportionally to the number of staff, however, for several reasons. First, a significant portion of our fair lending matters currently arise from referrals from the Federal bank regulators, and we do not anticipate a large increase in these referrals. Matters developed by HCE staff require substantially more staff time and resources than do regulator referrals, which generally come to us with a significant amount of information and analysis. The additional resources are required to initially screen data and complaints to initiate matters, to research and analyze enough information to determine those that require full investigation and then to evaluate and recommend based on the full investigation whether Federal litigation is warranted. Second, with the new resources, we intend to focus a larger proportion of our matters and investigations on large lenders, and these matters generally require more resources than some of our recent cases involving small to medium size lenders. Third, with the new resources, we intend to expand our fair lending work beyond the traditional areas of redlining, loan denials, and discrimination in the interest rate charged for loans. As we bring cases in new areas, we expect more lenders to choose to litigate rather than resolve cases during pre-suit negotiations; only 10% of our fair lending cases over the last two decades have involved contested litigation. Cases in contested litigation generally require far more staff resources than those that settle pre-suit.

<sup>3</sup> Consent decrees FY07-09 exceeds complaints because one of the settled cases was filed before FY07.

Impact on Performance (Relationship of Increase to Strategic Goals)

The Federal Government has a strong interest in protecting people from discrimination in lending and foreclosures, particularly given the role these illegal activities have played in the current crisis. Increased efforts to eradicate lending related discrimination play an integral role in DOJ's Strategic Plan, designed to uphold the civil and constitutional rights of all Americans.

## Funding

### Base Funding

FY 2009 Enacted				FY 2010 Enacted				FY 2011 Current Services			
Pos	Agt/ Atty	FTE	\$(000)	Pos	Agt/ Atty	FTE	\$(000)	Pos	Agt/ Atty	FTE	\$(000)
8	5	8	\$1,220	12	9	10	\$2,105	12	9	12	\$2,520

### Personnel Increase Cost Summary

Type of Position	Modular Cost per Position	Number of Positions Requested	FY 2011 Request (\$000)	FY 2012 Net Annualization (change from 2011) (\$000)
Attorney	\$104	12	\$1,250	\$1,006
Economist/ Statistician	86	4	398	326
EO Spec./ Investigator	100	4	345	283
Clerical	45	2	90	53
<b>Total Personnel</b>	<b>\$335</b>	<b>22</b>	<b>\$2,083</b>	<b>\$1,668</b>

### Non-Personnel Increase Cost Summary

Non-Personnel Item	Unit Cost	Quantity	FY 2011 Request (\$000)	FY 2012 Net Annualization (Change from 2011) (\$000)
	\$0	\$0	\$0	(\$0)
<b>Total Non-Personnel</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>(\$0)</b>

### Total Request for this Item

	Pos	Agt/Atty	FTE	Personnel (\$000)	Non-Personnel (\$000)	Total (\$000)
Current Services	12	10	12	\$2,520	\$0	\$2,520
Increases	22	12	11	2,083	\$0	2,083
<b>Grand Total</b>	<b>34</b>	<b>22</b>	<b>23</b>	<b>4,603</b>	<b>\$0</b>	<b>\$ 4,603</b>

The requested FY 2011 budget enhancement is comprised of:

Twelve attorneys (GS-14's): The majority of our enforcement work in the fair lending arena is done by attorneys, and this increase would approximately double the number of attorneys available to identify, investigate and litigate fair lending matters (after the projected increase for FY 2010). Currently, the Section's attorneys often split their time between fair lending work and cases in the other enforcement areas handled by the Section. Given the current active caseload of the Section in the fair housing area, litigation deadlines in other cases often must take precedence over the more complex lending investigations; the requested increase would allow staff attorneys to focus exclusively on fair lending matters and greatly increasing our productivity and efficiency in this area.

Four economists & statisticians (GS-14's): Most of our fair lending investigations and cases involve extensive statistical and/or econometric analysis of large loan databases. In addition, identifying lenders that may be discriminating based on publicly available loan data (such as the HMDA data described in the forthcoming GAO report) requires sophisticated statistical analysis. Our experience with our two in-house economists (one of these positions was newly created in 2008) and mathematical statistician is that this work can be done most efficiently and cost-effectively by in-house employees, as opposed to outside experts who charge several hundred dollars per hour and may not be familiar with the Department's procedures or prior cases and investigations. This is particularly true in the vast majority of our fair lending cases that are settled during pre-suit negotiations. Four additional economists and/or statisticians would be able to provide the statistical analysis and screening underlying the numerous new fair lending investigations and cases that would be produced by the expanded fair lending attorney staff.

Four EOS/investigators (GS-13's): Many of our fair lending investigations involve large lenders with thousands of loans at issue. These investigations often require extensive review of loan files, extensive database work (to enable the statistical analyses described above) or both. In addition, when statistical analyses identify lenders that may be discriminating, substantial factual research into publicly available information about the lender's corporate structure and business practices often is necessary in the course of an investigation. Currently, loan file review and factual research are often done by attorneys, and loan database review and refinement is often done by our economists and statisticians. HCE does not have any investigators or paralegals dedicated to the fair lending work; and HCE's general legal support staff members can be assigned to fair lending matters only on a project-specific basis. Four new fair lending EOS/investigators with strong research and computer programming skills would allow HCE to handle these types of fair lending projects for the expanded docket of lending investigations and cases efficiently and effectively.

Two clerical positions (GS-7's): These positions would be necessary to support the work and administrative needs of the new fair lending professional staff members described above.

**Item Name:** Employment Pattern or Practice & Defensive Litigation

Budget Decision Unit: Civil Rights Division (CRT)  
Strategic Goal & Objective: 2.6 Uphold the civil and constitutional rights of all Americans  
Organization Program: Civil Rights Division (CRT)  
Component Ranking of Item: 2 of 4

Program Increase: Positions 12, Agt/Atty 10, FTE 6, Dollars \$1,536,254

Description of Item

Because of the substantial increase in litigation demands projected for both its pattern or practice, and defensive litigations requirements in the Employment Litigation Section (ELS) CRT is requesting additional funding for FY 2011 of 12 additional positions (10 attorneys and two paralegals), as well as an increase of \$368,000 over fiscal year 2010 funding for essential litigation consultant funding requirements.

Justification

A. Title VII Pattern or Practice Enforcement

We anticipate a substantial increase in litigation demands due to our reinvigorated pattern or practice program. The number of pattern or practice lawsuits filed by the Section pursuant to Section 707 of Title VII increased dramatically in FY 2009. During this fiscal year we filed four Section 707 lawsuits. Given our current Section 707 targeting initiative, which we expect to result in multiple Section 707 investigations, we expect the pace of our pattern or practice filings to continue and substantially increase. Our pattern or practice lawsuits are often resource-intensive and may be in active litigation for a number of years. As one example, in May 2007, we filed a Title VII lawsuit, alleging that the City of New York had engaged in a pattern or practice of discrimination against blacks and Hispanics in hiring firefighters for the Fire Department of New York (FDNY). Discovery in the case was extensive and litigative consultant requirements were intensive, and did not close until October 2008. The FDNY litigation has required staffing by four trial attorneys and two paralegals, and the assistance of four litigative consultants.

In addition, because of the Supreme Court's June 29, 2009 decision in *Ricci v. DeStefano*, we anticipate that fewer of the Section's disparate impact lawsuits will settle without contested litigation. We also expect that lawsuits that ultimately are settled will tend to be settled later in litigation, after substantial discovery has taken place. In *Ricci*, the Supreme Court held that action taken to avoid using a practice that results in a disparate impact on the basis of race or national origin constitutes "race-based" disparate treatment that violates Title VII unless the employer can demonstrate a strong basis in evidence that, had the employer not taken the action, it would have engaged in an actual violation of Title VII. The Court further made clear that the existence of a *prima facie* case (*i.e.*, proof that the practice results in a disparate impact) is not alone sufficient to establish the required strong basis in evidence. Given the Court's holding, we expect that, because employers may fear disparate treatment liability, they will be wary of taking voluntary action to stop using an employment practice (such as a written examination) that results

in a disparate impact if they have any uncertainty as to whether the practice actually violates Title VII. In addition, employers likely will be inclined to wait until substantial discovery has taken place before settling our disparate impact lawsuits. By waiting until discovery has established a strong basis in evidence that there has been an actual violation of Title VII, the employer can be more confident that it will be able to defeat a potential *Ricci*-like disparate treatment claim.

#### B. Defensive Litigation

ELS also expects substantial additional litigation demands in FY 2011 due to the expected increase in the filing of suits by plaintiffs challenging the legality of the Federal Government's minority contracting programs.

Beginning in the early 1990s with *Adarand v. Peña*, ELS has had responsibility for litigating these cases at the district court level. Due to the complex nature of these cases, ELS assigns multiple attorneys and paralegals to represent the government in each case. ELS may also use experts in the fields of statistics and labor economics to assist in this litigation. At its height during the late 1990s, this type of defensive litigation represented 25% of the section's resources, and these cases routinely are litigated for several years before a final decision from the district court is issued. While litigation in this area has declined over the last five years, recently we have seen an increase of cases filed in this area and we expect this trend to continue. *See, Kline et al. v. Porcari & Maryland Dept. of Transportation; Associated General Contractors of America, San Diego Chapter v. California Dept of Transportation et al.* The section is seeking additional attorneys and support staff to properly handle these cases.

## Employment Litigation Section

### FY 2011 Workload Data

The projected workload, by fiscal year<sup>2</sup>, with the resources being requested, is as follows:

	FY08	FY09	FY10	FY11	FY12
<b>Title VII § 707 Pattern or Practice Enforcement Program<sup>2</sup></b>					
Suits filed:	2	4	3	5	10
Consent decrees/settlements:	0	5	2	3	7
Litigated decisions:	0	1	2	3	7
Investigations commenced:	9	10	4	8	20
<b>Defensive Litigation Program</b>					
Suits in litigation:	1	1	3	4	7
<b>USERRA Enforcement Program</b>					
Suits filed:	11	21	24	21	23
Consent decrees/settlements:	11	24	22	19	21
Litigated decisions:	0	1	2	2	3
DOL USERRA referrals:	100	175	190	210	220
<b>Title VII, § 706 Enforcement Program</b>					
Suits filed:	7	10	10	11	15
Consent decrees/settlements:	5	12	9	10	12
Litigated decisions:	0	0	1	2	3
Investigations commenced:	20	24	21	21	25

#### Impact on Performance (Relationship of Increase to Strategic Goals)

Increased efforts to eradicate employment discrimination plays an integral role in DOJ's Strategic Plan, designed to uphold the civil and constitutional rights of all Americans.

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<sup>2</sup> The **FY 08 and FY09** figures presented are actual. The **FY 10** figures presented are projections. The **FY 11** figures presented are projections based upon the enhanced staffing level being onboard for six months. The **FY 12** figures presented are projections based upon the enhanced staffing level being onboard for 12 months.

<sup>2</sup> ELS projects that, FY 09 to FY 10, the number of § 707 suits filed, consent decrees/settlements obtained, and investigations commenced will decrease; and the number of § 707 litigated decisions will increase. There are three reasons for these projections. First, these projections are based upon the anticipated significant negative impact that the Supreme Court's decision in *Ricci v. DeStefano* will have on our § 707 enforcement program, as discussed in the preceding Justification. Second, as discussed in the preceding Justification and reflected in the above chart, we anticipate significant additional litigation demands due to the increase in the filing of suits by plaintiffs challenging the legality of the federal government's minority contracting programs; these demands will take significant resources from our § 707 enforcement program. Third, the demands of ELS' Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA") enforcement program have increased significantly in recent fiscal years. Those demands are expected to continue to increase and to continue to take significant resources from our § 707 enforcement program.

## Funding

### Base Funding

FY 2009 Enacted				FY 2010 Enacted				FY 2011 Current Services			
Pos	Agt/ Atty	FTE	\$(000)	Pos	Agt/ Atty	FTE	\$(000)	Pos	Agt/ Atty	FTE	\$(000)
58	42	57	\$10,306	60	44	58	\$10,709	60	44	58	\$10,977

### Personnel Increase Cost Summary

Type of Position	Modular Cost per Position (\$000)	Number of Positions Requested	FY 2011 Request (\$000)	FY 2012 Net Annualization (change from 2011) (\$000)
Attorney	\$104	10	\$1,041	\$838
Paralegal	63	2	127	86
<b>Total Personnel</b>	<b>\$167</b>	<b>12</b>	<b>\$1,168</b>	<b>\$924</b>

### Non-Personnel Increase Cost Summary

Non-Personnel Item	Unit Cost	Quantity	FY 2011 Request (\$000)	FY 2012 Net Annualization (Change from 2011) (\$000)
Litigative Consultants	\$0	\$0	\$368	(\$0)
<b>Total Non-Personnel</b>	<b>\$0</b>	<b>\$0</b>	<b>\$368</b>	<b>(\$0)</b>

### Total Request for this Item

	Pos	Agt/Atty	FTE	Personnel (\$000)	Non-Personnel (\$000)	Total (\$000)
Current Services	60	44	58	\$10,977	\$0	\$10,977
Increases	12	10	6	\$1,168	\$368	\$1,536
<b>Grand Total</b>	<b>72</b>	<b>54</b>	<b>64</b>	<b>\$12,145</b>	<b>\$368</b>	<b>\$12,513</b>

Resource totals represent that of the ELS Section.

**Item Name: Voting Rights Enforcement and Defensive Litigation Responsibilities**

Budget Decision Unit: Civil Rights Division (CRT)  
Strategic Goal & Objective: 2.6 Uphold the civil and constitutional rights of all Americans  
Organizational Program: Civil Rights Division (CRT)  
Component Ranking of Item: 3 of 4

Program Increase: Positions 14, Agt/Atty 9, FTE 7, Dollars \$1,235,608

Description of Item

The Voting Section is requesting additional staff primarily to respond to three types of litigation where the Division's participation is non-discretionary: 1) to defend declaratory judgment actions brought against the Attorney General under Section 4 of the Voting Rights Act (VRA) that seek bailout from coverage under the Act's special provisions; 2) to defend constitutional challenges to the VRA and the other Federal voting rights statutes we enforce; and 3) to defend declaratory judgment actions brought against the Attorney General that seek a judicial determination that a proposed change affecting voting passes muster under Section 5 of the VRA.<sup>3</sup> Each of these three types of cases can consume significant resources. In light of the recent ruling on June 22, 2009 by the Supreme Court in *Northwest Austin Municipal Utility District Number One v. Holder*, it is anticipated that litigation activity in all three of these areas will increase in the future.

In addition to its responsibility for representing the Attorney General in certain suits brought against the Department, the Civil Rights Division (CRT) is requesting additional resources to expand its affirmative voting rights enforcement program in the areas identified below. Our needs in this area have only increased with President Obama's signing into law on October 28, 2009, a major new expansion of one of our statutes, the Uniformed and Overseas Citizens Absentee Voting Act. The protection of voting rights of all Americans is one of the Administration's and the Department's top civil rights priorities. Voting rights violations that interfere with and deny American citizens the opportunity to participate fully in the democratic process continue to plague elections for local, State and national offices.

CRT is at the forefront of ensuring that alleged violations of these Federal voting rights statutes are aggressively investigated and prosecuted. Enforcement of these statutes has

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<sup>3</sup> One of the most important areas of CRT's enforcement of federal voting laws concerns the thousands of submissions made each year, pursuant to Section 5 of VRA, in which State and local jurisdictions seek administrative preclearance for their voting changes. That area of activity is anticipated to increase in light of the fact that the release of the 2010 Census data will result in many covered jurisdictions enacting redistricting plans that will have to be submitted for federal preclearance under Section 5. That increase in workload is not relied upon here as a justification for an increase in FY 2011 funding, because it was relied upon when an increase for FY 2010 was requested. However, it should be considered that the heavy volume of Section 5 submissions in 2011, due to 2010 Census-related redistricting, will place a substantial burden upon persons who normally work on Section 5 submissions in the Voting Section, and it will make it unlikely that they will be free to work on other areas of voting rights enforcement discussed in this memorandum.

been active in the recent past, and it is expected that enforcement activities will increase in the future. Therefore, the Department seeks additional resources to address its voting rights enforcement responsibilities.

The request would fund nine additional attorneys, four additional paralegals and one additional clerical staff to work in enforcing these Federal voting rights statutes and in these expanded areas of defending the Attorney General in bailout suits, judicial preclearance actions or actions that challenge provisions of the VRA on constitutional grounds.

### Justification

*Section 4 bailout litigation:* The *Northwest Austin* decision greatly expands the number of sub-jurisdictions that are now entitled to file an action seeking a bailout from coverage of the Section 5 preclearance provisions of the VRA. Before the ruling in *Northwest Austin*, there were 900 jurisdictions nationwide that were considered eligible to seek bailout. After the ruling in *Northwest Austin*, the number of jurisdictions which will be eligible to seek bailout has expanded to approximately 11,000 to 12,000. Indeed, since the recent ruling in *Northwest Austin*, the Voting Section has received a significant number of calls from jurisdictions seeking information about how they might be able to bailout. The increased number of sub-jurisdictions eligible to seek bailout will likely increase substantially the number of bailout suits that will be filed. The requested additional resources will be used in part to fund the investigation and defense, if appropriate, of this anticipated increase in the number of bailout suits. Since 1997, we have resolved 19 bailout lawsuits, each with a consent decree, involving a total of 69 jurisdictions. Although uncontested, the amount of work involved in achieving each such resolution has been significant. There has been one litigated bailout lawsuit under the current standard, and it proved that such litigation would be exceptionally complex.

*Constitutional challenges:* The recent ruling of the Supreme Court in *Northwest Austin* will likely change the litigation landscape for the Voting Section in fundamental ways. Because the Supreme Court in *Northwest Austin* held that a sub-jurisdiction should be able to seek bailout, it did not reach the larger issue of the constitutionality of Section 5 of the VRA. However, the opinion of Chief Justice Roberts clearly suggested that he and probably other members of the Court have grave constitutional concerns about Section 5, and in particular its coverage trigger, in its present form. After four prior decisions from the Supreme Court upholding Section 5, this dictum in the *Northwest Austin* opinion expressing doubts is likely to encourage other parties to file new similar challenges to the constitutionality of Section 5. If this type of litigation is filed, it will be the responsibility of the Voting Section to represent the Attorney General in such suits. The requested additional resources will be used in part to fund the defense of these constitutional challenges to Section 5, a law long recognized to be one of the most important and effective civil rights statutes ever enacted in the history of the United States.

*Section 5 declaratory judgment litigation:* Based on past experience, we expect that several jurisdictions, in all likelihood, entire states, will exercise their statutory prerogative of filing a declaratory judgment action seeking judicial preclearance of voting changes under Section 5. The *Northwest Austin* decision has made the likelihood of such cases being filed even greater. In some instances, the jurisdiction goes directly to the court, bypassing the administrative review process. When that occurs, the Department

starts at a distinct disadvantage for several reasons. First, unlike the situation where we have interposed an objection based upon a thorough review of the available information, we are starting from scratch at understanding the factual complexities of the proposed plan. Second, regardless of the date that the lawsuit is filed, the jurisdiction will argue for an expedited discovery, briefing, and trial schedule because of its election schedule, so these cases can go from filing to judgment in a span of a few months or less, and can consume a large part of the Voting Section's resources on a single case. Third, we rarely get advance notice of the filing. For all these reasons, we need to be prepared to conduct the litigation with attorneys who are not only familiar with the unique analytical framework for such a trial, but are capable of conducting complex litigation, including discovery from highly-placed elected officials. These cases are very important to our overall program since they can have an immediate and profound effect on the law under Section 5, like the Supreme Court's decision in *Georgia v. Ashcroft*, because Section 5 of the VRA provides for a direct appeal of right to the Supreme Court, and the Court often takes such cases on full briefing and argument.

*Instituting and maintaining an aggressive affirmative litigation program:* The Voting Section also enforces the National Voter Registration Act (NVRA). The NVRA requires that individuals be given the opportunity to register to vote when applying for services at public assistance or disability offices under Section 7 of the NVRA or State driver license agencies under Section 5 of the NVRA. These provisions of Federal law must be vigorously enforced if groups who have been chronic nonparticipants in the American democratic process in the past are to become active voters in the future. In the recent past, the Voting Section has entered into two out-of-court settlements with Arizona and Illinois regarding the failure of those States to comply with the public assistance agency voter registration requirements of the NVRA. Importantly, the Voting Section has a number of active statewide investigations in other states regarding possible failures to comply with Section 7 of the NVRA, and these investigations will be informed by the biannual nationwide NVRA report issued by the Election Assistance Commission (EAC) in July 2009. The Administration has already informed the Voting Section that it expects it to mount a vigorous Section 7 initiative in the coming months and years, and the Voting Section intends to carry out this mission with an eye toward investigatory reviews and, if appropriate, enforcement actions against those States that are not complying with Section 7. The requested additional resources will be used in part to fund this Section 7 enforcement work, which is very resource intensive.

The Voting Section enforces the requirements of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). On October 28, 2009, the President signed into law significant new amendments to UOCAVA, enacted as part of the 2010 Defense Authorization Act, Public Law 111-84, HR 2647. These amendments were originally introduced by Senator Schumer as the Military and Overseas Voters Empowerment Act, and later added to the defense bill as an amendment. Federal election years always generate significant survey, investigation, and enforcement work under UOCAVA, to ensure that military and overseas voters receive their absentee ballots in a timely manner, and typically involve the need to file several statewide enforcement actions. These new amendments will take effect at the November 2010 Federal general election. Among other things, the new law may well require states to move their late primaries to an earlier date to meet the new requirement that states allow for 45 days for transmitting absentee ballots to UOCAVA voters. This will require significant new work for the Voting Section, above and beyond our regular UOCAVA enforcement work. This work needs to

begin immediately as states will have a relatively short time to bring their laws and procedures into line with the new UOCAVA mandates.

The Voting Section enforces Section 2 of the Voting Right Act, which prohibits voting practices that intentionally discriminate or have the result of discriminating on the basis of race, color or membership in a language minority group. In the last four and one-half years, the Voting Section has filed 12 lawsuits in which Section 2 claims were made. The continued use of methods of election that dilute minority voting strength poses one of the largest systematic barriers to minority voters being able to participate in the political process on an equal basis with white voters. Section 2 vote dilution cases are among the most resource intensive and analytically complex litigation we bring. The requested additional resources will be used in part to fund the continuation and expansion of these vote dilution suits.

The Voting Section enforces the minority language provisions of Sections 203, 4(f)4, and 4(e) of the VRA. The aggressive enforcement of these minority language provisions is essential to enable limited English proficient citizens to participate in the electoral process on an equal basis with English-speaking voters. In the last four and one-half years, the Voting Section has filed 20 lawsuits in which language minority claims were asserted, and the Voting Section has entered into three out-of-court settlements involving language minority compliance. The Voting Section continues to monitor existing consent decrees and settlements to ensure that jurisdictions are complying with the terms of these decrees and agreements. The additional resources will be used in part to fund the continuation of this important language minority enforcement program.

In addition to the above activities, the Voting Section will use the requested additional resources to continue our enforcement of the Help America Vote Act, and in particular its provisional ballot requirements; our enforcement of the prohibition against intimidation and coercion of voters under Section 11(b) of the VRA, and our enforcement of the requirement that election officials allow voters who are illiterate or have disabilities to choose assistors of their choice under Section 208 of the VRA.

Finally, the additional resources will be used to continue our election monitoring program, which sends Federal observers from OPM and our own attorneys and staff to monitor elections in all parts of the country all throughout each year.

## Voting Section

The projected workload,<sup>4</sup> by fiscal year<sup>5</sup>, with the resources being requested is as follows:

	FY08	FY09	FY10	FY11	FY 12
<b>Affirmative Enforcement Program</b>					
Cases filed	4	10	6	8	12
Settlement/consent decrees	8	6	7	7	8
Litigated decisions	1	0	4	4	5
Investigations commenced	49	21	40	55	70
<b>Defensive Litigation Program</b>					
§4 declaratory judgment actions	5	0	8	20	30
§5 declaratory judgment actions	0	0	3	5	6
Constitutional challenges to §5	0	0	2	3	4

### Impact on Performance (Relationship of Increase to Strategic Goals)

The Federal Government has a strong and compelling interest in protecting the voters from acts that violate the provisions of Federal voting law. Increased efforts to eradicate discrimination on the basis of race, color, membership in a language minority group, or disability plays an integral role in the Department's Strategic Plan, to uphold the civil and constitutional rights of all Americans.

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<sup>4</sup> VOT projects that from FY 09 to FY 10, the number of affirmative enforcement actions will experience an increase as the result of several newly authorized initiatives, including expanded enforcement of Section 7 of the National Voter Registration Act. More importantly, VOT anticipates that the number of § 4 declaratory judgment actions seeking to terminate coverage under the Voting Rights Act's special provisions will increase significantly following the Supreme Court's ruling in *Northwest Austin Municipal Utility District Number One v. Holder* as discussed in the preceding Justification. Second, as discussed in the preceding Justification and reflected in the above chart, we anticipate significant additional litigation demands as the result of an increase in the filing of suits by plaintiffs challenging the constitutionality of §5 of the Voting Rights Act. Finally, VOT expects that, as happened in previous redistricting cycles, the number of declaratory judgment filed under §5 will increase in the two or three years following the release of the decennial census data.

<sup>5</sup> The FY 08 and FY 09 figures presented are actual. The FY 10 figures presented are projections. The FY 11 figures presented are projections based upon the enhanced staffing level being onboard for six months. The FY 12 figures presented are projections based upon the enhanced staffing level being onboard for 12 months.

## Funding

### Base Funding

FY 2009 Enacted				FY 2010 Enacted				FY 2011 Current Services			
Pos	Agt/ Atty	FTE	\$(000)	Pos	Agt/ Atty	FTE	\$(000)	Pos	Agt/ Atty	FTE	\$(000)
98	39	102	\$15,944	118	43	112	\$19,916	118	43	122	\$21,556

### Personnel Increase Cost Summary

Type of Position	Modular Cost per Position (\$000)	Number of Positions Requested	FY 2011 Request (\$000)	FY 2012 Net Annualization (change from 2011) (\$000)
Attorney	\$104	9	\$937	\$754
Paralegal	63	4	254	172
Clerical	45	1	45	26
<b>Total Personnel</b>	<b>\$212</b>	<b>14</b>	<b>\$1,236</b>	<b>\$952</b>

### Non-Personnel Increase Cost Summary

Non-Personnel Item	Unit Cost	Quantity	FY 2011 Request (\$000)	FY 2012 Net Annualization (Change from 2011) (\$000)
	\$0	\$0	\$0	(\$0)
<b>Total Non-Personnel</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>(\$0)</b>

### Total Request for this Item

	POS	Agt/Atty	FTE	Personnel (\$000)	Non-Personnel (\$000)	Total (\$000)
Current Services	118	43	122	\$21,556	\$0	\$21,556
Increases	14	9	7	\$1,236	\$0	\$1,236
<b>Grand Total</b>	<b>132</b>	<b>52</b>	<b>129</b>	<b>\$22,792</b>	<b>\$0</b>	<b>\$22,792</b>

**Item Name:** **Hate Crimes Enforcement**

Budget Decision Unit: Civil Rights Division (CRT)

Strategic Goal & Objective: 2.6 Uphold the civil and constitutional rights of all Americans

Organization Program: Civil Rights Division (CRT)

Component Ranking of Item: 4 of 4

Program Increase: Positions 15, Agt/Atty 10, FTE 8, Dollars \$1,428,208

Description of Item

Hate crime enforcement is one of the Administration's and the Department's top civil rights priorities as it protects all Americans from the plague of bias-motivated violence. These crimes are a scourge on our society that must be prevented and punished to the full extent of the law. Hate crimes victimize not only individuals, but entire communities through these acts of intolerance. Perpetrators of hate crimes seek to deny the humanity that we all share, regardless of the color of our skin, our religion, or whom we choose to love. Our nation continues to suffer from horrific acts of violence inflicted by individuals consumed with bigotry and prejudice. Prosecuting those persons responsible for committing these crimes has been at the core of the Department's mission since the Civil Rights Division (CRT) was created in 1957.

CRT is at the forefront of ensuring that hate crime offenses are aggressively investigated and prosecuted. The Department's prosecution of hate crime incidents has increased over the last few years and the prosecution rate is expected to continue to increase as well. Therefore, the Department seeks additional resources to address its hate crimes enforcement responsibilities.

Justification

The Criminal Section of the CRT prosecutes incidents of bias-motivated violence which interfere with federally protected rights or activities, such as the rights to enjoy housing, employment, and public facilities and accommodations free from discrimination based on race or religion. Bias-motivated acts of violence divide our communities, intimidate our most vulnerable citizens, and damage our collective spirit. The number of hate crime incidents across the United States per year remains disturbing. The statistics reported for hate crimes demonstrate that we have a significant problem in this country. The FBI reported 7,755 hate crime incidents in 1998 and 7,624 in 2007, the most current year for which the FBI has compiled hate crime data. During this time frame, there have been over 77,000 hate crime incidents reported to the FBI, which is nearly one crime every hour of every day over a decade.

Over the past decade, approximately half of the hate crime incidents reported in the United States were racially motivated. However, many other victim classes are targeted for hate crimes. For example, during the last decade, religiously motivated incidents have generally accounted for the second highest number of hate crime incidents, followed closely by sexual orientation bias incidents. For the past decade, of all reported hate crime offenses, an average of 15.7% were motivated by bias against sexual orientation.

The number of sexual orientation bias crimes committed in 2008 increased by more than 10% over those committed in the preceding year.

At present, under 18 USC Section 245, the Department prosecutes hate crimes committed because of the victim's race, color, religion, or national origin and because that person was engaging in one of six specified federally protected activities. Based on the increase in hate crime activity and the Administration's strong commitment to prosecuting hate crimes, we expect a marked increase in CRT resources being devoted to investigating and prosecuting these crimes. In addition, Congress has introduced legislation that will create a new hate crime statute, 18 USC Section 249, that will expand our current hate crime authority to permit hate crimes prosecutions without the need to prove that a victim was attacked because he or she was engaged in a federally protected activity. It would also expand the statute to allow Federal prosecutions of hate crimes committed against victims because of their actual or perceived sexual orientation, gender, or disability. The Administration and Department fully support the goals of this legislation.

Given the sharp increase in hate crimes in recent years, and the renewed emphasis by the President and the Department in prosecuting these crimes, CRT also expects to enhance Federal and State coordination and cooperation in identifying and prosecuting hate crimes across the nation. This will require increased outreach and training to better identify, investigate, and prosecute these crimes. Increased cases and prosecutions will also result in increased victim assistance needs and services provided by Section staff.

Each year, CRM receives more than 10,000 complaints alleging criminal interference with civil rights, with more than 1,200 requiring investigation by the FBI and other investigative agencies. As of September 30, 2009, 112 new cases were filed, more cases than ever before in the history of CRT, charging 218 defendants with civil rights violations, and 141 defendants have been convicted.

Additional resources are desperately needed to investigate and prosecute the likely increase in hate crime cases handled by the Department. Racial and religious violence incidents remain another priority area for prosecution. As of September 30, 2009, 46 defendants have been charged in connection with crimes such as cross burnings, arson, vandalism, shootings and assault. This number already surpasses the total number of defendants charged during FY 2008. As part of CRM's hate crime enforcement responsibility and in support of the war on terrorism, it has spearheaded DOJ's law enforcement response to address post-September 11th "backlash" violence and threats against Arabs, Muslims and South Asians. Federal charges have been brought in 35 cases against 48 defendants, yielding the convictions of 44 defendants.

While States will continue to investigate and prosecute the majority of hate crimes, the FBI statistics reflect approximately 7,700 hate crimes per year. Passed on October 28, 2009, the Matthew Shepard-James Byrd, Jr. Hate Crimes Prevention Act is a significant expansion of Federal jurisdiction to investigate and prosecute crimes that have targeted whole communities. This bill will give law enforcement authorities at all levels the tools they need to effectively investigate, prosecute and deter bias-motivated violence. First, it will enable the Department of Justice to provide our non-Federal partners with technical, forensic, prosecutorial, and financial assistance to bolster their hate crimes enforcement efforts. Second, it will eliminate the antiquated and burdensome requirement under existing Federal law that prosecutors prove that a hate crime was motivated by a victim's

participation in one of six enumerated federally protected activities. Third, it will expand coverage beyond violent acts motivated by actual or perceived race, color, religion, or national origin to those motivated by actual or perceived gender, disability, sexual orientation and gender identity.

Bias-Motivated Investigation and Prosecution  
Statistical Information

Fiscal Years

	2005	2006	2007	2008	2009	2010	2011	2012
Investigations Initiated	420	314	251	470	214	251	470	214
Cases Filed	19	12	14	23	24	24	34	44
Defendants Charged	26	22	15	30	40	40	55	70
Defendants Convicted	17	26	17	19	24	35	45	55

Impact on Performance (Relationship of Increase to Strategic Goals)

The Federal government has a strong interest in protecting people from violent crimes motivated by such bias and bigotry. Increased efforts to eradicate bias-motivated acts of violence plays an integral role in DOJ's Strategic Plan, designed to uphold the civil and constitutional rights of all Americans.

## Funding

### Base Funding

FY 2009 Enacted				FY 2010 Enacted				FY 2011 Current Services			
Pos	Agt/ Atty	FTE	\$(000)	Pos	Agt/ Atty	FTE	\$(000)	Pos	Agt/ Atty	FTE	\$(000)
25	14	25	\$3,488	25	14	25	\$3,592	25	14	25	\$3,700

### Personnel Increase Cost Summary

Type of Position	Modular Cost per Position (\$000)	Number of Positions Requested	FY 2011 Request (\$000)	FY 2012 Net Annualization (change from 2011) (\$000)
Attorney	\$113	10	\$1,123	\$848
Paralegal	63	4	259	166
Clerical	46	1	46	28
<b>Total Personnel</b>	<b>\$162</b>	<b>1</b>	<b>\$1,428</b>	<b>\$1,042</b>

### Non-Personnel Increase Cost Summary

Non-Personnel Item	Unit Cost	Quantity	FY 2011 Request (\$000)	FY 2012 Net Annualization (Change from 2011) (\$000)
	\$0	\$0	\$0	(\$0)
<b>Total Non-Personnel</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>(\$0)</b>

### Total Request for this Item

	Pos	Agt/Atty	FTE	Personnel (\$000)	Non-Personnel (\$000)	Total (\$000)
Current Services	25	14	25	\$3,700	\$0	\$3,700
Increases	15	10	8	\$1,428	\$0	\$1,428
<b>Grand Total</b>	<b>40</b>	<b>24</b>	<b>33</b>	<b>\$5,128</b>	<b>\$0</b>	<b>\$5,128</b>

## **VI. Program Offsets by Item**

### Travel Offset

The Department is continually evaluating its programs and operations with the goal of achieving across-the-board economies of scale that result in increased efficiencies and cost savings. In FY 2011, DOJ is focusing on travel as an area in which savings can be achieved. For CRT, travel or other management efficiencies will result in offsets of \$172,000. This offset will be applied in a manner that will allow the continuation of effective law enforcement program efforts in support of Presidential and Departmental goals, while minimizing the risk to health, welfare and safety of agency personnel.