BY THE COMPTROLLER GENERAL

# Report To The Congress

OF THE UNITED STATES

# The Revenue Sharing Act's 1976 Amendments: Little Effect On Improving Administration And Enforcement Of Nondiscrimination Provisions

Previously reported problems which hindered the Office of Revenue Sharing's administration of the Revenue Sharing Act's nondiscrimination provisions continue to exist despite actions to improve its operations. However, the Office of Revenue Sharing, through complaint investigations, has achieved some major changes in recipient governments' employment practices and delivery of services.

GAO recommends that the Secretary of the Treasury direct the Office to:

--Modify the compliance tracking system to better manage case workload and improve monitoring.

--Implement its proposed monitoring system, make a stipulated number of self-initiated compliance reviews.

--Prepare single-document compliance agreements, and establish and implement cooperative agreements with State and other Federal agencies who have civil rights enforcement responsibilities.




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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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To the President of the Senate and the
Speaker of the House of Representatives

This report evaluates the procedures and practices of the Office of Revenue Sharing for securing recipient government compliance with the nondiscrimination provisions of the State and Local Fiscal Assistance Act of 1972, as amended, commonly called the Revenue Sharing Act. We examined the Office's administrative procedures and enforcement efforts covering civil rights compliance and its efforts to enter into cooperative agreements with State and Federal agencies.

We are providing copies of the report to the Secretary of the Treasury and to others having responsibility for or an interest in the revenue sharing program.

Comptroller General
of the United States

COMPTROLLER GENERAL'S REPORT TO THE CONGRESS

# THE REVENUE SHARING ACT'S 1976 AMENDMENTS: LITTLE EFFECT ON IMPROVING ADMINISTRATION AND ENFORCEMENT OF NONDISCRIMINATION PROVISIONS

## D I G E S T

The Revenue Sharing Act is administered by the Office of Revenue Sharing, Department of the Treasury. The 1976 amendments strengthened the nondiscrimination provisions of the Act by expanding coverage of the protected classes to include age, handicap, and religion; making the Secretary of the Treasury responsible for timely resolution of complaints; calling for a specific timetable providing for the cutoff of funds to governments who violate the nondiscrimination provisions of the law; and providing for the Secretary to endeavor to enter into agreements with State and other Federal agencies to investigate noncompliance.

### ADMINISTRATIVE PROBLEMS CONTINUE TO EXIST DESPITE PASSAGE OF THE 1976 AMENDMENTS

Previously reported problems identified in the Office of Revenue Sharing's administration of the Revenue Sharing Act's nondiscrimination provisions continue to exist despite enactment of the 1976 amendments. Although the Office is taking steps to correct these problems, they remain substantially unresolved.

--Case processing time continues to be lengthy.

--The case backlog is steadily increasing.

--Compliance agreements are not adequately monitored.

--Self-initiated compliance reviews are not generally made because of the consistent backlog of complaints awaiting investigation.

--Cooperative agreements with State and other Federal agencies are not being effectively used.

Despite these problems, however, the Office has prompted changes in recipient jurisdictions' employment practices and delivery of services.

## CORRECTIVE ACTION TO IMPROVE ADMINISTRATION OF THE CIVIL RIGHTS PROVISIONS HAS BEEN LESS THAN EFFECTIVE

The Office of Revenue Sharing has initiated changes to improve the effectiveness of its nondiscrimination compliance processing procedures. Some of the changes included revising its civil rights technical memorandum to provide additional administrative guidance; implementing a computerized civil rights case tracking system to better manage its case workload; developing a compliance manual to provide substantive guidance on investigating cases and evaluating evidence; and considering the feasibility of establishing a case priority processing system. Although these changes were all initiated some time ago, most of them have not been fully implemented. (See pp. 6 to 10.)

The Office of Revenue Sharing had substantially increased its civil rights investigative staff from 4 in 1975 to 34 in May 1978. However, during 1978 and 1979, 16 investigators left the Office while only 4 were hired. By March 1980, the Office had hired additional employees to bring its investigative staff to 1 below its authorized level of 31. However, the Office's case backlog will not be reduced unless the cases are processed more quickly. (See pp. 10 to 19.)

The Office's current monitoring process provides for a desk review of the recipient jurisdiction's progress toward compliance and is a positive step in fulfilling its monitoring responsibilities. However, GAO concluded that more aggressive steps (including onsite monitoring) must be taken to insure that jurisdictions are fully complying with agreements reached with the Office. (See pp. 19 to 18.)

Self-initiated compliance reviews authorized by its regulations are generally not made by the Office to identify discriminatory practices. Treasury officials concede that such reviews should be made, but maintain that the current caseload precludes them from doing so. GAO believes that compliance reviews along with complaint investigations would provide for a much more effective and comprehensive compliance effort. (See pp. 18 and 19.)

Although the Office is required to endeavor to enter into cooperative agreements with State and other Federal agencies, it has not successfully developed and implemented such agreements. Effective cooperative agreements could serve to expedite complaint processing, avoid duplication of effort, and afford additional support to the Office's civil rights compliance activities. GAO concluded that coordination with State agencies knowledgeable about civil rights efforts in their various jurisdictions can be very useful to the Office; and coordination with other Federal agencies whose civil rights mandates parallel those of the Office can assist in achieving a more comprehensive, concerted Federal approach to civil rights enforcement. (See ch. 3.)

## RECOMMENDATIONS TO THE SECRETARY OF THE TREASURY

To improve the Office's effectiveness in administering and enforcing the nondiscrimination provisions of the act, GAO recommends that the Secretary of the Treasury direct the Office to

--take appropriate action to modify the compliance tracking system to better manage case workload and improve case monitoring;

--proceed with the proposed monitoring plan;

--make a stipulated number of annual compliance reviews;

--prepare single-document compliance agreements; and

--establish, implement, and/or finalize cooperative agreements with State and Federal agencies as appropriate.

However, should the problems persist after implementation of these recommendations, the Secretary should seek to increase the size of the Office's investigative staff. (See pp. 20 and 36.)

## AGENCY COMMENTS

The Department of the Treasury acknowledged, in a strict sense, the accuracy of the report and

accepted a number of GAO's suggestions as constructive. However, the Department noted that it had explored many of these suggestions and would soon reach decisions regarding possible changes in the Office's procedures. The Department noted further that an improved monitoring capability is now in place, although the report suggests otherwise. (See app. XIII.)

On page 18 of its report, GAO acknowledges the Office's new monitoring system; and throughout chapter 2 (pp. 6 to 20) GAO cited other actions taken or planned. As the report shows, however, the Office has been considering corrective actions for quite some time now, and very few changes designed to improve its administrative and operating procedures had actually been implemented.

The Department also stated that the report places too much emphasis on the case processing backlog which is due to an imbalance between the inflow of cases and the resources available to process them. The Department also expressed doubt that more cooperative agreements with other Federal compliance agencies and State human rights agencies would eliminate many of the reported problems.

GAO disagrees. The case backlog is a significant problem which affects many of the other reported problems, such as the lack of on-site monitoring of compliance agreements, the lack of self-initiated compliance reviews, the inability to reach findings within the 90-day regulatory requirement, etc. GAO acknowledges that the problem may be due to an imbalance between the inflow of cases and resources available to process them and suggests that, if the problems persist after implementation of the report recommendations, the Secretary should seek to increase the size of the investigative staff.

GAO believes, however, that more effective use of cooperative agreements can help alleviate some of the Office of Revenue Sharing's administrative problems.

The Department also stated that in some ways the report title as well as the findings of chapters 2 and 3 contradict the findings of

chapter 4. GAO disagrees. The problems discussed in the report certainly detract from the Office's efficiency and effectiveness in resolving discrimination complaints. It does not, however, generally preclude the ultimate resolution of complaints. This is recognized in chapter 4, where GAO reports that despite the Office's administrative problems, the Office has achieved some major changes in recipient governments' employment practices and delivery of services.

Since the report addresses the Office of Revenue Sharing's cooperative efforts with other Federal agencies in coordinating and achieving Federal civil rights compliance, GAO also requested comments from the Office of Personnel Management, the Equal Employment Opportunity Commission, and the Departments of Justice, Housing and Urban Development, Health and Human Services, and Education. Most of the comments received acknowledged the usefulness of cooperative agreements in achieving effective coordination among Federal agencies charged with civil rights compliance responsibilities. (See apps. VII to XII.)

C O N T E N T S

APPENDIX



ABBREVIATIONS

| | |
|---|---|
| EEOC | Equal Employment Opportunity Commission |
| GAO | General Accounting Office |
| HEW | Department of Health, Education, and Welfare |
| HUD | Department of Housing and Urban Development |
| LEAA | Law Enforcement Assistance Administration |
| OPM | Office of Personnel Management |
| ORS | Office of Revenue Sharing |

# CHAPTER 1

# INTRODUCTION

The State and Local Fiscal Assistance Act of 1972 established the general revenue sharing program to provide $30.2 billion to State and local governments during the 5-year period from January 1, 1972, to December 31, 1976. The 1976 amendments extended the program through September 30, 1980. Legislation further extending the program is pending. Program funds provide fiscal assistance to approximately 39,000 State and local governments. Eligibility for continuous revenue sharing payments requires recipient governments to adhere to certain provisions of the act.

The Office of Revenue Sharing (ORS) in the Department of the Treasury administers the revenue sharing program. The Director, ORS, reports to the Secretary of the Treasury's Assistant Secretary (Domestic Finance) and is assisted by a staff of less than 200. In addition to other administrative duties, ORS is responsible for enforcing the Act's nondiscrimination provisions. ORS' Civil Rights Division investigates complaints of alleged violations.

## NONDISCRIMINATION PROVISIONS OF THE ORIGINAL ACT AND THE 1976 AMENDMENTS

The 1972 Revenue Sharing Act stated in part that:

> "No person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with (revenue sharing funds)."

The civil rights provisions were expanded when the revenue sharing program was reauthorized in 1976. The 1976 amendments expanded coverage of the protected classes to include age, handicap, and religion [31 U.S.C. §1242(a)]. The nondiscrimination provisions were applied to all funds of a recipient government unless the recipient demonstrated by clear and convincing evidence that the program or activity in question was not funded by revenue sharing.

The 1976 amendments also changed the enforcement procedures and placed responsibility for timely resolution of complaints on the Secretary of the Treasury. As required by the amendments, ORS regulations provide that within 90 days after receiving a complaint, the Secretary must make an

investigation and issue a finding. (See app. I for complaint processing procedures.) By statute, administrative remedies are deemed exhausted upon the expiration of the 90-day period. At this time, if no findings have been made or a determination has been made that the government in question has not violated the provisions of the law, the complainant has the right to pursue the matter in court.

Moreover, the enforcement procedures call for a specific timetable providing for the cutoff of funds to governments that violate the nondiscrimination provisions of the law. In cases where holdings of discrimination are made by the courts or by an administrative law judge, any subsequent administrative procedures may deal only with the issue of whether or not the activity in question was funded by revenue sharing monies. The 1976 amendments also provide for the Secretary of the Treasury to endeavor to enter into agreements with State and other Federal agencies to investigate noncompliance.

## OBJECTIVES, SCOPE, AND METHODOLOGY

We made our review because of Congressional interest in how the strengthened civil rights provisions were being administered. During revenue sharing program renewal hearings in March 1980, we presented our preliminary findings to the Subcommittee on Intergovernmental Relations and Human Resources, House Committee on Government Operations, and the Subcommittee on Intergovernmental Relations, Senate Committee on Governmental Affairs.

Our review focused on ORS' administration of the nondiscrimination provisions of the Revenue Sharing Act since the enactment of the 1976 amendments. Specifically, we evaluated ORS'

--complaint processing time and backlog,

--staffing levels,

--monitoring of compliance agreements,

--performance of self-initiated compliance reviews,

--utilization of State and other Federal agencies to expedite complaint resolution, and

--impact on practices of recipient governments.

We reviewed ORS literature, documents, and records and talked with ORS and Treasury officials to obtain an understanding of ORS' administrative procedures and civil rights

enforcement efforts. We reviewed 25 civil rights case files to determine complaint processing procedures and timeframes as well as the impact of the nondiscrimination provisions on recipient governments' employment practices and delivery of services. Also, we obtained information on the program's impact and ORS' effectiveness in enforcing the civil rights provisions from two private organizations involved in revenue sharing activities--the Lawyers' Committee for Civil Rights Under Law and the Center for National Policy Review. Additionally, we analyzed information contained in ORS' Compliance Tracking System to determine its usefulness and potential use in providing necessary data and promoting better management of case processing activities.

We interviewed officials of 14 State Human Rights Commissions to discuss the implementation of the cooperative agreements between ORS and the State agencies. We also examined 37 case files to verify the cooperative efforts of ORS and State agencies.

In addition, we interviewed Federal officials at the Office of Personnel Management (OPM); Equal Employment Opportunity Commission (EEOC); Law Enforcement Assistance Administration (LEAA); and the Departments of Health, Education, and Welfare (HEW) 1/; Housing and Urban Development (HUD); and Justice to discuss implementation of their cooperative agreements with ORS.

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1/On May 4, 1980, the Department of Health, Education, and Welfare was abolished and its responsibilities divided between the new Department of Education and the Department of Health and Human Services.

## CHAPTER 2

## ORS CONTINUES TO EXPERIENCE PROBLEMS IN ADMINISTERING THE ACT'S NONDISCRIMINATION PROVISIONS

Prior studies identified numerous problems in ORS' administration of the revenue sharing act's nondiscrimination provisions. Although ORS is attempting to correct these problems, they remain substantially unresolved. Case processing time continues to be lengthy, the case backlog is steadily increasing, compliance agreements are not adequately monitored, and ORS generally is unable to make self-initiated compliance reviews because of the consistent backlog of complaints awaiting investigation.

### PRIOR STUDIES IDENTIFIED MANY PROBLEMS

Since enactment of the revenue sharing program in 1972, several studies have evaluated ORS' administration and enforcement of the act's civil rights provisions. Such studies, including a report we issued in 1976, identified numerous problems with ORS' administration, including its inability to process discrimination complaints in a timely manner and an increasing case backlog. A study completed in early 1979, assessing ORS' compliance activities, cited some of the same problems and recommended corrective action. Although ORS is taking steps to address these problems, few corrective actions have been fully implemented.

Between 1974 and 1976, there were four major studies of the revenue sharing program's civil rights provisions. 1/

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1/ "The Civil Rights Aspects of General Revenue Sharing," a report of hearings held by the U.S. House Judiciary Subcommittee on Civil and Constitutional Rights. November 1975.

"Civil Rights Under General Revenue Sharing" by Morton Sklar. The bulk of this work was also published as part of the National Revenue Sharing Monitoring Project. July 1975.

"To Provide Fiscal Assistance," part of the Civil Rights Commission study, The Federal Civil Rights Enforcement Effort--1974.

"Nondiscrimination Provision of the Revenue Sharing Act Should be Strengthened and Better Enforced," Comptroller General of the United States (GGD-76-80, June 2, 1976).

Generally, the studies were critical of ORS' administration. Problems cited in these reports included:

--Extensive delays and lack of followup in processing discrimination complaints caused primarily by inadequate internal controls, increasing workload, and insufficient staffing.

--Failure to make self-initiated on-site compliance reviews to identify discriminatory practices. ORS relied almost exclusively on discrimination complaints as indicators of potential violations of the act.

--Inadequate monitoring of compliance agreements and reluctance to suspend or terminate funds reduced the effectiveness of ORS' compliance efforts.

In 1978, ORS contracted with E.H. White and Company to assess its compliance activities in several areas, including civil rights. In its February 1979 report, the company concluded that it was unusually difficult to determine how efficiently or inefficiently civil rights compliance activities were being performed because of the lack of explicit rules and procedures for characterizing, investigating, analyzing, and resolving civil rights compliance cases. The company recommended that ORS develop standards and priorities for case processing, develop effective case management controls, and consider general management issues facing the Civil Rights Division.

The report suggested that the development of explicit standards would (1) enable swifter, more effective training of new investigators, (2) facilitate more timely and proficient investigations, (3) permit consistency in handling of cases, and (4) afford measures of productivity by which the division could assess its performance. Also, it recommended that decisions on case processing priorities be made at the highest ORS management level and communicated to the staff in a consistent manner.

E.H. White and Company reported that generally supervisors had no consistent methods to monitor the status of cases assigned to investigators. The report therefore recommended development of effective case management controls, suggesting that greater emphasis be placed on holding supervisors and investigators accountable for assigned cases through periodic meetings and preparation of summary reports to the Director of ORS. The report also made recommendations

regarding the maintenance of case records and the filing system.

In addition, the report cited numerous general management issues facing the Civil Rights Division which should be considered for resolution. These included the need to establish priorities between self-initiated compliance reviews and complaint-initiated reviews and the need for additional, experienced investigators to help reduce the case backlog. The report also recommended that ORS support the development of common standards and a computerized information exchange to improve cooperative relationships with other civil rights compliance and enforcement agencies.

## FEW OF THE CHANGES INITIATED BY ORS HAVE BEEN FULLY IMPLEMENTED

ORS has initiated changes designed to improve the effectiveness of its nondiscrimination compliance processing procedures. Some of the changes included: (1) revising its civil rights technical memorandum to provide additional administrative guidance, (2) implementing a computerized civil rights case tracking system, (3) developing a compliance manual to provide substantive guidance on investigating cases and evaluating evidence, and (4) considering the feasibility of establishing a case priority processing system. These changes demonstrate that ORS is aware of problems with the compliance processing procedures. However, because its changes have not been fully implemented, they have had little impact on correcting the problems.

### Civil rights technical memorandum revised to provide additional administrative guidance

Technical Memorandum No. 79-3 sets forth ORS' administrative policies and procedures for processing citizens' complaints of civil rights violations. This memorandum was issued August 28, 1979, and supersedes Technical Memorandum No. 77-2, dated March 4, 1977. Basic revisions include the addition of case monitoring procedures and use of a pre-finding letter as the initial document for achieving compliance where discrimination has been found.

The revised memorandum incorporated the pre-finding letter as part of the investigative process. According to an ORS official, the pre-finding letter, which was initiated in 1978, was designed to eliminate delays that occurred while waiting for the finding letter to be signed by the ORS Director. Unlike the finding letter, it is prepared for the Civil Rights Division Manager's signature, and was implemented

in an attempt to promote early compliance in a case disclosing evidence of noncompliance. The pre-finding letter indicates that ORS has received an allegation against the recipient government, conducted an investigation, and found evidence of a violation of the Revenue Sharing Act. This letter also includes recommended changes to rectify the noncompliance and gives the jurisdiction 15 days to respond (jurisdictions are allowed 30 days to respond to a finding letter). Compliance with the pre-finding letter eliminates the need for a finding letter, thus saving time in the processing procedures.

The revised memorandum also sets forth procedures for the monitoring of corrective actions being taken by jurisdictions identified as being in violation of the nondiscrimination provision. Followup on the progress of the government's efforts is necessary to determine whether compliance is being achieved. Thus the monitoring procedures, which include maintaining a log of response due dates from jurisdictions, analyzing reports submitted, and evaluating the adequacy of a jurisdiction's response, are designed to help ORS determine whether jurisdictions are taking appropriate steps to achieve compliance.

## Civil rights compliance tracking system is of limited use to supervisors

The Civil Rights Compliance Tracking System became operational in June 1978. It was designed primarily to maintain the Civil Rights Division case files, keep the files up-to-date, and provide information regarding the status of any case (i.e., investigator assigned, completion timeframe, etc.). This system is essentially a tool to be used by the division manager and supervisors to track the progress of a case and note any problem areas or cases which may be falling behind schedule. The system, however, has been of limited use to supervisors in helping them fulfill their managerial responsibilities.

The compliance tracking sytem was established at the request of the Director's office, and the maintenance and updating of the case files was originally envisioned as being accomplished at the branch supervisor level, with each of the four supervisors having a remote terminal. However, it was later decided that the system should be maintained by the control supervisor, who is responsible for initiating the complaint process by preparing the notification letters, date stamping the complaint letter, and establishing a case file.

As of June 1980, only two of the branch supervisors had a terminal. Being unfamiliar with its operations, one of the supervisors does not utilize the compliance tracking system

terminal. The other supervisor uses his terminal primarily to determine the status of a case, identify the investigator on a particular case, and monitor the investigators to see how they are progressing on their caseloads. According to the supervisor, the system is not geared to meet the needs of the individual supervisors. That is, most of the summary data is presented for the entire division; the data is not categorized into a format which would be more informative and useful to the supervisors. For example, the compliance tracking system shows for the entire division how many cases have reached a certain step in the complaint process, not how many of the cases are the responsibility of individual supervisors.

The Civil Rights Division Manager acknowledged that the compliance tracking system is not being used as originally envisioned. He stated that the system is currently being used to provide a running count of active and closed cases. His proposal to include monitoring capabilities into the system has not been finalized because of the System Division's workload. He believes that the compliance tracking system has tremendous capabilities, but it has not yet reached the point where it is paying off.

Compliance manual providing substantive investigative guidance being developed

ORS is developing a Civil Rights Division Procedures Manual which will provide both standard "paper flow" procedures and substantive guidance on investigating cases and evaluating evidence. The manual will address issues such as

--type of data needed to investigate complaints filed alleging discrimination in jurisdictions' employment practices or delivery of services;

--what to look for and what to do with requested documents;

--how to prepare, present, and organize data and statistics; and

--how to handle defenses raised by jurisdictions.

The manual will also contain information on standards for determining discrimination as established by relevant case law and a checklist for investigators designed to assist them in preparing cases.

Part I of the manual will deal with service cases, and Part II will cover employment cases. Although Part I has

been prepared in draft, plans for completion of the manual have not been finalized. ORS believes that the manual will provide uniformity and increased efficiency in processing cases, make for better prepared cases, assist in obtaining necessary information, and help close the gap between the Legal Division and the Civil Rights Division concerning the proper preparation of cases.

Establishment of case priority processing system under consideration for more than a year

Since June 1979, ORS has been discussing the need for and feasibility of establishing criteria for processing civil rights complaints according to a set of priorities. Criteria being considered as a basis for determining a case's priority included

--size of the jurisdiction,

--amount of funds received,

--size of minority population,

--past history of discriminatory behavior, and

--systemic versus individual complaint.

In response to a January 7, 1980, memo from the Acting Director, the Civil Rights Division Manager prepared a plan for assigning processing priorities to civil rights complaints. In his proposal, dated February 7, 1980, the Manager advocated that priority in case assignment be based on age of complaint, difficulty of the case, and geographic location.

Priority would be based first on complaints filed before January 1, 1977. The second priority would relate to complaints concerning governments identified as follows: cities with a population of 250,000 or more, counties with a population of 500,000 or more, and/or 50 State governments and the District of Columbia. The third priority would encompass all other complaints. Therefore, under the priority processing system a supervisor would

--give first consideration to complaints filed prior to January 1, 1977;

--assign other cases within the same geographic location which are of a difficulty factor suitable for the assigned investigator; and

--in the absence of a pre-1977 case, assign as a base case a complaint involving a State or one of the large cities or counties and supplement the assignment with other cases, as appropriate.

As of June 1980, no decision had been made on the proposal.

## PREVIOUSLY REPORTED PROBLEMS STILL EXIST TODAY

As discussed earlier, previous studies identified numerous problems with ORS' administration of the nondiscrimination provisions of the Revenue Sharing Act. Many of these problems continue to exist. Case processing time continues to be lengthy and significantly exceeds the 90-day regulatory requirement. The case backlog is steadily increasing. Infrequent use of on-site monitoring limits the effectiveness of ORS' monitoring procedures. The lack of periodic, self-initiated compliance reviews reduces the overall impact ORS might have on enforcing the civil rights provisions.

### Processing timeframes continue to be lengthy

Section 51.61 of Department of Treasury regulations state that a finding shall be made within 90 days from the time a complaint alleging noncompliance by a recipient government is filed. Our review showed that ORS is taking an average of about 19 months to process a case from the date of receipt of a complaint until the case is closed. The time required to reach and issue a prefinding on a case has been averaging about 10.5 months.

We made several analyses to ascertain how long ORS was taking to process discrimination complaints. From its inception to June 16, 1980, ORS opened a total of 1,914 cases. Of these cases, ORS closed or resolved 904 cases, leaving 1,010 cases still in process. As shown in the following table, approximately 60 percent (536 cases) of the closed cases took more than 1 year to process, and about 30 percent (291 cases) took more than 2 years. Of the open cases, about half (530 cases) have been open longer than 1 year, and about 24 percent (245 cases) have been open longer than 2 years.

Table 1

Age Distribution of Civil Rights Complaint Cases

For Closed Cases

| Age (in months) | Number of cases | Cumulative total | Percent | Cumulative percent |
|---|---|---|---|---|
| 36+ | 117 | 117 | 12.9 | 12.9 |
| 24+ - 36 | 174 | 291 | 19.2 | 32.1 |
| 18+ - 24 | 99 | 390 | 11.0 | 43.1 |
| 12+ - 18 | 146 | 536 | 16.2 | 59.3 |
| 9+ - 12 | 103 | 639 | 11.4 | 70.7 |
| 6+ - 9 | 103 | 742 | 11.4 | 82.1 |
| 3+ - 6 | 86 | 828 | 9.5 | 91.6 |
| 0 - 3 | 70 | 898 | 7.7 | 99.3 |
| Unknown | 6 | 904 | 0.7 | 100.0 |

For Open Cases

| Age (in months) | Number of cases | Cumulative total | Percent | Cumulative percent |
|---|---|---|---|---|
| 36+ | 106 | 106 | 10.5 | 10.5 |
| 24+ - 36 | 139 | 245 | 13.8 | 24.3 |
| 18+ - 24 | 105 | 350 | 10.4 | 34.7 |
| 12+ - 18 | 180 | 530 | 17.8 | 52.5 |
| 9+ - 12 | 127 | 657 | 12.6 | 65.1 |
| 6+ - 9 | 99 | 756 | 9.8 | 74.9 |
| 3+ - 6 | 114 | 870 | 11.3 | 86.2 |
| 0 - 3 | 140 | 1,010 | 13.9 | a/100.1 |

a/Does not add to 100.0 percent due to rounding.

We selected 2 months--October and November 1979--and analyzed the time spent on the 29 cases closed during those 2 months. Our analysis showed that the time from the date the cases were opened until they were closed averaged 17.9 months. Times varied from a minimum of 6.3 months to a maximum of 49.5 months.

One of the reports which can be generated by the Compliance Information Management System shows the average days required to close a case. Our analysis of the report dated June 16, 1980, showed the average time required to close a case was 568 days or 18.9 months for all post-1976 cases. This same report showed that ORS was taking an average of 1,176 days or 39.2 months to resolve pre-1977 cases. An analysis of another June 16, 1980, report which can also be generated by the Compliance Information Management System showed the average processing time for all closed cases was 20.4 months.

These analyses demonstrate the lengthy time required to process a case from the opening to the closing dates. The 90-day requirement, however, applies to the time period beginning with the receipt of a complaint until a finding is issued. To test ORS compliance with the 90-day requirement, we reviewed 25 case files, 10 of which we selected at random and 15 of which were provided by the Civil Rights Division Manager as examples of cases where changes have occurred in jurisdictions as a result of ORS investigations. Five of these 25 cases had not reached an initial finding stage. Our analysis of the remaining 20 cases showed that ORS took about 10.5 months from the date a case was opened until an initial finding was issued, exceeding the 90-day requirement by 7.5 months.

Depending on the complexity of the case and the cooperation of the jurisdiction involved, delays can be encountered at various stages throughout the complaint processing procedures. However, our analyses showed no clear pattern that any one stage of the process was more of a problem or caused excessive delays over any other stage of the process. During our discussions with several investigators, however, they cited their caseload as the primary reason for delays.

An analysis of investigators' caseloads, as of June 16, 1980, showed that each investigator was responsible for an average of about 20 cases. Thirty investigators were on board at that time. The following table shows the reasons given by investigators for delays in processing 10 selected cases.

Table 2

Reasons for Delays in Case Processing

| Case number | Jurisdiction uncooperative | Investigator caseload | Case was reassigned | New investigator | Case unassigned | Other |
|---|---|---|---|---|---|---|
| 1 | X | X | X | | | |
| 2 | | X | | X | | |
| 3 | | | | | | X |
| 4 | | X | | | | |
| 5 | | | | | | X |
| 6 | | X | X | | | |
| 7 | | | | X | | |
| 8 | | X | | | | |
| 9 | | X | | | X | |
| 10 | | X | | | X | |

For 7 of the 10 cases, investigators identified caseload as a reason for processing delays. Another indication that investigator workload may be the main reason for processing delays is the amount of time cases remain unassigned. As shown in the following table, 69 percent of 358 unassigned cases were unassigned longer than 3 months.

Table 3

Unassigned Cases by Region as of June 16, 1980

| Region | Total number unassigned | Number unassigned longer than 3 months | Percent |
|---|---|---|---|
| Northeast | 104 | 73 | 70 |
| Southeast | 153 | 107 | 70 |
| Central | 59 | 39 | 66 |
| Western | 42 | 25 | 60 |
| Totals | 358 | 244 | 68 |

These 358 unassigned cases represented 35 percent of the 1,010 cases that were open as of June 16, 1980. All open cases are commonly referred to as the case backlog.

## Case backlog is steadily increasing

The number of complaints received each year by the ORS has steadily increased. The following table shows the number of complaints received for the last 4 years and the percentage increase each year over the previous year:

Table 4

Annual Percentage Increase in Complaints Received

| Year | Number of complaints received | Percentage increase over previous year |
|---|---|---|
| 1976 | 228 | -- |
| 1977 | 276 | 21 |
| 1978 | 352 | 28 |
| 1979 | 483 | 37 |

During the first 4 months of 1980, ORS received 147 complaints and closed only 74 cases. Thus, new complaints were being received twice as fast as old ones were being resolved.

Although ORS has substantially increased the number of investigators from four that were on board in 1975, the number of investigators declined steadily in 1978 and 1979

because many investigators left and were not replaced immediately.

As of May 1978, ORS had 34 investigators. During the period from May 1978 to December 1979, 16 investigators left the Civil Rights Division, and only 4 were brought on board. Thus, as of December 1979, 22 investigators were on board. According to the civil rights supervisors, the primary reason for investigators leaving is the lack of promotion potential beyond the grade 12 journeyman level. Other reasons, such as individuals not being suited for civil rights investigative work and the desire to relocate, were also cited.

Because of a formal grievance that was filed during 1979 by some of the civil rights investigators, the Department of the Treasury and ORS decided to suspend hiring additional investigators until the grievance could be resolved. The grievance involved an inequitable promotional system for civil rights investigators within ORS. Some of the investigators were not under a career ladder while others, who were hired during the same time and in the same job classification, were covered. The grievance was resolved in August 1979 by establishing a career ladder to grade 12 for all civil rights investigators.

Between January and March 1980, 1 investigator left and ORS hired 9 investigators, bringing the total number to 1 below their fiscal year 1980 authorized level of 31. Despite having almost all of its authorized number of investigators on board, ORS will not be able to reduce the backlog of cases unless some reductions are achieved in the processing timeframes. Our analysis of the actual cases closed per month per investigator shows that the backlog of cases will likely increase.

Our analysis of past experience in processing cases showed that ORS closes less than one case per month per investigator. As shown in the following table, this estimate was made by dividing the number of cases closed during 6-month intervals by the average number of investigators on board during the same intervals and then dividing by the time span involved.

Table 5

Average Monthly Cases Closed Per Investigator

| 6-month period | Number of cases closed | Average number of investigators on board | Average number of cases closed per investigator During 6-month period | Per month |
|---|---|---|---|---|
| 7/79 to 12/79 | 109 | 23 | 4.7 | 0.78 |
| 1/79 to 6/79 | 151 | 27 | 5.6 | 0.93 |
| 7/78 to 12/78 | 163 | 30 | 5.4 | 0.90 |
| 1/78 to 6/78 | 90 | 30 | 3.0 | 0.50 |

Therefore, assuming that the closure rate can be increased to 1 per month per investigator, we can estimate the likely effect the currently authorized 31 investigators may have on the backlog as follows.

Estimated Annual Backlog Increase

| | | |
|---|---|---|
| Backlog as of June 16, 1980 | | 1,010 |
| Add: Cases received annually a/ | 483 | |
| Less: Cases closed annually b/ | -372 | 111 |
| Estimated backlog as of June 16, 1981 | | 1,121 |

a/We made the conservative assumption that the number of complaints received over the previous year would not increase. As shown on page 13, the number of complaints received has increased each year over the last 4 years.

b/One case per month per investigator (31 x 1 x 12 = 372).

This analysis indicates that, given current circumstances, the case backlog will continue to increase by approximately 100 cases annually, and ORS will not be able to reduce the backlog unless reductions are achieved in the case processing timeframes.

Monitoring of compliance agreements to be given more emphasis

Once a complaint is investigated and findings of discrimination made, ORS requires the respondent government to implement specified actions to be deemed in compliance with civil rights requirements. Followup on the progress of the government's efforts is necessary to determine whether compliance is actually achieved, and it represents an integral

aspect of civil rights enforcement. Although ORS efforts in this area are improving, greater resources should be devoted to this responsibility.

ORS primarily relies upon desk reviews of correspondence and reports to assess jurisdictional compliance with corrective action requirements. In cases involving discrimination in the delivery of public services, jurisdictions may be required to report on progress made in equalizing such services. Progress in employment discrimination cases may be assessed by comparing annual reports of work force composition with the objectives established in an affirmative action plan. In a substantial number of cases, ORS finds that the degree of compliance attained is unacceptable and will so inform the jurisdiction. The jurisdiction may be contacted for additional information, be required to submit supplementary documents, or be notified that it remains in noncompliance and that stronger enforcement mechanisms may be initiated. In addition to problems identified through desk reviews, ORS is occasionally made aware of a jurisdiction's lack of corrective action by the complainant or by organized civil rights groups, such as the National Association for the Advancement of Colored People.

Beginning in October 1978, each branch supervisor assigned full-time responsibility for monitoring cases to one investigator on a 6-month rotational basis. The monitoring function in each branch consists of (1) maintaining a log of response-due dates from jurisdictions, (2) analyzing required reports submitted by jurisdictions to assess their progress in meeting compliance objectives, and (3) evaluating the adequacy of a jurisdiction's response to the ORS pre-finding and finding letters. In June 1980, the average monitoring caseload per branch was 108 cases.

Onsite monitoring activities, acknowledged by ORS civil rights staff and other civil rights experts as essential in evaluating the extent of progress made, especially in cases of service discrimination, are infrequently undertaken. During November 1979 and January 1980, the monitor for the Southeast Branch visited seven jurisdictions to assess their compliance with required actions, but no other formal onsite monitoring reviews have been made. ORS staff told us that such onsite reviews are not made because of staff and travel expense limitations.

The importance of onsite monitoring to achieve effective civil rights enforcement is illustrated by the results of the monitoring visits made by the Southeast Branch monitor. The seven jurisdictions visited in Mississippi and Florida were chosen on the basis of geographic location, number of complaints initiated in the States, and the perceived need for

verification of compliance progress. The monitor observed that six of the municipalities had made only marginal progress in meeting their corrective action mandates and that the remaining jurisdiction had not complied with any of the ORS requirements. The monitor so informed the appropriate local officials, who have since made considerable progress in implementing their compliance agreements.

Civil rights organizations have identified problems resulting from ORS' limited onsite monitoring of compliance agreements. The South Carolina Advisory Committee to the U.S. Commission on Civil Rights reviewed the implementation of a compliance agreement ORS had negotiated with a South Carolina jurisdiction. The Committee reported that, athough ORS had closed the case on the basis of its analysis of documents provided by the city, only marginal improvements in employment practices and public service provisions had been made.

An attorney for the Lawyers' Committee for Civil Rights Under Law noted that quality, as well as quantity, of municipal services provided should be considered in determining public service equity. For example, the quality of equipment and the maintenance provided to a park in the black community may be inferior to that in the white community, while the quantity, as described in a required report to ORS, may be equal. Through onsite monitoring such differences may be discerned.

Although an improvement over past procedures, the current monitoring system has limitations as an effective case follow-up process. Assigning staff on a rotational basis may cause a loss of continuity in the monitoring of cases. Moreover, there have been periods when a region was without an individual monitor because of staff turnover.

The effectiveness of the monitoring system is further limited by the lack of a single document compliance agreement which would ease monitoring of jurisdictional progress in resolving civil rights violations. Unless a compliance agreement has been prepared by the Office of the Chief Counsel, generally in response to a holding issued by a Federal court, a State court, or a Federal administrative law judge, the compliance agreement consists of a series of correspondence between ORS and the respondent jurisdiction regarding the discrimination noted and the remedies proposed. The lack of a single document compliance agreement makes assessment of a jurisdiction's progress time consuming because the monitor must read through a series of letters to ascertain the corrective actions required. Our review of case files to determine case resolution was hindered by the lack of a comprehensive agreement of discriminatory problems found and proposed remedies. Because negotiation as to the findings and proposed

remedies often takes place through correspondence, the lack of a single document can result in failure to take corrective action on all proposed remedies. For example, our review of case files revealed that in two instances some problems noted in the pre-finding letters had been left unresolved upon ORS' closure of the complaints.

In recognition of the importance of monitoring and the problems it has had in effective case followup, ORS is reorganizing its current system. Beginning June 16, 1980, ORS assigned one senior civil rights investigator to each branch to organize and implement monitoring functions. The senior investigator, who is to be assisted by a lower grade civil rights investigator, will be responsible for analyzing jurisdictional responses to pre-finding and finding letters and preparing ORS' replies to such letters. The Civil Rights Division Manager anticipates that a number of onsite reviews will be undertaken in response to problems noted in particular cases when the monitoring teams become operational as envisioned. Additions to the Compliance Tracking System designed to facilitate case monitoring are also planned. These changes should expedite the review of jurisdictional reports and permit more onsite followup to verify that compliance has been achieved.

ORS does not generally make self-initiated compliance reviews

ORS regulations state that the Director shall monitor and determine compliance of recipient governments with Revenue Sharing Act requirements by undertaking compliance reviews from time to time, as appropriate and feasible. Such reviews are to be completed within 180 days of initiation. A compliance review is defined as a review of a recipient's selected employment practices, facilities, or delivery of services for compliance with the nondiscrimination provisions of the regulations.

The Civil Rights Division Manager and branch supervisors told us that ORS has not performed any self-initiated compliance reviews. They cited insufficient resources and the current backlog of complaints as reasons why such reviews have not been made. They stated, however, that many complaints result in broad compliance reviews. For example, a complainant may allege civil rights violations of a jurisdiction's entire employment system. Also, civil rights investigators may cite flagrant examples of pattern and practice discrimination even if these were not the subject of the complaint. For example, if a complaint alleges a general lack of representation of minorities on a police force, ORS would not ignore statistics revealing the absence of women on

the force, even though sex discrimination was not cited in the complaint.

In addition, investigators sometimes expand the scope of their investigations which, in effect, may be the same as a compliance review. As one branch supervisor noted it does not take much longer to gather some additional data while the investigator is in the field, and such expanded investigations represent an efficient use of resources. That is, since an investigator is expending time and money on a case, as much as is reasonably possible should be done during the field review to evaluate all aspects of the jurisdiction's compliance with the act's nondiscrimination provisions.

Department of Treasury officials agreed that ORS does not have the resources to conduct self-initiated compliance reviews. Although they believe that compliance reviews may be a good idea, the problem of diverting resources from the complaint investigations enhances the steadily increasing backlog. Also, they see little difference in the effect that either investigation has on the jurisdictions. They explained that an investigation against a jurisdiction as a result of a complaint would have essentially the same effect on the jurisdiction as an ORS-initiated compliance review.

In testimony before the House Subcommittee on Intergovernmental Relations and Human Resources during April 1980, officials from the Center for National Policy Review stated that an effective enforcement program requires a mix of periodic, self-generated reviews along with the more frequent complaint investigations. These periodic reviews would allow an agency to target some of its resources toward problem areas and geographic locations where more specific violations might be expected to exist.

## CONCLUSIONS

Although the 1976 amendments to the Revenue Sharing Act strengthened the enforcement requirements of the civil rights provisions, they have had little impact on improving the overall administration of ORS' civil rights program. Despite actions taken by ORS to improve its operations, previously cited problems which hindered ORS' administrative efforts continue to exist.

Case backlog continues to increase annually, and the likelihood of a decline in the backlog is practically nil given ORS' current management operations and its limited staff resources. Unless the cases are processed more quickly than they have been, the recent hiring of nine additional investigators will not reduce the case backlog.

The effectiveness of ORS' monitoring process is limited by the lack of a single document compliance agreement which can result in failure to take corrective action on all proposed remedies to achieve civil rights compliance. Likewise, the current monitoring of jurisdictions' progress toward compliance through desk reviews is also limited. Nevertheless, the desk reviews are a positive step towards ORS' fulfillment of its monitoring responsibilities. Despite this action, more aggressive steps (including onsite monitoring) must be taken to help ensure that jurisdictions are fully complying with the stated agreements. Onsite monitoring coupled with planned additions to the Compliance Tracking System designed to facilitate case monitoring should enhance follow-up verification that civil rights violations are being corrected.

ORS does not generally make self-initiated compliance reviews authorized by its regulations, but relies instead upon complaints to determine discriminatory practices. ORS officials agree that such reviews should be made, but they maintain that the current caseload precludes them from doing so. We believe that ORS should make a stipulated number of compliance reviews in addition to conducting complaint investigations. Compliance reviews along with complaint investigations could provide for a much more effective and comprehensive compliance effort on the part of ORS and could serve to better detect civil rights violations.

## RECOMMENDATIONS

We recommend that the Secretary of the Treasury require ORS to:

- --Prepare single-document compliance agreements, to be signed by ORS and the jurisdiction, specifying the corrective actions agreed upon.

- --Modify the compliance tracking system to enable supervisors to use the system to manage case workload and to improve the monitoring of cases after agreements have been reached.

- --Fully implement its plan to use two-person teams for each branch to monitor jurisdictions' compliance agreements.

- --Direct the two-person monitoring teams to make a stipulated number of self-initiated compliance reviews.

## AGENCY COMMENTS

The Department of the Treasury acknowledged, in a strict sense, the accuracy of the report and accepted a number of

GAO's suggestions as constructive. (See app. XIII.) However, the Department noted that it had explored many of these suggestions and would soon reach decisions regarding possible changes in the Office's procedures. The Department noted further that an improved monitoring capability is now in place, although the report suggests otherwise.

On page 18 of our report, we acknowledge the Office's new monitoring system; and throughout chapter 2 (pp. 6 to 20) we cite other actions taken or planned. As the report shows, however, the Office has been considering corrective actions for quite some time now, and very few changes designed to improve its administrative and operating procedures had actually been implemented.

The Department of the Treasury stated that the report suggests that the compliance tracking system is not effective due to a lack of computer terminals and noted that this has not been a significant factor. The Department also mentioned that plans are in place for improving the system.

Our discussion of the compliance tracking system merely describes how the system was designed to operate and how it was operating. We indicate that one reason for the system's ineffectiveness is the manner in which the data is maintained--most of the summary data is presented for the entire division and is not geared to meet the needs of the individual supervisors. We also note that the system will have greater potential once monitoring capabilities are incorporated; but most of the improvements needed are in the planning phase rather than in implementation.

The Department further stated that it was not clear why delay in the assignment of cases extends case processing time. It noted that nothing is accomplished by assigning cases to an investigator who already has more cases than he or she can handle at one time.

We agree that unassigned cases do not appear to be a reason for delay and have revised our report to recognize that it is another indication of excessive investigator workload.

The Department of the Treasury said that we placed too much emphasis on the case processing backlog and that a backlog should not be interpreted as an indicator of ORS' productivity. The Department believes that the appropriate measure of productivity is the average time required to process a case and that such a measure must be used with care. The Department further stated that it was making every effort to reduce case processing time and that the increasing case backlog is a reflection of (1) an imbalance between the inflow of cases and the resources available to process them, and (2) the

confidence of complainants in the capability of ORS to provide constructive relief.

We believe that case backlog is a significant problem which tends to affect other problems cited, such as the lack of onsite monitoring of compliance agreements, the lack of self-initiated compliance reviews, the inability to reach findings within the 90-day regulatory requirement, etc.

We agree that the problem may be due to an imbalance between the inflow of cases and resources available to process them and, as stated on page 36, if the problems persist after ORS has implemented our recommendations, the Secretary should seek to increase the size of the investigative staff. As shown on page 13, the case backlog is increasing significantly. Our current evaluation shows that processing times have increased since our earlier 1976 evaluation. Unless ORS can reduce the case processing time, we believe its administrative problems will become more severe.

In commenting on single document agreements, the Department of the Treasury stated that although there are clear advantages to such agreements, it does not feel that the legal and practical advantages of the approach are as clear as we indicate.

We believe that a single document containing all proposed remedies, signed by ORS and the affected jurisdiction, would make it easier for both parties to understand what is required and for either party to ascertain the status of compliance with such requirements. From a practical viewpoint, a single document agreement should assist ORS in fulfilling its monitoring responsibilities by reducing the time needed to review the case files to identify what corrective action the jurisdiction has taken and is required to take.

# CHAPTER 3

## STATE AND FEDERAL AGREEMENTS ARE NOT EFFECTIVELY USED TO ACHIEVE CIVIL RIGHTS COMPLIANCE

One way to overcome scarce staff resources or to use resources more effectively in assuring compliance with the nondiscrimination provisions is through cooperation with State and other Federal agencies responsible for civil rights enforcement. Recognizing the potential benefits of coordination, the Congress included a provision for cooperative agreements, including the sharing of civil rights personnel and resources, in the 1976 amendments. Section 122(h) of the State and Local Fiscal Assistance Amendments of 1976 states that the Secretary shall endeavor to enter into agreements with State and other Federal agencies to secure compliance with the act's civil rights provisions. However, ORS has not been very successful in developing and implementing cooperative arrangements with other governmental agencies. ORS has not actively sought to establish new agreements with such agencies, nor has it made effective use of the agreements negotiated. Such agreements could and should serve to expedite complaint processing, avoid duplication of effort, and provide additional support to ORS' civil rights enforcement efforts.

### ORS IS MAKING LITTLE USE OF STATE COOPERATIVE AGREEMENTS

ORS' early efforts to establish cooperative agreements with State human rights agencies had limited success. ORS entered into agreements with only 14 agencies as the lack of Federal remuneration for State agency services proved to be a major obstacle in establishing such agreements. Although implementation varied, cooperative efforts with State agencies decreased significantly subsequent to the 1976 amendments. Aside from occasional contacts between investigators involving specific cases, formal coordination between ORS and these agencies is minimal.

### ORS' success in negotiating State agency agreements was limited

During 1975 and 1976, ORS, with a staff of five civil rights specialists, decided to initiate cooperative agreements with State human rights agencies, a strategy viewed by Treasury and ORS officials as consistent with the agency's philosophy of minimizing administrative overhead. To expedite complaint resolutions, ORS sought to negotiate agreements with State agencies identified by the EEOC as meeting basic standards of adequacy for enforcing Federal equal

employment opportunity requirements. ORS staff discussed the possibility of negotiating agreements with 38 agencies and subsequently signed agreements with the following 14 agencies.

Table 6

ORS-State Agency Cooperative Agreements

| State Agency | Date Agreement Signed |
|---|---|
| Alaska Commission for Human Rights | 9/27/75 |
| Connecticut Commission on Human Rights and Opportunities | 5/08/75 |
| Delaware Human Relations Commission | 7/28/75 |
| District of Columbia Office of Human Rights | 7/15/75 |
| Illinois Fair Employment Practices Commission | 7/15/75 |
| Maine Human Relations Commission | 7/15/75 |
| Maryland Commission on Human Relations | 4/28/75 |
| Massachusetts Commission Against Discrimination | 11/10/75 |
| Minnesota Department of Human Rights | 7/01/75 |
| Ohio Civil Rights Commission | 7/21/75 |
| South Carolina Human Affairs Commission | 9/05/75 |
| South Dakota Division of Human Rights | 5/16/75 |
| West Virginia Human Rights Commission | 7/15/75 |
| Wyoming Fair Employment Practices Commission | 4/23/76 |

The lack of Federal remuneration for the services of State human rights agencies proved to be the major obstacle in effecting cooperative agreements with several agencies. Seventeen State agencies contacted by ORS did not sign agreements, because they lacked the staff to undertake additional compliance activities on behalf of ORS without compensation for their effort.

## Memoranda of agreement provisions were similar, but implementation varied

The memoranda of agreement negotiated with State agencies provided for such things as ORS notifying the State agency of complaints received and compliance reviews planned within the State; ORS provision to the State agency of copies of all letters of noncompliance sent to the Governor; if mutually agreeable, State agency investigation of complaints received by ORS; ORS adoption of State agency findings whenever possible; and extension by State agencies of their regular monitoring and enforcement activities to include review of compliance with the act. (See app. II for an example of a State agreement.)

Although all 14 cooperative agreements contained the same basic provisions, implementation of the agreements varied among the States. Officials of eight agencies told us that their agencies and ORS had cooperated during the early years of the agreements. Officials of four other agencies we contacted had no recollection of any involvement with ORS, and another agency official was certain that the agreement had never been implemented. An official of the Massachusetts Commission Against Discrimination stated that, although there had been no communication with ORS during the first few years of the agreement, his agency had developed an effective cooperative relationship with ORS in recent years.

Officials of the eight State agencies reporting early use of the cooperative agreements stated that ORS had forwarded copies of letters of noncompliance issued against respondent jurisdictions and had informed their agencies of investigations planned. Some of these agency officials recalled that ORS investigators had requested information regarding a particular jurisdiction or copies of investigative files specific to a given complaint. However, only two of the eight agencies, West Virginia and South Dakota, have had any communication with ORS in recent years. (See app. III for a description of the implementation of State agreements.)

In 1975 and 1976, ORS transmitted complaints to four of these State agencies for investigation. Our analysis of the ORS case files for these complaints revealed that ORS frequently took longer to review the investigative results of

the State agency than the State agency took to investigate, analyze, and develop recommendations regarding the complaints. In most cases, ORS accepted the State agency's findings, as shown in the following table.

Table 7

ORS Acceptance of State Agency Findings

| State agency | Number of complaints investigated for ORS by the State | Average number of months elapsed between: Receipt by ORS and date sent to State | State receipt and date reported to ORS | Date State reported to ORS; ORS finding issued | ORS acceptance of State findings |
|---|---|---|---|---|---|
| Connecticut | 24 | 4.4 | 3.7 | 14.4 | Accepted all findings except in 4 cases |
| South Carolina | 6 | 12.9 | 30.7 | 4.3 | Accepted all case findings |
| Alaska | 1 | 9 | 3 | 25 | Accepted findings |
| South Dakota | 1 | 7 | 5 | 3 | Accepted findings |

In addition to the cases where ORS transmitted complaints to a State agency for investigation, ORS had adopted the findings of State agencies in other instances. For example, in 1977 ORS received a complaint which had also been filed with the Wyoming Fair Employment Practices Commission. ORS made an onsite investigation and also reviewed the State agency's investigative files. In its finding letter, ORS cited its agreement with the Wyoming agency and suggested that the jurisdiction in question develop an agreement with the State agency to avoid duplication of effort.

As an outgrowth of the cooperative activities specified in the agreements, State agencies and ORS have occasionally assisted each other in other ways. For example, State agencies of Connecticut, West Virginia, Massachusetts, and Wyoming have provided technical assistance to local governments in developing corrective action plans in response to ORS determination of noncompliance.

Moreover, some State agencies used their agreement with ORS as leverage for effecting civil rights compliance within their purview. For example, the West Virginia Human Rights Commission had been unable to resolve a complaint against the State's Department of Natural Resources. The Commission filed a complaint against the Department, and upon ORS intervention it was able to attain a conciliation agreement with the Department. Other agency officials commented that, by advising a respondent jurisdiction of their formal relationship with ORS, they were able to negotiate and resolve a complaint.

Inactive State agreements should be renegotiated

According to the manager of the Civil Rights Division, agreements signed with State agencies in 1975 and 1976 are no longer operative and there are no plans to reactivate these formal arrangements. ORS officials believe that:

(1) Few State agencies would be willing to invest their scarce resources to do investigations for ORS, particularly within the 90-day timeframe required by the 1976 amendments.

(2) It may be unwise to assume State agency neutrality in investigating local jurisdictions.

(3) Many State agencies do not have the requisite staff competence.

(4) For these reasons, complainants may not approve of ORS deferring their complaints to State agencies.

The Civil Rights Division Manager acknowledged that some State agencies, with adequate funding, professionally competent staff, and statutory independence, are capable of assisting ORS. However, he stated that criteria for selection of certain State agencies would be difficult to establish, and monitoring the implementation of such agreements would be too time consuming. The possibility of involving State agencies in monitoring jurisdictional compliance and coordinating investigations with State agencies has been discussed, but no consistent strategy toward this end has been developed.

The current ORS relationship with State agencies has been described by an ORS supervisor as "ad hoc involvement." Although State agencies are often contacted once an ORS investigator learns that the agency has also received a particular complaint, ORS no longer advises State agencies of complaints received or investigations planned, except for Massachusetts.

ORS has not deferred complaints to State agencies for investigation in recent years due to its increased investigative staff and lack of remuneration to these agencies.

Most State agency officials considered their agreements with ORS as technically in effect but no longer active. Two agencies--the South Carolina Human Affairs Commission and the Minnesota Department of Human Rights--have formally terminated the agreements. Officials of the Alaska Commission for Human Rights and the Massachusetts Commission Against Discrimination view the agreements as active.

ORS has developed a unique cooperative agreement with the Massachusetts Commission Against Discrimination. The Commission has developed a preventive approach in effecting civil rights compliance in local jurisdictions by using leverage gained through its role in the State's A-95 review process. 1/ Because the Commission works closely with local governments in preparing affirmative action plans to meet Federal civil rights requirements, it is a valuable source of information to ORS civil rights investigators. In recent months, ORS began forwarding copies of pre-finding letters to the Massachusetts Commission because (1) the Commission has the capability and the willingness to provide such jurisdictions with technical assistance to bring them into compliance, and (2) under the Commission's A-95 review activity, the Commission can influence a Federal agency's decision to award funds to a jurisdiction by refusing to sign off on their grant application. According to the Commission's Assistant Director of Public Sector Compliance, the Commission will not sign off if the jurisdiction is facing Federal agency charges of civil rights noncompliance.

The renewal of formal cooperative agreements should be considered. The knowledge that State agencies possess regarding the civil rights efforts of localities within their jurisdictions can be useful to ORS. Conceding that most State agencies may not have adequate staff resources to make additional investigations for ORS, ORS could reinstitute some of its previous cooperative activities with these agencies, including the

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1/Office of Management and Budget Circular A-95 is a regulation designed to promote maximum coordination of Federal and federally assisted programs and projects with each other and with State, areawide, and local plans. The agencies designated to review programs under A-95 are required to refer applications to State and local civil rights agencies for their comments on the civil rights aspects of the proposed projects.

--sharing of investigative information,

--notifying State agencies of complaints received and investigations planned,

--supporting State agency efforts to effect civil rights compliance within the State, and

--forwarding copies of letters of noncompliance issued against jurisdictions within the State.

State agencies could provide assistance in monitoring the implementation of ORS compliance agreements.

On a limited basis, ORS could negotiate agreements incorporating a provision regarding the referral of ORS complaints for State agency investigation with standards and timeframes for these investigations specified. Clarification of standards will permit ORS adoption of State agency findings. Criteria relevant to the ORS civil rights mission should be developed to determine those State agencies appropriate for such an agreement, with consideration given to the statutory authority, independence, and staff capacity of each agency.

## LIMITED USE HAS BEEN MADE OF COOPERATIVE EFFORTS WITH FEDERAL AGENCIES

Similar to its experience with State agencies, ORS has had limited success in implementing cooperative agreements with Federal agencies. In an effort to extend its civil rights compliance activities, ORS negotiated agreements with EEOC, HEW's Office for Civil Rights, and the Civil Rights Division of the Department of Justice. Although these agreements were never officially terminated, ORS' Civil Rights Division Manager considers them ineffective because they were signed before enactment of the 1976 amendments. ORS signed cooperative agreements with LEAA and OPM in 1979, but limited use has been made of these agreements. ORS has attempted to enter into new agreements with other Federal agencies, but it has not diligently pursued these efforts. (Implementation of Federal agreements are shown in app. IV.)

### Cooperative agreements were negotiated with several Federal agencies during the initial years of the program

The Memorandum of Agreement between EEOC and ORS, signed in October 1974, provided for exchanging information regarding noncompliance with each agency's civil rights and reporting requirements. The EEOC was to provide copies of Letters of Determination and Decisions regarding employers involved in revenue sharing-funded activities, which ORS

was to investigate in accordance with its own regulations. The agreement also stipulated that EEOC would provide ORS with EEO-4 forms which contain extensive workforce data obtained annually from State and local governments employing over 100 persons. In addition, EEOC agreed to respond to requests made by auditors of revenue sharing recipients for the number, basis, issues, and status of charges pending against a State or local government being audited.

EEOC considers the agreement to be active, and field personnel continue to follow some or all of the agreement's provisions. Eighteen of the 22 EEOC district offices provided us with information which showed that EEOC continues to respond to auditors' requests for information. Nine district offices reported that they continue to forward copies of Letters of Determination to ORS. While some district offices noted that they received no response from ORS, others commented that they were able to reconcile difficult cases due to ORS intervention. Several district office officials stated that there were occasional informal contacts between ORS and EEOC investigators regarding specific complaints.

The Civil Rights Division Manager explained that, due to staff limitations, ORS does not routinely follow through on EEOC findings, although investigators will contact EEOC if they learn that EEOC is involved in the case.

The Memorandum of Agreement between ORS and HEW was designed to establish procedures to avoid duplication of effort, provide for the timely exchange of information, and encourage joint action to secure voluntary compliance. Although ORS and HEW investigators contact each other informally regarding specific complaint investigations, and HEW refers complaints over which they have no jurisdiction to ORS, the agreement was not formally implemented. However, ORS did act in one instance to ensure that a Michigan school district did not receive revenue sharing funds following termination of Federal assistance by HEW. (See app. X.)

The Memorandum of Understanding between ORS and the Department of Justice was signed in September 1975 and was intended to avoid inconsistency and duplication of effort in implementing their concurrent responsibilities under the 1972 act. The agreement provided for an exchange of information regarding receipt of complaints, investigative findings, compliance reviews scheduled, and proposed judicial or administrative action under the act. Although joint investigations were not included in the agreement, ORS personnel advised the Department on remedies for some of the Department's lawsuits and helped monitor the City of Chicago's compliance agreement. The Department also communicates with the ORS Office of Chief Counsel during investigations of

alleged systemic discrimination and informs ORS of the judicial remedies ordered.

Although supportive of ORS' efforts to develop coordinative arrangements with other Federal agencies, public and private civil rights organizations have criticized the agreements because uniform standards for compliance, investigation, and enforcement were lacking. ORS' intention to determine on a case by case basis whether complaints would be handled jointly with other agencies was criticized, and some organizations felt that ORS should delegate the authority for certain investigations to other agencies possessing the appropriate expertise (for example, EEOC would handle individual employment complaints).

After the 1976 renewal hearings, ORS redirected its attention from the renegotiation of cooperative agreements with other Federal and State agencies to the development of its own staff capacity to deal with its mounting complaint backlog. However, in 1978, ORS again attempted to establish agreements with other Federal agencies.

## Renewed efforts to develop cooperative agreements with other Federal agencies have been less than successful

At the request of the former ORS director, the ORS Office of Chief Counsel initiated discussions with other Federal civil rights agencies regarding the development of interagency cooperative efforts. In consultation with ORS' Civil Rights Division, a list of items to be included in such agreements was prepared. While acknowledging that certain aspects of the civil rights compliance process are shared by all Federal agencies, the plan prepared by the Office of Chief Counsel recognized that differences in each agency's legislative authority would require unique provisions in each agreement. Basic provisions suggested for inclusion in such agreements were the

--sharing of complaint and investigative information,

--exchange of planning documents,

--protection of the confidentiality of complainants,

--periodic meetings,

--coordination and support of enforcement efforts,

--joint investigations and monitoring, and

--notice of formal proceedings.

A letter inviting discussion of interagency agreements was sent in the fall of 1978 to seven agencies--Architectural and Transportation Barriers Compliance Board, EEOC, HEW's Office for Civil Rights, HUD's Office of Fair Housing and Equal Opportunity, Civil Rights Division of the Department of Justice, LEAA, and OPM. Responses from these agencies varied, but all agencies agreed that an agreement could be of some use.

As of June 1980, ORS had successfully negotiated agreements with OPM and LEAA. Officials of EEOC, the Architectural and Transportation Barriers Compliance Board and HEW expressed interest in the proposal, but efforts to develop these cooperative arrangements have not been actively pursued either by ORS or by these agencies. During the fall of 1979 ORS and HUD's Office of Fair Housing staff decided to try an informal information sharing arrangement for a period of time before developing a formal document; however, as of June 1980, this arrangement had not yet been initiated.

As of June 1980, the ORS Office of Chief Counsel and the Civil Rights Division of the Department of Justice were negotiating a revision of their original memorandum of understanding signed in September 1975. The major purpose of the agreement will be to establish a framework for formal ORS deferral of complaint resolution to the Department of Justice as appropriate, primarily for large systemic cases. Such an agreement is viewed as beneficial to ORS because ORS does not have a legal staff large enough to handle cases involving large cities. It is expected that the agreement will soon be signed, and in anticipation of this agreement, the proposed ORS regulations published in the December 31, 1979, Federal Register include a process for deferral of complaint investigations as appropriate to the Attorney General.

## Cooperative agreements signed in 1979 with Federal agencies have not been fully implemented

As a result of its outreach efforts, ORS signed cooperative agreements with OPM and LEAA during 1979. However, neither agreement has been fully implemented as originally envisioned.

The purpose of the Agreement of Cooperation between OPM and ORS is to achieve a consistent Federal equal employment opportunity policy toward State and local governments and to enforce compliance with the revenue sharing program's nondiscrimination requirements. To this end, OPM is to assist ORS in monitoring the implementation of personnel system changes made pursuant to a compliance agreement between ORS and a State or local government. In addition, OPM will provide technical materials and training to community groups interested in monitoring compliance agreements, as well as

technical assistance to ORS in developing corrective action plans requiring personnel system changes to ensure that remedies will be consistent with merit principles (see app. V).

At the time of our review, ORS had not made use of this agreement. OPM officials had contacted ORS several times for a list of agreements to monitor but had received no positive response. In commenting on our report, OPM noted that it has instituted steps to implement the case monitoring aspects of the agreement between ORS and OPM. (See p. 37 and 38 and app. VIII.)

The LEAA agreement provides for

--the exchange of investigative information,

--periodic notification of complaints received and actions in progress,

--joint investigations,

--monitoring of each other's compliance agreements,

--coordination of compliance reviews, and

--provision of findings of illegal discrimination made by the agency, a Federal administrative law judge, or a Federal or State court (see app. VI).

Analysis of the implementation of this agreement shows that the agreement has served to codify the existing informal relationship between ORS and LEAA investigators rather than to substantively extend cooperative activities. As in the past, ORS and LEAA investigators will occasionally contact each other for investigative data. In some instances, LEAA has deferred the investigation of a complaint to ORS and adopted the ORS findings if appropriate. However, procedures have not been established by either agency to provide guidance to the investigative staff regarding the agreement's provisions; hence, effective routine coordination has not taken place.

Those portions of the agreement which would have extended the ongoing informal relationship between the two agencies have not been fully utilized. For example, LEAA and ORS do not monitor compliance with the other agency's compliance agreements when undertaking a new investigation of affected recipients and have made only two joint investigations. While LEAA regularly forwards copies of findings of illegal discrimination made administratively or through court proceedings to their ORS liaison, ORS has not routinely reciprocated. The two agencies have exchanged computer printouts of complaints received and actions in progress, but the format of the ORS printout impedes use by LEAA. ORS identifies complaints

according to the name of government, and LEAA identifies complaints by the specific agency involved.

Because no routine exchange of information exists between the two agencies, the provision of the agreement which calls for appropriate and timely written documents expressing support for the enforcement efforts of the other agency is not normally complied with. This portion of the agreement could be an especially effective enforcement mechanism, since it affords additional leverage to the investigating agency in gaining compliance.

The resolution of a complaint involving a city police department in Connecticut illustrates the benefits of cooperative efforts in civil rights enforcement. The complaint was filed with LEAA and ORS, and subsequent to a joint investigation, each agency concluded that the city was in violation of the civil rights provisions of its program. ORS joined LEAA in its negotiations with the city officials regarding the corrective action required, and a compliance agreement to be signed by all three parties has been prepared. By coordinating enforcement efforts, ORS and LEAA were able to use their combined influence to achieve a mutually satisfactory resolution of the complaint.

Since LEAA and ORS have similar civil rights statutes and in many cases share responsibility for ensuring equal opportunity in law enforcement programs, there is a clear need for coordination between these agencies. Moreover, staff limitations of both agencies (as of June 1980, LEAA had only five civil rights complaint investigators) highlight the need for effective use of available staff. Coordination can reduce duplication of effort while strengthening enforcement capability.

## Coordination with other Federal agencies can improve civil rights enforcement

The civil rights compliance activities of other Federal agencies represent a source of potential assistance to ORS. In view of the overlapping jurisdiction and mandates of these agencies, coordination could serve to expedite complaint processing, avoid duplication of investigative effort, and afford ORS additional support of its civil rights enforcement activities. The benefit of additional agency involvement is illustrated by ORS' investigation of a city in California where HUD's decision to postpone certification of the city's eligibility for a substantial Urban Development Action Grant was influential in convincing the city to settle its dispute with ORS.

The ORS Civil Rights Division Manager stated that while cooperative agreements with other Federal agencies are theoretically desirable, practical problems, most notably each agency's concern for protecting its authority, inhibit the effectiveness of this approach. While acknowledging the confusion engendered when two agencies develop contradictory conclusions for the same complaint, he is opposed to the automatic acceptance by one agency of another's findings because no uniform standards for all civil rights investigations exist. Formal support for each other's compliance efforts is the most useful way Federal agencies can assist one another.

Despite the impediments to interagency cooperation, coordination of Federal civil rights efforts is necessary for consistent and comprehensive enforcement. Under Executive Order 12067, issued on June 30, 1978, EEOC was given the responsibility of providing leadership and coordination for all Federal equal employment opportunity programs in order to "maximize effort, promote efficiency, and eliminate conflict, competition, duplication, and inconsistency" in all such Federal activities. To this end, the EEOC Office of Interagency Coordination, established to implement this order, is analyzing Federal agency data collection efforts, interagency memoranda of understanding, enforcement of compliance mandates, resources devoted by agencies to civil rights enforcement and the training of civil rights personnel. The Office plans to develop common standards of investigation, and points to the adoption of EEOC's Uniform Employee Selection Procedures by several Federal agencies and their review of agency issuances of new regulations as evidence of such efforts. While these EEOC efforts should improve the enforcement of Federal civil rights requirements, ORS should strive to coordinate its activities with other agencies to the extent possible.

## CONCLUSIONS

Despite the legal mandate that the Secretary endeavor to enter into agreements with State and other Federal agencies, ORS has not been totally successful in developing and implementing such cooperative arrangements. ORS considers the agreements negotiated with 14 State agencies during 1975 and 1976 defunct. Aside from occasional case-specific contact between investigators, ORS and these agencies, excluding Massachusetts, have had little contact. Although agreements were negotiated with LEAA and OPM in 1979, limited use has been made of them.

Given the scarce staff resources devoted to civil rights compliance by the agency and the broad jurisdiction of the

Revenue Sharing Act, such cooperative agreements would serve to expedite complaint processing, avoid duplication of effort, and afford additional support to ORS' civil rights compliance activities. The knowledge that State agencies possess regarding the civil rights efforts of localities within their jurisdictions can be useful to ORS. Coordination with other Federal agencies whose civil rights mandates parallel those of ORS can assist in achieving a more comprehensive, concerted approach to Federal civil rights enforcement.

## RECOMMENDATIONS

We recommend that the Secretary of the Treasury require ORS to:

- --Actively seek to establish more cooperative agreements with State civil rights agencies, focusing on practical areas of cooperation such as information exchange, State assistance in monitoring compliance agreements, and mutual support for each other's compliance efforts.

- --Finalize the revised agreement with the Department of Justice and establish cooperative agreements with other Federal agencies whose civil rights mandates overlap with ORS'.

- --Implement the cooperative agreement with OPM and make greater use of the agreement with LEAA.

Improvement of current internal operating procedures and the extension of cooperative efforts with other government civil rights agencies should expedite complaint processing and reduce the current complaint backlog. However, if these problems persist after implementation of these recommendations, then the Secretary should seek to increase the size of ORS' investigative staff.

## AGENCY COMMENTS

The Department of the Treasury recognized ORS' statutory obligation to seek cooperative agreements with State and other Federal agencies, and it cited efforts taken to establish and implement such agreements. The Department said it intends to continue such efforts but expressed the belief that such steps would prove to be insignificant as far as workload is concerned. (See app. XIII.)

Our report recognizes that ORS has initiated steps to establish agreements with a number of Federal agencies, and it addresses the extent to which ORS is implementing its

current agreements with OPM and LEAA. (See pp. 32 to 34 and app. IV.) Unfortunately, ORS' attempts to establish or renegotiate cooperative agreements have been meager; perhaps due to ORS' belief that such agreements are of limited value.

The Department stated that some of the other agencies were less than enthusiastic about the establishment of agreements. However, most of the other Federal agencies commenting on the report recognized the potential benefit to be derived from such agreements. (See app. VII to XI.)

ORS has made no attempt to establish or renegotiate agreements with State agencies and cited some of the same reasons noted on page 27 for its inaction in this area. We continue to believe that such agreements can help alleviate some of ORS' problems and that ORS should aggressively seek to establish new and workable cooperative agreements (including the provisions stated on p. 29) with State and other Federal agencies. Should ORS determine that such agreements are not practicable, after diligent efforts and a reasonable trial period, the Department should seek to have the law amended.

The Department of Justice agreed with our findings concerning the benefits of a cooperative agreement between ORS and the Department (see app. VII), and it stated that officials are awaiting a response from ORS' Acting Chief Counsel so that they may mutually finalize and implement the agreement.

In addition, the Department of Justice noted in its comments of September 19, 1980, that an executive order was being developed by the Department's Civil Rights Division, the Office of Management and Budget, and the White House Domestic Policy Council which will change the manner in which Federal agencies have been coordinating the enforcement of civil rights statutes. That order, issued on November 2, 1980, as Executive Order 12250, makes the Attorney General responsible for ensuring that ORS, as well as other Federal departments and agencies, coordinate with each other and make effective use of cooperative agreements with other Federal enforcement departments and agencies and with State and local governments. The Attorney General also will be responsible for periodically evaluating implementation of the nondiscrimination provisions of laws covered by the Order, including the relevant requirements of the Revenue Sharing program. Former Executive Order 11764 also gave coordination responsibilities to the Attorney General, but that Order was viewed as covering only Title VI of the Civil Rights Act of 1964, not the Revenue Sharing program.

In commenting on our report, the Office of Personnel Management (OPM) stated that by means of OPM Operations Letters 150-207, dated April 17, 1980, and 150-219, dated June 24,

1980, it has now instituted necessary steps to implement the case monitoring aspects of the cooperative agreement between ORS and OPM. (See app. VIII.) In OPM Letter 150-207, OPM reported that it had received 40 cases of prefindings from ORS which represents the monitoring work proposed by ORS. OPM has selected 10 case studies for monitoring during calendar year 1980. Additional information pertinent to the cases selected was furnished by ORS and transmitted to the appropriate OPM regions on June 26, 1980. Two additional cases are currently being selected for monitoring by OPM's Eastern and Northwest Regions.

The Department of Housing and Urban Development acknowledged the mutual benefits derived and the usefulness of their current informal cooperative approach with ORS, and it stated that it looked forward to establishing a formal agreement with the Office. (See app. IX.)

Comments received from the Department of Education primarily addressed efforts between ORS and the former Department of Health, Education, and Welfare to negotiate a new cooperative agreement. (See app. X.) The new agreement has not been effectuated due to a number of questions which were left unresolved concerning a number of issues, such as conducting joint investigations, monitoring compliance agreements negotiated by the other agency, etc. Despite the lack of a new agreement, the Department of Education stated that it recognizes the importance of achieving effective coordination of Federal civil rights compliance efforts. Following discussions with ORS in 1978 and 1979, the Department concluded that the proposed agreement offered much promise in permitting both agencies to meet their enforcement responsibilities more efficiently and provide better coordination. Consequently, it strongly endorsed our recommendations pertaining to increased coordination between ORS and other agencies having civil rights compliance responsibilities.

The Equal Employment Opportunity Commission (EEOC) concurred with our assessment of the implementation of the Memorandum of Agreement betweem EEOC and ORS and agrees that its plans, under Executive Order 12067 (to provide leadership and coordination for all Federal equal employment opportunity programs), should improve enforcement of Federal civil rights requirements.

As part of its renegotiation effort of the 1974 Agreement, EEOC initiated several actions to determine the feasibility of entering into a more extensive cooperative agreement with ORS. (See app. XI.) EEOC has tentatively concluded that such an agreement is appropriate and should include, among other things, such features as exchange of complaint and compliance review schedules by ORS with EEOC district offices, availability of EEOC district office facilities to ORS investigators who are

doing field work, and provision of EEOC conducted training to ORS staff as well as joint work efforts to develop more detailed training modules that are specific to ORS program activities. EEOC also tentatively determined that features of the 1974 agreement which are burdensome to ORS' limited staff should be reexamined. EEOC expects a favorable outcome from these initiatives.

The Department of Health and Human Services reviewed our report and had no comments. (See app. XII.)

# CHAPTER 4

## CIVIL RIGHTS PROVISIONS HAVE CAUSED CHANGE, BUT IMPACT IS DIFFICULT TO MEASURE

Despite the problems experienced by ORS in administering the revenue sharing program's nondiscrimination provisions, it has achieved some major changes in recipient governments' employment practices and delivery of services. Although it is difficult to quantify ORS' impact on alleviating discriminatory practices, our review of a small selection of complaints showed that governments found to be in violation of the nondiscrimination provisions have taken corrective action. These actions included hiring women and minorities, establishing grievance procedures, and making facilities accessible to handicapped persons.

### ORS HAS HAD A POSITIVE IMPACT ON ALLEVIATING DISCRIMINATION

The impact of the nondiscrimination provisions of the Revenue Sharing Act was addressed to some extent in a November 1978 study by Peat, Marwick, Mitchell, and Company entitled "An Analysis of the Impact of General Revenue Sharing Compliance Requirements." The study surveyed 6 State and 34 local governments out of a total recipient government universe of about 39,000. Although the selection of jurisdictions provided an array of population, geography, type of government, and related characteristics, the approach did not provide statistically valid results; therefore, the results can only be generalized to the universe with care. The study showed that:

--The Revenue Sharing Act and the 1976 amendments, along with other Federal legislation, have had a powerful effect on requiring and enforcing affirmative action to eliminate discrimination at the State and local level. However, it was difficult to isolate the impact of revenue sharing from that of other Federal programs.

--Thirty-five of the 40 jurisdictions included in the study, nearly 90 percent, had an affirmative action plan which was a general indication of the jurisdiction's awareness of their responsibility to help end discrimination.

--Six jurisdictions reported altering personnel practices, and five cities reported changes in

service delivery as a result of civil rights complaints filed under revenue sharing.

--Racial minorities had been helped most by changes in personnel practices and service delivery. The handicapped, women, and the elderly had also been affected by changes in service delivery.

--Jurisdictions' strategies for complying with revenue sharing civil rights requirements had been based on the expectation that ORS would not likely take any action against them, and that should a complaint be filed, they could make the required change gradually with no real threat of losing revenue sharing funds.

The report noted that the broadening of civil rights and nondiscrimination efforts throughout the Federal Government had resulted in a number of regulations, much media interest, and the emergence of new or strengthened interest groups. Although these outcomes were not necessarily attributed to the general revenue sharing program, the symbolic importance of tying civil rights compliance regulations to a program affecting 39,000 jurisdictions and the cumulative effect of multiple agency enforcement efforts should not be underestimated. The report further stated that despite the difficulty in measuring the impact, compliance requirements had contributed to strengthening diligence and efforts in the area of civil rights. To reduce or eliminate these requirements would inadvertently symbolize a Federal withdrawal of strong commitment in this area.

On April 16, 1980, in testimony prepared for hearings by the House Subcommittee on Intergovernmental Relations and Human Resources, Committee on Government Operations, the Revenue Sharing Project Director of the Center for National Policy Review spoke briefly on the subject of ORS' impact on effecting civil rights compliance. He stated that ORS had taken initiatives in dealing with several major cases of noncompliance affecting large urban areas that give promise of reducing discrimination in public sector employment practices, and that could serve as a useful model for application to other jurisdictions. In a few cases, after lengthy negotiations, ORS had been able to achieve agreements calling for systemic changes in municipal employment to eliminate barriers that impeded the hiring and advancement of blacks, women, and Hispanic Americans. Such agreements had been reached in San Francisco, Baltimore, and Mobile.

Many such compliance agreements affecting large urban areas have also resulted from court decisions. Under the

1976 amendments, ORS is obligated to take enforcement action when it receives a holding of discrimination by a Federal or State court or a Federal administrative law judge. The Center for National Policy Review in its testimony mentioned this type of enforcement action as an important aspect of the agency's authority. The Center noted that unlike its previous position where ORS took a passive role towards holdings, ORS now recognizes its responsibilities under the law and has established a system to inform itself of holdings.

## CHANGES IN COMMUNITIES' EMPLOYMENT PRACTICES AND DELIVERY OF SERVICES HAVE BEEN ACHIEVED DUE TO ORS INVESTIGATIONS

ORS has alleviated discriminatory practices at the State and local levels. Through its investigations of discrimination complaints, ORS has been successful in achieving corrective action in many cases.

The Revenue Sharing Advisory Service's publication, A Digest of Office of Revenue Sharing Civil Rights Decisions 1977-1979, which illustrates the nature of complaints investigated as well as their resolutions, was designed to serve as a reference source for recipient governments. It includes digests of 200 cases which were filed and completed during the period from the 1976 amendments through September 1979. In addition to serving as a useful resource for recipient governments with respect to their obligations under the nondiscrimination provisions of the act, the publication outlines the procedures utilized by ORS in implementing these provisions.

As shown in table 8, out of the 200 cases ORS effected some type of corrective action in 81 (40.5 percent). Of the remaining 119 cases, ORS lacked jurisdiction or found no discrimination in 68 (34 percent); 15 (7.5 percent) were referred to other agencies or resolved by the courts or another agency; and 36 (18 percent) of the cases were withdrawn or otherwise closed.

Table 8

Civil Rights Case Decisions 1977-1979

| Case Results | Branches: Central | Western | Northeast | Southeast | Number | Percentages |
|---|---|---|---|---|---|---|
| Some type of corrective action achieved | 27 | 19 | 13 | 22 | 81 | 40.5 |
| No discrimination found | a/17.5 | 7 | 4 | 15 | 43.5 | 21.8 |
| ORS lacked jurisdiction | a/ 6.5 | 7 | 5 | 6 | 24.5 | 12.2 |
| Referred to another agency | 2 | -- | 1 | 2 | 5 | 2.5 |
| Resolved by the courts or another agency | -- | 2 | -- | 8 | 10 | 5.0 |
| Case withdrawn or otherwise closed | 8 | 13 | 6 | 9 | 36 | 18.0 |
| Totals | 61.0 | 48.0 | 29.0 | 62.0 | 200.0 | 100.0 |

a/In one case, employment and service allegations were made which resulted in two different resolutions.

Examples of corrective action achieved by ORS through case resolution include:

--Development/revision/adoption/implementation of affirmative action plans.

--Elimination of discriminatory pre-employment inquiries from employment application forms.

--Review and validation of employment tests to show job relatedness; elimination of height requirements for police officers.

--Formulation of personnel procedures to include recruitment methods, interview process, and promotional and training procedures.

--Awarding of back pay to employees; receipt of retroactive seniority.

--Amendment of sex restrictive job titles.

--Development of job announcement procedures.

--Provision of training and promotional opportunities and recruitment and hiring plans for women and minorities.

--Maintenance of records to document applicants and/or employees by race, sex, position, etc.

--Making buildings and facilities accessible to the handicapped.

--Implementation of plans to improve services and facilities in minority areas such as paving streets, upgrading parks and playgrounds, etc.

Our review of 15 discrimination complaints showed that ORS had effected changes in jurisdictions' employment practices or delivery of services. As shown in the following table, some of these changes included hiring and more pay for individuals; development of plans for recruitment, training and promotion of women and minorities; establishment of grievance procedures; validation of employee selection procedures; and to benefit handicapped individuals, altering facilities to eliminate barriers and adding facilities such as access ramps to make public buildings more accessible.

Table 9

Cases Reviewed by GAO to Ascertain Whether ORS is Effecting Changes in Communities' Employment and Service Delivery Practices

| | Jurisdiction | Beneficiary | Changes in employment or service delivery practices |
|---|---|---|---|
| | **Employment** | | |
| 1. | Lexington, Mississippi | Individual | Hired female police officer who received $8,000 settlement fee. |
| 2. | Eddy County, New Mexico | Individual | Female received additional compensation she was entitled to; pay standards for County and Deputy Assessor established. |
| 3. | Hutchinson, Kansas | Class - Female | Two female police officers hired and more women are now in managerial, technical, and professional jobs. |
| 4. | Houston, Texas | Class - Hispanic | Houston has begun publicizing its revised Fire Department standards in minority communities; agreed to contact three Hispanic applicants who previously applied for employment and ask them to reapply. |
| 5. | Aurora, Colorado | Individual | Hired complainant as a police officer and provided back pay and seniority. Jurisdiction agreed to prescribe rules and regulations relative to visual acuity; agreed to endeavor to validate its visual acuity regulations. |
| 6. | Salinas, California | Individual/ Class - Hispanic | Claimant promoted to lieutenant retroactively with back pay, benefits, seniority, and costs of action and attorney fees. |

| | Jurisdiction | Beneficiary | Changes in employment or service delivery practices |
|---|---|---|---|
| 7. | Fresno, California | Individual Black | Claimant promoted to First Assistant Fire Chief retroactively with corresponding rights and benefits and given compensation of $18,891 plus $10,000 for attorney fees. Settlement was made contingent upon claimant's retirement. |
| 8. | San Francisco, California | Class - Hispanic | Jurisdiction has partially met requirements of compliance agreement; i.e., preparation of citywide and departmental affirmative action plan; and entrance/promotion examination plan; a comprehensive utilization analysis; a bilingual needs assessment; and an in-house grievance procedure. The second phase of the agreement--validation of employment testing procedures--has not yet been completed. |
| 9. | Pasco County, Florida | Individual - Primary<br>Class - Secondary | Claimant paid retroactively plus benefits and attorney fees. Her personnel file was cleared of references to her involvement in women's rights organizations. Satisfactory employment references were prepared. The jurisdiction has taken action to discontinue the assignment of clerical duties to its female professional and technical staff. |
| 10. | Durham, North Carolina | Individuals - 2<br>Class - Female | Jurisdiction made offers of employment to the two individuals. Jurisdiction advised to (1) develop and implement standards for evaluating |

| | Jurisdiction | Beneficiary | Changes in employment or service delivery practices |
|---|---|---|---|
| | | | recruits, (2) remove termination justification from complainant's personnel file, (3) develop and implement methods for recruitment of women for employment in all positions in the City, and (4) develop comprehensive plan to provide training and promotional opportunities to women and minorities. |
| | Service | | |
| 11. | Elmwood Place Village, Ohio | Class - Handicap | Jurisdiction removed fence which served as a barrier to entering Village. |
| 12. | New Augusta, Mississippi | Class - Blacks | The jurisdiction corrected deficiencies noted in storm drainage services, but did not take the corrective action required regarding fire protection and street paving. Funds were suspended effective April 1980. |
| 13. | Berks County, Pennsylvannia | Class - Handicap | Jurisdiction has engaged engineering firm to design plans to improve lavatory facilities. Ramps to Courthouse must be nonslip surface and lighting provided if ramp is used during evenings. (Also, in employment matters the jurisdiction agreed to change the employment application forms). |

| | Jurisdiction | Beneficiary | Changes in employment or service delivery practices |
|---|---|---|---|
| 14. | Sparta, Georgia | Class - Blacks | Jurisdiction is improving street paving, drainage, street lighting, water and sewer service, and fire protection. |
| 15. | Washington, D.C. | Class - 2--Handicap, Foreign speaking | D.C. Police Department will provide interpreters for deaf and foreign speaking persons attending traffic school. |

## CONCLUSIONS

Despite the problems encountered by ORS in administering and enforcing the nondiscrimination provisions of the act, ORS has generally been successful in resolving discrimination complaints. Although it is difficult to quantify ORS' impact, its efforts have effected changes in jurisdictions' employment practices and delivery of services.

## AGENCY COMMENTS

The Department of the Treasury stated that, in some ways, the report title as well as the findings of chapters 2 and 3 contradict the findings of this chapter. We disagree. ORS' efficiency and effectiveness in resolving complaints has certainly been hindered by the problems discussed in the previous chapters. Nevertheless, this does not preclude ORS from successfully resolving many of the complaints filed with the Office.

## STAGES OF A DISCRIMINATION COMPLAINT

1. Complaint Received - If a complaint is under ORS jurisdiction, a notification letter is sent to the government in question and the complainant. Letters should be mailed within 36 hours of receipt of complaint.

2. Case Assignment - On the basis of the location of the government in question, the case goes to a branch supervisor who examines the case and assigns it to an investigator. The investigator determines documents necessary for investigation, telephones the jurisdiction to request data, and follows up with an interrogatory letter. Jurisdiction has 15 days to respond to this letter.

3. Field Investigation and Case Analysis - Investigator analyzes data received and determines the need for a field investigation. Within 15 days after the field visit, the investigator should prepare an analysis and submit the case to the supervisor for review. If there is no evidence of noncompliance, a closure letter is sent to the jurisdiction and other interested parties. If noncompliance is found, a pre-finding letter is issued.

4. Pre-finding Letter (Signed by Civil Rights Manager) - This letter notifies the jurisdiction that there is evidence of violation of Section 122 (a) of the Revenue Sharing Act and outlines required actions for compliance. Jurisdiction has 15 days to respond to the pre-finding letter. If jurisdiction comes into compliance, case is closed.

5. Finding Letter (Signed by ORS Director) - If the jurisdiction does not respond or responds inadequately, a finding letter is issued reiterating violations cited in the pre-finding letter and requesting the jurisdiction to respond within 30 days. If jurisdiction achieves compliance, case is closed.

6. Determination Letter (Signed by ORS Director) - If the jurisdiction does not respond to the finding letter or does not negotiate a compliance agreement, ORS issues a letter stating ORS has determined that such a government has failed to comply with Section 122 (a), citing reasons therefor and noting that further payment of funds will be suspended within 10 days unless such government enters into a compliance agreement or requests an administrative hearing. If the case goes to a hearing, the case is turned over to the ORS Chief Counsel.

APPENDIX II

OFFICE OF THE SECRETARY OF THE TREASURY

OFFICE OF REVENUE SHARING
2401 E STREET, N.W.
COLUMBIA PLAZA HIGHRISE
WASHINGTON, D.C. 20226

MEMORANDUM OF AGREEMENT BETWEEN
THE DIRECTOR, OFFICE OF REVENUE SHARING
AND
THE CONNECTICUT COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES

With Regard to the Achievement of Compliance with the Nondiscrimination Provisions of Title I of the State and Local Fiscal Assistance Act of 1972

1. Title I of the State and Local Fiscal Assistance Act of 1972 (hereinafter referred to as the "Act") and Regulations of the Office of Revenue Sharing (ORS) provide that no person in the United States shall, on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with entitlement funds made available pursuant to subtitle A of Title I of the Act.

2. The State of Connecticut and its local governments are recipients of such entitlement funds. They are obligated to comply with the nondiscrimination requirements of the Act, and to insure that secondary recipients and contractors receiving general revenue sharing funds do not discriminate in the use of such monies.

3. The State of Connecticut has a Human Rights and Opportunities Commission (HROC) duly established under State Law with responsibilities to eliminate discrimination similar to those of the Act, which has been designated a "706 agency" by the Equal Employment Opportunity Commission.

4. It is in the mutual interest of ORS and HROC to reduce duplication of effort and promote information exchange so as to maximize the achievement of nondiscrimination in the use of general revenue sharing funds in the State by recipient governments, their secondary recipients and contractors.

THEREFORE, THE PARTIES TO THIS MEMORANDUM DO AGREE:

A. The ORS will advise the HROC regularly of all recipients of entitlement funds, including the details of each funding action and of all complaints received by it alleging discrimination in the use of general revenue sharing funds in the State by recipient governments, their secondary recipients, or their contractors.

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B. The HROC, in the course of its ongoing monitoring and enforcement activities, shall extend such activities to include review of compliance with the Act. When, in the conduct of these activities, it has reason to believe that a recipient government, a secondary recipient, or a contractor may be in noncompliance with the Act, it shall notify the ORS immediately. Such notice shall be considered a complaint to the ORS, which shall proceed according to established procedures.

C. If the ORS determines that a compliance review is warranted in the State, it may request the HROC to conduct such review on its behalf. The HROC will advise ORS promptly if it is unable to respond to the request. Otherwise, the HROC will undertake and complete such a review within 30 calendar days from receipt of such a request, and will promptly render a report of its findings to ORS.

D. The ORS will give the findings of the HROC substantial weight in its determination of whether the recipient government is in compliance with the Act. A determination by HROC will not preclude the ORS from making a separate determination. Likewise, a determination by ORS will not preclude the HROC from making a separate determination with respect to State statutes and other laws under its jurisdiction.

E. If the ORS determines that the recipient government is in noncompliance with the Act, it shall notify the Governor, as provided by the Regulations of ORS, requesting the Governor to take action to secure voluntary compliance with the Act within a reasonable time not to exceed 60 days. A copy of such notice shall be furnished to the HROC. Nothing contained herein shall preclude the HROC from instituting further efforts to gain compliance with its own State statutes and other laws under its jurisdiction.

F. Should the 60 day period expire or the Governor advise of his or her failure to obtain compliance, ORS will give consideration to the fact that the voluntary compliance efforts of HROC have failed with respect to such recipient and will proceed under subpart (f) of the Regulations.

G. ORS shall notify HROC in advance of any civil rights compliance reviews to be conducted by its own staff in the State, so as to achieve mutual coordination and cooperation. HROC will periodically advise ORS of monitoring and enforcement activities in which instances of noncompliance were not found.

H. In the course of its conduct of compliance reviews on behalf of ORS, HROC will keep ORS informed of its progress and will provide copies to ORS of all relevant documents. "Relevant documents" shall not include conciliation material, disclosure of which is prohibited by Connecticut State law. Likewise, ORS will provide copies of all relevant information dealing with open cases of noncompliance of recipient governments and secondary recipients in the State to the HROC.

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I. ORS and HROC shall conduct periodic reviews of the implementation of this agreement and shall, on an ongoing basis, continue efforts to develop consistent systems, procedures and standards in furtherance of the purposes of this agreement.

J. Both parties agree to preserve and protect the confidentiality of information including names of complainants obtained by one from the other, unless disclosure and further dissemination of the information with third parties is specifically authorized by the agency originating the data, or unless such information is used in enforcement activities by either party under their respective laws.

K. This agreement may be terminated upon thirty (30) days notice by either party to the other.

SIGNED:

| | |
|---|---|
| ARTHUR L. GREEN, EXECUTIVE DIRECTOR<br>CONNECTICUT COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES | GRAHAM W. WATT, DIRECTOR<br>OFFICE OF REVENUE SHARING<br>DEPARTMENT OF THE TREASURY |
| DATE: May 2, 1975 | DATE: May 2, 1975 |

Implementation of ORS - State Agency Agreements

| | State agency | Date agreement signed | Implementation of agreement | Current relationship with ORS | Status of agreement (State Perspective) |
|---|---|---|---|---|---|
| 1. | Alaska Commission for Human Rights | 9/27/75 | --Investigated the only complaint ORS has received from Alaska; State findings were adopted. | Have been no other complaints, so no recent interaction. | Active |
| 2. | Connecticut Commission on Human Rights and Opportunities | 5/08/75 | --Investigated 24 complaints transmitted by ORS; ORS disagreed with State findings in only 4 cases.<br>--In early years, ORS would inform State of complaints received and investigations they planned to conduct.<br>--Assisted jurisdictions in effecting corrective action mandated by ORS. | May be some informal contact with ORS investigators; no formal contact. | No longer active |
| 3. | Delaware Human Relations Commission | 7/28/75 | --Former Director had used agreement as leverage in gaining voluntary compliance. | Not aware of any investigator contact. | No longer active |



APPENDIX III

Implementation of ORS - State Agency Agreements

| | State agency | Date agreement signed | Implementation of agreement | Current relationship with ORS | Status of agreement (State Perspective) |
|---|---|---|---|---|---|
| 4. | District of Columbia Office of Human Rights | 7/15/75 | --Agreement was never implemented. | No contact between ORS and agency. | Not active |
| 5. | Illinois Fair Employment Practices Commission | 7/15/75 | --Agreement was not implemented. | Not aware of any contact between investigators. | Not active |
| 6. | Maine Human Relations Commission | 7/15/75 | --State filed a complaint with ORS; ORS investigated and issued a finding. | No recent involvement. | No longer active |
| 7. | Maryland Commission on Human Relations | 4/28/75 | --State had referred some complaints; ORS transmitted complaints to State for investigation.<br>--Until 2 years ago, State received copies of ORS determination letters; advised of complaints received by ORS; had meetings regarding implementation of agreement.<br>--One complaint transmitted by ORS in 4/76 was returned in 1/80 due to lack of State authority to obtain information. | May be some investigator contact. | No longer active |



APPENDIX III

Implementation of ORS - State Agency Agreements

| State agency | Date agreement signed | Implementation of agreement | Current relationship with ORS | Status of agreement (State Perspective) |
|---|---|---|---|---|
| 8. Massachusetts Commission against Discrimination | 11/10/75 | --Not implemented until 1977, when State initiated its Civil Rights Review Program.<br>--ORS leverage has helped State resolve cases.<br>--ORS investigated certain complaints at the request of the State. | Investigators routinely contact each other for information. ORS sends copies of pre-finding letters to State agency. Agency assists jurisdiction in implementing corrective action required. | Active |
| 9. Minnesota Department of Human Rights | 7/01/75 | --No information on whether agreement was implemented. | None. | State terminated agreement |
| 10. Ohio Civil Rights Commission | 7/21/75 | --No information on whether agreement was implemented. | May be some informal contact between investigators. | No longer active |
| 11. South Carolina Human Affairs Commission | 9/05/75 | --ORS informed State of complaints received and plans for investigation.<br>--Investigators would exchange information.<br>--ORS transmitted 6 complaints to State for investigation in 1976; State returned cases and findings in 1978 and 1979; ORS adopted State's findings. | Not aware of any recent contact between investigators. | State terminated agreement |
| 12. South Dakota Division of Human Rights | 5/16/75 | --In 1976, ORS requested State to investigate a complaint which had been filed with both agencies. ORS adopted the State's findings. | Recently, ORS and State received the same complaint but came to opposite conclusions. State feels that communication could have avoided resultant awkwardness. | No longer active |



APPENDIX III

Implementation of ORS - State Agency Agreements

| | State agency | Date agreement signed | Implementation of agreement | Current relationship with ORS | Status of agreement (State Perspective) |
|---|---|---|---|---|---|
| 13. | West Virginia Human Rights Commission | 7/15/75 | --During early years, ORS notified State of all complaints received.<br>--ORS still forwards copies of determination letters.<br>--ORS leverage helped State resolve cases. | Investigators exchange information. | No longer active |
| 14. | Wyoming Fair Employment Practices Commission | 4/23/76 | --State investigated and forwarded findings to ORS of a complaint filed with both agencies. ORS adopted State findings.<br>--A second complaint received by both agencies was investigated by ORS. ORS sent State a copy of its findings but refused to send investigative information, and State had to make separate investigation. | No current relationship. | No longer active |



APPENDIX III

Implementation of ORS - Federal Agency Agreements

| | Agency | Date agreement signed | Implementation of agreement | Current relationship with ORS | Status of agreement |
|---|---|---|---|---|---|
| 1. | Office of Personnel Management | 8/79 | --Steps have been instituted to implement the case monitoring aspects of the agreement. | During 1980, OPM selected 10 cases for monitoring, and ORS provided pertinent case information. | Active |
| 2. | Law Enforcement Assistance Administration | 2/79 | --LEAA has deferred some complaint investigations to ORS; occasionally adopting ORS findings.<br>--Investigators contact each other for information.<br>--ORS and LEAA exchange computer printouts of complaints received and actions in progress.<br>--LEAA regularly forwards findings to ORS; ORS does not routinely do so.<br>--Occasionally provide written support for each other's findings.<br>--Have made two joint investigations. | Relationship has remained basically informal. | Active |
| 3. | Equal Employment Opportunity Commission | 10/74 | --EEOC still responds to requests for information from auditors conducting revenue sharing audits.<br>--Some district offices send ORS notice of findings of noncompliance. | Investigators sometimes exchange information. | ORS considers agreement defunct; EEOC still considers it active.<br><br>ORS has approached EEOC regarding revisions. EEOC has taken action to determine the feasibility of entering into a more extensive cooperative agreement. |



APPENDIX IV

Implementation of ORS - Federal Agency Agreements

| Agency | Date agreement signed | Implementation of agreement | Current relationship with ORS | Status of agreement |
|---|---|---|---|---|
| 4. Department of Health, Education, and Welfare, Office for Civil Rights | 5/75 | --Agreement was generally not implemented. | Some contact between investigators for investigative information. HEW refers complaints to ORS when it lacks jurisdiction. | Not active |
| 5. Department of Justice, Civil Rights Division | 9/75 | --Department of Justice notifies ORS of compliance reviews.<br>--ORS and Justice decide matter of jurisdiction when a complaint is filed with both agencies. | Department of Justice maintains close contact with ORS Chief Counsel during an investigation; notifies ORS of outcome. Responsible for representing ORS when suit is brought against ORS. | Agreement is currently being renegotiated. |



APPENDIX IV

APPENDIX V

AGREEMENT OF COOPERATION
BETWEEN THE OFFICE OF REVENUE SHARING
DEPARTMENT OF THE TREASURY
AND
OFFICE OF PERSONNEL MANAGEMENT

The Office of Revenue Sharing, Department of the Treasury ("ORS"), and the Office of Personnel Management ("OPM"), hereby agree to take the actions set forth in this Agreement to achieve a consistent Federal equal employment opportunity policy toward State and local governments, and to enforce compliance with the nondiscrimination requirements of the State and Local Fiscal Assistance Act of 1972, as amended (31 U.S.C. 1242), and Title II of the Public Works Employment Act of 1976, as amended (42 U.S.C. 6727).

1. (a) The OPM will assist ORS in coordination with any interested State agencies in each of the ten (10) OPM regions to monitor the implementation of personnel system changes made pursuant to a Compliance Agreement between the ORS and a State or local government under 31 U.S.C. 1242 and 42 U.S.C. 6727. The purpose of such assistance is to determine whether a State or local government is fulfilling its obligations under such Compliance Agreement in accordance with applicable equal employment opportunity law.

(b) The monitoring of a Compliance Agreement shall include, but is not limited to, the review of interim reports submitted to ORS, and the on-site investigation of such policies and practices of the local government as are within the scope of the Compliance Agreement.

(c) A schedule for monitoring selected Compliance Agreements shall be established by ORS and the OPM, and if feasible, shall include ten (10) to twenty (20) local governments annually.

2. OPM regional offices will, upon request, provide technical assistance to ORS on the issue of whether any changes in the employment practices of the State and local government that may be required by a Compliance Agreement for the purpose of remedying any illegal discrimination found by ORS, are the most appropriate in terms of consistency with merit principles, standards and regulations. The OPM will provide such assistance to the extent practicable. ORS recognizes that OPM could be most helpful in commenting on the appropriateness of required changes in employment practices if requests for technical assistance came prior to ORS entering into an agreement.

3. The OPM will provide available technical materials, such as instructional and training manuals, to ORS for use by community groups to assist them in monitoring Compliance Agreements between the ORS and

State and local governments. To the extent practical, technical assistance and training will be provided to such groups by the OPM. Any training provided pursuant to this paragraph shall be consistent with policies and guidelines adopted by the Equal Employment Opportunity Commission, pursuant to the Executive Order No. 12067, and the statutes and regulations administered by the ORS.

4. The OPM will provide, upon request, any available evaluations by the OPM of whether there is equal employment opportunity in a State or local government's policies and practices.

5. ORS will provide the OPM with the names of all State and local governments which have entered into a Compliance Agreement with the ORS. Additional information with respect to such Compliance Agreements shall be provided by ORS, to the extent practicable, upon request of the OPM.

6. The ORS and the OPM will consult with respect to further steps to promote the purposes of this Agreement.

7. This Agreement may be terminated by either the ORS or the OPM upon notice to the other party.

8/8/79
(Date)

Bernadine Denning
Director
Office of Revenue Sharing
Department of the Treasury

7/20/79
(Date)

Norman Beckman
Assistant Director for Intergovernmental
Personnel Programs
Office of Personnel Management

APPENDIX VI

INTER-AGENCY AGREEMENT

BETWEEN THE

OFFICE OF REVENUE SHARING, DEPARTMENT OF THE TREASURY

AND

LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

Because it is in the mutual interest of the Office of Revenue Sharing, Department of the Treasury, and the Office of Civil Rights Compliance, Law Enforcement Assistance Administration, to assist each other in carrying out the purposes of the nondiscrimination provisions of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3701, et seq., (Crime Control Act), the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5601, et seq., (Juvenile Justice Act), and the State and Local Fiscal Assistance Act of 1972, as amended, 31 U.S.C. 1221, et seq., (Revenue Sharing Act), each agency agrees with respect to the other:

1. To furnish data, records or investigative and other files upon request, including, but not limited to, information gathered pursuant to 28 C.F.R. 42.301, et seq., and 31 C.F.R. 51.50, et seq.

2. To exchange and share computer print-outs on actions in progress on a quarterly basis.

APPENDIX VI

3. To furnish program divisions' annual enforcement plans and other planning documents which indicate investigative priorities and objectives.

4. To protect the confidentiality of complainants unless specifically authorized to disclose same.

5. To meet at least quarterly and as otherwise needed to discuss implementation of this Agreement.

6. To designate a specific person within each agency to attend said meetings and maintain interim liaison.

7. To provide notice on a monthly basis of receipt and nature of complaints alleging illegal discrimination within the other's jurisdiction.

8. To share civil rights enforcement personnel and resources and to support and coordinate enforcement activities and efforts in appropriate cases.

9. To conduct joint investigations where practical.

10. To accord the other's findings, whether as a result of complaint investigation or compliance review, due consideration in its determination of the recipient's compliance or noncompliance, provided that a determination by one agency shall not preclude the other from making a separate determination of compliance or noncompliance with respect to laws under its jurisdiction.

11. To determine the lead agency responsible for processing, investigating and settling complaints filed with both agencies after consideration of:

(a) governing timetables

(b) initial receipt

(c) agency experience

(d) staff resources

APPENDIX VI

12. To provide a listing of all current compliance agreements upon request.

13. To assist each other in monitoring compliance with such agreements during new investigation of affected recipients.

14. To coordinate compliance reviews to avoid duplication of efforts, and upon request, to conduct joint compliance reviews where practical.

15. To provide copies of any findings of illegal discrimination (issued after opportunity for a hearing consistent with the Administrative Procedures Act) made by a Federal, State, or local administrative agency, Federal or State court, or Federal administrative law judge against a recipient and to take appropriate action as authorized or required by the Crime Control Act, Juvenile Justice Act, or the Revenue Sharing Act.

16. To provide immediate notification of any formal administrative actions instituted against a recipient alleging a violation of any Federal civil rights statute or regulations and to take appropriate action as authorized or required by the Crime Control Act, Juvenile Justice Act, or the Revenue Sharing Act.

17. To provide appropriate and timely written documents such as letters to recipients expressing support for the enforcement efforts of the other agency.

18. To review and evaluate this agreement one year after its execution.

Bernadine Denning, Director
Office of Revenue Sharing
Department of the Treasury

Henry S. Dogin, Deputy Administrator
for Policy Development
Law Enforcement Assistance Administration
Department of Justice

Sworn Before me This Seventh of February 1977
Jacqueline L. Jackson
Notary Public

**U.S. Department of Justice**

*Washington, D.C. 20530*

SEP 1 1980

Mr. William J. Anderson
Director
General Government Division
United States Government Accounting Office
Washington, D.C. 20548

Dear Mr. Anderson:

This letter is in response to your request to the Attorney General for the comments of the Department of Justice on your draft report entitled "The 1976 Amendments of the Revenue Sharing Act Have Had Little Impact on Improving the Administration and Enforcement of the Nondiscrimination Provisions."

In general, the draft report does a good job of portraying a civil rights operation and accurately depicts many of the problems encountered. Some of the problems are often symptomatic of an understaffed office that has regulatory time frames imposed on it.

Portions of the draft report discuss matters relating to the Department of Justice's Civil Rights Division. Specifically, the report refers to the Civil Rights Division's efforts to negotiate a revised memorandum of understanding with the Office of Revenue Sharing (ORS) which would establish cooperative relationships regarding Civil Rights Division litigation and ORS investigations. We agree with the statement made by GAO that such an agreement would be "beneficial to ORS because ORS does not have a legal staff large enough to handle cases involving large cities."

Officials of the Civil Rights Division met with ORS two or three times over the past 3 years and the subject of a memorandum of understanding has been discussed and the language largely agreed upon. A draft of the memorandum of understanding has been under review by ORS for several months, and we are awaiting a response from ORC's Acting Chief Counsel so that we may mutually finalize and implement the agreement.

Presently, Executive Order 11764, which gives coordination authority to the Department of Justice for Title VI of the Civil Rights Act of 1964, is viewed as not covering the revenue sharing program. However, we would like to point out that the Civil Rights Division is presently working with the Office of Management and Budget and the White House Domestic Policy Council in the promulgation of an Executive order which would give the Department of Justice coordination authority for Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, and other civil rights statutes, including a stronger coordination role for Title VI of the Civil Rights Act of 1964. The President is expected to sign the Executive order before the end of the year.

The proposed Executive order will change the manner in which Federal departments and agencies have been enforcing civil rights statutes covering Federal financial assistance. Under the proposed Executive order, the Civil Rights Division would be responsible for ensuring that ORS, as well as other Federal departments and agencies, made effective use of cooperative agreements with other Federal enforcement departments and agencies and with State and local governments. The new Executive order would undoubtedly impact on a number of the issues raised by GAO in this report and, as a consequence, GAO may wish to comment in their final report on the purpose, scope and anticipated benefits in civil rights enforcement to be achieved by the order.

The draft report also makes reference to the cooperative agreement between the Law Enforcement Assistance Administration (LEAA) and ORS. The specific issues pointed out in the report appear to be factual and we have no comments to offer. There is one statistical error on page 31 regarding joint investigations. The draft report states that LEAA and ORS "have made only one joint investigation." We believe the report has reference to the Bridgeport Police Department investigation, which was a rather extensive endeavor. There was a second major joint investigation conducted in December 1977 involving the Mobile Police Department. Two investigators, one from ORS and the other from LEAA, conducted the investigation. It was successfully resolved in June 1979. Nevertheless, we agree with GAO's point that joint investigations have not been done as often as they could or should have been done.

We appreciate the opportunity to comment on the draft report. Should you desire any additional information, please feel free to contact me.

Sincerely,

Kevin D. Rooney

Kevin D. Rooney
Assistant Attorney General
for Administration

APPENDIX VIII

United States of America
**Office of Personnel Management**

Office of Intergovernmental
Personnel Programs
P.O. Box 14184
Washington, D.C. 20044

In Reply Refer To:

Your Reference:

SEP 23 1980

Mr. H.L. Krieger
Director
Federal Personnel Compensation
Division
U.S. General Accounting Office
Washington, D.C. 20548

SEP 15 1980

Dear Mr. Krieger:

Thank you for giving us an opportunity to review the draft report which evaluates the Office of Revenue Sharing's administration and enforcement of the nondiscrimination provisions of the 1972 Revenue Sharing Act, as amended. Although the draft report, "The 1976 Amendments of the Revenue Sharing Act Have Had Little Impact on Improving the Administration and Enforcement of the Nondiscrimination Provisions," does not contain any recommendations for the U.S. Office of Personnel Management (OPM), we are pleased to share information on the cooperative efforts of OPM with the Office of Revenue Sharing referred to in the report.

When discussions were initiated with the Office of Revenue Sharing (ORS) about ways that OPM might help ORS carry out its civil rights compliance responsibilities, it was done with the following thoughts in mind:

- The Office of Intergovernmental Personnel Programs represents a source of experience in working with and understanding State and local government concerns. This background and experience has been gained through the administration of the Intergovernmental Personnel Act since 1971, and particularly, the Merit System Standards whose program history reaches back to 1939. We felt such experience could prove helpful to ORS.

- It became increasingly clear that a need existed to achieve a consistent Federal equal employment opportunity policy toward State and local governments, in order to eliminate the problems of different representatives of the Federal Government placing conflicting requirements on State and local governments.

- Under the IPA program we have had good success in stimulating equal employment opportunity among State and local grant-aided agencies and State and local merit system agencies. For example, as early as 1975 all State grant-aided agencies had developed affirmative action plans. Similarly State merit system agencies had developed affirmative action plans for the provision of services to grant-aided agencies. Also, our statistical information shows a steady improvement over the years in the overall EEO posture of State grant-aided agencies. With these experiences and accomplishments we felt we could beneficially assist ORS' civil rights efforts.

- Although being willing to assist and support ORS' efforts to enforce compliance with the program's nondiscrimination requirements, we face a very serious restriction of resources which precludes the kind of extensive cooperation and assistance that could be extended if additional funding were available, or a reimbursable technical assistance agreement was established.

On August 8, 1979, I signed an Agreement of Cooperation with the Office of Revenue Sharing. Our primary role in carrying out the Agreement of Cooperation is to monitor the implementation of personnel system changes made pursuant to a Compliance Agreement between ORS and a State or local government. The purposes of the monitoring, to be accomplished in coordination with ORS and any interested State agencies, are to determine whether the State or local government is fulfilling its obligations under the Compliance Agreement in accordance with applicable EEO law and merit principles and to assist affected jurisdictions to improve EEO programs.

Currently, OPM has instituted the steps necessary to implement the case monitoring aspects of the agreement into ongoing administration and without funding support. This was done by means of Operations Letters 150-207, dated April 17, 1980, and 150-219, dated June 24, 1980 (copies enclosed). Ten case studies were selected for monitoring in calendar year 1980 by eight of the ten regions and the central office (see attachment (A) to O.L. 150-219), and, additional information pertinent to the cases selected, furnished by ORS, was transmitted on June 26, 1980. Two additional cases, one each by the Eastern and Northwest Regions, are currently in the process of being selected for monitoring.

OPM is also prepared to respond, within available resources, to any ORS requests for technical assistance and/or materials, as specified in the Agreement of Cooperation.

If you have any questions regarding our cooperative arrangements with ORS, we would be pleased to respond to them.

Sincerely,

Norman Beckman
Assistant Director for
Intergovernmental Personnel Programs

Enclosures

GAO note: We did not reproduce the enclosures in this report.

APPENDIX IX

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410

OFFICE OF THE
ASSISTANT SECRETARY FOR FAIR HOUSING
AND EQUAL OPPORTUNITY

September 12, 1980

Sep 17 1980

IN REPLY REFER TO:

Mr. Henry Eschwege
Director
Community and Economic Development Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Eschwege:

Thank you for the opportunity to comment on your recent draft report, "The 1976 Amendments of the Revenue Sharing Act Have Had Little Impact on Improving the Administration and Enforcement of the Nondiscrimination Provisions."

As you know, the Office of Fair Housing and Equal Opportunity and the Office of Revenue Sharing have established a mechanism for the informal exchange of information pertaining to our respective compliance and enforcement activities. We have found this cooperative approach to be quite useful and we look forward to working with the Office of Revenue Sharing to establish a formal agreement.

Convincing evidence regarding the benefit derived from supporting our mutual civil rights efforts is contained in the example cited on page 32, paragraph 3 of the report. Again, thank you for the opportunity to comment.

Sincerely,

Sterling Tucker
Assistant Secretary

APPENDIX X

UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

ASSISTANT SECRETARY
FOR CIVIL RIGHTS

OCT 2 [redacted]

Mr. Gregory J. Ahart
Director
Human Resources Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Ahart:

Secretary Hufstedler has asked me to thank you for your August 25 letter enclosing a proposed report which evaluates the enforcement of the nondiscrimination provisions of the State and Local Fiscal Assistance Act of 1972, as amended. The provisions are enforced by the Office of Revenue Sharing (ORS).

As you indicate, Chapter 3 of the report discusses coordination of these provisions with civil rights authorities administered by other Federal agencies. My comments are therefore directed at providing additional information regarding actions taken by ORS and the Office for Civil Rights (OCR), in the former Department of Health, Education, and Welfare, aimed at coordinating their respective compliance programs.

OCR and ORS entered into a memorandum of agreement on May 12, 1975. The substance of the agreement -- providing for exchange of information regarding Federal recipients and certain notification procedures -- is characterized correctly in the proposed report. However, Appendix IV of the report states the agreement was never implemented. This is not entirely accurate. In fact, one significant outcome of the agreement was an ORS initated action to ensure that Ferndale City (Michigan) School District did not receive revenue sharing funds following termination of Federal assistance by HEW.

In a letter dated October 12, 1978, ORS Director Bernadine Denning suggested the two agencies consider negotiating a new agreement. Presumably, ORS considered the existing agreement either invalid or meaningless in light of the 1976 amendments to the enabling legislation. Ms. Denning's letter also enclosed a list of suggested general provisions for such an agreement and requested the office's comments. A copy of the documents are enclosed for your reference.

APPENDIX X



Subsequently, these provisions were reviewed carefully by OCR senior staff. We found that several of them were identical to or expanded versions of provisions in the May 12, 1975, agreement. These included the exchange of information and notification procedures on the status of investigations and enforcement actions. However, the office also identified four provisions which extended beyond information sharing and notification procedures: 1) coordination and support during the investigative process (provision # 7); 2) joint investigations (provision # 8); 3) assigning lead responsibility for complaint processing (provision # 9); and 4) monitoring compliance agreements negotiated by the other agency (provision # 10).

In general, only minor adjustments in office procedures at headquarters and regional offices, without the need for additional resources, would have been required to implement the revised information sharing and notification procedures. However, several other proposals appeared to require either additional resources or the reallocation of existing staff. These included the provisions on complaint transfer and monitoring compliance agreements obtained by ORS.

In addition to staffing questions, there were other important issues raised by the proposed agreement. In OCR's judgment, they required careful attention before deciding whether an agreement was appropriate at that time. Some of the issues identified were: 1) whether the agreement should be restricted to certain classes of recipients and compliance matters; 2) roles of OCR and ORS in conducting joint investigation (including selection of recipients, planning, and responsibility for resolving findings of noncompliance); 3) extent of overlap regarding OCR and ORS recipients requiring compliance monitoring; 4) staff training and quality controls required for reciprocal compliance monitoring; 5) capability of the existing ORS compliance program (at the time there were only 42 employees, professional and clerical, in the ORS civil rights program); and 6) safeguards to ensure OCR would not default on meeting court order requirements and commitments contained in the agency's annual operating plan.

APPENDIX X



Finally, at the time OCR considered the new provisions, ORS was operating under interim civil rights regulations (Federal Register, April 6, 1977). Inasmuch as these regulations were being revised, the timing of execution for any new agreement was also discussed.

OCR and ORS discussed some of these issues in December 1978 and January 1979. Essentially, OCR concluded that the proposed agreement offered much promise in permitting both agencies to meet their enforcement responsibilities more efficiently and provide better coordination. While a new agreement was not effectuated, this office continues to recognize the importance of achieving effective coordination of Federal civil rights compliance efforts. Accordingly, we strongly endorse the recommendations of the GAO as they pertain to increasing coordination between ORS and other agencies with civil rights compliance responsibilities (pp.33-34).

Again, I want to thank you for allowing me to furnish these comments. I am sure the GAO's final report and recommendations will be helpful to all agencies charged with enforcing laws that prohibit discrimination in federally assisted programs and activities.

Sincerely,

Cynthia G. Brown

Enclosures

GAO note: We did not reproduce the enclosures in this report.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C. 20506

October 8, 1980

Mr. Gregory J. Ahart
Director
Human Resources Division
U. S. General Accounting Office
441 G Street, N. W.
Washington, D. C. 20548

Dear Mr. Ahart:

Thank you for this opportunity to respond to your draft of proposed report entitled: "The 1976 Amendments of the Revenue Sharing Act Have Had Little Impact on Improving the Administration and Enforcement of the Nondiscrimination Provisions".

In brief, we believe that your assessment of the operation and effectiveness of the 1974 Memorandum of Agreement between EEOC and ORS is accurate and have initiated contact with ORS, with the participation of staff from the Office of Management and Budget, to renegotiate the 1974 Agreement.

As part of this effort we have:

- Discussed the matter with the OMB budget examiners for ORS and EEOC.

- Provided a briefing for ORS personnel, which was conducted by EEOC's training staff, on how the Commission's Rapid Charge Processing system works and other aspects of our charge processing system.

- Received information from ORS on their active workload and compared it to EEOC's active and inactive files to determine if there is overlap. (Although our research is not complete at this point it appears that there is some overlap, i.e. ORS is carrying as uninvestigated some complaints which EEOC also received and resolved.)

- Initiated research by the legal staff of EEOC and ORS on the ramifications of entering into a more extensive Memorandum of Understanding under which some work division or work sharing could occur between EEOC and ORS on individual employment discrimination complaints.

- Outlined strategies for furtner discussions with the Department of Justice on revitalizing its referral mechanism for State and local litigation of employment discrimination complaints.

Our tentative conclusions are that:

- A more extensive agreement is appropriate and should include such features as:

  Exchange of complaint and compliance review schedule by ORS with EEOC District Offices.

  Continuation of the practice of sharing EEO-4 data with ORS.

  Each agency making its files available for inspection, copying and loan.

  Lending of EEOC District Office facilities to ORS investigators who are doing field work.

  EEOC should provide opportunities for ORS staff to participate in EEOC conducted training, and work jointly in developing more detailed training modules that are specific to ORS program activities.

  More extensive use of EEOC's charge status reports by ORS to identify complaints that have been received by both agencies.

  Some form of work sharing agreement.

- With respect to the October 1974 Agreement, our tentative conclusion is that those features which are burdensome on ORS's limited staff should be reexamined.

To date our discussions have been productive and we anticipate a favorable outcome.

Your recitation of EEOC's plans under Executive Order 12067 was accurate and we agree with your assessment that these plans should improve enforcement of Federal civil rights requirements. With respect to common standards, it is noteworthy that ORS in its Notice of Proposed Rulemaking published December 31, 1979 proposed to adopt EEOC's Guidelines on Sex, National Origin, Religion and Affirmative Action.

Sincerely yours,

Preston David
Executive Director

APPENDIX XII

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

OCT 3 [illegible]

Mr. Gregory J. Ahart
Director, Human Resources
Division
United States General
Accounting Office
Washington, D.C. 20548

Dear Mr. Ahart:

The Secretary has asked that I respond to your request of August 25, for our comments on your draft report entitled, "The 1976 Amendments of the Revenue Sharing Act Have Had Little Impact on Improving the Administration and Enforcement of the Nondiscrimination Provisions." We have carefully reviewed your report and have no comments.

Thank you for the opportunity to comment on this draft report before its publication.

Sincerely yours,

Richard B. Lowe III
Inspector General (Designate)

APPENDIX XIII

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

October 2, 1980

Dear Mr. Anderson:

I have reviewed the draft report prepared by the General Accounting Office (GAO) on the Office of Revenue Sharing's non-discrimination compliance efforts entitled "The 1976 Amendments to the Revenue Sharing Act Have Had Little Impact on Improving the Administration of the Non-discrimination Provisions." The Department of the Treasury's comments on this report are as follows:

1. Most of the draft report's observations are, in a strict sense, factually accurate. We accept as constructive a number of the suggestions for improvement. A number of these have been explored by the Office of Revenue Sharing--including self-initiated reviews, establishment of case-processing priorities, improved monitoring of closed cases, improving the civil rights case tracking system, initiation of cooperative agreements with other Federal agencies with civil rights enforcement responsibilities, and use of single-document compliance agreements. An improved monitoring-capability is now in place, although the draft report suggests otherwise on page 20. We intend to come to decisions soon in regard to the other possible changes in the Office's procedures.

2. Unfortunately, the draft report places too much emphasis on the existence of a case-processing backlog. Although the backlog is a matter of considerable concern to Treasury, its significance must be clearly understood. For example, a backlog should not be interpreted as an indicator of the productivity of the Office. The appropriate measure of productivity is the average time required to process a case, and even this measure must be used with care. Some types of cases require more time to resolve than others, and the mix of cases can change over time.

   A rising backlog can result from lagging productivity. More often, however, it reflects an imbalance between the inflow of cases and the resources available to process them. This, in fact, is the explanation for the rising backlog of civil-rights cases. The resources available to the Office have been relatively constant over the past several years, a period when the number of cases filed has soared. We believe that the rising volume of filings reflects the confidence of complainants in the capability of the Office of Revenue Sharing to provide constructive relief where complaints are determined to be justified.

APPENDIX XIII



Every effort is being made to reduce the time required to process individual cases. However, we are obligated to deal fairly with jurisdictions and complainants in these often-complicated cases. Further, we must often await the provision of information by jurisdictions. Both of these considerations contribute to the time it takes to process a case.

3. In some ways, the title of the report as well as the findings of chapters 2 and 3 contradict the findings of Chapter 4 that our efforts have had positive impacts. More emphasis could be given in the report to the favorable results achieved by the serious commitment of the Office of Revenue Sharing to its very difficult responsibilities for ensuring compliance with the non-discrimination requirements. This commitment has produced significant results despite very limited resources. In the final analysis, the resources available are the most important determinant of the success of the civil rights effort of the Office. Without an increase in staff, the case backlog will continue to exist, and may even increase further, despite recent progress in the implementation of management initiatives, which have been and will continue to be a major concern to us.

4. We do not feel that the recommendations for change offered by the report contribute many new ideas to the effort to improve the case-processing procedures. This comment applies especially to the draft report's acceptance of the conventional wisdom that more cooperative agreements with other Federal compliance agencies and with State human rights agencies will eliminate many of the problems. Little support is offered as to why this would be the case.

The Office Revenue Sharing has a statutory obligation to seek cooperative arrangements with other Federal agencies, and it intends to continue its efforts to do so. We also need to be more ready to make use of any help that may be available from other agencies in resolving cases. Nevertheless, it is not likely that these steps will have significant consequences for the workload. We have initiated efforts with a number of agencies to establish agreements, and are implementing those we now have with the Office of Personnel Management and the Law Enforcement Assistance Administration. In some instances, the other agencies are less than enthusiastic. They have limited resources, sometimes limited expertise, different expertise, or different statutory responsibilities--all of which often result in cooperative ventures not being of major concern to them.

As concerns agreements with State human-rights agencies, the problems confronted in dealing with Federal agencies are compounded. The State agencies are often very limited in resources, expertise, and authority. The Office has no ability to reimburse expenses, as the agencies on occasion expect in return for cooperation. Also, complainants lack confidence in some such agencies. Our experience with the cooperative agreements worked out with State agencies under the 1972 Revenue Sharing Act gives us strong reasons for doubting the effectiveness of this approach.

5. Pages 7 and 8 of the draft report suggest that the civil-rights tracking system is not effective because of the lack of computer terminals. This has not been a significant factor. We do feel that the system has considerable potential, and it will be strengthened as computer programming resources are available. Plans for such improvements are in place.

6. It is not clear why delay in the assignment of cases extends case-processing time (as suggested on page 13). This can occur only if one assumes that investigators are sitting and waiting for cases, which does not happen. It accomplishes nothing to assign cases to an investigator who already has more cases than he or she can handle at one time.

7. The draft report at several points suggests that single-document compliance agreements with recipients would be preferable to the current multi-document approval. While there are clear advantages to single-document agreements, the Office of Revenue Sharing does not feel that the legal and practical advantages of the approach are as clear as GAO indicates.

We appreciate this opportunity to comment on the draft report.

Sincerely,

Roger C. Altman
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(018450)



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