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BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

Federal Agencies' Block Grant Civil Rights Enforcement Efforts: A Status Report

The Omnibus Budget Reconciliation Act of 1981 consolidated numerous federal categorical assistance programs into nine block grants. The legislation shifted primary administrative responsibility for the grants to the states, and it provided states with broad programmatic and administrative authority. However, federal civil rights protections applicable to block grant programs are contained in existing civil rights statutes as well as in specific provisions of the Reconciliation Act, and unlike other dimensions of block grant administration, civil rights enforcement responsibilities have not been delegated to states.

The federal agencies that administer the block grants--Education, HHS, and HUD--remain responsible for enforcing the applicable civil rights provisions. With the exception of implementing specific Reconciliation Act provisions, such as sex and religious nondiscrimination protections, these agencies generally are applying the same civil rights enforcement policies and procedures to block grant programs and to categorical programs. However, HHS is planning a pilot study to increase state involvement, and HUD has assigned states primary responsibility for direct oversight of entities funded by states.

Before 1984, none of the agencies had conducted civil rights compliance reviews or compliant investigations focused on the block programs. Consequently, the agencies had not identified recipient compliance problems or encountered enforcement difficulties related to block grants. Therefore, GAO could not draw conclusions about civil rights compliance or enforcement problems in the block grant programs.

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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

Various committees of the Congress requested that the General Accounting Office review the implementation of the block grants established by the Omnibus Budget Reconciliation Act of 1981. Among other program aspects, we were asked to review enforcement of civil rights provisions applicable to the block grants.

This report provides information concerning the block grant civil rights enforcement policies and procedures of the three federal agencies that administer the programs. It is one of a series of reports we are issuing concerning block grants. Previous reports in the series have focused on program implementation in 13 selected states.

Copies of this report are being sent to the appropriate House and Senate committees; the Secretaries of Education, Health and Human Services, and Housing and Urban Development; the Director, Office of Management and Budget; the governors of the states included in our overall work; and other interested parties.

Charles A. Bowsher
Comptroller General
of the United States

COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

FEDERAL AGENCIES' BLOCK GRANT
CIVIL RIGHTS ENFORCEMENT
EFFORTS: A STATUS REPORT

D I G E S T

The Omnibus Budget Reconciliation Act of 1981 substantially changed various federal domestic assistance programs by consolidating numerous categorical programs into nine block grant programs and shifting primary administrative responsibilities to the states. This report focuses on enforcement of federal civil rights provisions applicable to these block programs. It is one of a series GAO is issuing to give the Congress a status report on block grant implementation.

CIVIL RIGHTS PROTECTIONS STEM FROM EXISTING STATUTES AND BLOCK GRANT LEGISLATION

The Department of Health and Human Services (HHS) administers seven of the nine block grant programs created by the 1981 Reconciliation Act; the Departments of Education and Housing and Urban Development (HUD) administer one each. The civil rights statutes applicable to these Departments' programs also apply to all the block grants. These provisions prohibit discrimination in (1) federally funded programs on the basis of race, color, national origin, age, handicap, or, in education programs, sex; and (2) housing, whether or not federally funded, on the basis of race, color, national origin, sex, or religion.

The 1981 Reconciliation Act reiterates many of these provisions and also contains additional civil rights provisions specific to the block grants. These include (1) prohibitions against discrimination on the basis of sex in six of the seven HHS block grants and on the basis of religion in four of them, (2) a requirement that HHS refer its findings of noncompliance to governors to allow them up to 60 days to obtain voluntary resolution before the Department proceeds with formal enforcement action, and (3) a requirement

that states applying for the HUD program certify they will conform to federal civil rights requirements and review their substate block grant recipients' (subrecipients') conformance with those requirements and that HUD review states' programs. (See pp. 1 and 16.)

EXISTING ENFORCEMENT RESPONSIBILITIES LARGELY UNCHANGED BUT STATE INVOLVEMENT DIFFERS AMONG AGENCIES

With the exception of the three provisions specific to the block grants, the Reconciliation Act generally did not contain provisions delineating federal or state civil rights enforcement responsibilities.

The federal agencies have retained responsibility for civil rights enforcement, including determining states' and subrecipients' civil rights compliance and undertaking formal enforcement actions. In doing so the agencies are continuing to carry out most traditional enforcement activities for block grants, especially complaint investigations and compliance reviews.

The extent of state involvement in block grant civil rights enforcement varies somewhat among agencies. Under HHS' and Education's financial assistance programs, states traditionally have been required to sign assurances that they and subrecipients will comply with civil rights laws but generally have not been required to be actively involved in federal civil rights enforcement. States are involved in enforcement, however, under some federal regulatory provisions or under state laws. This traditional role has not changed under the HHS or Education block grants, except that, as required by the Reconciliation Act, HHS will give governors an opportunity to obtain voluntary compliance acceptable to HHS.

States have not usually been involved in civil rights enforcement for HUD financial assistance programs. Under the Reconciliation Act's provision, however, states have an oversight role. That role has not altered the Department's responsibilities for determining recipients' civil rights compliance, but HUD

has changed the focus of some of the Department's oversight from the substate to the state level.

HHS' traditional approach augmented by block grant requirements

HHS has applied its traditional enforcement approach to block grant programs. HHS concluded that, under existing civil rights statutes, it could not delegate authority for making final determinations about civil rights compliance, but it could increase the states' role in complaint investigations and compliance reviews. It did not do so, however, because officials concluded that most states did not have the appropriate organization or sufficient resources dedicated to civil rights enforcement to carry out those responsibilities. To explore ways to increase state involvement in block grant civil rights enforcement, HHS is planning a pilot project. (See p. 13.)

HHS has not established unique policies or procedures for block grants other than for the block-specific legislative provisions. It has drafted regulations implementing the sex and religious nondiscrimination provisions. As of June 1984, the regulations had not been issued because they were under discussion with the Department of Justice which, under executive order, is responsible for coordinating agencies' civil rights regulations. Although HHS will investigate complaints alleging discrimination on the basis of sex or religion, until the regulations are issued HHS will provide limited technical assistance concerning these protections and will not conduct compliance reviews in these areas. (See p. 22.)

HUD establishes new state role but retains enforcement authority

HUD has not significantly changed its policies and procedures for investigating complaints and conducting compliance reviews and has retained authority for determining recipients' civil rights compliance. However, in implementing the Reconciliation Act provisions concerning state certification and review of

subrecipients, HUD has altered some aspects of its enforcement approach. For example, HUD shifted the focus of its technical assistance and monitoring activities from subrecipients to the state level, although it retained responsibility for assessing state and subrecipient compliance.

HUD also has given states some flexibility to interpret certain civil rights requirements, such as how to oversee subrecipients and what compliance-related records to keep. However, the states' flexibility was limited somewhat by the 1983 legislative amendments to the block grant program which established, and required HUD to establish, additional requirements for states concerning certain aspects of the program. For example, under the amendments, HUD must establish uniform recordkeeping and reporting requirements and the requirements under consideration include civil rights information. (See pp. 16 and 29.)

Education policies unchanged for block grant program

The Reconciliation Act did not include any specific civil rights provisions for the Education block grant, and according to officials, Education therefore has not established any specific block grant civil rights policies or procedures concerning either state or federal enforcement roles. Entities often receive funds from a variety of federal categorical programs, as well as the block grant, and accordingly, Education's enforcement activities usually do not focus on individual programs or specific sources of funds. Education's enforcement activities have historically addressed broad aspects of an entity's activities, such as classroom assignments or student discipline. (See pp. 20 and 35.)

LIMITED EXPERIENCE PRECLUDES CONCLUSIONS ABOUT BLOCK GRANT CIVIL RIGHTS COMPLIANCE OR ENFORCEMENT DIFFICULTIES

While states generally began implementing the HHS block grants in the beginning of fiscal year 1982, many were not approved for the HUD

program until the last half. Also, the Education program funds did not become available until the last quarter of that year.

Agency block grant enforcement experience differs

The limited number of block grant reviews and investigations precludes conclusions about recipients' civil rights compliance. Before fiscal year 1984, none of the three agencies had conducted any civil rights compliance reviews of block grants. Several reasons account for this, including lack of resources and newness of the programs. Both HHS and HUD began reviews in fiscal year 1984, HHS at the state and subrecipient levels and HUD at the subrecipient level only. HUD has delayed state-level compliance reviews until it has sufficient monitoring experience to identify specific issues on which to focus. Education had not scheduled any block grant compliance reviews for fiscal year 1984. (See p. 37.)

Because they do not distinguish between funding sources, Education officials could not provide information on the number of complaints against block grant recipients. GAO's review of 33 randomly selected files in two regions did not disclose complaints specifically about the block grant programs. Instead, the complaints were about more general activities, such as school hiring practices, some of which could have been supported, in whole or in part, by block grant funds.

Although HHS did not have complete data, officials identified 119 complaints filed in fiscal year 1983 against block grant recipients. Four of these were about the block grant programs specifically, and, as in education, others could have been about activities supported, in whole or in part, with block grant funds. HUD officials told GAO that they had received one complaint about the program and that it concerned a subrecipient. (See p. 41.)

Officials believe that potential enforcement problems can be overcome

While few enforcement activities related to block grant programs were underway, some officials in each agency expressed concerns about difficulties that could arise in the future. At Education, for example, although 6 of the 10 regional officials said that loss of data describing school districts that were previously supplied by the districts under the Emergency School Aid Act program would not make enforcement generally more difficult, 4 said it would. The four said such data were useful in conducting investigations or for general oversight. Headquarters officials said that while the data had been useful, such data could be developed from other sources. (See p. 47.)

HHS headquarters and regional officials said that for purposes of establishing jurisdiction over entities alleged to have discriminated, it is more difficult to identify whether an entity received block grant funds than categorical funds. For example, there are more potential funding sources to identify and contact at the state level. However, headquarters officials believe this situation will improve once federal civil rights staff gain more experience working with the programs and state officials. (See p. 49.)

HUD officials in 5 of the 12 local offices included in GAO's review raised concerns about the states' oversight mechanisms. The 12 offices were not statistically representative but showed the diversity of local office experience with the state program. HUD staff in 7 of the 12 offices had visited state agencies to monitor their programs. In two instances HUD staff found that at the time of their visit, the states had not set up oversight mechanisms. Staff of the other five offices had reviewed state mechanisms and found that the state often did not maintain sufficient documentation to allow HUD to assess the adequacy of state subrecipient oversight. The recordkeeping and reporting requirements now being established by HUD in accordance with the 1983 legislative program amendments may alleviate the documentation concerns. (See p. 44.)

AGENCY COMMENTS

In commenting on a draft of this report, HHS said that it presents a fair evaluation of the data collected. HHS also provided information updating some of its block grant civil rights activities. The information HHS provided, as well as suggestions of a technical nature, was incorporated into this report where appropriate.

Education expressed concern that the report implied criticism of the Department's activities. Education emphasized, for example, that it has not established specific civil rights enforcement policies or procedures for the block grant program because the Reconciliation Act did not include specific civil rights provisions for it. GAO incorporated Education's suggestions into the report. It was not GAO's intent to criticize or approve the Department's activities but to provide a status report on Education's efforts to enforce civil rights requirements applicable to the block grant.

GAO also requested comments on the draft from HUD, but the Department did not respond in time for the issuance of this report. However, GAO discussed the draft with HUD program and civil rights officials who said they generally agreed with the information reported. HUD also provided other comments of a technical nature which were incorporated where appropriate.

Copies of HHS' and Education's comments are included in the report as appendixes IV and V.

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ABBREVIATIONS

CDBG	Community Development Block Grant
ESAA	Emergency School Aid Act
FHEO	Office of Fair Housing and Equal Opportunity
GAO	General Accounting Office
HHS	Department of Health and Human Services
HUD	Department of Housing and Urban Development
OCR	Office for Civil Rights

CHAPTER 1

INTRODUCTION

The Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35) substantially changed the administration of various federal domestic assistance programs by consolidating numerous categorical programs into nine block grants and shifting primary administrative responsibility to states. Many of these federal predecessor categorical programs were funded through the states, which then provided funds to service providers. Typically, categorical programs provide funding for specialized and for narrowly defined purposes. Federal agencies administer the programs through such activities as specifying detailed application requirements, negotiating awards, monitoring the progress of the funded activities, and evaluating effects. However, the Reconciliation Act gives states greater discretion, within certain legislated limitations, to determine programmatic needs, set priorities, allocate funds, and establish oversight mechanisms.

Seven of the block grants are administered by the Department of Health and Human Services (HHS), one by the Department of Education, and one by the Department of Housing and Urban Development (HUD). The seven HHS programs established by the Reconciliation Act are Community Services, Low-Income Home Energy Assistance, Maternal and Child Health Services, Preventive Health and Health Services, Primary Care, Social Services, and Alcohol, Drug Abuse, and Mental Health Services. The other two programs are Education's elementary and secondary education block grant and HUD's state small cities community development block grant.

This report is one in a series of reports we are issuing to provide the Congress with comprehensive information on block grant implementation.[1] It describes the statutory civil rights protections applicable to the block grant programs and compares the agencies' approaches to civil rights enforcement, including the states' enforcement role, under the block grant programs and under categorical programs such as those consolidated into the blocks.

CIVIL RIGHTS PROTECTIONS APPLICABLE TO THE BLOCK GRANT PROGRAMS

The civil rights protections applicable to the block grant programs are contained in both existing civil rights laws as well as specific provisions in the 1981 Reconciliation Act. For

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[1]Other reports issued are listed in appendix I.

purposes of our review, we focused on the act's specific provisions and on five existing civil rights laws which have broad applicability to many federal programs.

Four of these existing civil rights laws apply generally to federal financial assistance programs. Together, these laws provide that individuals cannot be denied participation in, or benefits under, federally funded programs or activities on the basis of race, color, national origin, age, handicap, or in education programs, sex. Most also provide protection against discrimination in some aspects of employment. These four statutes are:

--Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), which prohibits discrimination by race, color, or national origin in any federally funded program or activity.

--Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicap in any federally funded program or activity.

--The Age Discrimination Act of 1975, as amended (42 U.S.C. 6101), which prohibits discrimination on the basis of age in any federally funded program or activity.

--Title IX of the Education Amendments Act of 1972 (20 U.S.C. 1681), which prohibits discrimination on the basis of sex under any education program or activity receiving federal financial assistance.

The fifth existing civil rights statute, title VIII of the Civil Rights Act of 1968, as amended (42 U.S.C. 3601), prohibits discrimination in housing, whether or not federally funded, on the basis of race, color, national origin, sex, or religion. The act also requires HUD to administer its programs in a manner that affirmatively furthers fair housing.

In addition to these existing civil rights statutes, for some of the block programs the Reconciliation Act contains specific nondiscrimination provisions. As shown in appendix II, in most cases these provisions specifically reference the existing laws or contain language parallel to them. However, these provisions also establish additional protections or set other specific requirements for some HHS programs and the HUD program. Additionally, the program legislation, which the Reconciliation Act amended to authorize the state small cities program, contains civil rights provisions that HUD has interpreted as applicable to the program.

The Reconciliation Act does not include any specific civil rights provisions for either the HHS social services or the Education block grant programs. However, the preamble to each agency's block grant program regulations states that the civil rights laws applicable to federal financial assistance apply to these programs.

Of the six HHS block programs for which the Reconciliation Act does contain civil rights provisions:

--Four programs state that title VI (of the 1964 Civil Rights Act) applies and the other two have language similar to title VI prohibiting discrimination on the basis of race, color, or national origin.

--Six prohibit sex discrimination, a prohibition which extends beyond the title IX (of the 1972 Education Amendments Act) prohibition of sex discrimination in education programs. Title IX is also explicitly cited as applicable for four of these programs.

--Six explicitly state that the 1975 age act and section 504 (of the 1973 Rehabilitation Act) apply.

--Four prohibit religious discrimination.

For these six HHS block programs, the Reconciliation Act requires states to submit assurances that they will carry out various requirements established by the act. Such assurances facilitate federal oversight of state compliance but are not necessary to enforce civil rights protections. For four of the block grant programs, those assurances include the act's civil rights provisions. Civil rights requirements are not included in the assurances for the community services or the primary care programs, and there are no assurances for the social services program. However, the regulations for some of the existing civil rights laws require assurances which would be applicable to these as well as the other block programs, including the social services block grant.

For these six programs the Reconciliation Act also specifies a procedure not required under the existing statutes. Specifically, when the Secretary of HHS finds that a recipient of block grant funds has failed to comply with the applicable statutory or regulatory nondiscrimination provisions, the Secretary must request the governor to secure compliance. If within 60 days the governor fails or refuses to secure compliance, the Secretary may proceed with formal enforcement actions, such as initiating procedures to terminate funds or referring the findings to the Department of Justice for purposes of filing suit.

In addition to acting on referral from HHS, the Reconciliation Act specifies that for these six HHS programs, the Attorney General may bring suit if the Attorney General has reason to believe that a state or entity has engaged in a pattern or practice in violation of the act's nondiscrimination provisions. Justice officials told us that this authority is new with regard to HHS programs but that similar provisions exist in other programs, such as the Revenue Sharing Program (31 U.S.C. 6720). Also, the Housing and Community Development Act of 1974, as amended, contains a similar provision (42 U.S.C. 5309) which is applicable to the small cities program.[2]

The Reconciliation Act specifically states that titles VI and VIII apply to the small cities block grant program, along with "other applicable laws." States are required to certify to HUD that the program will be conducted and administered in conformity with these provisions and to report to HUD on how the program was carried out. HUD's regulations for the small cities program interpret "other applicable laws" as including, among others, the following:

--Section 109 of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5309), which prohibits discrimination on the basis of race, color, sex, or national origin in employment and the provision of program services under any program or activity funded under title I of the act. The Reconciliation Act also amended this section to include reference to section 504 of the 1973 rehabilitation act and the 1975 age act.

--Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u), which in part requires that, to the greatest extent possible under any project assisted by HUD, low-income project area residents be employed and trained and project area businesses be used.

--Executive Order 11063, as amended, which prohibits discrimination on the basis of race, color, religion, sex, or national origin in housing provided with federal assistance and in lending practices with respect to residential property loans insured or guaranteed by the government.

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[2]As of December 1983 Justice had not initiated any action under this clause for any of the Reconciliation Act block grant programs.

TRADITIONAL FEDERAL CIVIL RIGHTS ENFORCEMENT RESPONSIBILITIES

Civil rights enforcement is carried out by civil rights staff located in the Offices for Civil Rights (OCR) in Education and in HHS and in the Office of the Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) in HUD. Although states which receive federal funds have civil rights responsibilities and are responsible for their subrecipients' compliance, the states' enforcement role relative to subrecipients has generally been limited for federal programs. However, states may have some role under specific federal regulatory or statutory provisions or under state laws or policies. (See pp. 7 to 10.)

In addition to publishing regulations implementing civil rights protections applicable to their programs, these agencies perform three primary enforcement activities: complaint investigations, compliance reviews, and technical assistance. These activities are usually carried out by staff in each agency's 10 regional offices. In addition, HUD has local offices which provide technical assistance to and conduct on-site monitoring of fund recipients.

Investigating complaints and conducting compliance reviews are two major enforcement activities. Agencies receive and investigate complaints of discrimination in program services or benefits and in employment. Generally, to investigate a complaint, agencies must determine that the complaint alleges discrimination on a basis prohibited by law (e.g., race or handicap) and that the activity complained about was funded, in whole or in part, by funds from the agency. Compliance reviews are self-initiated investigations of possible discrimination by fund recipients. The subject matter and specific recipients to be reviewed are selected on the basis of one or more factors, such as a number of complaints in a particular program area or against particular recipients, analyses of program beneficiary data for protected groups, or a high level of agency interest in a particular area. Reviews are generally broader in scope than investigations of specific discrimination complaints. During fiscal years 1980 to 1983, the three agencies reported receiving about 15,400 complaints and initiating about 3,200 compliance reviews.

If investigations or reviews identify areas of noncompliance, the agencies first seek to negotiate with the recipient to obtain voluntary compliance. If voluntary compliance cannot be obtained, formal enforcement actions, such as initiating administrative proceedings to terminate funds or referring the case

to Justice for court action, may be undertaken. Comments by agency officials as well as data reported to the Office of Management and Budget indicate that formal enforcement actions, however, are relatively rare. For example, for fiscal years 1980 through 1983 the three agencies reported referring only 29 cases to Justice for judicial enforcement and initiating judicial or administrative enforcement actions in 23 other cases. However, during this same period the agencies' complaint investigations and compliance reviews resulted in about 3,000 noncompliance findings, most of which were settled by voluntary means.

The third major enforcement activity is technical assistance, which encompasses a variety of efforts to assist recipients in understanding and complying with federal civil rights requirements. Efforts range from answering mail or telephone inquiries about nondiscrimination responsibilities and requirements to making on-site visits, providing training, and conducting seminars. Technical assistance may also be directed toward informing program beneficiaries of their rights.

HUD includes a fourth activity as a major part of its enforcement effort--monitoring. Outside formal, in-depth investigation or review activities, HUD staff conduct desk audits of, and make on-site visits to, fund recipients to identify potential problems and try to resolve them informally. Formal findings of noncompliance do not result from these monitoring efforts.

Each of the agencies also carries out other activities related to the primary enforcement activities. For example, agencies negotiate remedial agreements with fund recipients found in noncompliance. They also monitor implementation of these agreements and court orders. Agencies also review various types of data submitted by recipients, some of which are specifically required for civil rights enforcement purposes. For example, Education requires a sampling of school districts to report certain data biannually, such as the racial profile of pupil assignments and disciplinary actions. Other times the information is more general, such as program applications or end-of-year reports.

Although agencies may conduct civil rights enforcement activities focused on specific federal programs, they often focus enforcement more generally on recipient activities funded, in whole or in part, by federal funds. This is especially true in Education and HHS where recipients often receive funds from multiple programs. HUD's enforcement is more often program specific because that agency funds fewer programs and the program funds are usually used by recipients to support more specific

projects. However, even HUD's enforcement covers such activities as employment or requirements for affirmatively furthering fair housing which may not be directly related to the specific purpose of the HUD grant funds.

STATE ENFORCEMENT ROLE HAS USUALLY BEEN LIMITED

States' formal involvement in enforcing federal civil rights laws applicable to federal financial assistance programs has usually been limited. When states receive funds and pass them to subrecipients, states are responsible for signing assurances that they and subrecipients will administer programs in accordance with federal civil rights laws and regulations. However, with some exceptions, the federal agencies have not required states to be actively involved in federal civil rights enforcement. For example, states generally are not required to conduct compliance reviews or provide technical assistance.

States may be informally involved in enforcement, assisting federal agencies on request, or may be formally involved through various statutory or regulatory provisions. In both instances, the scope of responsibility is usually limited, and the federal agency retains authority to intervene directly if it considers the state action inadequate. States may also carry out civil rights enforcement activities under state laws.

Education and HHS

Part of the federal financial assistance funded by Education and HHS has historically been awarded to state agencies, which pass the funds to service providers, or subrecipients, such as school districts and local welfare departments. Consequently, state agencies have traditionally been responsible for assuring subrecipients' civil rights compliance for certain federal programs. For example, in the 13 states in our overall review, about 85 percent of the fiscal year 1981 funding for categorical programs consolidated into the HHS block grants (except primary care) went through the states. Likewise, nationally over 50 percent of the 1981 funding for the education programs consolidated into the education block grant went through the states.

According to OCR officials in both agencies, a state's usual involvement in enforcing federal civil rights provisions applicable to HHS and the elementary and secondary education programs has been limited to (1) signing a nondiscrimination assurance applicable to the state and any subrecipients, (2) not awarding federal program funds to subrecipients determined to be

in violation of the civil rights statutes or regulations, and (3) cooperating with the federal agency in federal investigations of subrecipients. OCR officials said that states may cooperate in federal enforcement by assisting in various ways, such as providing information in investigations or helping to negotiate remedial agreements with subrecipients the federal agencies find to be in noncompliance. This cooperation varies by state and region. HHS officials also pointed out that remedial agreements themselves may include provisions for state oversight of the subrecipients' implementation of the agreements.

Beyond these types of involvement, states are sometimes formally required to more actively oversee subrecipients' civil rights compliance. Under Education's vocational education guidelines, state agencies must develop methods of administration to assure compliance by recipients operating vocational education programs. States must report to OCR annually on their compliance activities, which must include technical assistance, analysis of available data, and periodic compliance reviews. OCR officials said these state activities are in addition to, not in place of, OCR's own enforcement activities.

HHS' title VI regulations require states or state agencies applying for funds under certain HHS programs to develop "methods of administration" setting forth actions states will take to assure they and subrecipients comply with title VI regulations. These methods differ among states but may include such actions as providing technical assistance, conducting compliance reviews, or investigating complaints. OCR officials provided some historical perspective concerning methods of administration. For other than education programs,[3] OCR previously relied heavily on states' enforcement activities and focused OCR efforts on assessing the adequacy of states' implementation of the methods of administration. Officials said that since the mid-1970's, OCR has taken a more direct enforcement approach with subrecipients and the existence of these methods of administration has not reduced OCR activities at the subrecipient level. OCR officials emphasized that state actions are in addition to federal activities. OCR does not routinely review each state's activities. However, when OCR reviews or investigates a state agency's or subrecipient's title VI compliance, the methods of administration are among the criteria available to assess the state's performance.

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[3]Education programs were administered by the Department of Health, Education, and Welfare until 1980. At this time a separate Education Department was established.

HUD

Unlike Education and HHS programs, HUD programs have not usually been funded through state agencies and, consequently, state agencies have not had an enforcement role under HUD assistance programs. However, under title VIII of the Civil Rights Act of 1968--which prohibits discrimination in housing, whether or not federally assisted--HUD must refer housing discrimination complaints to states and local governments if they have fair housing laws that HUD deems to be substantially equivalent to title VIII. As of August 1983, HUD had found the fair housing laws of 33 states and 115 localities to be substantially equivalent to title VIII. In fiscal year 1983, HUD referred 2,736 housing discrimination complaints to state or local agencies. This represented 60 percent of the 4,551 title VIII complaints HUD received.

States may be involved under state laws

States may also conduct civil rights enforcement activities under state laws and policies which provide protections similar to those of federal civil rights statutes. As noted above, many states enforce their own fair housing laws. Additionally, many states have established human rights commissions or similar organizations with a variety of enforcement powers. Most states also have fair employment practices laws and agencies which enforce them.

A study conducted for the Department of Health, Education, and Welfare in 1979 concluded that 12 states had specific nondiscrimination authority similar to federal nondiscrimination laws and another 27 states had probable authority through statutes which prohibit discrimination in places of public accommodation, a term defined differently by various statutes but sometimes referring to any place which receives public funds.

Similarly, data from a 1983 study done for the Education Commission of the States show that 29 states and the District of Columbia have constitutional provisions and/or statutes prohibiting racial discrimination in one or more aspects of education, including access to schools as well as broader aspects,

such as administration of programs.[4] Three other states have public accommodation laws which include schools in the definition of public accommodation or have been deemed to do so by the courts. The study data also show that enforcement mechanisms and sanctions vary. For example, one state had no enforcement mechanism or sanctions, while another had established a human rights commission and had empowered courts to order cessation of discrimination and assess penalties.

OBJECTIVES, SCOPE, AND METHODOLOGY

Our review concentrated on federal agencies' civil rights enforcement for the block programs and had three objectives. The first was to determine the federal agencies' civil rights enforcement policies, procedures, and practices being applied to block grant programs. We focused on identifying differences between each agency's enforcement approach for block programs and for other federal financial assistance programs, particularly categorical programs of the type replaced by the block grants. We also determined whether, and to what extent, the agencies were changing states' roles and responsibilities for enforcing federal civil rights requirements.

Our second objective was to determine if the agencies had found civil rights compliance problems regarding recipients' implementation of block programs. Our third objective was to determine whether the agencies had encountered any difficulties in conducting their enforcement activities in relation to block grant recipients.

Most of our fieldwork was undertaken between May 1983 and January 1984. The review was done in accordance with generally accepted government auditing standards. We used three major sources of information to carry out the three objectives:

--agency headquarters civil rights and program officials and documents,

--questionnaires completed by each of the agencies' regional civil rights offices as well as selected HUD local offices, and

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[4]The study identified one state that had a nondiscrimination provision expressly applicable to block grant programs. It provides that, unless already required by federal guidelines or provisions of a federal block grant, agencies receiving federal block grant funds must prepare an expenditure plan which prohibits discrimination on the basis of race, sex, religion, and age.

--information obtained from officials and case file review in two of each agencies' regional offices and two HUD local offices.

Although our procedures were essentially the same for each agency, they varied at times because of differences in the agencies' enforcement programs.

Headquarters

At each agency's headquarters we interviewed officials from the civil rights office and, where appropriate, the Office of the General Counsel and reviewed regulations, manuals, memoranda, and policy issuances to obtain complete information on the policies and procedures established for the block programs. In HUD, because much of the civil rights policy is established in conjunction with program office policy, we also interviewed officials of the Office of Community Planning and Development, which administers the small cities program, and reviewed various state program reports and documents in that office.

We also asked each headquarters agency for data concerning the number of block grant enforcement activities, especially complaint investigations and compliance reviews, that had been done. The agencies did not have this information available in central files, but HHS and HUD obtained some information from their regional offices. Education officials said that the data were not available because the agency does not always identify all sources of funds received by entities being reviewed or investigated.

Questionnaires

The questionnaires solicited the official views of HHS, Education, and HUD regional civil rights offices and of selected HUD civil rights local offices concerning federal and state enforcement responsibilities in relation to their agencies' block and categorical programs. Almost identical versions of the questionnaire were used for the three agencies, although each was tailored somewhat to special characteristics in the agencies' enforcement approaches or assistance programs. Questions focused on (1) federal and state responsibilities for specific civil rights activities--especially complaint investigations, compliance reviews, technical assistance, and FHEO's local office monitoring, (2) the extent and results of the offices' experiences with block grant programs, and (3) comparisons of those experiences with experiences under categorical programs.

We pretested drafts of the questionnaires at Education and HHS regional civil rights offices in Philadelphia and New York

and at HUD regional and local offices in Philadelphia. After making changes based on those tests, the questionnaires were sent to the directors of these agencies' 10 regional civil rights offices and to the FHEO directors in the 12 HUD local offices responsible for the 13 states included in our overall block grant review. The 13 states are: California, Colorado, Florida, Iowa, Kentucky, Massachusetts, Michigan, Mississippi, New York, Pennsylvania, Texas, Vermont, and Washington. The 12 sampled local offices are not statistically representative. However, they provided information showing that the offices had a variety of experiences with the state small cities program. For example, one office had no experience with the program because the state had not opted for it, while another local office had nearly completed a monitoring cycle for the program.

A detailed description of the questionnaires' content, source of information, and method of administration is provided in appendix III.

Regional office visits

To better understand agency procedures and practices and to obtain examples of investigations and reviews of block grant recipients, we visited the HHS and Education regional civil rights offices in Dallas, Texas, and Atlanta, Georgia, as well as HUD's FHEO regional offices in Fort Worth, Texas, and Atlanta and local offices in Dallas and Louisville, Kentucky.

Our work was not designed to be projectable to all of the agencies' offices or to fully review the visited offices' enforcement programs. The offices were selected because they were among the agencies' largest regions in terms of caseload and/or the regions' questionnaire responses indicated areas of interest for follow-up. Also, HUD's local office in Louisville, which is part of HUD's Atlanta region, had had considerable experience in monitoring one state's program. The offices selected also provided some geographic distribution, especially because we had already met with officials in the agencies' New York and Philadelphia offices during the questionnaire pretest.

At each office visited, we discussed general enforcement responsibilities and procedures with the office's director and staff. We also discussed officials' perceptions of their roles, responsibilities, and experiences concerning block grant programs and reviewed available block grant case files to determine if any compliance problems had been found concerning block grant program implementation.

The scope and methodology used in our field office work varied somewhat among agencies as described in appendix III.

CHAPTER 2

STATE CIVIL RIGHTS ENFORCEMENT RESPONSIBILITIES LARGELY UNCHANGED UNDER BLOCK GRANTS

The Reconciliation Act was, with some exceptions, silent concerning states' civil rights enforcement responsibilities and, unlike other aspects of block grant management, additional civil rights enforcement responsibilities generally have not been delegated to the states. There are, however, differences in the extent to which HHS, HUD, and Education have involved states in the block grant civil rights enforcement process beyond the states' traditional role in this area.

States have not been given an expanded enforcement role under the HHS block grants, although HHS plans to explore this possibility. In contrast, HUD has established a specific oversight role for states in response to provisions contained in the Reconciliation Act and has given states flexibility to interpret some statutory requirements. This state role does not alter HUD's responsibilities for investigations and reviews or for determining recipients' civil rights compliance. The Reconciliation Act did not contain any provisions concerning state (or federal) civil rights responsibilities under the Education block grant program, and Education has not changed state responsibilities under the program.

HHS HAS NOT ASSIGNED ADDITIONAL RESPONSIBILITIES TO THE STATES BUT PILOT PROJECT IS PLANNED

HHS considered giving more civil rights enforcement responsibilities to the states, but did not. However, HHS is planning to explore ways to increase the states' role in some aspects of civil rights enforcement.

In December 1981, the OCR block grant task force recommended that HHS study alternatives for increased state roles in complaint investigations and compliance reviews. HHS' Office of the General Counsel concluded that, although under the civil rights statutes HHS could not delegate authority for making final determinations of compliance, some kinds of responsibilities could be delegated to the states. In a March 1982 memorandum to OCR's Director, HHS' Assistant General Counsel for civil rights matters stated that where the statutes are silent, as they are with respect to investigative authority, the Department may, within limits, delegate responsibilities. He pointed

out that any delegation must limit discretionary power, especially where the delegation would result in recipients policing themselves.[1] However, OCR's Deputy Director for Program Operations told us that OCR decided to keep states' responsibilities the same for both block and categorical programs because an OCR survey as well as other studies showed that most states did not have the organization or staff needed to enforce federal civil rights laws. Further study is planned as discussed on page 15.

Most regions perceive state responsibilities unchanged although perceptions vary

Officials in all 10 regions told us that states' responsibilities under the HHS block grant programs for taking actions to assure compliance with civil rights laws were the same as those under categorical programs. However, they had various opinions regarding the details of those responsibilities:

--Eight regions said states must take actions specified by federal laws and regulations.

--One said states must take action, but the states can determine which actions.

--One said states do not have to take any actions.

The reasons for the different opinions among regions were not always clear. However, all regions said their responses were based at least in part on title VI methods of administration which, as discussed on page 8, vary among states.

Some regions did see some differences in states' responsibilities for block grants. Of the eight regions that responded that states must take federally specified actions, three said these actions were somewhat different for block and categorical programs. An official in one of the three regions explained that under the block grant philosophy, states have discretion in how they assure civil rights compliance. Another region's official saw state responsibilities essentially the same under the two programs, but said that state civil rights responsibilities under the block grant programs are not clearly defined. An

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[1]The memorandum also said, however, that the Department's ability to delegate enforcement responsibilities may be limited in those cases where the existing civil rights regulations assign responsibilities, such as complaint investigation responsibilities, to the Secretary. The memorandum suggested that any such delegations be included in regulations.

official from the third region said that he was not sure whether title VI methods of administration apply to block grants and consequently was "not sure" whether actions required under categoricals were required under the block grants.

The OCR Deputy Director for Program Operations told us that during training sessions held early in 1983, the regions were told that title VI methods of administration do apply to the block programs. He said even if some regions were still unsure about state responsibilities at the time of our fieldwork, much discussion has taken place between headquarters and regional officials since that time. In addition, guidance sent to OCR's regions in October 1983 concerning state-level compliance reviews outlined the types of activities states would be held accountable for.

Pilot project planned to explore increased state involvement

OCR is planning a pilot project to test new methods for involving states in block grant program complaint and compliance review activities. The project was recommended in December 1981 by the OCR block grant task force which suggested that several formats or prototypes for state involvement be tested. For example, the task force set out three complaint investigation approaches giving states progressively expanded roles, ranging from the state and OCR jointly investigating complaints and OCR making compliance determinations to the state conducting the investigation and determining compliance, subject to OCR review.

The task force report said that these approaches will allow more state participation, which would facilitate one of the major underlying principles of the block grant legislation, the return of programmatic and administrative control of programs to the states. OCR officials explained that they do not anticipate developing a single model for state involvement in block grant civil rights enforcement and that under the pilot project, OCR will retain final responsibility for civil rights enforcement. OCR will review states' investigations and remedies to ensure they meet OCR standards. Should a state not fulfill its obligations, OCR will reassume those responsibilities.

An OCR official said states will be selected for the project on the basis of the resources they have available for civil rights enforcement and the comparability of state laws, executive orders, and policies with federal statutes and regulations. The range of activities finally agreed upon will also depend on OCR's view of each state's capabilities and willingness to accept responsibility for those activities. OCR officials said that states' reactions have been favorable, although

some states have requested federal reimbursement for the costs of any additional civil rights enforcement responsibilities.

OCR plans to sign a memorandum of understanding with each pilot state delineating specific roles and responsibilities. The memorandum will address such issues as complaint and compliance review methods to be tested, training of state staff, cooperative technical assistance projects, and outreach and public information activities.

As of August 1984, OCR had identified seven states or territories as potential project participants. However, formal discussions had not started with them, pending final approval of a model memorandum of understanding. OCR expects the project to be fully operational by the first quarter of fiscal year 1985.

STATES HAVE OVERSIGHT ROLE IN HUD'S SMALL CITIES PROGRAM

HUD has not delegated authority to determine recipients' compliance with the civil rights statutes and has not significantly changed the regional office responsibilities for complaint investigations and compliance reviews of state and substate recipients. However, under provisions of the Reconciliation Act, states have a role in overseeing subrecipients' conformance with various requirements, including civil rights requirements.

FHEO has also given states some flexibility in interpreting the 1981 Reconciliation Act provisions as well as other civil rights provisions applicable to the small cities program. However, 1983 legislative amendments (Public Law 98-181, November 30, 1983) establish, and require HUD to establish, additional requirements for some aspects of the program.

State oversight role established under Reconciliation Act

HUD programs have not usually been funded through the states and states have not been involved in civil rights enforcement under HUD financial assistance programs. However, the 1981 Reconciliation Act requires that each state (1) certify to HUD that its program will meet certain requirements, including being operated in compliance with civil rights laws and (2) report to HUD on how the program has been implemented. The act also requires that HUD review each state program annually to determine whether the state has carried out its certifications in conformance with federal requirements and has maintained adequate oversight of its subrecipients to determine whether they

have carried out their grants in accordance with federal requirements.[2]

The state administrator's manual, which HUD issued in August 1982, states that in certifying that it will comply with applicable civil rights laws, the state is assuming a "specific legislative mandate" to enforce the provisions of those laws and thereby is assuring that state and subrecipient methods of administration will be adequate to meet the requirements of the civil rights laws. According to the manual, state responsibilities include:

--assuring the state and its subrecipients conduct the programs in a nondiscriminatory manner,

--ensuring subrecipients take affirmative actions to hire low-income residents of project areas and project area firms,

--maintaining records documenting the state's compliance and establishing similar recordkeeping requirements for subrecipients,

--conducting performance reviews to determine if subrecipients meet civil rights program requirements, and

--reporting annually to HUD on compliance with the state's civil rights certification.

As with requirements in non-civil-rights areas, the manual does not set forth the specific actions necessary to carry out these responsibilities but includes guidance and suggestions for how states can carry them out. For example, the manual specifies that states must review subrecipients, but does not establish required time frames or content or specify that the reviews be on site. It does set out suggested scope and methodologies for such reviews, as well as suggestions for technical assistance and monitoring activities, and it provides a monitoring checklist which states may use in overseeing subrecipients' activities.

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[2]Civil rights is only one of the subjects included in the 1981 Reconciliation Act's certification, reporting, and review requirements. In interpreting and implementing these requirements, HUD has applied the same philosophy to all subjects--to require nothing of states not specifically required in the statute--and has issued civil rights guidance as part of its overall state program guidance.

Regional and local office officials told us that they understood that the states were responsible for overseeing subrecipients but that FHEO had not required states to use any specific procedures to carry out their civil rights oversight responsibilities.

HUD originally excluded the states from some civil rights requirements it established for other CDBG recipients,[3] including

--maintaining records on and reporting civil-rights-related data specified by HUD,

--taking affirmative action to further fair housing,

--taking affirmative action to facilitate use of minority-owned businesses, and

--complying with regulations implementing the nondiscrimination provisions of section 109 of title I.

However, HUD's guidance encouraged the states to take similar action for the small cities program. For example, recordkeeping suggested for the state program was similar to that required for cities under the CDBG entitlement program. Also states were informed that they could follow the section 109 regulations as a standard FHEO would consider acceptable for meeting their section 109 responsibilities. The Secretary of HUD also encouraged use of minority-owned businesses.

As a result of the 1983 legislative amendments, however, additional requirements have been established for states. The amendments require that, beginning with fiscal year 1984 funds:

--States affirmatively further fair housing.

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[3]Title I of the Housing and Community Development Act of 1974 established the Community Development Block Grant (CDBG), which includes several federally administered programs. Two of these programs were the CDBG entitlement program--under which large cities are awarded funds on a formula basis for community development activities--and the federally administered small cities program--under which small cities received funds on a competitive basis. The 1981 Reconciliation Act amended title I to give the states the option to administer the small cities program.

--States obtain certifications from their subrecipients stating that the subrecipients will administer their small cities grants in conformity with title VI and title VIII and that they will affirmatively further fair housing.

--Applicable provisions of title I of the Housing and Community Development Act of 1974 and other federal laws apply to state program activities in the same manner and to the same extent as to activities conducted by entitlement cities under their HUD grants.

The amendments also required that HUD establish uniform recordkeeping and reporting requirements for the state program. According to officials from FHEO and HUD's program office, the requirements under consideration include civil rights information. (See pages 46 and 47 for further discussion of these requirements.)

Optional state compliance role

HUD has also established criteria under which states may elect to assume the Secretary's responsibility for assuring compliance with title VI and section 109. According to FHEO officials, however, states have shown very little interest in this option.

Although HUD's regional offices are responsible for doing compliance reviews and complaint investigations of the states and their subrecipients, under this optional program a state may elect to take on the subrecipient compliance review (but not complaint investigation) responsibility itself if it meets the following criteria:

--has a fair housing law substantially equivalent to title VIII,

--does not have any civil-rights-based court or administrative actions pending against it and has not had any for the past 5 years,

--develops a written description of the state's capability to conduct the required compliance activities, and

--does not have the compliance function located in the program-administering office.

The state administrator's manual sets forth requirements for meeting each criterion. If a state elects and is approved

to assume compliance responsibilities, FHEO will conduct compliance reviews of the state, including reviewing a sample of subrecipients, to determine whether the state is complying with requirements and with civil rights laws and is administering the program in a nondiscriminatory way.

NO EXPANDED STATE ENFORCEMENT ROLE UNDER EDUCATION BLOCK GRANT

According to OCR officials, because the Reconciliation Act did not require them to, OCR has not established civil rights requirements for states specifically for the block grant program. Headquarters officials said states' responsibilities, as described on page 7, have not changed for the block grant program compared to categorical programs. Regional officials generally confirmed that they perceive state responsibilities to be the same for block grant and categorical programs.

Education OCR officials pointed out that states do not have any civil rights duties under the block grant not already required by regulation. That states have no unique role under the block grant was emphasized to OCR regional directors in a June 1983 memorandum from the Assistant Secretary for Civil Rights. It noted that:

> "The Congress never intended to diminish Federal civil rights responsibilities. [The] Chapter 2 [block grant] does not diminish OCR jurisdiction or responsibility, although neither law nor regulation prohibits States from taking actions to promote and protect civil rights."

Education is encouraging a greater voluntary commitment from the states in their participation in enforcing civil rights laws. Education is developing memoranda of understanding to be signed by Education and individual states specifying cooperative activities, such as allowing each other access to complaint investigation files (within limits of the Privacy Act and other laws) and consultation during state- or OCR-initiated complaint investigations and compliance reviews. However, according to a spokesperson for the Assistant Secretary's office and the Director of OCR's Enforcement Division, Education officials never considered giving states a specific role under the block grant program.

Most regional officials said that they perceive state responsibilities to be the same for both the block grant and categorical programs, although regions differed somewhat in their perception of those responsibilities. For example, 7 of Education's 10 regions told us that states' responsibilities under

the block grant for taking actions to assure they and subrecipients do not discriminate were the same as those under categorical programs. However, they had various opinions regarding the details of those responsibilities. While the reasons for their responses varied, officials from six regions said they based their responses on states' vocational education methods of administration. Three regions said they perceived some differences in state responsibilities between programs or were unsure about state responsibilities under one or both types of programs.

CONCLUSION

The Reconciliation Act was, with some exceptions, silent concerning state civil rights enforcement responsibilities. The three agencies have not delegated civil rights investigation or review responsibilities or authority for determining recipients' civil rights compliance to the states under the block grant programs. Under current Education and HHS policies, the state role under block programs is the same as it is for other programs funded through the states. HUD, however, under provisions of the Reconciliation Act, has established a specific civil rights oversight role for states. Because HUD programs have not traditionally been funded through the states, this role is by definition both new and limited to the HUD state small cities program.

CHAPTER 3

FEDERAL AGENCIES RESPONSIBLE FOR BLOCK GRANT CIVIL RIGHTS ENFORCEMENT BUT APPROACHES DIFFER

The federal agencies have retained responsibility for block grant civil rights enforcement and are applying their traditional civil rights enforcement approaches to these programs. However, there are differences in the extent to which each agency is establishing block-specific policies and procedures.

HHS is developing block-specific policies to implement the additional protections and procedures required for some block programs by the 1981 Reconciliation Act. HUD, while not changing its policies concerning complaint investigations and compliance reviews, has changed the focus of its monitoring and technical assistance activities to the state level. Education has not made any distinctions between types of programs in its enforcement approach.

Generally, regional and local office officials indicated the offices were carrying out civil rights policies as described by headquarters. There were, however, some indications of uncertainty about their responsibilities toward program subrecipients.

HHS ENFORCEMENT PROCEDURES UNCHANGED FOR BLOCK PROGRAMS

Generally, HHS' civil rights enforcement procedures are the same for both block and categorical program recipients. HHS regions operated under interim procedures pertaining to block grant enforcement until March 1983 when procedures for referring noncompliance findings to the governor, as required by the Reconciliation Act, were issued. As of May 1984 HHS had not yet issued regulations for the Reconciliation Act protections against sex and religious discrimination. Although HHS officials do not believe that lack of regulations has significantly hindered their enforcement activities, they said limited technical assistance and no compliance reviews about sex and religious discrimination would be conducted until the regulations are issued.

Regions indicate block grants did not change their responsibilities

HHS regional offices said that they perceive their responsibilities to be the same under both block and categorical programs. With one minor exception, all 10 regions indicated that they are responsible for performing the same enforcement activities--including investigations, reviews, technical assistance, and related activities--for block and categorical programs.

HHS regional officials said that the emphasis in their enforcement activities changed since block grant implementation. Six regions reported increased emphasis on technical assistance, six on negotiating remedial agreements, and two on conducting compliance reviews. However, 8 of the 10 regions reported that the changes were not attributable to block grants, and the other 2 said they were only partially attributable to block grants.

Seven regions also reported that block grants had not changed the amount of attention they devoted to state recipients or subrecipients. However, three reported an increase in one or more activities, usually technical assistance, at the state or subrecipient level as a result of block grants. No regions reported any decrease. Also, officials from about half the regions indicated there were no differences in the methods the regions use to carry out the major enforcement activities related to block grant and categorical grant recipients.

Interim enforcement procedures guided HHS activities

In February 1982, HHS OCR formally issued interim enforcement procedures to be followed concerning block grant recipients until specific procedures for block grant investigations and compliance reviews were developed. OCR's Director and its Deputy Director for Program Operations told us that these procedures had, in fact, been followed since October 1981 when the Reconciliation Act was enacted.

Basically, when block grant funds[1] were involved, the procedures were as follows:

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[1]Social services block funds were to be treated as nonblock funds because the Reconciliation Act contained no special nondiscrimination provisions for this program.

--If complaints were received against entities that received only block grant funds, the investigation was delayed pending development of block grant procedures.

--If complaints were received against entities that received both block program and other HHS funds, existing investigation procedures were to be used. However, official correspondence concerning OCR's financial jurisdiction would not mention block funds, and findings of noncompliance were to be discussed with headquarters before formal letters of findings were issued.

--No compliance reviews of block grant recipients were to be started. (If reviews were underway, regions were to contact headquarters for guidance.)

--Regional offices were not to initiate contacts with governors' offices or state agencies concerning block grants, and responses to states' inquiries were to be coordinated with headquarters.

With regard to complaints, OCR headquarters and regional officials said that no complaints were received alleging discrimination by entities that received funds only from the block grants covered by the interim procedures. Therefore, no investigations were delayed due to these procedures. Also, data provided by HHS, as well as information we developed from regional files, showed that complaints about entities which received both block and categorical funds had been investigated.

No compliance reviews focusing on block grant programs were scheduled until fiscal year 1984. However, officials in 7 of the 10 regions reported that they had been performing reviews of block grant recipients. The activities covered in these reviews may have been supported in whole or in part with block grant funds. Two of the three that had not performed reviews cited lack of opportunity or resources, not the interim procedures, as the reason. The other cited lack of procedures for referring findings to governors and for the sex and religion provisions. Staff in one region said that there were three compliance reviews underway at the time the policy was issued, but they checked with headquarters for guidance and then continued; there was no real delay. The regional director of another office told us that the region chose entities for compliance reviews without regard to whether they received block grant funds.

According to the executive director of OCR's block grant task force, these procedures were rescinded in March 1983.

Beginning in December 1982, OCR conducted regional training courses concerning a revised investigative procedures manual, dated March 1983, which included procedures for referring findings against block grant recipients to the governors.

Block grant civil rights regulations not issued

HHS has drafted regulations implementing the block-specific civil rights provisions. On February 22, 1983, HHS sent these proposed regulations to the Department of Justice and the Equal Employment Opportunity Commission for review and comment under Executive Orders 12250 and 12067, respectively.[2] As of May 1984, the Commission had approved publication of the draft regulations, but discussions between HHS and Justice were still underway. Neither HHS nor Justice officials would disclose what problems, if any, were delaying Justice's approval of the regulations. However, in June 1984 Justice officials told us they were working with HHS to expedite issuance of the regulations.

An HHS General Counsel official as well as OCR headquarters officials said that the lack of regulations concerning the sex and religion provisions had had no practical effect on OCR's enforcement program. According to OCR's Director, OCR's policy is to investigate complaints under the block grants' sex and religion provisions in the same manner as any other complaint and to take action if noncompliance is found. However, as of March 1984, OCR officials said they had received no complaints of sex or religious discrimination for those block grants which provide such protections.

HHS' Associate General Counsel for Enforcement noted that without regulations it is possible that the "effects" test[3] could not be used, but emphasized that currently this issue would have an impact only in the rare instance that a finding of noncompliance were taken to court to obtain a judicial remedy. Over the long term, however, if no regulations were

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[2]Under these orders Justice and the Commission are responsible for coordinating implementation of civil rights laws, including reviewing federal agencies' civil rights regulations.

[3]This test can be applied for some civil rights provisions, such as title VI, because the regulations for those provisions specifically state that recipients can be found to be in violation if their actions have a discriminatory effect, even if the actions were nondiscriminatory on their face.

issued he said OCR's negotiating position in the process of convincing recipients to voluntarily comply (without formal enforcement) might be weakened if recipients believed they could not be taken to court because of an "effects-type" violation.

We also discussed with an HHS General Counsel official whether possible differences in interpretations of the race, color, or national origin protections could affect enforcement. Provisions in two of the HHS block programs parallel that in title VI prohibiting discrimination on the basis of race, color, or national origin but could be interpreted differently than provisions in the other Reconciliation Act block programs that specifically reference title VI. For example, with certain exceptions, title VI excludes discrimination in employment while the Reconciliation Act provision does not exclude employment discrimination.

According to OCR's Director and other OCR and General Counsel officials, one subject under discussion between HHS and Justice concerning the regulations is whether the more general Reconciliation Act provisions concerning race, color, and national origin should be interpreted as "equivalent" to title VI or be interpreted more broadly. The officials pointed out, however, that, regardless of the interpretation ultimately used, employment discrimination is prohibited for employers with 15 or more employees by title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e), and that HHS would refer most employment discrimination complaints to the Equal Employment Opportunity Commission, which administers title VII.

Although HHS OCR and General Counsel officials believe the lack of regulations has not significantly hindered their overall enforcement efforts, technical assistance and compliance reviews concerning the sex and religion provisions are not being performed pending issuance of the regulations. Regions have been instructed to initiate compliance reviews and technical assistance concerning the block grant programs in fiscal year 1984. However, reviews will not address sex and religious discrimination, and officials said technical assistance about these subjects would be limited and would include only general guidance, such as telling recipients to ensure their program policies and eligibility criteria are not discriminatory.

Officials responsible for establishing regional guidance for block grant technical assistance and compliance review efforts told us that regulations would establish specific administrative and procedural requirements for recipients and that most technical assistance and compliance reviews would focus on those requirements. For example, when issued, if the

regulations are similar to the existing title VI regulations, they could require that recipients

--sign nondiscrimination assurances concerning sex and religion,

--notify program beneficiaries of the new protections through publications, posters, etc., or

--maintain data useful for determining compliance with these provisions, if so instructed by HHS.

In July 1984, the Director, OCR, reconvened the OCR block grant task force and charged it with developing input for revisions of the proposed block grant regulations. According to the Director, the task force's priority will be to develop specific policy guidance on sex and religious discrimination issues for use in connection with fiscal year 1985 compliance reviews.

Referring noncompliance findings to the governor

Although HHS has not significantly altered its enforcement procedures, the 1981 Reconciliation Act requires that, for six of the seven blocks, HHS refer findings of noncompliance to the governor. The governor is given up to 60 days to obtain voluntary compliance. HHS has also decided to use this procedure when the recipient receives funds from the seventh program, social services. HHS has established basic procedures for implementing this policy and was working with individual states to establish specific agreements. However, at the time of our fieldwork, HHS had not referred any findings to the governors because none had reached that stage in processing.

According to HHS OCR officials, regional offices were instructed to implement the referral procedures in March 1983. Under these procedures, the governor is sent a letter of notification along with a copy of the warning letter sent to the recipient found in noncompliance.[4] OCR offers both the governor and the recipient technical assistance in formulating a corrective action plan. If the governor submits a proposed remedy during the 60-day period, the regional OCR has 15 days to review it and respond. (The 60-day period does not include time used by OCR in reviewing proposals.)

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[4]The letters of warning are sent to the recipient prior to the formal notification of noncompliance.

If the proposed remedy meets OCR standards, OCR will incorporate it into a negotiated agreement between OCR and the recipient. If the remedy is unacceptable, OCR will notify the governor and explain the reasons for the determination. The governor may then revise the proposal and resubmit it to OCR if time still remains within the 60-day period. If the governor is unable to develop a satisfactory remedy within the 60-day period, OCR again undertakes efforts to obtain compliance.

HHS OCR's Deputy Director for Program Operations told us that no firm policy had been established concerning which findings of noncompliance against block grant recipients would be referred to the governor. HHS' Associate General Counsel for Enforcement said the wording in the Reconciliation Act is somewhat ambiguous. However, he indicated that findings dealing with activities for which block grant funds were the only federal funds would be referred to the governor. Those findings dealing with activities where no block grant funds were involved would not be referred, even if the entity received block grant funds for other purposes. He said the main ambiguity exists where the activity was funded by both block and categorical funds--i.e., where OCR could establish jurisdiction without citing the block grant funds. The OCR Deputy Director said that HHS has not had experience under the referral provision. He said OCR procedures require that regions submit all potential findings of noncompliance to headquarters before letters of warning are sent and that headquarters will decide on a case-by-case basis whether to refer cases to the governor. The block grant task force, reconvened in July 1984, has been charged with developing a policy concerning whether to refer to governors noncompliance findings concerning activities receiving both block grant and nonblock funding.

In April 1983, OCR began making arrangements with the states to implement referral procedures, asking governors to designate liaisons who would be contacted by the appropriate regional OCR directors. This was described as "an essential first step in establishing an effective working relationship and ensuring an effective compliance effort." At the time of our fieldwork, all governors had appointed liaisons, and OCR regional representatives were meeting with these liaisons and helping to establish procedures by which the block grant findings of noncompliance would be resolved by the governors. Although HHS OCR will offer advice on reaching compliance, the final procedures used will be determined by the governors. All agreements reached during these discussions will be confirmed in either a letter from the OCR regional manager to the governor or a formal memorandum of understanding.

OCR officials believe the referral procedure will not significantly extend the time involved in resolving noncompliance findings over that of nonblock programs and added that the governor's involvement may increase the success of negotiations. Further, the block grant procedures are not significantly different from procedures established in May 1983 for other programs that flow through the states. Under these procedures, when a state agency's subrecipient is found in noncompliance--and the state has not caused the noncompliance by state policies or other means--the state agency responsible for the funds is notified and given a fixed number of days to obtain the subrecipient's voluntary compliance. An OCR official told us that usually OCR allows between 30 and 60 days. If the state agency is then unable or unwilling to bring the subrecipient into compliance, the state agency is also cited for noncompliance.

ASPECTS OF HUD'S ENFORCEMENT ARE DIFFERENT FOR THE STATE PROGRAM

In many respects, HUD's civil rights enforcement approach for the state-administered small cities program is the same as for other CDBG programs. However, under the state-administered program the focus of local office technical assistance and monitoring has shifted from the substate to the state level.

Although, at the time of our fieldwork, HUD officials generally understood their responsibilities, they also indicated some confusion about them under the program, especially concerning subrecipients. In June 1984 FHEO provided training to local offices.

Procedures for reviewing state certifications

Certification and review requirements for the state small cities program are similar to those for other CDBG programs and are being administered in a similar manner. The Reconciliation Act requires states to submit certifications, including civil rights certifications, to HUD and report on the use of funds and how such use related to program objectives. HUD must review each state's program at least annually to determine whether the state has carried out its certifications and is in compliance with applicable laws, including civil rights laws.

HUD must accept a state's certification as a prerequisite for the state to obtain funds. According to FHEO guidance, states' first year certifications "will generally be accepted on their face" unless HUD has independent information that would cause it to question them. Reviews of subsequent years'

certifications will consider states' performance, including states' reviews of local government administration methods and of the actual results achieved from activities funded through the program. According to the Director of the State and Small Cities Division, these reviews have not resulted in the non-acceptance of any state certifications for subsequent years.

Regional office role unchanged under state program

Under HUD's civil rights enforcement program, the regional FHEOs are responsible for investigating all complaints against HUD-funded recipients, investigating title VIII complaints, conducting compliance reviews of recipients, and carrying out other related activities, such as monitoring remedial agreements which result from investigations and reviews. Under the state-administered small cities program, regional office responsibilities are unchanged with respect to substate recipients and now also apply to state recipients.

FHEO regional offices are responsible for investigating all civil rights complaints about the state program, whether they are filed with HUD or the states. If a state receives a civil rights complaint about either the state agency or a subrecipient, the state is required to forward the complaint to the FHEO regional office for investigation. Also, FHEO regional offices are responsible for compliance reviews of the state program at both the state and subrecipient levels. However, as of April 1984, FHEO was still developing procedures for such reviews.

Focus of local office activity at state level

Under both the state-administered small cities program and other CDBG programs, the FHEO local office responsibilities include on-site monitoring and technical assistance. Under the state-administered program, these activities are focused at the state level, whereas under the CDBG entitlement program the FHEO local office deals directly with the grantee city.

Monitoring reviews assess whether recipients are carrying out activities in conformance with their civil rights certifications but are not as indepth as regional office compliance reviews. If problems are found, actions, such as placing conditions on approval of the next year's grant, may be taken. However, formal findings of noncompliance are not made on the basis of monitoring visits. If unresolved problems are considered significant, they are referred to the regional office, which may conduct a formal compliance review. Technical

assistance is given in response to requests from recipients. Technical assistance, also an integral part of monitoring, is given to help avoid or correct problems identified during monitoring visits. In fiscal year 1983, HUD local offices conducted 1,511 monitoring visits to CDBG recipients, including 854 city-level recipients of the federally administered small cities program. Under the state program, monitoring reviews will not be routinely conducted at the city level, but will be done at the state level.

FHEO headquarters guidance issued in August 1982 provides that the primary role of the FHEO local office is to assist states in assuming their new responsibilities under the state-administered small cities program. The guidance also emphasizes the importance of technical assistance, which is to be provided throughout the program, and that monitoring and technical assistance should be carried out in a mutually supportive manner.

Additional guidance, issued jointly by program and FHEO headquarters offices in September 1982, also provides that monitoring reviews be made at the completion of each of four phases of a state's program implementation cycle: fund distribution, local implementation, state review of its subrecipients' performance, and the submission of the state's performance report.[5] According to the guidance, civil rights monitoring reviews are intended to ensure that the state program is being carried out in conformance with the civil rights requirements and that the civil rights certifications are being met. For example, the local office will determine whether the recordkeeping requirements a state has developed for its subrecipients provide the state sufficient information about the subrecipients' compliance with civil rights requirements and whether a state's recordkeeping provides a sufficient data base for the state to report to HUD regarding whether it has met its civil rights certification.

The September guidance emphasized monitoring at the state level. It provided that the state's subrecipients may be monitored by HUD on site only if information developed during a state-level monitoring review indicates possible problems at the subrecipient level which can only be resolved through an on-site visit. Local offices must consult with headquarters before making such visits.

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[5]Guidance was revised in fiscal year 1984 to require at least two visits per year. Where possible, FHEO staff and program office staff conduct joint visits, but the FHEO staff is not required to follow this monitoring schedule precisely.

Some regional and local officials are unclear about responsibilities

Most regional officials said that they see their responsibilities under the CDBG entitlement program and the state program to be the same. However, some officials made exceptions concerning their responsibilities for state program subrecipients.

Officials indicated that the state program had not caused any change in the focus of the regions' overall enforcement program. Officials in all 10 regions told us that their level of effort for complaints, compliance reviews, and negotiating remedial agreements had not changed since the introduction of the state-administered program. Most also reported no change in attention to city-level activities, although two reported a decrease in attention to city-level compliance reviews.

Officials indicated that although regional responsibilities are basically the same under the CDBG entitlement and state-administered small cities programs, there is some uncertainty about the scope of responsibilities relative to subrecipients. Officials in all 10 regions said that with respect to both CDBG entitlement recipients and state-level state program recipients, they are responsible for investigating complaints, conducting compliance reviews, and negotiating and monitoring remedial agreements developed in response to noncompliance findings. However, officials said they were not responsible, or were not sure they were responsible, for some activities with respect to state program subrecipients:

--With respect to complaint investigations, one region's responding official believed that all substate enforcement, including investigating complaints about subrecipients, was a state responsibility. He also said, however, that he would check with FHEO headquarters before referring any complaints about subrecipients to a state. Officials in another region, although recognizing a responsibility to conduct investigations of subrecipients, believed that states should be given a chance to resolve such complaints informally before HUD begins an investigation.

--With respect to compliance reviews, one region's responding official said, as he had concerning complaints, that all subrecipient enforcement was a state responsibility, so the region would not do compliance reviews of subrecipients. Another said it would do such reviews only if the state requested it.

--With respect to negotiating and monitoring remedial agreements, officials in four regions responded that they are not responsible for negotiating these agreements with subrecipients, and six said that they are not responsible for monitoring such agreements with subrecipients.

Generally local office officials confirmed the change in focus for monitoring the state-administered program. However, they also indicated some confusion about responsibilities with respect to subrecipients. For example, 10 offices said monitoring and technical assistance had decreased at the subrecipient level. Seven and six offices, respectively, also reported that their general level of effort in both monitoring and technical assistance had decreased compared to what it was prior to introduction of the state-administered program. Four of the offices responded that all or most of this change was caused by the introduction of the program. Two of the offices noted, however, that they had been able to increase their monitoring of housing programs since they were no longer monitoring the small city grantees directly.

Local officials also confirmed that, generally, their responsibilities for state-level recipients under the state-administered program are the same as for CDBG entitlement program recipients. All 12 local offices said they were responsible for

--forwarding discrimination complaints to the FHEO regional office,

--conducting monitoring reviews of recipients,

--providing technical assistance to recipients, and

--reviewing the compliance-related data (e.g., annual performance reports) recipients submit to HUD.

Ten of the 12 local offices reported that the methods used to provide technical assistance were similar to those used for CDBG entitlement recipients. Also four of the six offices that responded to our inquiry comparing monitoring said methods were similar, one said they were not similar, and one said it had no basis to judge the methods.

With respect to state-administered program subrecipients, all of the offices reported that they were responsible for forwarding complaints about subrecipients to the regional offices. They also reported that they were not responsible for providing technical assistance to subrecipients or that they would do so

only if the state requested or permitted it. However, concerning monitoring subrecipients under the state program, responses varied. Officials from four local offices said they were responsible for monitoring subrecipients. Two said they would do so if information at the state level indicated a possible problem at the subrecipient level (reflecting the FHEO guidance discussed on p. 31), another stated it "anticipated" such monitoring, and the fourth stated that it was not clear when subrecipient monitoring would occur. On the other hand, officials from eight local offices said they were not responsible for monitoring subrecipients, but four stated they would do so if state-level information warranted it. Officials in two of the remaining four offices said they would monitor subrecipients only if the state permitted or requested it, and two said it is a state responsibility.

FHEO officials responsible for overseeing local office monitoring activities were not surprised that some regional and local offices did not completely understand their roles and responsibilities under the state program. The officials suggested that some FHEO staff may not have sufficiently differentiated instructions for program staff from those for FHEO staff. For example, they said the concept of letting states try to resolve complaints first--as stated by one FHEO regional official--is a guideline for the program staff and not meant for FHEO staff.

Although some FHEO regional and local office staff received training on the states' civil rights responsibilities under the state-administered small cities program, some officials believed that their staffs also needed training in FHEO's responsibilities.

--Officials in 5 of the 10 regions said that they needed training on small cities program reviews and investigations. Also, officials in the two regions we visited said they needed guidance from headquarters concerning procedures for conducting compliance reviews of the state program before they could begin such reviews.

--Four local office officials indicated that they wanted their staffs to have training in monitoring and/or technical assistance for the state program.

The headquarters officials responsible for FHEO local office activities also told us that they lacked sufficient training funds for fiscal year 1983 to provide the FHEO staff with training on their state program responsibilities. They said, however, that they were developing a handbook delineating FHEO regional and local office responsibilities under the state

small cities program. One problem they were having in developing the handbook was clearly defining the local office's relationship to state subrecipients in accordance with HUD's policy of giving maximum deference to states' interpretations of statutory requirements. The officials had also received increased training funds in 1984 and conducted local office training on state program responsibilities in June 1984. As discussed further on page 41, HUD also is developing compliance review guidance for regional office staffs.

EDUCATION ACTIVITIES DO NOT DIFFER AMONG PROGRAMS

Reconciliation Act provisions for the Education block grant do not include any civil rights provisions, and Education headquarters officials told us that OCR, therefore, treats the block grant like any other financial assistance program. Regional office officials confirmed that Education's policies and procedures have not changed since block grant implementation, and their overall enforcement policies do not differ among funding sources. They indicated that the regions were responsible for the same enforcement activities--investigations, compliance reviews, technical assistance, and related activities--whether or not entities receive block grant funds.

The methods used to conduct complaint investigations and compliance reviews of block grant fund recipients and those of categorical fund recipients were the same. For both activities officials in seven regions said that the methods were greatly similar, and the remaining three either said that they had no basis to judge or they did not respond to our inquiry. Likewise, although regional officials indicated some increase in emphasis on conducting compliance reviews, providing technical assistance, and negotiating remedial agreements, these changes were not attributed to the block grant. All 10 regions also reported that the implementation of the block grant had not changed the attention devoted to state recipients or to subrecipients in conducting compliance reviews, investigating complaints, or providing technical assistance.

CONCLUSION

In most respects, the three agencies' civil rights enforcement approaches are being applied to block grant programs in the same way as to categorical programs. Of the three agencies, Education OCR's activities were least affected by the introduction of the block grant program. The Reconciliation Act did not include specific civil rights provisions for the program, and, according to agency officials, the Department therefore has not implemented any policies or procedures which

apply specifically to it. HHS and HUD, on the other hand, have implemented policies and procedures related specifically to the block programs. HHS OCR's block-specific policies do not affect the majority of its activities but relate to the block-specific provisions and procedures included in the Reconciliation Act. HUD, on the other hand, while not changing its policies concerning regional office complaint investigations and compliance reviews, has changed the focus of its local office monitoring and technical assistance activities to the state level.

At the time of our fieldwork, HHS either had not fully developed specific policies and procedures or issued regulations for effecting the Reconciliation Act's block-specific nondiscrimination provisions, including the protections against sex and religious discrimination, and the requirement that findings of noncompliance be referred to governors. OCR headquarters officials believe that the lack of regulations has had limited effect on their enforcement activities and pointed out that complaints alleging discrimination on the basis of sex or religion will be investigated. However, pending issuance of regulations, OCR will provide limited technical assistance and will not conduct compliance reviews concerning the sex and religion provisions.

The three agencies' regional civil rights officials generally understood their responsibilities for the block grant programs. The uncertainty of some HUD FHEO officials about their responsibilities relative to subrecipients was being addressed partly through training and the development of a handbook on FHEO staff responsibilities for the state-administered small cities program.

CHAPTER 4

AGENCIES HAVE LIMITED BLOCK GRANT EXPERIENCE TO ASSESS POTENTIAL COMPLIANCE PROBLEMS OR ENFORCEMENT DIFFICULTIES

At the time of our fieldwork the agencies' compliance reviews and complaint investigations had not yet focused on block grant programs, and conclusions about recipients' civil rights compliance could not be drawn. There were indications that some issues concerning the agencies' enforcement procedures may warrant further oversight--such as reduced availability of compliance-related data and difficulties in tracing funds. However, officials believe most problems can be overcome and do not anticipate significant difficulties in carrying out enforcement activities related to block grant programs.

BLOCK PROGRAMS' CIVIL RIGHTS COMPLIANCE NOT YET ASSESSED

For a variety of reasons, including newness of the programs themselves,[1] none of the agencies had, at the time of our fieldwork, assessed civil rights compliance related to block grant implementation and administration. However, HUD local offices had monitored some states' programs, and both HHS and HUD had included block grants as one of the areas to be covered in fiscal year 1984 compliance reviews.

Education does not plan to review the block grant program

Education has not conducted any block grant program compliance reviews, and as of April 1984, none were planned, although officials said they had not necessarily ruled out such reviews. A spokesperson for the Office of the Assistant Secretary for Civil Rights explained that most of OCR's resources are devoted

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[1]While most states began implementing some HHS block grants in the beginning of fiscal year 1982, many were not approved for the HUD program until the last half of that year. The Education program funds did not become available until July 1982.

to complying with a court order[2] which requires it to process complaints and compliance reviews within specified time frames.[3] The spokesperson said that OCR currently sees no need to devote its limited compliance review resources to the block grant, which constitutes a very small part of the funds the Department provides for education. The Assistant Secretary also pointed out that most of the school districts OCR plans to review in its general enforcement activities receive block grant as well as other Education funds.

HHS compliance reviews begun

HHS began conducting block grant compliance reviews in fiscal year 1984. OCR's Director of Operational Analysis and Training explained that OCR did not believe the states had had sufficient experience with the programs to allow meaningful compliance reviews before fiscal year 1984. Also, until they were rescinded in early 1983, HHS' interim policies, discussed on page 23, precluded conducting compliance reviews of block grant programs. By that time the fiscal year 1983 regional operating plans, which did not include block grant programs, had been established.

Therefore, OCR first instructed regions to include compliance reviews of block programs in their fiscal year 1984 operating plans. OCR instructed the regions to review (1) underutilization of program services by minority, handicapped, and elderly persons, (2) availability and accessibility of facilities and services to the handicapped, and (3) the states' activities designed to assure civil rights compliance. Reviews are to incorporate the title VI, section 504, and age discrimination authorities. Discrimination on the basis of sex or

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[2]In an order issued in Kenneth Adams, et al., Plaintiffs v. Joseph Califano, Jr., Secretary of Health, Education, and Welfare, et al., Defendants; 430 F. Supp. 118 (D.D.C. 1977), the Department was required to dispose of title VI, title IX, and section 504 cases within specified time frames. This order was modified in 1983 by a court order entered in the cases of Kenneth Adams, et al., Plaintiffs v. Terrel H. Bell, Secretary of Education, et al., Defendants (Civil Action No. 3095-70); and Women's Equity Action League, et al., Plaintiffs v. Terrel H. Bell, Secretary of Education, et al., Defendants (Civil Action No. 74-1720).

[3]In May 1983 the Assistant Secretary testified before the Subcommittee on Postsecondary Education of the House Committee on Education and Labor and the Subcommittee on Civil and Constitutional Rights of the House Judiciary Committee that Education OCR devoted an estimated 98 percent of its resources to complying with the order.

religion is not to be considered because the block grant regulations for these provisions have not been approved. In addition, headquarters guidance on selecting recipients for review provides that the reviews should

--be conducted in two states if possible;

--include the state agency administering the block, with a minimum of two and preferably three local sites; and

--focus on one or two consolidated programs within each of the blocks.

According to the OCR official responsible for monitoring regions' operating plan implementation, fiscal year 1984 plans include reviews of each block grant (except primary care) as follows:

--Social Services - six states.

--Alcohol, Drug Abuse, and Mental Health - six states.

--Maternal and Child Health - one state.

--Preventive Health and Health Services - one state.

--Community Services - one state.

--Low-Income Home Energy Assistance - two states. (Because of limited resources this is currently a project review, not a full compliance review, in one of the states.)

As of August 1984, OCR headquarters did not have data on the number of reviews that had been completed. OCR's Director of Operational Analysis and Training told us that the regions' early experience had shown that the block grant reviews require considerable time and resources. Consequently, in fiscal year 1984 OCR is concentrating on identifying the most important compliance issues as well as any difficulties in conducting the reviews, such as problems in data retrieval, and developing models for future reviews, including time estimates.

HUD monitoring is ongoing and compliance reviews are planned

At the time of our fieldwork, not all states had fully implemented the small cities program, and FHEO's activities focused on providing technical assistance and monitoring. FHEO had not conducted compliance reviews of the small cities program at either the state or subrecipient level, but had instructed its regional offices to conduct subrecipient compliance reviews in fiscal year 1984.

FHEO local offices have state program experience

The FHEO local offices we contacted had varying degrees of experience with the state program. The local offices reported that they had provided technical assistance to 9 of the 13 states.[4] The responses indicated that the remaining four states had not been given assistance either because the state was not, or had not been, in the program or because the state had not requested such assistance.

Seven of the 12 local offices said they had made monitoring visits to state agencies. Officials in the seven offices indicated that, at the time of their visits, states were in different stages of implementing civil rights oversight mechanisms. Two reported that the states had not established oversight mechanisms. Staff from one of these offices said they had visited a state agency three times, and each time the state staff said they were unaware of any civil rights responsibilities and asked for information about those responsibilities.

Staff from the other five offices had been able to review at least some aspects of state oversight mechanisms. Officials in four of the five were concerned that states had insufficient documentation concerning subrecipients. This lack of documentation, as well as the fact that state monitoring staff had not been trained in civil rights, raised questions from one official concerning the extent of the state's civil rights monitoring. An official from the fifth office, which had monitored six states, said that, generally, the states' data on program benefits to protected groups were weak, but the states were working with subrecipients to improve the data. He suggested that the states were slow in developing recordkeeping and reporting requirements (for all aspects of the program) because they had first concentrated on distributing the funds.

FHEO subrecipient reviews scheduled for 1984

FHEO plans to review some state program subrecipients in fiscal year 1984 and in later years to review state-level recipients as well. FHEO's fiscal year 1984 regional management plan

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[4]The 12 FHEO local offices we contacted were responsible for the 13 states in our overall review as well as some other states. We asked questions concerning both the offices' general experience and specific experiences in the 13 states. Consequently, the universe of answers was 12 for some questions and 13 for others.

requires each region (except Fort Worth)[5] to conduct compliance reviews of five state program subrecipients. According to FHEO's Director of the Office of HUD Program Compliance, as of July 1984, some reviews had been started, but he did not know how many because headquarters does not maintain separate data for the state small cities program. He said also that although the regions had experience in reviewing cities, FHEO was developing guidance for regions to use in new aspects of the program, such as contacting the state office and using information from the state to select subrecipients for review.[6]

The director, as well as other FHEO officials, told us that the program was too new to allow meaningful civil rights compliance reviews before 1984. He also explained that state-level reviews had not yet been scheduled for two primary reasons, although some may be done in fiscal year 1985. First, FHEO had no experience with state-administered programs. Because the compliance issues will be different at the state level than at the subrecipient level, FHEO plans to develop guidance on how to conduct such reviews. He said FHEO wants to wait until it has sufficient monitoring experience to identify the most important review issues. Local offices were expected to have monitored most states by the end of fiscal year 1984. Second, FHEO wants to give the states time to develop their data bases and establish a record of experience in administering their programs, which will enable FHEO to better assess state compliance with civil rights laws.

COMPLAINTS DID NOT FOCUS ON BLOCK PROGRAMS

Data available from the three agencies identified only a few civil rights complaints specifically about block grants. Nine of the 10 HUD FHEO regional offices said they had not received any complaints about the small cities program recipients. One region said it had received one complaint about a subrecipient's contracting practices, but it had not yet begun to investigate the complaint at the time of our fieldwork. On the other hand, both Education's and HHS' OCR had received and investigated complaints about block grant recipients. Although these were not usually about the block programs specifically, the activities complained about may have been funded, in whole or in part, by block grant funds.

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[5]According to an FHEO official, the Fort Worth regional office does not have sufficient resources to undertake such reviews because the region is required to do extensive housing reviews as a result of a housing discrimination suit.

[6]This guidance was issued in July 1984.

Education

OCR officials believed they had investigated block grant recipients, but neither records nor regional officials could identify all specific cases. Officials from two regions said they had investigated some block grant recipients but that complaints had not been about the block grant program. Officials in the remaining eight regions said they assumed that some of the school districts they investigated had been block grant recipients but did not know which ones had received such funds; four commented that no complaints about the block grant had been received. Because OCR does not have to identify all funds an entity receives in order to establish jurisdiction, files usually do not include all funding sources. Therefore, complete information could not be obtained by reviewing files.

None of the randomly selected complaints we reviewed in two regions was about the block grant program. Of 36 randomly selected complaints, we reviewed files for 33 (3 were unavailable at the time of our visit). None of the 33 was about the block grant program. However, nine files indicated the entity investigated had received block grant funds.[7] Those nine complaints were about general activities, such as discrimination in school hiring practices and student discipline, not about the block grant program, although block grant funds may have supported, in whole or in part, some of the activities complained about. At the time of our fieldwork, three of the nine had been closed, none with a finding of noncompliance.

HHS

HHS had received complaints about block grant recipients, including some specifically about the block grant programs. However, information available, though not complete, indicated the block programs were seldom the focus of the complaints.

Although most regions had performed investigations of block grant recipients, data obtained from OCR headquarters indicated that they had done so infrequently: in fiscal years 1982 and 1983, the number of complaints filed against block grant recipients were 34 and 119, respectively.[8] In 1983 this represented about 10 percent of all complaints received. The data identified 4 of the 119 complaints as being specifically about the block grant programs. Also, as in Education, some of the other

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[7]Because Education does not necessarily identify all funding sources, other files might also have concerned block grant recipients.

[8]Most of these entities also received funds from other HHS programs.

complaints may have been about activities supported, in whole or in part, by block grant funds.

We reviewed files for 27 of the 33 complaints that HHS had identified as complaints against block grant recipients in the two regions we visited. (Files for six were unavailable at the time of our visit.) All but two of the complaints were about general activities--for example, employment discrimination in a child care center and inappropriate placement of handicapped children in a state hospital--not about block grant programs specifically. At the time of our fieldwork, 21 of the 27 complaints had been closed, none with a finding of noncompliance.

Our case file review identified only two complaints about block grant programs--both of which were among the four identified in HHS' data. The two complaints were filed against the same state agency and alleged that, in administering the Low-Income Home Energy Assistance Program, the agency was not assuring access by the handicapped. Both complaints were withdrawn by the complainants before HHS' investigation was begun.

Although HHS' data are the best available, they may be incomplete. For example, the two regions we visited relied to a large extent on staff knowledge of funds received by entities, and our review indicated staff may not always identify all block grant funds (or all categorical funds) an organization receives. OCR's Deputy Director for Program Operations and other officials confirmed that the data probably are incomplete. They said they did not believe failure to identify all funding is a significant problem and, with regard to block grants, reiterated one regional official's comment that staff are now more aware of the need to look for block grant funds.

SOME ASPECTS OF ENFORCEMENT MAY BE MORE DIFFICULT

Agency officials compared several aspects of enforcement activities under block and categorical programs. Among those aspects compared were the adequacy of compliance-related data maintained by states and the usefulness of the information available at the federal program office for purposes of civil rights enforcement. We also asked whether the following aspects of investigations and compliance reviews were better or worse under block grants:

--Ease of establishing jurisdiction (complaints only).

--Certainty of state responsibilities.

--Certainty of regional OCR/FHEO responsibilities.

--Time required to complete the activity.

Officials' comments did not establish that enforcement difficulties pose a significant problem. For most aspects officials either (1) reported that the situation was the same under block and categorical programs, (2) did not respond, or (3) reported that they were not sure. Those that did see a difference, however, almost always reported more, not less, difficulty under the block grants. Officials' comments seem to indicate three areas where enforcement may be more difficult:

--Less data available at the block grant recipient level to use in determining recipient compliance.

--Less data available at the federal program office level to use in enforcement activities.

--Difficulties in establishing jurisdiction in complaints against block grant recipients.

Data maintained by recipients

In conducting enforcement activities, agencies use a variety of information from recipients' records as well as other sources to determine whether recipients meet civil rights requirements. None of the three agencies had sufficient experience under block grants to assess the adequacy of the data maintained by state or substate block grant recipients. Of the 10 regional offices in each agency, 7 in HHS, 6 in Education, and 9 in HUD said they had no basis to judge data adequacy. Likewise, HUD local offices said they could not judge data adequacy for 10 of the 13 states. Other comments by officials in HHS and HUD raised questions about the adequacy of data that will be available to them.

There are indications that data maintained by HHS block grant recipients may be inadequate, although not necessarily any worse than data maintained by categorical grant recipients. Officials could not assess block grant data, but eight regional officials, as well as headquarters OCR and OGC officials, said that the data maintained by recipients of categorical programs are inadequate for determining compliance.

Information we obtained from state block grant program officials shows that states are generally maintaining the same types of data concerning program beneficiaries--key information for determining civil rights compliance--as they did when the programs were categorical. They generally indicated that no significant increases or decreases in types of data collected are expected.

An HHS OCR official pointed out that data maintained by categorical program recipients are often inadequate for determining compliance. However, he and other OCR and General

Counsel officials said that usually investigators can develop sufficient data from program records and demographic data, such as census data.

HUD FHEO officials raised specific concerns about data available under the small cities program. These concerns may be alleviated, however, when HUD implements the 1983 amendments to the program, which require HUD to establish uniform recordkeeping and reporting requirements for states.

Officials in five of six local offices that provided comments concerning data said that data availability was worse under the small cities program than under the CDBG entitlement program. Four officials were concerned that under the small cities program, FHEO lacked direct information on the individual city-level recipients, and states had only limited data concerning subrecipients' civil rights compliance.

HUD General Counsel officials and program officials who developed the regulations for the state program do not believe any significant oversight was lost by focusing monitoring at the state level. They pointed out that HUD retained compliance review authority, that the current policy avoids the possible duplication of both HUD and state staff monitoring subrecipients, and that HUD's state-level monitoring should disclose enough information to determine whether monitoring by HUD at the substate level is necessary.

On the other hand, as discussed on page 40, FHEO officials in five local offices believed the information about subrecipient activities from the states was not sufficient. Officials from four of the local offices said that the state agency showed them checklists used in conducting on-site reviews of subrecipients. Although the checklists indicated the subrecipients had performed certain civil rights functions, such as conducting equal employment activities or maintaining data on protected group participants, there was no documentation or explanation of why the state reviewer found the subrecipients' activities acceptable. Also, officials from those four offices and the fifth office were concerned that they no longer had direct contact with subrecipients. FHEO's Director of Program Standards and Evaluation and other headquarters officials echoed the field staff concerns about the lack of direct FHEO local office contact with, and data from, subrecipients.

Also, states' annual reports to HUD have contained limited information concerning how they fulfilled their civil rights certifications. Under the state program, HUD has not prescribed any specific format or content for the states' annual reports.

We reviewed the six state reports HUD headquarters had received as of November 1983. Those six reports either did not mention civil rights at all or provided only limited information. For example, one report indicated that the state had conducted reviews of subrecipients but did not indicate the number or the results.

FHEO has taken steps to address these problems and, pursuant to the 1983 amendments, was developing more specific recordkeeping and reporting requirements. One of the 10 objectives in FHEO's fiscal year 1984 regional management plan is to assure that states maintain civil rights records and that they establish adequate civil rights recordkeeping systems for their subrecipients. The plan states that this objective will be met through state-level monitoring and, when appropriate, technical assistance.

Also, in a December 1983 memorandum the HUD program office and FHEO emphasized to their field offices that state reports must include a section on how states complied with applicable laws and regulations, including those for civil rights. They instructed field offices that when performing the annual review of state programs, they use any information obtained during monitoring or technical assistance visits to the states as well as the information contained in the state reports. If information available is still considered inadequate, the memorandum set forth actions for the offices to take to obtain additional information from the states. The memorandum also suggested that the field staff remind states of the deadlines for submitting their reports and offer their assistance in preparing the reports.

Further, the 1983 amendments to the small cities authorizing legislation require that HUD assist various state and local government public interest groups to develop and recommend to HUD, by November 30, 1984, uniform recordkeeping, performance reporting, and evaluation reporting requirements for both states and subrecipients. As of August 1984, HUD was working with these groups to develop the recommendations and to have the requirements established by November 30, 1984. Provisions then under consideration included requiring that:

--Records kept by small cities document (1) actions taken to affirmatively further fair housing and to meet the requirements for employing project area low-income residents and businesses, (2) the extent of protected group participation in the program, (3) equal employment opportunity data, and (4) actions taken to utilize minority- and women-owned businesses in carrying out the program.

--Records kept by states contain equal employment opportunity data and show how states reviewed their subrecipients' conformance to the program's civil rights requirements.

--State annual reports include data showing the extent to which protected groups benefited from the program and summarize actions taken to (1) ensure equal employment opportunity in the program, (2) review subrecipients (including the review results), (3) affirmatively further fair housing, and (4) utilize minority- and women-owned businesses.

Reduced usefulness of information available at the federal level

Generally, under the block grant programs the federal program offices responsible for administering the programs have less information concerning recipients' activities than they did under the prior categorical programs. We asked regional officials in each agency whether this reduced information had affected their civil rights enforcement activities. Many said they had not used information from the program offices before or, if they did, that information could be obtained from other sources. Some officials, however, raised concerns in this area.

Emergency School Aid Act program data no longer available

Although 6 of the 10 Education regional OCR officials said that loss of data previously available under the Emergency School Aid Act (ESAA) program was not a problem, the remaining four officials said it was. The four were concerned that the loss of data resulting from consolidation of the program into the Education block grant would make their overall enforcement efforts, not just those related to the block grant, more difficult.

ESAA's primary purpose was aiding efforts to desegregate schools and overcome the effects of minority group isolation. Education's OCR was responsible for determining school districts' and other recipients' compliance with nondiscrimination requirements established as prerequisites for receiving grants under the program. Consequently, according to some officials, OCR received and had available fairly extensive data on school districts and other entities that applied for ESAA funds.

Officials in four regions noted that under the ESAA program they had data that had been useful in conducting complaint investigations or in general oversight of school districts. One official noted that these data had been a "major help" in investigations. He said that the data can be developed by the

region, but he did not know how much more difficult it would be to do so or how significant the loss of the ESAA data will be. Another regional official noted that in reviewing the data submitted by districts, OCR could identify possible problems and bring them to the district's attention for action. This official also stated that the program's pregrant review procedure facilitated settling discrimination complaints. A third regional official said that in conducting pregrant reviews, the region made community and school district contacts that were useful in conducting investigations and that without ESAA data, complaint investigations would take longer to complete. The fourth official stated that the absence of ESAA data makes the job "a little more difficult" because the staff now has to go to the school districts to develop the information.

The extent to which this lack of previously available data will make it more difficult to conduct complaint investigations and compliance reviews may be limited. Six regions responded that it made no difference. Education OCR officials, including a spokesperson for the Office of the Assistant Secretary for Civil Rights and an official familiar with OCR's elementary and secondary education enforcement activities, agreed that information available under ESAA had been useful in the agency's civil rights enforcement activities but said sufficient information for enforcement is still available.

Recipient application information not available for HUD FHEO

Officials from 6 of the 10 FHEO regional offices said they had no basis to judge the usefulness--for purposes of civil rights investigations and reviews--of information available from the program office. Of the four remaining offices, however, three said the information was less useful and the fourth said it was equally useful. They were concerned about the lack of specific information in program applications about planned program activities which previously served as background for investigations and reviews.

FHEO headquarters officials agreed that prior program applications had been very useful tools. However, they pointed out that the 1981 Reconciliation Act removed the requirement for detailed applications from the entire CDBG program. Consequently, this difficulty is no greater for the state-administered program than for other CDBG programs.

Difficulties in establishing jurisdiction over entities alleged to have discriminated

To have authority to investigate a discrimination complaint, an agency must establish that the activity was funded in

whole or in part with funds from the agency. Education and HUD officials saw no difficulties in tracing block grant funds for this purpose. On the other hand, five of the seven HHS regional officials who provided comments on this subject said that it was more difficult to establish jurisdiction under block grant programs than it was under categorical programs.

Education OCR regional officials did not believe the block grant would affect their ability to establish jurisdiction. Seven of the 10 regional officials reported that establishing jurisdiction is not more difficult under the block grant program. (Three officials were not sure of the effect or did not respond to our inquiry.) One official commented that if a recipient did not receive other funds and jurisdiction had to be established solely on the basis of block grant funds--something Education's Assistant Secretary for Civil Rights said is unlikely, considering the relatively small amount of block grant funding assistance compared with other types of federal elementary and secondary education assistance--the region would need more information than it currently has to establish the funding source. On the other hand, on June 3, 1983, the Assistant Secretary advised the regions that:

> "The courts have said that Federal assistance which provides support to an institution's general education program may be terminated upon a showing of discrimination within the general education program. . . . To the extent that block grants are provided for more general use by school districts, it will make [establishing jurisdiction] less difficult in enforcement proceedings. Furthermore, headquarters is unaware of any local school district in the last 10 years that has challenged OCR jurisdiction to investigate."

Because they had not conducted any investigations of state small cities program recipients, none of the 10 HUD regions provided information concerning difficulty in establishing jurisdiction. However, regional officials in the two offices we visited did not believe this would be a problem. They were confident that they could readily obtain funding data from the states.

HHS officials express concern

In contrast to Education and HUD officials, HHS officials believe establishing jurisdiction is more difficult under block grant programs, although they believe the difficulty would be overcome. Their concern is that less information is available for tracing funds through layers of recipients.

According to both headquarters and regional officials, establishing jurisdiction over specific entities is more art than science. For some programs jurisdiction can be established quickly from such sources as federal grantee lists. Often, however, funds must be traced from the state level through various substate layers with no specific trail. Only the investigators' experience guides them in what types of program funds the entity might have received and therefore what potential funding sources to contact. A variety of federal, state, and local sources are used, including sometimes asking the entity directly.

All 10 HHS regions said they were currently able to determine which entities received block grant funds. However, five of the seven regional offices, which provided information concerning the relative difficulty of doing so, indicated that establishing federal jurisdiction in complaints against recipients was more difficult when block grant funds were involved. (One region said the level of difficulty was the same and one was not sure.) All five pointed to the lack of data identifying which substate entities received block funds from the states. Three of the five also said the regional program offices were less useful as sources of information for investigations and reviews than under the prior categorical programs.

In our review of block grant implementation in 13 states, we also found that states may have limited information concerning who ultimately received some block grant funds. State agencies have information on which entities they funded with block grant funds but may not know to whom those recipients may have passed block funds. Furthermore, subrecipients themselves may not be aware that they had received block grant funds from the state because these funds are often merged with state funds to pay subrecipients.

HHS OCR's Director of Program Operations and other headquarters officials agreed with regional office comments that jurisdiction is more difficult to establish for block grants. They said that federal program offices are less useful in helping to trace block grant funds than the categorical funds because those offices have less information, not only about which entities received the funds, but also about the services those programs are funding. This requires OCR's staff to contact more sources in determining what funding an entity is receiving. Further, one official commented that all regions had reported problems in tracing the block grant funds through the states.

However, jurisdiction can often be established under other programs, so in many cases (except for issues involving the block grant sex and religion protections or after noncompliance has been found) block grants do not have to be identified. Additionally, an OCR official also noted that one difficulty regions have often reported is dealing with state program

staffs; regions were not sure whom to contact at the state level or had to contact several sources at the state. Officials said that as OCR and state staff gain experience, OCR should be better able to trace the funds.

CONCLUSION

The agencies' enforcement activities had not, at the time of our fieldwork, focused on block grant programs. Accordingly, their limited block grant experience sheds little light on recipients' civil rights compliance or on whether the block grant mechanism has created difficulties for the agencies in carrying out enforcement activities. If such compliance problems or enforcement difficulties exist, they may come to light as HHS and HUD carry out their planned compliance reviews.

Education's enforcement approach does not usually require complete funding data, and it had not conducted any compliance reviews of the block grant program. Consequently, Education had virtually no information specifically about the extent to which its activities involved block grant recipients. Similarly, HHS had not conducted compliance reviews of the block programs at the time of our fieldwork, although some block grant recipients had been investigated as part of the Department's general enforcement program. However, no problems specifically concerning the block grants had been identified, and officials believed any initial difficulties in tracing block grant funds would be alleviated through experience. As with the other two agencies, HUD regional offices had not conducted any complaint investigations or compliance reviews of the state-administered small cities program. Some HUD local offices had conducted monitoring visits to states and raised concerns about the adequacy of states' records. However, in implementing the 1983 program amendments, HUD will be establishing uniform recordkeeping requirements for states and subrecipients.

PRIOR GAO REPORTS ON BLOCK GRANT IMPLEMENTATION

States Are Making Good Progress in Implementing the Small Cities Community Development Block Grant Program	GAO/RCED-83-186, Sept. 8, 1983
Maternal and Child Health Block Grant: Program Changes Emerging Under State Administration	GAO/HRD-84-35, May 7, 1984
States Use Added Flexibility Offered by the Preventive Health and Health Services Block Grant	GAO/HRD-84-41, May 8, 1984
States Have Made Few Changes in Implementing the Alcohol, Drug Abuse, and Mental Health Services Block Grant	GAO/HRD-84-52, June 6, 1984
States Fund an Expanded Range of Activities Under Low-Income Home Energy Assistance Block Grant	GAO/HRD-84-64 June 27, 1984
States Use Several Strategies to Cope With Funding Reductions Under Social Services Block Grant	GAO/HRD-84-68 Aug. 9, 1984

CIVIL RIGHTS PROTECTIONS APPLICABLE TO THE BLOCK GRANT PROGRAMS

Summary of Protections From Existing Statutes and Reconciliation Act Provisions

Program	Race, color, or national origin	Sex	Religion	Handicap	Age
Alcohol, Drug Abuse, and Mental Health Services (HHS) Maternal and Child Health Services (HHS) Preventive Health and Health Services (HHS) Primary Care (HHS)	X	X	X	X	X
State Small Cities (HUD) Community Services (HHS) Low-Income Home Energy Assistance (HHS)	X	X	a	X	X
Education Block Grant Social Services (HHS)	X	b	a	X	X

[a]No religious discrimination protection is provided in the 1981 Reconciliation Act or the existing civil rights statutes applicable to these programs. However, title VIII of the civil rights act of 1968 prohibits religious discrimination in housing.

[b]Under title IX sex discrimination in education programs is prohibited.

Specific Provisions of the 1981 Reconciliation Act

Alcohol, Drug Abuse, and Mental Health Services

The Reconciliation Act prohibits discrimination pursuant to title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title IX of the Education Amendments Act of 1972. In addition, it prohibits discrimination on the basis of sex or religion.

Maternal and Child Health Services

The Reconciliation Act prohibits discrimination pursuant to title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title IX of the Education Amendments Act of 1972. In addition, it prohibits discrimination on the basis of sex or religion.

Preventive Health and Health Services

The Reconciliation Act prohibits discrimination pursuant to title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title IX of the Education Amendments Act of 1972. In addition, it prohibits discrimination on the basis of sex or religion.

Primary Care

The Reconciliation Act prohibits discrimination pursuant to title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title IX of the Education Amendments Act of 1972. In addition, it prohibits discrimination on the basis of sex or religion.

State Small Cities

The Reconciliation Act amends the certification requirement of title I of the Housing and Community Development Act of 1974 to require states to certify compliance with titles VI and VIII of the Civil Rights Acts of 1964 and 1968, respectively, and with other applicable laws. According to HUD, applicable civil rights provisions include section 109 of the above housing

act--which references section 504 of the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975--and Executive Order 11063, as amended. The 1983 amendments to the program's authorizing legislation also require states to certify that they will affirmatively further fair housing.

Community Services

The Reconciliation Act prohibits discrimination pursuant to section 504 of the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975. In addition, it prohibits discrimination on the basis of race, color, national origin, or sex.

Low-Income Home Energy Assistance

The Reconciliation Act prohibits discrimination pursuant to section 504 of the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975. In addition, it prohibits discrimination on the basis of race, color, national origin, or sex.

Education Block Grant

There are no nondiscrimination provisions in the Reconciliation Act. However, the Department of Education has determined that title VI of the Civil Rights of 1964, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title IX of the Education Amendments Act of 1972 apply.

Social Services

There are no nondiscrimination provisions in the Reconciliation Act. However, HHS has determined that title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title IX of the Education Amendments Act of 1972 apply.

DESCRIPTION OF GAO'S DATA COLLECTION METHODOLOGY

We used three major sources to obtain information on federal civil rights enforcement applicable to the block programs:

--HHS, Education, and HUD headquarters officials and documents.

--Information obtained from officials and case file reviews in two of each agency's civil rights regional offices and in two HUD civil rights local offices.

--Questionnaires administered to civil rights regional and local offices.

AGENCY HEADQUARTERS, REGIONAL, AND LOCAL OFFICES

Our work at the agencies' headquarters, regional, and local offices was essentially the same for each agency. However, our work varied at times, especially in the regional and local offices, because of differences in the agencies' enforcement programs.

Agency headquarters

At each agency's headquarters we interviewed officials from the civil rights office and reviewed pertinent regulations, manuals, memoranda, and policy issuances to obtain complete information on policies and procedures established for block grants. In some cases we also talked to officials from the Office of General Counsel and officials responsible for implementing the block grant programs.

We also asked each agency headquarters for data concerning the number of block grant enforcement activities, especially complaint investigations and compliance reviews, they had initiated. To include the broadest scope of activities, we defined a block grant complaint or compliance review as any complaint filed or review initiated against a recipient of block funds, regardless of whether the recipient received other forms of federal assistance or whether the investigation or review was specifically about the block grant program.

Education officials told us that these data were not available. During our regional office visits OCR staff confirmed that they do not necessarily identify all funding sources and do not know which recipients receive block grant funds.

FHEO's Director of the Office of HUD Program Compliance said its central computer files did not show whether entities investigated or reviewed had received state small cities program funds. However, the Director had the regions provide the information. We verified these data in our questionnaire follow-up interviews. Also, in the two regions we visited, both of which reported no state program investigations or reviews, officials' comments and our tests of their files confirmed that complaints had not been closed because of lack of HUD funding and that the activities they had investigated or reviewed had been supported by other HUD funding, not state small cities program funds.

Although HHS headquarters does not maintain data on funding sources centrally, HHS instructed its regions to identify all cases involving block grant recipients (and to specify which cases focused specifically on the block programs). HHS supplied us with block grant case numbers, and we did not fully verify these data. Our visits to two regional offices--Atlanta and Dallas--indicated that the data may not be complete since officials told us that they had not reviewed all files, but had instead relied, in part, on staff memory. However, on the basis of our file review and discussions with regional and headquarters officials, we believe the information provided is the best readily available indication of the extent of HHS' enforcement activity related to block grant recipients.

HHS regional office visits

The data provided by HHS/OCR headquarters identified 33 complaints against block grant recipients filed in the two regions between October 1981, when the Reconciliation Act became effective, and May 1983, when we obtained the data from HHS. Although our work indicated the data are not complete, they helped us to identify some block grant cases. Six of the 33 were unavailable for review because they were open at the time of our visit and officials told us their retrieval would have adversely affected processing. Thus, a total of 27 block grant complaint cases were reviewed in the two regions. Additionally, in the Atlanta office, we reviewed the file for one of the three compliance reviews of block grant recipients identified in the HHS data as being started during the above time frames. We reviewed the files to find out how OCR determined that block grant funds had been received, what issues were investigated or

reviewed, what, if any, violations had been found, and how the cases were closed.

Education regional office visits

At the Education regional offices, we followed procedures similar to those used at HHS. However, because Education could not identify specific block grant complaints or compliance reviews, we selected a small random sample from a list provided by Education of all complaints received between October 1, 1982, the beginning of the first fiscal year after the block grant funds became available, and August 1983, the date we obtained the data from Education. We did not verify the accuracy of Education's list. Using random numbers, we selected 36 (10 percent) of the 356 complaints received in the two regions during that time frame. We reviewed OCR's case files for 33 of these complaints; 3 were not available because they were in process or files had been sent to headquarters for quality assurance review. We reviewed the files to determine if any complaints had been filed specifically about the block grant program; whether any indicated the entity complained about received block grant funding; and, if so, what issues were investigated, what, if any, violations were found, and how the cases were closed.

HUD regional and local office visits

At the HUD regional offices, officials confirmed that they had not received any complaints against, or begun compliance reviews of, recipients of the state-administered small cities program. Therefore, we could not review any block grant case files. We discussed with officials their understanding of and experience with the program.

Our scope differed somewhat at each of the two local offices because their experiences with the state program varied at the time of our visits. The Louisville office had made several monitoring visits to Kentucky, which had accepted the program in March 1982. Therefore, we discussed with the FHEO director and staff their overall understanding of the state program and their experiences with it in Kentucky and reviewed the office's monitoring files for the Kentucky program. At the Dallas office we were unable to review state program monitoring files because Texas had just accepted the program in June 1983 and the local office had had no experience monitoring it. However, we discussed with the local office FHEO director his understanding of the state program in general and the results of his contacts with the Texas staff regarding that program. Also, for comparative purposes with the state-administered block program, we reviewed a few monitoring review files for small cities under the HUD-administered small cities and CDBG entitlement programs.

Civil rights regional and local office questionnaire

Content:

This questionnaire was designed to elicit information about the policies, procedures, and practices used by civil rights regional and local offices in carrying out block and categorical program civil rights enforcement. It asked officials:

--What they perceived to be federal and state enforcement responsibilities under both types of programs.

--Whether they had conducted civil rights investigations or compliance reviews of, or provided civil rights technical assistance to, block grant recipients.

--Whether and how experience with block grant recipients differed from that with categorical program recipients.

Questions which compared experience with block and categorical program recipients asked whether (1) certain aspects of the agencies' enforcement activities were more or less difficult under block programs, (2) procedures and practices were any different, and (3) the block programs had affected their overall enforcement programs, such as causing them to pay greater attention to state recipients in their investigations and reviews. In most cases we asked them to compare experiences with current categorical programs so that differences could be more clearly associated with block programs than overall changes in civil rights enforcement. However, in some cases the comparisons were against the prior categorical programs that were consolidated into the block programs to determine whether programmatic changes had affected civil rights enforcement.

Source of information

The questionnaires were mailed to the directors of each agency's 10 regional civil rights offices and to the 12 HUD local offices responsible for the 13 states in our review. We specified in the questionnaire that the responses should represent the official response of the regional or local civil rights office.

Method of administration

The regional and local office civil rights directors were asked to complete the questionnaires, with help if necessary, and to return them to us by mail. All of the offices returned the questionnaires. We then contacted each office by phone or on-site visits to clarify and expand on selected responses. We focused especially on officials' answers indicating differences in federal or state civil rights enforcement roles under block and categorical programs, confusion about responsibilities, and any problems or difficulties reported about the block grant programs.

UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE ASSISTANT SECRETARY FOR CIVIL RIGHTS

AUG 22 1984

Mr. Richard L. Fogel
Director
Human Resources Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Fogel:

Your letter to Secretary Bell requesting the Department of Education's Review and comment on your proposed report entitled "Federal Agencies Retain Primary Responsibility for Block Grant Civil Rights Enforcement" was referred to this office for response. On behalf of the Department, the following comments are submitted for your consideration.

As the report points out, the Omnibus Budget Reconciliation Act of 1981 did not require the Department of Education's Office for Civil Rights (ED/OCR) to change any of its procedures for enforcing the civil rights laws. Neither did it include any specific civil rights provisions in the Education block grant concerning how we or the states should conduct our enforcement responsibilities. While the report acknowledges this, it frequently implies that ED/OCR should be doing something more than we are responsible for and are now doing. Similarly, by presenting certain information in a negative manner, the report implies that we are remiss in our enforcement of the law. Several examples of these problems are cited below.

ED/OCR has traditionally focused its enforcement program upon recipients of Federal financial assistance from the Department of Education. All programs and activities of entities that receive such assistance are subject to our compliance oversight. Block grants are one of many sources of departmental Federal aid and whether a recipient receives its funds through categorical or block grants, our jurisdiction remains the same. Therefore, the establishment of the Education block grant has not limited our ability to enforce the civil rights laws or in any way changed our operational procedures. However, on page iv, page 20, page 35, and page 57 of the report, you imply that ED/OCR has failed to carry out its responsibilities.

The language on page 20 highlights the problem. The first sentence, second paragraph reads: "Education has not established civil rights requirements for states specifically for the block grant program." We suggest the sentence be revised by adding: "Since the block grants do not require them, Education/OCR has not established . . . ."

Pages iv and 35 reinforce the implication that we have neglected our responsibilities. The first sentence in the second paragraph on page iv reads: "The Reconciliation Act did not include any specific civil rights provisions for the Education block grant, and Education has

not established any specific civil rights policies or procedures concerning either state or Federal enforcement roles." The third sentence in the first paragraph on page 35 reads: "The Reconciliation Act did not include specific civil rights provisions for the (block grant) program, and the agency has not implemented any policies or procedures which apply specifically to it." We suggest that both sentences be revised by adding the word "therefore" in each. For example, "The . . . Act did not include specific provisions, and, therefore, the agency has not implemented any policies . . . ."

On page 57, the report again implies that ED/OCR is not doing its job. In the second paragraph, second sentence, the report states that staff ". . . do not attempt to identify all funding sources and that Education case files do not list all sources." It is not necessary for staff to identify all sources of Federal financial assistance in order to establish jurisdiction over a program or activity, although we do attempt to find as many sources as possible. As long as we can establish that a program or activity receives any departmental funds, jurisdiction can be conferred upon that program or activity. To word the report as it is now is misleading. We suggest that the sentence be revised as follows: "During our . . . visits we confirmed that OCR staff attempt to determine if any Federal funding from the department is received in order to establish legal jurisdiction. Education files, however, will not necessarily list all sources.

We also find that the presentation of certain information about ED/OCR is distorted. For example, on pages vi and 47, the report discusses the reaction of regional officials to the loss of data formerly available to them under the Emergency School Aid Act (ESAA). On each page the report begins by saying that four of the ten officials interviewed were concerned about the effect of this loss. This is followed by the acknowledgement that six of the ten did not consider this a problem. We suggest that you place the majority opinion first in order to put this issue in its proper perspective.

Finally, we suggest revisions on the following pages:

p. v - Second paragraph, last sentence, change to read: "Education has not scheduled any block grant compliance reviews for fiscal year 1984. However, virtually every elementary and secondary system that OCR/ED plans to investigate receives block grants (as well as other funds) from ED."

p. 6 - Second paragraph, next to last sentence: "For example, Education requires a sampling of school districts to report certain data biannually, ..."

p. 8 - Second paragraph, second sentence: "Under Education's Vocational Education Guidelines, state agencies must develop methods of administration . . . ."

Sincerely,

Harry M. Singleton
Assistant Secretary
for Civil Rights

GAO note: Page references in this appendix have been changed to agree with page numbers in the final report.

DEPARTMENT OF HEALTH & HUMAN SERVICES Office of Inspector General

AUG 27 1984

Mr. Richard L. Fogel
Director, Human Resources
Division
United States General
Accounting Office
Washington, D.C. 20548

Dear Mr. Fogel:

The Secretary asked that I respond to your request for the Department's comments on your draft report "Federal Agencies Retain Primary Responsibility for Block Grant Civil Rights Enforcement." The enclosed comments represent the tentative position of the Department and are subject to reevaluation when the final version of this report is received.

We appreciate the opportunity to comment on this draft report before its publication.

Sincerely yours,

Richard P. Kusserow
Inspector General

Enclosure

COMMENTS OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
ON THE GENERAL ACCOUNTING OFFICE'S DRAFT REPORT,
"FEDERAL AGENCIES RETAIN PRIMARY RESPONSIBILITY
FOR BLOCK GRANT CIVIL RIGHTS ENFORCEMENT"

General Comments

We have carefully reviewed the subject draft report and, in general, find it to be a fair evaluation of the collected data. We note, however, that current Office for Civil Rights (OCR) compliance activities address and clarify some of the conclusions drawn in the report. Specifically, a memorandum of agreement has been developed regarding the proposed pilot project for increasing State involvement in civil rights enforcement and meetings have been scheduled with the designated State program or human rights agencies. This project is expected to be fully operational in the first quarter of FY 1985. Additionally, OCR has developed a new and separate assurance form specifically for the block grant programs. This form has been printed and paperwork is being prepared to distribute it to the appropriate State block grant agencies for use during FY 1985 and thereafter.

Regarding the procedures for referring noncompliance findings to governors' offices, OCR regional offices have been instructed to assure that where formal agreements are not yet signed, written confirmation is made of all procedures agreed upon during the required meetings with designated state block grant officials.

Finally, the OCR Block Grant Task Force has been reconvened and has as its priority to develop specific policy guidance on sex and religious discrimination issues for use in connection with compliance reviews scheduled for FY 1985. The Task Force will also develop a policy on the question of whether to refer to Governors those noncompliance findings concerning programs receiving both block and nonblock grant funding.

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