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U.S. DEPARTMENT OF JUSTICE

Information on Employment Litigation, Housing and Civil Enforcement, Voting, and Special Litigation Sections' Enforcement Efforts from Fiscal Years 2001 through 2007



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Highlights of [GAO-10-75](#), a report to congressional requesters

Why GAO Did This Study

The Civil Rights Division (Division) of the Department of Justice (DOJ) is the primary federal entity charged with enforcing federal statutes prohibiting discrimination on the basis of race, sex, disability, religion, and national origin. GAO was asked to review the Division's enforcement efforts. This report addresses the activities the Division undertook from fiscal years 2001 through 2007 to implement its enforcement responsibilities through four of its sections (1) Employment Litigation, (2) Housing and Civil Enforcement, (3) Voting, and (4) Special Litigation. To conduct our review, GAO analyzed data on cases filed in court and matters (e.g., a referral or allegation of discrimination) investigated. To supplement this analysis, GAO also reviewed a sample of closed matter files (about 210 of 5,400). GAO randomly selected matters investigated under different statutes for each section and considered the government role (e.g., plaintiff or defendant) and type of issues investigated (e.g., the nature of the alleged discrimination or violation) to ensure that the sample reflected the breadth of the work and practices of each section. While not representative of all closed matters, the sample results provided examples of why matters were closed. Additionally, GAO analyzed complaints and other relevant court documents for a comparable number of cases filed as plaintiff by each section, as well as DOJ documents, such as annual reports, that described the Division's enforcement efforts.

[View GAO-10-75 or key components.](#)
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U.S. DEPARTMENT OF JUSTICE

Information on Employment Litigation, Housing and Civil Enforcement, Voting, and Special Litigation Sections' Enforcement Efforts from Fiscal Years 2001 through 2007

What GAO Found

From fiscal years 2001 through 2007, the Employment Litigation Section initiated more than 3,200 matters and filed 60 cases as plaintiff under federal statutes prohibiting employment discrimination. About 90 percent of the matters initiated (2,846 of 3,212) and more than half of the cases filed (33 of 60) involved individual claims of discrimination. Of these cases, more than half (18 of 33) alleged sex discrimination against women. The Section filed 11 pattern or practice cases—cases that attempt to show that the defendant systematically engaged in discriminatory activities. Nine of these cases involved claims of discrimination in hiring, and the most common protected class (i.e., class of individuals entitled to statutory protection against discrimination, such as national origin or gender) was race (7 of 11).

From fiscal years 2001 through 2007, the Housing and Civil Enforcement Section initiated 947 matters and participated in 277 cases under federal statutes prohibiting discrimination in housing, credit transactions, and certain places of public accommodation (e.g., hotels). Nearly 90 percent (456 of 517) of the Fair Housing Act (FHA) matters were initiated under its pattern or practice authority. The largest number of the FHA matters involved allegations of discrimination based on race (228) or disability (206). The majority (250 of 269) of the cases that the Section filed as plaintiff included a claim under the FHA and primarily involving rental issues (146 of 250). Most of the cases alleged discrimination on the basis of disability (115) or race (70).

From fiscal years 2001 through 2007, the Voting Section initiated 442 matters and filed 56 cases to enforce federal statutes that protect the voting rights of racial and language minorities, disabled and illiterate persons, and overseas and military personnel and addressed such issues as discriminatory voter registration practices. The Section initiated most matters (367 of 442) and filed a majority of cases (39 of 56) as plaintiff under the Voting Rights Act. These matters (246 of 367) and cases (30 of 39) were primarily filed on behalf of language minority groups. The Section spent about 52 percent of its time on reviews of proposed changes in voting procedures (e.g., moving a polling place) submitted by certain jurisdictions covered under the act, as compared with cases (about 33 percent) or matters (about 14 percent).

From fiscal years 2001 through 2007, the Special Litigation Section initiated 693 matters and filed 31 cases as plaintiff to enforce federal civil rights statutes in four areas—institutional conditions (e.g., protecting persons in nursing homes or jails), conduct of law enforcement agencies (e.g., police misconduct), access to reproductive health facilities and places of worship, and the exercise of religious freedom of institutionalized persons. Of the matters initiated and closed (544 of 693), the largest numbers involved institutional conditions (373) and conduct of law enforcement agencies (129). The cases filed (27 of 31) primarily involved institutional conditions.

DOJ provided technical comments, which GAO incorporated as appropriate.

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Abbreviations

AAG	Assistant Attorney General
ADA	Americans with Disabilities Act
CRIPA	Civil Rights of Institutionalized Persons Act of 1980
DOJ	Department of Justice
DOL	Department of Labor
ECOA	Equal Credit Opportunity Act
EEOC	Equal Employment Opportunity Commission
FACE	Freedom of Access to Clinic Entrances Act
FDIC	Federal Deposit Insurance Corporation
FHA	Fair Housing Act
FHAP	Fair Housing Assistance Program
HAVA	Help America Vote Act of 2002
HUD	Department of Housing and Urban Development
IDEA	Individuals with Disabilities Education Act
ICM	Interactive Case Management System
IT	information technology
NVRA	National Voter Registration Act
PROMPT	Proactive Recruitment of Multicultural Professionals for Tomorrow
RLUIPA	Religious Land Use and Institutionalized Persons Act of 2000
SCRA	Servicemembers Civil Relief Act
STAPS	Submission Tracking and Processing System
UOCAVA	Uniformed and Overseas Citizens Absentee Voting Act
USERRA	Uniformed Services Employment and Reemployment Rights Act of 1994
VRA	Voting Rights Act of 1965, as amended
14141	Violent Crime Control and Law Enforcement Act of 1994

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Washington, DC 20548

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The Honorable John Conyers, Jr.
Chairman
Committee on the Judiciary
House of Representatives

The Honorable Jerrold Nadler
Chairman
Subcommittee on the Constitution, Civil Rights, and Civil Liberties
Committee on the Judiciary
House of Representatives

The Honorable Melvin L. Watt
House of Representatives

Established after the passage of the Civil Rights Act of 1957, the Civil Rights Division (Division) of the Department of Justice (DOJ) is the primary federal entity charged with the responsibility of enforcing federal statutes prohibiting discrimination on the basis of race, sex, disability, religion, and national origin. Since its establishment, the Division's mission has expanded to include the enforcement of laws prohibiting discrimination in employment, housing, voting, public accommodations, education, and the rights of institutionalized persons. To carry out these broad enforcement responsibilities, the Division initiates thousands of matters and hundreds of cases each year.¹ In hearings as recent as 2008, members of Congress raised issues about how the Division carried out its enforcement responsibilities from fiscal years 2001 through 2007. Specifically, these hearings included testimony on the work of 4 of the Division's 11 sections—Employment Litigation, Housing and Civil Enforcement, Voting, and Special Litigation—over the 7-year period.²

¹A case is defined as an activity that has been assigned an identification number that has resulted in the filing of a complaint, indictment, or information in court. A matter is defined as an activity that has been assigned an identification number, but has not resulted in the filing of a complaint, indictment, or information in court—for example, the investigation of a complaint or an allegation of discrimination referred by another federal agency. A complaint outlines the facts and legal claims for relief from damages caused, or wrongful conduct engaged in, by the defendant. An indictment or information is the formal charge made by a prosecutor to initiate a criminal proceeding against the accused.

² The Division has 11 sections—10 program-related sections and an Administrative Management section.

During these hearings, members raised issues about the sections' activities, including how they determined which matters to investigate and which cases to pursue in federal court in the areas of employment, housing, and voting discrimination. Additionally, members also raised issues about actions undertaken to protect individuals confined in certain institutions operated by, or on behalf of, state or local governments (e.g., mental health facilities, nursing homes, jails and prisons, and juvenile correctional facilities); efforts to enforce laws prohibiting religious discrimination; and actions taken to investigate allegations of police misconduct (e.g., excessive use of force).³

In the past, we have done work on the Division and its enforcement activities. In September 2000, we reported on the reasons that the Division's Employment Litigation, Housing and Civil Enforcement, and Voting sections pursued a selection of cases and closed a selection of matters.⁴ According to section managers, legal merit (i.e., the strength of evidence in a case) was the predominant reason in their decisions to pursue allegations of discrimination as cases by filing complaints in federal court. We reported that the reasons generally given for closing a matter were a lack of merit (e.g., insufficient evidence to support allegations), no further action was warranted (e.g., the problem was resolved), the matter was returned to the referring federal agency for administrative resolution by that agency, or corrective action was taken by the jurisdiction investigated. In addition, in February and September 2000, we reported on how the Division tracked and managed matters and cases using its Case Management System, including the limitations of that system. We also described the new Interactive Case Management System (ICM) that the Division was implementing at the time of our review to replace the Case Management System.⁵ As the Division's official case management system, ICM was to track, count, and measure all matters and cases from their inception to conclusion.

³A jail is a place of confinement of persons, held in lawful custody under the jurisdiction of a local government (e.g., a county), who are awaiting trial or convicted of minor offenses. A prison is a state or federal place of confinement for persons convicted of serious crimes.

⁴ GAO, *Civil Rights Division: Selection of Cases and Reasons Matters were Closed*, GAO/GGD-00-192 (Washington, D.C.: September 2000).

⁵ GAO, *Civil Rights Division: Policies and Procedures for Establishing Litigation Priorities, Tracking and Managing Casework, and Disseminating Litigation Results*, GGD-00-58R (Washington, D.C.: February 2000) and GAO/GGD-00-192.

You asked us to review the enforcement efforts of the Division's Employment Litigation, Housing and Civil Enforcement, Voting, and Special Litigation sections from fiscal years 2001 through 2007.

Accordingly, this report addresses the following question for each of the four sections: From fiscal years 2001 through 2007, what activities did the Division undertake to implement its enforcement responsibilities through the Section?

To address our objective for each of the four sections, we analyzed electronic data from ICM on the cases pursued and matters initiated by each section from fiscal years 2001 through 2007. As part of this analysis, we took actions to assess the reliability of the ICM data to ensure they were sufficiently reliable for the purposes of these objectives. Those actions included ascertaining if, and to what extent, data were missing in the information provided; determining the consistency of the data by comparing data in related fields; comparing the ICM data with matter and case file documents to identify any differences between the electronic and file information, as described below; and discussing any anomalies or instances of missing data with appropriate agency officials to identify possible data entry errors. As appropriate, we made corrections to the data or used the data in conjunction with other sources. We found the data to be sufficiently reliable for presenting overall trends in the sections' enforcement efforts. Limitations in the data that we identified are noted later in this report.

To supplement our analysis of the ICM matter data and further assess the reliability of these data, we compared ICM data with documents (e.g., memoranda and correspondence) in matter files for a nongeneralizable sample of closed matters—matters that were concluded—for each of the four sections.⁶ Specifically, we reviewed 49 of about 3,300 closed matters for the Employment Litigation Section; 60 of about 1,070 closed matters for the Housing and Civil Enforcement Section; 51 of about 345 closed matters for the Voting Section; and 51 of about 714 closed matters for the Special Litigation Section. In determining our samples, we randomly selected matters investigated under each of the statutes enforced by the respective section and took into consideration the government role (e.g., plaintiff or defendant) and the subject investigated (e.g., the nature of the

⁶ A nongeneralizable sample may be either a nonprobability sample where observations are selected in a manner that is not completely random, or a probability sample where random sampling is used, but the sample size is too small to allow the results to be generalized to the broader population.

alleged discrimination or violation) to ensure that the sample reflected the breadth of the work and practices of the respective section from fiscal years 2001 through 2007. Because our samples were not representative, we were unable to generalize the results to all closed matters investigated by these sections during the period of our review. Nevertheless, our file reviews provided examples of how the matter data in ICM compared to the same information in the matter files, how the sections investigated matters, and why the sections closed them.

Additionally, to supplement our analysis of the ICM case data of each section, as well as our assessment of the reliability of these data, we analyzed complaints for a comparable number of cases filed in court by each of the four sections. Specifically, we analyzed 60 complaints from the Employment Litigation Section, 56 complaints from the Voting Section, and 31 complaints from the Special Litigation Section, which constituted all of the complaints that each of those sections filed as plaintiff during the time period of our review. Given the large number (277) of complaints filed by the Housing and Civil Enforcement Section during the 7-year period, we analyzed case documents for a nongeneralizable sample of 33 cases identified in the ICM data. In selecting the sample of Housing and Civil Enforcement Section cases to review, we randomly chose cases that involved each of the statutes enforced by the Section, and considered other case characteristics, such as the fiscal year in which the case was filed in court. For all four sections, we compared the information in the complaints to data contained in ICM (e.g., the statutes under which the complaints were filed) to identify possible data entry errors. Although the information we obtained cannot be generalized to all cases filed by the Housing and Civil Enforcement Section during the period of our review, it provided us with information on how the case data in ICM compared to the same information in the case files and illustrative examples of the types of cases pursued by this Section.

In addition to the closed matter data, we also analyzed aggregate matter data for matters initiated from fiscal years 2001 through 2007 by each of the four sections in our review. The Division also provided aggregate data for the time each of the four sections reported spending on matters and cases from fiscal years 2001 through 2007.

We also analyzed DOJ documents, such as annual reports, hearing statements, speeches, and budget documents, that described the Division's enforcement efforts (including special initiatives and areas of focus) from fiscal years 2001 through 2007. We interviewed DOJ headquarters, Division, and Section officials to obtain information on the four sections'

enforcement efforts during the 7-year period. Furthermore, to identify issues and gain additional perspective on the sections' litigation efforts, we interviewed representatives of three nongovernmental civil rights organizations and five experts on the four civil rights areas covered in our review. We identified these individuals in part through our review of the transcripts from oversight hearings in which these individuals had testified. Although the information we obtained was not generalizable beyond the individuals we interviewed, these interviews helped enhance our analysis of the litigation efforts and other activities of the four sections during the period of our review.

We conducted our work from June 2007 through October 2009 in accordance with all sections of GAO's *Quality Assurance Framework* that are relevant to our objectives. The framework requires that we plan and perform the engagement to obtain sufficient and appropriate evidence to meet our stated objectives and to discuss any limitations in our work. We believe that the information and data obtained, and the analysis conducted, provide a reasonable basis for any findings and conclusions in this product. Additional details on our scope and methodology are contained in appendix I.

Background

History of the Division and Some of the Major Statutes Enforced

The Division was established within DOJ as a result of the Civil Rights Act of 1957⁷ to enforce all federal statutes affecting civil rights. The act provided DOJ with new tools to prosecute racial inequality and political disenfranchisement. The act focused specifically on voting, authorizing DOJ to bring lawsuits against anyone who had violated or was about to violate any other person's voting rights—either the right to vote in federal elections or the right to be free from racial discrimination in voting. The act was followed by a series of laws that prohibited discrimination in employment, credit, housing, public accommodations and facilities, education, and certain federally funded and conducted programs. These laws also expanded the classes of individuals entitled to statutory protection from discrimination—referred to as protected classes—prohibiting discrimination on bases including gender, religion, national origin, familial status, and disability. The following are the some of the

⁷ Pub. L. No. 85-315, 71 Stat. 634.

goals and purposes articulated by Congress in passing the major civil rights statutes enforced by the four sections in our review.

- **The Voting Rights Act of 1965, as amended**⁸

The purpose of the Voting Rights Act, as reauthorized in 2006, is to ensure that the right of all citizens to vote is preserved and protected as guaranteed by the Constitution. Originally enacted in 1965, the Voting Rights Act reflected Congress's intention to rid the country of racial discrimination in voting.

- **The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)**⁹

UOCAVA was enacted in 1986 to facilitate absentee voting by United States citizens, both military and civilian, who are overseas, because, as noted in the House of Representatives report accompanying the bill, when they fail to receive their absentee ballots in time to vote and return them, they are clearly and effectively disenfranchised.¹⁰

- **National Voter Registration Act (NVRA)**¹¹

In passing the NVRA in 1993, Congress found that discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation in federal elections and disproportionately harm voter participation by various groups, including racial minorities. The NVRA was intended, in part, to establish procedures to increase the number of eligible citizens who register to vote in federal elections as well as to protect the integrity of the electoral process and ensure accurate and current voter registration rolls.

⁸ 42 U.S.C. §§ 1971, 1973 to 1973bb-1.

⁹ 42 U.S.C. §§ 1973ff – 1973ff-6.

¹⁰ H.R. Rep. No. 99-765 at 5, 12 (1986).

¹¹ 42 U.S.C. §§ 1973gg – 1973gg-10.

- **Help America Vote Act of 2002 (HAVA)**¹²

HAVA was enacted after the events surrounding the November 2000 election, at least partly in response to perceived voting irregularities in the State of Florida. Problems identified in this election were related to voter registration lists, absentee ballots, ballot counting, and antiquated voting systems, among others.

- **The Civil Rights Acts of 1964 and 1968**¹³

The Civil Rights Act of 1964 expanded the Division's authority to combat racial, ethnic, religious, and gender-based discrimination by prohibiting discrimination in public facilities; employment; schools; and certain places of public accommodation, such as motels, restaurants, and theaters. The Civil Rights Act of 1968 further broadened the reach of the Division, addressing civil-rights-related violence, employment discrimination, housing discrimination, and the rights of Native Americans living on tribal reservations.

- **Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)**¹⁴

Following a review after the 1991 Gulf War of the effectiveness of the reemployment rights set forth in the Vietnam Era Veterans' Readjustment Assistance Act of 1974,¹⁵ Congress passed USERRA. The law was designed, among other things, to encourage noncareer service in the uniformed services by eliminating or minimizing the disadvantages to civilian careers and employment that can result from such service. USERRA protects individuals as they transition between their military duties and civilian employment.

- **Civil Rights of Institutionalized Persons Act of 1980 (CRIPA)**¹⁶

In passing CRIPA, Congress recognized the commitment of DOJ to ensuring the adequate care of the nation's institutionalized citizens, but

¹² 42 U.S.C. §§ 15301-545.

¹³ Pub. L. No. 88-352, 78 Stat. 241; Pub. L. No. 90-284, 82 Stat. 73.

¹⁴ 38 U.S.C. §§ 4301-35.

¹⁵ Pub. L. No. 93-508, 88 Stat. 1578.

¹⁶ 42 U.S.C. §§ 1997-1997j.

noted that federal court decisions had made clear that a federal statute was necessary to clarify the Attorney General’s authority to bring suits on behalf of such persons. As such, Congress passed CRIPA to give the Attorney General legal standing to enforce existing constitutional and federal statutory rights of institutionalized persons and ensure they are afforded the full measure of protections the Constitution guarantees them.

- **Fair Housing Amendments Act of 1988**¹⁷

Originally enacted as part of the Civil Rights Act of 1968, the Fair Housing Act (FHA) was significantly amended in 1988. In its report on the bill, the House of Representatives Committee on the Judiciary explained its purpose as fulfilling the promise made to the American people in the Civil Rights Act of 1968, which was to proscribe housing practices that discriminate on account of race, color, national origin or religion, and as added later, sex.¹⁸ The committee noted that the prior act had failed to provide an effective enforcement system to make that promise a reality, so the new law was to fill that void by creating an administrative enforcement system and removing barriers to court action by private litigants and DOJ. The statute’s purposes were also to extend the principle of equal housing opportunity to handicapped persons and families with children, all of whom had been the victims of unfair and discriminatory housing practices.

- **Equal Credit Opportunity Act (ECOA)**¹⁹

In passing the first version of ECOA, Congress found “a need to insure that the various financial institutions and other firms engaged in the extensions of credit exercise their responsibility to make credit available with fairness, impartiality, and without discrimination on the basis of sex or marital status.”²⁰ Two years later, in 1976, the categories of race, color, religion, national origin, and age were added to the law,

¹⁷ Pub. L. No. 100-430, 102 Stat. 1619.

¹⁸ H.R. Rep. No. 100-711, at 13 (1988). Color is a valid protected class under various statutes (e.g., Title VII and the Fair Housing Act), although separate claims of color discrimination are rare. Such claims are usually brought with and subordinated to race discrimination claims; for example, in a case of unlawful discrimination on the basis of color where an individual has been treated differently on the basis of skin tone.

¹⁹ 15 U.S.C. § 1691 *et seq.*

²⁰ Pub. L. No. 93-495, § 502, 88 Stat. 1500, 1521.

as well as prohibitions against discrimination based on the receipt of public assistance benefits and the exercise of rights under the Consumer Credit Protection Act.²¹

- **Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA)**²²

As explained upon the bill's introduction in the Senate, RLUIPA was intended to protect religious liberty from unnecessary governmental influence and represented an attempt to respond to the Supreme Court's decision in the case of *City of Boerne v. Flores*,²³ in which it had held that Congress lacked the authority to enact provisions of the Religious Freedom Restoration Act.²⁴

- **Violent Crime Control and Law Enforcement Act of 1994**

The Violent Crime Control and Law Enforcement Act of 1994, included a provision—codified at 42 U.S.C. § 14141—which responded to judicial decisions that had denied both individual victims and DOJ standing to pursue relief for police misconduct. The law conferred standing upon the Attorney General to bring civil actions for prospective relief against governmental authorities for unconstitutional patterns or practices, which, according to the report on the bill by the House of Representatives Committee on the Judiciary, was a recognized gap in the federal scheme for protecting constitutional rights.²⁵

²¹ Pub. L. No. 90-321, 82 Stat. 146 (1968) (codified as amended in scattered sections of 15 U.S.C. and 18 U.S.C.).

²² 42 U.S.C. § 2000cc *et seq.*

²³ 521 U.S. 507 (1997).

²⁴ 146 Cong. Rec. S6678-02, S6687-88.

²⁵ H.R. Rep. No. 102-242, at 138 (1991).

Organization of the Division and Staffing Levels for the Employment Litigation, Housing and Civil Enforcement, Special Litigation, and Voting Sections

The Division is headed by an Assistant Attorney General, who reports to the Associate Attorney General. The Office of the Assistant Attorney General establishes policy and provides executive direction and control over litigative enforcement and administrative management activities in the Division.²⁶ The Division has 11 sections—10 program-related sections and an Administrative Management Section. Eight of the 10 program sections have enforcement responsibilities over particular subject areas that include employment, housing, voting, criminal violations, education, immigrant-related discriminatory employment practices, disability rights, and institutional conditions. Of the remaining two sections, one is responsible for coordinating federal agencies' civil rights enforcement efforts, and the other handles appellate matters and provides legal guidance. Each of the enforcement sections, with the exception of the Office of Special Counsel, is headed by a Section Chief and has several Deputy Section Chiefs. This report focuses on four of the Division's program sections: Employment Litigation, Housing and Civil Enforcement, Voting, and Special Litigation.

According to the Acting Assistant Attorney General and the Division's budget official, changes in the Department's priorities from fiscal years 2001 through 2007 affected the resources available to the sections. Specifically, officials said that the Attorney General had realigned resources in 2005 to reflect the increased prioritization of DOJ's counterterrorism efforts, which became DOJ's top strategic goal. As a result, the Division, like many other DOJ components, had lost staff since 2002. Table 1 presents the number of permanent positions and salaries and expenses available from fiscal years 2001 through 2007, by fiscal year, to each of the four sections in our review. (App. II-V provide additional information on resources available to each section.)

²⁶ The Professional Development Office is within the Office of the Assistant Attorney General. This office was established by the Assistant Attorney General in 2005 to enhance the training opportunities for new and experienced Division attorneys.

Table 1: Employment Litigation, Housing and Civil Enforcement, Voting, and Special Litigation Sections' Available Permanent Positions and Salaries and Expenses from Fiscal Years 2001 through 2007

Fiscal year	2001	2002 ^a	2003 ^b	2004 ^c	2005 ^d	2006 ^e	2007 ^f
Employment Litigation Section							
Permanent positions	62	62	62	62	61	61	61
Salaries and Expenses	6,804	7,515	7,797	8,056	8,226	9,279	9,963
Housing and Civil Enforcement Section							
Permanent positions	100	100	100	100	98	98	98
Salaries and expenses	13,295	13,963	14,278	14,594	14,342	13,541	14,168
Voting Section							
Permanent positions	105	105	105	105	102	102	98
Salaries and Expenses	12,158	13,242	13,596	14,123	13,720	11,758	11,810
Special Litigation Section							
Permanent positions	63	73	73	73	72	72	72
Salaries and expenses	7,500	8,920	9,799	10,048	10,233	12,096	12,656

Source: Civil Rights Division, DOJ.

Note: Actual dollars in thousands.

^aFiscal year 2002 includes a \$95,000 rescission.

^bFiscal year 2003 includes a \$683,000 rescission.

^cFiscal year 2004 includes a \$1,158,000 rescission, partially offset by the restoration of the fiscal year 2003 \$683,000 rescission.

^dFiscal year 2005 includes two rescissions totaling \$1,458,000, and subsequent transfers of \$228,000 (Office of Immigration and Litigation \$95,000) and U.S. Attorneys (\$133,000), and a reduction of 15 positions (8 attorneys) from civil enforcement activities.

^eFiscal year 2006 includes two rescissions totaling \$1,410,000 and a transfer of \$443,000 to the U.S. Attorneys.

^fFiscal year 2007 includes an across-the-board reduction of \$1,057,000 and a transfer of 4 positions and \$576,000 to U.S. Attorneys.

Process for handling matters and cases

All four of the sections undertake investigations on behalf of individuals alleging a single act of discrimination against a person or persons as well as investigations that tend to be larger and more complex. This second type of investigation is referred to in the Employment Litigation, Housing and Civil Enforcement, and Special Litigation sections as a pattern or practice investigation and in the Voting Section as a systemic investigation. A pattern or practice case is one in which the plaintiff attempts to show that the defendant—such as an employer, provider of housing, or correctional institution—has systematically engaged in discriminatory or unlawful activities, especially by means of policies and procedures. The number of incidents necessary to show a pattern or practice depends upon the nature of the right protected and the nature of

the ordinary violations of that right. These cases are factually and legally complex and, according to Division officials, time-consuming and resource intensive. While the Voting Section does not have pattern or practice authority like the other three sections, according to Section officials, cases that the Voting Section initiates typically address systemic problems in the method of election of a given jurisdiction or other discriminatory voting practices. According to the Division, these cases are similar in scope and complexity to pattern or practice cases.

The Division's process for handling matters and cases in the four sections covered in our review generally varies by section because of the structure of the statutes or provisions within a statute that each section enforces. However, each section's process shares some common steps. For example, all four sections receive referrals of allegations of discrimination from numerous sources, such as other federal agencies, private attorneys, Members of Congress, citizens, community organizations, and advocacy groups. All four sections may also initiate investigations as a result of information obtained from section survey and outreach work, demographic data, U.S. Attorney's Offices, media sources, and other sources of information about discrimination. However, the extent to which the sections have discretion to pursue particular matters varies by section. For example, the Employment Litigation Section receives referrals of individual charges of discrimination against state and local government employers under section 706 of Title VII of the Civil Rights Act from the Equal Employment Opportunity Commission (EEOC), and has the discretion either to close the matter with a letter to the charging party (known as a right-to-sue letter)²⁷ after reviewing the charge²⁸ or consider the matter for possible litigation. In contrast, the Housing and Civil Enforcement Section receives certain referrals under the Fair Housing Act from the Department of Housing and Urban Development (HUD); DOJ is required by statute to file these referrals in federal district court. These

²⁷ The Employment Litigation Section is legally required to notify the charging party when it is not going to pursue a charge so that the charging party can pursue private litigation. This notification is made by means of a letter from the Division to the charging party or his or her attorney and is referred to as a right-to-sue letter. 42 U.S.C. § 2000e-5(f)(1).

²⁸ As used by the Employment Litigation Section, the term charge refers specifically to those allegations of discrimination referred to by the EEOC. The Department of Labor (DOL) also refers USERRA complaints to the Employment Litigation Section. We use the term referral to refer to HUD, EEOC, DOL, and other regulatory agency referrals. The more general term allegation of discrimination will be used to describe other instances of alleged discrimination.

nondiscretionary referrals are called “election cases” because either the complaining party or the respondent has elected to have the case heard in federal court rather than through a HUD administrative hearing. The Voting Section generally does not receive referrals from other federal agencies and, like the other three sections, has the authority to initiate its own litigation. The Special Litigation Section has discretion under all the statutes it enforces to recommend or not to recommend an investigation or case; therefore, the Section considers all its work to be self-initiated.

Generally, all four sections may initiate certain types of investigations, but for other types, they must obtain the approval of the Office of the Assistant Attorney General. For example, in the Employment Litigation Section, the Section Chief can approve opening an investigation on charges of discrimination that the EEOC referred to DOJ under section 706 of Title VII.²⁹ A Deputy Section Chief initially reviews the referrals and brings those that have potential for litigation to the attention of the Section Chief. The Housing and Civil Enforcement Section can also initiate investigations based on most HUD referrals, but as of 2007 had to obtain the approval of the Office of the Assistant Attorney General to initiate certain investigations, such as allegations of religious discrimination in land use regulation under RLUIPA. Once a section decides to investigate a referral or allegation of discrimination, the Section Chief or an attorney manager assigns a trial attorney to conduct the investigation. Upon completion of the investigation, the trial attorney makes a recommendation to the Deputy Section Chief or Section Chief on whether to file a lawsuit, close the matter, or participate in some other manner,³⁰ and the Section Chief makes the final decision whether to close an investigation that has been authorized by the Assistant Attorney General or recommend a lawsuit or other participation to the Assistant Attorney General. If the Section Chief decides not to pursue a referral or allegation of discrimination, the section closes the matter and notifies all appropriate parties.³¹

²⁹ By statute, the Employment Litigation Section can investigate and file suit in matters involving an individual instance of discrimination under section 706 only after receiving a referral from the EEOC.

³⁰ In USERRA matters handled by the Employment Litigation Section, a recommendation about whether to offer representation to the claimant is made.

³¹ The Special Litigation Section does not notify all appropriate parties if it decides not to recommend an investigation.

In all four sections, if the Section Chief decides to pursue a matter and recommend filing a complaint to initiate a lawsuit, then the trial attorney prepares a justification package.³² The contents of this package vary by section, but are to include a justification memorandum for pattern or practice cases. This memorandum includes the facts of the case, the legal argument for filing a lawsuit, and the proposed complaint to be filed in court alleging a violation of civil rights laws. Each package is reviewed and approved by an attorney manager and the Section Chief. A Deputy Assistant Attorney General then reviews the justification package, and forwards it to the Assistant Attorney General for final review and approval. Depending on the type of case, the section may also send the justification package to the U.S. Attorney's Office for the district where the lawsuit is to be filed for review and concurrence. Pursuant to statutory requirements, the Attorney General is to authorize some justification packages for the Special Litigation Section.

If the Assistant Attorney General approves the justification package, the Division notifies the defendant by letter of DOJ's intent to file a lawsuit.³³ Subsequently, the trial attorney and the defendant often have presuit settlement discussions.³⁴ If they reach a presuit settlement, a settlement document stating the points of agreement is prepared, reviewed and approved by the Office of the Assistant Attorney General, and signed by all parties. The settlement document may be filed in the federal district court along with the complaint for approval by the judge. In these instances, the settlement document is called a consent decree. A settlement entered into by the Employment Litigation and Housing and Civil Enforcement sections is usually a consent decree. The Section or the relevant U.S. Attorney's Office monitors the settlement agreement for compliance, where appropriate. If the presuit settlement discussions do not result in a settlement, the Section files the complaint in federal district court and the parties engage in litigation conducted pursuant to the federal rules of civil procedure and evidence. According to Section officials, defendants often

³² A complaint filed in court is the initial formal statement that starts a lawsuit and that sets forth the allegations made by the plaintiff against the defendant and the plaintiff's demand for relief.

³³ The Special Litigation Section does not notify a defendant by letter of DOJ's intent to file a lawsuit.

³⁴ Settlement discussions can occur at any time during the process. Negotiations held prior to the filing of a formal complaint to initiate the lawsuit are referred to as presuit settlement discussions.

settle prior to or during a trial. If a trial is held, the plaintiff or defendant can appeal the decision, and then the Section works closely with the Division's Appellate Section, which assumes responsibility for the appellate stage of the case. In certain instances, sections may conclude a matter without the filing of an approved complaint by reaching an out-of-court settlement agreement with the opposing party. For example, the Special Litigation Section may resolve a matter in this manner, but leave the matter open and monitor compliance with the agreement; thus, the matter never becomes a case, although it has been resolved by settlement between the two parties.

If the Assistant Attorney General does not approve the justification package, the trial attorney generally prepares a closing memorandum (or another form of documentation) and notifies the charging party, respondent, or referring agency, as appropriate, that DOJ is not filing a lawsuit. The matter is then closed.

In pursuing investigations and cases, the four sections may play a number of different roles depending on the legal and factual circumstances. While the Division may act as a plaintiff—with the section representing the United States in a case whereby it brings a lawsuit against an individual or entity based on unlawful discrimination—it may also be involved in a case in other ways. A section may act as *amicus curiae*, or “friend of the court,” by filing a brief in an action in which it is not a party, because the Division has a strong interest in the subject matter. A section may also intervene as a party in a case—either on the side of the plaintiff or the defendant—because the constitutionality of a federal statute has been questioned or it has another interest in the outcome of the case. A section may also participate in a case as the defendant, representing the United States in lawsuits brought by plaintiffs against federal agencies challenging the enforcement of federal laws.

The Division's Interactive Case Management System Tracks Matters and Cases

Over the past 20 years, the Division has used various case management systems to manage its workload. In October 2000, the Division implemented the Interactive Case Management System (ICM) as its official system to track, count, and capture performance measurement information for all matters and cases from their inception to their conclusion and to assist staff in their case work. According to Division documentation, ICM was also designed to serve as a tool for senior management to oversee the work of the Division and to assist senior managers in reporting accurate matter and case data at all levels of the organization, improving accountability, analyzing the Division's

performance, and responding to congressional inquiries about the work of the Division. Additionally, ICM was designed to capture and report on the level of effort that attorneys and professionals dedicate to investigations and case-related tasks to help Division managers oversee attorneys' work.

In September 2009, as part of our work on the Division's enforcement efforts from fiscal years 2001 through 2007, we reported on the extent to which the Division had conducted and documented assessments of ICM's performance since its implementation in fiscal year 2001, and additional data the Division could collect using ICM to assist in reporting on its enforcement efforts.³⁵ We reported that in accordance with DOJ guidance that encourages components to conduct assessments of electronic data systems at least once a year, the Division reported conducting annual assessments of ICM's performance from fiscal years 2001 through 2006; although the Division has not assessed the performance of ICM since fiscal year 2006 and lacks documentation of prior assessments. We also reported that opportunities exist to collect additional data that have been consistently requested by Congress for oversight purposes, which would improve the Division's use of ICM for reporting on the four sections' enforcement efforts. To strengthen the Division's ability to manage and report on the four sections' enforcement efforts, we recommended that the Acting Assistant Attorney General of the Division (1) conduct and respond to annual assessments of the performance of the Division's case management system and ensure that these assessments are documented and maintained so they can be used to improve the performance of the system; (2) require sections to record data on protected class and subject in the Division's case management system in order to facilitate reporting of this information to Congress; and (3) as the Division considers options to address its case management system needs, determine how sections should be required to record data on the reasons for closing matters in the system in order to be able to systematically assess and take actions to address issues identified. DOJ concurred with our recommendations.

Results-in-Brief

From fiscal years 2001 through 2007, the Employment Litigation Section initiated more than 3,200 matters and filed 60 cases as plaintiff under federal statutes prohibiting discrimination in employment based on race,

³⁵ GAO, *DOJ's Civil Rights Division: Opportunities Exist to Improve Its Case Management System and Better Meet Its Reporting Needs*, [GAO-09-938R](#) (Washington, D.C.: Sept. 30, 2009).

color, sex, religion, national origin, and military service, and retaliation against a person for filing a charge of discrimination, participating in an investigation, or opposing discriminatory practices. About 90 percent of the more than 3,200 matters the Section initiated (2,846 of 3,212) alleged violations of section 706 of Title VII of the Civil Rights Act, which involve individual claims of discrimination. Additionally, about 96 percent of the matters (3,087 of 3,212) initiated were as a result of section 706 referrals from the EEOC and USERRA referrals from the Department of Labor.³⁶ As such, much of the Section's matters are driven by what the Section receives from other agencies. Consequently, the number of section 706 and USERRA matters initiated declined in the latter fiscal years, which Section officials attributed to a decline in referrals from EEOC and the Department of Labor, respectively. Because the Section did not require staff to maintain information in ICM on the subjects of the matters, such as harassment and retaliation, or the protected class, such as race and religion, of the individuals who were allegedly discriminated against, we could not determine this information for over 80 percent of the matters the Section closed from fiscal years 2001 through 2007. In our September 2009 report on ICM, we recommended that the Division require the sections to record data on protected class and subject in the Division's case management system in order to strengthen its ability to account for its enforcement efforts.³⁷ DOJ concurred with our recommendation. In addition to the matters initiated, the Section filed 60 cases in court as plaintiff from fiscal years 2001 through 2007, and filed more than half (33 of 60) under section 706 of Title VII. According to Employment Litigation Section officials, the primary reason for pursuing a case was that the case had legal merit, i.e., the strength of evidence in the case. The majority of the Section's cases (18 of 33) involved sex discrimination against women, and one-third (11 of 33) involved claims of race discrimination,³⁸ with six

³⁶ The Employment Litigation Section considers all EEOC charge referrals and Department of Labor USERRA referrals as matters even if an investigation is not opened. However, the section does not consider requests for right-to-sue letters as matters. While a charging party is required to file a charge of discrimination with the EEOC, according to Section officials, some charging parties may prefer to initiate litigation on their own and, in such instances, will request that DOJ provide a right-to-sue letter as obtaining a right-to-sue letter is a precondition to filing a Title VII claim in federal court. According to Employment Litigation Section officials, the section honors such requests and issued 14,608 such letters from fiscal years 2001 through 2007. (App. II includes information on the number of right-to-sue letters issued each fiscal year by the Section.)

³⁷ [GAO-09-938R](#).

³⁸ Individual cases can involve multiple protected classes and subjects.

cases filed on behalf of African Americans and five cases filed on behalf of whites. For example, in March 2005, the Section filed a lawsuit alleging that the city of Cairo, Illinois, discriminated against a female employee by sexually harassing her, denying her a promotion, and terminating her employment because she refused sexual advancements from her supervisors. Most of the 11 pattern or practice cases the Section filed during the 7-year period involved claims of discrimination in hiring (9 of 11) and the most common protected class was race (7 of 11), with four cases filed on behalf of African Americans, two on behalf of whites, and one on behalf of American Indians or Alaska Natives. For example, in January 2001, the Section filed a lawsuit alleging that the Delaware State Police Department was discriminating against African Americans in hiring for trooper positions.³⁹ Of the 16 USERRA cases the Section filed from fiscal year 2005—the year the Section began filing these cases—through 2007, more than half (10 of 16) alleged violations of reemployment rights and/or discharge under USERRA.

From fiscal years 2001 through 2007, the Housing and Civil Enforcement Section initiated 947 matters and participated in 277 cases under federal statutes prohibiting discrimination in housing, credit transactions, and in certain places of public accommodation (e.g., hotels).⁴⁰ The Section enforced provisions of the Fair Housing Act (FHA), the Equal Credit Opportunity Act (ECOA), and the land use provisions of the Religious Land Use and Institutionalized Persons Act (RLUIPA), among others. According to Section officials, the Section considers legal merit when deciding whether to pursue a matter as a case as well as (1) whether it looks like the matter will be resolved locally, (2) whether litigation would resolve a significant statutory issue, and (3) whether the plaintiff has the resources to proceed on its own should the Section choose not to get involved. During the 7-year period, the Section initiated more matters (517 of 947) and participated in more cases (257 of 277) involving discrimination under the FHA than any other statute or type of matter or case. More than half (517 of 947) of the matters initiated involved an

³⁹ African American refers to the protected class “black or African American.”

⁴⁰ One of the cases the Housing and Civil Enforcement Section filed was as plaintiff intervenor against multiple defendants. When the Section entered into a consent decree with some of the defendants, it created an additional Department of Justice (DJ) number—a unique identification number assigned by DOJ when a matter or case is first entered into ICM—so it could track both the settlement and the remaining ongoing litigation; however, the Section treats this as one case, as there was one complaint.

allegation under the FHA,⁴¹ primarily alleging discrimination on the basis of race or disability and involving land use/zoning/local government or rental issues.⁴² For example, the Section investigated a matter in which a landlord of an apartment complex allegedly turned away families with children or assigned them to a particular floor. According to Section officials, the large number of land use/zoning/local government matters it initiated was due to the Section regularly receiving referrals from HUD as well as complaints from other entities involving these issues. Over the 7-year period, the Section experienced a general decline of election matters involving an allegation under the FHA derived from HUD referrals, with the fewest number of total matters, 106, in fiscal year 2007. Section officials attributed the decrease, in part, to a decline in referrals from HUD as a result of more complaints of housing discrimination being handled by state and local fair housing agencies instead of HUD. The majority (250 of 269) of cases that the Section filed in court as plaintiff involved a claim under the FHA—more than half (132 of 250) of which involved a pattern or practice of discrimination. Additionally, more than half (146 of 250) of the FHA cases involved rental issues and nearly half (115 of 250) were brought on behalf of persons with a disability. For example, one of the complaints we reviewed was filed on behalf of a man with a disability who had filed a complaint with HUD against the property manager and owner of his apartment complex, alleging the defendants discriminated against him on the basis of his physical impairments when they unreasonably prolonged meeting his request for a ground floor apartment and did not provide the reasonable accommodation of an accessible parking space. The number of cases filed by the Section generally decreased from fiscal years 2001 through 2007 from 53 to 35, which Section officials generally attributed to fewer election cases being referred from HUD. Overall, almost 70 percent (185 of 277) of the cases the Section participated in from fiscal years 2001 through 2007 originally derived from a HUD referral, but declined to about 50 percent (17 of 35) of cases filed in fiscal year 2007.

From fiscal years 2001 through 2007, the Voting Section initiated 442 matters and filed 56 cases as plaintiff to enforce federal statutes that protect the voting rights of racial and language minorities, disabled and illiterate persons, and overseas and military personnel and address such

⁴¹ This includes FHA either solely or in combination with ECOA and RLUIPA.

⁴² Rental matters involve discrimination in property that is listed for a fee, and can involve issues such as eviction, the discriminatory provision of services and facilities occupancy restrictions, and the assessment of rental fees based on the number of occupants.

issues as discriminatory voter registration practices. It enforced the VRA, the NVRA, UOCAVA, and beginning in fiscal year 2002, HAVA. The Voting Section has the discretion to initiate a matter or pursue a case under all of its statutes, with the exception of the review of changes in voting practices or procedures, which it is statutorily required to conduct under section 5 of the VRA. During the 7-year period, the Section initiated more matters (367 of 442) and filed more cases (39 of 56) under the VRA than the other statutes it enforced. The Section initiated most matters (246 of 367) on behalf of language minority groups, primarily Spanish speakers (203 of 246). For example, in one matter, the Section obtained copies of bilingual general election materials from the elections administrator to determine whether the jurisdiction was complying with requirements that it provide written materials and other assistance for elections (e.g., ballots) in the language of the applicable minority group. The Section also initiated 162 matters under section 2 of the VRA, which prohibits voting practices or procedures that discriminate on the basis of race, color, or membership in a language minority group. About half of these matters were initiated on behalf of language minority groups (80 of 162), primarily Spanish speakers (71 of 80) and about half involved a racial minority (88 of 162), primarily African American voters (71 of 88).⁴³ For example, one matter involved allegations that African American students at a college and a university faced discriminatory treatment in the registration process for the 2000 presidential election. The majority of the cases that the Section filed in court under the VRA were on behalf of language minority groups (30 of 39 cases), primarily Spanish speakers (27). While cases involving language minority groups were filed under various VRA provisions, the largest number of cases (24 of 30) involved claims under section 203 alleging that the covered jurisdiction had failed to provide voting-related materials or information relating to the electoral process in the language of the applicable minority group. For example, in one case, the Section alleged that, in conducting elections, a city, where over 46 percent of the total citizen voting age population was Hispanic, had not translated fully into Spanish written election-day materials and information, such as the official ballot, forms for voters with disabilities, and signs identifying a polling place's location, among others. The Section filed 13 cases that involved a claim under section 2 of the VRA, 5 on behalf of language minority groups and 10 on behalf of racial minority groups—6 on behalf of

⁴³ Seven matters involved both a language minority and a racial minority group and in one matter the specific protected class was not identified.

Hispanics and 3 on behalf of African Americans.⁴⁴ For example, the Section alleged that certain voting practices—such as hostile acts directed at Hispanic voters or requiring Hispanic voters to prove their citizenship without credible evidence calling into question their citizenship—were in violation of section 2. According to aggregate data on time spent on matters, cases, and other activities for the 7-year period, the Voting Section reported devoting the greatest total percentage of time (52 percent) to administrative reviews of proposed changes in the voting practices and procedures of certain jurisdictions covered under section 5 of the VRA, such as a proposed redistricting plan—which would make changes to the geographic boundaries of voting districts—or the relocation of a polling place, as compared with cases (33 percent) or matters (14 percent).

From fiscal years 2001 through 2007, the Special Litigation Section initiated 693 matters and participated in 33 cases enforcing federal civil rights statutes in four areas—institutional conditions, the conduct of law enforcement agencies, access to reproductive health facilities and places of worship, and the exercise of religious freedom of institutionalized persons. The Section enforced the Civil Rights of Institutionalized Persons Act (CRIPA), Violent Crime Control and Law Enforcement Act (14141), Freedom of Access to Clinic Entrances Act (FACE), and the provisions of the Religious Land Use and Institutionalized Persons Act (RLUIPA) protecting the rights of free exercise of religion for institutionalized persons. The Section could bring cases involving the exercise of religious freedom under RLUIPA and access to reproductive health facilities under FACE, on behalf of individuals. However, the Section was statutorily required to file only cases that alleged a pattern or practice involving institutional conditions under CRIPA and 14141 and of police misconduct under 14141. Because the Section had discretion under all these statutes to pursue an investigation or case, it considered all of its work to be self-initiated. During the 7-year period, the Section initiated 693 matters and participated in 33 cases under federal statutes corresponding to its four areas of responsibility, but these matters and cases primarily involved institutional conditions. Of the 693 matters initiated, the Section concluded or closed 544 matters. The majority of the closed matters (373 of 544) concerned a wide range of allegations about institutional conditions in various types of facilities—adult corrections (e.g., jails and prisons), health and social welfare (e.g., nursing homes, mental health

⁴⁴ Two cases involved both racial and language minority groups.

facilities, facilities for persons with developmental disabilities, and group foster homes), and juvenile corrections (juvenile correctional facilities or entire juvenile correctional systems). The allegations included failure to provide adequate medical, mental health, and nursing care services to residents; staff's physical abuse of residents; and overcrowding in the facility. The Section also initiated and closed 129 matters involving the conduct of law enforcement agencies, specifically allegations of police misconduct in law enforcement agencies, such as police use of excessive force (i.e., more than necessary to subdue a citizen). During the 7-year period, the Section participated in 33 cases—31 as plaintiff, 1 as defendant, and 1 as defendant intervenor. The majority (27 of 31) of the cases that the Section filed as plaintiff alleged a pattern or practice of egregious and flagrant conditions that deprived persons institutionalized in health and social welfare (13), juvenile corrections (7), and adult corrections (7) facilities of their constitutional or federal statutory rights. Cases involving juvenile correctional facilities constituted the largest number (7) of any one type of facility and included such allegations as a pattern or practice of failing to protect inmates from undue risk of suicide and abuse from staff; failure to provide adequate mental health, special education, rehabilitation therapy, or psychiatric services; use of isolation or physical restraints; and failure to provide the number of professional staff legally required for that type of facility. According to Special Litigation Section officials, the Section filed two of the seven cases because the respective jurisdiction refused to cooperate with the Section and settle the case. The Section filed the other cases because Section officials believed conditions in the juvenile facilities were so egregious that filing a case was the proper avenue for the Section to monitor the respective jurisdictions' remedial efforts. In addition, the Section brought cases against two city and one county police department. All three cases alleged police use of excessive force. According to aggregate data on the time spent on matters and cases from fiscal years 2001 through 2007, the Section reported devoting the greatest percentage of time (62 percent) to matters and cases (81 percent) involving institutional conditions, as compared with its other areas of responsibility.

We provided a draft of this report to the Attorney General for review and comment. DOJ provided technical comments, which we incorporated into the report as appropriate

The Employment Litigation Section Investigated More Matters and Participated in More Individual Employment Discrimination Cases under Section 706 of Title VII Than under Other Statutory Provisions, and Devoted Most of Its Time Spent on Cases to Pattern or Practice Cases

From fiscal years 2001 through 2007, the Employment Litigation Section was responsible for enforcing federal civil rights statutes that prohibit discrimination in employment based on race, color, sex, religion, national origin, and military service, and retaliation against a person for filing a charge of discrimination, participating in an investigation, or opposing discriminatory practices. During the 7-year period, the Section initiated more matters (2,846 of 3,212) and participated in more cases filed in court as a plaintiff (33 of 60) under section 706 of Title VII of the Civil Rights Act, based on claims of individual employment discrimination referred from the EEOC, than other statutory provisions. A majority of these cases involved individual claims of sex discrimination on behalf of women (18 of 33), and about one-third (11 of 33) involved claims of race discrimination. Most of the pattern or practice cases filed by the Section during the 7-year period involved claims of discrimination in hiring (9 of 11) and the most common protected class was race (7 of 11).

The Employment Litigation Section Had Various Statutory Responsibilities from Fiscal Years 2001 through 2007

The Employment Litigation Section is responsible for enforcing civil rights laws that prohibit discrimination in employment based on race, color, sex, religion, national origin, and military service, and retaliation against a person for filing a charge of discrimination, participating in an investigation, or opposing discriminatory practices. Two major statutes enforced by the Employment Litigation Section are Title VII of the Civil Rights Act and USERRA. The Section was responsible for enforcing Title VII from fiscal years 2001 through 2007. The Section began enforcing USERRA in September 2004 after the Attorney General transferred responsibility for USERRA enforcement to the Civil Rights Division. The Assistant Attorney General for Civil Rights delegated USERRA enforcement authority to the Employment Litigation Section. The Employment Litigation Section initiates Title VII litigation in two ways— (1) under section 706 in response to referrals from the EEOC or (2) under section 707 at the discretion of the Section. The Section initiates USERRA litigation in response to referrals from the Department of Labor. Table 2 provides a description of the Section’s responsibilities under Title VII of

the Civil Rights Act and USERRA. (App. II provides additional information on the statutes enforced by the Employment Litigation Section.)

Table 2: Statutory Provisions Enforced by the Employment Litigation Section from Fiscal Years 2001 through 2007

Statutory provision	Description of responsibilities
Section 706 of Title VII of Civil Rights Act, 42 U.S.C. § 2000e-5	Title VII prohibits discrimination in employment based on race, color, sex, religion, and national origin. Individuals who believe they were unlawfully denied an employment opportunity or otherwise discriminated against by an employer may file charges with the EEOC. If after investigation the EEOC determines that a charge made against a state or local government has merit and efforts to obtain voluntary compliance are unsuccessful, the EEOC must refer the charge to DOJ to bring an enforcement action. Section 706 provides the Attorney General with the authority to file suit based upon an individual charge of discrimination that EEOC has referred to DOJ. If the Section decides not to initiate litigation, it is required under Title VII to notify the charging party of his or her right to file a private lawsuit. Section 706 also grants the Attorney General the authority to intervene in private cases against a public employer that are of general public importance.
Section 707 of Title VII of Civil Rights Act, 42 U.S.C. § 2000e-6	Section 707 provides the Attorney General with authority to bring lawsuits against state and local governments where there is reason to believe that there has been a pattern or practice of employment discrimination.
The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C. §§ 4301-35	USERRA prohibits discrimination in employment and related practices based on military service as well as protects individuals who have not been timely and properly reemployed following their return from military service. The Department of Labor (DOL) investigates USERRA complaints, makes a determination as to whether the complaint has merit, and attempts to resolve voluntarily those complaints that are deemed meritorious. If DOL is unable to resolve a complaint, at the request of the servicemember, DOL will refer the complaint to DOJ.

Source: GAO analysis of federal laws.

The Section Initiated More Matters and Participated in More Cases under Section 706 of Title VII Based on Claims of Individual Employment Discrimination Than Other Statutory Provisions

The Section Initiated Most Matters under Section 706 and Most Matters Resulted from Agency Referrals

The Employment Litigation Section initiated over 3,200 matters from fiscal years 2001 through 2007. About 90 percent of the more than 3,200 matters the Section initiated (2,846 of 3,212) alleged violations of section 706 of Title VII. Of the total time charged to matters during the 7-year period, about 65 percent was devoted to section 706 matters, including time charged to ongoing matters initiated prior to fiscal year 2001.⁴⁵ Additionally, the Section initiated about 96 percent of the matters (3,087 of 3,212) as a result of section 706 referrals from the EEOC and USERRA referrals from the Department of Labor. As such, much of the Section's matters are driven by what the Section receives from other agencies. As shown in table 3, the number of section 706 and USERRA matters initiated declined in the latter fiscal years, which a Section Chief attributed to a decline in referrals from the EEOC and the Department of Labor, respectively.⁴⁶ In addition to initiating matters as a result of referrals from other federal agencies, the Section also has the authority to initiate section 707 pattern or practice matters at its own discretion. The Section initiated more than 100 pattern or practice matters based on its analysis of data on employers or job classifications; referrals from congressional members, citizens, and civil rights organizations; media reports; and other sources.⁴⁷ Section officials stated that these matters have been a longstanding priority for the Section.

⁴⁵ The Division's time data show that from fiscal years 2001 through 2007, the Section's professional staff charged about 20 percent of their time to matters, about 47 percent to cases, and about 33 percent to other activities, such as professional development and outreach. According to Section officials, the Section Chief and the six deputies charge all their time to other activities. Appendix II provides information on the time charged to cases and other activities by fiscal year.

⁴⁶ In addition to information maintained in ICM, the Section also maintains information on USERRA referrals in a word processing file. According to the Section, the information generated from the word processing file identified that the Section received 262 USERRA referrals—122 in fiscal year 2005, 81 in fiscal year 2006, and 59 in fiscal year 2007. For purposes of this report, we are reporting on the information from ICM—the Division's official case management system.

⁴⁷ According to Employment Litigation Section officials, section 707 matters are assigned a Department of Justice (DJ) number—a unique identification number assigned by DOJ when a matter or case is first entered into ICM—and recorded in ICM only after an attorney has spent 4 hours on them.

Table 3: Matters the Employment Litigation Section Initiated by Statute from Fiscal Years 2001 through 2007

Statute	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	Total
Section 706	486	494	512	377	430	269	278	2,846
Section 707	7	5	13	55 ^b	4	5	16	105
USERRA	n/a	n/a	n/a	n/a	110	75	56	241
Other ^a	3	6	0	0	1	2	8	20
Total	496	505	525	432	545	351	358	3,212

Source: Division ICM data.

Note: n/a—not applicable

^aOther includes matters referred to the Section involving section 709 of Title VII, which requires employers to file certain reports with the EEOC, and matters involving Section initiatives.

^bThirty-nine of the 55 matters initiated in fiscal year 2004 were related, and one of the matters initiated in fiscal year 2004 also involved the Fourteenth Amendment.

According to data maintained by the Section in ICM, the Employment Litigation Section conducted investigations for about 390 of the approximately 3,100 closed matters the Section initiated from fiscal years 2001 through 2007.⁴⁸ Section officials stated that professional judgment, recommendations made by the EEOC or the Department of Labor (in the case of section 706 and USERRA referrals, respectively), strength of the evidence, and Section resources are considered when deciding whether to recommend an investigation. Section officials acknowledged that the data maintained in ICM may understate the number of matters investigated because the stage field—which tracks the history of a matter—may not yet have been updated to indicate that an investigation had been authorized. Additionally, officials stated that some matters included in the Section’s ICM data were referred to the U.S. Attorney’s Office for the Southern District of New York, which has communicated to the Section its interest in receiving Title VII and USERRA referrals.⁴⁹

⁴⁸ About 220 additional matters were initiated by the Employment Litigation Section prior to fiscal year 2001. The Employment Litigation Section authorized an investigation for about 90 of these approximately 220 matters and they remained open during some part of our review period.

⁴⁹ We could not determine the number of matters referred to the U.S. Attorney’s Offices because the Employment Litigation Section does not track this information in ICM.

Information on the Characteristics of the Matters Closed by the Employment Litigation Section and the Reasons for Closing Each Matter Was Not Readily Available

Because the Section did not require staff to maintain information in ICM on the subjects of matters and the protected classes of the individuals who were allegedly discriminated against, we could not determine this information for the majority of the matters closed from fiscal years 2001 through 2007. Specifically, the subject field—the field that provides information on the nature of the allegation, e.g., harassment and retaliation—was not captured in ICM for about 85 percent of the matters and the protected class field, e.g., race and religion, was not captured in ICM for about 83 percent of the matters. According to Section officials, staff are not required to maintain this information—information that is key to ensuring the Division executes its charge to enforce statutes prohibiting discrimination on the basis of protected class—in ICM because the Section does not view this information as necessary for management purposes. Additionally, Division officials stated that when planning for ICM’s implementation with Section officials, the Division did not consider requiring sections to provide these data. As previously discussed, in our September 2009 report on ICM, we recommended that the Division require the Employment Litigation, Housing and Civil Enforcement, and Voting sections to record data on protected class and all four sections to record data on subject in the Division’s case management system in order to strengthen its ability to account for its enforcement efforts.⁵⁰ The Division concurred with our recommendation. Information on protected class and subject, however, was available for most of the approximately 85 closed matters initiated under section 707 from fiscal years 2001 through 2007.⁵¹ According to ICM data, these matters largely focused on claims of race discrimination against African Americans (about 56 matters)⁵² and sex discrimination against females (about 48 matters), and most of the section 707 matters had a subject of hiring, recruitment, and/or testing program. Similarly, because the Section does not systematically collect information in ICM on the reasons matters were closed, we were not able to readily determine this information for the approximately 3,300 matters the Section

⁵⁰ GAO-09-938R.

⁵¹ An additional 20 section 707 matters were initiated by the Employment Litigation Section from fiscal years 2001 through 2007. However, because those matters were still open at the time of our review, given sensitivity concerns, we did not review certain types of information related to these matters, including protected class data.

⁵² According to ICM data, 6 of the matters involved claims of race discrimination against whites and 3 against Asians. Information on protected class was not included in ICM for 9 of the section 707 matters. Each matter can involve multiple protected classes (e.g., race).

closed from fiscal years 2001 through 2007.⁵³ However, interviews with agency officials and our review of a nongeneralizable sample of 49 Employment Litigation Section closed matter files provided information on some of the reasons why the Section closed these matters. The reasons Section officials gave for closing matters included:

- intervention is not justified,
- a similar or related case is or has been prosecuted,
- the size and/or limited impact would not justify the resources necessary to prosecute,⁵⁴
- the facts in the file would not justify prosecution,
- the Section does not have jurisdiction to bring suit,
- a lawsuit has been filed by the charging party, and
- the employer provided or offered appropriate relief on its own.

The Section also closed matters when Division managers did not approve the Section's recommendation to proceed with a case, although Division officials we interviewed could not identify instances in which this had occurred and the Section does not maintain this information in ICM or other Section-level information systems. In our September 2009 report on ICM, we reported that capturing such information in ICM would enable the Division to conduct a systematic analysis of the reasons that matters were closed and determine whether there were patterns in the reasons that the Division or sections may need to address.⁵⁵ For example, Division management may provide additional guidance on factors it looks for in deciding whether to approve a section's recommendation to pursue a case. As previously discussed, we recommended that the Division determine how sections should be required to record data on the reasons for closing matters in the system in order to be able to systematically assess and take actions to address issues identified. DOJ concurred with our recommendation.

⁵³ The Section closed approximately 3,300 matters from fiscal years 2001 through 2007, of which about 200 were initiated prior to fiscal year 2001.

⁵⁴ According to the Employment Litigation Section, size refers to both the size of the employer and the parameters of the claim. For example, a matter is considered small in size if the employer is small and/or the nature of the claim is narrow (e.g., a claim for 1 week of back pay). Limited impact refers to the nature of the relief obtainable and whether such relief would have an impact on anyone other than the charging party.

⁵⁵ [GAO-09-938R](#).

We also reviewed documents from a nongeneralizable sample of 49 closed matter files and determined the reasons provided in the files for closing matters were generally consistent with the reasons identified by Section officials and varied by the statutory provision under which the investigation was conducted.⁵⁶ As shown in table 4, the most common reason (9 of 19) for closing a section 706 matter was that the size and/or limited impact would not justify the resources necessary to prosecute or the facts in the file would not justify prosecution. However, for 7 of the 19 section 706 closed matter files, the reason the matter was closed was not contained in the file documentation we received, and Section officials attributed this to a filing error. Eight of the 10 section 707 matters we reviewed were closed because the Section found that the evidence did not support the allegations. For example, in four of these matters, which were related, the Section determined that although there was some evidence that supported the allegation of a pattern or practice of discrimination against African American job applicants, several factors would make litigation difficult, including (1) the small number of African American applicants, which meant there was little applicant data on which to build a strong pattern or practice claim of hiring discrimination; (2) the remaining evidence was 5 to 10 years old; and (3) the facts upon which the Section would bring a case had already been unsuccessfully litigated. The most common reason for closing USERRA matters was because the Section agreed with the Department of Labor's recommendation against providing representation.

⁵⁶ As previously discussed, because our samples were not representative, we were unable to generalize the results to all closed matters investigated by the section during the period of our review. Nevertheless, our file reviews provided examples of why the section closed matters.

Table 4: Reasons for Closing Matters

Statute	Reason for closing matter	Number of closed matters reviewed by GAO^a
Section 706		19^b
	The size and/or limited impact would not justify the resources necessary to prosecute, or the facts in the file would not justify prosecution	9
	EEOC did not recommend litigation	5
	Entity took corrective action	2
	Reason not included in the documents in the file	7
Section 707		10
	Evidence did not support the allegations	8
	Issue was resolved through private litigation	1
	Unable to determine reason ^c	1
USERRA		20
	Section agreed with Department of Labor's recommendation against providing representation	10
	Representation not provided	4
	Reason not included in the documents in the file	2
	Other reasons, such as plaintiff to obtain private counsel	4

Source: GAO review of documents from closed case matter files.

^aThe numbers do not total to 49 because some matters were closed for more than one reason.

^bThe numbers do not total to 19 because some matters were closed for more than one reason.

^cOn the basis of the matter documents we reviewed, the attorney recommended going forward with a supplemental investigation to enable additional information to be collected. However, the matter was closed.

The Section Filed More Than Half of its Cases under Section 706 and a Majority of These Cases Involved Individual Claims of Sex Discrimination

The Employment Litigation Section filed 60 cases as a plaintiff and participated in 18 additional cases as a plaintiff intervenor, amicus, or defendant from fiscal years 2001 through 2007. According to Employment Litigation Section officials, legal merit is the primary reason for pursuing cases. Other factors considered by the Section in deciding whether to pursue a case include the impact of the case on a type or category of discrimination or on a particular location, and the casework of the Section. Other priorities, such as those of the Attorney General, may also influence the Section's decision to pursue particular kinds of cases. In July 2009, Section officials told us that given that the Assistant Attorneys General who authorized suits from fiscal years 2001 through 2007 and the Section Chief who made suit recommendations to the Assistant Attorneys General during that period are no longer employed by DOJ, it would be inappropriate for them to speculate as to why the Section focused its

efforts in particular areas. Nevertheless, according to Section officials, following the terrorist attacks of September 11, 2001, the Assistant Attorney General asked the various sections within the Division to make the development of cases involving religious discrimination a priority. Officials stated that in response to the Assistant Attorney General's request, the Employment Litigation Section opened a supplemental investigation on charge referrals related to religious discrimination.⁵⁷ Section officials also reported that they aggressively pursue employment discrimination cases involving national origin because the Section receives so few meritorious referrals of this type. As shown in table 5, more than half of the cases (33 of 60) the Section initiated from fiscal years 2001 through 2007 were filed under section 706 of Title VII.⁵⁸ However, about 19 percent of the total time the Section charged to cases over the 7-year period was charged to section 706 cases, according to time data reported in the Division's time reporting system. According to Section officials, these cases are small in scope when compared with pattern or practice lawsuits that target systemic discrimination practices. Nevertheless, according to Section officials, section 706 cases are important because they might not be pursued without the Section's participation.

Table 5: Cases the Employment Litigation Section Initiated by Statute from Fiscal Years 2001 through 2007

Statute	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	Total
Section 706	6	4	5	2	4	3	9	33
Section 707	1	0	0	4	2	3	1	11
USERRA	n/a	n/a	n/a	n/a	6	4	6	16
Total	7	4	5	6	12	10	16	60

Sources: GAO review of complaints filed in court and Civil Rights Division ICM data.

A majority of the section 706 cases (18 of 33) filed from fiscal years 2001 through 2007 involved claims of sex discrimination on behalf of women.⁵⁹ For example, in January 2001, the Division filed a lawsuit alleging that the Village of Cuba, New Mexico, discriminated against three females by

⁵⁷ According to a Section Deputy Chief, for a period of time following the September 11 terrorist attacks, the Division had an attorney coordinator who reviewed all complaints of religious backlash.

⁵⁸ The Employment Litigation Section referred one section 706 case to the U.S. Attorney's Office for the Southern District of New York from fiscal years 2001 through 2007—*U.S. v. City of New York and New York City Housing Authority* filed on May 31, 2001.

⁵⁹ Individual cases can involve multiple protected classes and subjects.

failing or refusing to increase their hourly compensation at the same rate as the increase in compensation given to male hourly employees. Additionally, in March 2005, the Division filed a lawsuit alleging that the city of Cairo, Illinois, discriminated against a female employee by sexually harassing her, denying her promotion, and terminating her employment because she refused sexual advancements from her supervisors.

About one-third of the section 706 cases (11 of 33) filed during the 7-year period involved claims of race discrimination, with six cases filed on behalf of African Americans and five cases filed on behalf of whites.⁶⁰ For example, in June 2005, the Division filed a lawsuit alleging that the Weimar Independent School District discriminated against an African American individual by not selecting her for the high school principal position.⁶¹ Additionally, in July 2007, the Division filed a lawsuit alleging that the city of Indianapolis discriminated against six white males by promoting African Americans and females to the position of sergeant even though they were ranked lower on the eligibility list.⁶² Table 6 provides the subjects and protected classes for the complaints the Division filed in court from fiscal years 2001 through 2007.

⁶⁰ One of the 11 cases involving claims of race discrimination was a lawsuit the Division filed in June 2003 alleging that the University of Guam discriminated against 11 individuals by discharging them, denying them promotion, and/or retaliating against them on the basis of their race and/or national origin. The complainants included eight non-Chamorro Caucasians, a non-Chamorro Native American, a non-Chamorro African American, and a non-Chamorro Filipina.

⁶¹ The complaint the Division filed in court did not specify the race of the complainant. According to the Employment Litigation Section, the complainant was an African American female.

⁶² The complaint also alleged that the city of Indianapolis discriminated against two males on the basis of sex with respect to promotions to the lieutenant position.

Table 6: Section 706 Cases Initiated by Subject and Protected Class from Fiscal Years 2001 through 2007

	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	Total
Subject								
Discharge	2	0	2	1	3	0	3	11
Discrimination in terms/conditions	0	0	0	1	0	0	1	2
Harassment	2	3	3	0	2	0	2	12
Hiring	1	0	0	0	1	0	1	3
Promotion	2	2	2	1	1	0	1	9
Retaliation	2	1	4	1	2	1	1	12
Other ^a	2	0	0	1	0	3	1	7
Protected class								
National Origin/Ethnicity	1	1	1	0	0	0	0	3
Hispanic or Latino	1							1
Indian		1						1
Not Hispanic or Latino			1					1
Race	2	2	1	0	1	1	4	11
African American	1	1	1		1		2	6
American Indian or Alaska Native		1	1					2
Asian			1					1
White	1		1			1	2	5
Religion	1	0	0	0	0	0	1	2
Seventh Day Adventist	1							1
Not specified							1	1
Sex	3	2	4	2	3	2	5	21
Female	3	2	3	1	3	2	4	18
Male	0	0	1	1	0	0	1	3

Source: GAO analysis of Division complaints filed in court.

Note: The 33 individual cases may involve multiple protected classes and subjects.

^aOther includes assignment, discipline, equal pay, and pregnancy.

The Section filed 11 pattern or practice (section 707) cases from fiscal years 2001 through 2007,⁶³ and charged about 63 percent of the total time

⁶³ The Employment Litigation Section referred three pattern or practice cases to the U.S. Attorney's Office for the Southern District of New York—*U.S. v. New York City Department of Parks and Recreation* filed on June 19, 2002; *U.S. v. New York City and New York City Department of Transportation* filed on March 12, 2007; and *U.S. v. New York City Department of Correctional Services* filed on March 15, 2007.

spent on cases over the 7-year period to pattern or practice cases, including time charged to ongoing cases filed prior to fiscal year 2001.⁶⁴ According to Division officials, pattern or practice cases have consistently been a priority of the Section because they have the greatest impact on remedying discriminatory practices.⁶⁵ Under its pattern or practice authority, the Section obtains relief in the form of offers of employment, back pay and other compensatory relief for individuals who have been the victims of the unlawful employment practices. According to the Division, these cases very frequently are resolved by consent order prior to trial. As shown in table 7, most of the pattern or practice cases the Section filed involved claims of discrimination in hiring, and the most common protected class was race.

⁶⁴ According to Section officials, pattern or practice cases are resource-intensive and complex given that multiple plaintiffs are involved; whereas section 706 and USERRA cases typically involve an individual plaintiff.

⁶⁵ Employers are liable for employment practices that are intentionally discriminatory, as well as those that have the effect of being discriminatory, for instance, a physical fitness test that eliminates more female than male candidates.

Table 7: Section 707 Pattern or Practice Cases Initiated by Subject from Fiscal Years 2001 through 2007

	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	Total
Subject								
Assignment				1				1
Discharge				1				1
Discrimination in Terms/Conditions				2	1			3
Hiring	1			3	1	3	1	9
Promotion					1			1
Recruitment				1				1
Testing Program	1			1		2	1	5
Protected class								
National Origin/Ethnicity	0	0	0	0	0	3	1	4
Hispanic or Latino						2	1	3
Other						1		1
Race	1	0	0	1	1	3	1	7
African American	1					2	1	4
American Indian or Alaska Native				1				1
White					1	1		2
Religion	0	0	0	2	1	0	0	3
Jewish				1				1
Muslim				1				1
Sikh				1				1
Other					1			1
Sex	0	0	0	1	1	1	0	3
Female				1				1
Male					1	1		2

Source: GAO analysis of Division complaints filed in court.

Note: The 11 individual cases may involve multiple protected classes and subjects.

From fiscal years 2001 through 2007, the Section filed seven pattern or practice cases that alleged discrimination on the basis of race—four on behalf of African Americans, two on behalf of whites, and one on behalf of American Indians or Alaska Natives. One such case was filed in fiscal year 2001, and alleged that the Delaware State Police Department was discriminating against African Americans in hiring for trooper positions. Specifically, the lawsuit alleged that the police department’s use of written examinations to select entry-level state troopers disproportionately excluded African Americans from employment and was not job-related and consistent with business necessity, as required by federal law.

The next pattern or practice case the Section filed on behalf of African Americans was filed in fiscal year 2006. This case also involved a protected class of national origin/ethnicity, specifically Hispanics or Latinos.

In July 2005, the Section filed its first case involving an allegation of a pattern or practice of discrimination against white males. The lawsuit alleged that the City of Pontiac through the Pontiac Fire Department pursued and continued to pursue policies and practices that discriminated against applicants for employment and employees based on race and sex by explicitly creating and maintaining a dual system for hiring and promotion. A second pattern or practice on behalf of white males was filed in February 2006.

Three of the 11 pattern or practice cases alleged discrimination on the basis of religion—two were filed in fiscal year 2004 and one was filed in fiscal year 2005. For example, in September 2004, the Section filed a lawsuit alleging that the New York Metropolitan Transportation Authority and the New York City Transit Authority selectively enforced uniform policies to target Muslim and Sikh employees whose religious beliefs and practices required that they wear head coverings. According to the lawsuit, Muslim, Sikh, and similarly situated employees suffered adverse employment actions.

Three of the 11 pattern or practice cases included claims of sex discrimination—one related to females and two related to males.⁶⁶ For example, in January 2004, the Division filed a suit alleging that the city of Erie, Pennsylvania, discriminated against females by, among other things, failing or refusing to hire women for the entry-level position of police officer on the same basis as men. (App. II contains additional information on each of the section 707 cases.)

The Employment Litigation Section also initiated 16 USERRA cases from fiscal years 2005 through 2007, as shown in table 8, and charged about 6 percent of its total time spent on cases to these cases.⁶⁷ More than half of these cases (10 of 16) alleged violations of reemployment rights and/or

⁶⁶ The two cases alleging sex discrimination against males are the same two discrimination cases cited previously regarding white males.

⁶⁷ According to the Employment Litigation section, four USERRA referrals were settled but not filed in federal district court.

discharge under USERRA.⁶⁸ For example, in March 2005, the Division filed a lawsuit alleging that an employer violated USERRA by denying the plaintiff reemployment rights upon his return from military service and by discharging him. In another lawsuit filed in September 2007, the Division alleged that the employer violated USERRA by demoting the plaintiff upon his return from military service and subsequently discharging him because of his membership, service, or obligation to perform service in the uniformed services.

Table 8: USERRA Cases Initiated by Subject from Fiscal Years 2005 through 2007

Subject	FY 2005	FY 2006	FY 2007	Total
Assignment	0	0	1	1
Benefit	0	1	0	1
Discharge	4	1	5	10
Discipline	0	1	0	1
Discrimination in terms/conditions	1	2	1	4
Reemployment	4	2	4	10

Source: GAO analysis of Division complaints filed in court.

Note: Individual cases can involve multiple subjects.

The Employment Litigation Section also participated in 18 additional cases in the role of plaintiff intervenor (11),⁶⁹ defendant (6), and amicus curiae (1). (App. II includes additional information on these cases as well as cases that were filed prior to fiscal year 2001 that the Section was still involved in, e.g., monitoring compliance, from fiscal years 2001 through 2007.)

⁶⁸ The protected class for all USERRA cases is military.

⁶⁹ Three of these cases were related and alleged that the District of Columbia government discriminated against three pregnant females on the basis of their sex.

The Housing and Civil Enforcement Section Initiated More Matters and Participated in More Cases Involving a Pattern or Practice of Discrimination under the Fair Housing Act Than Any Other Statute or Type of Matter or Case

From fiscal years 2001 through 2007, the Housing and Civil Enforcement Section was primarily responsible for the enforcement of federal civil rights statutes related to discrimination in housing, credit transactions, and in certain places of public accommodation. During this time period, the Housing and Civil Enforcement Section initiated more matters (517 of 947) and participated in more cases (257 of 277) under the FHA than any other statute or type of matter or case. Nearly 90 percent of the matters (456 of 517) were initiated under its pattern or practice authority under the FHA, primarily alleging discrimination on the basis of race or disability and involving land use/zoning/local government or rental issues. The majority (250 of 269) of cases that the Section filed in court as plaintiff involved a claim under the FHA—more than half (132 of 250) of which involved a pattern or practice of discrimination. Additionally, more than half (146 of 250) of the FHA cases involved rental issues and nearly half (115 of 250) were brought on behalf of persons with a disability.

The Housing and Civil Enforcement Section Had Various Statutory Responsibilities from Fiscal Years 2001 through 2007

The Housing and Civil Enforcement Section is primarily responsible for the enforcement of federal civil rights statutes related to discrimination in housing, credit transactions, and in certain places of public accommodation, which have been long-standing responsibilities for the Section. From fiscal years 2001 through 2007, the Section had responsibility for enforcing provisions of the FHA, the Equal Credit Opportunity Act (ECOA), and Title II. Additionally, in the spring of 2001, the Section received responsibility for enforcing the land use provisions of the Religious Land Use and Institutionalized Persons Act (RLUIPA) and, in July 2006, received responsibility for enforcing the Servicemembers Civil Relief Act (SCRA). The Section has the discretion to investigate matters and bring cases under all of the statutes it enforces, with the exception of HUD “election cases,” which the Section is statutorily required to file. These nondiscretionary referrals are called “election cases” because either the complaining party or the respondent has elected to have the case heard in federal court, rather than through a HUD administrative hearing process. The Section, however, has discretion about whether to add a pattern or practice allegation to the HUD-referred election complaint, if supported by the evidence. Furthermore, the Section has the authority and discretion to independently file pattern or practice cases and to pursue

referrals other than HUD election cases.⁷⁰ Table 9 presents the responsibilities of the Section, by statute. (App. III provides greater detail about each statute enforced by the Section.)

Table 9: Statutory Provisions Enforced by the Housing and Civil Enforcement Section from Fiscal Years 2001 through 2007

Statutory provision ^a	Description of responsibilities
The Fair Housing Act (FHA), 42 U.S.C. § 3601 <i>et seq.</i>	The FHA prohibits discrimination on the basis of race, color, religion, sex, familial status, national origin, or disability in all types of housing transactions. The FHA allows individuals who believe they have been injured by a discriminatory housing practice to file complaints with HUD and DOJ to bring suit where there is reason to believe that a person or entity has engaged in a pattern or practice of discrimination.
Equal Credit Opportunity Act (ECOA), 15 U.S.C. § 1691 <i>et seq.</i>	ECOA prohibits creditors from discriminating against applicants in any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, or age, because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act.
Title II of the Civil Rights Act of 1964 (Title II), 42 U.S.C. §§ 2000a to a-6	Title II prohibits discrimination on the basis of race, color, religion, or national origin in certain places of public accommodation, such as motels, restaurants, or movie theaters.
Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc <i>et seq.</i>	RLUIPA prohibits state and local governments from unjustifiably imposing a substantial burden on religious exercise or imposing land use regulations that discriminate against a religious assembly or institution.
The Servicemembers Civil Relief Act (SCRA), 50 U.S.C. App. §§ 501-96	The SCRA provides protections for members of the military as they enter active duty, such as the suspension of judicial and administrative proceedings.

Source: GAO review of federal statutes.

^a The Section is also responsible for enforcing several statutes that prohibit discrimination in, among other things, programs where the operator of the program receives federal funds. Such statutes include Title VI of the Civil Rights Act of 1964, and section 504 of the Rehabilitation Act of 1973. These kinds of cases can be brought only after a referral from the agency that administers the relevant federally funded program. Additionally, the Section enforces Title III of the Civil Rights Act of 1964, which prohibits discrimination in public facilities.

More Than Half of the Matters the Section Initiated Involved an Allegation under the FHA

The Housing and Civil Enforcement Section initiated 947 matters from fiscal years 2001 through 2007. According to Section officials, the Section initiated matters based on referrals from HUD and bank regulatory agencies; allegations of discrimination received from Members of Congress, citizens, private attorneys, advocacy or non-profit groups, and

⁷⁰ In addition to the HUD election cases, the Housing and Civil Enforcement Section also receives other referrals from HUD involving allegations of a pattern or practice of discrimination or allegations of discriminatory land use and zoning practices, as well as matters involving the enforcement of a HUD order, decision, or conciliation agreement. The Section receives pattern or practice referrals involving alleged violations of ECOA from bank regulatory agencies, such as the Federal Deposit Insurance Corporation and the Federal Reserve Board.

federal and state agencies; and the Section's review of media sources and written materials, such as policies stated in advertisements or other printed documentation.⁷¹ The Division's budget submission for fiscal year 2007 states that the pattern or practice cases in the Housing and Civil Enforcement Section remained a high priority because of their broad impact. As shown in table 10, more than half (517 of 947) of the matters initiated involved an allegation under the FHA,⁷² of which about 90 percent (456 of 517) included an allegation of a pattern or practice of discrimination.⁷³ Furthermore, according to time data for the 7-year period, of the total time Section staff charged to matters, most of the time (about 79 percent) was charged to matters involving allegations under the FHA (either solely or in combination with other statutes).⁷⁴ After the FHA, the Section initiated the next largest number of matters (252 of 947) and devoted about 19 percent of its time to ECOA matters (either solely or in combination with other statutes). (App. III includes additional information on the matters initiated by the Section, the time charged to matters during the 7-year period, and the reasons the Section identified for closing matters.⁷⁵) Table 10 shows the numbers of matters the Section initiated, by statute.

⁷¹ According to Housing and Civil Enforcement Section officials, referrals from other agencies are automatically included in ICM as a matter and assigned an official DOJ tracking number; self-initiated work becomes a matter after 2 hours of work.

⁷² This includes FHA either solely or in combination with ECOA and RLUIPA.

⁷³ The remaining 10 percent of the FHA matters involved the following. Eighteen of these instances involved nondiscretionary referrals (election investigations). In 1 instance, the Section was a defendant in impending litigation. In 9 instances, the Section was preparing to act as amicus curiae. In 9 instances, the Section indicated that the matter was related to research. In 14 FHA investigations, the Section was involved in an enforcement role, ensuring that a HUD order, decision, or conciliation agreement was implemented. In 10 matters, the Section was preparing to take prompt judicial action to involve the court in preventing the enforcement of or forcing compliance with a decision of the court.

⁷⁴ Time data include all matters initiated and ongoing from fiscal years 2001 through 2007. Additionally, the data include time charged by all section professional staff, including the section chief, deputies, special counsel, attorneys, legal support staff, legal assistants, law clerks, and any staff unique to a section.

⁷⁵ We derived information on the reasons why the Housing and Civil Enforcement Section closed matters through interviews with Section officials and a review of a nongeneralizable sample of 60 closed matter files. However, the Division does not capture data in ICM or other Section-level information systems on the reasons why matters were closed. Therefore, we could not systematically identify the Section's reasons for closing matters, including the number of instances in which the Section recommended to proceed with a case and Division management did not approve the Section's recommendation.

Table 10: Matters the Housing and Civil Enforcement Section Initiated by Statute from Fiscal Years 2001 through 2007

Statutes	Statute combinations	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	Total
FHA	FHA	94	75	80	60	59	63	49	480
	FHA and section 504	1							1
	Total	95	75	80	60	59	63	49	481
ECOA	ECOA	18	17	31	54	36	42	20	218
	ECOA and FHA	8	1	2	4	4	8	6	33
	ECOA and Title III					1			1
	Total	26	18	33	58	41	50	26	252
RLUIPA	RLUIPA	1	4	30	25	32	23	16	131
	RLUIPA and FHA			1				2	3
	Total	1	4	31	25	32	23	18	134
TITLE II		13	10	8	7	7	3	2	50
SCRA								8	8
Other ^a		2	2	0	7	4	4	3	22
Grand Total		137	109	152	157	143	143	106	947

Source: Division ICM Aggregate Data.

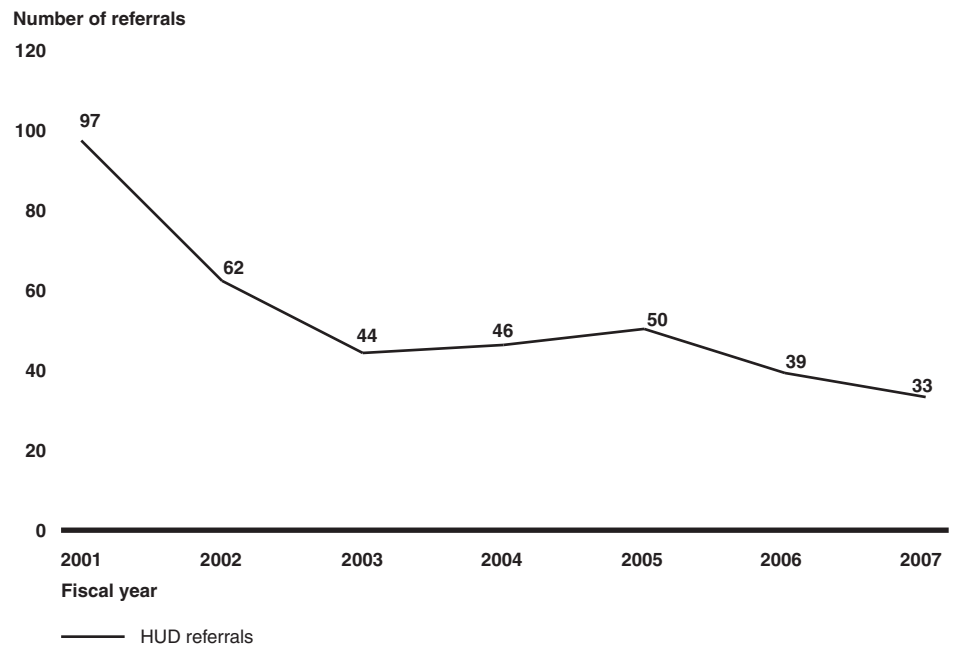
^aOther includes Title III, Title VI, section 504, and Criminal Interference with Housing Rights. Matters involving these statutes are described in appendix III.

The Section initiated the fewest number of total matters, 106, in fiscal year 2007. Section officials attributed the decrease, in part, to a decline in the number of referrals from HUD, as shown in figure 1, and the bank regulatory agencies. In addition, Section officials stated that the number of matters initiated can fluctuate each year depending on the extent to which the Section’s resources are focused on the litigation of large cases. According to Section officials, the general decrease in HUD election referrals over time resulted in part from more complaints of housing discrimination being handled by state and local fair housing agencies instead of HUD. According to Section officials, since the passage of the amendments of the FHA, more state and local fair housing agencies have been certified to receive complaints of discriminatory housing practices.⁷⁶ Such certification is granted if the Secretary of HUD determines that a state or local agency affords substantially equivalent rights and regulations

⁷⁶ GAO, *Fair Housing: Opportunities to Improve HUD’s Oversight and Management of the Enforcement Process*, GAO-04-463 (Washington, D.C., Apr. 21, 2004), and *Fair Housing: HUD Needs Better Assurance That Intake and Investigation Processes Are Consistently Thorough*, GAO-06-79 (Washington, D.C. Oct. 31, 2005).

to those provided in the FHA. Housing and Civil Enforcement Section officials stated that as a result, HUD handles a third to a fourth fewer complaints than in the 1990s. Further, over the 7-year period, ICM data show a general decline of election matters—nondiscretionary matters involving an allegation under the FHA—which are derived from HUD referrals.

Figure 1: HUD Referrals from Fiscal Years 2001 through 2007



Source: Civil Rights Division, *Housing and Civil Enforcement Section Report on HUD Referrals*.

The FHA Matters Primarily Involved Allegations of Discrimination on the Basis of Race or Disability and Issues Involving Land Use/Zoning/Local Government or Rental

The largest proportions of the FHA matters the Section initiated involved allegations of discrimination based on race, disability, or both.⁷⁷ About 44 percent (228 of 517) of the FHA matters initiated involved allegations of racial discrimination—of which almost all (207 of 228) involved allegations of discrimination against African Americans. Further, 99 of the 517 FHA matters (about 19 percent) involved at least 1 allegation of discrimination on the basis of national origin/ethnicity, 79 of which involved allegations of discrimination against Hispanics or Latinos. Approximately 40 percent (206 of 517) of the matters the Section initiated under the FHA from fiscal years 2001 through 2007 involved at least 1 allegation of discrimination based on disability, as shown in table 11.⁷⁸

Table 11: Bases of Allegations for the FHA Matters Initiated from Fiscal Years 2001 through 2007

Protected class	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	Total
Disability	44	33	29	27	25	25	23	206
Family	14	11	4	7	3	6	3	48
National Origin/Ethnicity	17	13	17	12	9	12	19	99
Race	45	36	36	22	29	34	26	228
Other ^a	6	4	5	11	3	12	4	45

Source: GAO analysis of ICM aggregate matter data.

Note: Table includes all matters with an allegation under the FHA. If a single complaint alleged multiple bases, it was counted under each basis alleged. Since one matter can involve multiple protected classes, the numbers of allegations is greater than the 517 matters.

^aOther includes age, color, homeless, marital status, religion, sex, and source of income.

As shown in table 12, about 35 percent (181 of 517) of the FHA matters the Section initiated involved the subject, or issue, of land use/zoning/local government, which is used for allegations of discriminatory actions taken by a local zoning board or governing body. According to Section officials, the large number of land use/zoning/local government matters it initiated was due to the Section regularly receiving referrals from HUD as well as

⁷⁷ The Fair Housing Act defines a disability, or handicap, as a mental or physical impairment that substantially limits one or more major life activities; a record of such impairment; or being regarded as having such an impairment. The term mental or physical impairment may include conditions such as blindness, hearing impairment, mobility impairment, HIV infection, mental retardation, alcoholism, drug addiction (other than current illegal use of a controlled substance), chronic fatigue, learning disability, head injury, and mental illness.

⁷⁸ Each matter can involve multiple protected classes; therefore, percentages do not total 100.

complaints from other entities involving these issues. Division officials identified that a Section priority from fiscal years 2001 through 2007 was to ensure that zoning and other regulations concerning land use were not used to hinder the residential choices of individuals with disabilities. Another priority was ensuring that newly constructed multifamily housing is built in accordance with the FHA’s accessibility requirements.⁷⁹

Table 12: Issues in the FHA Matters Initiated from Fiscal Years 2001 through 2007

Subject (Issue) ^a	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	Total
Group Homes	21	19	12	14	7	8	6	87
Harassment	1	2	3	4	5	5	0	20
Land Use/Zoning/Local Government	40	31	32	28	20	16	14	181
Lending	8	6	3	4	7	9	6	43
New Construction	11	1	4	6	10	5	7	44
Other Housing Subject Matter ^b	9	4	18	8	11	10	5	65
Rental	29	27	23	15	16	24	13	147
Retaliation	1	2	1	1	1	5	1	12
Sales	9	7	3	3	1	3	3	29
Other ^c	2	3	1	2	0	1	1	10

Source: GAO analysis of ICM aggregate matter data.

Note: Includes all matters with an allegation filed under the FHA.

^aIf a single complaint alleged multiple issues, it was counted under each issue alleged.

^bOther Housing Subject Matter covers items that relate to a housing complaint but do not involve the denial of housing—such as the denial of utilities or repairs.

^cOther includes insurance, other nonhousing subject matter, and public accommodations.

Rental matters were also among the most common matters the Section initiated (147 of 517), followed by group home matters (87 of 517). Rental matters involve discrimination in property that is listed for a fee, and can involve issues such as eviction, the discriminatory provision of services and facilities occupancy restrictions, and the assessment of rental fees based on the number of occupants. For example, the Section investigated a matter in which a landlord of an apartment complex allegedly turned

⁷⁹ The FHA requires that certain multifamily dwellings constructed for initial occupancy after March 1991 be accessible for persons with disabilities. The FHA accessibility requirements generally include: (1) accessible building entrance on an accessible route, (2) accessible and usable public and common use areas, (3) usable doors, (4) accessible route into and through the covered dwelling unit, and (5) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations.

away families with children or assigned them to a particular floor. According to Section officials, the number of rental-related issues is reflective of larger national trends in that discrimination in rental housing may be more frequently reported or easier to detect than in home sales.

Additionally, matters involving allegations of discrimination in group homes were among the largest number of the FHA matters the Section initiated. In 2001, the President announced the New Freedom Initiative and issued Executive Order 13217, which addressed the implementation of existing laws in light of the *Olmstead* decision, where the Supreme Court held that under Title II of the Americans with Disabilities Act, states are required to provide community-based treatment for persons with mental disabilities, where appropriate.⁸⁰ According to the Division, in response, the Housing and Civil Enforcement Section increased its focus on discrimination against group homes for individuals with disabilities, and housing providers employing policies designed to bar individuals with disabilities.⁸¹ For example, the Section opened an investigation in fiscal year 2003 on behalf of complainants who had been denied a conditional use permit for a residential group home, which would have allowed them to build the home on their property despite certain zoning restrictions. The complainants alleged the city had acted in a discriminatory manner against the disabled and group homes for the disabled by denying the permit.

Over a Quarter of Housing and Civil Enforcement Section Matters Initiated Involved Lending Issues under ECOA

From fiscal years 2001 through 2007, the Section initiated 252 matters with at least one allegation under ECOA involving a lending issue. As shown in table 13, about 70 percent (177 of 252) of these matters included allegations of discrimination based on age, marital status, or both. Section officials stated that due to the high number of bank and regulatory agency referrals from fiscal years 2001 through 2007 that involved allegations of discrimination based on marital status or age, the majority of matters initiated during the 7-year period also involved these bases of discrimination. For example, the Federal Deposit Insurance Corporation (FDIC) alleged a bank committed a discriminatory pattern or practice in violation of ECOA by requiring the spouses of the guarantors to sign commercial guarantees (business agreements). Allegedly, the guarantees were required only because of a spousal relationship with the guarantor

⁸⁰ *Olmstead v. L.C.*, 527 U.S. 581, 607 (1999).

⁸¹ The Assistant Attorney General began the multifamily housing access forum in 2005 to provide information to those who might be defendants in cases on how to design and construct facilities so that they do not conflict with the law.

and not because of any business relationship. Additionally, according to Section officials and DOJ’s annual ECOA reports to Congress, all but a small number of the referrals based on age and marital status are of the type that are generally returned for administrative resolution because the unlawful practice has discontinued and there is little chance that it will be repeated.⁸² Section officials also stated that matters that involved allegations of discrimination based on race or national origin/ethnicity generally involve more complicated issues and may not be as easily corrected by administrative enforcement action the bank regulatory agencies can take. Additionally, according to Section officials, issues of potential lending discrimination based on race or national origin have long been priorities for the Division. Thus, a larger proportion of race and national origin discrimination matters are retained and investigated by DOJ and may eventually become cases.

Table 13: Basis of Allegations for ECOA Matters from Fiscal Years 2001 through 2007

	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	Total
ECOA	26	18	33	58	41	50	26	252
Age	6	2	9	21	11	13	3	65
Marital Status	4	11	15	28	22	18	14	112
National Origin/Ethnicity	6	3	6	3	3	5	4	30
Race	17	0	9	6	10	10	8	60
Unfair Documentary Practices ^a	3	0	0	0	0	7	0	10
Other ^b	4	5	3	1	2	4	2	21

Source: GAO analysis of ICM aggregate matter data.

Notes: Includes all matters with an allegation filed under ECOA.

If a single complaint alleged multiple bases, it was counted under each basis alleged.

^a“Unfair documentary practices” is used to describe unfair requirements for materials to determine income, national origin, and creditworthiness, or inappropriate use of fraud of active duty alerts on credit reports.

^bOther includes disability, source of income, sex, family, and religion.

From fiscal years 2001 through 2007, about a third (90 of 252) of matters initiated with at least one allegation under ECOA involved the protected classes of race, national origin/ethnicity, or both, as shown in table 13. Based on ICM data kept by the Section, 51 of these 90 matters (about 56

⁸² Each year the section provides information to Congress on referrals through a document, entitled *The Attorney General’s Annual Report to Congress Pursuant to the Equal Credit Opportunity Act Amendments of 1976*.

percent) involved racial discrimination against African Americans and 20 (about 22 percent) involved national origin discrimination against Hispanics or Latinos. For example, the Section initiated an investigation to determine if the defendant, a car dealership, engaged in discrimination against African Americans in setting finance terms for car loans. The Section initiated the investigation after a Section attorney read a newspaper article in which a former employee made admissions concerning the discriminatory actions of his former employer.

As shown in table 13, the number of matters initiated under ECOA varied from fiscal years 2001 through 2007. According to Housing and Civil Enforcement Section officials, the variance was in part due to the number and type of ECOA matters referred to the Section. For example, new Home Mortgage Disclosure Act⁸³ regulations promulgated by the Federal Reserve Board, effective in 2004, changed the type and amount of information lenders were required to report on home loans under this act, including some data on loan pricing by race and gender.⁸⁴ As a result, the Section received an increased number of race and national origin referrals, even as the total number of bank agency referrals decreased, and reported devoting more time to reviewing the race and national origin referrals and developing cases from them.⁸⁵ Consequently, Section officials stated that as a result, they initiated fewer matters on their own. In addition, with respect to type of referral, Section officials explained that investigations involving national origin and race take a greater amount of resources to review than cases involving other protected classes. According to these officials, because the Section conducted more of these investigations in

⁸³ Home Mortgage Disclosure Act of 1975, Pub. L. No. 94-200, 89 Stat. 1124 (codified as amended at 29 U.S.C. §§ 2801-10).

⁸⁴ 12 C.F.R. pt. 203 (commonly known as Regulation C).

⁸⁵ Housing and Civil Enforcement Section officials also reported that the Section had developed three redlining cases since 2004 using Home Mortgage Disclosure Act data. Redlining is the refusal of lenders to make mortgage loans on an equal basis in certain geographic areas based on the racial or ethnic composition of the neighborhood. According to Section officials, these are complex cases, requiring significant resources.

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and Other Statutes

fiscal year 2007, and these types of investigations are complex, the overall number of matters initiated in fiscal year 2007 declined.⁸⁶

After the FHA and ECOA matters, the Housing and Civil Enforcement Section initiated the highest numbers of matters under RLUIPA and Title II of the Civil Rights Act. Of the 947 matters initiated by the Section, 134 (about 14 percent) included at least one allegation under RLUIPA, of which nearly all involved allegations of religious discrimination and the subject of land use/zoning/local government. For example, a religious society alleged the county violated RLUIPA by not granting a special exception permit to a zoning code that restricts the height of structures in residential zones for the construction of a mosque, where the zoning code had an exception for Christian structures. Fifty (about 5 percent) of the Housing and Civil Enforcement Section matters were initiated under Title II, of which about 36 matters (about 72 percent) involved allegations of discrimination based on race in places of public accommodation. (App. III provides information on the numbers of matters the Section initiated under other statutory provisions, including Title III, Title VI, and the SCRA.)

⁸⁶ According to the Attorney General's 2007 Annual Report to Congress Pursuant to ECOA, nine of the bank agency referrals the Section continued to investigate at the end of calendar year 2007 involved race or national origin discrimination—one of which involved allegations that a mortgage company engaged in redlining on the basis of race. Additionally, those nine referrals included seven that involved lender discrimination on the basis of race in the pricing of mortgage loans.

Most of the Cases Filed by the Housing and Civil Enforcement Section Included a Claim under the FHA and Involved Rental Issues Regarding Discrimination on the Basis of Disability or Race

The Housing and Civil Enforcement Section filed 269 cases as plaintiff from fiscal years 2001 through 2007.⁸⁷ Additionally, the Section participated in seven cases as amicus, and served as intervenor on behalf of the plaintiffs in one case.⁸⁸ According to Section officials, the Section considers legal merit when deciding whether to pursue a matter as a case as well as (1) whether it appears the matter will be resolved without Section intervention, such as by the local jurisdiction, (2) whether litigation would resolve a significant statutory issue, such as the interpretation of a provision of law the Section enforces; and (3) whether the plaintiff has the resources to proceed on his or her own should the Section choose not to get involved. Section officials stated that the Section examines evidence of disparate impact—practices that are not intended to discriminate but in fact have a disproportionately adverse effect on minorities—when relevant to individual or pattern or practice cases, although the Section had never filed a case based solely on disparate impact evidence. The Section’s decision to pursue particular kinds of cases may also be influenced by other priorities, such as those of the Assistant Attorney General. The Section may litigate cases solely or share litigation responsibility with a U.S. Attorney’s Office.⁸⁹

⁸⁷ According to data maintained in ICM, from fiscal years 2001 through 2007, the section also participated in 150 lawsuits that were filed prior to fiscal years 2001. (App. III provides additional information on prefiscal year 2001 cases).

⁸⁸ Of the seven cases the Section participated in as amicus, six involved FHA and one involved RLUIPA. The case for which the Section served as intervenor on behalf of the plaintiffs involved the FHA.

⁸⁹ Of the 277 cases in which the Housing and Civil Enforcement Section participated, 73 were litigated primarily by a U.S. Attorney’s Office, 204 primarily by the Housing and Civil Enforcement Section. When an election case complaint is referred to DOJ, the Section is to review the referral to determine whether it should be handled by the section, or if it should be handled by the local U.S. Attorney’s Office. According to Section officials, they usually keep a complaint if it seems as though they will be able to add to it a pattern or practice claim. If the complaint is novel or involves a difficult legal issue, the section might handle it even if it is not a pattern or practice case. Another factor considered by the Housing and Civil Enforcement Section is the experience of a U.S. Attorney’s Office in handling housing cases, as some attorneys have more experience than others. All election complaints and settlements, including those handled by a U.S. Attorney’s Office, are to be approved by the Assistant Attorney General (AAG). A Housing and Civil Enforcement Section reviewer is involved in guiding the U.S. Attorney’s Office through the approval process.

About 90 Percent of the Section's Cases Included a Claim under the FHA and More than Half of These Cases Involved Rental Issues

As shown in table 14, the Section participated in 277 cases from fiscal years 2001 through 2007.⁹⁰ Of the 277 cases, 140 were HUD-referred election cases—35 of which included an additional allegation of a pattern or practice of discrimination. Additionally, about 90 percent (257 of 277) of the cases included a claim under the FHA and 250 of these FHA cases were filed as plaintiff.

Table 14: Housing and Civil Enforcement Section Cases by Statute and Fiscal Year Filed from Fiscal Years 2001 through 2007

Statutes	Statute combinations	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006	FY2007	Total
FHA	Section 504				1				1
	FHA	49	45	26	31	40	28	29	248
	3613 (E) ^a		1		1				2
	Total	49	46	26	33	40	28	29	251
ECOA	ECOA		1					3	4
	ECOA and FHA			1	2		1	1	5
	Total		1	1	2		1	4	9
RLUIPA	RLUIPA			1		1	1	1	4
	RLUIPA and FHA					1			1
	Total			1		2	1	1	5
TITLE II		4	2	1	3		1	1	12
TITLE II Total		4	2	1	3		1	1	12
Total		53	49	29	38	42	31	35	277

Source: GAO analysis of ICM data.

^a42 U.S.C. § 3613(e) allows the Attorney General to intervene in cases that involve discriminatory housing practices where the Attorney General certifies that the case is of general public importance.

ICM data show that the number of cases filed by the Housing Section generally decreased from fiscal years 2001 through 2007. According to Section officials, the decline can be attributed to fewer election cases being referred from HUD. Overall, almost 70 percent (185 of 277) of the cases the Housing Section participated in from fiscal years 2001 through 2007 originally derived from a HUD referral. Such cases declined from 75 percent (40 of 53) of cases filed in fiscal year 2001 to 63 percent (24 of 38) of cases filed in fiscal year 2004. Such cases increased in fiscal year 2005, but again declined in fiscal years 2006 and 2007 to around 50 percent (17

⁹⁰ This includes cases filed either solely under the FHA or in combination with RLUIPA, ECOA, or section 504.

of 35) of cases filed in fiscal year 2007. Among HUD-referred cases are election cases, which the Section is statutorily required to file. As shown in table 15, the Section filed the largest number of election cases (31) in fiscal year 2001 and the lowest number (12) in fiscal year 2003.⁹¹ Section officials reported that the number of cases with an allegation of pattern or practice varied slightly over the 7-year period and the Section has more control over these kinds of cases because it can initiate them without a referral. However, Section officials also said that the number of pattern or practice cases filed may fluctuate each year depending on the extent to which the Section's resources are focused on the litigation of large cases. Additionally, in some years, the Section may file more consent orders resolving ongoing cases, while in other years the Section may file more new cases. According to time data maintained by the Division, the Section spent at least three-quarters of its time on pattern or practice cases each year from fiscal years 2001 through 2007. (App. III includes information on the percentage of time Section staff charged by case type for the 7-year period.)

Table 15: Housing and Civil Enforcement Section Case Types for Cases Initiated from Fiscal Years 2001 through 2007

Case type	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006	FY2007	Total
Pattern or Practice	18	20	14	17	16	14	17	116
Election Case	25	22	6	11	17	10	14	105
Pattern or Practice Election	6	5	6	5	6	5	2	35
Enforcement		1	3	4	3	2		13
Amicus Participation	3	1		1			2	7
Amicus Participation Pattern or Practice	1							1
Total	53	49	29	38	42	31	35	277

Source: GAO analysis of ICM data.

For cases the Housing and Civil Enforcement Section filed as plaintiff involving at least one allegation under the FHA, the Section asserted more claims related to rental issues (146 of 250) than any other subject, as

⁹¹ The 31 election cases that the Section filed in fiscal year 2001 and the 12 such cases filed in fiscal year 2003 include election cases with an additional allegation of a pattern or practice of discrimination.

shown in table 16.⁹² In one rental case, the defendant allegedly violated the FHA when he discriminated against African American tenants at two apartment complexes that he owned and managed by evicting African American tenants, while not evicting similarly situated non-African American tenants. Specifically, the defendant allegedly required African American tenants to vacate their apartments permanently while not requiring non-African American tenants to do so, and failed to provide necessary and requested maintenance to African American tenants while providing such maintenance to non-African American tenants.

Table 16: Issues in the FHA Cases Filed from Fiscal Years 2001 through 2007

Subject (Issue) ^a	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	Total Occurrences
Rental	27	27	14	14	22	19	23	146
New Construction	15	7	6	8	6	3	6	51
Retaliation	4	5	0	3	2	6	6	26
Harassment	2	4	1	4	6	6	2	25
Testing Program	4	4	2	1	1	2	4	18
Land Use/Zoning/Local Government	2	2	3	3	4	2	1	17
Sales	0	3	3	4	1	4	1	16
Group Homes ^b	1	1	2	2	2	3	1	12
Other Housing Subject Matter	2	4	0	2	3	0	0	11
Other ^c	0	0	1	4	3	1	1	10

Source: Division ICM data.

Note: Includes all claims with an allegation filed under the FHA.

^aIf a single complaint alleged multiple issues, it was counted under each issue alleged.

^bGroup home cases are usually a subset of land use/zoning/local government cases.

^cOther includes lending, insurance, and other non-housing subject matter.

Additionally, the Section asserted more claims on behalf of persons with a disability (115 of 250) than any other protected class, as shown in table 17. For example, one of the complaints we reviewed was filed on behalf of a

⁹² The relatively large number of allegations of disability and rental discrimination also appears in the type of complaints received by HUD and Fair Housing Assistance Program (FHAP) agencies. According to HUD's *Fiscal Year 2007 Annual Report on Fair Housing*, the most common basis of complaints received by HUD and FHAP agencies was disability and the most common allegation was discrimination in the terms and conditions of the rental or sale of housing.

man with a disability who had filed a complaint with HUD against the property manager and owner of his apartment complex, alleging the defendants discriminated against him on the basis of his physical impairments when they unreasonably prolonged meeting his request for a ground floor apartment and did not provide the reasonable accommodation of handicapped parking spaces.

Table 17: Bases of Claims for the FHA Cases Filed from Fiscal Years 2001 through 2007

Protected class (Basis)	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	Total occurrences
Disability	20	17	13	18	18	13	16	115
Family	13	10	7	6	6	4	5	51
National Origin/Ethnicity	4	4	3	2	5	2	3	23
Hispanic or Latino	1	3	2	2	3	1	2	14
Other ^a	4	2	1	0	2	1	1	11
Race	15	16	8	7	11	8	5	70
African American	12	15	8	7	11	8	5	66
Asian	3	2	0	0	0	0	0	5
Other ^b	1	1	0	0	0	1	0	3
Sex	2	4	4	3	5	6	1	25
Female	2	3	4	3	4	5	1	22
Male	0	1	0	0	1	1	0	3
Other^c	2	3	0	0	2	1	1	9

Source: Division ICM data.

Notes: Includes all claims with an allegation filed under the FHA.

If a single complaint alleged multiple bases, it was counted under each basis alleged.

^aFor National Origin cases, the category other includes American Indian or Alaskan Native, Arab, Indian, Not Hispanic or Latino, and Other.

^bFor race cases, the category other includes American-Indian or Alaskan Native, Hispanic, and white.

^cOther includes color and religion.

Furthermore, 70 of the 250 FHA cases that the Housing and Civil Enforcement Section filed as plaintiff involved at least one claim of racial discrimination, primarily related to rental issues (about 50 of 70). Of those 70 cases, which include HUD election cases that the Section is statutorily required to file, about 66 were described as concerning racial discrimination against African Americans. As shown in table 17, the number of cases with a claim of racial discrimination generally declined from fiscal years 2001 through 2007. According to Section officials, since the Section has discretion to initiate the FHA pattern or practice cases it

The Section Conducted over 1,600 Housing Tests and Filed 20 Housing Testing Cases over the 7-Year Period

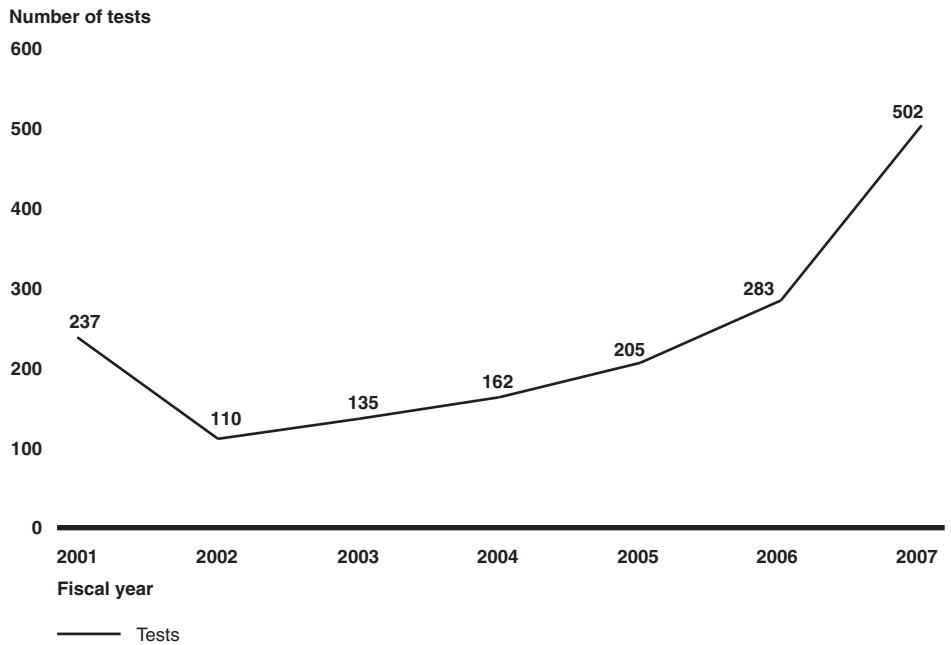
files, not the HUD election cases, it is more meaningful to look at the trend in the filing of those cases. Our review of the FHA pattern or practice cases identified that of the 132 pattern or practice cases the Section filed as plaintiff from fiscal years 2001 through 2007, 30 included at least one claim of racial discrimination. From fiscal years 2001 through 2003, the number of such cases filed ranged from 6 to 7. The Section filed 3 such cases each year from fiscal years 2004 through 2006, and 2 cases in fiscal year 2007.

The Section filed 20 cases derived from over 1,600 tests conducted as part of its Fair Housing Testing Program from fiscal years 2001 through 2007.⁹³ In 1991, the Section created the Fair Housing Testing Program to help enforce the FHA. Generally, fair housing testing involves individuals who pose as prospective buyers or renters of real estate to gather information that may indicate whether a housing provider is complying with fair housing laws. The purpose of this testing is to allow the Section to identify potential patterns or practices of housing discrimination that may go undetected.⁹⁴ According to Section officials, in fiscal year 2005, DOJ set the goal of doubling the number of tests conducted by fiscal year 2007. As shown in figure 2, DOJ exceeded this goal.

⁹³ Nineteen (17 FHA and 2 Title II) testing cases were litigated by the Section and 1 FHA testing case was litigated by a U.S. Attorney's Office.

⁹⁴ Even when an individual test reveals what appears to be unlawful discrimination, that alone may not be sufficient to support a lawsuit by DOJ. Absent a referral from HUD pursuant to 42 U.S.C. § 3612(o), based upon a complaint and investigation, the Attorney General has jurisdiction to commence a lawsuit to enforce the Fair Housing Act in federal court only when there is reasonable cause to believe that there has been a "pattern or practice" of discrimination or a denial of rights to a group of persons that raises a matter of general public importance. *See* 42 U.S.C. § 3614(a). The Supreme Court has held that to establish a "pattern or practice" of discrimination, the government must show "by a preponderance of the evidence that racial discrimination was the company's standard operating procedure—the regular rather than the unusual practice." *Int'l Bhd of Teamsters v. United States*, 431 U.S. 324, 336 (1977). Proof of one instance of unlawful discriminatory conduct, standing alone, is often not sufficient to prevail in a pattern or practice case. *See id.* at 336 n.16. And in the context of fair housing testing, multiple tests may be necessary to show a pattern or practice or denial of rights to a group of persons. *See, e.g., United States v. Balistrieri*, 981 F.2d 916, 930 (7th Cir. 1992), *cert. denied*, 510 U.S. 812 (1993); *United States v. Garden Homes Mgmt. Corp.*, 156 F. Supp. 2d 413, 422 (D.N.J. 2001).

Figure 2: Housing Testing Conducted from Fiscal Years 2001 through 2007



Source: Housing and Civil Enforcement Section data on housing testing.

Nine of the Section’s 20 testing cases involved allegations of discrimination on the basis of disability in new construction, rentals, or both; 7 involved race discrimination against African Americans in rentals or public accommodations; 5 involved familial status discrimination in rentals, of which 2 additionally involved discrimination against African Americans; and 1 involved discrimination on the basis of national origin/ethnicity in rentals.⁹⁵ As shown in table 18, the Section filed 9 of the 20 cases, including 4 of the 5 new construction cases, from fiscal years 2001 to 2002, filed 1 to 2 cases per year from fiscal years 2003 through 2006, and 4 cases in fiscal year 2007.

⁹⁵ A single test can involve multiple issues and bases of discrimination.

Table 18: Bases of Claims and Issues for Housing and Civil Enforcement Section Testing Program Cases Filed from Fiscal Years 2001 through 2007

Statute	Issue	Basis of discrimination	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	Total	
FHA	New Construction Rental	Disability	3		1					4	
	New Construction Sales	Disability	1							1	
	Rental	Disability				1			1	2	4
		Family			1				1	1	3
		Family and Race - African American			2						2
		National Origin/Ethnicity – Other								1	1
	Race - African American			1		1	1			3	
Title II	Public Accommodations	Race - African American	1			1				2	
Total			5	4	2	2	1	2	4	20	

Source: GAO analysis of ICM data.

According to the Division’s fiscal year 2005 budget submission, the Section’s ability to identify patterns and practices of discrimination against persons with disabilities through testing had been reduced during fiscal year 2003 when the Immigration and Naturalization Service was transferred to the Department of Homeland Security, as many experienced and trained DOJ testers were Immigration and Naturalization Service employees. In 2006, the Attorney General initiated Operation Home Sweet Home to ensure equal access to housing by expanding and targeting the Division’s fair housing testing program.⁹⁶ Housing Section officials stated that Operation Home Sweet Home has resulted in an increase in the quantity and quality of testing.

⁹⁶ According to Housing and Civil Enforcement Section officials, the Section offered contracts to local groups to do the testing, creating local scenarios that are more credible and enabling access to hard-to-reach areas in the community. Section officials stated that under Home Sweet Home they may target a particular area based on need; for example, Section officials noted that they had targeted testing efforts in areas affected by Hurricane Katrina where displaced persons may be looking for housing.

The Section Filed Cases under
ECOA, RLUIPA, and Title II

The Housing and Civil Enforcement Section filed a total of 26 cases pursuant to ECOA, RLUIPA and Title II. All 9 ECOA complaints, 5 of which were in combination with the FHA, involved lending issues. Seven of the 9 complaints included at least one allegation of racial discrimination and 4 included at least one allegation of discrimination on the basis of national origin/ethnicity.⁹⁷ For example, in October 2006, the Section filed a complaint alleging that a bank was in violation of ECOA and the FHA for discriminating on the basis of race and national origin by, among other things, placing branch offices and providing banking and lending services to meet the banking and credit needs in majority white areas, but not areas where minorities comprised the majority of the population. The Section filed 5 complaints pursuant to RLUIPA, 1 in combination with the FHA. All of the RLUIPA complaints involved discrimination based on religion and the issue of land use/zoning/local government. The Section also filed 12 public accommodation complaints under Title II, all of which involved at least 1 allegation of racial discrimination, national origin/ethnicity discrimination, or both.

The Voting Section
Initiated Matters and
Filed Cases Primarily
under the Voting
Rights Act on Behalf
of Language Minority
Groups, and Devoted
the Greatest
Proportion of Its Time
to Reviews of
Changes in Voting
Practices and
Procedures

From fiscal years 2001 through 2007, the Voting Section was responsible for enforcing federal statutes that protect the voting rights of racial and language minorities, disabled and illiterate persons, and overseas and military personnel. During the 7-year period, the Section initiated more matters (367 of 442) and cases (39 of 56) under the Voting Rights Act than the other statutes it enforced, and primarily on behalf of language minority groups (246 of 367 matters and 30 of 56 cases). According to aggregate time data for the 7-year period, the Voting Section spent the greatest total percentage of time (52 percent) on administrative reviews of proposed changes in the voting practices and procedures of certain jurisdictions covered under section 5 of the VRA, such as a proposed redistricting plan—which would make changes to the geographic boundaries of voting districts—or the relocation of a polling place, as compared with cases (33 percent) or matters (14 percent).

⁹⁷ Four of the 9 complaints included allegations of discrimination both on the basis of race and national origin.

The Voting Section Had Various Statutory Responsibilities from Fiscal Years 2001 through 2007

The Voting Section has responsibility for the enforcement of federal voting rights statutes, including provisions designed to safeguard the right to vote of racial and language minorities, disabled and illiterate persons, and overseas and military personnel. The Section undertook its statutory responsibilities on behalf of specific protected classes, for example, ensuring that certain jurisdictions provide voting materials in the languages of certain language minority groups as well as in English. In addition, the Section enforced provisions that are to protect voters in general, such as the requirement that states provide provisional ballots to voters in federal elections who claim to be eligible and registered to vote, but whose names do not appear on the polling place register. From fiscal years 2001 through 2007, the Section enforced the Voting Rights Act (VRA); the National Voter Registration Act (NVRA); the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA); and beginning in fiscal year 2002, the Help America Vote Act (HAVA). Table 19 presents responsibilities of the Voting Section by statute and provision. Appendix IV provides additional information about each statute enforced by the Voting Section.

Table 19: Statutory Provisions Enforced by the Voting Section from Fiscal Years 2001 through 2007

Statutory provision	Description of responsibilities
Section 2 of the VRA, 42 U.S.C. § 1973	Section 2 of the Voting Rights Act prohibits discriminatory procedures or practices that result in a denial or abridgment of the right to vote on account of race, color, or membership in a language minority group. Section 2 prohibits not only voting practices and procedures that are intended to discriminate against these protected classes, but also those practices and procedures that have a discriminatory impact.
Sections 203, 4(f)(4) and 4(e), of the VRA, 42 U.S.C. §§ 1973aa-1a, 1973b(f)(4), 1973b(e)	Collectively known as the “language minority provisions” of the Voting Rights Act, sections 203 and 4(f)(4) are to enable members of applicable language minority groups to participate effectively in the electoral process; thus, covered jurisdictions must provide registration and voting materials in the language of the applicable minority group, in addition to English, or, in certain instances, provide oral instructions. Section 4(e) prohibits states from denying the right to vote on the basis of English proficiency to those who were educated in public or accredited private schools in which the predominant classroom language was other than English.
Section 208 of the VRA, 42 U.S.C. § 1973aa-6	Section 208 allows any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write to be given assistance generally by a person of the voter’s choice.
Section 5 of the VRA, 42 U.S.C. § 1973c	Under section 5, state and local jurisdictions in certain parts of the country may not change their election practices or procedures, which include moving a polling place or changing district lines in the county, until they obtain federal “preclearance” that the change has neither the purpose nor the effect of discriminating against protected minorities in exercising their voting rights. Preclearance may be obtained either from the United States District Court for the District of Columbia or the Attorney General.

Statutory provision	Description of responsibilities
Section 4 of the VRA, 42 U.S.C. § 1973b	Section 4 of the VRA provides for jurisdictions to terminate or “bailout” from the requirements of section 5, if determined by a three-judge panel of the United States District Court for the District of Columbia to meet certain statutory standards. The Attorney General may consent to an entry of judgment granting the bailout.
Section 11(b) of the VRA, 42 U.S.C. § 1973i(b)	Section 11(b) prohibits persons, whether or not they are acting on behalf of the government, from intimidating, threatening, or coercing, or attempting to do so, any person for voting or attempting to vote. It further prohibits intimidation, threats, or coercion of persons aiding others in voting or exercising certain powers or duties under the VRA.
Help America Vote Act of 2002 (HAVA), 42 U.S.C. §§ 15301-545	HAVA established requirements related to voting system standards, provisional voting and voting information, and computerized statewide voter registration lists to be enforced by the Attorney General.
National Voter Registration Act of 1993 (NVRA), 42 U.S.C. §§ 1973gg–1973gg-10	The NVRA requires states to adopt certain federal voter registration procedures and contains detailed requirements regarding state removal of names from federal registration rolls. The NVRA requires states to have a program to remove ineligible voters from voter rolls, but also requires that such list maintenance programs incorporate specific safeguards.
Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), 42 U.S.C. §§ 1973ff–1973ff-6	UOCAVA requires states and territories to allow absent uniformed services voters and their spouses or dependents, as well as overseas voters, to register and vote absentee in federal elections.

Source: GAO summary of federal statutes.

The Voting Section has the discretion to initiate a matter or pursue a case under all of its statutes, with the exception of the review of changes in voting practices or procedures, which it is statutorily required to conduct under section 5 of the VRA.^{98, 99} According to Section officials, the Section

⁹⁸ According to Voting Section officials, the Section initiated a matter when an inquiry or fact finding involved either travel or more than 4 hours of attorney time. Once a matter was open, it received a DJ number and remained in the Voting Section as a matter until such time as the Section went forward to the Division with a justification memorandum recommending the filing a complaint to initiate a lawsuit or closed the matter. However, not all the work of the Section becomes a matter.

identifies possible violations of the statutes it enforces from allegations of discriminatory practices that it receives from citizens, as well as advocacy and community organizations, members of Congress, and U.S. Attorney's Offices; by staff reviewing news articles; and through the Section's election monitoring efforts.¹⁰⁰ They noted that during the 7-year period, as compared to prior years, the Section had received complaints from a broader range of racial and ethnic groups and a consortium of civil rights organizations that monitor polling places during elections. Section and Division officials identified shifts in the Section's priorities beginning in 2002. In October 2007, the Section Chief who served from 2005 through late 2007 told us that the Voting Section was focused on enforcing all of the statutes for which it was responsible, rather than any provision in particular. He further stated that while at-large election systems that discriminated against African Americans remained a priority of the Section, not many of these systems continued to discriminate, and new tensions over immigration had emerged; therefore, the Section had been pursuing cases of voting discrimination against citizens of other minority

⁹⁹ According to Section officials, the process for opening an investigation has changed since the period of our review. In December 2007, the Division's Front Office implemented an Investigatory Memorandum (I-memo) requirement. Under this new procedure, if the initial review indicated that the allegation was reasonably likely to result in an investigation, it became a matter upon the approval of a reviewer with the Section. Before proceeding with an investigation by contacting state or local officials, the Section was to prepare a short memorandum to the Deputy Assistant Attorney General and receive authorization from the Division's Front Office. Officials said this process was intended to avoid the situation in which the Division learned of such an investigation from the media. In August 2009, this process changed again. While Section officials are required to receive authorization from the Division's Front Office before contacting local officials, the reviewing Deputy Assistant Attorney General advised the section that a formal I-memo was not necessary and that authorization could be obtained by an email outlining the information on which the Section based the recommendation to proceed with an investigation. Section officials stated that this change was intended to make it easier for the section to initiate investigations. However, if an allegation is quickly resolved, no DJ number is assigned and the allegation does not become a matter.

¹⁰⁰ The Section engages in election monitoring, which refers to the assigning of (1) federal observers by the Office of Personnel Management, upon notification of the need by the Attorney General, to monitor polling place activities in counties that the Attorney General has certified under VRA and counties authorized by federal courts and (2) Justice Department attorneys and professional staff to monitor election-day activities in local jurisdictions throughout the United States, whether or not the locations have been certified under VRA, to investigate possible voting rights violations. Election monitoring information is not kept in ICM, but in a separate database. Sections 3 and 8 of the VRA provide authority to the federal courts and the Attorney General, respectively, to authorize federal observers to be assigned to political jurisdictions to monitor the voting process. 42 U.S.C. §§ 1973a, 1973f.

groups.¹⁰¹ However, in September 2009, Voting Section officials stated that while many at-large election systems that diluted minority voting strength have been successfully challenged, the Section continued to identify such systems that discriminate against African American, Hispanic, and Native American residents in jurisdictions throughout the country and that taking action against at-large election systems remained a high priority for the Section. They also stated that the Section had as a priority the enforcement of all the statutes for which it was responsible throughout the period of our review. In July 2007, the Assistant Attorney General stated that since 2002, the Section had increased its enforcement of the minority language provisions of the VRA and in 2002 had instituted the most vigorous outreach efforts to jurisdictions covered by the minority language provisions of the Act. Additionally, the Acting Assistant Attorney General reported in September 2008 that the Division had brought more cases under the VRA's minority language provisions during the past 7 years than in all other years combined since 1975.

The Voting Section Initiated More Matters under the VRA Than Other Statutes and Primarily on Behalf of Language Minority Groups

From fiscal years 2001 through 2007, the Voting Section initiated 442 matters, over 80 percent (367 of 442) of which involved allegations under the VRA.¹⁰² Although the number of matters initiated each fiscal year fluctuated, the largest number of matters initiated consistently involved the enforcement of VRA provisions, increasing in fiscal year 2003 to its highest level (136 of 367) and then generally declining. Section officials explained that, generally, fluctuation from year to year in terms of the number of matters initiated under any of the statutes enforced by the Section is a normal occurrence; however, certain occurrences and initiatives of the Section, described as applicable below, may affect the distribution of cases over time. Table 20 shows the number of matters initiated by the Voting Section from fiscal years 2001 through 2007.

¹⁰¹ An at-large election system is one in which a public official is selected from the whole of a political unit or election district rather than from a subdivision of the larger unit.

¹⁰² Matters may be initiated under more than one statute.

Table 20: Matters Initiated by the Voting Section from Fiscal Years 2001 through 2007 by Statute

Fiscal year statute	2001	2002	2003	2004	2005	2006	2007	Total
VRA	52	69	136	38	19	18	29	361
HAVA					6	19		25
HAVA/NVRA						1		1
HAVA/VRA					1		2	3
NVRA	5	2	2	4	3	3	1	20
NVRA/VRA	1			1		1		3
UOCAVA		1	3	3	3	9	5	24
Other ^a	4			1				5
Total	62	72	141	47	32	51	37	442

Source: GAO analysis of ICM data.

^aOther includes one matter involving a challenge to the constitutionality of UOCAVA; a project to post on the Section's Web site information on the rules for restoring the rights for ex-felons; and matters pursuant to the Voting Accessibility for the Elderly and Handicapped Act of 1984, 42 U.S.C. §§ 1973ee to 1973ee-6, which, with certain exceptions, requires that for federal elections polling places and registration facilities be accessible to handicapped and elderly voters and states make available registration and voting aids for handicapped and elderly individuals.

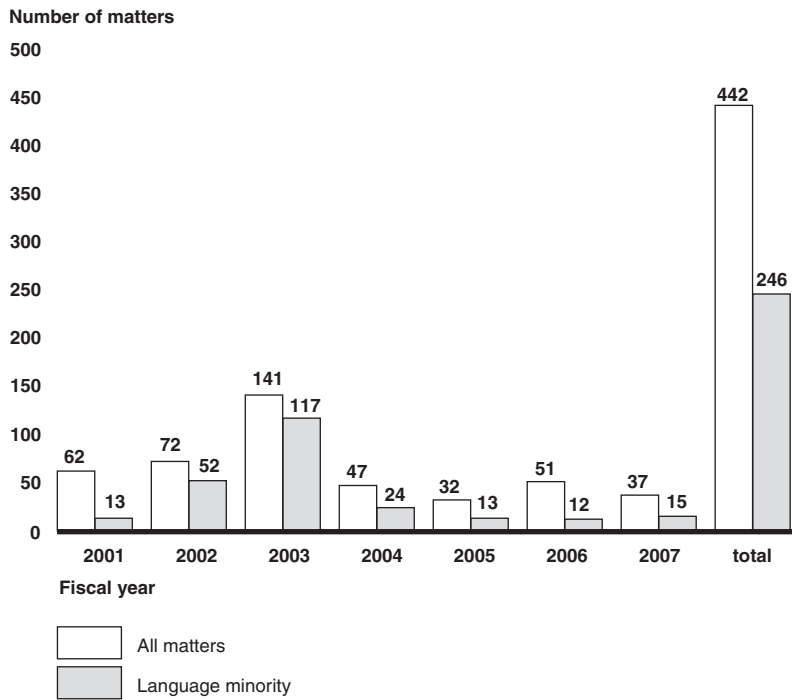
As shown in figure 3, over half (246 of 442) of all matters initiated during the 7-year period were on behalf of language minority groups.¹⁰³ The Section initiated the largest number of these matters in fiscal years 2002 and 2003 (52 and 117, respectively), which constituted almost 70 percent (169 of 246) of all matters initiated on behalf of language minority groups. Section officials explained that while the Section's work is for the most part driven by information received from various sources, the likely explanation for the increased number of matters on behalf of language minority groups was, in part, due to increased Section activity following the renewed 2002 determinations of the Director of the Census regarding

¹⁰³ These matters were initiated under sections 2, 4(e), 4(f)(4), 11(b), 203 and 208 of the VRA. Seven of these matters also involved allegations of racial discrimination.

jurisdictions covered by section 203 of the VRA.¹⁰⁴ Following the coverage determinations, the Section, in the latter part of 2002 and in 2003, initiated investigations of newly covered jurisdictions to ensure compliance with the law's requirements. In addition, around the same time period, the Section had an initiative to investigate at-large elections in numerous jurisdictions, particularly in California, many of which had experienced significant minority population growth.

¹⁰⁴ Coverage under section 203 is determined by a coverage formula contained in that section. There are three ways that a jurisdiction may be covered: (1) more than 5 percent of the voting age citizens of a state or political subdivision are members of a single language minority group and are limited-English proficient; (2) more than 10,000 of the voting age citizens of a political subdivision are members of a single language minority group and are limited-English proficient; or (3) a political subdivision is covered if there is located within its borders all or any part of an Indian reservation, in which more than 5 percent of the voting age American Indian or Alaska Native citizens are members of a single language minority group and are limited-English proficient. In all three cases, it is additionally required that the illiteracy rate of the language minority citizens is higher than the national illiteracy rate. 42 U.S.C. § 1973aa-1a; *see also* 28 C.F.R. § 55.6. The requirements of section 203 take effect upon publication in the *Federal Register* of the requisite determinations of the Director of the Census. Such determinations are not reviewable in any court. 28 C.F.R. § 55.4.

Figure 3: Language Minority Matters Compared with All Matters Initiated by the Voting Section from Fiscal Years 2001 through 2007



Source: GAO analysis of ICM data.

The Majority of Matters Initiated on Behalf of Language Minority Groups Involved Spanish Speakers

Over 80 percent (203 of 246) of the language minority matters involved Spanish speakers; approximately 16 percent involved Native Americans or Alaska Natives (39 of 246); and about 9 percent involved Asian language speakers (21 of 246).¹⁰⁵ As shown in table 21, about half of the matters involving Spanish and Native Americans voters were initiated in fiscal year 2003, which officials explained was, in part, as a result of the post-Census initiative described above.

¹⁰⁵ Eighteen of these matters were initiated on behalf of more than one language minority group.

Table 21: Matters Initiated On Behalf Of Language Minorities from Fiscal Years 2001 through 2007

Fiscal year Protected class	2001	2002	2003	2004	2005	2006	2007	Total
Chinese			1	1				2
Chinese / other Asian			1					1
Chinese / Spanish		1	2			2	1	6
Chinese / other Asian / Spanish / Vietnamese						1		1
Native American	3	5	20	1	2	1	1	33
Native American / Spanish	1		2	3				6
Other Asian	1		2	1			2	6
Other Asian / Spanish			3				1	4
Spanish	6	46	84	17	10	7	9	179
Spanish / Race–African American	2				1			3
Spanish / Race–Hispanic				1		1		2
Spanish / Race–Asian			2					2
Vietnamese / Race–African American							1	1
Total	13	52	117	24	13	12	15	246

Source: GAO analysis of ICM data.

Almost 70 percent (171 of 246) of the matters initiated on behalf of language minorities were under the VRA’s language minority provisions that require covered jurisdictions to provide bilingual written materials and other assistance for elections (e.g., ballots) in the language of the applicable minority group or oral instructions in the case of Alaska Natives or American Indians.¹⁰⁶ For example, in one matter, the Section requested and received from the official responsible for administering elections

¹⁰⁶ According to Voting Section officials, the reference “203” was used in ICM to designate matters initiated pursuant to sections 203 and 4(f)(4), as well as section 4(e) of the VRA; therefore, we were unable to distinguish under which of these provisions a matter was initiated. Coverage under section 203 is determined by a coverage formula contained in that section that takes into account factors such as the percentage of voting age citizens of a state or political subdivision who are members of a single language minority group and are limited-English proficient, as well as illiteracy rates of such citizens, among other factors. 42 U.S.C. § 1973aa-1a; *see also* 28 C.F.R. § 55.6. The coverage determination under section 4(f)(4) is related to the formula for determining jurisdictions subject to the preclearance requirements of section 5 of the VRA, which are those evidencing discriminatory voting practices, based upon a triggering formula as defined in section 4 of the VRA. 42 U.S.C. § 1973b(f)(4); *see also* 28 C.F.R. § 55.5. During this time, the Section also did not have a separate ICM subject value for matters initiated under section 208 on behalf of voters who were blind, disabled, or unable to read or write. Section officials stated that issues related to Section 208 would ordinarily be added to matters initiated under the minority language provisions.

About Half of the Matters
Initiated under Section 2 of the
VRA Involved Language
Minority Groups and About
Half Involved Racial Minority
Groups

copies of bilingual materials for a general election to determine whether a jurisdiction was in compliance with section 203. Matters initiated on behalf of language minorities also involved claims under other VRA provisions—about 80 matters under section 2 of the VRA¹⁰⁷ and 8 alleging intimidation.¹⁰⁸

From fiscal years 2001 through 2007, the Voting Section initiated 162 matters under section 2 of the VRA—about 80 involving a language minority group and 88 involving a racial minority group.¹⁰⁹ As shown in table 22, the majority (71 of 80) of the section 2 language minority matters were initiated on behalf of Spanish speakers. The largest number (71 of 88) of matters initiated on behalf of racial minorities involved African American voters. Table 22 shows the number of matters that the Voting Section initiated under section 2 of the VRA from fiscal years 2001 through 2007, by protected class.

¹⁰⁷ Two of these matters were also initiated pursuant to an allegation of intimidation and 8 were with allegations under section 203, one of which also involved an NVRA-related allegation.

¹⁰⁸ Two of these matters were in combination with section 2.

¹⁰⁹ Seven matters involved both a language minority and a racial group. For purposes of describing cases and matters under the VRA, cases and matters involving Hispanics are included with the protected class of race.

Table 22: Section 2 Matters Initiated from Fiscal Years 2001 through 2007 by Protected Class

Protected class	Total
Language minority	
Spanish	64
Native American	6
Native American/Spanish	1
Asian	2
Total	73
Race	
African American	64
Asian	6
Hispanic	4
American Indian/Alaska Native	1
African American/Hispanic	3
African American/white	1
Native Hawaiian/other Pacific Islander	2
Total	81
Language minority and race	
Language Minority–Spanish/Race–Hispanic	2
Language Minority–Spanish/Race–African American	2
Language Minority–Spanish/Race–Asian	2
Language Minority–Vietnamese Race–African American	1
Total	7
Voters^a	1
Grand Total	162

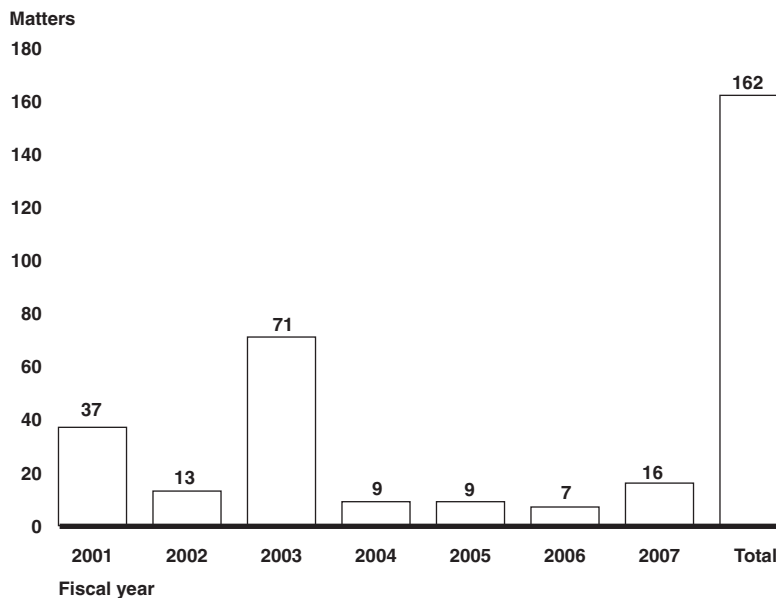
Source: GAO analysis of ICM data.

^aSpecific protected class was not identified.

Most of the section 2 matters were initiated in fiscal years 2001 through 2003 (121 of 162). Section officials reported that the larger number of section 2 matters in 2001 can likely be attributed to a highly contested and controversial Presidential election occurring in November 2000, which gave rise to an abnormally high number of election-related complaints to DOJ. In addition, as noted above, Section officials reported that the Section had developed a section 2 initiative in the latter part of fiscal year 2002 and in 2003 to investigate at-large elections in numerous jurisdictions where African American or Hispanic population growth had occurred.

Figure 4 shows the number of section 2 matters initiated in each of fiscal years 2001 through 2007.

Figure 4: Number of VRA Section 2 Matters Filed by the Voting Section for Fiscal Years 2001 through 2007



Source: GAO analysis of ICM data.

As shown in table 23, the 162 matters initiated under section 2 involved three issues—at-large methods of election (103 of 162), “other dilution” (12 of 162), and other practices prohibited under section 2 (47 of 162), which are described below. The relative proportion of matters involving language minority groups as compared with racial minority groups varied by issue.

Table 23: Matters Initiated by the Voting Section under VRA Section 2 from Fiscal Years 2001 through 2007 by Subject

VRA provision	Protected class	Total
Section 2–At Large ^a	Language minority	60
	Race	39
	Language minority and race	4
Section 2–At Large total		103
Section 2–other dilution	Race	7
	Language minority	3
	Language minority and race	2
Section 2–other dilution total		12
Section 2–other	Race	35
	Language minority	10
	Language minority and race	1
	Voters	1
Section 2–other total		47
Grand Total		162

Source: GAO analysis of ICM data.

^aSection officials, noted, however, that most of the matters opened for investigations of at-large elections involving Hispanic voters were designated under the protected class of “language minority – Spanish,” whereas now, the Section uses the racial category of Hispanic in order to distinguish these matters from the bilingual minority language matters.

About 64 percent (103 of 162) of the section 2 matters involved at-large methods of election.¹¹⁰ About 62 percent (64 of 103) of these at-large matters were initiated on behalf of language minorities and about 42 percent (43 of 103) were initiated on behalf of racial minorities, including 4 matters involving both racial and language minorities. For example, in one matter, the Section initiated an investigation to determine whether there

¹¹⁰ An at-large election system is one in which a public official is selected from the whole of a political unit or election district rather than from a subdivision of the larger unit. This type of election can dilute the strength of minority voters. For example, when all the of the voters within a jurisdiction vote on all members of the city council, with the result that racial minorities who live in a particular part of the city, and might be able to elect one or more representatives if the city council members were individually elected from smaller districts, are regularly outvoted by the white majority. In analyzing claims that at-large systems violate section 2 by giving minorities less opportunity to elect representatives of their choice, courts engage in an intensive analysis of the effects of the election system and of the racial history of the area in question, and have been guided by a list of factors identified in the legislative history of the 1982 amendments to the Voting Rights Act and articulated by the Supreme Court.

was cause to believe that the at-large method of election for a city council diluted Hispanic voting strength in violation of section 2. Matters that the Section characterizes as “section 2—other dilution” are similar to the at-large matters in that they involve allegations that the method of election or election plan—other than an at-large election system—denies members of the protected class an opportunity to participate in the political process and elect representatives of their choice equal to other members of the electorate. For example, according to Section officials, such matters may involve a challenge to a jurisdiction’s redistricting plan. The Section initiated 12 of these matters—7 on behalf of racial groups, 3 on behalf of language minorities, and 2 involving both racial and language minorities. Section officials reported that they would expect to see the large majority of their section 2 work involving voting practices such as at-large and other dilutive methods of election.

In addition, the Voting Section initiated 47 (of 162) section 2 matters challenging practices other than a method of election, such as voting qualifications that deny or abridge the rights of protected groups, discriminatory voting registration procedures, or election-day practices that have a “disparate impact” (i.e., a greater impact on one group of voters than other groups). For example, one matter involved allegations that African American students at a college and a university faced discriminatory treatment in the registration process for the 2000 presidential election. A second matter involved allegations from a citizen that city officials had discriminated against a Hispanic candidate for city council by invalidating her filing forms while accepting similar forms from another candidate and had instructed voters during an election not to vote for “the Mexican.” Thirty-five of these (47) matters were initiated on behalf of racial minority groups of which 31 involved African Americans, 10 were on behalf of language minority groups, and 1 included both language minority and racial groups.¹¹¹ Section officials told us that these types of claims often grow out of section 203 language minority investigations, and are not always reflected in ICM data.

The Section Initiated Matters under VRA’s Intimidation Provision, as Well as under HAVA, the NVRA, and UOCAVA

The Section also initiated 27 matters, referred to as intimidation matters, under the provision of the VRA that prohibits persons, whether or not they are acting on behalf of the government, from, among other things, intimidating or threatening anyone for voting or anyone who is aiding

¹¹¹ One matter did not identify a particular protected class, but referred to voters.

others in voting.¹¹² These matters primarily involved the intimidation of persons who belong to racial groups—African Americans (16), whites (2), and Hispanics (1). Eight involved language minorities.¹¹³

In addition to the VRA, the Voting Section initiated 76 matters under HAVA, NVRA, and UOCAVA on behalf of voters. The Section initiated 29 matters involving HAVA provisions in fiscal years 2005 through 2007.¹¹⁴ About two-thirds of the HAVA matters (19 of 29) involved issues related to HAVA's voter list requirements, which refers to the computerized statewide voter registration list required by section 303(a) of HAVA. For example, the Section initiated one HAVA matter when several organizations brought a lawsuit alleging that a state had violated HAVA and other federal laws in the operation of its computerized voter registration database. The state filed a motion in court seeking to add the United States as a defendant, which the Section successfully opposed in court because the United States was not a necessary party. Section officials explained that the largest number (20 of 29) of HAVA matters was initiated in fiscal year 2006 because the HAVA voting systems standards requirements went into effect on January 1, 2006, and the computerized statewide voter registration list requirements became effective for most states that had applied for a waiver on January 1, 2006, as well. Section officials told us that for a time prior to and following the January 1, 2006, deadline, the Section was engaged in extensive investigation efforts to determine states' compliance with the law. Section officials reported that most of the issues that arose with the states with regard to compliance were resolved cooperatively without resort to litigation.

The Section also initiated 24 matters under the NVRA. These matters either involved issues related to the requirement to remove voters from registration lists under specified conditions—known as “purge” cases (11)—or issues related to the registration of voters (6).^{115,116} For example,

¹¹² Section 11(b) of the VRA.

¹¹³ One matter involved both a language minority and racial minority group and one matter involved two racial groups, thus accounting for 25 of the 27 matters. ICM data did not identify the specific protected class of two of these matters.

¹¹⁴ One matter involved both provisions of HAVA and the NVRA and three matters involved HAVA and the VRA.

¹¹⁵ One matter involved both provisions of HAVA and the NVRA and three matters involved both the NVRA and the VRA.

in one NVRA matter, the Section investigated a citizen's allegations that a newspaper had improperly published about 50,000 names of inactive voters and had reported that these voters were subject to removal from the registration list unless action was taken.

In addition, the Voting Section initiated 24 matters under UOCAVA. For example, in one matter, the State Supreme Court had issued an order staying the distribution of ballots to overseas voters pending the outcome of litigation regarding the appearance of certain candidates on the ballot. The Section wrote a letter to the State Attorney General expressing concerns regarding potential violations of UOCAVA's mailing requirements. Because UOCAVA only applies to federal elections, Section officials explained that, typically, more matters are initiated during federal election years; however, special elections to fill vacancies in congressional seats occasionally arise in odd-numbered years as well, which have resulted in UOCAVA matters. According to Section officials, the number of UOCAVA matters initiated was the highest in fiscal year 2006 (9 of 24) because after a UOCAVA case involving run-off elections in Georgia, they sought to identify other states where the statutory timetables for primary run-off elections did not permit enough time for overseas balloting. (App. IV provides information on the reasons why the Voting Section closed matters.¹¹⁷)

Similar to Matters, the Voting Section Filed More Cases under the VRA Than Other Statutes and Primarily on Behalf of Language Minority Groups

During the 7-year period, the Voting Section filed 56 cases, primarily under the VRA and on behalf of language minority groups. The Section also participated in 33 cases as plaintiff intervenor (1), amicus (2), or defendant (30); handled 19 Immigration and Nationality Act appeals for DOJ's Office of Immigration Litigation in fiscal years 2006 and 2007; and continued to participate in approximately 25 cases in which the complaint or brief had been filed prior to 2001, but remained open for at least part of the 7-year period. Appendix IV provides information on these cases. According to Section officials, the Section typically pursued cases that addressed systemic problems, similar to pattern or practice cases in the Employment

¹¹⁶ We could not determine the subject for six of these matters because the information was not contained in ICM.

¹¹⁷ We derived information on the reasons why the Voting Section closed matters through interviews with Section officials and a review of a nongeneralizable sample of 51 closed matter files. However, the Division does not capture data in ICM or other Section-level information systems on the reasons why matters were closed. Therefore, we could not systematically identify the Section's reasons for closing matters, including the number of instances in which the Section recommended to proceed with a case and Division management did not approve the Section's recommendation.

Litigation and Housing and Civil Enforcement sections, involving larger and more complex issues than a single act of discrimination. They said that an at-large method of election is the most systemic type of method the Section might attempt to change, but other practices may also have a systemic effect. For example, the use of racial slurs by poll workers, if not an isolated instance, may create a hostile environment for minority voters in a polling place. Section officials further stated that the failure of local officials to take corrective actions can also tend to make a practice more systemic. The Section Chief from 2005 through 2007 told us that when deciding whether to pursue a case, the Section considered legal merit, available Section resources, timing, whether the issue was a priority of the Attorney General, and whether the Section could win the case.¹¹⁸

As shown in table 24, approximately two-thirds (39) of the 56 plaintiff cases filed by the Voting Section from fiscal years 2001 through 2007 included a claim under the VRA. Almost half (27 of 56) of these cases were filed in fiscal years 2006 and 2007.

Table 24: Voting Cases Filed from Fiscal Years 2001 through 2007 by Statute

Fiscal year Statutes	2001	2002	2003	2004	2005	2006	2007	Total
VRA	2	4	2	4	7	6	8	33
HAVA						2		2
HAVA/NVRA						1	1	2
HAVA/NVRA/VRA							2	2
HAVA/VRA				1	1	1	1	4
NVRA		2		2		2		6
UOCAVA		2		2		3		7
Total	2	8	2	9	8	15	12	56

Source GAO analysis of ICM data.

The Majority of Cases Filed on Behalf of Language Minority Groups Involved Spanish Speakers

The majority of cases (30 of 56) filed were brought on behalf of language minorities. Twenty-seven of these cases involved claims on behalf of Spanish speakers. Six cases involved claims on behalf of other language minority groups, including Chinese, Korean, Vietnamese, Creole, and

¹¹⁸ Timing may be relevant where, for example, a new census is occurring that would allow for the redrawing of districts. For example, in one matter, the section received a letter regarding efforts to obtain single member districts for a city council, to which the section responded it would revisit the issue after census data was released 4 months later.

Tagalog speakers and Native Americans.¹¹⁹ While cases involving language minority groups were filed under various provisions of the VRA, the largest number of cases (24 of 30) involved claims under section 203 of the VRA alleging that the covered jurisdiction had failed to provide voting-related materials or information relating to the electoral process in the language of the applicable minority group. For example, in one section 203 case, the Section alleged that, in conducting elections, a city, where over 46 percent of the total citizen voting age population was Hispanic, had failed to translate fully into Spanish written election-day materials and information, such as the official ballot, forms for voters with disabilities, and signs identifying a polling place's location, among others.

Other provisions under which the Section filed cases on behalf of language minorities included section 4(f)(4) of the VRA (3 of 30)—which contains the same requirements for covered jurisdictions to provide voting-related materials and information in languages other than English—and section 208 of the VRA (9 of 30)—which entitles voters who are blind, disabled, or unable to read or write to be assisted in voting by a person of their choosing. All of the cases the Section filed under section 208 were on behalf of language minorities. Section officials explained that when the Section monitored elections to determine if jurisdictions were providing effective language assistance, monitors often discovered that in addition to inadequate bilingual assistance, the jurisdiction was also not permitting voting assistance to limited English proficient voters by a family member or other person of the voter's choosing.

The Section filed five cases involving language minority groups pursuant to section 2.¹²⁰ Four of these cases involved the denial or abridgment of the right to vote of Spanish speakers, one of which also involved Chinese and Vietnamese speakers. For example, one section 2 claim alleged that in conducting elections, city officials had treated limited English proficient Hispanic and Asian American voters disrespectfully by, among other things, improperly influencing, coercing, or ignoring their ballot choices and by refusing or failing to provide them provisional ballots. The fifth section 2 language minority case was filed on behalf of Native

¹¹⁹ Four cases involving Spanish-speakers involved one or more other language minority.

¹²⁰ All five of these cases were filed in conjunction with other statutes or other provisions of the VRA. Two of these cases also alleged claims of the denial or abridgment of the right to vote on account of race, on behalf of Hispanic voters.

Cases Filed under VRA Section 2 Primarily Involved Racial Minority Groups

Americans.¹²¹ In September 2008, the Acting Assistant Attorney General for Civil Rights explained that, in many cases, violations of section 203 were accompanied by such overt discrimination by poll workers that section 2 claims could have been brought as well. However, the Section had been able to obtain complete and comprehensive relief through its litigation and remedies under section 203 without the added expense and delay of a section 2 claim.

From fiscal years 2001 through 2007, the Section filed 13 cases that involved a claim under section 2 of the VRA, as shown in table 25.¹²² Five cases were on behalf of language minority groups, as previously discussed, and 10 were on behalf of racial minority groups (two cases involved both racial and language minority groups).¹²³ Section officials reported that their litigation was driven by the facts developed during investigations. They also stated that they were not aware of any specific reasons for distribution of section 2 cases filed by the Section among the various groups.

Table 25: VRA Section 2 Cases Filed from Fiscal Years 2001 through 2007 by Protected Class

Protected class	Number of cases
Language minority–Spanish	1
Language minority–Spanish/Race–Hispanic	2
Language minority–Spanish–Chinese–Vietnamese	1
Language minority–Native American	1
Race–Hispanic	4
Race–African American	3
Race–white	1
Total	13

Source: GAO analysis of ICM data and complaints filed.

¹²¹ This case was originally filed in 1993, but an amended complaint realleging claims under sections 203 and 2, as well as new claims pursuant to HAVA and the NVRA, was filed in 2007.

¹²² Six cases were in combination with other statutes and/or in combination with other provisions of the VRA, including sections 4(e), 11(b), 203, and 208 of the VRA, and HAVA and the NVRA.

¹²³ As described previously, for purposes describing cases and matters under the VRA, cases and matters involving Hispanics are included with the protected class of race.

Of the 10 cases filed on behalf of racial minorities, six were on behalf of Hispanic citizens.¹²⁴ In three of these six cases, the Section challenged at-large methods of election, because the methods resulted in Hispanic citizens having less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. In the remaining three cases, the Section alleged that other voting practices—such as hostile acts directed at Hispanic voters or requiring Hispanic voters to prove their citizenship without credible evidence calling into question their citizenship—were in violation of section 2.

The Voting Section also brought three section 2 cases on behalf of African Americans; two were filed in fiscal year 2001 and one was filed in fiscal year 2006. All three cases challenged methods of election, alleging that the methods diluted the voting power of African American voters thus resulting in the denial of an opportunity equal to that afforded to other members of the electorate to participate in the political process and elect representatives of their choice. For example, in the 2006 case, the Section claimed that the method of electing the City Council, whereby the five members were elected at-large and four were elected by ward (i.e., from particular districts), diluted the voting strength of African American citizens. According to the complaint filed in court, although African Americans comprised nearly 30 percent of the city's electorate, African American candidates preferred by African American voters had been defeated since 1995. The complaint also alleged that the city could have used another method to divide the districts that would result in African American citizens constituting a majority of the total population and voting age population in two districts.

The Section Also Filed One Intimidation Case on Behalf of White Voters

During the 7-year period, the Section filed one intimidation case on behalf of white voters in fiscal year 2005. According to Section officials, the case was initially investigated under section 2 of the VRA, but later included intimidation claims under section 11(b) of VRA. The complaint alleged, among other things, that the defendants had:

- excluded whites from participating in Democratic Executive Committee affairs by excluding them from Committee meetings relating to primary election matters and Democratic caucuses,
- manipulated the voter registration rolls in an unlawful manner, by moving voters from one district to another in order to affect the racial

¹²⁴ Two cases involved both race and membership in a language minority, as noted above.

percentages of voters in particular districts and in an attempt to alter the outcome in certain elections where African American and white candidates opposed each other, and

- systematically misapplied state absentee ballot procedures in a manner that had disproportionately burdened white voters and candidates.

In June 21, 2007, testimony before the Senate Judiciary Committee, the Assistant Attorney General stated that this case was unusual in that it was the most extreme case of racial exclusion seen by the Section in decades, the racial discrimination was directed against white citizens, and the Section was not aware of any other case in which the Section had to move for a protective order to prevent the intimidation of witnesses.

The Voting Section Filed Cases under HAVA, the NVRA and UOCAVA

Subsequent to HAVA's enactment in 2002, the Section filed 10 cases involving its provisions from fiscal years 2004 through 2007.¹²⁵ Specifically, these 10 cases involved allegations in five areas relating to statutory requirements under the law, including the failure to:

- (1) provide provisional ballots to voters in federal elections who claim to be eligible and registered to vote, but whose names do not appear on the polling place register;
- (2) comply with voter registration application-related requirements;
- (3) comply with requirements making voting more accessible, including the posting of voter information and the provision of voting systems that are accessible to individuals with disabilities and in alternative languages;
- (4) implement identification requirements for first-time voters who register by mail; and
- (5) establish an official, computerized, statewide voter registration list.

Most cases (7 of 10) involved issues related to making voting more accessible. Section officials explained that such cases were frequently filed against localities and were often based on evidence obtained during election day monitoring or other localized investigative activities. For example, election observation in a locality for minority language voting system requirement purposes might indicate that, at certain polling places, there were no voting machines accessible to persons with disabilities or provisional voting was not implemented in accordance with HAVA. In one

¹²⁵ Eight of these cases were filed in conjunction with claims under other statutes, such as the VRA and the NVRA.

case filed by the Section, for example, the Section alleged that in the 2004 primary and general elections, defendant county officials had failed to post in each polling place all of the voting information required by HAVA, including information regarding the date of the election, federal and state voting laws, and requirements applicable to first-time voters who registered by mail. According to Section officials, they had sent officials in 50 states a letter explaining how to comply with HAVA and offered guidance on the law's requirements.

During the 7-year period, the Section filed 10 cases involving allegations under provisions of the NVRA.¹²⁶ From fiscal years 2001 through 2007, the Section filed 8 cases involving a purge-related claim and 3 cases involving the issue of voter registration.¹²⁷ Purge cases may involve allegations that the state did not have a program to remove ineligible voters from voter rolls (i.e., a program of list maintenance, which is to ensure accurate and current voter registration rolls for elections). For example, in 1 case, the Section alleged that the state's failure to identify and remove ineligible voters from the registration list and ensure that local election jurisdictions had done so as well had resulted in counties with excessively high registration totals as compared to the voting age population in each county. Purge cases may also involve allegations that in conducting this required program of removing ineligible voters from the rolls, the state did not incorporate certain safeguards, thus unlawfully removing eligible voters from registration lists. In one instance, the Section filed a case alleging that a city's procedures with respect to its voter lists had placed so high a burden on certain voters that, for all practical purposes, they were prevented from voting on election day and effectively removed from the voter registration rolls in violation of the NVRA. Of the 8 NVRA cases with purge-related claims, which the Voting Section filed during the period of our review, 4 cases involved claims that the jurisdiction had failed to conduct a program to remove ineligible voters from voter rolls, 2 involved claims that the jurisdiction unlawfully removed voters from the voter rolls, and 2 cases involved both types of claims. Section officials reported that during the time period of our review, the Assistant Attorney General had as a priority identifying list maintenance—i.e., purge—cases under the NVRA. They explained that the focus was on both ensuring states had a list maintenance program and that such programs incorporated required

¹²⁶ Four of these cases also included claims under other statutes, such as HAVA and the VRA.

¹²⁷ Two cases involved both kinds of claims.

safeguards. However, investigations may focus on one or more aspects of the NVRA, depending on the information received by the Section leading to the initiation of the investigation and the facts developed during the investigation.

The Section also filed seven cases involving allegations under UOCAVA on behalf of overseas voters. In 2007, the Assistant Attorney General reported that UOCAVA remained a priority of the Section and stated that in calendar year 2006, the Voting Section had filed the largest number of cases under UOCAVA in any year since 1992. Section officials explained that the incidence of UOCAVA cases in 2006 was the result of the Section's nationwide review of states with primary run-off elections, as described above.

The Voting Section Engaged in Activities under Section 5 of the Voting Rights Act

The Section also carried out its responsibilities under section 5 of VRA, which requires certain jurisdictions covered under the act to “preclear” changes to voting practices and procedures with DOJ or the United States District Court for the District of Columbia to determine that the change has neither the purpose nor the effect of discriminating against protected minorities in exercising their voting rights. As shown in table 26, from fiscal years 2001 through 2007, the Voting Section received for administrative review 37,677 submissions—containing 119,459 proposed changes—from jurisdictions required to preclear changes in voting practices and procedures under section 5 of the VRA. According to Voting Section officials, the Section analyzed and reviewed each submission, which, on average, included 4.5 changes. They said that proposed changes varied in complexity. For example, moving a single voting place or adding registration sites were simple changes, but statewide redistricting changes were highly complex and required more time than other types of proposed changes. As shown in table 26, the number of section 5 submissions and the number of proposed changes received by the Section fluctuated during the 7-year period. The total number of submissions peaked in fiscal year 2006 at 7,294, containing a total of 20,434 proposed changes, although the number of changes involving redistricting peaked (1,617) in fiscal year 2002 and subsequently declined. Voting Section officials explained that most of the covered jurisdictions conduct their state and local elections as well as federal elections in even-numbered years (e.g., 2002, 2004, and 2006). Accordingly, as these jurisdictions prepare to conduct the elections, they seek to implement a greater number of changes affecting voting than in years when they are not conducting elections, which accounts for the higher number of proposed changes in those years. Officials also explained that the number of redistricting plans submitted for review had

increased early in the decade (2001 through 2003), following the release of the 2000 Census, as has occurred after each census. They reported that the Division usually provided additional staff to meet the increased work demands. Officials said that they expected a similar increase in the number of submissions following the 2010 census and hoped that they would receive additional staff; however, at the time of our review, they did not know whether such resources would be forthcoming.¹²⁸

Table 26: Number of Section 5 Submissions and Changes Received by the Voting Section during Fiscal Years 2001 through 2007

Fiscal year	2001	2002	2003	2004	2005	2006	2007	Total
Number of submissions received	3,949	5,967	4,616	5,506	4,456	7,294	5,889	37,677
Number of changes	12,458	20,145	15,166	18,279	13,210	20,434	19,767	119,459

Source: GAO analysis of Submission Tracking and Processing System (STAPS) data.

The Section reported that it made 42 objections to proposed changes; however, some objections addressed more than one proposed change. As shown in table 27, almost 70 percent of the objections (29 of 42) involved changes to redistricting plans. However, the proposed changes to redistricting plans accounted for less than 3 percent (2,990 of 119,459) of the overall changes submitted to the Section during the 7-year period.

¹²⁸ The Voting Section has an entire system—Submission Tracking and Processing System, referred to as STAPS—to track preclearance requests, including the origin of the request and the outcome. The system is independent of all other Voting Section computer programs and databases. When the Section receives a section 5 submission from a jurisdiction, the submission is assigned a unique submission number. Information that the Voting Section maintains for each submission is: state, county or subjurisdiction, as applicable; staff assignments; date of submission, Section response due date; pertinent census data; list of related submissions (if any); type and description of change; state or local act or ordinance number, as applicable; and Section action taken and dates of action. All documents related to each submission are scanned into a database. Such documents would include the submission from the jurisdiction, public comment (if any), internal Section analysis and memoranda, memoranda of telephone communications, and correspondence to and from the jurisdiction.

Table 27: Number of Objections to Section 5 Changes Proposed from Fiscal Years 2001 through 2007

Fiscal year Type of change	2001	2002	2003	2004	2005	2006	2007	Total
Includes redistricting	1	17	5	4	1	0	1	29
Other	1	4	3	2	0	2	1	13
Total	2	21	8	6	1	2	2	42

Source: GAO analysis of data from Voting Section Web site.

Note: Some objections may involve multiple changes.

The Voting Section also initiated about 24 matters involving section 5 of the VRA.¹²⁹ Sixteen matters involved the enforcement of the preclearance requirement. For example, according to Section officials, the Section might initiate a matter to investigate a voting change that was not precleared or consider intervening in a private right of action seeking an injunction for a voting change that was not precleared. For 15 of these 16 matters, ICM data included information about the group or groups affected by the enforcement action—11 involved African Americans, 4 involved the language minority group of Spanish speakers, 1 involved the racial minority group of Hispanics, and 1 involved white voters. An additional 4 matters involved issues related to the administrative section 5 preclearance process and were initiated on behalf of African Americans, one in conjunction with Hispanics. The Section officials explained that the Section would initiate this type of matter if an issue related to section 5 arose, but was not a formal section 5 submission or litigation to which the Section was a party. For example, prior to an expected statewide redistricting submission under section 5, which the Section anticipated to be complicated and resource and time-intensive, the Section might open a matter to prepare for the submission. An additional 3 matters involved issues related to jurisdictions that were required to preclear voting changes under section 5 and were seeking to obtain a judgment from the district court to be removed from coverage, referred to as a “bailout.” Information on the affected groups was available for two of these matters—one involved the language minority group of Spanish speakers as well as Hispanics, and the other involved African Americans.

In addition, the Voting Section filed one case to enforce the provisions of section 5 of the VRA. In that case, filed in fiscal year 2006, the Section alleged that the jurisdiction had failed to obtain preclearance of a change

¹²⁹ One matter did not specify the type of section 5 matter or a specific protected class.

to a practice or procedure affecting voting. The Voting Section identified the minority voters potentially affected by the voting change as African American and Hispanic voters.

The Voting Section Devoted the Greatest Proportion of Its Time to Reviews of Changes in Voting Practices and Procedures

As shown in table 28, from fiscal years 2001 through 2007, the Voting Section reported spending the greatest total percentage of time (52 percent) on administratively reviewing Section 5 preclearance submissions, as compared with cases (33 percent) or matters (14 percent).

Table 28: Percentage of Time the Voting Section Spent on Cases, Matters, and Section 5 Reviews from Fiscal Years 2001 through 2007

Activity type	Percentage of total time
Cases	33
Matter	14
Section 5	52
Total	100

Source: GAO analysis of ICM time reporting data.

Note: Percentages are rounded to the nearest whole number. Percentages do not sum to 100 due to rounding. Hours that provide the basis for the percentages include time of all section staff, including section chief, deputies, special counsel, attorneys, support staff, legal assistants, law clerks, and any staff unique to a section.

The proportion of the total time spent on the administrative reviews of voting changes generally decreased over the 7-year period. As shown in table 29, 40 percent of the total time was spent in fiscal years 2001 and 2002; 70 percent was spent from fiscal years 2001 through 2004; and only 8 percent was spent in fiscal year 2007. As previously discussed, in the years immediately following a census, the number of submissions for preclearing complex redistricting plans increases and then decreases over the 10-year period between each census. The fluctuation in the number of such submissions over time corresponds with the changes in the time data. Appendix IV provides additional information on the time spent by the Section on cases and matters during the 7-year period.

Table 29: Percentage of Time Reported Spent on Section 5 Reviews from Fiscal Years 2001 through 2007 by Fiscal Year

Fiscal year	2001	2002	2003	2004	2005	2006	2007	Total
Section 5 reviews	18	22	15	15	12	11	8	100

Source: GAO analysis of ICM time reporting data.

Notes: Percentages rounded to nearest whole number. Percentages do not sum to 100 due to rounding.

Hours that provide the basis for the percentages include time of all section staff, including section chief, deputies, special counsel, attorneys, support staff, legal assistants, law clerks, and any staff unique to a section.

The Special Litigation Section Primarily Investigated Matters and Participated in Cases Involving Institutional Conditions and Devoted the Greatest Percentage of Time to these Matters and Cases, as Compared with Its Other Areas of Responsibility

From fiscal years 2001 through 2007, the Special Litigation Section had four areas of statutory responsibility—institutional conditions, the conduct of law enforcement agencies, access to reproductive health facilities and places of worship, and the exercise of religious freedom of institutionalized persons—and initiated 693 matters and participated in 33 cases under federal statutes corresponding to these areas. Of the closed matters (544 of 693) initiated by the Section during the 7-year period, about 373 involved institutional conditions and 129 involved the conduct of law enforcement agencies, specifically allegations of police misconduct.¹³⁰ During the 7-year period, the Section participated in 33 cases, the majority (27 of 33) of which involved institutional conditions. According to aggregate data on the time spent on matters and cases from fiscal years 2001 through 2007, the Section reported devoting the greatest percentage of time to matters and cases involving institutional conditions, as compared with its other areas of responsibility.

The Special Litigation Section Had Various Statutory Responsibilities from Fiscal Years 2001 through 2007

From fiscal years 2001 through 2007, the Special Litigation Section was responsible for the enforcement of federal civil rights statutes in four areas—institutional conditions, the conduct of law enforcement agencies, access to reproductive health facilities and places of religious worship, and the exercise of religious freedom of institutionalized persons. According to Special Litigation Section officials, the Section did not

¹³⁰ The 544 matters, initiated from fiscal year 2001 through 2007, were closed as of August 8, 2008, the date on which the Division provided the data to us.

experience significant changes in its statutory responsibilities during the 7-year period. The primary statutes enforced by the Section were the Civil Rights of Institutionalized Persons Act (CRIPA), Violent Crime Control and Law Enforcement Act (14141), Freedom of Access to Clinic Entrances Act (FACE), and the provisions of the Religious Land Use and Institutionalized Persons Act (RLUIPA) protecting the rights of free exercise of religion for institutionalized persons.¹³¹ A matter or a case might be pursued under more than one statute. For example, a matter concerning a prison or jail might involve allegations of egregious conditions, such as lack of medical care, and practices affecting the exercise of inmates' religious freedom in violation of CRIPA and RLUIPA, respectively. While Special Litigation Section officials reported that the Section had not undertaken any special initiatives during the 7-year period, they noted that institutional conditions in juvenile correctional facilities had been a priority of the Assistant Attorney General who headed the Division from August 2003 through June 2005. Table 30 shows these responsibilities according to the statutory provisions and how they apply to various forms of discrimination and types of institutions.

¹³¹ Just prior to the start of this period, on September 22, 2000, the President signed into law the Religious Land Use and Institutionalized Persons Act (RLUIPA). The Justice Department delegated responsibility for enforcing provisions protecting the rights of free exercise of religion for institutionalized persons to the Special Litigation Section. However, Section officials said that its RLUIPA responsibilities were not new because the Section had previously been involved in enforcing similar provisions of the Religious Freedom Restoration Act of 1993 before the act was declared unconstitutional by the Supreme Court. Pub. L. No. 103-141, 107 Stat. 1488 (1993), *invalidated by* City of Boerne v. Flores, 521 U.S. 507 (1997).

Table 30: Statutory Provisions Enforced by the Special Litigation Section from Fiscal Years 2001 through 2007

Area of responsibility	Statutory provision	Description of responsibilities
Institutional conditions	Civil Rights Of Institutionalized Persons Act (CRIPA), 42 U.S.C. §§ 1997-1997j	CRIPA protects the constitutional and federal statutory rights of persons confined in certain institutions operated by, or on behalf of, state or local governments (e.g., facilities for persons with developmental disabilities, nursing homes, juvenile correctional facilities, and adult jails and prisons) ^a by providing the Attorney General with the authority to bring lawsuits where there is a pattern or practice of egregious and flagrant conditions that deprive institutionalized persons of their federal or constitutional rights.
	Violent Crime Control and Law Enforcement Act (14141), 42 U.S.C. § 14141	14141 authorizes the Attorney General to bring suit when juvenile justice system administrators engage in a pattern or practice violating confined juveniles' constitutional or federal rights.
	Title III of the Civil Rights Act of 1964, 42 U.S.C. § 2000b	Title III prohibits discrimination in public facilities on the basis of race, color, religion, or national origin.
Conduct of law enforcement agencies	Violent Crime Control and Law Enforcement Act (14141)	14141 authorizes the Attorney General to bring suit where law enforcement agencies have engaged in a pattern or practice of conduct that violates federal law.
	Omnibus Crime Control and Safe Streets Act, 42 U.S.C. § 3789d, and Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d <i>et seq.</i>	Both statutes contain prohibitions on discrimination based on race, color, religion, national origin, or gender by law enforcement agencies receiving federal financial assistance.
Access to reproductive health facilities and places of religious worship	Freedom of Access to Clinic Entrances Act (FACE), 18 U.S.C. § 248	FACE prohibits the use or threats of force and physical obstruction that injures, intimidates, or interferes with a person seeking to obtain or provide reproductive health services or to exercise the First Amendment right of religious freedom at a place of religious worship.
Exercise of religious freedom of institutionalized persons	Religious Land Use & Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc-1	Section 3 of RLUIPA protects the rights of free exercise of religion for institutionalized persons, by prohibiting a state or local government from imposing a substantial burden on the religious exercise of an institutionalized person, unless the government can demonstrate that the imposition furthers a compelling interest and is the least restrictive means available to further that interest.

Source: GAO review of federal laws.

^aWith respect to prisons, jails, and correctional facilities, under CRIPA, the Section is authorized to seek relief for constitutional violations only. 42 U.S.C. § 1997a(a).

The Special Litigation Section considered all of its work to be self-initiated because it had discretion under all the statutes it enforced to pursue or not to pursue an investigation or case. The Section could bring cases involving the exercise of religious freedom under RLUIPA and access to reproductive health facilities under FACE on behalf of individuals. However, it was statutorily required to file only claims alleging a pattern or practice involving institutional conditions under CRIPA and 14141 and claims alleging police misconduct under 14141. According to Special

Litigation Section officials, the Section received allegations of unlawful conditions and discrimination or misconduct by law enforcement from a variety of sources, including incarcerated persons, family members of institutionalized persons, members of Congress, advocacy groups, other federal agencies, states, and localities.¹³² Section attorneys also developed cases from information gathered from newspaper accounts or talking with representatives of advocacy groups, among other things.

Unlike the other sections, the Special Litigation Section always conducted a pre-investigation (also referred to as preliminary inquiry) prior to an investigation, which required the Assistant Attorney General's approval to proceed.¹³³ Staff were to open a matter after spending more than 2 hours looking into an allegation, which demonstrated the Section's interest in pursuing the matter. Section officials said that these pre-investigations could be time-consuming to complete, especially those involving CRIPA or 14141, which require the Section to report on system allegations that suggest that egregious and flagrant conditions that deprive institutionalized persons of their constitutional or federal statutory rights or systemic problems (e.g., a departmentwide practice of police officers using excessive force, not just an individual officer) might exist. They further explained that many pre-investigations did not progress to an investigation because the Special Litigation Section could not gather sufficient evidence to show a pattern or practice of unlawful conditions or conduct. According to Section officials, the Section expected its attorneys and investigators to conduct preliminary inquiries regularly to find new matters to investigate. However, when attorneys and investigators were involved in contested litigation, they primarily worked on the litigation and perhaps one or two ongoing cases or matters and were not expected to, nor did they typically, open new matters. Consequently, the Section opened fewer preliminary inquiries when it was engaged in active litigation. Officials also said that the Section experienced slight variations in the types of matters and cases it investigated in the normal course of business. Appendix V provides additional information on the statutes enforced by the Special Litigation Section.

¹³² According to Special Litigation Section officials, the Section maintained a phone log and had phone tree duty. For example, they estimated that in 2006 that they had received about 700 phone calls.

¹³³ A matter was considered a "pre-investigation," and not an "investigation," until the Assistant Attorney General approved the justification memorandum for an investigation (S10) submitted by the Section.

The Special Litigation Section Primarily Initiated Matters Involving Institutional Conditions and Conduct of Law Enforcement Agencies

As shown in table 31, the Special Litigation Section initiated 693 matters from fiscal years 2001 through 2007 under the statutes corresponding to its four areas of responsibility. Over 70 percent of all matters initiated (504 of 693) and the largest number of matters initiated each fiscal year involved institutional conditions. These matters most frequently alleged violations of CRIPA affecting institutionalized persons in a variety of types of facilities. Matters concerning prisons and jails could involve alleged violations of 14141 or RLUIPA, sometimes in conjunction with alleged CRIPA violations. Matters concerning the administration of juvenile justice systems always involved allegations of violations of 14141. Over 20 percent of the matters initiated (158 of 693) concerned the conduct of law enforcement agencies and alleged police misconduct in violation of 14141. The total number of matters initiated by the Section was highest in fiscal years 2002 and 2003, and then generally declined.¹³⁴ According to Section officials, during fiscal years 2002 and 2003, the Section was not involved in active litigation, but in the ensuing years it experienced increased case demands, possibly explaining the decline in the number of matters initiated.¹³⁵ In addition, Section officials stated that fewer staff and resources were available in the later years, as the number of onboard Special Litigation staff—attorneys, professional, and clerical—decreased in fiscal years 2005, 2006, and 2007, from higher staff numbers in fiscal years 2003 and 2004.¹³⁶

¹³⁴ According to agency officials, matters initiated includes both preliminary inquiries (preinvestigations) and “actual investigations.” Before 2003, preliminary inquiries were opened with minimum standards. After 2003, further management controls were introduced so that preliminary inquiries were only opened after a staff person spent 2 hours on the particular matter and the matter was actively supervised. Thus, the number of preliminary inquiries declined after 2003; this resulted in a corresponding decline in the total number of matters initiated.

¹³⁵ Aggregate data on the time spent by the Section on cases and matters show that in each fiscal year during the 7-year period the Section spent a greater percentage of time on cases than matters. However, in fiscal years 2001, 2005, and 2006, the Section reported spending a lower percentage of time on matters relative to cases than in other fiscal years. Appendix V includes additional information on the time the Section reported spending on matters and cases.

¹³⁶ The Section reported the following on-board staff numbers at the end of each of the 5 fiscal years: 2003—70, 2004—73, 2005—61, 2006—57, and 2007—60. According to the Division, in fiscal year 2005, the Division was granted Voluntary Early Retirement Authority along with a Voluntary Separation Incentive Payment of \$25,000. Appendix V includes additional information on the Sections staff resources from fiscal year 2001 through 2007.

Table 31: Matters Initiated by the Special Litigation Section from Fiscal Years 2001 through 2007 by Fiscal Year

Statute	Fiscal year							Total
	2001	2002	2003	2004	2005	2006	2007	
Institutional conditions								
CRIPA ^a	54	102	77	52	48	73	58	464
CRIPA and 14141 ^b			9	4	4	3		20
CRIPA and ADA ^c	2	4		5				11
14141 ^d	1			6			2	9
Total	57	106	86	67	52	76	60	504
Conduct of law enforcement agencies								
14141	18	29	31	37	20	11	11	157
14141 and Omnibus Crime Control Act				1				1
Total	18	29	31	38	20	11	11	158
Access to reproductive health facilities and places of religious worship								
FACE		1						1
Total		1						1
Exercise of religious freedom of institutionalized persons								
RLUIPA		3	17	1	2		6	29
RLUIPA and CRIPA ^e					1			1
Total		3	17	1	3		6	30
Grand Total	75	139	134	106	75	87	77	693

Source: GAO analysis of ICM data.

^aIncludes matters involving juvenile correctional facilities and juvenile justice administration, for which complaints, if filed, would be filed under 14141 rather than CRIPA.

^bIncludes matters involving juvenile correctional facilities and the administration of juvenile justice systems.

^cIncludes some, but not all matters, involving institutional conditions in facilities for persons with developmental disabilities and nursing homes. These matters involved the integration mandate provision of the Americans with Disabilities Act (ADA), also known as the Olmstead Initiative, after the Supreme Court case, *Olmstead v. L.C.*, 527 U.S. 581 (1999), which upheld the most integrated setting requirement of the ADA. That is, individuals are required to be moved out of unnecessary institutionalization into community-based living arrangements, where appropriate.

^dThese nine matters involved the administration of juvenile correctional systems within a state, not individual facilities.

^eBecause protected class was identified as religion, similar to other RLUIPA matters, and not institutionalized persons, this matter was categorized under religious worship rather than institutional conditions.

The Largest Number of Closed Matters Involved Institutional Conditions in Various Types of Facilities and the Conduct of Law Enforcement Agencies

Because the work of the Special Litigation Section primarily involved enforcing statutes that protected the constitutional rights of persons confined in certain institutional facilities and prohibited misconduct by law enforcement agencies, analyzing the matter data in terms of the types of facility under investigation helped to describe the work of the Section during the 7-year period. Accordingly, we analyzed disaggregated and more detailed information about 544 of the 693 matters initiated during the 7-year period and that the Section had closed as of August 8, 2008.^{137,138,139} The closed matter data included 521 pre-investigations and 23 authorized investigations. As presented in figure 5, our analysis showed that the largest number of closed matters (approximately 373 of the 544) for any of the Section's four areas of responsibility involved institutional conditions. Conduct by law enforcement agencies, specifically issues of police misconduct, comprised the second largest group of matters and the most frequently mentioned facility type—law enforcement agency (129 of 544).¹⁴⁰ Twenty four matters involved issues related to the exercise of religious freedom of institutionalized persons (e.g., denial of a special diet required for religious reasons) in prisons (18), jails (2), and jail-prisons (4).^{141,142} One matter involving access to reproductive health facilities was a pre-investigation of allegations of obstructive activities and property damage at a clinic. According to Section officials, during the 7-year period,

¹³⁷ The remaining 149 matters were still open at the time of our review, and given sensitivity concerns, we did not review certain types of information related to these matters.

¹³⁸ Seventeen of the 544 closed matters were identified as other. These matters are not included in the overall counts for each area of responsibility. For 6 of the 17 matters there was sufficient information to be able to categorize them and they are reported in footnotes to the appropriate text.

¹³⁹ The Division also provided information on 169 matters that the Section initiated prior to fiscal year 2001, but remained open and were then closed during the 7-year period. Division officials said, and our review of the data confirmed, that these data were not always complete. Accordingly, we did not include an analysis of these data in our review.

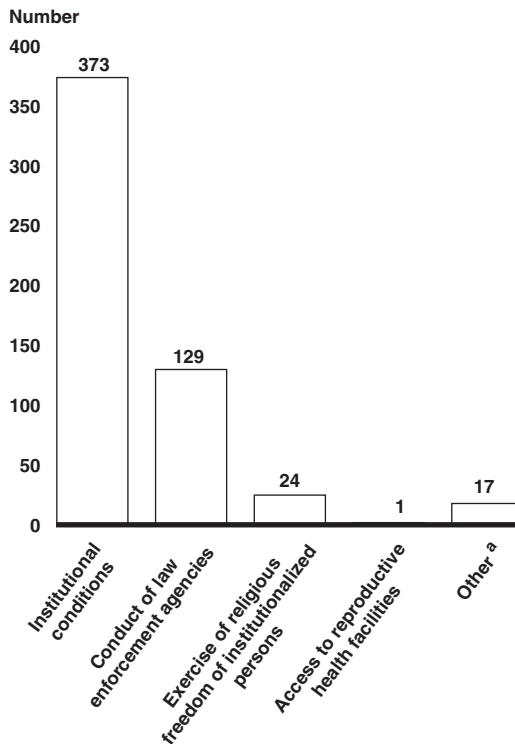
¹⁴⁰ The area of responsibility conduct of law enforcement agencies includes one facility type in ICM—law enforcement agency. Therefore, numbers reported for the area of responsibility conduct of law enforcement agencies are the same as those reported for the facility type law enforcement agency.

¹⁴¹ Special Litigation Section officials said that prisons and jails do not constitute the universe of its RLUIPA work. We identified one additional RLUIPA matter for which the facility was identified as other; therefore, we could not determine the facility type. One of the 18 RLUIPA prison matters also involved CRIPA, but is only counted in the RLUIPA total.

¹⁴² A single adult correctional facility may include both jail and prison facilities.

the Section received few allegations of issues involving access to reproductive health care facilities—clinics—in violation of FACE.

Figure 5: Matters Initiated and Closed by the Special Litigation Section from Fiscal Years 2001 through 2007 by Area of Responsibility



Source: GAO analysis of ICM data.

Note: The data analyzed included 544 matters initiated by the Special Litigation Section from fiscal years 2001 through 2007 and closed as of August 8, 2008.

^aAnalyzing additional ICM fields, the 17 matters in the column—“other” included: 5 involving access to court for juveniles; 1 involving religious freedom, but the type of facility was not identified; 1 involving a nursing home; and 10 did identify the type of facility.

Closed matters involving institutional conditions

The approximately 373 (of 544) closed matters involving institutional conditions included pre-investigations and investigations of diverse categories and different types of institutional facilities within each category—adult corrections (e.g., jails and prisons), health and social welfare (e.g., nursing homes, mental health facilities, facilities for persons with developmental disabilities, and group foster homes), and juvenile corrections (juvenile correctional facilities or entire juvenile correctional systems). According to Section officials, the Section usually investigated

these matters under its CRIPA authority, but matters involving juvenile correctional facilities or systems and some matters involving prisons and jails were investigated under 14141. Officials further explained that in protecting the constitutional rights of institutionalized persons under the CRIPA statute, its mandate was to try to resolve problems, not necessarily to file a lawsuit.¹⁴³ Consequently, the Section might resolve allegations of CRIPA violations through settlements or other agreements not filed in court, which then continued to be identified as a matter in ICM. Officials said that the Section also settled the vast majority of its jail, prison, and juvenile justice cases rather than going to court because of a provision in the Prison Litigation Reform Act enacted in 1996.¹⁴⁴ This provision, which required a state to admit liability before a court could enter into a consent decree, made it difficult to file such cases since very few jurisdictions agreed to admit liability.¹⁴⁵ When the Section did not file an agreement in court, the matter did not become a case and the Section's monitoring of compliance under the settlement agreement continued to be tracked in ICM as a matter. Table 32 shows the number of matters that the Section initiated from fiscal years 2001 through 2007, which involved institutional conditions by category and facility type.

¹⁴³ Under CRIPA, the Attorney General must notify, in writing, the appropriate state officials of the intention to commence an investigation and, during that time, the Attorney General is required to make efforts to consult with the jurisdiction about assistance from the United States to correct the unlawful conditions and encourage the appropriate officials to take corrective actions. 42 U.S.C. § 1997b.

¹⁴⁴ Pub. L. No. 104-134, § 802, 110 Stat. 1321, 1321-66 (1996).

¹⁴⁵ In addition to other provisions, in particular, the act provides that a federal court shall not order prospective relief in a prison conditions lawsuit unless the court makes written findings that such relief is narrowly drawn, extends no further than is necessary to correct the violation of the federal right, and that it is the least intrusive means necessary to correct the violation. These requirements also apply to consent decrees, but not private settlements. As such, federal courts cannot sanction consent decrees in which the parties agree to remedies beyond the constitutional minimum. Moreover, in support of the consent decree, state officials must agree that the relief addresses a violation of a federal right, which means that they must admit that there has been a violation. The act was in effect for the entire period of our review; however, according to Section officials, of four cases that remained open during the review period, three were filed with consent decrees before the enactment of the act and one was filed after its enactment, together with a memorandum of agreement that was not filed in court. (See app. V.)

Table 32: Number of Matters Initiated Involving Institutional Conditions from Fiscal Years 2001 through 2007 by Category and Facility Type

Category	Facility type	Number of closed matters ^a
Adult corrections	Jail	102
	Prison	80
	Jail/prison	1
	Total	183
Health and social welfare	Nursing home	86
	Mental health facility	35
	Developmental disabilities facility	28
	Group foster home	1
	Total	150
Juvenile corrections	Juvenile correctional facility	37
	Administration of justice system	3
	Total	40
Grand Total		373

Source: GAO analysis of ICM data.

^aThe data analyzed included 373 matters initiated by the Special Litigation Section from fiscal years 2001 through 2007 and closed as of August 8, 2008.

Nearly one-half (183 of 373) of the closed matters concerning institutional conditions involved adult correctional facilities—jails (102), prisons (80), and jail-prisons (1). Special Litigation Section officials said prisoners, more than any of the other populations that the Section serves, contacted the Section through letters and phone calls to advocate on behalf of conditions. In response to these communications, the Section would open a matter to pursue a pre-investigation, but if it could not find evidence of a pattern or practice, would subsequently close the matter. The Section investigated these matters under CRIPA (jails (98), prisons (78),¹⁴⁶ jail-prison (1)), 14141 (jails (2), prison (1)), or both statutes (jails (2), prison (1)). The allegations in these matters included

- inadequate medical care or diet and nutrition services for residents,
- use of isolation or physical restraints,
- coercive sexual misconduct by staff or peers perpetrated on detainees or inmates without consent,

¹⁴⁶ The 78 matters involving conditions in prisons under CRIPA do not include 1 matter initiated under CRIPA and RLUIPA. This matter is included in the RLUIPA matters.

-
- inadequate protection of inmates or detainees from harm due to insufficient correctional staffing on cellblocks,
 - a systemic level of violence as a result of inmate-on-inmate fights, and
 - overcrowding in the facility.

The 80 closed prison matters included 75 pre-investigations and 5 investigations. In 3 of the investigations, the parties agreed to a memorandum of understanding, which the Section monitored for compliance for several years before the matter was closed.¹⁴⁷ The Section closed 2 investigations without further action.

In addition, 150 closed matters (of 373) involved alleged violations of the civil rights of residents of health and social welfare facilities, including nursing homes (86), mental health facilities (35), facilities for persons with developmental disabilities (28), and group foster homes (1).¹⁴⁸ The allegations that the Section investigated in these matters under its CRIPA authority included failure to provide adequate medical, mental health, and nursing care services to residents; staff's physical abuse of residents; and failure to properly supervise or care for a resident. Section officials estimated that approximately 90 percent of these matters involved the investigation of whether the jurisdiction was serving the residents in the most integrated setting appropriate to an individual resident's needs, as required by the *Olmstead* decision.¹⁴⁹ Also related to the Section's *Olmstead* work were three (of 28) matters that involved inquiries about facilities for persons with developmental disabilities located in the community, which the Section initiated in fiscal year 2004 to identify private lawsuits involving *Olmstead*-related issues in which the Section might join as an *amicus curiae*. Of the 150 closed matters, 143 were pre-

¹⁴⁷ Section officials provided additional information on the number of current matters involving jails and prisons. They reported that as of July 2, 2009, the Section had 25 open matters involving jails and 3 involving prisons—2 of which were being investigated and one was settled with a memorandum of agreement.

¹⁴⁸ According to Section officials, group foster homes usually have 8 beds or less and, therefore, it is usually not fiscally justified for the Special Litigation Section to investigate a group foster home unless the situation is very bad.

¹⁴⁹ These matters involved the integration mandate provision under the Americans with Disabilities Act, also known as the *Olmstead* Initiative, after the Supreme Court case, *Olmstead v. L.C.*, 527 U.S. 581 (1999), which held that individuals with mental disabilities are required to be moved out of unnecessary institutionalization into community-based living arrangements, where appropriate. Executive Order 13217 required the Attorney General, among other agency heads, to ensure that the *Olmstead* decision was implemented in a timely manner.

investigations and 7 were authorized investigations—6 of nursing homes and 1 of a facility for persons with developmental disabilities. In two of the nursing home investigations, the parties reached an agreement that the Section monitored for compliance for a period before it closed the matter.¹⁵⁰

Additionally, 40 closed matters (of 373) involved juvenile corrections—conditions in juvenile correctional facilities (37) or the administration of juvenile justice systems (3).¹⁵¹ The Section initiated over half of these matters from fiscal years 2003 through 2005, when a priority of the Assistant Attorney General was conditions in juvenile facilities. According to Section officials, although CRIPA and 14141 statutorily provided essentially the same protections for juveniles in correctional facilities, the Section filed complaints involving a juvenile correctional facility under its 14141 authority. They explained that filing a case under CRIPA required the approval of the Attorney General, but doing so under 14141 did not. Nevertheless, the Section included these matters in its annual CRIPA report to Congress, as the Section considered them to be part of its CRIPA work, and recorded them in ICM under CRIPA to distinguish them from 14141 law enforcement matters. These matters included allegations such as failure to adequately provide services to residents (e.g., medical, psychological, psychiatric, substance abuse treatment, and special education), properly care for or supervise residents, or adequately protect residents with suicidal or self-harming behaviors. They also included allegations of physical abuse of residents, improper placement of residents in a locked room for a long period of time without access to adequate services, overcrowding, and insufficient numbers of professional staff to provide the services legally required in these facilities. Thirty-three of these 37 matters were pre-investigations and 4 were investigations. In 1 of the investigations, the parties agreed to a memorandum of understanding, which the Section monitored for compliance for a period of time before closing the matter; 1 investigation was dismissed by the court at the request of the Special Litigation Section when the facility closed; and the Section closed 2 matters. In addition, under its 14141 authority, the

¹⁵⁰ The Section reported in ICM that the case was dismissed from court pursuant to Federal Rule of Civil Procedure 41(a)(2), which allows a complaint to be dismissed by the court at the plaintiff's request.

¹⁵¹ As part of the Section's focus on juveniles, the Section initiated and closed an additional 5 matters involving access to counsel in juvenile court (identified under other), under its 14141 authority.

Closed matters involving the conduct of law enforcement agencies

Section initiated 3 matters involving the administration of juvenile justice in jurisdictions to determine whether there was a pattern or practice of violating the federal rights of incarcerated juveniles. These matters were not linked to a specific facility, but concerned systemwide issues across a jurisdiction (e.g., a state juvenile corrections system). Two of these matters were pre-investigations, which were closed, and 1 matter was an investigation that was resolved by the parties agreeing to a memorandum of understanding.

Matters involving law enforcement agencies comprised the second largest group and the most frequently reported facility type for closed matters (129 of 544). These closed matters included 123 pre-investigations and 6 investigations. For its police misconduct work, the Section identified in ICM specific police-related subjects for investigations, including police use of excessive force (i.e., more than necessary to subdue a citizen), police-false arrest of citizens for pretextual reasons that have no basis in fact, searching and seizing of property by police officers in ways that violate the law, and other forms of discriminatory policing unlawful under 14141. (App. V includes additional information on these subjects.)

According to the Section, the Division considered an investigation resolved when the Section secured a settlement agreement that addressed the concerns uncovered during the investigation. Once the Section secured a settlement, the matter remained open for ongoing monitoring and compliance until the jurisdiction successfully satisfied the terms of the settlement. At that time, the Division officially closed the matter. The six investigations identified in the closed matter data were initiated in fiscal years 2001 (2), 2002 (3), and 2003 (1).¹⁵² Two of the investigations were resolved by the parties agreeing to a memorandum of agreement, monitored for compliance for a period, and then closed. Section officials provided additional information on police department investigations that were initiated during our review period, but remained open after the end of fiscal year 2007. In fiscal year 2004, investigations of three police departments were authorized and the Section resolved five investigations

¹⁵² In a letter to the House Subcommittee on the Constitution, Civil Rights, and Civil Liberties, Committee on the Judiciary, dated July 30, 2007, DOJ reported having successfully resolved 14 pattern or practice police misconduct investigations involving 11 police departments from 2001 to 2006. According to the Special Litigation Section, 9 of these investigations were initiated or opened prior to 2001.

with settlement agreements. (App. V provides information on the reasons why the Section closed matters.¹⁵³)

The Special Litigation Section Participated in 33 Cases, the Majority Involved Institutional Conditions

From fiscal years 2001 through 2007, the Special Litigation Section participated in 33 cases, filing complaints as plaintiff in 31 cases and participating in 1 case as defendant and 1 case as defendant intervenor. The Section also handled 25 Immigration and Nationality Act appeals for DOJ in fiscal years 2006 and 2007. In addition, the Section continued to participate in 66 cases in which the complaint or brief had been filed prior to 2001 and remained open for at least part of the 7-year period. These cases are described in appendix V. The 31 plaintiff cases involved three of the Section's four areas of responsibility—institutional conditions, the conduct of law enforcement agencies, and access to reproductive health facilities and places of religious worship. According to Special Litigation Section officials, the Section sought to ensure that the work of the Section reflected geographic diversity. Our analysis of the 31 plaintiff cases showed that the Section had filed cases in 21 states and the District of Columbia.¹⁵⁴ The Section filed more than one case involving different types of facilities in 7 states; for example, 1 case within a state might involve juvenile facilities and another case in the same state might involve a facility for persons with developmental disabilities.

For cases brought under CRIPA, the Special Litigation Section is authorized to file claims alleging a pattern or practice of egregious and flagrant conditions that deprive institutionalized persons of their constitutional or federal statutory rights. Under 14141, the Section is authorized to file claims alleging a pattern or practice of conduct by law enforcement or conduct of officials responsible for the administration of juvenile justice or the incarceration of juveniles, which deprived persons of their constitutional or federal statutory rights. According to Special

¹⁵³ We derived information on the reasons why the Special Litigation Section closed matters through interviews with Section officials and a review of a nongeneralizable sample of 51 closed matter files. However, the Division does not capture data in ICM or other Section-level information systems on the reasons why matters were closed. Therefore, we could not systematically identify the Section's reasons for closing matters, including the number of instances in which the Section recommended to proceed with a case and Division management did not approve the Section's recommendation.

¹⁵⁴ The 21 states were Arkansas, Arizona, California, Georgia, Hawaii, Iowa, Indiana, Kentucky, Louisiana, Maryland, Michigan, Mississippi, New Jersey, New Mexico, New York, Oklahoma, Pennsylvania, Tennessee, Texas, Vermont, and Wyoming.

Litigation Section officials, in deciding whether or not to pursue a case, they considered the conditions in a particular facility or misconduct of a particular police department and whether the system (e.g., state correctional or juvenile justice system) or department alleged to have violated the statute had taken corrective action or had accepted the behavior in question as its way of doing business. However, they said that even if the system or department were taking corrective action, the Special Litigation Section might pursue a case depending on the severity of the situation (e.g., sexual abuse) or if Section officials believed that the facility or local entity were incapable of addressing the problem. As in the other sections, when recommending litigation, the Special Litigation Section sent a justification package to the Division. According to Section officials, the justification package that the Special Litigation Section sent to the Division for approval usually contained an explanation of what occurred in negotiations among the parties and why the Special Litigation Section was unable to reach a settlement, and the Section's plans for going forward, in addition to the investigative findings and relevant supplemental information.

As shown in table 33, most of the cases (27 of 31) that the Section filed from fiscal years 2001 through 2007 involved institutional conditions. The Section filed three cases involving the conduct of law enforcement agencies. In addition, in August 2007 the Section filed one case involving access to a reproductive health clinic in which the complaint alleged threats of death and injury to a physician working at a reproductive health care clinic. The court issued a permanent injunction in November 2007, prohibiting the defendant from publishing information about reproductive health care physicians, staff, or patients with the intent of threatening them with physical bodily harm or death to prevent them from providing reproductive health services. During the 7-year period, the Section did not file any cases involving violations of the exercise of religious freedom of institutionalized persons—RLUIPA. Section officials stated that there was a time when the Section's enforcement of RLUIPA was directed to be a lower priority than its enforcement of other statutes. However, in April 2009, these officials told us that the Section was reviewing a number of preliminary inquires under RLUIPA, but had not yet filed any complaints because it was still investigating these matters.

Table 33: Cases Filed by Special Litigation Section from Fiscal Years 2001 through 2007 by Area of Responsibility

Fiscal year	Fiscal year							2001-2007 Total
	2001	2002	2003	2004	2005	2006	2007 ^a	
Area of responsibility								
Institutional conditions	2	3	1	6	5	6	4	27
Conduct of law enforcement agencies ^b	1		1	1				3
Access to reproductive health facilities and places of religious worship							1	1
Total	3	3	2	7	5	6	5	31

Source: GAO analysis of complaints filed for cases identified in ICM data.

^aIn fiscal year 2007, the Section filed an amended complaint in a case filed and settled in fiscal year 2005. Since the amendment was part of the same case, the amendment was not counted as a separate case in fiscal year 2007.

^bThe area of responsibility—conduct of law enforcement agencies—includes one facility type in ICM—law enforcement agency. Therefore, numbers reported for the area of responsibility conduct of law enforcement agencies are the same as those reported for the facility type law enforcement agency.

Cases involving institutional conditions

As shown in table 34, from fiscal years 2001 through 2007, the Special Litigation Section pursued 27 cases involving institutional conditions in three categories—health and social welfare (13), juvenile corrections (7), and adult corrections (7). The number of cases filed varied by facility type. Additionally, a single case might involve more than one facility; for example, 1 case initially involved 4 mental health facilities and 3 more were added by an amended complaint.

Table 34: Cases Involving Institutional Conditions by Category, Facility Type, and Fiscal Year

Category	Facility type	Fiscal year							2001-2007 Total
		2001	2002	2003	2004	2005	2006	2007	
Health and social welfare	Developmental disabilities facility	1			2	1	2		6
	Mental health facility						2	1	3
	Nursing home				1	2		1	4
	Total								13
Juvenile corrections	Juvenile correctional facility			1	2	1	2	1 ^a	7
Adult corrections	Jail	1	2		1	1		1	6
	Prison		1						1
	Total								7
Grand Total		2	3	1	6	5	6	4	27

Source: GAO analysis of complaints filed for cases identified in ICM data.

^aIn fiscal year 2007, the Section filed an amended complaint in a case filed and settled in fiscal year 2005. Since the amendment was part of the same case, the amendment was not counted as a separate case in fiscal year 2007.

Under its CRIPA authority, the Section filed 13 (of 27) cases alleging violations of the civil rights of residents of health and social welfare facilities, including facilities for persons with developmental disabilities (6), mental health facilities (3), and nursing homes (4). It filed 12 of the 13 cases from fiscal years 2004 through 2007. Among the violations alleged in these cases were failure to provide adequate services (e.g., medical treatment planning, psychiatric, psychological, nursing, rehabilitation therapy, nutritional, pharmacy, and medical and dental care) and sufficient numbers of trained professional staff as legally required. The allegations usually included a failure to assess facility residents to ascertain whether they were receiving adequate treatment in the most integrated setting, as required under the Americans with Disabilities Act.¹⁵⁵ The Section resolved the 13 cases through different legal means, including six cases by consent decree (nursing home (2), developmental disabilities (2), and mental health (2) facilities) and seven cases by out of court settlements (developmental disability (4), nursing home (2) and mental health (1) facilities). The Section was monitoring 11 of these cases for compliance and closed 2 cases (1 nursing home and 1 facility for persons with developmental disabilities) during our review period.

¹⁵⁵ See 42 U.S.C. § 12132.

Seven (of 27) cases involved institutional conditions in juvenile correctional facilities, the most frequently reported facility type, from fiscal years 2003 through 2007. All cases involving juvenile correctional facilities were recorded as part of the Section's CRIPA work in the Division's annual CRIPA report to Congress, although, as previously discussed, all complaints against juvenile correctional facilities had been filed under 14141 since 1997, while cases involving allegations against an entire juvenile justice system were filed under both statutes. The 7 cases involved one or more facilities located in 7 states—Arkansas, Arizona, Hawaii, Indiana, Maryland, Mississippi, and Oklahoma. The allegations included a pattern or practice of failing to protect inmates from undue risk from harm, including risk of suicide and abuse from staff; failing to provide adequate services of various types (e.g., mental health, special education, rehabilitation therapy, or psychiatric); and using isolation or physical restraints, among others. According to Special Litigation Section officials, 2 cases were filed because the respective jurisdiction refused to cooperate with the Section and settle the case. In other situations, because Section officials believed conditions in the juvenile facilities to be so egregious, they determined that filing a case was the proper avenue to monitor remedial efforts by the jurisdiction. During the time of our review, the Special Litigation Section resolved 5 of the juvenile justice cases by the Section requesting that the court dismiss the case (3), the parties entering into a consent decree (1), and the parties reaching an out of court settlement (1). The Section continued to monitor the jurisdictions for compliance in 4 of the 5 cases and closed the fifth case. The Section resolved the sixth case through a settlement in 2005 and monitored the jurisdiction for compliance until 2007, when the Section filed an amended complaint, replacing the original complaint, and amended the settlement to add another facility. The seventh case was still in litigation as of July 31, 2008.

In addition, during the 7-year period, the Section filed seven cases involving institutional conditions in adult correctional facilities—jails (6) and prisons (1). The six jail cases were filed under CRIPA (5) and 14141 (1). The alleged violations included a pattern or practice of failing to protect inmates from harm and failure to adequately classify and supervise inmates. The allegations also included failure to provide sufficient access to the courts, adequate medical and mental health care, sufficient exercise opportunities, a healthy environment, and sanitary living conditions (e.g., insufficient ventilation, which can cause medical issues, or the presence of

vermin or human waste). Five of the jail cases were resolved by the parties reaching an out of court settlement (4) or entering into a consent decree (1). The Section then monitored jurisdictions for compliance.¹⁵⁶ One case was still in litigation as of July 31, 2008. Additionally, the Section filed one case involving conditions in prison under its CRIPA authority. In this case, the allegations included failure to provide adequate supervision and inmate classification, adequate medical and mental health care, and a healthy environment. The parties agreed to a settlement in 2002, and the court dismissed the case in 2006.

Cases involving the conduct of law enforcement agencies

During the 7-year period, to carry out its responsibility to enforce laws involving the conduct of law enforcement agencies, the Special Litigation Section filed three cases alleging police misconduct. These cases were filed under 14141 and were brought against police departments in two cities and one county, in fiscal years 2001, 2003, and 2004, respectively. According to Section officials, the Section decided whether or not to pursue a case involving a law enforcement agency on a department-by-department basis, as determined by the Section's assessment of the kind of misconduct uncovered and its estimation of the jurisdiction's ability to address the misconduct with or without the involvement of the court and upon the approval by the Division's Front Office. The complaints in the three cases included allegations of police use of excessive force. The two cases involving city police departments also included allegations of improper searches and seizures, arrests made without a warrant, and issues related to the receipt and adjudication of civilian complaints. The parties in each of the cases entered into a consent decree. By the end of fiscal year 2007, the Section had closed the case involving the county police department and was monitoring for compliance the consent decrees with the two city departments.

The Section also participated as a defendant and a defendant intervenor in two cases involving law enforcement agencies. In the case in which DOJ was a defendant, the Fraternal Order of Police sought to prevent DOJ from enforcing 14141 on the grounds that the act exceeded congressional authority under the Fourteenth Amendment and, therefore, was unconstitutional. In the case in which DOJ was a defendant intervenor, the Section intervened in support of the state's hiring practices, as they

¹⁵⁶ In one case in which a settlement was reached, the case had been previously dismissed by the court at the request of the section, pursuant to Federal Rule of Civil Procedure 41(a)(2).

applied to the selection of the chief of police. The plaintiff—a candidate for police chief—sought to have the city follow state law and promote its new police chief from within the ranks the police department. DOJ intervened because it believed that the court might order the city to take actions that conflicted with an ongoing consent decree between DOJ and the city. The Section closed the former case in fiscal year 2001 and the latter in fiscal year 2002.

The Special Litigation Section Devoted the Greatest Proportion of Time to Matters and Cases Involving Institutional Conditions

Aggregate data on time spent by Special Litigation staff on matters and cases from fiscal years 2001 through 2007 showed that overall the Section spent the greatest percentage of time on those matters and cases involving institutional conditions.¹⁵⁷ However, the proportion of time spent in any fiscal year on matters and cases involving institutional conditions varied in relation to the time spent enforcing laws related to the conduct of law enforcement agencies.

As shown in table 35, during the 7-year period, the Section reported spending the greatest percentage of time on matters involving institutional conditions in all facility types (62 percent). The Section spent the remaining 39 percent of the time on matters involving the conduct of law enforcement agencies. The percentage of time spent on matters involving institutional conditions each fiscal year generally increased during the 7 years, while the percentage of time spent on conduct of law enforcement generally decreased.

¹⁵⁷ The aggregate time data included time reported spent for all matters on which the Special Litigation Section staff worked from fiscal years 2001 through 2007, including matters initiated during the 7-year period and matters initiated prior to fiscal year 2001 that were still open during the 7-year period. (App. V includes additional information on these matters.)

Table 35: Percentage of Hours Reported for Matters by Facility Type and Fiscal Year

Area of responsibility	Fiscal year							2001-2007
	2001	2002	2003	2004	2005	2006	2007	
Institutional conditions	53	51	54	61	63	69	75	62
Conduct of law enforcement ^a	46	47	43	39	37	31	24	39
Total	99	98	97	100	100	100	99	101

Source: GAO analysis of ICM time reporting data.

Notes: The table does not include time reported for facility group home (CRIPA); jail/prison (RLUIPA matters); and clinic (FACE) matters where hours were less than .05 percent. The table also does not include the category "other," for which the facility type was not identified and the combination of hours was less than 1 percent in any fiscal year. Percentages were rounded to nearest whole number. Percentages do not sum to 100 due to rounding.

Hours that provided the basis for the percentages include time of all section staff, including section chief, deputies, special counsel, attorneys, support staff, legal assistants, law clerks, and any staff unique to a section.

^aThe area of responsibility conduct of law enforcement agencies includes one facility type in ICM—law enforcement agency. Therefore, the numbers reported for the area of responsibility conduct of law enforcement agencies are the same as those reported for the facility type law enforcement agency.

As shown in table 36, of the total reported time spent on cases for the 7-year period, the Section spent the greatest percentage of time (81 percent) on cases involving institutional conditions. In addition, the Section spent 17 percent of the time on cases involving the conduct of law enforcement agencies.¹⁵⁸ However, the percentage of time spent on each of these two areas of responsibility varied during the time period.

¹⁵⁸ The aggregate time data included time reported spent for cases on which the Special Litigation Section staff worked from fiscal year 2001 through fiscal year 2007, including cases in which the Section filed complaints during the period, cases in which the Section was a defendant or defendant intervener, and cases that remained open during the 7-year period. (App. V includes additional information on these cases.)

Table 36: Percentage of Hours Reported for Cases by Area of Responsibility and Fiscal Year

Area of Responsibility	Fiscal year							2001-2007 Total
	2001	2002	2003	2004	2005	2006	2007	
Institutional conditions	58	72	83	84	90	88	92	81
Conduct of law enforcement agencies ^b	40	26	15	15	10	9	7	17
Access to reproductive health	0	1	2	0	0	0	1	1
Immigration Appeals	0	0	0	0	0	3	1	1
Total^a	98	99	100	99	100	100	101	100

Source: GAO analysis of ICM data.

Note: Hours that provide the basis for the percentages include time of all section staff, including section chief, deputies, special counsel, attorneys, support staff, legal assistants, law clerks, and any staff unique to a section.

^aTotal percentages may be less than 100 percent due to exclusion of the facility type mental retardation and mental health where hours were less than .05 percent or rounding.

^bThe area of responsibility conduct of law enforcement agencies includes one facility type in ICM—law enforcement agency. Therefore, the numbers reported for the area of responsibility conduct of law enforcement agencies are the same as those reported for the facility type law enforcement agency.


The percentage of time spent on cases involving institutional conditions increased to over 90 percent in fiscal year 2007. Section officials explained that in that year, the Section had been involved in contested litigation related to juvenile justice practices in two states and in regular contempt proceedings in another case, which accounted for 44 (of 92) percent of the time spent that year on cases involving institutional conditions. In contrast, the Section reported spending a larger percentage of time on cases involving the conduct of law enforcement in fiscal years 2001 (40 percent) and 2002 (26 percent). According to Section officials, during these 2 years the Section was engaged in highly contested litigation that involved racial profiling claims and required intensive document analysis. They explained that since this was the first contested police department litigation under the Section’s police misconduct authority, each issue that arose presented an issue of law that had not previously been decided by any court. Consequently, this case required significant attorney time, thus explaining the high percentage of time spent on police conduct cases for those 2 years. Appendix V provides additional information on time reported spent on matters and cases.

Agency Comments and Our Evaluation

We provided a draft of this report to the Attorney General for review and comment. DOJ provided technical comments, which we incorporated into the report as appropriate.

As agreed with your offices, unless you publicly announce its contents earlier, we plan no further distribution until 30 days after the date of this report. At that time, we will send copies of this report to interested congressional committees and the Attorney General, and other interested parties. In addition, this report will be available at no cost on the GAO Web site at <http://www.gao.gov>.

If you or your staff have any questions concerning this report, please contact me at (202) 512-8777, or larencee@gao.gov. Contact points for our Office of Congressional Relations and Public Affairs may be found on the last page of this report. Other GAO contacts and key contributors to this report are listed in appendix VI.



Eileen Regen Larence
Director, Homeland Security
and Justice Issues

Appendix I: Objectives, Scope, and Methodology

To describe the enforcement efforts of the Civil Rights Division's Employment Litigation, Housing and Civil Enforcement, Voting, and Special Litigation sections from fiscal years 2001 through 2007, this report discusses the activities that the four sections undertook to implement their respective enforcement responsibilities during the 7-year period.

To determine the types of activities undertaken, we analyzed electronic data for closed matters—matters that were concluded—and cases from the Division's Interactive Case Management System (ICM) for each of the four sections.¹ We included matters initiated and closed during fiscal years 2001 through 2007 or initiated in prior years and closed during these years. We included cases pursued during these 7 fiscal years. As part of this analysis, we took actions to assess the reliability of the ICM data to ensure that they were sufficiently reliable for the purposes of these objectives.

Initially, we obtained ICM data in spreadsheet form for closed matters and cases for each of the four sections.² We electronically tested the data for obvious errors in accuracy and completeness, including examining the consistency of entries among related data fields. In addition, we manually reviewed matter and case data for each of the four sections, identifying missing values and assessing consistency across fields, to help assess the completeness and accuracy of the spreadsheets in order to determine which fields were sufficiently reliable, accurate, and complete for purposes of our review. Since we found the data for matters initiated prior to 2001 to have substantial missing values in certain fields, we focused our analysis on closed matters initiated from fiscal year 2001 through fiscal year 2007.³ As appropriate, we asked the sections to provide additional information so that we could complete the entries for a field or correct errors for matter and case data. From July through August 2008, the

¹ A case is defined as an activity that has been assigned an identification number that has resulted in the filing of a complaint, indictment, or information in court. A matter is defined as an activity that has been assigned an identification number, but has not resulted in the filing of a complaint, indictment, or information in court—for example, the investigation of a complaint or an allegation of discrimination referred by another federal agency. The complaint outlines the facts and legal claims for relief from damages caused, or wrongful conduct engaged in, by the defendant. An indictment or information is the formal charge made by a prosecutor to initiate a criminal proceeding against the accused.

² We obtained the spreadsheets, by section, from December 2007 through March 2008.

³ According to the Division, case management data kept prior to 2001 were tracked in a number of other auxiliary systems and field formats did not conform to the current ICM database structure.

Division provided us with revised spreadsheets for matters and cases with additional information and the identified data errors corrected.

As part of our assessment of the ICM data, we also analyzed Division documents that provided guidance on the actions that Division and section staffs were to take to ensure the accuracy, reliability, and completeness of ICM data. These documents included internal memoranda from Division managers and the ICM user's guide and data dictionary, which described the purpose and contents of ICM. We also interviewed Division Information Technology (IT) officials, who are the Division officials responsible for managing and maintaining ICM, and section chiefs, deputy chiefs, and other section staff to obtain information on actions taken by the Division and sections to take to ensure the accuracy, reliability, and completeness of these data from fiscal years 2001 through 2007.

To supplement our analysis of the ICM matter data and further assess the reliability of these data, we compared ICM data with documents (e.g., memoranda and correspondence) in matter files for a nongeneralizable sample of closed matters for each of the four sections.⁴ In determining our samples, we randomly selected matters investigated under each of the statutes enforced by the respective section and took into consideration the government role (e.g., plaintiff or defendant) and type of subject investigated (e.g., the nature of the alleged discrimination or violation) to ensure that the sample reflected the breadth of the work and practices of the respective section from fiscal years 2001 through 2007. Once the matters for each section were organized into categories, we randomly ordered the matters for selection. We initially decided to review about 200 matter files (about 50 for each section), which was similar to the number of matters reviewed in the prior GAO report on the Civil Rights Division.⁵ Additionally, given the audit's time constraints and the intended purpose of the information—to provide anecdotal information on the sections' reasons for closing matters—we concluded that reviewing this number of matter files would provide insight into the sections' enforcement efforts.

⁴ A nongeneralizable sample may be either a nonprobability sample where observations are selected in a manner that is not completely random, or a probability sample where random sampling is used, but the sample size is too small to allow the results to be generalized to the broader population.

⁵ GAO, *Civil Rights Division: Selection of Cases and Reasons Matters were Closed*, GAO/GGD-00-192 (Washington, D.C.: Sept. 27, 2000).

Using the randomized list of matters, we selected the matter files to be reviewed.

Specifically, we reviewed about 210 of 5,400 matters, including

- 49 of about 3,300 closed matters for the Employment Litigation Section,
- 60 of about 1,070 closed matters for the Housing and Civil Enforcement Section,
- 51 of about 345 closed matters for the Voting Section, and
- 51 of about 714 closed matters for the Special Litigation Section.

Because our samples were not representative, we were unable to generalize the results to all closed matters investigated by these sections during the period of our review. Nevertheless, our file reviews provided examples of how the matter data in ICM compared to the same information in the matter files, how the sections investigated matters, and why the sections closed them.⁶

From our analysis of the ICM closed matter data, we determined which data fields were sufficiently reliable for presenting overall trends in the sections' enforcement efforts from fiscal years 2001 through 2007, with respect to matters. However, the results of analysis for each of the four sections and, therefore, the fields on which we reported, varied for each section. For example, for the Employment Litigation Section, the subject field—the field that provides information on the nature of the allegation, e.g., hiring, recruitment, and reemployment—was incomplete in ICM for about 85 percent of the matters and the protected class field was incomplete for about 83 percent of the matters; therefore, we could not determine the characteristics of the majority of the matters closed from fiscal years 2001 through 2007.⁷ In contrast, for the Housing and Civil Enforcement Section, we determined the data for these fields to be sufficiently accurate, reliable, and complete for our purposes.

⁶ The Division does not capture data in ICM or other Section-level information systems on the reasons why matters were closed. Therefore, we could not systematically identify the Sections' reasons for closing matters, including the number of instances in which the Sections recommended to proceed with a case and Division management did not approve the Sections' recommendation.

⁷ While ICM includes fields for collecting these data, the Division has not required sections to do this because, according to Division officials, when planning for ICM's implementation with section officials, the Division did not consider requiring sections to provide these data.

Additionally, to supplement our analysis of the ICM case data for each section, as well as our assessment of the reliability of these data, we analyzed complaints for a comparable number of cases that each section filed in court as plaintiff. Specifically, we analyzed all complaints filed from fiscal years 2001 through 2007 by the Employment Litigation (60), Voting (56), and Special Litigation (31) sections. For each of the three sections, we compared the information in the complaints to data contained in ICM (e.g., the statutes under which the complaints were filed) to identify possible data entry errors. We provided the results of our analyses to officials in each of the sections and based on their respective responses made changes to the case data for each section, as appropriate. Our analysis of the cases for the three sections allowed us to report on the type of litigation pursued by each of these sections during the 7-year period.

Given the large number (277) of complaints filed by the Housing and Civil Enforcement Section during the 7-year period, we analyzed documents for a nongeneralizable sample of 33 cases identified in the ICM data.⁸ In selecting the sample of cases to review, we randomly chose cases that involved each of the statutes enforced by the Section, and considered other case characteristics, such as the fiscal year in which the case was filed in court. Once the cases were organized into categories, we randomly ordered them within each category and selected cases from each category for a total of 33 cases (31 plaintiff complaints and 2 amicus briefs). As with the other three sections, we compared the information in the sample of complaints to data contained in ICM (e.g., the statutes under which the complaints were filed) to identify possible data entry errors. Although the information we obtained cannot be generalized to all cases filed by the Housing and Civil Enforcement Section during the period of our review, it provided us with information on how the case data in ICM compared to the same information in the case files and examples of the types of cases pursued by this Section. In addition, we reviewed the complaints for all 20 (including the 2 that had been randomly selected) cases filed that the Housing and Civil Enforcement Section derived from over 1,600 tests conducted as part of the Section's Fair Housing Testing Program from

⁸ One of the cases the Housing and Civil Enforcement Section filed was as plaintiff intervenor against multiple defendants. When the Section entered into a consent decree with some of the defendants, it created an additional Department of Justice (DJ) number so it could track both the settlement and the remaining ongoing litigation; however, the Section treats this as one case, as there was one complaint.

2001 through 2007, which it established in 1991 to help enforce the FHA.⁹ We provided the results of our analyses of 51 cases, which included the randomly selected and testing cases, to agency officials. After their review, we made changes to the case data, as appropriate. This analysis allowed us to report on all of the “testing” cases as well as examples of other cases pursued by Housing and Civil Enforcement Section during the 7-year period.

In addition to the closed matter data, we also analyzed aggregate matter data for matters initiated from fiscal years 2001 through 2007 by each of the four sections in our review. Because these data included open matters—ongoing investigations—the Division provided the information aggregated by fiscal year for selected fields, for example, statute. We received hard copies of this information for each section, which we then entered into spreadsheets. We verified our data entry, and then analyzed the spreadsheets. From our assessment of the accuracy and reliability of the closed matter data and discussions with agency officials about the aggregate matter data provided for each section, we were able to determine potential data issues and make necessary corrections in the aggregate matter data. For example, in the Voting Section aggregate matter data, we identified potential discrepancies in about 40 of the 442 matters, when we compared the data in the statute, subject, or protected class fields; for example, a protected class was paired with a statutory provision for which it was not relevant. We asked each section to review our observations and provide corrections. Changes were made to the data for each section, as appropriate.

The Division also provided aggregate data for the time each of the four sections reported spending on matters and cases from fiscal years 2001 through 2007. These data included the time reported spent by all section staff, including the section chief, deputies, special counsel, attorneys, support staff, legal assistants, law clerks, and any staff unique to a section. Because these data included open matters—ongoing investigations—the Division provided the information aggregated by fiscal year for selected fields, for example, statute. We received hard copies of this information for each section, which we then entered into spreadsheets. We verified our data entry, and then analyzed the spreadsheets. From our assessment of the accuracy and reliability of the closed matter data and discussions with

⁹ Nineteen (17 FHA and 2 Title II) testing cases were filed by the Section and 1 FHA testing case was litigated by a U.S. Attorney’s Office.

agency officials about the aggregate time data provided for each section, we were able to determine potential data issues and make necessary corrections. However, although the time data system is linked to ICM, the information is entered into the system by the individual staff person and not subject to the same review process as the ICM data; therefore, the time data may not be precise. Accordingly, after discussions with Division officials about these limitations, we decided to report time information as percentages and generally in broad categories (e.g., time reported spent on cases and matters by a section). This information provided additional trend information and context for our analysis of the enforcement efforts of each of the four sections from fiscal years 2001 through 2007.

On the basis of our data assessment efforts for all of the matter, case, and time data, we determined that the data presented in the report were sufficiently reliable for presenting overall trends in the sections' enforcement efforts. Limitations in the data that we identified for each of the sections are noted in the report as needed.

We used the ICM matter and case data in conjunction with other sources, including matter and case file documents, agency documents, and interviews with agency officials. In addition to the materials obtained from agency files, we also analyzed DOJ documents, such as annual reports to Congress, congressional hearing statements by agency officials, and budget documents, which described the Division's enforcement efforts (including special initiatives and areas of focus) from fiscal years 2001 through 2007. We analyzed Division documents such as internal memoranda from Division managers, Division reports to Congress on the four sections' enforcement endeavors, transcripts of congressional oversight hearings, and federal budget submissions, to determine how Division and section officials used ICM data to report information to congressional committees on the four sections' enforcement efforts.¹⁰ We interviewed senior officials in DOJ's Justice Management Division, which is the management arm of DOJ; the Acting Assistant Attorney Generals for the Division;¹¹ and officials, including section chiefs, deputy section chiefs,

¹⁰ We reviewed two reports that the Division was required to submit to Congress, including a report on DOJ's activities under the Civil Rights of Institutionalized Persons Act, which DOJ submits annually to Congress pursuant to 42 U.S.C. § 1997f, for each year 2001 through 2007, and DOJ's annual report to Congress on the administration of its functions under the Equal Credit Opportunity Act, pursuant to 15 U.S.C. § 1691f.

¹¹ We met with the individuals serving in the position of Acting Assistant Attorney General for the Division in August 2008 and March 2009.

and other staff in the Employment Litigation, Housing and Civil Enforcement, Voting, and Special Litigation sections to obtain information on each of the four sections' enforcement efforts during the 7-year period.

Finally, to identify issues and gain additional perspective on the sections' litigation efforts, we interviewed representatives of three nongovernmental civil rights organizations and five experts on the four civil rights areas covered in our review. We identified these individuals in part through our review of the transcripts from oversight hearings in which these individuals had testified. Although the information we obtained is not generalizable beyond the individuals we interviewed, these interviews helped enhance our analysis of the litigation efforts and other activities of the four sections during the period of our review.

We conducted our work from June 2007 through October 2009 in accordance with all sections of GAO's *Quality Assurance Framework* that were relevant to our objectives. The framework requires that we plan and perform the engagement to obtain sufficient and appropriate evidence to meet our stated objectives and to discuss any limitations in our work. We believe that the information and data obtained, and the analysis conducted, provide a reasonable basis for any findings and conclusions in this report.

Appendix II: Additional Information on the Employment Litigation Section

Statutes Enforced by the Employment Litigation Section from Fiscal Years 2001 through 2007

Title VII

The Employment Litigation Section is responsible for enforcing against state and local governments provisions of Title VII of the Civil Rights Act of 1964, as amended (Title VII). Title VII¹ prohibits discrimination in employment based on race, color, religion, sex, and national origin. Unlawful practices may include recruitment, hiring, assignment, promotion, benefits, testing, firing and harassment, among others. Title VII also prohibits retaliation against a person for filing a charge of discrimination, participating in an investigation, or opposing discriminatory practices. The Employment Litigation Section initiates Title VII litigation in two ways—(1) under section 706 or (2) under section 707.

Section 706² allows the Attorney General to file a suit based upon an individual charge of discrimination that has been referred to DOJ by the Equal Employment Opportunity Commission (EEOC). Individuals who believe that they were unlawfully discriminated against by an employer—including a state or local government—may file a charge with the EEOC. Once a charge is filed with the EEOC, the EEOC is then obligated to investigate. The EEOC may either dismiss the charge if there is not reasonable cause to believe that it is true or, alternatively, if the EEOC decides that there is reasonable cause, it must attempt to eliminate the alleged unlawful employment practices by other methods, such as mediation. If after investigation the EEOC determines that a charge made against a state or local government has merit and efforts to obtain voluntary compliance are unsuccessful, the EEOC must refer it to DOJ to bring an enforcement action. DOJ has the authority to determine whether to bring such an action. If the Section decides not to initiate litigation, then it will issue a right-to-sue letter notifying the charging party of his or her right to file a private lawsuit.³ Section 706 also grants the Attorney General

¹ 42 U.S.C. § 2000e *et seq.*

² 42 U.S.C. § 2000e-5.

³ The section is required under Title VII to notify the charging party of their right to file a private lawsuit.

the authority to intervene in private cases against a public employer that are of general public importance.

Under section 707 of Title VII,⁴ the Attorney General has authority to bring lawsuits against state and local governments where there is reason to believe that there has been a pattern or practice of employment discrimination. Pattern or practice cases seek to alter employment and selection practices—such as recruitment, hiring, assignment, tests, and promotions—which have the purpose or effect of discriminating on the basis of race, color, religion, sex, or national origin. Employers are liable for employment practices that are intentionally discriminatory, as well as those that have the effect of being discriminatory, for instance, a physical fitness test that eliminates more female than male candidates. The Employment Litigation Section has discretion to initiate these cases. Its authority is not dependent upon a referral from the EEOC.

USERRA

The Employment Litigation Section also enforces the provisions of the Uniformed Service Employment and Reemployment Rights Act of 1994 (USERRA),⁵ which prohibit employers from discriminating or retaliating against an employee or applicant for employment on the basis of that person's military service. Servicemembers who meet certain conditions in USERRA are entitled to reemployment rights and benefits including, for example, prompt reinstatement to the positions they would have held if they had never left their employment, health coverage for designated periods, and training, as needed, to requalify for their jobs. The Department of Labor (DOL) investigates USERRA complaints, makes a determination as to whether the complaint has merit, and attempts to resolve voluntarily those complaints that are deemed meritorious. If DOL is unable to resolve a complaint, at the request of the servicemember, DOL will refer the complaint to DOJ. According to Employment Litigation Section officials, most USERRA matters are resolved by DOL. The Employment Litigation Section reviews DOL's investigative file accompanying the complaint and makes a determination as to whether the complainant is entitled to the rights or benefits. After making such a determination, the Section has the authority to bring a case on behalf of the claimant. At the end of fiscal year 2004, the Attorney General transferred responsibility for the enforcement of USERRA to the Civil Rights Division from the Civil Division. The Assistant Attorney General for

⁴ 42 U.S.C. § 2000e-6.

⁵ 38 U.S.C. § 4301-35.

Civil Rights delegated USERRA enforcement authority to the Employment Litigation Section.

Right-to-Sue Letters

Most of the more than 3,200 matters (about 90 percent) that the Employment Litigation Section initiated from fiscal years 2001 through 2007 resulted from section 706 referrals, referred to as charge referrals, from the EEOC. The Section considers all EEOC charge referrals as matters even if an investigation is not opened. However, the Section does not consider requests for right-to-sue letters as matters. While a charging party is required to file a charge of discrimination with the EEOC, according to a Section Deputy Chief, some charging parties may prefer to initiate litigation on their own. In such instances, the charging parties will request that DOJ provide a right-to-sue letter as a precondition to filing a Title VII claim in federal court. According to a Section Deputy Chief, the Section honors such requests and, as shown in table 37, issued 14,608 such letters from fiscal years 2001 through 2007.

Table 37: Number of Right-to-Sue Letters Issued by the Employment Litigation Section

Fiscal year	Number of right-to-sue letters issued (charging party requested right to sue letter)
2001	2,796
2002	2,441
2003	2,125
2004	1,989
2005	1,765
2006	1,643
2007	1,849
Total	14,608

Source: Civil Rights Division, DOJ.

Pattern or Practice Cases
from Fiscal Years 2001
through 2007

Pattern or practice cases seek to alter employment and selection practices—such as recruitment, hiring, assignment, tests, and promotions—that have the purpose or effect of discriminating on the basis of race, sex, religion, or national origin.⁶ According to Section officials, pattern or practice cases, which are complex and resource-intensive, have consistently been a priority of the Section because they have the greatest impact on remedying discrimination practices. The Section filed 11 pattern or practice cases from fiscal years 2001 through 2007. As described in table 38, most of these cases involved claims of discrimination in hiring and the most common protected class was race.

Table 38: Summary of Section 707 Cases Filed from Fiscal Years 2001 through 2007

Date filed	Name of case	Summary of case
January 10, 2001	<i>U.S. v. the State of Delaware; the Delaware Department of Public Safety; and the Delaware Division of State Police</i>	The Section filed a lawsuit alleging that the Delaware Department of Public Safety, Division of State Police used written examinations for the entry-level trooper positions that have disproportionately excluded African Americans from employment, but have not been shown to be job related and consistent with business necessity, as required by federal law.
January 8, 2004	<i>U.S. v. City of Erie, Pennsylvania</i>	The Section filed a lawsuit alleging that the city of Erie, Pennsylvania, pursued practices that discriminated against women and deprived or tended to deprive women of employment opportunities because of their sex. According to the lawsuit, the city of Erie implemented these policies and practices by, among other ways, failing or refusing to hire women for the entry-level position of police officer on the same basis as men, and using selection procedures and physical agility standards for entry-level positions of police officer that have an adverse impact on women, and that are not job-related.
September 16, 2004	<i>U.S. v. Los Angeles County Metropolitan Transit Authority</i>	The Section filed a lawsuit alleging that the Los Angeles County Metropolitan Transit Authority pursued policies and practices that discriminated against employees and applicants for employment on the basis of religion by, among other ways, failing or refusing to reasonably accommodate employees and applicants for employment who, in accordance with their religious observances, practices, or beliefs, needed religious accommodation because they are unable to comply with the Metropolitan Transit Authority's requirement that employees in the Operations Division be available to work weekends, on any shift, at any location.

⁶ Employers are liable for employment practices that are intentionally discriminatory, as well as those that have the effect of being discriminatory, for instance, a physical fitness test that eliminates more female than male candidates.

**Appendix II: Additional Information on the
Employment Litigation Section**

September 29, 2004	<i>U.S. v. City of Gallup</i>	The Section filed a lawsuit alleging that the city of Gallup, New Mexico, implemented discriminatory recruitment and hiring procedures by, among other ways, failing or refusing to recruit and hire American Indians on the same basis as whites and Hispanics.
September 30, 2004	<i>U.S. v. New York Metropolitan Transportation Authority, and the New York City Transit Authority</i>	The Section filed a lawsuit alleging that the New York Metropolitan Transportation Authority and the New York City Transit Authority selectively enforced uniform policies to target Muslim and Sikh employees whose religious beliefs and practices require that they wear head coverings.
July 26, 2005	<i>U.S. v. City of Pontiac, Michigan and Local #376 Fire Fighters Union, International Association of Fire Fighters</i>	The Section filed a lawsuit alleging that the city of Pontiac, through the Pontiac Fire Department, has pursued policies and practices that discriminate against non-minority applicants for employment and employees based on race and sex by explicitly creating and maintaining a dual system for hire and promotion requiring that one of every three hires or promotions be given to a minority, which includes women.
August 26, 2005	<i>U.S. v. State of Ohio, et. al.</i>	The Section filed a lawsuit alleging that the state of Ohio, among others, pursued policies and practices that discriminated against employees on the basis of religion by failing or refusing to reasonably accommodate the religious observances, practices, and beliefs of those state employees who hold religious objections to associating with and financially supporting employee organizations, but who are not members of religions that historically have held conscientious objections to joining or financially supporting organizations. The lawsuit further alleged that the state of Ohio, among others, subjected state employees to disparate treatment on the basis of religion by allowing employees who are members of religions that historically have held conscientious objections to joining or financially supporting employee organizations to redirect their fair share fees to nonreligious charities, but denying the same accommodation to employees who are not members of such religions, even if they hold religious objections to associating with and financially supporting employee organizations.

**Appendix II: Additional Information on the
Employment Litigation Section**

February 8, 2006	<i>U.S. v. The Board of Trustees of Southern Illinois University</i>	The Section filed a lawsuit alleging that the Board of Trustees of Southern Illinois University maintained programs open only to undergraduate, prospective graduate and doctoral students who were either of a specified race and/or national origin or who are female. Specifically, the Proactive Recruitment of Multicultural Professionals for Tomorrow (PROMPT) fellowship had been open only to members of “traditional underrepresented groups,” including African Americans, Latino/Hispanic Americans, Asian Americans, and Native Americans. Of the approximately 78 fellowship recipients from 2000 to the time the lawsuit was filed, none of the recipients were white or a member of a minority group other than one of the PROMPT-specified minority groups. The Bridge to the Doctorate fellowship had been open only to members of “underrepresented minority groups,” including Hispanics, African Americans, Native Americans, Alaskan Natives, and Pacific Islanders. Of the approximately 27 Bridge fellowship recipients during the 2 years it had been in effect, none were white or a member of a minority group other than one of the specified minority groups. Additionally, the Graduate Dean’s fellowship had been open to women and “traditionally underrepresented students” who had overcome social, cultural, or economic conditions that adversely affected their educational process, including African Americans, Hispanic Americans, Asian Americans, and Native Americans. Of the 27 Graduate Dean fellowship recipients, none were white males.
April 3, 2006	<i>U.S. v. City of Virginia Beach, Virginia</i>	The Section filed a lawsuit alleging that the city of Virginia Beach pursued policies and practices that discriminated against African American and Hispanic applicants and that deprived or tended to deprive African Americans and Hispanics of employment opportunities because of their race and national origin, by, among other ways, failing or refusing to hire African American and Hispanic applicants for the position of entry-level police officer on the same basis as white applicants; and by using a mathematics test (National Police Officer Selection Test) with a cutoff score of 70 percent as a pass/fail screening device that had an adverse impact on African American and Hispanic applicants for the position of entry-level officer and that was not job related for the position consistent with business necessity.
July 24, 2006	<i>U.S. v. City of Chesapeake, Virginia</i>	The Section filed a lawsuit alleging that the city of Chesapeake’s use of the National Police Officer Selection Test had an adverse impact on African American and Hispanic applicants for the position of entry-level police officer, and was not job related for the position consistent with business necessity.

May 21, 2007

U.S. v. City of New York

The Section filed a lawsuit alleging that the city of New York pursued policies and practices that discriminated against African Americans and Hispanics and deprived these groups of individuals of employment opportunities because of their race and/or national origin by, among other ways, (1) failing or refusing to appoint, through its open competitive examination process, African Americans and Hispanics to the rank of entry-level firefighter on the same basis as whites; and (2) using written examinations that resulted in disparate impact upon African Americans and Hispanics and were not job related or consistent with business necessity.

Source: GAO analysis of section 707 complaints filed by the Section from fiscal years 2001 through 2007.

Additional Information on Cases in Which the Employment Litigation Section Participated from Fiscal Years 2001 through 2007

In addition to its work representing plaintiffs in employment discrimination cases, the Employment Litigation Section participated in lawsuits in several other ways, including as (1) an amicus curiae, or “friend of the court,” in which the Section filed a brief in an action in which it was not a party because the Division had a strong interest in the subject matter; (2) a plaintiff or defendant intervenor, in which the Section intervened as a party in a case—either on the side of the plaintiff or the defendant—because the constitutionality of a federal statute had been questioned or it had another interest in the outcome of the case; and (3) a defendant, in which the Section represented the United States in lawsuits brought by plaintiffs against federal agencies challenging the enforcement of federal laws. From fiscal years 2001 through 2007, the Section participated in 18 cases as a plaintiff intervenor, amicus curiae, or defendant. Specifically, the Section intervened on behalf of the plaintiffs in 11 cases during the seven year period. Three of these cases were related and alleged that the District of Columbia government discriminated against three pregnant females on the basis of sex in violation of section 706 of Title VII.

The Section participated in one case as amicus curiae during the 7-year period. In this case, which was filed in court on February 24, 2004, the Section appeared as amicus in support of the Salvation Army and state and local government defendants. Plaintiffs, current and former employees of the Salvation Army, brought an action seeking relief from the Salvation Army’s efforts to enforce compliance with its religious mission among its staff; plaintiffs claimed to have been subjected to unlawful religious discrimination and brought suit against the Salvation Army, as well as against the City of New York and the commissioners of several state and local government entities that contracted with the Salvation Army for the provision of social services. The brief filed on behalf of the United States as amicus noted concern with the plaintiffs’ claims that the Salvation

Army's social service contracts with the state and local government defendants had turned it into a state actor, therefore subjecting its employment policies and practices to challenge as violating the federal Free Exercise and Equal Protection Clauses, as well as the claim that the Salvation Army's employment practices, in light of these contracts, created an Establishment Clause violation. As of September 21, 2009, the case was still pending.

During the 7-year period of our review, the Employment Litigation Section participated in six cases as defendant. For example, in *Colwell v. United States Department of Health and Human Services*, the Section represented the Department of Health and Human Services in a suit where the plaintiffs had challenged guidance issued by that agency that would have required medical service providers and others to provide translation services to limited English proficient persons in order to implement the nondiscrimination principle of Title VI of the Civil Rights Act.⁷ The plaintiffs asserted that the guidance exceeded that agency's authority and the agency had violated other federal and constitutional law. In *ProEnglish, et al. v. George W. Bush, et al.*, the Section defended an action brought by plaintiffs' against federal defendants, including the Department of Health and Human Services. The plaintiffs challenged Executive Order 13,166, which directed federal agencies, after consulting with appropriate program and activity stakeholders, to develop guidance that will help ensure that persons with limited English proficiency have meaningful access to federally funded services, as well as other related agency policy guidance documents.

The Section was also involved in 116 cases from fiscal years 2001 through 2007 that were filed prior to fiscal year 2001. These cases included (1) those where the Section was involved in litigation and (2) those where the case had been resolved and the Section was monitoring compliance with a settlement agreement or order. More than half (67 of 116) of these cases involved pattern or practice claims under section 707. According to Section officials, these cases typically result in consent orders that Section staff monitor over many years, as specified in the orders. On the basis of

⁷ Title VI of the Civil Rights Act of 1964 states that "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d. Title VI requires each federal grant agency to implement this principle of nondiscrimination "by issuing rules, regulations, or orders of general applicability." 42 U.S.C. § 2000d-1.

the Division’s ICM data, the Section monitored compliance for 39 of the section 707 (pattern or practice) plaintiff cases that were closed at some point during the 7-year period for, on average, about 15 years.⁸ According to Section officials, as of October 2, 2009, the Section was continuing to monitor compliance in an additional 23 section 707 plaintiff cases. The Section had been monitoring compliance with these cases for, on average, about 28 years. About 22 percent (26) of the 116 cases involved section 706 claims. According to the Division’s ICM data, the Section monitored compliance with the 24 section 706 plaintiff cases for, on average, about 4 years. As shown in table 39, 22 of the remaining 23 cases were defensive cases.

Table 39: Cases Filed Prior to Fiscal Year 2001 That Were Still Open from Fiscal Years 2001 through 2007

Statute	Section’s role	Number of cases filed
Section 707	Plaintiff	63
	Defendant intervenor	2
	Defendant	1
	Amicus	1
Total section 707^a		67
Section 706	Plaintiff	24
	Plaintiff intervenor	1
	Amicus	1
Total section 706		26
Small Business Act Small Disadvantaged Business Goals^b	Defendant	7
Executive Order 11246	Defendant	4
	Plaintiff	1
Total Executive Order 11246		5
Transportation Equity Act for 21st Century ^a	Defendant	4
	Defendant Intervenor	1
Total Transportation Equity Act for 21st Century		5
Department of Defense Price Preference Program^c	Defendant	2

⁸ There was 1 section 707 plaintiff case for which the Section did not monitor compliance because the Section did not obtain a favorable outcome in that case.

**Appendix II: Additional Information on the
Employment Litigation Section**

Statute	Section's role	Number of cases filed
False Statements	Defendant	1
Small Business Act 8(a) Program	Defendant	1
Fourteenth Amendment and Department of Defense Appropriations Act of 2000	Defendant	1
Environmental Protection Act	Defendant	1

Source: Civil Rights Division ICM data.

^aIncludes cases in combination with section 707—section 706, Crime Control Act, 14th Amendment, Revenue Sharing Act, and the Department of Defense Appropriations Act of 2000.

^bIncludes one case in combination with Executive Order 11246. The Section has authority to prosecute enforcement actions upon referral by the Department of Labor of complaints arising under Executive Order 11246, which prohibits discrimination in employment by federal contractors.

^cIncludes one case in combination with Small Business Act 8(a) Program. Under the Department of Defense Price Preference Program, minority firms, including female-owned firms, are given price preferences in competing for federal contracts.

Time Spent on Matters, Cases, and Other Activities from Fiscal Years 2001 through 2007

The Division's time data show that from fiscal years 2001 through 2007 about 20 percent of the Employment Litigation Section's professional staff's time was charged to matters,⁹ 47 percent to cases, and 33 percent to other activities, such as professional development and outreach.¹⁰ Of the total time charged to matters, about 65 percent of the time was charged to the section 706 matters, which comprised about 90 percent of the section's matter workload over the seven year period.

As shown in table 40, the percentage of time charged each year to matters involving sections 706 and 707 claims fluctuated over the 7-year period, whereas time charged to USERRA matters from fiscal years 2005 through 2007 was relatively constant.

⁹ The time data include time Section staff spent working on cases that were filed in court prior to fiscal year 2001, but were still ongoing (e.g., monitoring compliance with consent orders) at some point during fiscal years 2001 through 2007.

¹⁰ Nearly 50 percent of the total time charged to other activities was charged to administrative matters during the period of our review. According to Section officials, the Section Chief, all six Deputy Chiefs, program analysts, and administrative staff all charge time to administrative matters, including time spent reviewing EEOC charge referrals and other information related to matters and cases.

**Appendix II: Additional Information on the
Employment Litigation Section**

Table 40: Percentage of Time Charged to Employment Litigation Section Matters by Statute from Fiscal Years 2001 through 2007

Statute	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	Percentage of total time charged over the 7-year period
Section 706	70	76	82	62	55	60	41	65
Section 707	26	19	15	38	25	16	20	23
USERRA	n/a	n/a	n/a	n/a	20	23	23	8
Other ^a	4	5	3	.3	.2	1	16	4

Source: Division ICM time data.

Notes: n/a—not applicable.

Percentages do not sum to 100 due to rounding.

^aOther primarily includes time charged to various Section initiatives, such as the Section's ongoing initiative to target employers that may be engaged in a pattern or practice of employment discrimination, and the Section's technical assistance to other DOJ components and other federal executive agencies with respect to the use of employment selection practices and devices in terms of compliance with Title VII.

As shown in table 41, more than 50 percent of the total time charged to cases each year was charged to pattern or practice (section 707) cases; and of the total time charged to cases over the 7-year period, about 63 percent of the time was charged to these cases. Section officials stated that pattern or practice cases are resource-intensive because they are complex and typically involve multiple complainants.

**Appendix II: Additional Information on the
Employment Litigation Section**

Table 41: Percentage of Time Charged to Employment Litigation Section Cases by Statute from Fiscal Years 2001 through 2007

Statute	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	Percentage of total time charged over the 7-year period
706	24	26	14	22	15	13	21	19
707	51	60	71	67	72	61	61	63
USERRA					9	16	15	6
Transportation Equity Act of the 21st Century	15	4	6	4	0.4	0.6	0	4
Department of Defense Price Preference Program	0.6	3	4	4	3	4	2	3
Immigration and Nationality Act ^a	0	0	0	0	0	6	1	1
Other	8	7	5	3	1	.03	.08	4

Source: Division ICM data.

Note: Percentages do not sum to 100 due to rounding.

^aDuring fiscal years 2006 and 2007, the Section assisted DOJ's Office of Immigration Litigation in handling Immigration and Nationality Act appeals.

According to the time data, in fiscal year 2001, about 27 percent of the time spent on cases was devoted to cases in which the Section acted as defendant. The Section represents the Departments of Labor and Transportation and other federal agencies when they are sued for what is alleged to be overzealous enforcement of federal laws that prohibit discrimination and/or require affirmative action by government contractors or recipients of federal financial assistance.¹¹ In addition, the Section has authority to prosecute enforcement actions for the Department of Labor of referrals arising under Executive Order 11246, which prohibits discrimination in employment by federal contractors. According to the fiscal year 2001 budget submission, the demands placed

¹¹ In *Adarand Constructors Inc. v. Peña*, 515 U.S. 200 (1995), the Supreme Court ruled that federal affirmative action programs to benefit minorities must meet the same "strict scrutiny" standard that applies to state and local programs. To survive strict scrutiny, federal programs must serve a compelling governmental interest and be narrowly tailored to meet that interest. Previously, the court had subjected congressionally mandated affirmative action to a lesser standard of review in light of Congress's broad authority to enforce equal protection guarantees.

upon the Section by defensive litigation had resulted in personnel being diverted from investigating and litigating affirmative Title VII cases, which resulted in less effective enforcement of Title VII. The amount of time devoted to defensive cases, as reported in ICM, declined to about 13 percent in fiscal year 2002, and generally declined slightly each following year to about 2 percent in fiscal year 2007. According to a Section Deputy Chief, the Section was involved in many defensive cases following the Adarand decision in 1995. However, the Section has not participated in any new defensive cases in recent years. Our review of complaints filed by the Division from fiscal years 2001 through 2007 identified that the Employment Litigation Section had not participated in any new defensive cases from fiscal years 2005 through 2007.

Staff and Attrition Levels

As shown in table 42, for the 7-year period in our review, the Section had its highest level of staff (61) in fiscal year 2001.¹²

Table 42: Number of On-board Staff for the Employment Litigation Section by Position and Fiscal Year

	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Attorney	37	36	34	36	34	39	35
Professional	17	17	17	15	10	12	13
Clerical	7	6	7	7	5	7	5
Total	61	59	58	58	49	58	53

Source: Civil Rights Division.

Note: Staff on-board reflects official numbers as of the last day of each fiscal year.

The turnover rates among Section staff varied by position and fiscal year, as shown in table 43. In fiscal year 2005, the Division granted voluntary early retirement authority along with a voluntary separation incentive payment of \$25,000. According to Division officials, the buyout offered in 2005 resulted in an increased turnover rate among Section staff.

¹² Table 1 on page 11 of this report provides information on available permanent positions and salaries and expenses for the Employment Litigation Section from fiscal years 2001 through 2007.

**Appendix II: Additional Information on the
Employment Litigation Section**

Table 43: Percentage of Attrition for the Employment Litigation Section by Position and Fiscal Year

	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Attorney	20	8	23	35	22	9	21
Professional	0	12	0	12	40	20	8
Clerical	29	14	0	0	29	20	29

Source: Civil Rights Division.

Notes: The Section's turnover rates include employees who have separated from the Division (i.e., resignation, transfer to another federal agency, retirement, etc.) and those reassigned to another section within the Division.

Numbers have been rounded to nearest whole number.

Appendix III: Additional Information on the Housing and Civil Enforcement Section

Statutes Enforced by the Housing and Civil Enforcement Section from Fiscal Years 2001 through 2007

The Housing and Civil Enforcement Section is responsible for enforcing federal civil rights statutes related to discrimination in housing, credit transactions, land use, and in certain places of public accommodation, as well as enforcing certain federal protections for active duty servicemembers. Statutes enforced by the Housing and Civil Enforcement Section include the Fair Housing Act, The Equal Credit Opportunity Act, Title II of the Civil Rights Act of 1964, the land use provisions of the Religious Land Use and Institutionalized Persons Act, and the Servicemembers Civil Relief Act.

Fair Housing Act

The Fair Housing Act (FHA)¹ prohibits discrimination on the basis of race, color, religion, sex, familial status, national origin, and disability in all types of housing transactions. The FHA applies to direct providers of housing, such as landlords and real estate companies, as well as other entities, such as municipalities, banks or other lending institutions, and homeowners' insurance companies. Unlawful discriminatory housing practices include, among others, refusing to sell, rent or finance housing; discriminating in the terms or conditions of a sale or rental; publishing notices or advertisements that indicate any preference, limitation or discrimination; falsely representing that a dwelling is not available; inducing or attempting to induce any person to sell or rent by making representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status, or national origin; and discriminatory zoning or land use regulations. In addition, the FHA makes it unlawful to discriminate on the basis of handicap by refusing to allow reasonable modifications to housing premises or to make reasonable accommodations to rules, policies, practices, and services. The statute also requires that multifamily dwellings be constructed in ways that are accessible and usable by persons with disabilities.

The Section is involved in the enforcement of the FHA through a variety of mechanisms. The FHA allows DOJ to bring suit where there is reason to believe that a person or entity has engaged in a pattern or practice of discrimination, or where a denial of rights to a group of persons raises an issue of general public importance. DOJ may sue for preventive relief, monetary damages to the aggrieved persons, and civil penalties. The Section may also be involved in individual claims of discrimination. Individuals who believe they have been injured by a discriminatory

¹ 42 U.S.C. § 3601 *et. seq.*

housing practice may file complaints with the Department of Housing and Urban Development (HUD), which is to investigate each complaint. If the complaint cannot be conciliated, HUD is required to determine whether reasonable cause exists to believe that a discriminatory housing practice has occurred. If HUD determines that reasonable cause exists, it must issue a charge of discrimination; otherwise, the complaint is dismissed. An administrative hearing on the charge will be held, unless either the complainant or respondent elects to have the case heard in federal court. Where either party has made such an election, DOJ is required to bring a civil lawsuit on behalf of the aggrieved person in federal district court; these are known as “election” cases.

In addition to pattern or practice cases and election cases, the Section is involved in cases under the FHA in several other ways. The FHA requires HUD to refer any matter involving a state or local zoning or land use law or ordinance to DOJ, rather than issuing a charge of discrimination, as well as to refer matters that may be the basis of a pattern or practice case. Additionally, DOJ may bring an action to enforce a HUD order or a breach of a conciliation agreement, upon referral by HUD, and may bring suit to enforce a subpoena on behalf of HUD. The statute also requires DOJ to bring suit for relief pending the final disposition of a complaint that has been filed with HUD, where the Secretary of HUD determines that prompt judicial action is necessary. Additionally, 42 U.S.C. § 3613(e) states that the Attorney General “may intervene” when the Attorney General “certifies that the case is of general public importance.”

Equal Credit Opportunity Act

The Equal Credit Opportunity Act (ECOA)² prohibits creditors from discriminating against applicants in any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, age, because all or part of the applicant’s income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act.³ Compliance with the requirements of ECOA is enforced by federal bank regulatory agencies—such as the Federal Deposit Insurance Corporation and the Federal Reserve Board—which have authority over certain types of lenders and creditors. Where the agency has been unable to obtain compliance with ECOA’s nondiscrimination requirement, ECOA authorizes the agency to

² 15 U.S.C. § 1691 *et seq.*

³ Pub. L. No. 90-321, 82 Stat. 146 (1968) (codified as amended in scattered sections of 15 U.S.C. and 18 U.S.C.).

refer the matter to DOJ with a recommendation that a civil action be filed. Additionally, the bank regulatory agencies with enforcement authority under ECOA are required to refer matters to DOJ where the agency has reason to believe that one or more creditors has engaged in a discriminatory pattern or practice of discouraging or denying applications for credit in violation of ECOA. In turn, DOJ, through its Housing Civil Enforcement Section, may bring a civil action for relief—including actual and punitive damages—when a matter has been referred. DOJ may also bring suit whenever there is reason to believe that one or more creditors are engaged in a pattern or practice of unlawful discrimination in violation of ECOA.

Title II of the Civil Rights Act of 1964

The Section may also bring suit to enforce Title II of the Civil Rights Act of 1964,⁴ which prohibits discrimination on the basis of race, color, religion, or national origin in certain places of public accommodation, such as motels, restaurants, or movie theaters. DOJ may bring suit where there is reasonable cause to believe that a pattern or practice of discrimination exists and may obtain injunctive—but not monetary—relief.

Religious Land Use and Institutionalized Persons Act

The Section is also responsible for enforcing the land use provisions of the Religious Land Use and Institutionalized Persons Act (RLUIPA).⁵ RLUIPA prohibits state and local governments from unjustifiably imposing a substantial burden on religious exercise or imposing land use regulations that (1) discriminate against a religious assembly or institution by treating them on less than equal terms with a nonreligious assembly or institution; (2) discriminate on the basis of religion or religious denomination; (3) totally exclude religious assemblies from a jurisdiction; or (4) unreasonably limit religious assemblies, institutions, or structures within a jurisdiction. DOJ is authorized to bring a suit for injunctive or declaratory relief to enforce the provisions of RLUIPA. The Housing and Civil Enforcement Section received jurisdiction to enforce land use provisions of RLUIPA in 2001.

The Servicemembers Civil Relief Act

The Servicemembers Civil Relief Act (SCRA)⁶ provides protections for members of the military as they enter active duty. It covers issues such as rental agreements, security deposits, eviction, installment contracts, credit

⁴ 42 U.S.C. §§ 2000a to a-6.

⁵ 42 U.S.C. § 2000cc *et seq.*

⁶ 50 U.S.C. App. §§ 501–96.

card interest rates, mortgage foreclosure, civil judicial and administrative proceedings, motor vehicle leases, life insurance, health insurance, and income tax payments. SCRA complaints are forwarded to DOJ by a military legal assistance office when the office cannot resolve the complaint; the Section may then bring suit pursuant to 28 U.S.C. § 517, which allows DOJ to attend to the interests of the United States in any pending suit.⁷ In 2006, the Attorney General transferred authority for enforcing the SCRA to the Civil Rights Division; the Assistant Attorney General, in turn, delegated that responsibility to the Housing and Civil Enforcement Section.

The Section Initiated Matters under Other Statutes in Addition to the FHA, ECOA, and RLUIPA

The Housing and Civil Enforcement Section initiated matters pursuant to Titles III and VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act, and the SCRA. From fiscal years 2001 through 2007, no cases were filed under any of these provisions, except section 504, under which one case was filed in conjunction with the FHA.⁸ The Section initiated 13 matters under Title III of the Civil Rights Act of 1964, which prohibits discrimination in public facilities based on race, color, religion, or national origin. According to data maintained by the Section, these matters involved discrimination based on national origin (Hispanic or Latino), race (black or African American), and religion (Muslim, Sikh, or other), or were not specified, and related to land use/zoning/local government, rentals, public accommodations, or other housing or non-housing subjects.

The Section initiated eight matters under the SCRA, on behalf of members of the military, which involved lending or rental issues. The Section also initiated five section 504 matters,⁹ which prohibits programs or activities receiving federal assistance from discriminating against individuals on the

⁷ A bill is pending in Congress that would give the Attorney General explicit authority to bring actions under the SCRA. *See* Servicemembers' Rights Protection Act, H.R. 2696, 111th Cong. (2009).

⁸ The Section was assigned responsibility for the SCRA in 2006 and, according to Section officials, it took some time before the Section began receiving allegations of violations. Officials reported that they were able to resolve several SCRA matters without filing complaints by obtaining repayment for servicemembers from potential defendants. Officials reported that their first case involving the SCRA was filed in December 2008 and, as such, is outside the time period of our review; they also noted that they expect data from fiscal year 2009 to show an increase in matters and cases under the SCRA.

⁹ One of these matters also involved Title VI.

basis of disability.¹⁰ All of these matters involved discrimination on the basis of disability and the subject of other housing subject matter, which the Section uses to signify issues that relate to a housing complaint, but do not involve being denied housing, such as denial of utilities or repairs. Section officials explained section 504 matters are rare and are referred to the Section from HUD. The Section initiated four matters under Title VI of the Civil Rights Act of 1964,¹¹ which prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance.¹² Primary responsibility for prompt and vigorous enforcement of Title VI rests with the head of each department and agency administering programs of federal financial assistance and such cases require a referral to the Section from HUD. The matters initiated under Title VI involved discrimination based on disability, national origin (Hispanic or Latino), and race (black or African American), in land use/zoning/local government or other housing or non-housing subject matters. The Section initiated one matter involving the criminal interference with housing rights,¹³ which related to discrimination based on race (black or African American) and harassment issues. Section officials explained that such cases may be referred from the Criminal Section of the Civil Rights Division of DOJ.

Time Spent on Matters,
Cases, and Other Activities
from Fiscal Years 2001
through 2007

During fiscal years 2001 through 2007, about 48 percent of the total time that Housing and Civil Enforcement Section staff charged to cases, matters, and other activities was spent on cases, about 17 percent on matters, and about 34 percent on other activities such as outreach and professional development. As shown in table 44, of the time charged to matters during the 7-year period, the Section charged about 70 percent of its time to matters initiated under the FHA. Matters involving allegations under ECOA or allegations under ECOA and the FHA comprised about 19 percent of the time charged. The Section staff charged about 5 percent of their time to matters involving allegations under Title II and about 5 percent to those under RLUIPA.

¹⁰ 29 U.S.C. § 794.

¹¹ One of these matters also involved section 504.

¹² 42 U.S.C. § 2000d *et seq.*

¹³ 42 U.S.C. § 3631.

**Appendix III: Additional Information on the
Housing and Civil Enforcement Section**

Table 44: Housing and Civil Enforcement Section: Percentage of Time Charged to Matters by Statute for Fiscal Years 2001-2007

Statute	2001	2002	2003	2004	2005	2006	2007	Percent of total time charged over the 7-year period
FHA	63	74	73	69	75	68	66	70
ECOA	12	5	12	13	7	13	9	10
FHA and ECOA	19	10	2	3	3	8	12	9
Title II	3	8	4	5	8	6	2	5
RLUIPA	0	2	8	7	6	6	6	5
Total	97	99	99	97	99	101	95	99

Source: GAO analysis of Division ICM data.

Notes: Two hours of time charged were not provided. Time does not equal 100 percent, as the statutes and statute combinations to which the Housing and Civil Enforcement Section devoted less than 1 percent of its time are not included. Those statutes and statute combinations are: SCRA, Equal Employment Opportunities Commission, Criminal Interference with Housing Rights, the FHA and RLUIPA, Title VI and the FHA, Title VI and section 504, Title VI, Title III and ECOA, Title III, Title II and the FHA, and section 504.

Hours that provide the basis for the percentages include time of all section professional staff, including section chief, deputies, special counsel, attorneys, legal support staff, legal assistants, and law clerks, and any staff unique to a section.

In September 2009, Section officials stated that while the current time data for the 7-year period are different from the data we obtained in September 2008 and reported in this table in part due to revisions to the data, they agreed that Section staff spent most of their time on the FHA matters, followed by ECOA, and then RLUIPA or Title II, depending on the year.

The Section spent at least three-quarters of all time spent on cases on pattern or practice cases from fiscal years 2001 through 2007. Fourteen percent of the Section's time was spent on election cases that had an additional allegation of pattern or practice. Table 45 shows the percentages of case related time charged by Section staff by case type.

**Appendix III: Additional Information on the
Housing and Civil Enforcement Section**

Table 45: Housing and Civil Enforcement Section: Percentage of Time Charged by Case Type for Fiscal Years 2001 through 2007

Case type	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006	FY2007	Percent of total time charged over the 7-year period
Amicus Participation	4	3	0	0	0	0	0	1
Election Case	14	5	5	4	11	12	9	8
Enforcement	0	0	0	0	1	0	0	0
Pattern or Practice	68	77	81	85	74	71	67	75
Pattern or Practice & Election	12	12	14	10	14	15	22	14
Other ^a	2	3	0	0	0	3	2	1
Total	100	100	100	99	100	101	100	99

Source: GAO analysis of ICM time reporting data.

Notes: Twelve hours were attributed to the category "not provided." In some cases, the percentage was less than .05 percent. For example, 1 percent of hours charged in 2005 were charged to Enforcement; however, overall for the 7-year period, less than 1 percent of total time was charged to Enforcement. Percentages may not add to 100 percent due to rounding.

Hours that provide the basis for the percentages include time of all section professional staff, including the section chief, deputies, special counsel, attorneys, legal support staff, legal assistants, law clerks, and any staff unique to the section.

Other includes the following case types and case type combinations: amicus and pattern or practice; defend other federal agency; enforcement and pattern or practice; Immigration and Nationality Act appeals; and prompt judicial action.

Reasons the Housing and Civil Enforcement Section Closed Matters

Using ICM data, we were unable to readily determine the reasons that the Section closed approximately 1,070 matters from fiscal years 2001 through 2007 because this information was not maintained in the system.¹⁴

However, on the basis of interviews with agency officials and our review of 60 Housing closed matter files, we determined that the Section usually closed matters for one or more of the following reasons: (1) a lack of merit; (2) no further action was warranted (e.g., because the matter was referred to another section, or the parties settled); (3) the referral was returned to the referring agency for administrative resolution (e.g., the accused took actions to resolve the allegations); or (4) there was insufficient evidence of a pattern or practice. Housing officials stated that although HUD election referrals are generally filed as cases, they may be

¹⁴ Of the 1,070 closed matters, 211 were initiated prior to fiscal year 2001 and the remaining 859 were initiated from fiscal years 2001 through 2007.

closed as matters if (1) the parties settled early in the process and DOJ did not sign the settlement agreement, or (2) HUD withdrew the charge. We reviewed the matter files of 10 closed election matters, and although we were not able to generalize from this sample, we found that 7 of the 10 files confirmed these reasons for closure. For example, in one election matter file we reviewed, the complainant alleged discrimination based on disability and HUD later withdrew the complaint in light of newly discovered evidence. The remaining three election files reviewed were initiated prior to fiscal year 2001 and closed either because (1) the Housing and Civil Enforcement Section asked HUD to follow up on an investigation, as some of the allegations were unclear, and HUD never issued a new determination of reasonable cause; or (2) the investigation was open for over 2 years, and it was determined no further action was warranted.

The Housing and Civil Enforcement Section's Work on Cases Filed Prior to 2001

According to ICM data, the Housing and Civil Enforcement Section filed 137 cases as plaintiff prior to fiscal year 2001 that remained open during the time period of our review. Section officials explained that once a case has been resolved, during the term of a consent decree, the Section monitors the defendants' compliance with the consent decree's various provisions. The cases that remained open involved the FHA, ECOA and Title II of the Civil Rights Act of 1964. Specifically, 132 cases involved the FHA, 7 involved ECOA, and 3 involved Title II.¹⁵ The cases remaining open under the FHA involved a variety of subject matters. Most involved rental issues (71 of 132), followed by cases involving the Section's testing program (27 of 132).¹⁶ Most of the FHA cases were election cases (58 of 132), followed by pattern or practice cases (51 of 132).¹⁷ Other cases involved the Section's enforcement of an order or decision (an order, consent decree, or some type of agreement issued by an administrative law judge to collect money owed or to perform a service/duty) or a prompt judicial action or enforcement matter.¹⁸ All of the ECOA and Title II cases were pattern or practice cases. The Section also participated in 12 cases as amicus curiae and 1 case as plaintiff intervenor that were filed before

¹⁵ Five cases involved both ECOA and the FHA.

¹⁶ The subject matter of two cases was not identified in ICM data.

¹⁷ Sixteen cases involved both pattern or practice and election.

¹⁸ Two enforcement cases were also pattern or practice cases.

fiscal year 2001. Table 46 shows the 137 cases remaining open from fiscal years 2001 through 2007, by statute and government role.

Table 46: Cases Remaining Open from Fiscal Years 2001 through 2007 by Statute and Government Role

Statutes	Government Role	Total
ECOA	Amicus	1
	Plaintiff	2
ECOA Total		3
Title II	Amicus	2
	Plaintiff	3
Title II Total		5
FHA	Amicus	8
	Plaintiff	127
	Plaintiff - Intervenor	1
FHA Total		136
FHA and ECOA	Amicus	1
	Plaintiff	5
FHA and ECOA Total		6
Grand Total		150

Source: GAO analysis of ICM data.

**Housing and Civil
Enforcement Section
Resources from Fiscal
Years 2001 through 2007**

According to data provided by the Division, the staff resources available to the Housing Section showed little fluctuation over the 7-year period. As shown in table 47, the total number of permanent positions available in the Section remained at 100 during the first 4 years and then declined to 98 in the last 3 years.

Table 47: Housing and Civil Enforcement Section: Historical Track of Available Resources (dollars in thousands)

Resources ^a	Fiscal year						
	2001	2002	2003	2004	2005	2006	2007
Permanent Positions	100	100	100	100	98	98	98
Salaries and Expenses	13,295	13,963	14,278	14,594	14,342	13,541	14,168

Source: Civil Rights Division.

^aSalaries and Expenses.

Appendix III: Additional Information on the Housing and Civil Enforcement Section

The number of on-board staff, shown in table 48, generally decreased from fiscal years 2001 through 2007. However, the number of on-board attorneys was lowest in fiscal year 2003 (40). The Division stated that in fiscal year 2005 the Division had granted voluntary early retirement authority along with a voluntary separation incentive payment of \$25,000. Over the 7-year period, the number of attorneys decreased from 49 to 41 and the number of professionals in the Section remained relatively constant, fluctuating between 31 and 27.

Table 48: Number of On-board Staff for Housing and Civil Enforcement Section by Position and Fiscal Year

Position ^a	Fiscal year						
	2001	2002	2003	2004	2005	2006	2007
Attorney	49	45	40	46	46	41	41
Professional	31	31	29	27	30	29	31
Clerical	13	13	9	12	9	8	10
Total	93	89	78	85	85	78	82

Source: Division on-board data for the Housing and Civil Enforcement Section.

^aOn-board statistics reflect the official numbers of staff at the end of the fiscal years. The Housing and Civil Enforcement Section keeps statistics on the average on-board numbers for each fiscal year. The average on-board number of attorneys and professionals is based on information contained in the "Staffing Pattern Report" the Section receives from Human Resources. If the Section receives 10 reports for a fiscal year, it totals the number of on board attorneys and professionals and then divides each by the number of received reports (in this case 10).The Section has been generating these numbers in this manner since fiscal year 2003. The Section's statistics show the following average on-board attorney positions: fiscal year 2003—42; fiscal year 2004—42; fiscal year 2005—43; fiscal year 2006—42; and fiscal year 2007—41, and the following average on-board professional positions: fiscal year 2003—28; fiscal year 2004—27; fiscal year 2005—28; fiscal year 2006—29; and fiscal year 2007—30.

In addition, the attrition rates for Section staff fluctuated over the 7-year period, as shown in table 49. The attrition rate for Section attorneys was highest in fiscal years 2003 and 2007, and attrition was at the lowest level in fiscal year 2001.

**Appendix III: Additional Information on the
Housing and Civil Enforcement Section**

Table 49: Percentage of Attrition for Housing and Civil Enforcement Section by Position and Fiscal Year

Position	Fiscal year						
	2001	2002	2003	2004	2005	2006	2007
Attorney	5	10	24	15	13	13	27
Professional	11	29	22	14	15	28	10
Clerical	25	8	31	33	33	44	25

Source: Division attrition data.

Notes: The Section's attrition rates include employees who had separated from the Division (e.g., resignation, transfer to another federal agency, retirement, etc.) and those reassigned to another section within the Division.

Numbers have been rounded to the nearest whole number.

Appendix IV: Voting Rights Section

Statutes Enforced by the Voting Section from Fiscal Years 2001 through 2007

The Voting Section is responsible for the enforcement of federal voting rights statutes, including statutory provisions designed to safeguard the right to vote of racial and language minorities, disabled and illiterate persons, and overseas and military personnel. The Voting Section is also charged with the responsibility for enforcing federal statutes that, among other things, address issues such as voter registration, provisional voting, and voter information.

The Voting Rights Act

The purpose of the Voting Rights Act (VRA),¹ as reauthorized in 2006, is to ensure that the right of all citizens to vote, including the right to register to vote and cast meaningful votes, is preserved and protected as guaranteed by the Constitution. The Voting Section is involved in enforcement of several of its provisions.

- **Section 2**

Section 2 of the VRA² prohibits discriminatory procedures or practices that result in a denial or abridgment of the right to vote on account of race, color, or membership in a language minority group. A violation is proved where, based on a totality of the circumstances, political processes leading to nomination or election are not equally open to members of the protected classes, in that the members have less opportunity to participate in the political process and elect candidates of their choice. Prohibited practices and procedures include redistricting plans and at-large election systems, poll worker hiring, and voter registration procedures, among others, that discriminate on the basis of race, color, or membership in a language minority group. Section 2 prohibits not only voting practices and procedures that are intended to discriminate against the protected classes, but also those that have a discriminatory impact. Affected private citizens, as well as the Attorney General through the Voting Section, may bring lawsuits to obtain court-ordered remedies for violations of section 2.

- **Sections 203, 4(f)(4) and 4(e)**

Collectively known as the “language minority provisions” of the Voting Rights Act, sections 203³ and 4(f)(4)⁴ are to enable members of

¹ 42 U.S.C. §§ 1971, 1973 to 1973bb-1.

² 42 U.S.C. § 1973.

³ 42 U.S.C. § 1973aa-1a.

⁴ 42 U.S.C. § 1973b(f)(4).

applicable language minority groups to participate effectively in the electoral process. Under sections 203 and 4(f)(4), covered jurisdictions⁵ must provide any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, in the language of the applicable minority group, as well as in English. Where the applicable minority language group is Alaska Natives or American Indians, and the predominant language is historically unwritten, the covered jurisdiction is only required to provide oral instructions. Section 4(e)⁶ prohibits states from conditioning the right to vote on English language proficiency for persons educated in American-flag schools in which the predominant classroom language was other than English. The Attorney General is authorized to bring civil actions for appropriate relief for violations of these provisions, which is accomplished through the Voting Section.

- **Section 5**

Under section 5 of the act,⁷ covered jurisdictions⁸ may not change their election practices or procedures until they obtain federal “preclearance” for the change. The act provides for either judicial or administrative preclearance. Under the judicial mechanism, covered jurisdictions may seek declaratory judgment from the United States District Court for the District of Columbia that the change has neither the purpose nor the effect of discriminating against protected minorities in exercising their voting rights. Under the administrative mechanism, covered jurisdictions may seek the same determination

⁵ The coverage determination under section 4(f)(4) is related to the formula for determining coverage for the preclearance requirements of section 5 of the Voting Rights Act. Coverage under section 203 is determined by a coverage formula contained in that section that takes into account factors such as the percentage of voting age citizens of a state or political subdivision who are members of a single language minority group and are limited-English proficient, as well as illiteracy rates of such citizens, among other factors. Section 203(b); *see also* 28 C.F.R. § 55.6.

⁶ 42 U.S.C. § 1973b(e).

⁷ 42 U.S.C. § 1973c.

⁸ The jurisdictions targeted for “coverage” are those evidencing discriminatory voting practices, based upon a triggering formula, as defined in section 4 of the Voting Rights Act. 42 U.S.C. § 1973b. The Attorney General and the Director of the Census have responsibility for determining which jurisdictions are covered by the triggering formula, and their determinations are not reviewable in any court and are effective upon publication in the *Federal Register*. *Id.*

from the Attorney General. The Attorney General may deny preclearance by interposing an objection to the proposed change within 60 days of its submission. In order to terminate or “bailout” from the requirements of section 5, jurisdictions may seek a declaratory judgment from a three-judge panel in the United States District Court for the District of Columbia that the jurisdiction meets certain statutory standards. To be successful, a bailout applicant must demonstrate, for example, that for the previous 10 years all changes affecting voting have been reviewed under section 5 prior to their implementation and that these changes were not the subject of an objection by the Attorney General or the denial of a section 5 declaratory judgment from the District Court for the District of Columbia, and that the jurisdiction has made constructive efforts to eliminate intimidation and harassment of persons seeking to register to vote and vote, among several other requirements. The Attorney General is authorized to consent to an entry of judgment granting the bailout if after investigating the Attorney General concludes the jurisdiction has complied with all of the statute’s requirements.

- **Section 208**

Section 208⁹ allows any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write to be given assistance by a person of the voter’s choice other than the voter’s employer or agent of that employer or officer or agent of the voter’s union.

- **Section 11(b)**

Section 11(b)¹⁰ of the Voting Rights Act prohibits persons, whether acting under color of law or not, from intimidating, threatening, or coercing, or attempting to intimidate, threaten or coerce, any person for voting or attempting to vote. Section 11(b) further prohibits intimidation, threats, or coercion of those persons aiding other persons in voting or exercising certain powers or duties under the act.

⁹ 42 U.S.C. § 1973aa-6.

¹⁰ 42 U.S.C. § 1973i(b).

Help America Vote Act of 2002	The Help America Vote Act of 2002 (HAVA), ¹¹ among other things, established a program to provide funds to states to replace punch card voting systems, established the Election Assistance Commission, and established minimum election administration standards for states and units of local government with responsibility for the administration of federal elections. Certain HAVA provisions relating to voting system standards, provisional voting and voting information requirements, and computerized statewide voter registration list requirements are to be enforced by the Attorney General. HAVA was enacted in 2002 and primary responsibility for its enforcement was delegated to the Voting Section.
Uniformed and Overseas Citizens Absentee Voting Act	Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) ¹² requires states and territories to allow absent uniformed services voters and their spouses or dependents, and overseas voters to register and vote absentee in federal elections. Under UOCAVA, the Attorney General may bring a civil action for declaratory or injunctive relief to carry out the act's provisions.
National Voter Registration Act of 1993	The National Voter Registration Act of 1993 (NVRA) ¹³ requires states ¹⁴ to adopt certain federal voter registration procedures, including allowing voters to register to vote by mail, when they obtain driver's licenses, or at offices that provide public assistance and services to persons with disabilities and other state agencies and offices. The NVRA also contains detailed requirements regarding state removal of names from federal registration rolls. The Act requires states to have a program to remove ineligible voters from voter rolls, but also requires that list maintenance programs incorporate specific safeguards, for example, they be uniform, non-discriminatory, in compliance with the VRA, and not be undertaken within 90 days of a federal election. The Attorney General is authorized to bring a civil action for declaratory or injunctive relief to enforce the provisions of the NVRA, as are private parties.

¹¹ 42 U.S.C. §§ 15301-545.

¹² 42 U.S.C. §§ 1973ff – 1973ff-6.

¹³ 42 U.S.C. §§ 1973gg – 1973gg-10.

¹⁴ Except for those states that have no registration requirements or that permit election-day registration with respect to federal elections. 42 U.S.C. § 1973gg-2.

Reasons the Voting Section Closed Matters

From fiscal years 2001 through 2007, the Section closed 345 matters. According to Section officials, the recommendation to close should come from the lead attorney and be approved by a reviewer (Section Chief or Deputy Section Chief). As previously discussed, through our analysis of ICM data we were unable to readily determine the reasons the Voting Section closed the 345 matters, because this information was not maintained in ICM. However, through interviews with Voting Section officials and our analysis of 50 closed matter files, we were able to ascertain why the Section usually closed matters. According to Section officials, the primary reasons the Section closed matters included: (1) no further action was warranted, (2) insufficient evidence to show a systemic problem, (3) the matter resolved itself, and (4) corrective action was taken by local officials.

Among the 51 closed matters we reviewed, we identified specific reasons to close that fell within each of the four categories reported by Section officials. The specific reasons included the following examples: NVRA and HAVA claims were incorporated into a pending law suit; from post election interviews, the Section could not substantiate claims of intimidation; DOJ's concerns were resolved; and the state agreed to extend the time to receive and count absentee ballots from overseas voters. However, we also identified three matters in which the documentation indicated that the Division had not approved the Section's recommendation. In one instance, the Division denied further investigation on the grounds of limited resources, more pressing matters, and the election results were not due to ethnic background of the candidate; in the second, it decided not to bring suit; and in the third, it did not approve further contact with state authorities on this matter.¹⁵ Section officials further noted that section 5 enforcement matters, actions where a covered jurisdiction has failed to preclear a voting change with the Voting Section, may have remained open, in some instances for 2 to 3 years. The officials said that these matters may have remained open because the attorney was waiting for a corrective action to be taken by the jurisdiction. The reasons Section officials gave for closing the section 5 enforcement matters reviewed was that no objection to the proposed change was made.

¹⁵ The first matter was on behalf of Native Americans and involved a possible violation of section 2 of the VRA based on a county's use of an at-large election system; the second matter involved a state's potential violation of UOCAVA; and the third matter was on behalf of African Americans and concerned a possible violation of section 11(b) of the VRA (intimidation) by state officials in the course of a voter fraud investigation.

Additional Information on Cases in Which the Voting Section Participated from Fiscal Years 2001 through 2007

Plaintiff Intervenor Case

In fiscal year 2001 the Section intervened in one case on behalf of the plaintiff, to defend the constitutionality of section 2. The underlying litigation had been ongoing since 1991 and the plaintiffs had alleged that the defendant city's at-large method of electing members of the city council violated section 2. In response, the defendants had asserted, among other things, that section 2 of the VRA was unconstitutional.

Defendant Cases

The Voting Section participated in 30¹⁶ cases as defendant from fiscal years 2001 through 2007.¹⁷ These cases involved several types of claims against the Attorney General and were filed by political jurisdictions covered under section 5 of the VRA as well as by private litigants; although most cases were filed by jurisdictions (17 of 30).

The largest number of cases in which the Section served as defendant (12 of 30) was filed by jurisdictions seeking relief under the "bailout" provision in section 4(a) of the VRA, which allows a political subdivision to be released from the preclearance requirements of section 5 if certain conditions are met. To bailout, a jurisdiction must seek a declaratory judgment¹⁸ from a three-judge District Court in Washington, D.C. It must show that for the previous 10 years it has not used any forbidden voting

¹⁶ Three of these cases were related.

¹⁷ According to data maintained by the Voting Section, there were an additional three cases in which the Section participated as defendant. Section officials reported that in one instance, a VRA case naming the United States as a defendant was closed after the court dismissed it for failure of the plaintiff to prosecute it. The United States was not served with the complaint and did not file any pleadings in the case. With respect to the second two cases, pro se plaintiffs had asserted challenges to HAVA and UOCAVA, but the Voting Section did not handle the cases. Division officials made the determination for the Civil Division and relevant U.S. Attorney's Office to participate in the case. While the Section reviewed relevant documents, the officials reported that the amount of time spent was minimal.

¹⁸ A "declaratory judgment" declares the rights of the parties or expresses the opinion of the court on a question of law without ordering anything to be done.

test, has not been subject to any valid objection under section 5, and has not been found liable for other voting rights violations. It must also show that it has engaged in constructive efforts to eliminate intimidation and harassment of voters, and similar measures. The Attorney General can consent to entry of judgment in favor of bailout if the evidence warrants it, though other interested parties are allowed to intervene in the declaratory judgment action. Eleven of the bailout cases were brought by political subdivisions in Virginia; Voting Section officials reported that the United States consented to the declaratory judgment in each of these cases. In the last bailout case, a small utility district in Texas filed suit seeking to bailout from the VRA's preclearance requirements. The district also argued that if the VRA was interpreted in a way that meant that the district was ineligible to bailout, then section 5 of the VRA was unconstitutional. The case was heard by the Supreme Court, which held that the district was eligible to bailout from the requirements of section 5 and did not reach the question of the constitutionality of section 5.

In 5 cases, jurisdictions filed actions seeking a declaratory judgment under section 5 of the VRA that a change in voting had neither the purpose nor effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. This is the judicial preclearance process—bringing an action in the District Court of the District of Columbia—as opposed to an administrative preclearance conducted by the Voting Section. All of these cases involved states seeking to have redistricting or reapportionment plans¹⁹ cleared by the court. For example, in one case, after the 2000 census, the state of Florida gained an additional two members in the House of Representatives and divided the state into different electoral districts. Because this constituted a voting change, Florida brought an action requesting the court to determine whether the congressional reapportionment plan satisfied the standard of section 5. After the case was filed, the Attorney General precleared the same plan, which the state had also submitted for administrative preclearance, consequently making the filed case unnecessary. In another case, which was litigated to the Supreme Court, the state of Georgia brought an action seeking to preclear its state senate redistricting plan. DOJ unsuccessfully argued that Georgia's redistricting plan should not be precleared and that the plan's changes to the existing boundaries of

¹⁹ Redistricting and reapportionment are often used interchangeably to refer to the division or drawing of districts within a state; however, under the Constitution, apportionment is the division of congressional districts among the states according to population.

certain districts unlawfully reduced the ability of black voters to elect candidates of their choice.

The remainder of the cases in which the Section acted as defendant were brought by private litigants (13 of 30). Four of these cases related to the section 5 preclearance process. In these cases, the plaintiffs brought suit seeking to challenge DOJ's preclearance determination, or DOJ's request for more information from a covered jurisdiction seeking preclearance. For example, after an invalidated primary election, the governor of South Carolina issued an executive order setting a special primary election, which the State of South Carolina then requested the Attorney General review under section 5 of the VRA. Voting Section officials informed the South Carolina officials that the Attorney General would not object to the proposed change to state election procedures. Subsequently, plaintiffs—27 African American voters from South Carolina—brought suit challenging the Attorney General's decision to preclear the change, which the court held that it could not do.

Several cases (10 of 30) were filed by pro se plaintiffs (those acting on their own behalf, without legal representation) against the Attorney General, for which the Voting Section acted as defendant because the cases related to statutes the Section enforces. For example, in two cases, the same pro se plaintiff challenged the constitutionality of section 5 and in another case, a plaintiff challenged the constitutionality of the Voting Rights Act as a whole. In another pro se case, the plaintiff alleged that DOJ had failed to respond to the states' failure to implement HAVA-compliant voting procedures and requested that the court direct an official in the Voting Rights Section to take action to prevent future HAVA violations. It was not always clear what claims the plaintiffs were seeking to allege.²⁰

A final case was filed by a group of individual plaintiffs and a nonprofit public interest organization to challenge DOJ's actions with respect to its enforcement of HAVA. The plaintiffs filed an action against DOJ, along with Pennsylvania state and county defendants. The complaint alleged a number of claims against the state and county defendants relating to the purchase of new voting machines asserting that, among other things, the machines were inaccessible to persons with disabilities. The plaintiffs also

²⁰ In addition to the cases mentioned, the cases filed pro se included two cases involving the preclearance provisions of section 5 of the VRA, as discussed above, three related cases involving claims arising out of HAVA, and one case involving plaintiffs' attempts to obtain party status for the Non-Affiliated Voters Party.

alleged that DOJ had treated Pennsylvania, the plaintiffs, and the county at issue differently than it had treated a similar matter in New York, which violated plaintiffs' right to due process of law, under the Fifth Amendment.

Amicus Briefs Filed from Fiscal Years 2001 through 2007

From fiscal year 2001 through 2007, the Voting Section filed two amicus briefs.²¹ Both of these cases involved the enforcement of the preclearance requirement under section 5 and the Section appeared on behalf of the plaintiffs. For example, in one case, the state of South Dakota, not itself covered by section 5, enacted a legislative redistricting plan in 2001 and sought to enforce that plan in Shannon and Todd counties, which were subject to section 5, without first obtaining the required preclearance. The plaintiffs alleged that the state had violated section 2 and 5 of VRA. DOJ filed an amicus brief on behalf of the plaintiffs arguing that the state plan was a voting change in the covered counties subject to preclearance under section 5.

The Voting Section's Work on Plaintiff Cases Filed Prior to 2001

According to ICM data, the Voting Section filed 25 cases as plaintiff prior to fiscal year 2001 that remained open during the time period of our review. Complaints for these cases were filed starting in 1976 to just shortly before fiscal year 2001. Section officials explained that some cases remained open because the Section was monitoring consent decrees, and in other cases the Section continued to monitor elections in the jurisdictions to ensure continued implementation of procedures in accordance with the relevant statute.²² As shown in table 50, most of the cases (21 of 25) were filed under the VRA, and two cases were filed under the NVRA and UOCAVA, respectively.

²¹ According to data maintained by the Voting Section, there were an additional six cases in which the Section participated as amicus. However, upon further review, Section officials reported that the Section did not file an amicus brief in any of the six cases. Specifically, in three cases, the Section appeared in court, but did not file any documents; in two cases, briefs were filed by the Division, not the Section, but appear in ICM because the Section may have reviewed the matter initially or assigned staff to analyze and/or monitor it; and, in one case, the Section sent a letter to the court of its willingness to participate if the court desired, but was never asked to participate.

²² Section officials noted that many of the cases that the ICM data reported as being open during the time period were not active, so data reported may overrepresent the number of cases for which the Voting Section had ongoing responsibilities during the time period.

Table 50: Voting Section Plaintiff Cases Filed Prior to Fiscal Year 2001, but Open from Fiscal Years 2001 through 2007, by Statute

Statutes	Number of cases
Voting Rights Act – 1965	21
The National Voter Registration Act	2
The Uniformed And Overseas Citizen Absentee Voting Act	2
Total	25

Source: GAO analysis of ICM data.

As shown in table 51, of the cases filed under the VRA, 15 involved section 2 of the VRA, 6 involved section 203 of the VRA, and 1 involved both the enforcement of section 5 and section 2 of the VRA.²³ Most (12 of 15) of the cases filed under section 2 of the VRA involved the subject of “at-large,” which refers to an at-large method of election as denying members of the protected class an opportunity equal to participate in the political process and elect representatives of their choice as other members of the electorate. An additional two cases filed under section 2 involved the subject of “other.” The Section uses the subject “other” to signify cases challenging practices other than a method of election, such as voting qualifications that deny or abridge the rights of protected groups, discriminatory voting registration procedures, or election-day practices that have a “disparate impact” (i.e., a greater impact on one group of voters than other groups). One case involved the subject “other dilution.” The Section uses the subject “other dilution” to identify cases alleging that the method of election or election plan—other than an at-large election system—denies members of the protected class an opportunity equal to participate in the political process and elect representatives of their choice as other members of the electorate.

²³ One case involved both sections 2 and 5 of the VRA.

Table 51: Cases Filed under the Voting Rights Act Prior to Fiscal Year 2001, but Open from Fiscal Years 2001 through 2007, by Subject

Subject	Number of cases
Section 2–At Large	11
Section 2–At Large Section 5–Enforcement	1
Section 2–other dilution	1
Section 2–other	2
Section 203	6
Total	21

Source: GAO analysis of ICM data.

As shown in table 52, the (15) cases remaining open that were filed under section 2 of the VRA involved the protected classes of race (10)—5 on behalf of blacks or African Americans,²⁴ 3 on behalf of American Indians or Alaska Natives, and 1 on behalf of Arabs and 1 Hispanics, respectively—and language minority (5)—4 on behalf of Spanish speakers and 1 on behalf of Native Americans.

Table 52: Cases Filed under Section 2 of the Voting Rights Act Prior to Fiscal Year 2001, but Open from Fiscal Years 2001 through 2007, by Protected class

Protected class	Number of Cases
Race–African American	5
Race–American Indian Or Alaska Native	3
Race–Arab	1
Race–Hispanic	1
Total	10
Language Minority–Spanish	4
Language Minority–Native American	1
Total	5
Grand Total	15

Source: GAO analysis of ICM data.

²⁴ One of these cases was in combination with section 5 of the VRA.

Most cases filed under section 203²⁵ and that remained open during the period of our review involved Native Americans (5 of 6), and one case involved Spanish speakers. Section 203 requires covered jurisdictions to provide bilingual written materials and other assistance for elections (e.g., ballots) in the language of the applicable minority group or oral instructions in the case of Alaska Natives or American Indians.

Time Spent on Matters and Cases from Fiscal Years 2001 through 2007

The percentage time spent by the Section on matters fluctuated over the time period. As shown in table 53, over half of the total time spent on matters during the 7-year period was reported in fiscal years 2003 through 2005.

Table 53: Percentage of Time the Voting Section Spent on Matters from Fiscal Year 2001 through 2007, by Fiscal Year

	Fiscal year							Total
	2001	2002	2003	2004	2005	2006	2007	
Matters	14	8	16	20	18	14	11	100

Source: GAO analysis of ICM data.

Notes: Percentages rounded to nearest whole number. Percentages do not sum to 100 due to rounding.

Hours that provide the basis for the percentages include time of all section staff, including section chief, deputies, special counsel, attorneys, support staff, legal assistants, law clerks, and any staff unique to a section.

Over the 7-year period, the proportion of the total time reported spent on cases fluctuated. As shown in table 54, the percentage of the total time spent on cases declined from fiscal year 2002 to fiscal year 2005, and then

²⁵ According to Voting Section officials, the reference “203” was used in ICM to designate cases and matters under sections 203 and 4(f)(4), as well as section 4(e) of the VRA; therefore, we were unable to distinguish under which of these provisions a case was filed. Coverage under section 203 is determined by a coverage formula contained in that section that takes into account factors such as the percentage of voting age citizens of a state or political subdivision who are members of a single language minority group and are limited-English proficient, as well as illiteracy rates of such citizens, among other factors. 42 U.S.C. § 1973aa-1a; *see also* 28 C.F.R. § 55.6. The coverage determination under section 4(f)(4) is related to the formula for determining jurisdictions subject to the preclearance requirements of section 5 of the VRA, which are those evidencing discriminatory voting practices, based upon a triggering formula as defined in section 4 of the VRA. 42 U.S.C. § 1973b(f)(4); *see also* 28 C.F.R. § 55.5. During this time, the Section also did not have a separate ICM subject value for matters initiated under Section 208 on behalf of voters who were blind, disabled, or unable to read or write. Section officials stated that issues related to Section 208 would ordinarily be added to matters initiated under the minority language provisions.

began increasing. Thirty-eight percent of the total time spent on cases was reported in fiscal years 2006 and 2007.

Table 54: Percentage of Time the Voting Section Spent on Cases from Fiscal Years 2001 through 2007 by Fiscal Year

	Fiscal year							Total
	2001	2002	2003	2004	2005	2006	2007	
All Cases	14	16	11	9	11	18	20	100

Source: GAO analysis of ICM data.

Notes: Percentages rounded to nearest whole number. Percentages do not sum to 100 due to rounding.

Hours that provide the basis for the percentages include time of all section staff, including section chief, deputies, special counsel, attorneys, support staff, legal assistants, law clerks, and any staff unique to a section.

Of the total time spent on cases shown in table 55, the Section reported spending approximately 85 percent on cases in which it was the plaintiff and about 12 percent on cases in which it was a defendant.²⁶ The total time the Section reported it spent on plaintiff cases fluctuated during the 7-year period with over 40 percent of the time reported in fiscal years 2006 and 2007.

Table 55: Percentage of Time the Voting Section Spent on Plaintiff Cases from Fiscal Years 2001 through 2007, by Fiscal Year

	Fiscal year							Total
	2001	2002	2003	2004	2005	2006	2007	
Plaintiff cases	15	14	11	8	12	21	20	100

Source: GAO analysis of ICM time reporting data.

Notes: Percentages rounded to nearest whole number. Percentages do not sum to 100 due to rounding.

Hours that provide the basis for the percentages include time of all section staff, including section chief, deputies, special counsel, attorneys, support staff, legal assistants, law clerks, and any staff unique to a section.

The time spent on defendant cases, as shown in table 56, also fluctuated during the time period. Seventy percent of the total time spent on defendant cases during these years was reported from fiscal years 2002 through 2004, over half of which was reported in fiscal year 2002 alone.

²⁶ The remaining 3 percent was spent on other roles including amicus, investigator, plaintiff intervener, or defendant intervener.

Table 56: Percentage of Time the Voting Section Spent on Defendant Cases from Fiscal Years 2001 through 2007 by Fiscal Year

	Fiscal year							Total
	2001	2002	2003	2004	2005	2006	2007	
Cases	6	36	16	18	5	5	14	100

Source: GAO analysis of ICM time reporting data.

Notes: Percentages rounded to nearest whole number.

Hours that provide the basis for the percentages include time of all section staff, including section chief, deputies, special counsel, attorneys, support staff, legal assistants, law clerks, and any staff unique to a section.

Voting Section Resources Available from Fiscal Years 2001 through 2007

According to data provided by the Division, the staff resources available to the Voting Section fluctuated from fiscal years 2001 through 2007. As shown in table 57, the total number of permanent positions available in the Section was highest (105) during each of the first 4 years and then declined to a low of 98 in fiscal year 2007. Voting Section officials confirmed the fluctuations in staff, explaining that the Section has the largest number of positions during the periods when it is reviewing redistricting plans after a census. After the Section completed this work, it lost positions, which DOJ transferred to its Civil Division.

Table 57: Voting Section: Historical Track of Available Resources

Resources	Fiscal year						
	2001	2002	2003	2004	2005	2006	2007
Permanent positions	105	105	105	105	102	102	98
Salaries and expenses	12,158	13,242	13,596	14,123	13,720	11,758	11,810

Source: Civil Rights Division, DOJ.

Note: Salaries and Expenses, dollars in thousands.

As shown in table 58, the number of Voting Section staff on board at the end of each fiscal year also fluctuated over the 7-year period. The number of attorneys reached its lowest levels in fiscal year 2005—the year in which the Division granted voluntary early retirement authority along with a voluntary separation incentive payment of \$25,000. The number of professionals in the Section declined steadily, reaching a low of 20 in fiscal year 2007, half the number of professionals in fiscal year 2001.

Table 58: Number of On-board Staff for Voting Section by Position and Fiscal Year

Position	Fiscal Year						
	2001	2002	2003	2004	2005	2006	2007
Attorneys	41	43	39	36	33	34	38
Professionals	40	35	32	31	28	26	20
Clerical	16	16	15	16	15	14	13
Total	97	94	86	83	76	74	71

Source: Civil Rights Division.

Note: Staff on-board reflects the official numbers as of the last day of each fiscal year.

In addition, the attrition rates for Section staff, shown in table 59, fluctuated over the 7-year period. The rate for Section attorneys was highest in fiscal years 2005 through 2007, reaching its highest level in 2005. The Division noted that in fiscal year 2005, it was granted voluntary early retirement and voluntary separation authority, which contributed to the rate of attrition that year.

Table 59: Percentage of Attrition for Voting Section by Position and Fiscal Year

Position	Fiscal year						
	2001	2002	2003	2004	2005 ^a	2006	2007
Attorney	6	7	19	15	31	27	21
Professional	5	20	20	31	13	32	35
Clerical	13	0	6	13	6	13	14

Source: Civil Rights Division, DOJ.

Notes: The Section's attrition rates include employees who had separated from the Division (i.e., resignation, transfer to another federal agency, retirement, etc.) and those reassigned to another section within the Division.

Numbers have been rounded to nearest whole number.

^a In fiscal year 2005, the Division granted voluntary early retirement authority along with a voluntary separation incentive payment of \$25,000.

Appendix V: Special Litigation Section

Statutes Enforced by the Special Litigation Section from Fiscal Years 2001 through 2007

The Special Litigation Section was responsible for the enforcement of federal civil rights statutes in four major areas—institutional conditions, the conduct of law enforcement agencies, access to reproductive health facilities and places of worship, and the exercise of religious freedom of institutionalized persons. Specifically, the Section enforced provisions in the following statutes:

Civil Rights of Institutionalized Persons Act

The Civil Rights of Institutionalized Persons Act (CRIPA)¹ provides the Attorney General with the authority to bring lawsuits where there is a pattern or practice of egregious and flagrant conditions that deprive institutionalized persons of their federal or constitutional rights. These institutions include facilities for individuals who are mentally ill and developmentally disabled, nursing homes, juvenile correctional facilities, and adult jails or prisons,² which are owned or operated by, or on behalf of, state and local governments. Before commencement of a suit under CRIPA, the Attorney General is required to take several steps. Among other things, at least 7 days before an investigation begins, the Attorney General is to notify, in writing, the appropriate state officials of the intention to commence an investigation and, during that time, the Attorney General is required to make efforts to consult with the jurisdiction about assistance from the United States to correct the conditions and encourage the appropriate officials to take corrective actions. Forty-nine days before filing any complaint, the Attorney General is to notify the appropriate state or local government of the alleged unlawful conditions, and minimum necessary remedial measures. Lastly, the Attorney General must personally sign the complaint. The Attorney General has the authority to obtain equitable relief in a lawsuit, which is carried out through the Special Litigation Section.

Violent Crime Control and Law Enforcement Act of 1994

The Violent Crime Control and Law Enforcement Act of 1994 (14141)³ authorizes the Attorney General to bring suit for equitable and declaratory relief where there has been a pattern or practice of conduct by law enforcement or officials responsible for the administration of juvenile justice or the incarceration of juveniles to deprive persons of their rights under the Constitution or federal law. As such, the Special Litigation

¹ 42 U.S.C. §§ 1997-1997j.

² With respect to prisons, jails, and correctional facilities, under CRIPA, the Section is authorized to seek relief for constitutional violations only. 42 U.S.C. § 1997a(a).

³ 42 U.S.C. § 14141.

	<p>Section has the authority to obtain identical relief under CRIPA and this act with respect to incarcerated juveniles. Actions under this statute regarding conduct by law enforcement can involve, among other issues, systemic problems such as excessive force, false arrest, and discriminatory harassment, stops, searches and arrests.</p>
<p>Title III of the Civil Rights Act of 1964</p>	<p>The Special Litigation Section is responsible for enforcing Title III of the Civil Rights Act of 1964,⁴ which prohibits discrimination in public facilities on the basis of race, color, religion, or national origin.</p>
<p>Omnibus Crime Control and Safe Streets Act of 1968</p>	<p>The Omnibus Crime Control and Safe Streets Act of 1968⁵ authorizes the Attorney General to bring suit to remedy a pattern or practice of discrimination based on race, color, religion, national origin, or gender by law enforcement agencies receiving federal financial assistance. Relief may include, among other things, the repayment of federal funds.</p>
<p>Freedom of Access to Clinic Entrances Act of 1994</p>	<p>The Freedom of Access to Clinic Entrances Act of 1994 (FACE)⁶ prohibits the use or threat of force and physical obstruction that injures, intimidates, or interferes with a person seeking to obtain or provide reproductive health services and to exercise the First Amendment right of religious freedom at a place of religious worship. The Act also prohibits intentional damage or destruction of a facility providing reproductive health services or a place of religious worship. The Attorney General is authorized to seek various forms of civil relief against violators of FACE, as may persons who are injured by the unlawful activities.</p>
<p>The Religious Land Use and Institutionalized Persons Act of 2000</p>	<p>The Special Litigation Section is involved in enforcing section 3 of the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA),⁷ which protects the rights of free exercise of religion for institutionalized persons. Section 3 prohibits a state or local government from imposing a substantial burden on the religious exercise of an institutionalized person, unless the government can demonstrate that the imposition furthers a compelling interest and is the least restrictive means available to further that interest. DOJ is authorized to bring an action for injunctive or declaratory relief; private individuals may also seek remedies for</p>

⁴ 42 U.S.C. § 2000b.

⁵ 42 U.S.C. § 3789d.

⁶ 18 U.S.C. § 248.

⁷ 42 U.S.C. § 2000cc-1.

violations of RLUIPA. Although RLUIPA was enacted in 2000, the Section was involved in enforcing similar provisions of the Religious Freedom Restoration Act of 1993⁸ before it was declared unconstitutional by the Supreme Court.

Reasons the Special Litigation Section Closed Matters

We were unable to readily determine the reasons why the Section closed over 700 matters⁹ using ICM data because this information is not maintained in the system. However, interviews with agency officials and our review of 51 randomly selected Special Litigation Section typically closed matter files provided information on the reasons why the Special Litigation Section closed matters. According to Section officials, the primary reasons matters were closed were lack of sufficient evidence to show a pattern or practice of unlawful conditions, no current evidence of problems, or corrective action had been taken by the relevant jurisdiction. Our review of 51 Special Litigation Section closed matter files identified examples of each of these reasons. The most frequently recorded summary reason to close a matter as identified in the file documentation was “no further action warranted” (12). Accompanying documents usually provided further explanation of why no further action was warranted and this information reflected the specific reasons to close identified by Section officials.¹⁰

Special Litigation Section officials further explained the Section’s use of these reasons to close matters within the context of the statutory prerequisites that it was required to meet to open an investigation. They noted that evidence might be insufficient to show a pattern or practice of discrimination or misconduct because it was difficult to gather evidence of systemic problems. Furthermore, officials said that if the Section received dated information but had no evidence of recent problems (e.g., if in 2009

⁸ Pub. L. No. 103-141, 107 Stat. 1488 (1993), *invalidated by* City of Boerne v. Flores, 521 U.S. 507 (1997).

⁹ The more than 700 closed matters included matters initiated or open as of October 1, 2000, and closed as of August 8, 2008.

¹⁰ According to Special Litigation Section officials, since 2003 the Section’s closed matter files are to include a closure memo for all closed pre-investigations and investigations. Prior to 2003, closure memorandums were cursory forms. Our review of a random selection of matter files closed between 2001 and 2007, while limited, suggested that this policy was being implemented. We found closing memorandums or explanations of why matters were closed in 12 of the 14 files reviewed for matters initiated from fiscal years 2004 through 2007.

an investigator were to receive evidence of three suicides that occurred in a jail in 2005), the Section would consider this information to be an indication that there possibly had been a problem. Accordingly, they would close the matter, but keep monitoring the situation (e.g., by using online news alerts) to identify evidence of current allegations of problems. In addition, with regard to preliminary investigations, officials said that the Special Litigation Section would close the investigation if officials believed that a jurisdiction recognized a problem existed and fixed it (e.g., the jurisdiction fired the sheriff, provided funds to a nursing home, or implemented an initiative to stop certain behaviors within an agency). In such instances, the Section would close the file and monitor the jurisdiction to ensure that reform was effective.

Special Litigation Section's Work on Cases Filed Prior to Fiscal Year 2001

From fiscal years 2001 through 2007, the Special Litigation Section continued to participate in 66 cases in which the complaint or brief had been filed prior to 2001 and remained open for at least part of the 7-year period.¹¹ As shown in table 60, these cases involved three of the Section's areas of responsibility—institutional conditions, the conduct of law enforcement agencies, and access to reproductive health facilities and places of worship. The largest number of cases (47 of 66) involved institutional conditions; 14 cases involved access to reproductive health facilities and 4 involved the conduct of law enforcement agencies.

¹¹ An additional case identified in ICM indicated that the Section's role was investigator. According to Section officials, the Section's role was investigator because the defendant in the case was under a permanent injunction and if the defendant violated the injunction, the Special Litigation Section would return to court as it had done in the past. The case involved FACE and access to a reproductive health clinic.

Table 60: Special Litigation Section Cases Filed Prior to Fiscal Year 2001 by Facility Type

Facility type	Total
Institutional conditions	
Developmental disabilities facility	14
Mental health facility	6
Nursing home	2
Jail	13
Prison	7
Juvenile correctional facility	4
Juvenile justice system ^a	1
Total	47
Access to reproductive health facilities and places of religious worship	
Clinic	14
Conduct of law enforcement agency^b	
Law enforcement agency	4
Unable to determine	1
Grand Total	66

Sources: GAO analysis of ICM data and Special Litigation Section documentation.

^aThis case involved the entire juvenile correctional system of a state.

^bThe area of responsibility conduct of law enforcement agencies includes one facility type in ICM—law enforcement agency. Therefore, the numbers reported for the area of responsibility conduct of law enforcement agencies are the same as those reported for the facility type law enforcement agency.

The Section participated as plaintiff in 56 (of 66) cases, as plaintiff intervenor in 6 cases, and as amicus curiae in 4 cases. As shown in table 61, the Section filed complaints, as plaintiff, in cases involving three of its four areas of responsibility and diverse facility types. Five of the 6 cases in which the Section participated as plaintiff intervenor fell under institutional conditions—3 involved prisons and 2 involved facilities for persons with developmental disabilities—and the sixth case involved a clinic under the Section’s responsibility for access to reproductive health care facilities. The 4 cases in which the Section filed amicus briefs involved institutional conditions in facilities for persons with developmental disabilities (2), a mental health facility, and a nursing home.

Table 61: Special Litigation Section Cases Filed Prior to Fiscal Year 2001, by Government Role and Facility Type

Facility type	Government role			Total
	Plaintiff	Plaintiff Intervenor	Amicus	
Institutional conditions				
Developmental disabilities facility	10	2	2	14
Mental health facility	5		1	6
Nursing home	1		1	2
Jail	13			13
Prison	4	3		7
Juvenile correctional facility	5			5
Total				47
Access to reproductive health facilities and places of religious worship				
Clinic	13	1		14
Conditions of confinement				
Law enforcement agency	4			4
Unable to determine	1			1
Grand Total	56	6	4	66

Sources: GAO analysis of ICM data and Special Litigation Section documentation.

All 66 cases were open for some period during our review. According to the ICM data, as of May 28, 2008, the files for 45 cases were closed; 19 cases were being monitored for compliance; and for 2 cases the parties agreed to a settlement and the file remained open.

Time Spent on Matters and Cases from Fiscal Years 2001 through 2007

Aggregate data on time spent by Special Litigation staff on matters and cases from fiscal years 2001 through 2007 showed that the Section spent the greatest percentage of time on those matters and cases involving institutional conditions. However, the proportion of time varied by facility type within this area of responsibility and in relation to the time spent enforcing laws related to the conduct of law enforcement agencies.

Aggregate time data for matters

According to aggregate time data spent on matters from fiscal years 2001 through 2007, the Section reported spending the greatest percentage of time on matters involving institutional conditions in all facility types (62 percent). The remaining percentage of the time was spent on matters involving the conduct of law enforcement agencies.

Table 62: Percentage of Hours Spent on Matters by Facility Type and Fiscal Year

Area of responsibility	Fiscal year							
	2001	2002	2003	2004	2005	2006	2007	2001-2007
Conditions of confinement	53	51	54	61	63	69	75	62
Conduct of law enforcement agencies ^a	46	47	43	39	37	31	24	39
Total	99	98	97	100	100	100	99	101

Source: GAO analysis of ICM time reporting data.

Notes: Deleted facility group home (CRIPA), jail/prison (RLUIPA matters), and clinic (FACE) where were hours less than .05 percent and other, which involved CRIPA, but facility type was not identified and combination of hours was less than 1 percent in any fiscal year. Percentages rounded to nearest whole number.

Hours that provided the basis for the percentages include time of all section staff, including section chief, deputies, special counsel, attorneys, support staff, legal assistants, law clerks, and any staff unique to a section. Percentages do not sum to 100 due to rounding.

^aThe area of responsibility—conduct of law enforcement agencies includes one facility type in ICM—law enforcement agency. Therefore, the numbers reported for the area of responsibility conduct of law enforcement agencies are the same as those reported for the facility type law enforcement agency.

The time spent on matters involving institutional conditions (62 percent) varied by category and facility type by fiscal year. Among these matters, the Section reported spending the greatest percentage of time on matters involving adult corrections (26 percent) during the 7-year period, as shown in table 63. Time spent on matters involving jails was about 27 percent of total time reported for fiscal year 2007, the highest percentage of time for any facility type that year. Taken together, the time reported spent on matters involving facilities for persons with developmental disabilities, mental health facilities, and nursing homes totaled 23 percent for the 7-year period, but fluctuated from year to year. Section officials explained that time spent on these matters involved investigating a particular facility, drafting findings letters, and engaging in settlement negotiations during the investigatory stage, as the majority of these matters were filed as cases. The time reported spent on conditions in juvenile correctional facilities peaked at 14 percent in fiscal years 2001 and 2004. According to Section officials, time spent on juvenile matters usually occurred during the investigatory stage, but relatively little time was spent on juvenile justice matters. Rather, a significant amount of time was spent litigating or monitoring compliance on filed cases, information that would be recorded in the case time data. Generally, Section officials stated fluctuations in the percentage of time spent on these matters across fiscal years may reflect the ebb and flow of complaints received in a year, the nature of the allegations, and the type of investigations recommended and approved in any given year.

Table 63: Percentage of Hours the Special Litigation Section Spent on Institutional Conditions Matters, by Facility Type and Fiscal Year

Category	Facility type	Fiscal year							2001-2007
		2001	2002	2003	2004	2005	2006	2007	
Adult corrections	Jail	17	11	13	15	18	24	27	17
	Prison	5	4	9	10	10	12	10	9
	Total	22	15	22	25	28	36	37	26
Health and social welfare	Developmental disabilities facility	3	7	3	4	10	10	13	7
	Mental health facility	2	10	3	2	2	5	7	5
	Nursing home	11	13	13	12	12	7	6	11
	Total	16	30	19	18	24	22	26	23
Juvenile corrections	Juvenile correctional facility	14	6	8	14	11	11	12	11
	Juvenile court	1	0	5	4	0	0	0	2
	Total	15	6	13	18	11	11	12	13
Total		53	51	54	61	63	69	75	62

Source: GAO analysis of ICM data.

Notes: Deleted facility group home (CRIPA), jail/prison (RLUIPA matters), and clinic (FACE) where hours were less than .05 percent and other, which involved CRIPA, but facility type was not identified and combination of hours was less than 1 percent in any fiscal year. Percentages do not sum to 100 due to rounding. Percentages rounded to nearest whole number.

Hours that provided the basis for the percentages include time of all section staff, including section chief, deputies, special counsel, attorneys, support staff, legal assistants, law clerks, and any staff unique to a section.

During the 7-year period, 39 percent of the total reported time spent on matters involved law enforcement agencies, the highest for any single facility type for those years (see table 62). Section officials said that matters involving law enforcement agencies were highly technical, resource-intensive, generally more time-consuming as compared to the Section's other areas of responsibility, and required a thorough review by the Division at all stages from pre-investigation through resolution. They added that such matters involved significant and time-consuming reviews of documents and databases and required that Section staff work closely with expert consultants, who review numerous documents and reconstruct specific incidents to arrive at conclusions about the appropriateness of the level of force used in any given incidents. Additionally, Section staff might conduct on-site interviews and "ride-along" with police officers. Officials stated that in these matters, unlike its work involving institutional conditions, the Section is required to present objective evidence to demonstrate a factual basis for each issue in technical assistance letters and settlement agreements. The time data

show that the percentage of time spent each fiscal year on these matters declined during the period. According to Section officials, this change in the percentage of time spent might have been due to fluctuations in the number of complaints received; the number of institutional conditions matters received that were egregious, resource intensive, and required more of the staff’s attention; or the additional review of police misconduct recommendations by the Division’s Front Office.

Aggregate time data for cases

As shown in table 64, of the total reported time spent on cases for the 7-year period, the Section spent the greatest percentage of time (81 percent) on cases involving institutional conditions. In addition, 17 percent of the time spent on cases was spent on cases involving the conduct of law enforcement agencies.¹² However, the proportion of time spent on each of these two areas of responsibility varied during the time period.

Table 64: Percentage of Hours the Special Litigation Section Spent on Cases, by Area of Responsibility and Fiscal Year

Area of responsibility	Fiscal year							2001-2007
	2001	2002	2003	2004	2005	2006	2007	
Institutional conditions	58	72	83	84	90	88	92	81
Conduct of law enforcement agencies	40	26	15	15	10	9	7	17
Access to reproductive health	0	1	2	0	0	0	1	1
Immigration appeals	0	0	0	0	0	3	1	1
Total	98	99	100	99	100	100	101	100

Source: GAO analysis of ICM data.

Notes: Hours that provide the basis for the percentages include time of all section staff any, including section chief, deputies, special counsel, attorneys, support staff, legal assistants, law clerks, and any staff unique to a section.

Total percentages may be less than 100 percent due to exclusion of facility type mental retardation and mental health where hours were less than .05 percent. Percentages do not sum to 100 due to rounding.

As shown in table 65, the time spent on cases involving institutional conditions (81 percent) varied by category and facility type by fiscal year. Over 40 percent of the time was spent on cases involving health and social welfare facilities. The greatest percentage of that time (27 of 41 percent)

¹² These data included cases on which the Special Litigation Section staff worked from fiscal years 2001 through fiscal year 2007, including cases in which the Section filed complaints during the period, cases in which the Section was a defendant or defendant intervener, and cases that remained open during the 7-year period.

was spent on cases involving facilities for the developmentally disabled. During the 7-year period, the percentage of time spent each year on cases involving juvenile correctional facilities reached a high of 44 percent in fiscal year 2007. Section officials explained that while the Division’s emphasis on juvenile justice may have been a factor, a more significant factor contributing to this increase was the Section’s involvement in contested litigation related to juvenile justice practices in two states and in regular contempt proceedings in another case.

Table 65: Percentage of Hours the Special Litigation Section Spent on Institutional Conditions Cases by Facility Type and Fiscal Year

Category	Facility type	Fiscal year							2001-2007
		2001	2002	2003	2004	2005	2006	2007	
Health and social welfare	Developmental disability facility	27	32	38	33	20	23	18	27
	Mental health facility	10	12	13	11	11	12	9	11
	Nursing home	1	3	2	2	3	4	8	3
	Total	38	47	53	46	34	39	35	41
Juvenile corrections	Juvenile correctional facility	9	17	18	26	37	27	44	26
Adult corrections	Prison	4	2	4	5	5	10	4	5
	Jail	7	6	8	7	14	12	9	9
	Total	11	8	12	12	19	22	13	14
Grand Total		58	72	83	84	90	88	92	81

Source: GAO analysis of ICM data.

Notes: Hours that provide the basis for the percentages include time of all section staff, including section chief, deputies, special counsel, attorneys, support staff, legal assistants, law clerks, and any staff unique to a section.

Total percentages may be less than 100 percent due to exclusion of facility type mental retardation and mental health where hours were less than .05 percent. Percentages do not sum to 100 due to rounding.

The percentage of time spent on cases involving the conduct of a law enforcement agency was highest in fiscal year 2001 (40 percent) followed by fiscal year 2002 (26 percent) (See table 64). According to Section officials, during these two years the Section was engaged in highly contested litigation that involved racial profiling claims and required intensive document analysis. Since this was the first contested police department litigation under the Section’s police misconduct authority, officials said that each issue that arose required significant attorney time.

Special Litigation Section Resources Available from Fiscal Years 2001 through 2007

According to data provided by the Division, the number of permanent positions available to the Special Litigation Section from fiscal years 2001 through 2007 increased from fiscal years 2001 through 2002 and then remained relatively constant. However, Section officials stated that while the official budget data indicated minor fluctuations in staff resources, the Section had a number of vacancies for a number of years during the 7-year period.

Table 66: Special Litigation Section: Historical Track of Available Resources

Resources	Fiscal year						
	2001	2002	2003	2004	2005	2006	2007
Permanent positions	63	73	73	73	72	72	72
Salaries and expenses	7,500	8,920	9,799	10,048	10,233	12,096	12,656

Source: Civil Rights Division, DOJ.

Note: Salaries and Expenses, dollars in thousands.

As shown in table 67, the number of Section staff on board at the end of each fiscal year increased from fiscal years 2001 through 2004, and then declined in fiscal years 2005 and 2006. Section officials confirmed that fewer staff were available in the later years of the 7-year period, as the number of onboard Special Litigation staff—attorneys, professional, and clerical—decreased in fiscal years 2005, 2006, and 2007, from higher staff numbers in fiscal years 2003 and 2004.

Table 67: Number of On-board Staff for Special Litigation Section by Position and Fiscal Year

Position	Fiscal year						
	2001	2002	2003	2004	2005	2006	2007
Attorneys	33	47	47	48	41	39	39
Professionals	12	13	14	16	12	10	11
Clerical	7	9	9	9	8	8	10
Total	52	69	70	73	61	57	60

Source: Civil Division, DOJ.

Note: Staff on-board reflects official numbers as of the last day of each fiscal year.

In addition, the attrition rates for Section staff varied over the 7-year period. The rate for Section attorneys was higher in fiscal years 2001, 2005, and 2006. The Division noted that in fiscal year 2005, it was granted voluntary early retirement and voluntary separation authority, which contributed to the rate of attrition that year.

Table 68: Percentage of Attrition for Special Litigation Section by Position and Fiscal Year

Position	Fiscal year						
	2001	2002	2003	2004	2005b	2006	2007
Attorney	26	3	17	17	31	24	18
Professional	0	8	8	7	31	25	10
Clerical	0	14	44	0	11	13	38

Source: Civil Division, DOJ.

Notes: The Section's attrition rates include employees who had separated from the Division (i.e., resignation, transfer to another federal agency, retirement, etc.) and those reassigned to another section within the Division. Percentages were rounded to the nearest whole number.

In fiscal year 2005, the Division granted voluntary early retirement authority along with a voluntary separation incentive payment of \$25,000.

A July 2, 2008, joint report by the DOJ Office of the Inspector General and Office of Professional Responsibility addressed staffing issues confronted by the Special Litigation Section, which occurred within the period of our review. The report describes the results of an investigation into allegations that political or ideological affiliations were considered in hiring, transferring, and assigning cases to career attorneys in the Division, including the Special Litigation Section.¹³ Specifically, it cites issues raised by the Section Chief that attorneys were unqualified to work in the Section and the Division management changed the attorney assigned to a case. According to Section officials, these decisions affected the morale of the Section and managers had to take on the work of attorneys.

Subject Values Used by the Special Litigation Section

The Special Litigation uses the ICM subject field to describe the types of issues and allegations under investigation in matters initiated and cases filed. Table 69 provides a list of the subject values that the Section used and descriptions of these values. According to Special Litigation Section officials, the information presented describes what the code was supposed to mean when it was originally devised by the ICM team.

¹³ U.S. Department of Justice, Office of the Inspector General, *An Investigation of Allegations of Politicized Hiring and Other Improper Personnel Actions in the Civil Rights Division*. (Washington, D.C.: July 2, 2008), released publicly January 13, 2009.

Table 69: Special Litigation Section Subject Values for Matters and Cases Recorded in ICM

Subject	Description of subject
Abuse/neglect	In the Section's CRIPA health care cases and CRIPA/14141 juvenile justice facility cases, this refers to staff's physical abuse of residents or staff's failure to properly care for or supervise a resident.
Access to courts	In the Section's CRIPA/14141 juvenile justice facility cases and CRIPA jail and prison cases, this refers to the failure of a facility to provide juveniles, detainees, or prisoners with an adequate ability to exercise their legal rights with respect to the court system.
Accessibility (ADA)	In the Section's CRIPA cases, except for prisons and jails where CRIPA does not permit the Section to enforce federal statutes, this refers to the failure of a facility to provide adequate accommodations so that residents with disabilities can access facilities or programs.
Active treatment	In the Section's CRIPA cases involving facilities for persons with developmental disabilities, this refers to the failure of a facility to provide a program of specialized and generic training, treatment, health services, and other services directed toward the acquisition of skills necessary for the residents to function with as much self-determination and independence as possible, and to prevent regression and loss of function.
Coercive sexual misconduct	In the Section's CRIPA cases and juvenile facility cases under both CRIPA and 14141, this refers to sexual acts by staff or peers perpetrated on residents, detainees, or inmates without consent.
Community placement	In the Section's CRIPA health care cases, this refers to enforcement of the integration mandate of the ADA that residents be served in the most integrated setting appropriate to their needs and which they do not oppose; most often, if a resident is not being served in the most integrated setting, a transition from an institution into the community is the remedy.
Correctional staffing	In the Section's CRIPA cases involving jails and prisons, this refers to the direct staffing on the cellblocks; the issue usually comes up that detainees or inmates are not adequately protected from harm due to insufficient direct staffing and supervision.
Dental care	In all of the Section's CRIPA cases and CRIPA/14141 juvenile justice facility cases, this refers to a facility's inadequate provision of dental care services to the residents of the facility.
Diet/nutrition	In the Section's CRIPA cases, this refers to a facility's failure to provide an adequate diet or nutrition to residents who need a specialized diet due to a health condition such as diabetes or high blood pressure, or, where inmates are only being served one meal a day. In the Section's RLUIPA cases, this refers to a facility's failure to provide a diet required by a person's religion, such as kosher diets or vegetarian diets.
Environment	In the Section's CRIPA cases, usually involving jails and prisons, it often finds egregious environmental health and safety issues, such the presence of vermin or human waste, or an environment with insufficient ventilation, which can cause medical issues.
Excessive force	In the Section's CRIPA cases, the Section encounters this issue, which involves the use of more force than is necessary under the circumstances. The Section sees this issue in many of its CRIPA investigations, particularly involving jails, prisons, and juvenile justice facilities. The Section does not use this issue code when it encounters this issue in its Police Misconduct work, where it uses a separate issue, below.
Face-obstructive activities	In the Section's FACE cases, this issue involves efforts by a citizen to block a woman's right to access reproductive services.
Face-property damage	In the Section's FACE cases, this issue involves any damage to a clinic by a citizen who is trying to impede a woman's right to access reproductive services.
Face-violence/threats	In the Section's FACE cases, this issue involves the use of physical force or verbal threats made by a citizen to a woman seeking reproductive services at a clinic.

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Subject	Description of subject
False Claims Act	In the Section's CRIPA health care cases, this legal action involves a jurisdiction billing the Department of Health and Human Services for services it did not, in fact, render to an institutionalized person, or to services that were billed that deviated so substantially from accepted professional care such that the services could be characterized as a failure of care. The Special Litigation Section does not pursue False Claims Act cases. Instead, when the Section suspects that there may be False Claims Act issues in a matter, the Section refers it to the Civil Division, the component which enforces this statute.
Feeding practices	In the Section's health care cases involving nursing homes and facilities for persons with developmental disabilities, the Section often encounter feeding practices that endanger institutionalized persons, such as improperly feeding someone who cannot feed him or herself, such that food is aspirated into a lung, causing aspiration pneumonia that after repeated episodes often leads to death.
Fire safety	In the Section's CRIPA cases, the Section often finds dangerous fire safety issues, such as the lack of sprinklers, expired fire extinguishers, or an insufficient avenue of egress in the event of a fire.
First Amendment	This is the primary issue code in all of the Section's RLUIPA cases, which involve the free exercise of religion issues. The Section's also use this, sometimes, in its CRIPA cases. In those cases, there are times when a jurisdiction refuses the Section access to speak with the residents of a facility during its investigation. In those circumstances, the Section takes the position that the jurisdiction is violating the residents' First Amendment right to access their government to make a complaint.
Grievance	In the Section's CRIPA cases involving jails, prisons, and juvenile justice facilities, residents have a right to a system to make their complaints known.
Inmate violence	In the Section's CRIPA cases involving jails and prisons, this issue arises when there is a systemic level of violence as a result of inmate-on-inmate fights.
Isolation/seclusion	In the Section's CRIPA work, the Section often finds that residents are improperly placed in a locked room by themselves, often for a very long period of time, without access to adequate services.
Juvenile administration	Under 14141, the Section's can investigate the administration of juvenile justice in a jurisdiction where the Section has reason to believe that the is infringing on juveniles' civil rights.
Juvenile facility	In both the Section's CRIPA and 14141 work, the Section investigates juvenile detention centers, where youth are held before they are adjudicated, and juvenile training centers, where some youth are sent following adjudication.
Law library	In the Section's CRIPA work, detainees in jails and inmates in prisons are legally entitled to access to certain legal materials that may assist them in their efforts to challenge their detention or for other related legal matters.
Mail tampering	In the Section's CRIPA work, particularly in jails and prisons, residents have legal rights to use the mail; institutions have rights to monitor the mail for security risks. The Section has received allegations, in certain matters, that inmate mail is tampered with so that outgoing information is impermissibly not allowed to leave the facility or that incoming mail was impermissibly searched or confiscated.
Medicaid regs	In the Section's CRIPA health care work, the Section often cites as the professional standards regulations issued by Department of Health and Human Services, Centers for Medicare and Medicaid Services regarding the requirements that a facility must meet in order to maintain federal funding.
Medical care	In all of the Section's CRIPA work, the Section typically evaluates the medical care provided to the residents of a facility to assess whether it is legally sufficient.

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Subject	Description of subject
Mental health services	In all of the Section's CRIPA work, the Section typically evaluates the mental health care services provided to the residents of a facility to assess whether it is legally sufficient.
Most integrated setting (ADA)	In the Section's CRIPA health care work, the Section typically assesses whether residents of a facility are being served in the most integrated setting appropriate to individual needs, as required by the Americans with Disabilities Act (ADA) and confirmed by the Supreme Court in <i>Olmstead v. L. C.</i> , 527 U.S. 581 (1999).
Numbers of professional staff	In all of the Section's CRIPA work, the Section evaluates whether there are enough professional staff to provide the services that are legally required in the particular facility.
Numbers of trained direct care staff	In all of the Section's CRIPA work, the Section evaluates whether there are enough trained direct care staff to adequately and safely supervise the residents of the particular facility.
Nursing care	In all of the Section's CRIPA cases, the Section typically evaluates, as part of the medical care, whether the nursing care at the facility is legally sufficient.
Occupational therapy	In the Section's CRIPA health care work, particularly with respect to facilities serving persons with developmental disabilities, the Section evaluates whether a facility is providing adequate services to increase an individual's ability to engage in supported employment. Most often, the Section assesses communication services under this issue.
Overcrowding	In the Section's CRIPA work, the Section often encounters facilities that house more residents than were intended to be housed in the facility.
Physical therapy	In the Section's CRIPA health care work, particularly with respect to facilities for persons with developmental disabilities, the Section evaluates whether a facility is providing adequate physical therapy services to individuals who need them as a result of a physical disability.
Police-canine	In the Section's Police Misconduct work, the Sections evaluates whether a police force is using dogs in a legally permissible manner.
Police-city	In the Section's Police Misconduct work, the Section uses this issue code when it is investigating a city police force.
Police-Civilian Complaint System and Discipline	In the Section's Police Misconduct work, the Section uses this issue code when it is evaluating whether the civilian complaint system is legally sufficient; it also uses this issue code when it is evaluating whether an officer is appropriately disciplined as a result of a finding that a citizen's rights were violated.
Police-coercive sexual conduct	In the Section's Police Misconduct work, the Section uses this issue code when it is investigating whether officers are impermissibly coercing sexual conduct from the citizens they are interacting with.
Police-county	In the Section's Police Misconduct work, the Section uses this issue code when it is investigating a county police force.
Police-discriminatory highway stops	In the Section's Police Misconduct work, it uses this code when it is investigating whether officers are impermissibly stopping cars on the highways due to discriminatory factors, such as race.
Police-discriminatory pedestrian stops	In the Section's Police Misconduct work, it uses this code when it is investigating whether officers are impermissibly stopping pedestrians due to discriminatory factors, such as race.
Police-discriminatory urban traffic stops	In the Section's Police Misconduct work, it uses this code when it is investigating whether officers are impermissibly stopping cars on city streets due to discriminatory factors, such as race.
Police-excessive force	In the Section's Police Misconduct work, it uses this issue code when it is investigating whether officers use more force than is necessary to subdue a citizen.
Police-false arrest	In the Section's Police Misconduct work, it uses this issue code when it is investigating whether officers are arresting citizens for pretextual reasons that have no basis in the facts.

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Subject	Description of subject
Police-improper searches/seizures	In the Section's Police Misconduct work, it uses this issue code when it is investigating whether officers are searching or seizing property in a way that violates the law.
Police-other discriminatory policing	In the Section's Police Misconduct work, it uses this issue code when it is investigating allegations of discrimination by officers that do not fit into the other codes already described.
Police-retaliation	In the Section's Police Misconduct work, it uses this code when it is investigating allegations that someone has been retaliated against for cooperating with the Special Litigation Section while the Special Litigation Section was conducting its investigation.
Police-sheriff	In the Section's Police Misconduct work, it uses this code when it is investigating the sheriff and his/her officers, often used in connection with investigations of conditions in the lock up cells in a jail.
Police-state	In the Section's Police Misconduct work, it uses this code when it is investigating state police officers.
Police-supervisory measures	In the Section's Police Misconduct work, it uses this code when it is investigating whether the measures that a police force uses to supervise its officers is adequate.
Police-training	In the Section's Police Misconduct work, it use this code when it is investigating whether officers are adequately trained to do their jobs.
Protection from harm	In all of its CRIPA cases, the Section uses this very broad term to determine whether the residents of a facility are provided with adequate safety. This term can encompass whether there is staff abuse, whether there is too much resident-on-resident violence, whether residents are adequately supervised, and many other areas.
Psychiatric services	In the Section's CRIPA work, this issue is a bit narrower than the term "mental health services." Psychiatric services are provided to residents who have been diagnosed with a serious mental illness, whereas mental health services are provided to any resident who needs help with a mental health problem, even if there hasn't been a psychiatric diagnosis.
Psychological services	In the Section's CRIPA work, especially with respect to matters involving facilities for persons with developmental disabilities, this issue relates to the services to persons who have challenging behaviors and to the services provided to all residents in order that they learn skills designed to help them function better in their living situation.
Psychopharmacology	In all of its CRIPA work, the Section evaluates the psychoactive medication practices at a facility to ensure that dosages are correct, that the medications actually can treat the diagnosed problem, the medication error rates, whether particular residents are taking many different medications to treat the same problem, and whether residents are experiencing negative side effects without intervention by the facility.
Rehabilitation services	In the Section's CRIPA work involving psychiatric hospitals, nursing homes, and juvenile justice facilities, it evaluates whether the facility is providing adequate services to address the problems that required the resident to be institutionalized in the first place.
Restraints-chemical	In all of its CRIPA work, the Section evaluates whether psychoactive medications are impermissibly being used for the convenience of staff to sedate residents, instead of treating the underlying problem; this issue can also be used when an institution uses mace on residents to subdue them when there was no imminent threat to the resident or to others.
Restraints-physical	In all of its CRIPA work, the Section's evaluates whether a facility is using undue or unnecessary physical restraints on facility residents. Physical restraints include such things as soft leather strips used to tie psychiatric patients to hospital beds; mittens used to cover the hands of a self abusive person; helmets used to prevent a person from banging his or her head on the wall; or take down procedures where staff hold a resident on the resident's stomach on the floor until calm.

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Subject	Description of subject
Sanitation	This issue arises in some of the Section's CRIPA work, particularly in jails and prisons, but can arise in its health care work. The Section investigates issues such as whether laundry is properly cleaned so that it does not spread infection; whether dishwashers are using water hot enough to prevent food borne illnesses from being spread on dishes and utensils; or whether toilets and showers are properly cleaned to prevent the spread of disease.
Special Education (IDEA) ^a	In the Section's CRIPA health care where there are residents under the age of 22 and in its juvenile justice work, the Section investigates whether youth with learning disabilities are being provided education in accordance with the requirement of this federal statute.
Speech/Language Therapy	In its CRIPA cases involving persons with developmental disabilities and in its juvenile justice cases involving youth entitled to related services under the IDEA, the Section investigates whether appropriate individuals are provided adequate services to address disabilities related to the individuals' ability to communicate.
Substance abuse treatment	In its CRIPA psychiatric hospital cases and in its juvenile justice cases, the Section investigates whether residents with substance abuse diagnoses are being provided adequate substance abuse treatment to address their needs.
Suicide prevention	In all of its CRIPA cases and in its juvenile justice cases, the Section investigates whether facilities are adequately protecting residents with suicidal or self harming behaviors from harm, making sure that environments where suicidal residents are housed are free from suicidal hazards and that mental health services are provided in an appropriate and timely manner to prevent harm.
Vocational training	In the Section's matters and cases where there are IDEA violations, the Section investigates whether youth are provided with adequate vocational training, as required by IDEA.
World Trade Center/Pentagon attacks	The Special Litigation Section does not use this issue in its ICM data base. This code was added as a value to all sections of the Civil Rights Division not long after the September 11, 2001 attacks.

Source: Civil Rights Division, Special Litigation Section.

^aRefers to the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et seq.*

Appendix VI: GAO Contact and Staff Acknowledgments

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