

EXAMINING THE POLICIES AND PRIORITIES
OF THE EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION (EEOC) AND THE OFFICE OF
FEDERAL CONTRACT COMPLIANCE
PROGRAMS (OFCCP)

HEARING

BEFORE THE

SUBCOMMITTEE ON CIVIL RIGHTS AND HUMAN
SERVICES

COMMITTEE ON EDUCATION
AND LABOR

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

HEARING HELD IN WASHINGTON, DC, SEPTEMBER 19, 2019

Serial No. 116–39

Printed for the use of the Committee on Education and Labor



Available via the World Wide Web: www.govinfo.gov

or

Committee address: <https://edlabor.house.gov>

U.S. GOVERNMENT PUBLISHING OFFICE

37–857 PDF

WASHINGTON : 2021

COMMITTEE ON EDUCATION AND LABOR

ROBERT C. "BOBBY" SCOTT, Virginia, *Chairman*

Susan A. Davis, California	Virginia Foxx, North Carolina,
Raúl M. Grijalva, Arizona	<i>Ranking Member</i>
Joe Courtney, Connecticut	David P. Roe, Tennessee
Marcia L. Fudge, Ohio	Glenn Thompson, Pennsylvania
Gregorio Kilili Camacho Sablan,	Tim Walberg, Michigan
Northern Mariana Islands	Brett Guthrie, Kentucky
Frederica S. Wilson, Florida	Bradley Byrne, Alabama
Suzanne Bonamici, Oregon	Glenn Grothman, Wisconsin
Mark Takano, California	Elise M. Stefanik, New York
Alma S. Adams, North Carolina	Rick W. Allen, Georgia
Mark DeSaulnier, California	Lloyd Smucker, Pennsylvania
Donald Norcross, New Jersey	Jim Banks, Indiana
Pramila Jayapal, Washington	Mark Walker, North Carolina
Joseph D. Morelle, New York	James Comer, Kentucky
Susan Wild, Pennsylvania	Ben Cline, Virginia
Josh Harder, California	Russ Fulcher, Idaho
Lucy McBath, Georgia	Van Taylor, Texas
Kim Schrier, Washington	Steve Watkins, Kansas
Lauren Underwood, Illinois	Ron Wright, Texas
Jahana Hayes, Connecticut	Daniel Meuser, Pennsylvania
Donna E. Shalala, Florida	William R. Timmons, IV, South Carolina
Andy Levin, Michigan*	Dusty Johnson, South Dakota
Ilhan Omar, Minnesota	Fred Keller, Pennsylvania
David J. Trone, Maryland	
Haley M. Stevens, Michigan	
Susie Lee, Nevada	
Lori Trahan, Massachusetts	
Joaquin Castro, Texas	
* Vice-Chair	

Véronique Pluviose, *Staff Director*
Brandon Renz, *Minority Staff Director*

SUBCOMMITTEE ON CIVIL RIGHTS AND HUMAN SERVICES

SUZANNE BONAMICI, OREGON, *Chairwoman*

Raúl M. Grijalva, Arizona	James Comer, Kentucky,
Marcia L. Fudge, Ohio	<i>Ranking Member</i>
Kim Schrier, Washington	Glenn "GT" Thompson, Pennsylvania
Jahana Hayes, Connecticut	Elise M. Stefanik, New York
David Trone, Maryland	Dusty Johnson, South Dakota
Susie Lee, Nevada	

C O N T E N T S

Hearing held on September 19, 2019	Page 1
Statement of Members:	
Bonamici, Hon. Suzanne, Chairwoman, Subcommittee on Civil Rights and Human Services	1
Prepared statement of	3
Comer, Hon. James, Ranking Member, Subcommittee on Civil Rights and Human Services	4
Prepared statement of	6
Statement of Witnesses:	
Brown Barnes, Ms. Cindy, Director, Education, Workforce, and Income Security, U.S. Government Accountability Office	29
Prepared statement of	31
Dhillon, Ms. Janet, Chair, U.S. Equal Employment Opportunity Commis- sion	19
Prepared statement of	21
Leen, Mr. Craig, Esquire, Director, Office of Federal Contract Compliance Programs, U.S. Department of Labor	7
Prepared statement of	10
Additional Submissions:	
Ms. Brown Barnes:	
Report: Progress Made on GAO Recommendations to Improve Non- discrimination Oversight, but Challenges Remain	70
Table 1: Status of GAO's September 2016 Recommendations to the Office of Federal Contract Compliance Programs	71
Table 2: Status of GAO's November 2017 Recommendations to the Office of Federal Contract Compliance Programs (OFCCP) and the Equal Employment Opportunity Commission (EEOC)	72
Questions submitted for the record by:	
Bonamici, Hon. Suzanne, a Representative in Congress from the State of Oregon	74, 76, 81
Fudge, Hon. Marcia L., a Representative in Congress from the State of Ohio.....	74, 78, 82
Lee, Hon. Susie, a Representative in Congress from the State of Nevada	79
Schrier, Hon. Kim, a Representative in Congress from the State of Washington	78
Scott, Hon. Robert C. "Bobby", a Representative in Congress from the State of Virginia	74, 76, 81
Responses to questions submitted for the record by:	
Ms. Brown Barnes	83
Ms. Dhillon	86
Mr. Leen	107

**EXAMINING THE POLICIES AND PRIORITIES
OF THE EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION (EEOC) AND THE OFFICE OF
FEDERAL CONTRACT COMPLIANCE
PROGRAMS (OFCCP)**

**Thursday, September 19, 2019
House of Representatives,
Committee on Education and Labor,
Subcommittee on Civil Rights and Human Services
Washington, D.C.**

The subcommittees met, pursuant to call, at 2:17 p.m., in Room 2175, Rayburn House Office Building. Hon. Suzanne Bonamici [chairwoman of the subcommittee] presiding.

Present: Representatives Bonamici, Schrier, Hayes, Lee, Comer, Stefanik, and Johnson.

Also Present: Representatives Scott, and Foxx.

Staff Present: Ilana Brunner, General Counsel; Emma Eatman, Press Assistant; Eunice Ikene, Labor Policy Advisor; Ariel Jona, Staff Assistant; Stephanie Lalle, Deputy Communications Director; Jaria Martin, Clerk/Assistant to the Staff Director; Richard Miller, Director of Labor Policy; Max Moore, Office Aid; Janice Nsor, Oversight Counsel; Veronique Pluviose, Staff Director; Carolyn Ronis, Civil Rights Counsel; Banyon Vassar, Deputy Director of Information Technology; Jonathan Walter, Labor Policy Fellow; Courtney Butcher, Minority Director of Member Services and Coalitions; Cate Dillon, Minority Staff Assistant; Rob Green, Minority Director of Workforce Policy; Jeanne Kuehl, Minority Legislative Assistant; John Martin, Minority Workforce Policy Counsel; Hannah Matesic, Minority Director of Operations; Audra McGeorge, Minority Communications Director; Carlton Norwood, Minority Press Secretary; and Ben Ridder, Minority Professional Staff Member.

Chairwoman BONAMICI. The Committee on Education and Labor will come to order. Welcome, everyone. I note for the Subcommittee that Congressman Walberg of Michigan is permitted to participate in today's hearing with the understanding that his questions will come only after all members of the Subcommittee on both sides of the aisle who are present have had an opportunity to question the witnesses.

I note that a quorum is present. The Committee is meeting today in an oversight hearing to hear testimony on examining the policies

and priorities of the Equal Employment Opportunity Commission, EEOC, and the Office of Federal Contract Compliance Programs, OFCCP.

Pursuant to Committee Rule 7c, opening statements are limited to the Chair and Ranking Member. This allows us to hear from the witnesses sooner and provides all members with adequate time to ask questions.

I now recognize myself for the purpose of making an opening statement.

Today's hearing will examine the policies and priorities of the Equal Employment Opportunity Commission, the EEOC, and the Office of Federal Contract Compliance Programs, OFCCP. These are the two primary agencies responsible for combating workplace discrimination and harassment and their oversight is as necessary today as ever before.

Today the median Black worker earns only 75 percent of the wage earned by the median White worker. One in four LGBTQ workers reports experiencing some form of discrimination in the workplace. And more than 60 percent of workers over the age of 45 report seeing or experiencing age discrimination in the workplace.

My home State of Oregon has one of the most rapidly aging populations in the country, and I have heard from workers, particularly those in the technology industry, who believe they have been dismissed from or denied employment because of their age. The technology sector is one of the fastest growing sectors in our economy and the lack of racial, ethnic, and gender diversity is particularly noteworthy. In 2017 the Government Accountability Office found that women hold only 19 percent of senior officer and manager positions. Representation is similarly low for Asian, Hispanic, and Black workers.

Our workforce is becoming increasingly diverse, yet women, people of color, older workers, workers with disability, and LGBTQ workers are still experiencing persistent discrimination in the workplace, including pay disparities, limited opportunities, and often times harassment.

The EEOC was established more than 50 years ago under the Civil Rights Act. It enforces the Federal laws that prohibit workplace discrimination based on race, religion, sex, national origin, age, disability, or genetic information. OFCCP's mission is to make sure Federal contractors and subcontractors promote diversity through affirmative action and enforce anti-discrimination laws for companies receiving taxpayer dollars.

It is the responsibility of both agencies to help protect workers from discrimination. Unfortunately, we have seen both the EEOC and the OFCCP take actions that further the Trump Administration's efforts to undermine and roll back civil rights protections.

We should be doing everything we can to promote fairness in the workplace, but the Trump Administration seems to be taking us backward, not forward in this important effort. The President's fiscal year 2019 budget proposed a 13 percent cut to OFCCP and his fiscal year 2020 budget proposed nearly a \$24 million cut to the EEOC's budget. These drastic proposed cuts send a clear message about the value, or lack thereof, this Administration places on the

protection of civil rights. That message has been reiterated through its policy decisions.

In 2017 the Administration took the extraordinary step of filing an amicus brief in direct opposition to the EEOC in a case regarding the sexual orientation and gender identity protections under Title VII of the Civil Rights Act. The EEOC appears to be adopting the Administration's lax approach to workplace discrimination. The Commission has not filed any new cases of sex-based discrimination related to gender identity or sexual orientation since September of 2017. And although it cleared the notorious case backlog, its ability to do so while employing fewer people raises serious questions about how rapidly cases are being closed. And most recently, many of us were dismayed by EEOC's announcement that it would stop collecting pay data that would help the EEOC and OFCCP staff identify and address pay disparities based on gender, race, and ethnicity.

In 2016 the EEOC stated that the expanded pay data collection was necessary for the enforcement of Title VII, Executive Order 11246 and the Equal Pay Act. The decision to end the collection of pay data is an unprecedented setback for the enforcement of civil rights laws.

With respect to the OFCCP, the Administration's record is not much better. In July, Politico reported that from fiscal year 2017 to fiscal year 2018, the OFCCP conducted on average 977 compliance evaluations per year. That is about one-quarter the rate during the Obama Administration. The same reporting found that the Agency has investigated only 9 percent of the discrimination complaints received, compared to 21 percent under the Obama Administration.

Additionally, in August the Department of Labor issued a new proposal to dramatically broaden the ability of Federal contractors to use religion as a basis to discriminate in hiring. This will open the door to Federal contractors discriminating against LGBTQ individuals, people of color, women, or even those with varying religious beliefs, upending the government's compelling interest in preventing the use of taxpayer funds to perpetuate otherwise unlawful discrimination.

During today's hearing we will explore the rollback of these civil rights protections. And as our workplace becomes increasingly diverse, we need the EEOC and the OFCCP to get back on track.

I want to thank all the witnesses for their time today.

And I yield to Ranking Member Comer for his opening statement.

[The statement of Chairwoman Bonamici follows:]

**Prepared Statement of Hon. Suzanne Bonamici, Chairwoman,
Subcommittee on Civil Rights and Human Services**

Today's hearing will examine the policies and priorities of the Equal Employment Opportunity Commission, or the E-E-O-C, and the Office of Federal Contract Compliance Programs, or the O-F-C-C-P.

These are the two primary agencies responsible for combatting workplace discrimination and harassment, and their oversight is as necessary today as ever before. Today, the median Black worker earns only 75 percent of the wage earned by the median white worker. One in four LGBTQ workers reports experiencing some form of discrimination in the workplace. And more than 60 percent of workers over the age of 45 reporting seeing or experiencing age discrimination in the workplace.

My home state of Oregon has one of the most rapidly aging populations in the country, and I have heard from workers, particularly those in the technology industry, who believe they have been dismissed from or denied employment because of their age. The technology sector is one of the fastest growing sectors of our economy, and the lack of racial, ethnic, and gender diversity is particularly noteworthy. In 2017, the Government Accountability Office found that women hold only 19 percent of senior officer and manager positions. Representation is similarly low for Asian, Hispanic, and Black workers.

Our workforce is becoming increasingly diverse, and yet women, people of color, older workers, workers with disabilities, and LGBTQ workers are still experiencing persistent discrimination in the workplace including, pay disparities, limited opportunities, and harassment.

The EEOC was established more than 50 years ago under the Civil Rights Act. It enforces the federal laws that prohibit workplace discrimination based on race, religion, sex, national origin, age, disability, or genetic information. OFCCP's mission is to protect federal contractors and subcontractors, promote diversity through affirmative action, and enforce anti-discrimination laws for companies receiving taxpayer dollars.

It is the responsibility of both agencies to help protect workers from discrimination. Unfortunately, we have seen both the EEOC and the OFCCP take actions that further the Trump Administration's efforts to undermine and roll back civil rights protections.

We should be doing everything we can to promote fairness in the workplace. But the Trump Administration seems to be taking us backward, not forward, in this important effort. The President's Fiscal Year 2019 budget proposed a 13 percent cut to OFCCP, and his Fiscal Year 2020 budget proposed a nearly \$24 million cut to the EEOC's budget. These drastic cuts send a clear message about the value, or lack thereof, this Administration places on the protection of civil rights, and that message has been reiterated through its policy decisions.

In 2017, the Administration took the extraordinary step of filing an amicus brief in direct opposition to the EEOC in a case regarding the sexual orientation and gender identity protections under Title VII of the Civil Rights Act.

The EEOC appears to be adopting the Administration's lax approach to workplace discrimination. The Commission has not filed any new cases of sex-based discrimination related to gender identity or sexual orientation since September 2017. And although it cleared the notorious case backlog, its ability to do so while employing fewer people raises serious questions about how rapidly cases are being closed.

And most recently, many of us were dismayed by EEOC's announcement that it would stop collecting pay data that would help the EEOC and OFCCP staff identify and address pay disparities based on gender, race, and ethnicity. In 2016, the EEOC stated that the expanded pay data collection was necessary for the enforcement of Title VII, Executive Order 11246, and the Equal Pay Act. The decision to end the collection of pay data is an unrepresented setback for the enforcement of civil rights laws.

With respect to OFCCP, the Administration's record is not much better. In July, Politico reported that from Fiscal Year 2017 to Fiscal Year 2018, the OFCCP conducted, on average, 977 compliance evaluations per year—about one quarter the rate during the Obama Administration. The same reporting found the agency has investigated only nine percent of the discrimination complaints received, compared to 21 percent under the Obama Administration.

Additionally, in August, the Department of Labor issued a new proposal to dramatically broaden the ability of federal contractors to use religion as a basis to discriminate in hiring. This will open the door to federal contractors discriminating against LGBTQ individuals, people of color, women, or even those with varying religious beliefs, upending the government's compelling interest in preventing the use of taxpayer funds to perpetuate otherwise unlawful discrimination.

During today's hearing we will explore the rollback of these civil rights protections. As our workplace becomes increasingly diverse, we need the EEOC and OFCCP to get back on track.

I want to thank all the witnesses for their time today, and I yield to Ranking Member Comer for his opening statement.

Mr. COMER. Yielding? The Committee Republicans have long been committed to policies and laws that empower Americans to achieve success. No one should ever be denied an opportunity be-

cause of unlawful discrimination. That is why there are important protections under Federal law to prevent workplace discrimination.

While we agree our Nation's nondiscrimination laws must be properly enforced, workers and entrepreneurs should not be held back by burdensome regulations, excessive red tape, and overzealous enforcement actions.

Under the Obama Administration, the Equal Employment Opportunity Committee, or EEOC, significantly expanded the employer information report, the EEO-1, to require businesses to collect and report employee pay data. Since 1966 the EEOC has required employers with 100 or more employees to submit demographic data annually. Before the Obama scheme was proposed, pay data was never part of the EEO-1 report, and for good reason. In 2017 the Trump Administration argued this mandate was unnecessarily burdensome and lacked practical utility. Job creators from around the country weighed in and voiced their concerns with this extreme regulatory mandate. Not surprisingly, the EEOC recently estimated that the burden of collecting and reporting EEO-1 information with pay data for 2018 would be \$622 million, a significant increase from EEOC's 2016 estimate of \$53.5 million annually. This led EEOC to conclude that the supposed benefits of collecting and reporting pay data did not outweigh the cost of burdens placed on our Nation's job creators.

But it is not all bad news coming from the EEOC. Currently the Commission, which is also responsible for investigating charges of discrimination against employers, has the lowest backlog of pending charges in over a dozen years. Committee members on both sides of the aisle have long raised concerns about the Agency's backlog, so this is a promising step in the right direction. When American workers turn to the Federal Government for help, they should receive their due process in a timely manner.

And we are seeing more good news from the Department of Labor's Office of Federal Contract Compliance Programs, or OFCCP. OFCCP is tasked with enforcing nondiscrimination and affirmative action requirements for Federal contractors. Religious organizations have been discouraged from seeking Federal contracts. So the OFCCP has proposed a rule that will clarify the protection retained by religious organizations that contract with the Federal Government. If adopted, the rule will encourage more employers of all backgrounds, to participate in the Federal contracting system and reaffirms our commitment to protecting religious freedoms of all Americans.

The purpose of America's nondiscrimination laws and the agencies enforcing them is to give all Americans equal opportunities to succeed. EEOC and OFCCP play important roles in helping to prevent and combat unlawful discrimination, but they should also be encouraged to prioritize policies that are responsible and effective so our Nation's job creators can flourish and America's workplaces can be free from discrimination.

Thank you, Madam Chairman, and I yield back.

[The statement of Mr. Comer follows:]

**Prepared Statement of Hon. James Comer, Ranking Member,
Subcommittee on Civil Rights and Human Services**

“Committee Republicans have long been committed to policies and laws that empower all Americans to achieve success. No one should ever be denied an opportunity because of unlawful discrimination. That is why there are important protections under federal law to prevent workplace discrimination.

While we agree our nation’s nondiscrimination laws must be properly enforced, workers and entrepreneurs shouldn’t be held back by burdensome regulations, excessive red tape, and overzealous enforcement actions.

Under the Obama administration, the Equal Employment Opportunity Commission (EEOC), significantly expanded the Employer Information Report— the EEO-1—to require businesses to collect and report employee pay data. Since 1966, the EEOC has required employers with 100 or more employees to submit demographic data annually. Before the Obama scheme was proposed, pay data was never part of the EEO-1 report, and for good reason. In 2017, the Trump administration argued this mandate was “unnecessarily burdensome” and “lacked practical utility.”

Job creators around the country weighed in and voiced their concerns with this extreme regulatory mandate. Not surprisingly, the EEOC recently estimated that the burden of collecting and reporting EEO-1 information with pay data for 2018 would be \$622 million; a significant increase from EEOC’s 2016 estimate of \$53.5 million annually. This led EEOC to conclude that the supposed benefits of collecting and reporting pay data do not outweigh the costs and burdens placed on our nation’s job creators.

But it’s not all bad news coming from the EEOC. Currently the Commission, which is also responsible for investigating charges of discrimination against employers, has the lowest backlog of pending charges in over a dozen years. Committee Members on both sides of the aisle have long raised concerns about the agency’s backlog, so this is a promising step in the right direction. When American workers turn to the federal government for help, they should receive their due process in a timely manner.

And we are seeing more good news from the Department of Labor’s Office of Federal Contract Compliance Programs (OFCCP). OFCCP is tasked with enforcing non-discrimination and affirmative action requirements for federal contractors. Religious organizations have been discouraged from seeking federal contracts, so the OFCCP has proposed a rule that will clarify the protections retained by religious organizations that contract with the federal government. If adopted, the rule will encourage more employers, of all backgrounds, to participate in the federal contracting system, and reaffirms our commitment to protecting religious freedom for all Americans.

The purpose of America’s nondiscrimination laws, and the agencies enforcing them, is to give all Americans equal opportunities to succeed. EEOC and OFCCP play important roles in helping to prevent and combat unlawful discrimination, but they should also be encouraged to prioritize policies that are responsible and effective so our nation’s job creators can flourish, and America’s workplaces can be free from discrimination. “

Chairwoman BONAMICI. Thank you, Ranking Member Comer. All other Members who wish to insert written statements into the record may do so by submitting them to the Committee Clerk electronically in Microsoft Word format by 5:00 p.m. on October 2, 2019.

I will now introduce our witnesses.

Craig E. Leen serves as the Director of the Office of Federal Contract Compliance Programs at the U.S. Department of Labor. Prior to serving at OFCCP, Mr. Leen was the City Attorney of Coral Gables, Florida, where he was the General Counsel and Chief Legal Officer.

Janet Dhillon is the 16th Chair of the Equal Employment Opportunity Committee. Chair Dhillon was nominated by President Donald J. Trump on June 29, 2017 and sworn in on May 15, 2019. Chair Dhillon practiced law in the private sector for more than 25 years.

Cindy Brown Barnes is a Director in the Government Accountability Office's Education, Workforce, and Income Security team. She oversees the employment and training portfolio. Mrs. Brown Barnes has more than 30 years of service performing financial, forensic, and performance audits of Federal agencies and programs.

Instructions to the witnesses—we appreciate all of you for being here today and we look forward to your testimony.

Let me remind the witnesses that we have read your written statements and they will appear in full in the hearing record. Pursuant to Committee Rule 7d and Committee Practice, each of you is asked to limit your oral presentation to a 5 minute summary of your written statement.

Let me remind the witnesses that pursuant to Title 18 of the U.S. Code Section 1011, it is illegal to knowingly and willfully falsify any statement, representation, writing, document, or material fact presented to Congress or to otherwise conceal or cover up a material fact.

Before you begin your testimony please remember to press the button on the microphone in front of you—I am afraid I didn't set a very good example this morning—so it will turn on and the Members can hear you. As you begin to speak the light in front of you will turn green, after 4 minutes the light will turn yellow to signal that you have 1 minute remaining. When the light turns red your 5 minutes have expired and we ask that you please wrap up.

We will let the entire panel make their presentations before we move to Member questions. When answering a question, please again remember to turn your microphone on.

I will first recognize Director Leen.

**TESTIMONY OF CRAIG LEEN, ESQUIRE, DIRECTOR, OFFICE OF
FEDERAL CONTRACT COMPLIANCE PROGRAMS, U.S. DE-
PARTMENT OF LABOR**

Mr. LEEN. Madam Chair, Mr. Ranking Member, distinguished Members of the Subcommittee, thank you for this opportunity to discuss the critical work of OFCCP. I believe strongly in its mission and I am honored to serve as its Director.

In this Administration, OFCCP is vigorously pursuing its mission to enforce the civil rights protections for Federal contractors in Executive Order 11246, Section 503 of the Rehabilitation Act, and VEVRAA. These authorities touch approximately one-quarter of America's workforce. OFCCP is dedicated to ensuring equal employment opportunity for these workers and protecting against discrimination based on race, color, sex, sexual orientation, gender identity, religion, national origin, disability, and veteran status, as well as enforcing pay transparency.

Indeed, in the past two calendar years, OFCCP recovered a record \$45 million in monetary remedies, significantly more than any previous administration in any 2 calendar years. OFCCP is as efficient and effective as it has ever been.

A few words about myself and my passion for this work. I am the father of a daughter and son who were each diagnosed with autism as young children. In particular, my daughter, Alex, who is 14 years old, has profound autism and a substantial intellectual disability. I have struggled and fought for accommodations for my

daughter for over a decade on an almost daily basis, and through these efforts became involved as an advocate in the disability community. I have seen through this experience the challenges individuals with disabilities face obtaining accommodations and being treated inclusively. Indeed, this experience led me here to OFCCP with the determination to make a positive impact for people with disabilities.

There is much to be done and the numbers are startling. For people with disabilities, the labor force participation rate is approximately 20 percent compared to 60 percent generally. The unemployment rate is typically double the general unemployment rate, and the wage gap is approximately 30 percent. To address these numbers and to ensure that people with disabilities are treated inclusively by contractors, OFCCP is making Section 503 compliance a primary focus of the Agency.

As part of this effort, I have ordered 500 Section 503 focused reviews, which are presently ongoing. These reviews are all on site at corporate headquarters across the country and are a comprehensive look at disability inclusion and nondiscrimination. More Section 503 focused reviews will be included in future scheduling lists.

The Agency has also posted helpful guidance on its website, with training materials and best practices in disability inclusion. If we find violations in these reviews, we will remedy them. We will also encourage contractors to adopt best practices to avoid potential future violations. We then will publish a report detailing our findings to help other contractors and companies generally.

The Rehabilitation Act was the first Federal statute focused on eliminating employment discrimination based on disability status and I am proud that we are making it a central focus of OFCCP's enforcement program.

This autumn, I am ordering 500 VEVRAA focused reviews as to veterans, veterans with disabilities and military spouses, with the list being released around Veteran's Day. We will then do focused reviews on promotions to ensure that all Americans have a fair chance to advance in employment and to address a number of the groups of people that you have talked about previously, women, women of color, people with disabilities, trying to make sure that they can advance in employment.

The Agency is fully committed to enforcement. The most recent scheduling list included 3,500 establishments made up of 2,500 compliance reviews, 500 focused reviews, and 500 compliance checks, the largest list in many years. Of course, enforcement and compliance assistance go hand in hand. The Agency is also focused on providing assistance to stakeholders and contractors through its new online help desk and opinion letter programs.

In providing compliance assistance, OFCCP will continue to focus on providing transparency, certainty, efficiency, and recognition.

I would like to briefly draw attention to our efforts to increase efficiency. OFCCP has addressed its backlog of aged cases, cases over 2 years old, cutting its case rate by a third in the past 2 years. More efficiency leads to the ability to conduct more reviews and help more workers.

I would like to conclude where I began, with people with disabilities. These Americans make up about 20 percent of our population

and have not been fully included in employment for too long. Individuals with disabilities are a significant untapped source of skills and talent and our country would be greatly benefitted by helping ensure their full employment. OFCCP is doing its part, and will continue to do so.

Thank you, Madam Chair.

[The statement of Mr. Leen follows:]

**STATEMENT OF CRAIG E. LEEN
DIRECTOR
OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS
U.S. DEPARTMENT OF LABOR**

BEFORE THE

**SUBCOMMITTEE ON CIVIL RIGHTS AND HUMAN SERVICES
COMMITTEE ON EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES**

September 19, 2019

Chairwoman Bonamici, Ranking Member Comer, and members of the Subcommittee:

Thank you for giving me the opportunity to testify about the Office of Federal Contract Compliance Programs (OFCCP) and the critical work we do to enforce three equal employment opportunity authorities: Executive Order 11246, as amended (Executive Order); Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793 (Section 503); and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212 (VEVRAA). Collectively, these authorities prohibit federal contractors and subcontractors from discriminating in employment because of race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or status as a protected veteran. In addition, contractors and subcontractors are prohibited from discriminating against applicants or employees because they inquire about, discuss, or disclose their compensation or that of others, subject to certain limitations.

OFCCP has jurisdiction over approximately 120,000 contractor establishments and 25,000 firms or parent companies. Given the large size of the contractor and subcontractor population, OFCCP can only evaluate some of them each year. OFCCP carries out the vast majority of its work through neutrally scheduled compliance evaluations, complaint investigations, and proactive compliance assistance and education to contractors. As a result, OFCCP is implementing a comprehensive strategy that promotes compliance for all contractors through enforcement, compliance assistance efforts, compliance verification, and compliance incentives.

1. OFCCP's Four Guiding Principles

Under this Administration, OFCCP developed four principles to guide agency strategies and activities to support a broader compliance strategy and promote compliance across the entire contractor community. These principles support OFCCP in working with federal contractors and subcontractors to ensure full compliance with its civil rights laws, while at the same time requiring contractors in violation of the law to remedy and correct the violation.

- **Certainty** – OFCCP believes it is essential to provide clear and certain guidelines consistent with the rule of law. Certainty ensures that contractors know what OFCCP expects of them so that they can comply. OFCCP provides clear guidance and in return expects cooperation and access in compliance evaluations when it seeks compliance verification.
- **Efficiency** – OFCCP aims to greatly reduce the time it takes to complete compliance evaluations and to process compliance decisions more efficiently. An unduly lengthy compliance evaluation process hurts both employees and employers, as it leaves evaluations open indefinitely without closure, conciliation, or remedies, and the uncertainty that comes with a prolonged audit despite the lack of a clear finding of wrongdoing. For Fiscal Year 2019, my first full year as Director, I am proud to report that OFCCP has completed non-monetary compliance evaluations (*i.e.*, a compliance review in which OFCCP finds no violation that would require a contractor to provide monetary make whole relief) within an average of 318 days, down from an average of 419 days for Fiscal Year 2016 . The agency has reduced the time undertaken for desk audit—the first step in the compliance review process in which OFCCP reviews information and data submitted by the contractor—to 42 days (a reduction of over 70% in less than a year), and is aiming to reduce the current average of five years the agency takes to complete monetary evaluations (*i.e.*, an evaluation that requires the contractor to provide monetary make whole relief, such as lost wages or benefits). In prioritizing the prompt completion of evaluations and in accordance with numerous recommendations made by the Government Accountability Office¹, the agency will be better able to provide efficiency and transparency to the contractor community without sacrificing the thoroughness and quality of evaluations. As compliance is best achieved through a mutual dedication on the part of contractors and OFCCP, prompt completion of evaluations greatly depends on contractor cooperation.
- **Recognition** – OFCCP has announced and is developing incentive programs to recognize high performing contractors, those that go above-and-beyond the requirements of law, for their innovation and success in equal employment opportunity programs. These contractors serve as mentors to their peers. By recognizing best practices, encouraging innovative programs, and supporting peer mentorship, OFCCP will continue facilitating the ability of contractors to increase equal employment opportunities throughout the United States.
- **Transparency** – OFCCP is committed to transparency in its mission, policies, and practices. Transparency is the foundation of a relationship of respect, dialogue, and feedback between OFCCP and its stakeholders that helps the agency improve effectiveness in both compliance assistance and enforcement. Transparency also improves operational consistency and efficiency within the agency, allowing for a more collaborative and efficient approach to compliance evaluations. Furthermore, a

¹ GAO Diversity in the Technology Sector 18-69 Report “Federal Agencies Could Improve Oversight of Equal Employment Opportunity Requirements” (<https://www.gao.gov/assets/690/688460.pdf>) and GAO Equal Employment Opportunity 16-750 Report, “Strengthening Oversight Could Improve Federal Contractor Nondiscrimination Compliance” (<https://www.gao.gov/assets/680/679960.pdf>).

culture of transparency supports contractors' ability to conduct meaningful self-audits that proactively identify and address issues with their employment practices. OFCCP will continue to ensure transparency by maintaining open communication and cooperation with contractors and by minimizing unnecessary burdens through the completion of high quality, efficient compliance evaluations. The agency will also expend considerable effort to resolve violations through conciliation, but will stand ready to vigorously pursue litigation when necessary.

2. OFCCP Record 2-Year Period of Recoveries

The combination of proactive compliance assistance and effective enforcement works hand in hand. Indeed, in the first two years of the present administration, OFCCP recovered more than double the amount of back pay owed to workers and applicants than was collected over the prior two-year period. The first two calendar years of the Trump Administration was the highest two year period for monetary recovery in the history of the agency (\$45M: CY 2017 – 2018) – nearly double any two years in the Obama administration (\$25M: any two years).

3. Major Initiatives

OFCCP expects that the numerous strategies and initiatives it has rolled out over the past two years, including regulatory reform, proposed in FY 2019, will yield improved results and performance in FY 2020. These strategies and initiatives will advance the efficiency of OFCCP's enforcement and compliance activities while reaching the broadest number of workers. These strategies and initiatives promote compliance across the entire contractor community through enforcement, compliance assistance efforts, compliance verification, and compliance incentives.

a. Regulatory Reform

- In FY 2019, OFCCP published a notice of proposed rulemaking (NPRM) to implement legal requirements regarding the exemption for religious organizations (*Implementing Legal Requirements Regarding the Equal Opportunity Clause's Religious-Organization Exemption*). This exemption commits the federal government to respecting the sincerely-held religious beliefs of organizations that contract with the federal government, ensuring that conscience and religious freedom rights are recognized and protected. Besides ensuring that OFCCP regulations are in line with religious exemptions in other federal civil rights laws, recent Supreme Court rulings, and executive orders, protecting conscience and religious freedom rights will lead to a better functioning federal contracting market by encouraging greater participation.
- In FY 2020, OFCCP anticipates publishing an NPRM that would include limiting and otherwise altering the obligations of TRICARE providers covered by OFCCP's authorities. (*Affirmative Action and Nondiscrimination Obligations of Federal Contractors and Subcontractors: TRICARE and Certain Other Healthcare Providers*). This proposed rule will offer beneficial clarification that will improve the health of active service members and veterans and their families. OFCCP is concerned that health care providers are increasingly unwilling to accept federal contracts due to the regulatory

burden they expect to incur – which may result in active service members and veterans and their families having difficulty accessing health care services.

- In FY 2020, OFCCP anticipates publishing an NPRM entitled *Nondiscrimination Obligations of Federal Contractors and Subcontractors: Procedures to Resolve Potential Employment Discrimination* to codify existing procedures that OFCCP uses to resolve potential employment discrimination. This rule will increase clarity and ensure certainty for OFCCP's stakeholders, and enhance the agency's efficiency in remediating employment discrimination.

b. Increased Compliance Evaluations and Efficient Resolution

In FY 2019, OFCCP replaced the agency's Active Case Enforcement (ACE) procedures, which established procedures to replace abbreviated desk audits with full desk audits, with new procedures. These new procedures emphasize that compliance reviews will be governed by OFCCP's Federal Contract Compliance Manual (FCCM) and other directives and initiatives that shorten full desk audits and conciliate violations more efficiently. As a result, OFCCP is expecting to complete 1,500 compliance evaluations in FY 2020, and substantially increase the number of compliance evaluations it conducts annually to 3,000 in FY 2021.

- OFCCP replaced Directive 307 with Directive 2018-05 (Compensation Directive), which provides greater transparency and certainty for contractors by clarifying in a step-by-step manner OFCCP's approach and method for compensation system evaluations. Contractors know to proactively use Pay Analysis Groups (PAGs) in accordance with principles indicated by OFCCP. If contractors apply these principles and create reasonable and sufficiently large PAGs, OFCCP will conduct its analysis using these contractor-provided PAGs, providing much greater certainty for contractors and encouraging proactive compliance that will benefit workers. OFCCP is also prioritizing enforcement matters where there is both statistical and non-statistical evidence of discrimination. [See Directive 2018-05.](#)
- In addition to the compliance reviews OFCCP typically conducts, OFCCP is conducting focused reviews and compliance checks. Focused reviews and compliance checks are types of compliance evaluations that allow OFCCP to target its review toward a specific part of a contractor's compliance. This focus allows for the reviews to conclude swiftly, resulting in cost savings and quicker remedy. In FY 2019, OFCCP is conducting focused reviews for Section 503, and in FY 2020, the agency will conduct focused reviews for VEVRAA and promotion data under the provisions and corresponding regulations of Executive Order 11246. [See Directive 2018-04.](#)
- In FY 2019, OFCCP implemented Early Resolution Procedures (ERP), an initiative that allows OFCCP and contractors with multiple establishments to cooperatively develop corporate-wide compliance with OFCCP's requirements, reducing the length of compliance evaluations through early and efficient resolutions. The efficiency of this program could greatly increase OFCCP's capacity to conduct a greater number of compliance evaluations. [See Directive 2019-02.](#)

- OFCCP has also announced and is in the process of implementing the Voluntary Enterprise-wide Review Program (VERP) which enables the agency to blend its compliance evaluation and compliance assistance activities to work with high-performing contractors toward the mutual goal of sustained, enterprise-wide (corporate-wide) compliance outside of OFCCP's neutral establishment-based scheduling process. VERP is responsive to the Government Accountability Office's (GAO) recommendation for OFCCP to make requisite "changes to the contractor scheduling list development process" so as to focus its enforcement resources "on those contractors with the greatest risk of not following equal employment opportunity and affirmative action requirements." [See GAO Report, "Strengthening Oversight Could Improve Federal Contractor Nondiscrimination Compliance," September 22, 2016.](#) By closely following the GAO's recommendations, OFCCP anticipates more program efficiency, increased findings of violations, and remedies for more workers harmed by discrimination. [See Directive 2019-04.](#)
- In support of the PMA IT Modernization Goal and in response to GAO's recommendation to "develop a mechanism to monitor Affirmative Action Plans (AAP) from covered federal contractors on a regular basis," OFCCP is reviewing how better to ensure that contractors are complying with their AAP obligations. OFCCP is considering a contractor certification mechanism, technology solutions to facilitate AAP compliance, and adjustments to our scheduling and review processes. [See Directive 2018-07.](#)
- OFCCP has many compliance evaluations that take over a year, and a number that take over five years. This hurts employers and employees, as it leaves cases open indefinitely without closure, conciliation, or remedy. This is especially troublesome in cases where no discrimination has been found. OFCCP typically defines an aged case as one that has been open for two or more years. In FY 2019, OFCCP implemented an aged case initiative to significantly reduce the age case rate from the current level of 20% (30% in 2017) to 10% or lower. OFCCP will accomplish its age case rate reduction goals by bringing to resolution cases that are four or more years old. OFCCP will endeavor to promptly resolve or refer to the appropriate agency those aged cases with specific findings attached. For those aged cases with no specific findings, staff will conduct a final review and make a timely determination whether to proceed with or close the case. This policy will best prevent any harm inflicted by holding a company to an audit for months or years on end without any specific findings of wrongdoing. Similarly, our policy of prompt resolution or referral for those cases with specific findings will provide a timely remedy to those workers who have suffered harm. In addition to addressing the issue of aged cases, OFCCP has also revised its procedures such that the time for completing desk audits in newly opened reviews has dramatically improved. Average desk audit times have dropped from 154 day prior to the 9/19/18 transparency directive to 42 days—a reduction of over 70% in less than a year. [See Directive 2018-08.](#)

c. Compliance Assistance and Contractor Education

OFCCP uses contractor education and compliance assistance as vehicles to reach out to a wider array of contractors and establish a culture of self-compliance. In FY 2019, OFCCP implemented

several compliance assistance initiatives to educate contractors about their legal obligations and to provide technical assistance so that they understand applicable laws and strive for self-compliance.

- OFCCP issued several directives and responses to Frequently Asked Questions (FAQ) addressing a wide variety of issues in order to facilitate contractor compliance.
- OFCCP hired an ombudsman to improve transparency in OFCCP compliance evaluation and assistance activities. The ombudsman will improve the efficiency and effectiveness of internal OFCCP operations by providing an independent perspective and improving communication between external stakeholders and OFCCP regional and district offices as necessary. [See Directive 2018-09.](#)
- Recently, OFCCP has joined a decades-long tradition at the Department of Labor by issuing its first opinion letters. Opinion letters provide fact-specific guidance to employers and employees to provide more certainty and clarity about how OFCCP exercises its regulatory authority.
- To further assist contractors, OFCCP expanded the services offered through its Help Desk – which provides compliance assistance to individual callers and inquirers. In FY 2019, OFCCP implemented its Contractor Assistance Portal (CAP). This portal is a place where federal contractors can find answers to questions about their obligations under OFCCP's laws. OFCCP uses the portal to support contractors on their path to compliance, create a new contractor knowledge base, and deliver compliance assistance. Through this portal, contractors can dynamically search existing responses to frequently asked questions, review questions posted by other federal contractors, and post questions to an OFCCP expert. [See Directive 2019-03.](#)
- To further support contractors in their ongoing efforts to ensure equal employment opportunities, in FY 2019, OFCCP began developing a cloud-based learning management system (LMS) to deliver contractor training using a blended methodology (virtual webinars, self-paced learning, and online learning). LMS will ensure efficiency in the use of resources and promote accessibility for all contractors regulated by OFCCP. In FY 2020, OFCCP plans to launch the Contractor Compliance Institute, its virtual training program for federal contractors. The Contractor Compliance Institute will enable OFCCP to provide clearer compliance assistance and guidance so as to better help contractors understand their requirements, thus decreasing contractor noncompliance and increasing the effectiveness of the agency in carrying out its mission.
- OFCCP is updating and making its Federal Contract Compliance Manual more accessible on the agency's website. This effort not only supports OFCCP's transparency initiative, but also increases the efficiency of OFCCP's compliance evaluations and improves the consistency of OFCCP's enforcement and compliance assistance efforts.

4. Focused Reviews

One of OFCCP's primary initiatives this year is focused reviews. The agency issued Directive 2018-04 on August 10, 2018, requiring that a portion of future scheduling lists include focused reviews for each of the three authorities that the OFCCP enforces –Executive Order 11246, Section 503, and VEVRAA. [See Directive 2018-04.](#)

a. Section 503

- The agency began this initiative by scheduling 500 Section 503 focused reviews at federal contractor corporate headquarters.
- Section 503 prohibits federal contractors and subcontractors from discriminating against employees and applicants on the basis of disability, and requires these employers to take affirmative action to recruit, hire, promote, compensate, and retain qualified individuals with disabilities.
- Numerous troubling statistics show why a focus on disability inclusion should be a top priority for OFCCP.
 - The labor participation rate for individuals with disabilities is approximately 20%, less than a third of the general labor participation rate.
 - The unemployment rate for individuals with disabilities is more than double that of the general unemployment rate and has been so for the past several years.
 - A wage gap exists for individuals with disabilities that is by some measures 30 cents or more on the dollar less than that of individuals without disabilities.
 - Compared with people without disabilities, earning inequalities for people with disabilities translate into lower pay and higher poverty rates.
- OFCCP created a Section 503 messaging campaign to announce the new Focused Review landing page, which highlighted Directive 2018-04, best practices, stakeholder resources, responses to FAQs, and other guidance to assist federal contractors. See landing page at <https://www.dol.gov/ofccp/Section503-FocusedReviews/>.
 - OFCCP worked closely with the Office of Disability Employment Policy (ODEP) in developing its leading Section 503 best practices and stakeholder resources, consisting of:
 - A Centralized Accommodation System;
 - Accessible Online Recruiting Tools;
 - CEO Leadership through Correspondence and Video;
 - Coordination with State or Local Vocational Rehabilitation Agencies;
 - A Comprehensive and Welcoming Self-Id Program;
 - Disability Inclusion Programs;
 - Employee Resource Groups; and
 - A Chief Accessibility Officer.
- OFCCP offered extensive compliance assistance to federal contractors nationwide via town hall sessions, agency presentations, direct requests, and other forms of

correspondence. Town hall sessions allow stakeholders to pose questions and make recommendations to OFCCP officials and will continue throughout the course of the fiscal year while the focused reviews are ongoing.

- OFCCP developed comprehensive Section 503 focused review training for OFCCP staff and delivered external Section 503 focused review federal contractor training on September 11, 2019.
- OFCCP is rolling out Section 503 onsite focused reviews in the fall, with an online forum made available to contractors wishing to submit inquiries on September 6, 2019. The agency will launch a series of disability events agency-wide in October.
- A small trained National Office team will participate in a sample set of Section 503 focused reviews in listening mode only to gather and collect information to assist with identifying additional best practices and the development of training and compliance assistance, including a technical assistance guide for stakeholders. During these focused reviews, OFCCP goes onsite and conducts a comprehensive review of the particular authority at issue. For example, in a Section 503 focused review, the compliance officer reviews policies and practices of the contractor related solely to Section 503 compliance. The review includes interviews with managers responsible for equal employment opportunity and Section 503 compliance (such as the ADA coordinator) as well as employees affected by those policies.
- OFCCP is also making the President's initiatives on mental health a material part of its focused reviews. Specifically, OFCCP is focusing on best practices that highlight training resources, accommodation policies, psychiatric treatment, counseling services, suicide prevention hotlines, mental health and wellness campaigns, etc., as it relates to promoting equal employment opportunity for individuals with disabilities. OFCCP intends to provide further information on these issues on its landing page by the end of FY 2019.
- In FY 2019, OFCCP launched the Excellence in Disability Inclusion Award Program, a joint initiative between OFCCP and ODEP, to annually recognize companies not only embracing their obligations under Section 503 of the Rehabilitation Act, but exemplifying best practices for disability inclusion. The application period for this award closes on November 1, 2019.

b. VEVRAA/Executive Order 11246

- The agency intends to issue a scheduling list of 500 VEVRAA focused reviews at federal contractor corporate headquarters in early FY2020.
- VEVRAA prohibits federal contractors and subcontractors from discriminating against employees and applicants on the basis of protected veteran status, and requires these employers to take affirmative action to recruit, hire, promote, compensate, and retain qualified protected veterans.

- In honor of Veterans' Day, OFCCP will issue its first VEVRAA focused review supplemental scheduling list in November 2019 and launch a series of VEVRAA focused events. OFCCP's VEVRAA focused reviews will focus on protected veterans, spouses of protected veterans, and protected veterans with disabilities.
- OFCCP will partner with DOL's Veterans' Employment and Training Service (VETS) to identify best practices and contractor resources, develop a VEVRAA focused review landing page, and offer training and compliance assistance.
- In preparation for the VEVRAA focused reviews, OFCCP held a VEVRAA/Uniformed Services Employment and Reemployment Rights Act (USERRA) town hall (in collaboration with the U.S. Department of Veterans Affairs and VETS) on August 7, 2019, allowing the contractor community to pose questions to officials, as well as interact with others in breakout sessions. Participating individuals provided recommendations for OFCCP that it will consider integrating into its VEVRAA focused reviews.
- In FY 2020, OFCCP will use the same framework to roll out the Executive Order 11246 focused reviews, which will primarily focus on promotions for women to executive level positions within the workplace.

In Conclusion

The United States Department of Labor is committed to preserving the American dream. No American should suffer unlawful discrimination, and every American should be free to work hard and advance on merit without unlawful discrimination.

OFCCP collaborates with federal contractors and subcontractors who seek in good faith to achieve full compliance with their affirmative obligations. Conversely, OFCCP will continue to pursue vigorous enforcement against those contractors who fail to ensure equality of opportunity. This approach has, we believe, reduced discrimination and furthered OFCCP's mission—ensuring contractors' comprehensive and proactive compliance with civil rights requirements and the rule of law.

Chairwoman BONAMICI. Thank you, Mr. Leen.
I now recognize Chair Dhillon for 5 minutes for your testimony.

**TESTIMONY OF JANET DHILLON, CHAIR, U.S. EQUAL
EMPLOYMENT OPPORTUNITY COMMISSION**

Ms. DHILLON. Thank you. Good afternoon, Madam Chair, Ranking Member, and Members of the Subcommittee. Thank you for inviting me to testify here today on behalf of the Equal Employment Opportunity Commission. I serve as Chair of the EEOC, along with Commissioners Victoria Lipnic and Charlotte Burrows, and General Counsel, Sharon Gustafson. I appreciate the opportunity to appear before you to discuss the plans for the Agency and the challenges that we face.

I would like to thank the Committee and the Subcommittee for their support of the EEOC, and I look forward to working with all of you and all Members of Congress to achieve the mission of the EEOC, to prevent and remedy unlawful employment discrimination and advance equal opportunity for all in the workplace.

I have been at the Commission now for just over 4 months, and I am still learning about many aspects of the Commission's role. In my prior professional roles, I have seen the EEOC in action and the positive impact that it has made on workforces across the country. As Chair, I want to build on the Agency's legacy and continue to tackle workplace discrimination while striking a careful balance between enforcement and compliance assistance.

To further build on this legacy, I am starting with several principles which are outlined in the written testimony that I have submitted. I will note a few highlights here.

First, the EEOC must continue to provide excellent customer service. We must be responsive to employees who raise discrimination claims. An employee's decision to bring a charge can be in many instances a courageous act, but an act that can also be very stressful for that individual and their family. We owe it to these employees, as well as everyone else involved, to honor their courage by swiftly addressing their concerns. Too often the sad reality is that justice delayed is justice denied. Evidence can be misplaced, memories will fade. The opportunity to quickly stop and remedy a discriminatory practice can also be lost, potentially to the detriment of other employees. So it is critical that our private sector charges and our Federal complaints hearings, and appeals are handled promptly and fairly. To do so, we must continue to effectively manage our workload across all program offices.

Second, the EEOC will continue to work vigorously to protect vulnerable workers. To that end I have established an internal task force to take a closer look at vulnerable workers and the effectiveness of our current enforcement and education efforts. I have challenged this task force to step back and look at everything fresh and see if there are things that we can do better to maximize our effectiveness with these populations.

Third, the Agency will continue to focus on its use of alternative dispute resolution and conciliation to achieve the Agency's mission. The EEOC's successful and popular mediation program is a means by which we can promptly resolve charges and bring benefits to victims of discrimination. In fiscal year 2018, the Agency conducted

more than 9,000 mediations, which resulted in nearly \$166 million in benefits being paid to victims of employment discrimination. Conciliation efforts are another way for the EEOC to effectively enforce Federal employment antidiscrimination laws. Conciliation is a voluntary, informal, and confidential process that occurs once the EEOC has determined that there is reasonable cause to believe that discrimination has occurred. The Agency has an obligation to attempt to resolve findings of discrimination through conciliation before the Agency considers litigation. And we will remain focused on ensuring that our efforts are fair and taken in good faith.

Finally, litigation is an important tool in our toolbox, but I believe it is a tool of last resort. When it does become necessary, EEOC's litigation will be conducted in accordance with the highest ethical standards.

In conclusion, discrimination threatens equal opportunity, it holds people back from pursuing their dreams, and despite the progress that we have made as a nation, bias in employment still happens far too often. We must continue to work together to bring America to a place where everyone has a fair chance to work, to provide for their families, and to contribute to our economy and our society.

I appreciate the opportunity to appear before you today and I look forward to answering your questions.

[The statement of Ms. Dhillon follows:]

**STATEMENT OF
JANET DHILLON, CHAIR
U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
BEFORE THE
SUBCOMMITTEE ON CIVIL RIGHTS AND HUMAN SERVICES
COMMITTEE ON EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES**

SEPTEMBER 19, 2019

Good afternoon Madam Chair, Ranking Member and Members of the Subcommittee. Thank you for inviting me to testify today on behalf of the Equal Employment Opportunity Commission (EEOC). The EEOC is a five-member commission responsible for the enforcement of federal employment anti-discrimination laws. I serve as the Chair of the EEOC with Commissioners Victoria Lipnic and Charlotte Burrows, and General Counsel Sharon Gustafson. I appreciate the opportunity to appear before you to discuss the plans, challenges and needs of the EEOC.

I would first like to thank you for your past support of the EEOC and I look forward to working with the members of this subcommittee and all members of Congress to advance the mission of the EEOC to prevent and remedy unlawful employment discrimination and advance equal opportunity for all in the workplace.

I believe that equal opportunity in employment is one of our nation's most cherished and hard-fought values. It gives workers, and their families, a fair shot to reach their highest dreams and aspirations. And it clears the way for all of us to contribute to the economic engine and social fabric of our nation.

I have been at the Commission for just over four months and am still learning about many aspects of the Commission's work. In my prior roles, I have seen the EEOC in action – and the positive impact that it has had on workforces across the country. In fact, I am keenly aware that my own career is, in part, a result of the work of legislators passing the Civil Rights Act, the EEOC, and many others in the civil rights community.

In our very own EEOC Headquarters building, there is a display on our wall titled "Breaking Barriers" which celebrates men and women who have triumphed over obstacles, inspired others, and opened doors for future generations. It highlights the lives of pioneers who successfully confronted stereotypes, challenged gender inequalities, and overcame barriers of all kinds, which speaks to the promise of America as a land of equality and opportunity for all. One such pioneer showcased in this display is Sandra Day O'Connor, who became the first female Justice of the United States Supreme Court in 1981, shattering the ultimate "glass ceiling" in the legal profession. She has been a role model for all Americans. Along with the tribute to Supreme Court Justice O'Connor, there is a quote from her as well which reads: "At every step

of the way, I felt the thrill of doing something right for a reason that was good. It was the thrill of building bridges.” I believe all of us here in this room share the sense of feeling thrill in doing something right for a reason that is good.

As Chair of the EEOC I want to build on the agency’s legacy and continue to tackle workplace discrimination, while striking a careful balance between enforcement and compliance assistance. To further build on this legacy, I am starting with several central principles:

Customer Service

We at the EEOC must provide excellent customer service. The EEOC must be responsive to employees who raise discrimination claims. An employee’s decision to bring a charge is, in many instances, a courageous act – and that act can also be stressful for both the individual and his or her family. We owe it to these employees, as well as everyone else involved, to respect that courage by swiftly addressing their concerns.

It is the sad reality that too often, justice delayed is justice denied. Evidence can be misplaced, and memories fade with the passage of time. The opportunity to quickly stop and remedy a discriminatory practice can also be lost – potentially to the detriment of other impacted employees. To ensure quality service, it is critical that private sector charges and federal complaints are handled promptly and fairly – and so we must work to reduce backlogs across all program offices.

Each year, the EEOC handles hundreds of thousands of calls, inquiries, and charges from workers in the private and public sector seeking assistance with potential complaints of discrimination. During fiscal year 2018, the EEOC received over 519,000 calls to the toll-free number and more than 34,600 emails. These contacts led to roughly 200,000 formal inquiries concerning discrimination to our field offices. A continued emphasis on inventory management strategies and priority charge handling procedures, technological enhancements, and hiring front-line staff in fiscal years 2017 and 2018, allowed us to make significant progress managing our pending workload of charges. As a result, in fiscal year 2018 the EEOC reduced the charge workload by 19.5 percent to 49,607, which builds on the 16 percent already realized in fiscal year 2017. In fiscal year 2019, staff are continuing to work diligently to provide quality and prompt service to the public. However, the lengthy government shut-down has had a negative impact on the pending workload: our private sector inventory jumped to 53,281 at the end of the third quarter. EEOC staff is working diligently, but we will not be able to make the same reductions to the inventory we would have expected without the shut-down.

Even as we leverage resources and technology to successfully manage the workload, we are continuing to focus on the quality of our investigations to ensure that we are providing the best possible service to the public. We reassess charges to determine whether the investigation has yielded information about whether further inquiry is needed, if sufficient information is available to support a cause finding, or if there is information that would lead to a conclusion of no reasonable cause that discrimination occurred. In 2015 the Commission also approved a plan for quality enforcement practices (QEP) to provide a consistent, agency-wide framework to enhance the timeliness of charge investigations and to ensure the continued quality of charge

enforcement activity. The QEP sets forth, in a transparent manner, the practices that are expected at different stages of the administrative process to ensure that charges are resolved in a timely and thorough manner.

The EEOC also views the merit factor rate as a key indicator that the reassessment and prioritization of charges does not adversely affect the quality of our investigations, in the private sector. The merit factor rate includes settlements, withdrawals with benefits, successful conciliations and unsuccessful conciliations. In fiscal year 2018 the merit factor rate increased to 15.2 percent of all resolutions, and as of the third quarter of fiscal year 2019, merit factor resolutions are up significantly, with the merit factor rate above 16 percent.

Another example of successfully managing resources to provide better customer service is found in our federal sector hearing and appeals programs. By developing and implementing strategies to increase efficiency, the federal sector hearings program increased its resolutions in fiscal year 2018 by 30.0 percent over fiscal year 2017, allowing it to reduce the pending hearings inventory for the first time - a reduction of 8.6 percent, from 14,885 to 13,612. Addressing the inventory is important to ensure that we are able to focus our resources on cases with merit. In FY 2018 we increased the findings of discrimination by 7% and increased the monetary amount recovered for employees by 16%. At the same time, we continued to review and evaluate files to ensure that there was no drop in the quality of hearings. We also developed quality assurance metrics, which are being implemented this fiscal year, so that we are able to assess and measure the quality of hearings going forward.

During fiscal year 2018, the EEOC implemented vigorous case management strategies in its federal sector appellate program, reducing the overall pending inventory that will carry-over to next fiscal year by almost 20 percent. The EEOC also reduced the age of the pending appellate inventory by 14 percent, from 363 days in fiscal year 2017 to 313 at the end of fiscal year 2018. The EEOC's adjudication efforts on appeal resulted in a 43 percent reduction in the pending cases that were more than 500 days old. At the same time, more than 46 percent of the total resolutions were issued within 180 days of their receipt.

While the government shutdown impacted our agency, the EEOC has made it a top priority to ameliorate the effects of the shutdown to the greatest extent possible. I commend all EEOC employees for their hard work on this initiative.

Leverage Technology

The EEOC has continued to embrace and leverage technology to improve our services – we have a powerful set of tools available to us. The EEOC continues to invest in and leverage technology to transform the way we do our work, including making our processes more transparent and providing information to our stakeholders faster – electronically, online, and on demand. The EEOC has significantly increased the public's access to the agency's services through the launch of online systems for employees and employers involved in discrimination disputes. These secure systems give individuals and employers 24/7 access to submit inquiries, schedule interview appointments, check the status of charges, upload and download charge

documents, make Freedom of Information Act (FOIA) requests, and receive notices from the EEOC about investigative actions on charges.

Online access through the agency's inquiry and appointment system launched in November 2017 and resulted in a 30 percent increase in the number of individuals submitting inquiries about potential discrimination charges in fiscal year 2018. Since its launch, more than 46,700 individuals have scheduled intake interviews with EEOC staff. Providing online capabilities to employees, employers, and the EEOC's staff enables faster communications and actions that save time and resources for the public we serve and for the agency.

During fiscal year 2018, the EEOC expanded its digital services to our state and local Fair Employment Practices Agencies (FEPA) partners to facilitate sharing notices of dual-filed charges, and to federal agencies to streamline the systems for hearings and appeals, bringing efficiencies to the process and savings to other federal agencies. I was very pleased earlier this year to announce the most recent expansion of the EEOC Public Portal, which allows federal employees and applicants to file and manage requests for hearings and appeals of their federal EEO complaints. It also invites parties to pursue Alternative Dispute Resolution at the hearing stage. These enhanced system capabilities, in conjunction with online FAQs and user guides on our public EEOC website, improve the efficiency and transparency of the EEOC's federal hearings and appeals process. Making these critical technology investments in support of our mission will accelerate productivity across our program areas.

It is also important to note that our major mission essential system, the Integrated Mission System (IMS), is outdated and the services it provides must be modernized. The IMS is so critical to EEOC's mission, and EEOC is looking for pathways to accelerate modernization. We have submitted an application to the Technology Modernization Fund (TMF) that is being considered by the Board. If approved by the Board, this infusion of funds, tied to EEOC's thoughtful execution strategy, will jump start this critical effort. The TMF funding would be matched with sufficient EEOC development and modernization funds in fiscal year 2020 and 2021 in order to meet EEOC Strategic Plan Goals and modernize this mission essential system. If not approved for TMF funding, other alternatives will be required or progress will be delayed.

Outreach and Education

Critically important to our mission is outreach and education. I believe that most employers want to be law-abiding. The EEOC has strengthened our efforts to educate employees, applicants and employers, many in collaboration with our enforcement partners in federal, state, and local government as well as with employer, employee, and academic communities. This allows the agency to maximize the impact of collective knowledge and resources to educate the public on legal rights and responsibilities and continue to build on the EEOC's work of providing tools to employers that allow them to comply with the law.

In fiscal year 2018, the EEOC conducted over 3,900 outreach events reaching 398,665 individuals nationwide. Notwithstanding the government shutdown, we anticipate similar outreach levels in fiscal year 2019. The EEOC has focused on outreach to small and new businesses, especially those lacking the resources to maintain full-time professional human

resources staff. EEOC staff conducted 620 no-cost outreach events directed toward small businesses in fiscal year 2018, reaching 42,619 small business representatives. Working with the Small Business Administration's (SBA) Office of the National Ombudsman, the EEOC participated in several Round Table discussions across the country with small businesses and organizations that represent small businesses, as well as a Regulatory Fairness Hearing held in Washington, DC. The EEOC launched an online Small Business Resource Center at the end of fiscal year 2016 and continues to make online access to information from us easier to understand, and more directly responsive to the real-life issues that small businesses face in the workplace.

The SBA Ombudsman's Report grades all federal agencies on their responsiveness to small business concerns and their compliance with the Small Business Regulatory Enforcement Fairness Act of 1996. The Ombudsman's report for fiscal year 2017, the most recent report available, gives the EEOC an "A" rating across-the-board, the highest rating possible. In addition, the SBA highlighted the EEOC's Small Business Resource Center as an example of agency compliance assistance initiatives in the fiscal year 2017 report. I am proud to note that over the years that the Ombudsman has issued the report, EEOC has consistently received an "A," reflecting the SBA's recognition of the EEOC's strong commitment to assist this important sector of the economy.

Rather than solely addressing persistent problems after they occur, the agency is also examining the underlying causes of discriminatory patterns and focusing on developing solutions to the most complex problems. Building active and engaged partnerships to develop innovative solutions to the workplace challenges facing many employers and employees today is one way to do this. The Select Task Force on the Study of Harassment in the Workplace is a prime example of this effort as it brought together employers, workers' advocates, academics, and others experienced with harassment issues to identify underlying problems leading to harassment claims and effective strategies for preventing and remedying workplace harassment.

In fiscal year 2018, EEOC staff conducted 1,513 free outreach events involving harassment, reaching 151,671 attendees. A total of 949 of these events covered the topic of sexual harassment and were attended by 96,735 participants. Through the 3rd Quarter of fiscal year 2019, EEOC staff have conducted 436 events focusing on sexual harassment and reached 81,248 participants. Additionally, in fiscal year 2019, Office of Federal Operations staff have provided Respectful Workplace training to approximately 2,000 federal employees, and there are at least 43 more sessions scheduled for the remainder of the fiscal year.

Clear and Accurate Guidance

Important tools in educating employers, as well as employees, are the regulations, guidance and technical assistance documents produced by the Commission. The EEOC works with hundreds of thousands of employees and employers every year to educate them on their legal rights and responsibilities, and it is important that the information available to our stakeholders is clear, accurate, and does not cause confusion.

The EEOC is currently undertaking an effort to eliminate obsolete guidance that may cause confusion. Shortly after joining the agency, I established a working group to review

regulations, guidance and technical assistance documents and address those that have been superseded by legislation, court decisions, or newer guidance, as well as those that involve issues that rarely arise and make guidance unnecessary.

We are working diligently to implement this process. After reviewing EEOC's regulations, guidance, and technical assistance documents and compiling a list of documents that meet the criteria, the material will be circulated internally to EEOC office directors, as well as Commissioners and the General Counsel, for comment. Commissioners will then vote to repeal guidance documents that were originally adopted by Commission vote. Technical assistance documents, which were not approved by Commission vote, will be withdrawn after notice to the Commission. I am committed to keeping you updated about this process and letting you know when you can expect to start to see outdated guidance rescinded.

Along the same lines, a priority of mine is to harmonize our guidance with other federal agencies so that employers have a clear understanding of their obligations. If we are holding employers accountable for their obligations under the laws we enforce, those obligations need to be clear across the federal government. I am committed to working with my federal agency partners to work through any conflicts that may arise, and keeping you informed about the results of those discussions.

Finally, and importantly, when the EEOC is called upon to provide guidance or take regulatory action, we will do so in a way that is transparent and provides opportunities for all stakeholders to provide input. Honest, vigorous exchanges of views, sharing of best practices, and honest debate will result in a better product, which benefits all involved. We will also ensure that we act in compliance with the Administrative Procedure Act.

Vulnerable Workers

Under my leadership the EEOC will continue to work vigorously to protect vulnerable workers. I have established an intra-agency workgroup to target our efforts to educate vulnerable workers about their rights and increase outreach efforts. The workgroup will examine who we consider a vulnerable worker, as well as how best to reach those populations. Pursuant to the President's Interagency Task Force to Monitor and Combat Trafficking in Persons, we will also work to increase awareness of and reduce human trafficking.

The EEOC has been successful in reaching vulnerable workers. In fiscal year 2018, approximately 34 percent of the outreach conducted was to vulnerable communities. Immigrant and farm worker communities were a priority for this outreach. Addressing the scourge of human trafficking, the EEOC staff worked with governmental and non-governmental organizations, to raise awareness and address trafficking. Staff members traveled to states and communities where no EEOC office is located or where certain communities are reluctant to come forward to complain of employment discrimination, and partnered with local community organizations, consulates, and other entities to reach these workers. For example, 1,320 events targeted toward vulnerable and underserved communities reached 108,174 individuals in fiscal year 2018.

While vulnerable workers may be harder to reach, and cases may be more difficult to investigate, resources will be allocated appropriately to support this important effort.

Alternative Dispute Resolution and Conciliation

Alternative Dispute Resolution (ADR) and conciliation are vital tools in achieving the agency's mission. Successful settlement or conciliation avoids time-consuming, expensive, and stressful litigation. It truly is a win-win result. Accordingly, these processes must always be conducted in good faith.

The EEOC's mediation program began 20 years ago and has had great success. In fiscal year 2018 the agency conducted more than 9,000 mediations and was successful in more than 6,700. Importantly, those mediations were completed in an average of 99 days and resulted in a total of \$165.8 million in benefits – quickly resolving charges that would otherwise use investigatory resources and providing benefits for victims of discrimination.

Additionally, the program continues to receive positive feedback from participants. Based on the responses to an annual survey of participants in our mediation program, charging parties (job applicants, employees, and former employees) and employers continue to express their confidence in the level of service provided under this process. In fiscal year 2018, 97.2 percent of all participants indicated that they would utilize the mediation process in a future charge filed with the EEOC, and we anticipate similar results from our fiscal year 2019 survey.

The EEOC's conciliation efforts are another vital means to promote voluntary compliance with federal employment discrimination laws. If the EEOC determines there is reasonable cause to believe discrimination has occurred, the agency invites the parties to join the EEOC in seeking to settle the charge through an informal and confidential process known as conciliation. Conciliation is voluntary for employers, and the parties must agree to the resolution. The EEOC has an obligation to attempt to resolve findings of discrimination on charges through conciliation before the agency considers the matter for litigation.

The agency has continued to emphasize the importance of conciliation, statutory requirements, and how to effectively reach meaningful resolutions which include appropriate targeted equitable relief. The EEOC has worked to conciliate a greater percentage of cases than at any time in recent history - with successful conciliations rising from 27 percent in fiscal year 2010 to 44 percent in fiscal years 2015 and 2016, 40 percent in fiscal year 2017 and 41 percent in fiscal year 2018. The success rate for conciliation of systemic charges was approximately 46 percent in fiscal year 2018.

Litigation as a Last Resort

I believe that litigation truly is a last resort. When it does become necessary, the EEOC's litigation will be conducted in accordance with the highest ethical standards. The EEOC is the preeminent federal agency focused on workplace discrimination issues – its work in the courtroom should be consistently excellent and demonstrate respect for both the tribunal and other litigants.

The EEOC's litigation attorneys should have access to the resources needed to conduct litigation to these high standards and should be subject to careful oversight and given appropriate guidance. Courts and others in the litigation process should recognize the EEOC as an honest broker, whose advocacy is above reproach, whose motives are transparent, and whose approach is always constructive.

The Commission has long emphasized that the litigation program should focus on cases that have the potential to impact multiple workplaces or large groups of applicants or employees, emerging issues where the agency's expertise may be especially critical to achieving a successful outcome, and individual cases where broader law enforcement goals can be advanced with the successful resolution of the case. In addition, the litigation program focuses on population groups and geographic locations where private enforcement of anti-discrimination laws is rare, and individuals have minimal access to the legal system to protect their rights.

The EEOC has been successful in ensuring that the great majority of the cases selected for litigation raise priority issues, including discriminatory barriers to employment (chiefly recruitment and hiring practices), patterns of harassment, protecting the rights of immigrants and other vulnerable populations.

The Commission's resource investments in its litigation program have paid dividends. Since fiscal year 2010, the EEOC has averaged a favorable outcome in over 90 percent of its suits.

Conclusion

As we all see in the work we do, discrimination threatens equal opportunity, holding people back from pursuing their dreams. And, despite the progress we've made as a nation, bias in employment still happens too frequently. This comes at a high cost to all of us – in economic advancement and untapped talent – and it could hinder our ability to find solutions to our most pressing problems. We must continue to work together toward an America where everyone has a fair chance to work, provide for their family, and contribute to our economy and our society.

Thank you for the opportunity to highlight my priorities and the work of the EEOC. I look forward to working with you in the future to achieve EEOC's mission to remedy and prevent employment discrimination and create equal employment opportunity for all in the American workplace. I am happy to answer any questions that you may have.

Chairwoman BONAMICI. Thank you for your testimony, Chair Dhillon.

I now recognize Miss Brown Barnes for 5 minutes for your testimony.

TESTIMONY OF CINDY BROWN BARNES, DIRECTOR, EDUCATION, WORKFORCE, AND INCOME SECURITY, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Ms. BROWN BARNES. Chair Bonamici, Senior Republican Comer, and Members of the Subcommittee, I am pleased to be here today to discuss our prior work across three GAO reports, examining the challenges facing the Federal Government, and overseeing employers' compliance with equal employment opportunity requirements.

Today I will discuss the progress OFCCP and EEOC have made in implementing 12 recommendations from our 2016 report on strengthening OFCCP's oversight of Federal contractors and our 2017 report to increase equal employment opportunity in the technology sector. I will also discuss the exemptions sought by faith-based grantees from nondiscrimination laws related to religious based hiring.

In our September 2016 report on OFCCP, we found that weaknesses in OFCCP's compliance evaluation process limited its ability to ensure that Federal contractors comply with nondiscrimination provisions. We made six recommendations, as you can see from the table on the screen. OFCCP has taken action to fully implement the first three of our recommendations; however, OFCCP has not fully implemented the remaining recommendations, four, five, and six on the screen.

I want to highlight recommendation number five, involving monitoring of the affirmative action plans. We found that OFCCP relies significantly on voluntary compliance by Federal contractors, and this approach cannot ensure that contractors were complying with basic requirements to develop and maintain an AAP. An AAP is a management tool that includes practical steps to address underrepresentation of women and minorities, such as goals for expanding employment opportunities to these groups, and instances in which they are underrepresented.

OFCCP's regulations generally that cover contractors prepare and maintain an AAP within 120 days of contract commencement and update it annually. At the time of our review, we found that OFCCP had no process for ensuring that establishment met these requirements.

OFCCP has taken steps to address this recommendation, such as developing a web-based portal to allow contractors to upload their AAPs to assist OFCCP in reviewing and prioritizing resources, among other actions. However, OFCCP needs to obtain OMB approval to fully implement this recommendation.

In our November 2017 report on diversity in the technology sector, we found that weaknesses in EEOC's and OFCCP's oversight efforts impact their ability to ensure nondiscrimination and equal employment opportunity in the technology sector. Specifically, we found that while the estimated percentage of minority technology workers had increased from 2005 to 2015, there have been statis-

tically significant increases in the number of Asian and Hispanic workers, but no growth either for females or black workers.

As a result of our work, we made five recommendations to OFCCP and one to EEOC, as you can see from table 2 on the screen. Of the five recommendations made to OFCCP, the Agency has fully implemented the one focused on requiring contractors to desegregate demographic data for the purpose of setting placement goals in the AAP.

I want to highlight the recommendation from EEOC at the bottom of the table. EEOC has taken some action towards addressing missing industry code data, which has broader implications in the technology sector. However, EEOC has not fully implemented this recommendation.

EEOC cannot analyze charge data by industry to help identify investigation and outreach priorities. As a part of an effort to overhaul its data system, EEOC has begun developing an employer master list that will provide a source of employer information, including industry codes. This will enable EEOC to focus on industries with EEO disparities.

In our October 2017 report on faith-based grantees, we found that few grantees sought an exemption based on the Religious Freedom Restoration Act. We found that from 2007 through 2015, 9 of the 117 potentially faith-based organizations certified that they were exempt from nondiscrimination laws related to religious based hiring.

Thank you. This concludes my prepared statement.
[The statement of Ms. Brown Barnes follows:]



United States Government Accountability Office

Testimony

Before the Subcommittee on Civil Rights
and Human Resources, Committee on
Education and Labor, House of
Representatives

For Release on Delivery
Expected at 2:00 p.m. ET
Thursday, September 19, 2019

EQUAL EMPLOYMENT OPPORTUNITY

Progress Made on GAO Recommendations to Improve Nondiscrimination Oversight, but Challenges Remain

Statement of Cindy Brown Barnes,
Director, Education Workforce and Income Security

Chairwoman Bonamici, Senior Republican Comer, and Members of the Subcommittee:

I am pleased to be here today to discuss the challenges facing the federal government in conducting oversight to ensure that employers meet federal equal employment opportunity requirements. Various federal laws, executive orders, and regulations promote equal employment opportunity by prohibiting employers from discriminating in employment on the basis of race and gender, among other things, and generally require companies contracting with the federal government to comply with affirmative action and other equal employment opportunity provisions. The U.S. Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) are the primary federal agencies that enforce these requirements.

My statement today will focus on three GAO reports examining equal employment opportunity. In particular, I will be discussing our findings and agencies' progress in addressing our recommendations from a September 2016 report in which we examined OFCCP's oversight of federal contractor compliance with nondiscrimination requirements,¹ and a November 2017 report in which we examined OFCCP and EEOC's efforts to increase equal employment opportunity and affirmative action in the technology sector.² I will also be discussing findings from an October 2017 report in which we examined the number of faith-based grantees who sought exemptions from nondiscrimination laws related to religious-based hiring and recent action by OFCCP to clarify the exemption—we made no recommendations in that report.³

To conduct the work for these three reports, we analyzed program data and reviewed relevant federal laws, executive orders, regulations and guidance. We also interviewed agency officials, academics, and representatives from employers, as well as civil rights and advocacy organizations. To update the status of recommendations from our

¹ GAO, *Equal Employment Opportunity: Strengthening Oversight Could Improve Federal Contractor Nondiscrimination Compliance*, GAO-16-750 (Washington, D.C.: Sept. 22, 2016).

² GAO, *Diversity in the Technology Sector: Federal Agencies Could Improve Oversight of Equal Employment Opportunity Requirements*, GAO-18-69 (Washington, D.C.: Nov. 16, 2017).

³ GAO, *Faith-Based Grantees Few Have Sought Exemptions from Nondiscrimination Laws Related to Religious-Based Hiring*, GAO-18-164 (Washington, D.C.: Oct. 5, 2017).

September 2016 and November 2017 reports, we reviewed agency reports on their related actions, publicly available information on related new or revised agency policies and procedures and interviewed agency officials. More detailed information on our objectives, scope, and methodology for the three reports discussed in this statement can be found in the issued reports.

We performed the work on which this statement is based in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Federal Requirements Related to Equal Employment Opportunity and Affirmative Action

Private companies are generally prohibited by federal law from discriminating in employment on the basis of race, color, religion, sex, national origin, age, and disability status.⁴ Additionally, federal contractors and subcontractors are generally required to take affirmative action to ensure that all applicants and employees are treated without regard to race, sex, color, religion, national origin, sexual orientation, and gender identity, and to employ or advance in employment qualified individuals

⁴ Title VII of the Civil Rights Act of 1964 (Title VII) prohibits employers with 15 or more employees from discriminating in employment on the basis of race, color, religion, sex, or national origin. 42 U.S.C. §§ 2000e(b), 2000e-2(a). The Age Discrimination in Employment Act of 1967 prohibits employers from discriminating in employment on the basis of age, defined as being age 40 and over. 29 U.S.C. §§ 623, 631(a). The Americans with Disabilities Act of 1990 prohibits employers with 15 or more employees from discriminating in employment on the basis of disability. 42 U.S.C. §§ 12111(5), 12112. Whether a specific employer is covered under these statutes depends on whether the employer meets the requirements under each statute, as well as applicable agency regulations and case law.

	<p>with disabilities and qualified covered veterans.⁵ EEOC enforces federal antidiscrimination laws, and OFCCP enforces affirmative action and nondiscrimination requirements for federal contractors. EEOC and OFCCP share some enforcement activities and have established a memorandum of understanding (MOU) to minimize any duplication of effort.</p>
U.S. Equal Employment Opportunity Commission	<p>The EEOC enforces Title VII of the Civil Rights Act of 1964, as amended, which prohibits employment discrimination on the basis of race, color, religion, sex, or national origin. EEOC also is responsible for enforcing other federal laws that prohibit discrimination in employment based on age and disability, among other characteristics.⁶ EEOC investigates charges of</p> <p>employment discrimination from the public, litigates major cases, and conducts outreach to prevent discrimination by educating employers and workers. EEOC also pursues a limited number of cases each year designed to combat systemic discrimination, defined by the agency as patterns or practices where the alleged discrimination presented by a complainant</p> <p>has a broad impact on an industry, profession, company, or geographic location. EEOC can also initiate a systemic investigation under Title VII with the approval of an EEOC commissioner provided the commissioner finds there is a reasonable basis for the investigation.⁷ In fiscal year 2018,</p>

⁵ Executive Order 11246 prohibits covered federal contractors from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin. It also requires these contractors to take affirmative action to ensure that equal employment opportunity is provided in employment without regard to these protected characteristics. Section 503 of the Rehabilitation Act of 1973 (Section 503) requires covered federal contractors and subcontractors to take affirmative action to employ and advance in employment qualified individuals with disabilities. 29 U.S.C. § 793. The Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA) requires covered contractors to take affirmative action to employ and advance in employment qualified covered veterans. 38 U.S.C. § 4212(a). Whether a particular contractor is subject to Executive Order 11246, Section 503, or VEVRAA, and if so, what specific requirements apply, may vary depending on factors such as the size of the contract, the type of contract, and the number of employees who work for a contractor.

⁶ For example, EEOC enforces the Age Discrimination in Employment Act of 1967 and Title I of the Americans with Disabilities Act of 1990, among other laws.

⁷ 42 U.S.C. § 2000e-5(b), 29 C.F.R. § 1601.11.

EEOC resolved about 90,558 charges of discrimination, secured more than \$505 million for victims of discrimination, and filed 199 lawsuits.⁸

**Office of Federal Contract
Compliance Programs**

The OFCCP within DOL is responsible for ensuring that nearly 200,000 federal contractor establishments comply with federal nondiscrimination and affirmative action requirements. Under Executive Order 11246 and other federal laws and regulations, covered federal contractors and subcontractors are prohibited from discriminating in employment on the

basis of race, color, religion, sex, sexual orientation, gender identity, or national origin and are required to take affirmative action to help ensure that all applicants and employees are treated without regard to these factors. OFCCP also enforces Section 503, and the affirmative action provisions of VEVRAA, which require covered contractors to take affirmative action to employ and advance in employment qualified individuals with disabilities and covered veterans, respectively.

OFCCP uses two approaches to ensure compliance with federal equal employment and affirmative action requirements—enforcement and compliance assistance. OFCCP's enforcement program primarily involves conducting evaluations of contractors' compliance with federal requirements and these evaluations represent the preponderance of agency activity. In 2015, OFCCP compliance officers conducted 2,345 compliance evaluations, which represented about 2 percent of federal contractor establishments in its jurisdiction. OFCCP has since significantly decreased the number of compliance evaluations it conducts. In fiscal year 2018, OFCCP completed 812 compliance evaluations, which is 65 percent fewer than in fiscal year 2015.⁹ Since fiscal year 2016, OFCCP has adopted a strategy of conducting fewer compliance evaluations and prioritizing larger systemic cases. Since OFCCP can only evaluate a small fraction of federal contractors each year, the agency also carries out compliance assistance efforts, including issuing guidance, conducting outreach concerning nondiscrimination requirements, and providing compliance assistance to contractors.

⁸ EEOC reported it resolved 97,443 charges and 139 lawsuits in fiscal year 2016.

⁹ These evaluations resulted in \$16.4 million in monetary remedies for applicants and employees subject to systemic employment discrimination in hiring, compensation, and other employment practices. This was the third highest year on record, according to OFCCP.

OFCCP's regulations generally require that covered contractors prepare and maintain an affirmative action program (AAP).¹⁰ Contractors must also comply with certain recordkeeping requirements; for example, under Executive Order 11246, covered contractors are required to maintain records pertaining to hiring, promotion, layoff or termination, rates of pay, and applications, among other records.¹¹ Under OFCCP's Executive Order 11246 regulations, an AAP is a management tool that is designed to ensure equal employment opportunity, with an underlying premise that the gender, racial, and ethnic makeup of a contractor's workforce should be representative of the labor pools from which the contractor recruits and selects.¹² An AAP must also include practical steps to address underrepresentation of women and minorities, such as goals for expanding employment opportunities to these groups in instances in which they are underrepresented.¹³ Companies must create an AAP for each business establishment—generally, a physical facility or unit that produces goods or services, such as a factory, office, or store for the federal contractor.¹⁴

**Religious Freedom
Restoration Act of 1993
(RFRA)**

Each year the federal government provides billions of dollars to organizations that provide social services to needy families and individuals. Some of these funds are provided through competitive grants to faith-based organizations (FBO), which may include religious groups, like churches, mosques, synagogues, and temples, or charitable organizations affiliated with religious groups.

¹⁰ Generally, non-construction contractors that have 50 or more employees and a contract above \$50,000 are required to prepare an AAP within 120 days of the commencement of the contract, and annually update the AAP. Under Executive Order 11246 and Section 503, this threshold is \$50,000. Under VEVRAA, all contractors with 50 or more employees that are otherwise covered under VEVRAA must prepare and maintain an AAP. See generally 41 C.F.R. §§ 60-2.1 to 60-2.35 (implementing Executive Order 11246 requirements), 41 C.F.R. §§ 60-300.40 to 60-300.45 (implementing VEVRAA requirements), and 41 C.F.R. 60-741.40 to 60-741.47 (implementing Section 503 requirements).

¹¹ 41 C.F.R. § 60-1.12.

¹² 41 C.F.R. § 60-2.10(a)(1).

¹³ 41 C.F.R. § 60-2.10(a)(1).

¹⁴ 41 C.F.R. § 60-2.1(b). A contractor must develop and maintain a written AAP for each of its establishments if it has 50 or more employees.

In some instances, FBOs believe it is necessary to hire only individuals who share their religious beliefs in order to carry out their mission. Title VII of the Civil Rights Act of 1964 generally prohibits employment discrimination based on religion.¹⁵ However, section 702(a) of the Act exempts FBOs with respect to basing employment decisions on religion, thereby permitting FBOs to intentionally, and exclusively, hire individuals who share their religious beliefs.¹⁶ In light of this exemption, FBOs that receive federal grant funding or that contract with the federal government have also generally been permitted to make employment decisions based on religion.¹⁷ OFCCP is responsible for ensuring that federal contractors comply with federal nondiscrimination requirements and provides compliance assistance to the entities it oversees, including guidance related to this exemption.

There are, however, certain federal grant programs that are subject to statutory restrictions that prohibit recipients from using grant funding, in whole or in part, to discriminate or deny employment on the basis of religion, among other factors. In June 2007, the Department of Justice's Office of Legal Counsel issued an opinion in a particular case stating that the Religious Freedom Restoration Act of 1993 (RFRA) could be reasonably construed to require an agency to exempt FBOs from statutory requirements that restrict federal grantees from hiring on the basis of religion. Pursuant to that opinion, and the RFRA, certain federal agencies have permitted FBOs that receive funding under a program that is subject to a statutory restriction on religious-based hiring to certify that they are exempt from such restrictions, allowing these FBOs to engage in

¹⁵ Pub. L. No. 88-352, tit. VII, 78 Stat. 253, 255 (codified at 42 U.S.C. §§ 2000e et seq.).

¹⁶ See 42 U.S.C. § 2000e-1(a).

¹⁷ Some agency regulations explicitly state that a religious organization's exemption from the federal prohibition on employment discrimination on the basis of religion in section 702(a) of the Civil Rights Act of 1964 is not forfeited when the organization receives financial assistance from the government. See, e.g., 24 C.F.R. § 5.109(i) (HUD); 28 C.F.R. § 38.5(e) (DOJ); 29 C.F.R. § 2.37 (DOL); 34 C.F.R. § 75.52(g) (Education); 45 C.F.R. § 87.3(f) (HHS); see also 41 C.F.R. § 60-1.5(a)(5) (providing that federal contractors and subcontractors that are religious entities are exempt from the federal prohibition on employment discrimination on the basis of religion). FBOs that receive federal funding are subject to other religious nondiscrimination requirements. For example, FBOs may not use funds for explicitly religious activities such as worship, prayer, or proselytizing, and all services offered by FBOs receiving federal funds must be provided to qualified beneficiaries regardless of the religious or nonreligious belief of the individuals. See, e.g., 24 C.F.R. § 578.87; 28 C.F.R. § 38.5(a); 29 C.F.R. § 2.33; 42 C.F.R. § 54a.4; 45 C.F.R. § 87.3.

religious-based hiring, provided that they do not discriminate on other bases.

OFCCP and EEOC Could Improve the Effectiveness of their Processes to Ensure Employers Meet Equal Employment Opportunity Requirements

OFCCP and EEOC face challenges in conducting oversight efforts to ensure that employers meet applicable federal equal employment opportunity requirements. For example, in our September 2016 report, we found several shortcomings that limited OFCCP's oversight efforts, including weaknesses in OFCCP's compliance evaluation selection process, its reliance on voluntary compliance, and the lack of staff training. Also, in our November 2017 report, we found that OFCCP's planned methodology for identifying equal employment disparities by industry, such as the technology sector, might not accurately identify industries at greatest risk of potential noncompliance with affirmative action and nondiscrimination requirements. Additionally, we reported that while EEOC had identified barriers to recruitment and hiring in the technology sector as a strategic priority, it had not consistently captured information identifying specific industries when conducting investigations. EEOC's inability to capture this information using standard industry codes impeded its ability to conduct related analysis that could be used to more effectively focus its limited enforcement resources and outreach activities.

Weaknesses in the Compliance Evaluation Process Limited OFCCP's Ability to Ensure Federal Contractors' Nondiscrimination Compliance

In September 2016, we reported that about 22 percent of OFCCP's compliance evaluations of supply and service contractors found violations of some type and about 2 percent had discrimination findings, since 2010 (see figure 1). When OFCCP found violations during compliance evaluations, it often resolved those violations with conciliation agreements that outlined remedial action that contractors agreed to take.

Figure 1: Findings of OFCCP's Federal Contractor Nondiscrimination Compliance Evaluations, from Fiscal Years 2010-2015



Source: Office of Federal Contract Compliance Program data. GAO-16-750. | GAO-19-719T

As a result of our work, we made six recommendations (see table 1). The agency has taken action to fully implement three of our recommendations: (1) to address the risk geographic imbalances in compliance evaluation assignments; (2) to review outreach and compliance assistance efforts and identify options for improving information provided to federal contractors; and (3) assess existing contractor guidance for clarity.¹⁸ However, the agency has not taken action to fully implement our other three recommendations that focus on improving enforcement and compliance.

Table 1: Status of GAO's 2016 Recommendations to Strengthen the Office of Federal Contract Compliance Programs' Oversight of Federal Contractors' Nondiscrimination Compliance

GAO Recommendations	Additional actions needed to implement recommendations
Implemented	
1. Make changes to the current scheduling list distribution process so that it addresses changes in human capital and does not rely exclusively on geographic location.	Recommendation implemented; no action needed.
2. Review outreach and compliance assistance efforts and identify options for improving information provided to federal contractors and workers to enhance their understanding of nondiscrimination and affirmative action requirements to ensure equal employment opportunities for protected workers.	Recommendation implemented; no action needed.
3. Assess existing contractor guidance for clarity to ensure that contractors have information that helps them better understand their responsibilities regarding nondiscrimination and affirmative action requirements to ensure equal employment opportunities for protected workers.	Recommendation implemented; no action needed.
Not Fully Implemented	
1. Make changes to the contractor scheduling list development process so that compliance efforts focus on those contractors with the greatest risk of not following equal employment opportunity and affirmative action requirements.	Ensure the process for developing the scheduling list is not weighted by prior scheduling list factors.
2. Develop a mechanism to monitor affirmative action plans (AAP) from covered federal contractors on a regular basis. Such a mechanism could include electronically collecting AAPs and contractor certification of annual updates.	Obtain Office of Management and Budget approval for collecting AAPs and launch the AAP portal for public use.
3. Provide timely and uniform training to new staff, as well as provide continuing training opportunities to assist compliance officers in maintaining a level of competence to help ensure quality and consistency of evaluations across regions and district offices.	Fully implement the new learning management system.

Source: GAO-16-750 and Department of Labor. | GAO-19-719T

¹⁸ See GAO-16-750.

With regard to the recommendations that have not been fully implemented, OFCCP has taken action to date as described below.

Focus compliance evaluations on greatest violation risk. We found the process OFCCP used to select contractors for compliance evaluations could not ensure that contractors with the highest risk of noncompliance were being selected. OFCCP's selection process was nonrandom and did not produce a generalizable sample of contractors for evaluation.¹⁹ As a result, OFCCP was unable to draw conclusions about noncompliance risk in the overall federal contractor population. While the selection process included consideration of a number of neutrally applied factors, such as alphabetical order, employee count at the establishment, contract value, or contract expiration date, OFCCP was not able to identify which of these factors, or any factors, are associated with risk of noncompliance. Thus, OFCCP was unable to quantify the extent to which federal contractors in its jurisdiction are noncompliant, and did not have reasonable assurance that it was focusing its efforts on those contractors at greatest risk of not following equal employment opportunity or affirmative action requirements. Because OFCCP only conducts evaluations on less than 2 percent of federal contractor establishments in its jurisdiction, without an effective risk-based contractor selection process, OFCCP may be missing opportunities to evaluate whether there is a significant segment of contractors who may be more likely to violate nondiscrimination and affirmative action requirements, leaving workers potentially vulnerable.

OFCCP has taken steps to improve its contractor selection process, but has not fully implemented either this 2016 recommendation or a related recommendation we made in 2017 that it assess the quality of its proposed methods to incorporate consideration of disparities by industry before selecting contractors for compliance evaluation. Beginning in fiscal year 2020, contractors will be able to apply to the Voluntary Enterprise-wide Review Program (VERP), which aims to remove top-performing

¹⁹ OFCCP's process for selecting contractors for compliance evaluations must comply with applicable Fourth Amendment requirements for administrative searches. In general, to be consistent with the Fourth Amendment, the agency must select a contractor based on: (1) specific evidence of an existing violation, (2) reasonable legislative or administrative standards that have been met with respect to that particular contractor, or (3) an administrative plan containing specific neutral criteria. See *Marshall v. Barlow's, Inc.*, 436 U.S. 307 (1978), *United States v. Mississippi Power & Light Co.*, 638 F.2d 899 (5th Cir. 1981). According to OFCCP officials, a neutral selection is not necessarily random.

contractor participants from the pool of contractors scheduled for compliance evaluations.²⁰ OFCCP also recently implemented a new scheduling list (the list of contractor establishments selected for evaluation) methodology on the basis of research on closed cases from the previous five years (2014-2018). Thirty-three percent of the new scheduling list was comprised entirely of contractor establishments from the three industries with the highest rates of violation based on this sample of closed cases. However, the scheduling lists of the previous 5 years included nonrandom selections of contractor establishments that included a number of neutrally applied factors. If OFCCP's goal is to prioritize contractors at highest risk of noncompliance, this new scheduling methodology may not achieve this, because contractors selected will be weighted towards prior neutrally applied selection factors, such as employee count, in addition to violation risk. Further, while VERP may remove some compliant contractors from the scheduling list pool, without overwhelming volunteer participation, it will do little to help identify those most likely to violate. Consequently, it remains unclear whether contractors with the highest risk of not following equal employment opportunity and affirmative action requirements will be selected for compliance reviews.

Monitor affirmative action programs. In 2016 OFCCP relied significantly on voluntary compliance by federal contractors, and this approach could not ensure that contractors were complying with basic requirements like developing and maintaining an AAP. By signing a qualifying federal contract, covered contractors are required to develop an

²⁰ In February 2019, OFCCP issued a new directive that facilitates and confirms enterprise-wide (corporate-wide) compliance by high-performing federal contractors and those aspiring to reach the top through individualized, corporate-wide compliance assistance. The program will be voluntary for federal contractors and will recognize two tiers of contractors. The top tier will include top performing contractors with corporate-wide model diversity and inclusion programs. The next tier will consist of OFCCP compliant contractors that will receive individualized compliance assistance to become top performers. Criteria for the top tier will be more stringent. The program will present an alternative to OFCCP's establishment-based compliance evaluations with a focus on recognizing contractors that have comprehensive, corporate-wide inclusion and compliance programs. Contractors will apply to the program electronically beginning in fiscal year 2020. During the application process, OFCCP will conduct compliance reviews of the contractor's headquarters location as well as a sample or subset of establishments.

AAP within 120 days of contract commencement and update it annually.²¹ However, OFCCP had no process for ensuring that the tens of thousands of establishments that had signed a qualifying federal contract do so.

OFCCP has taken steps towards implementing a mechanism to monitor AAPs but has not fully implemented this recommendation. In 2018 OFCCP contracted with an information technology vendor to develop a web-based portal to allow contractors to upload their AAPs electronically for convenience, increased compliance, and for OFCCP review and resource prioritization. Officials anticipate delivery of the portal by the close of fiscal year 2019. Simultaneously, according to officials, OFCCP has developed the necessary information collection request to obtain approval from OMB to collect all contractors' AAPs annually. The agency anticipates that OMB approval will be timely to align with completion of the AAP portal.

Facilitate timely compliance officer training. In 2016, we found that OFCCP may not be providing timely training for new compliance officers. According to OFCCP officials, budget constraints had made it difficult to hold timely centralized training for new compliance officers. In half of the regions we visited, compliance officers or management officials we spoke with noted that this training was not provided in a timely manner after new officers are hired. For example, one compliance officer told us they worked for 8 months before receiving formal training. In one district office, compliance officers we spoke with explained that the lack of uniform, timely training made compliance officers feel unprepared when they began their job. Further, without providing timely training to new compliance officers, OFCCP cannot ensure consistency in its enforcement efforts across its offices.

OFCCP has taken steps to improve its training program, but has not fully implemented this recommendation. In 2018, OFCCP retained an expert

²¹ As previously mentioned, only contractors that meet the applicable thresholds are required to comply with the AAP requirements. In general, under Executive Order 11246 and Section 503, the AAP requirements apply to contractors with 50 or more employees and a contract of \$50,000 or more; under VEVRAA, the AAP requirements apply to contractors with 50 or more employees and a contract of \$150,000 or more. Under OFCCP's regulations, agencies shall require each bidder or prospective contractor to state, in the bid or in writing at the outset of negotiations for the contract, whether it has developed and has on file AAPs at each establishment, among other things. 41 C.F.R. § 60-1.7(b)(1). However, OFCCP is not able to verify the actual development of the AAP or whether it is being updated annually, according to OFCCP officials.

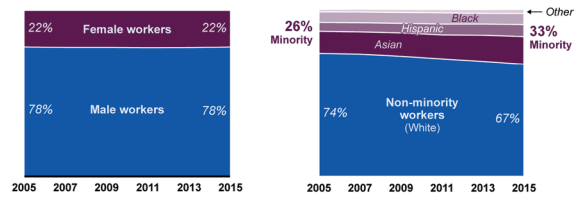
consultant to assess its national training program and standardize its training development and evaluation process. The assessment was completed in 2019 and a plan of action was created to address any program gaps, according to agency officials. Officials reported that the plan of action was fully implemented in fiscal year 2019 and OFCCP obtained a 5 year International Association for Continuing Education and Training (IACET) accreditation for its program. OFCCP officials told us they are developing a learning management system that will allow new compliance officers easy access to training soon after the hiring. OFCCP plans for the system to include the development of course requirements by level of competence— basic, intermediate, and advanced. OFCCP officials told us they plan to roll out the new system in January 2020.

**Weaknesses in Oversight
Efforts Impact EEOC's and
OFCCP's Effectiveness in
Ensuring
Nondiscrimination and
Equal Employment
Opportunity in the
Technology Sector**

In November 2017, we reported that the estimated percentage of minority technology workers had increased from 2005 to 2015, however, while we found statistically significant increases in the numbers of Asian and Hispanic workers, no growth had occurred for either female or Black workers (see figure 2). Further, female, Black, and Hispanic workers remain a smaller proportion of the technology workforce—mathematics, computing, and engineering occupations—compared to their representation in the general workforce. These groups have also been less represented among technology workers inside the technology sector—those companies that have the highest concentration of technology workers in such industries as computer systems design and software publishing—than outside the technology sector such as retail or finance companies. In contrast, Asian workers were more represented in these occupations than in the general workforce.²²

²²GAO-18-69

Figure 2: Estimated Percentages of Technology Workers by Gender and Race/Ethnicity, 2005-2015



Source: GAO analysis of American Community Survey (ACS) data from the U.S. Census Bureau. GAO-18-69. | GAO-19-719T

Note: Changes from 2005 to 2015 were statistically significant at p-value <0.05 except for changes for female, male, and Black workers. All population estimates have Relative Standard Errors of less than 7 percent. "Other" includes American Indian or Alaskan Native, and "Two or More Races." White, Black, Asian, and "Other" categories include only non-Hispanic members.

As a result of our work, we made one recommendation to EEOC and five recommendations to OFCCP (see table 2). EEOC has taken action, but not fully implemented our recommendation on identifying missing standard industry classification data from its handling of charges. By providing guidance to contractors regarding the option to include more specific goals in their AAPs, OFCCP has taken actions to implement one of our six recommendations—to take steps toward requiring contractors to disaggregate demographic data for the purpose of setting placement goals in the AAP. The agency has not taken action to fully implement our other four recommendations that focus on improving oversight, as shown in table 2 and discussed below.

Table 2: Status of GAO's 2017 Recommendations to Improve the Equal Employment Opportunity Commission and Office of Federal Contract Compliance Programs' Oversight of Equal Employment Opportunity Requirements in the Technology Sector

GAO Recommendations		Additional actions needed to implement recommendations
Implemented		
1.	Office of Federal Contract Compliance Programs (OFCCP) should take steps toward requiring contractors to disaggregate demographic data for the purpose of setting placement goals in the AAP rather than setting a single goal for all minorities, incorporating any appropriate accommodation for company size. For example, OFCCP could provide guidance to contractors to include more specific goals in their AAP or assess the feasibility of amending their regulations to require them to do so.	Recommendation implemented; no action needed.
Not Fully Implemented		
1.	The Equal Employment Opportunity Commission (EEOC) should develop a timeline to complete the planned effort to clean its database of charges and enforcement actions—referred to as the Integrated Mission System (IMS) data—for a one-year period and add missing industry code data.	Collect sufficient information through its Employer Master List and use it to analyze charge data by industry.
2.	OFCCP should analyze internal process data from closed evaluations to better understand the cause of delays that occur during compliance evaluations and make changes accordingly.	Demonstrate that its internal policy changes are addressing the root causes of delays based on data analysis of actual evaluations.
3.	OFCCP should assess the quality of the methods used by OFCCP to incorporate consideration of disparities by industry into its process for selecting contractor establishments for compliance evaluation. It should use the results of this assessment in finalizing its procedures for identifying contractor establishments at greatest risk of noncompliance.	Further refine new schedule methodology after completion of the most recent cycle of compliance evaluations.
4.	OFCCP should evaluate the current approach used for identifying entities for compliance review and determine whether modifications are needed to reflect current workplace structures and locations or to ensure that subcontractors are included.	Obtain Office of Management and Budget approval for revising how it identifies entities for compliance reviews to reflect current workplace structures and locations or subcontractors.
5.	OFCCP should evaluate the Functional Affirmative Action Program to assess its usefulness as an effective alternative to an establishment-based program, and determine what improvements, if any, could be made to better encourage contractor participation.	Evaluate the Functional Affirmative Action Program to assess its usefulness as an effective alternative to Affirmative Action Program.

Source: GAO-17-89 EEOC, and Department of Labor. | GAO-19-719T

With regard to the recommendations that have not been fully implemented, EEOC and OFCCP have taken action to date as described below.

Capture standard industry classifications on charges. In our November 2017 report, we found that EEOC could not analyze charge data by industry to help identify investigation and outreach priorities. This was inconsistent with EEOC strategic planning documents and EEOC Inspector General reports which, had emphasized the importance of analyzing charge data by industry. EEOC's inability to analyze charge data by industry limits EEOC's ability to identify trends by industry sector and conduct sector-related analyses that could be used to more effectively to focus its limited enforcement resources and outreach activities. EEOC has taken some action towards addressing missing industry code data, but has not taken actions sufficient to fully implement this recommendation. As part of an effort to overhaul its data system, EEOC has begun developing an Employer Master List that will provide a source of employer information, including industry codes, but EEOC told us that it has not yet completed this effort. It anticipates this system will be more fully developed by spring 2020.

Use data on closed evaluations to address delays. In our November 2017 report, we found that OFCCP did not analyze data on closed evaluations to understand the root causes of delays in its compliance review process that may be straining its resources and inhibiting OFCCP's efforts to identify potential discrimination. This evaluation could help OFCCP determine whether changes are needed in its own internal policies and processes, as well as guide OFCCP's selection of improved methods for obtaining complete, accurate, and timely documentation from federal contractors. OFCCP has taken actions but it does not fully address this recommendation. In June 2019, OFCCP officials reported that OFCCP's procedures outlined in the Active Case Enforcement Directive (DIR 2011-01) caused delays in case closures, but it does not indicate that this conclusion resulted from the recommended analysis of internal process data from closed evaluations. OFCCP officials reported that the agency's aged case rate—defined as a case which is open for more than 730 days and has not been referred for further enforcement—has dropped from 27.7 percent in fiscal year 2017 to 20.9 percent in fiscal year 2019, though they did not report any corresponding change in case outcomes. In September 2019, OFCCP officials told us they continue to study causes and how to address delays with effective policies that make the agency more efficient.

Assess the methods used to consider industry disparities in compliance. In our November 2017 report, we found that OFCCP's current methodology for identifying disparities by industry—using data from the American Community Survey—may not have accurately identified industries at greatest risk of potential noncompliance with nondiscrimination and affirmative action requirements. In its agency response to our November 2017 report, OFCCP officials reported that the agency was exploring the use of U.S. Census Bureau and administrative data to refine its selection process to focus on industries with a greater likelihood of noncompliance. OFCCP has taken some action, but has not fully implemented this recommendation. In January 2019, DOL officials reported that DOL had revised its scheduling methodology to include industries with the highest rates of violations. OFCCP published the scheduling list in March 2019 and its field offices started scheduling cases in May 2019. OFCCP stated it will continue to monitor results from this revised scheduling methodology to determine its effectiveness. It will be important for OFCCP to refine these methods based on its experiences with them. This new process is a step toward focusing efforts on industries at greater risk of potential noncompliance with nondiscrimination or affirmative action requirements.

Evaluate establishment-based approach to compliance evaluations. In our November 2017 report, we found that OFCCP had made no changes to its establishment-based approach since OFCCP was founded in 1965. However, OFCCP officials acknowledged the changing nature of a company's work can involve multiple locations and corresponding changes in the scope of hiring and recruitment. OFCCP has taken some action, but has not fully addressed this recommendation. In fiscal year 2019, OFCCP evaluated its current approach for identifying subcontractors for review. OFCCP stated that the current approach does not reliably include subcontractors in the pool from which contractors are scheduled because there is no government or public database that captures the complete universe of subcontractors and other important data. In June 2019, OFCCP submitted revisions to its process to the Office of Management and Budget (OMB) for approval.

Evaluate the Functional Affirmative Action Program. In November 2017, we found that OFCCP had not evaluated its Functional Affirmative Action Program (FAAP)—an alternative affirmative action program for a business function or unit that may exist at multiple establishments or multi-establishment contractors. OFCCP offered the FAAP so that companies could move away from establishment-based reviews, which may be more appropriate for some multi-establishment contractors.

However, few contractors participate in this program and the agency has not conducted an evaluation of it. OFCCP has taken some action, but has not fully implemented this recommendation. OFCCP has taken steps to encourage contractors to use the FAAP program without fully evaluating it as an alternative to the establishment-based program. Evaluating the FAAP could help OFCCP improve its ability to achieve its objectives and may provide broader insight for OFCCP's overall enforcement approach.

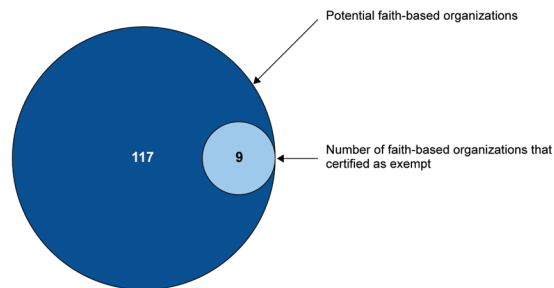
Few Faith-based Grantees Certified They Were Exempt from Statutory Restrictions on Religious-based Hiring

In our October 2017 report, we found that from fiscal years 2007 through 2015, 9 of the 117 potential FBOs we identified across HHS, DOJ, and DOL, certified that they were exempt based on RFRA from nondiscrimination laws related to religious-based hiring (see fig. 3).²³ As a result, the nine FBOs were allowed to consider a prospective employees' religious faith when making employment decisions. All nine of the FBOs were awarded funding by DOJ primarily through the agency's Justice Programs, and collectively received approximately \$3.2 million, which is less than 1 percent of the \$804 million in grants that DOJ awarded that were subject to statutory restrictions from fiscal years 2007 to 2015. HHS, DOJ, and DOL awarded funding to at least 2,586 grantees through 53 grant programs that were subject to statutory restrictions on religious-based hiring.²⁴ The number of relevant grant programs could be higher because GAO could not identify all such programs due to data limitations.

²³ We use the language "potential FBOs" because we could not determine the complete universe of such organizations that were eligible to be primary recipients of grant funding or the amount of federal funds they received because DOJ, DOL, and HHS do not maintain and are not required to maintain information on whether an organization is an FBO. Our efforts to identify and count FBOs was further complicated by the lack of a federal-level definition of FBOs.

²⁴ GAO-18-164. FBOs may also be eligible to be sub-grantees, but not primary grantees, for other grant programs that have statutory restrictions on religious-based hiring, but we did not include sub-grantees in the scope of our review.

Figure 3: Number of Faith-Based Grantees Identified as Potentially Subject to Statutory Restrictions on Religious-Based Hiring and Those That Certified They Were Exempt from Restrictions, Fiscal Years 2007 – 2015



Source: GAO analysis of Department of Health and Human Services, Department of Labor and Department of Justice data. GAO-18-164 | GAO-19-719T

We interviewed six of the nine faith-based grantees that certified that they were exempt from religious-based hiring restrictions.²⁵ Each of the six grantees emphasized the importance of hiring someone of the same religious faith to assist with grant activities. For example, the grantees said that hiring someone with the same religious faith was critical to their mission and organizational success, and if the RFRA exemption were not available, they may not have sought the grant. We also interviewed grantees from five of 35 potential FBOs that did not certify that they were exempt from statutory restrictions based on religious-based hiring to see if they were aware of the potential for an exemption. The five grantees said that they did not recall seeing information about the exemption option in the grant application or grant award documentation. They said that they also may not have been looking for the information because they were not considering religion in their hiring decisions.

HHS, DOJ, and DOL used various methods for informing grant applicants and recipients of the statutory restrictions on religious-based hiring and

²⁵ The three other grantees did not respond to our request to meet with them.

their processes for obtaining an exemption from such restrictions. Specifically:

- DOJ had made this information available on agency web pages as well as in the documentation that is provided to grant recipients.
- DOL had a web page dedicated specifically to explaining statutory restrictions on religious-based hiring to faith-based grant applicants and recipients, which also covers the process for seeking exemptions from the restrictions.
- In addition to providing information in grant announcements, HHS provided all Substance Abuse and Mental Health Services grant applicants seeking funds for substance abuse prevention and treatment services with a form that cites laws and regulations governing religious organizations that receive grant funding, including the regulation that outlines the exemption process.

As we reported in 2016, DOJ, DOL, and HHS all required grantees that seek to make employment decisions based on religion to self-certify that they met requirements to be eligible for an exemption from statutory restrictions on religious-based hiring, but varied in how they reviewed and approved requests for approval. All three agencies required that faith-based grantees complete a form or some written request to demonstrate their eligibility for the exemption, but DOL is the only agency that reviewed and approved the requests. For example, DOL required that faith-based grantees submit their requests for the exemption for review and approval by the Assistant Secretary responsible for issuing or administering the grant. Conversely, while DOJ and HHS required that faith-based grantees submit a form or written request, respectively, neither reviewed nor approved the requests.

On August 15, 2019, OFCCP proposed regulations intended to clarify the scope and application of the religious exemption to help religious employers²⁶ with federal contracts and subcontracts and federally assisted construction contracts and subcontracts better understand their

²⁶ Implementing Legal Requirements Regarding the Equal Opportunity Clause's Religious Exemption, 84 Fed. Reg. 41,677 (Aug. 15, 2019). According to the proposed rule, religious employers eligible for this exemption may include "not just churches but employers that are organized for a religious purpose, hold themselves out to the public as carrying out a religious purpose, and engage in exercise of religion consistent with, and in furtherance of, a religious purpose."

obligations.²⁷ OFCCP proposes to add definitions of the following terms: exercise of religion; particular religion; religion; religious corporation, association, educational institution, or society; and sincere. In addition, the proposed rule states that the religious exemption should be construed to provide the broadest protection of religious exercise permitted under the Constitution and related laws, consistent with the administration policy to protect religious freedom. The stated intent of the proposed rule is to make clear that religious employers who contract with the federal government can condition employment on acceptance of or adherence to religious tenets, provided that they do not discriminate on other bases.

Chairwoman Bonamici, Senior Republican Comer, and Members of the Subcommittee, this completes my prepared statement. I would be pleased to respond to any questions you may have at this time.

GAO Contact and Staff Acknowledgments

If you or your staff have any questions about this testimony, please contact Cindy Brown Barnes, Director, Education, Workforce and Income Security Team at (202) 512-7215 or brownbarnesc@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. GAO staff who made key contributions to this testimony are Blake Ainsworth, Amber Yancey-Carroll, Melinda Bowman,

Sheranda Campbell, Sarah Cornetto, Mary Crenshaw, Helen Desaulniers, Holly Dye, Michael Erb, Monika Gomez, LaToya King, Joel Marus, Diana Maurer, Heidi Neilson, James Rebbe, Katrina Taylor, Rosemary Torres Lerma, Kathleen van Gelder, and Betty Ward Zukerman.

²⁷ Implementing Legal Requirements Regarding the Equal Opportunity Clause's Religious Exemption, 84 Fed. Reg. 41,677 (Aug. 15, 2019).

GAO's Mission	The Government Accountability Office, the audit, evaluation, and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.
Obtaining Copies of GAO Reports and Testimony	The fastest and easiest way to obtain copies of GAO documents at no cost is through GAO's website (https://www.gao.gov). Each weekday afternoon, GAO posts on its website newly released reports, testimony, and correspondence. To have GAO e-mail you a list of newly posted products, go to https://www.gao.gov and select "E-mail Updates."
Order by Phone	<p>The price of each GAO publication reflects GAO's actual cost of production and distribution and depends on the number of pages in the publication and whether the publication is printed in color or black and white. Pricing and ordering information is posted on GAO's website, https://www.gao.gov/ordering.htm.</p> <p>Place orders by calling (202) 512-6000, toll free (866) 801-7077, or TDD (202) 512-2537.</p> <p>Orders may be paid for using American Express, Discover Card, MasterCard, Visa, check, or money order. Call for additional information.</p>
Connect with GAO	<p>Connect with GAO on Facebook, Flickr, Twitter, and YouTube. Subscribe to our RSS Feeds or E-mail Updates. Listen to our Podcasts. Visit GAO on the web at https://www.gao.gov.</p>
To Report Fraud, Waste, and Abuse in Federal Programs	<p>Contact FraudNet: Website: https://www.gao.gov/fraudnet/fraudnet.htm Automated answering system: (800) 424-5454 or (202) 512-7700</p>
Congressional Relations	Orice Williams Brown, Managing Director, WilliamsO@gao.gov , (202) 512-4400, U.S. Government Accountability Office, 441 G Street NW, Room 7125, Washington, DC 20548
Public Affairs	Chuck Young, Managing Director, youngc1@gao.gov , (202) 512-4800 U.S. Government Accountability Office, 441 G Street NW, Room 7149 Washington, DC 20548
Strategic Planning and External Liaison	James-Christian Blockwood, Managing Director, spel@gao.gov , (202) 512-4707 U.S. Government Accountability Office, 441 G Street NW, Room 7814, Washington, DC 20548



Please Print on Recycled Paper.

Chairwoman BONAMICI. Thank you for your testimony.

Under Committee Rule 8a we will now question witnesses under the 5 minute rule alternating between the parties.

I now recognize myself for 5 minutes.

Americans are living and working longer, and we must do all we can to make sure they are protected from age discrimination. According to recent data from the Census Bureau and the Bureau of Labor Statistics, the percentage of retirement age Americans in the labor force has doubled since 1985. Unfortunately, age discrimination in the workplace is still disturbingly pervasive, and it is a significant factor in older workers' long-term unemployment. According to an AARP survey released last year, three in five older workers reported seeing or experiencing age discrimination on the job.

Earlier this year, this Committee approved the bipartisan Protecting Older Workers Against Discrimination Act, or POWADA. The bill would amend our four core civil rights laws, the Age Discrimination and Employment Act, the anti-retaliation provision of Title VII of Civil Rights Act, the Americans with Disabilities Act, and the Rehabilitation Act of 1973, to make a Congressional intent clear. Any unlawful discrimination in the workplace is unacceptable.

Chair Dhillon, the Gross v. FBL Financial Services decision applied the "but for" standard to age discrimination, requiring the EEOC to demonstrate that age was essentially the sole factor leading to an adverse employment action. Yet, under other civil rights law, such as Title VII, the motivating factor test is applied.

How does having different standards influence the EEOC's efforts and outcomes? And would the legislation this Committee passed, the POWADA bill, Protecting Older Workers Against Discrimination Act, how would that strengthen the EEOC's ability to enforce the ADEA?

Ms. DHILLON. Well, thank you, Chairwoman, for that question.

Certainly, age discrimination cases and claims and charges are a focus of the EEOC's effort. In fact, in the most recent fiscal year, over 22 percent of the charges that we received involved allegations of age discrimination. So, I agree with you that it is a significant issue and the Commission is focused on remedying age discrimination cases.

I can't support or not support a particular piece of legislation. I can say that obviously the "but for" standard is a higher standard. But that does not mean that the Commission is any less committed to investigating, and where appropriate, litigating charges of age discrimination. You have my commitment, and I know you have the commitment of my fellow commissioners, as well as our General Counsel and all the staff, that we take age discrimination charges very seriously and we pursue them vigorously.

Chairwoman BONAMICI. But you agree that the motivating factor test would be easier to prove a case of age discrimination?

Ms. DHILLON. It is a lower standard. It is a lower standard, yes.

Chairwoman BONAMICI. Thank you. I request unanimous consent now to submit a letter into the record from former EEOC chair Jenny Yang and former EEOC General Counsel David Lopez.

Without objection. I have the letters introduced.

According to this letter from the former EEOC Chair and General Counsel, “The Agency’s 2017 efforts to update the enforcement guidance on unlawful harassment were critical because, according to the letter, the EEOC’s guidance on harassment has not had a comprehensive update for over 20 years. As the MeToo Movement has brought nationwide attention to the pervasive problem of workplace harassment, the demand for up to date guidance is even greater.”

The letter also notes that the enforcement guidance “was the product of extensive research, analysis, and deliberation informed by public hearings, public testimony, public input, and the work of the task force.”

The comment period for guidance closed on March 21, 2017, yet there is still no final guidance issued.

Chair Dhillon, where is the guidance and the review process and when will it be finalized? And I ask that question because in the wake of the MeToo Movement we would like to have some specific examples of how the EEOC is using its enforcement tools, including strategic enforcement in addressing and preventing harassment in the workplace.

Ms. DHILLON. Thank you, Chairwoman, for your question. And I am glad that you called out the work of the task force, and particularly the efforts of former Acting Chair Lipnic, who convened that task force and issued a very comprehensive and, frankly, in my opinion extremely well done work on the problem of harassment in the workplace. And I would note that she was far ahead of the curve because that was issued well over a year before the MeToo Movement came into public consciousness.

On our website, we have that task force report, we also have tools for employers and employees on how to address sexual harassment and harassment claims and allegations of discrimination. And these are all very helpful tools and I would encourage people to look at them and consult with them. The guidance itself is still in the OMB process.

Chairwoman BONAMICI. Do you have any sense of when that will be completed?

Ms. DHILLON. I do not.

Chairwoman BONAMICI. And I now request unanimous consent to enter letters into the record from the Human Rights Campaign relevant to this hearing.

Without objection.

I yield back the balance of my time and recognize Mr. Comer for your questions. Excuse me, I am sorry, recognize Ms. Stefanik from New York for your questions.

Ms. STEFANIK. Thank you, Chairwoman Bonamici.

I want to focus on women in the workplace. Today there are nearly 75 million women working in the United States, the most ever. Of the 2.8 million jobs created within the past year, 58 percent have gone to women. Women are graduating college at a higher rate than their male counterparts, 56 percent of degrees conferred last year, and women are increasingly their family’s primary breadwinners. We must address unique challenges facing women in the workforce.

Earlier this year, I introduced the Wage Equity Act and have earned co-sponsorships of over 50 of my colleagues. My bill, the Wage Equity Act, addresses the gender pay gap and reinforces equal pay for equal work by creating a self-audit system to encourage businesses to proactively conduct a pay analysis audit and identify any potentially unlawful pay disparities. It allows businesses to quickly rectify any of these disparities while being protected from lawsuits.

So, my question for Chairwoman Dhillon and Director Leen, do you believe that the creation of such a self-audit system would be beneficial to enhance employer compliance and address unlawful pay disparities?

Mr. LEEN. Thank you for that question. Pay disparities based on race or gender, or any of the protections we enforce, are problematic. And when they are caused by discrimination, they are illegal. I would tell you I can't speak specifically as to a particular piece of legislation, but I can tell you that OFCCP is doing that already with Federal contractors. We require Federal contractors every year to assess their compensation and to make sure that there are not unexplainable pay disparities based on gender and race.

Typically, what we do is they look to see the size of the gap, and if it is more than two standard deviations and it can't be explained by a legitimate business reason that is nondiscriminatory, they need to fix it. If they don't fix it, then we come in and we make them fix it.

Ms. STEFANIK. So, the concept of a self-audit system, we are trying to incentivize businesses if they identify a pay gap to close that pay gap.

Ms. Dhillon, do you have any comments on that?

Ms. DHILLON. Thank you, Congresswoman.

Again, like Mr. Leen, I cannot comment on a particular piece of legislation or proposed legislation, but what I can say is that I do believe that employers do want to do the right thing. And by and large they do want to pay their employees fairly. So, I think anything that encourages them along those lines could be helpful. And I certainly look forward to working with you and working with your staff, and any kind of technical assistance that we can provide we would be happy to do so.

Ms. STEFANIK. Sure. Setting aside the specifics of the bill, perhaps I should have said that at the end, the concept of a self-audit, so incentivizing businesses to look at their data proactively, reaching out to the EEOC to make sure that if there are disparities they are closing those potential pay gaps. Is that concept something that you think would be helpful in terms of making sure businesses are doing right by the law, which from my perspective, when I visit businesses, they are trying to do that. The concept of a self-audit. Based upon Maine, Massachusetts, Maryland, this is not a novel concept. Many states have self-audit systems in place.

Mr. LEEN. OFCCP has a lot of experience in this area and it is certainly a best practice to do a self-audit every year. For Federal contractors, though, it is required by law.

Ms. STEFANIK. Great. Best practice, that is great. So I think that data would be helpful.

My next question is through the Federal contractors, because they are required to do that every year, how is that more beneficial than the broad data collection in the EEO-1 in regard to identifying these pay discrepancies?

Mr. LEEN. Well, the EEO-1 data, that basically asks for sort of average data about salaries based on gender, for example, in nine categories. So what OFCCP—when we do an audit, we get much more specific data.

Ms. STEFANIK. Right, more nuanced data.

Mr. LEEN. Well, it is by—it is very granular, it goes all the way to the person. And we are able to do regression analyses based on job title or job group. That sort of data allows us to make a finding of discrimination.

More generalized data typically can't be used to make a finding of discrimination.

Ms. STEFANIK. Great. With that, I yield back.

Chairwoman BONAMICI. Thank you, Representative Stefanik.

Now I recognize Dr. Schrier from Washington for 5 minutes for your questions.

Dr. SCHRIER. Thank you, Madam Chair, and thank you to our witnesses today.

I am going to direct my questions today to you, Chair Dhillon. I was concerned to hear that the EEOC at the end of this month is going to stop collecting data that would help identify and address pay disparities based on gender, race, and ethnicity. And we have talked a lot about equal pay for equal work. And in this Committee, I told my own story about coming out of residency having earned \$4.00 an hour and was so excited to have a job offer that I immediately just said, sure, I will take it, only to find out later that some of my colleagues, all male, had the good sense to negotiate a higher salary. And, of course, when you start with a higher salary, then any increases from then just compound it.

But mine is just an anecdote and I don't think we can make decisions based on anecdotes and conjecture. And that is why I really think we need to collect this data. And it sounds, from your testimony, that it is really clear that you acknowledge that there are systemic disparities in pay related to gender and race, whether intentional or not.

And so my question is, why would we stop getting this data when data helps us make decisions?

Ms. DHILLON. Well, thank you, Congresswoman, for your question.

Currently the EEOC is under court order to collect the EEO-1 component 2 pay data, and that data collection is ongoing pursuant to the court order. Earlier this month the Commission filed—or submitted to the Federal Register required documentation under the Paperwork Reduction Act seeking permission from the OMB to collect data for the next 3 years. So we go to the OMB and we need to get permission through the Paperwork Reduction Act process in order to be allowed to collect data in the future. And in going through that, we have to actually make a showing to the OMB, we have to balance the burden that will be placed on the people who we are asking to provide the data against the utility.

In the notice that we filed in the Federal Register for public comment last week, what the Commission said was that on a going forward basis we were not seeking authorization to collect pay data, the so-called component 2 data. And the reason for that, as laid out in the notice, was really two-fold.

First of all, relying on our data scientists and statisticians at the EEOC, they did a burden analysis of the ongoing component 2 pay data collection and concluded that the burden to the responding community, to the employers, was about 10 times—actually more than 10 times higher than had originally been estimated. So we had to take that into account. Then we looked at the utility of that data, particularly as compared to the heightened burden, and concluded that we couldn't seek—under the requirements of the Paperwork Reduction Act, we could not seek additional authorization to collect the data. I have concern—

Dr. SCHRIER. In the interest of time, I am surprised that it is that burdensome, and simply because Congresswoman Bonamici and I were just at Nike, I visited Starbucks, they have voluntarily—like Miss Stefanik was talking about—they voluntarily collected this data just because they wanted to do their own self-improvement, which is very noble. But I also don't think that we can just depend on the kindness and the goodness of businesses to collect this data. I cannot imagine that in this day of computers and data entry that it would be really that hard to collect this. And I notice that there was no comment period, so the public was not invited to comment. Is that because you—

Ms. DHILLON. Congresswoman, the 60-day notice has been filed and so the public does have an opportunity to provide comments. We solicit comments on that, on what was put into the Federal Register.

Dr. SCHRIER. And then one last question, given that Nike and Starbucks are able to do this so easily, have you been able to identify some better practices that perhaps they are using, perhaps other industry is using, to get at the root of this information? Because it may be a burden for companies, but it is really a burden for people who are systematically being paid less than they should be paid. Is there a better way to get this information?

Ms. DHILLON. Well, I think there is a better way to do a pay data collection. And, in fact, during the comment period in 2016, a number of groups and employers made suggestions to the EEOC, which unfortunately were not adopted. What the Commission said in the Paperwork Reduction Act notice that was submitted to the Federal Register, is that we are committed to going through a rule-making, a Title VII rulemaking, which in my view is what should have been done in 2016, to allow for robust public comment and input into how we craft a pay data collection that, while there is going to be a certain level of burden involved, it is not undue burden, but at the same time collects data that is useful to the EEOC in its enforcement mission.

Dr. SCHRIER. Thank you. I see we are out of time.

Chairwoman BONAMICI. Thank you, Representative.

They have called votes on the floor. Before we go to the floor, I am going to recognize Dr. Foxx, the Ranking Member of the Full Committee, for 5 minutes for your questions. And after Dr. Foxx's

questions, we will recess until immediately after the last vote and then return to the Committee.

Dr. Foxx.

Mrs. FOXX. Thank you very much, Chairwoman. And I want to thank our witnesses for being here today. I think we have superbly prepared and talented people here today. And I want to appreciate all three of you for your comments and for your willing to serve in the positions that you are in.

Chair Dhillon, congratulations to you on your confirmation and thank you for being here.

In its final year, the Obama Administration proposed EEOC collect this employee pay data, which has been the subject of the conversation recently. My understanding is the collection would increase the data fields provided by employers in each EEO-1 report 20-fold, from 180 to 3,660 fields. As you indicated, your new cost estimate for employers to complete and submit this revised report with pay data is \$622 million, more than 11 times higher than the Obama Administration's estimate.

Do you agree that requiring additional reporting of employee pay data to the Federal Government not only creates enormous compliance costs, but also raises significant privacy and confidentiality concerns for workers and businesses?

Ms. DHILLON. Yes, Congresswoman, I agree with you.

Mrs. FOXX. And I am glad to hear that you think there is a better way to do this.

I would like to explore with you whether the pay data the court is now requiring EEOC to collect will have any value. In his court declaration in April, EEOC's chief data officer raised significant concerns about the data's validity and reliability, calling attention to such issues as to whether the data would enable valid comparisons within and between employees. He also stated that EEOC never conducted a true pilot study on collecting pay data, even though the National Academy of Sciences in 2012 recommended the completion of a true pilot study before embarking on a full-scale collection of pay data.

Do you share the EEOC chief data officer's concerns regarding the utility of the pay data collection?

Ms. DHILLON. Congresswoman, yes, I do. And in particular, the point that you raised about the lack of a pilot study is something that is of significant concern to me. The National Academy of Sciences in 2012 actually made six recommendations for a pay data study. The EEOC unfortunately only adopted one of those recommendations.

Mrs. FOXX. Right.

Director Leen, thank you again for testifying. I would like to congratulate you on the proposed rule regarding the religious exemption for Federal contractors that OFCCP published last month.

At a hearing in June in this Committee, Republicans found themselves defending religious liberty. Republicans will always stand up for religious freedom, but it was disheartening to see it under attack. OFCCP's proposed rule relates to the religious exemption for Federal contractors based on the First Amendment, recent Supreme Court decisions and Title VII Civil Rights Act. Do

you view the proposed rule as making new law or merely restating and clarifying existing law?

Mr. LEEN. Thank you for that question. I have to be a little limited in what I can say about the proposed rule because it is a pending proposed rule.

We have received over 109,000 comments on the rule and we are looking at them, and we are open-minded, and we are considering how to move forward.

I can answer your question, though, based on what we have said in the preamble of the NPRM, which is that the intent is to clarify. My Agency does not make law, Congress makes law.

Mrs. FOXX. Well, thank you very much for that. We celebrated Constitution Week this week and I think it is extraordinarily important that we never lose sight that the Bill of Rights begins with the First Amendment and the very first right is the freedom of religion. And I think that is something we must remind people of all the time.

Thank you all very much, again.

Thank you, Madam Chair.

Chairwoman BONAMICI. Thank you, Representative Foxx. And now the Committee will be recessed. We have two votes. It should be probably 20–30 minutes and we will resume after the last vote is concluded.

The Committee is in recess.

[Recess]

Mrs. HAYES. The Chair will continue to recognize Members for 5 minutes.

And next we have Chairman Scott from Virginia for questioning.

Mr. SCOTT. Thank you.

Chairman Dhillon, you have had several questions on the pay data, how can you effectively, proactively do anything about pay discrepancies without the data?

Ms. DHILLON. Congressman, thank you for your question.

The EEOC enforces compensation discrimination laws now, we investigate charges, we conciliate charges, where appropriate, we bring litigation to obtain relief for charging parties. In addition, we engage in substantial outreach efforts, educating employers and employees as well, and then we have resources on our website. So I think that the Agency is actively and aggressively enforcing compensation discrimination laws.

Mr. SCOTT. Mr. Leen, you have a proactive obligation, how would pay data help you fulfill your mission?

Mr. LEEN. Congressman, we receive the pay data, as I mentioned, that is much more specific through our neutrally scheduled audits. So the pay data we typically get is the pay by employee, by race, and gender. And we are able to put those employees into pay analysis groups, run regression analyses, and then determine whether there is a statistically and practically significant finding. And then we require them to fix it.

What I was mentioning before was we could not do that with the EEO–1 component 2 pay data because it is too general. So for us, we are going to continue to focus on the data that we get in our neutrally scheduled audits.

Mr. SCOTT. You get more specific information than the component 2 data?

Mr. LEEN. Yes, much more specific.

Mr. SCOTT. Then why is it so expensive to just do the little component 2 data?

Mr. LEEN. Well, I can tell you from the perspective of OFCCP that when they have to provide us this data, it is when they have been neutrally scheduled for an audit, which does not occur every year. It occurs whenever we include them on the scheduling list. There are costs associated with OFCCP compliance that we are keenly aware of and we try to reduce. But typically that is—you sign up for that by being a Federal contractor. That is something you agree to do affirmatively in taking the Federal—in basically being in the Federal procurement system. And it is only when you are audited that you have to provide us that information.

Mr. SCOTT. Okay. Let me ask another question on religious discrimination. If someone has strong religious views, it is my understanding that they can discriminate now?

Mr. LEEN. Congressman, absolutely not. They cannot discriminate just because they have strongly held religious views.

Mr. SCOTT. Okay. What does the new guidance allow them to do that they couldn't do before?

Mr. LEEN. The new proposed guidance, which is a pending rule making, so I am limited as to what I can say, provides clarifying definitions related to the present regulation that is already in OFCCP's regulations, which are based on Title VII. And the proposed rule would provide additional definitions, as well as an interpretive rule, which basically says that the rule would be interpreted to the full extent of the Constitution.

Mr. SCOTT. You are aware of the organization in South Carolina that is running a child placement agency that is discriminating based on religion with Federal money?

Mr. LEEN. Mr. Scott, what I would—what we do is if they are a Federal contractor and they are discriminating against their employees, we would prevent that. And the way we do that is if a complaint was made, we would go in and we would fix it, or if we neutrally schedule them for audit.

Mr. SCOTT. So if it is a Federal contractor they are not able to discriminate based on religion?

Mr. LEEN. They are not able to discriminate based on religion against their employees. Unless there is—the religious exemption applies, and then they are allowed to favor—they are—under the current religious exemption, they are allowed to favor employees based on religion. That exemption goes all the way back to Title VII.

Mr. SCOTT. Now, does religion include favoring people who belong to their particular church?

Mr. LEEN. Yes.

Mr. SCOTT. And if it is an all White church, that pretty much excludes a lot of different groups, wouldn't it?

Mr. LEEN. If it were—the point—I don't know if I agree with the premise there. We don't allow discrimination based on race, even if religion is given as the reason for that. That is in the preamble to the NPRM. We cite to the Bob Jones University case. And, in

fact, that principle applies to every protected group that OFCCP protects. You cannot discriminate against someone based on their gender, gender identity, sexual orientation, national origin, race, based on disability status, based on veteran status, because of religion. That we do not permit.

Mr. SCOTT. I am sorry, just for clarification, did you say that sexual orientation is a protected class?

Mr. LEEN. Yes, it is. It is a protected class for OFCCP because it is expressly included in our executive order.

Mrs. HAYES. Thank you.

I now recognize the gentleman from Kentucky, Mr. Comer.

Mr. COMER. Thank you.

Director Leen, thank you for testifying today. OFCCP's proposed rule clarifying the religious exemption for Federal contractors states that religious organizations provided previous feedback to OFCCP that they were hesitant to bid on Federal contracts because of uncertainty surrounding the scope and application of the religious exemption.

Could you elaborate on those concerns? And do you believe a rule clarifying the religious exemption will encourage more organizations to participate in the Federal contracting system?

Mr. LEEN. Yes. I can elaborate on that a little bit. I am limited again in talking about the proposed rule based on the fact that it is pending. I can talk about what is in the preamble, and I can tell you a little bit about some of the goals that are expressed in the preamble.

So, for example, you asked about religious organizations. Very few—the percentage of Federal contractors that are religious organizations is quite low, it is less than 1 percent. So we are not talking about a huge group of companies to begin with.

In addition to that, there has been a concern because of the lack of clarity in OFCCP's regulations that a religious organization that wishes to be a Federal contractor is not exactly certain as to what that entails. And, in fact, there is a concern by some religious contractors that have been expressed to me, that they have to actually sacrifice a portion of their religious character in order to be a Federal contractor. That concern I have. I have that concern. Religious discrimination is a problem, be it against an individual based on their religious beliefs, or a religious organization. The First Amendment does not allow discrimination based on religion.

So that is a concern. It is 1 of the 10 protections OFCCP is entrusted to protect, just as important as the other 9.

Mr. COMER. Director, we have heard from employers that OFCCP enforcement and interpretations of the law and its purview vary widely from regional office to regional office. This can be especially challenging for companies that operate in multiple states around the country.

What are you doing to supervise OFCCP's regional offices to ensure they interpret and apply the law consistently and fairly?

Mr. LEEN. We are taking several actions in that regard. First, we issued what is called the preliminary determination notice directive, and that directive ensures that whenever OFCCP is going to issue a preliminary finding, that has been reviewed by both career staff and myself in the national office to make sure that what

we are doing is consistent across all regions and that there is substantial competent evidence supporting what action we are taking.

In addition to that, we are—it has been—let me tell you, it has been a focus of—we have quarterly senior leadership meetings with our regional directors, it is a focus of mine in every one of those meetings that you can't be treated differently in Miami than you are being treated in Seattle. We need to be strict in enforcing the law, but we need to be equally strict in enforcing the law. And we also need to make sure that we are achieving remedies in all parts of the country in the same way. It shouldn't depend on who the Regional Director is.

Mr. COMER. Chair Dhillon, you discussed in your testimony that EEOC has made significant progress in addressing and reducing the charge backlog. This is welcome news since members of this Committee on both sides of the aisle have been critical of the EEOC's inability to keep the backlog at a manageable level, resulting in protracted investigation and litigation that creates unnecessary uncertainty for workers and employers.

I agree with you that justice delayed is justice denied. With this in mind, could you elaborate on what EEOC is doing to ensure discrimination charges are investigated fairly and resolved promptly?

Ms. DHILLON. Thank you, Congressman, and I appreciate your kind words and I know that all the hardworking employees at the EEOC very much appreciate it, because it has been an enormous effort.

One of the changes or enhancements to the process that EEOC embarked on under Acting Chair Lipnic's leadership and that I affirm and support, is paying more attention at the intake stage. So when an employee comes to the EEOC with a concern, they can schedule an appointment or they can come in on a walk-in basis and an investigator can sit with that employee and talk to them about what their concern is. And what that does it is gives the EEOC very early on an opportunity to appropriately direct that potential charge. It may be the case that particular employee has a complaint that is covered by a law that the EEOC does not enforce. So rather than taking a charge and going through the process, we can instead swiftly direct that employee to where they need to go to get appropriate redress. It may be that when the employee understands the process, including the fact that their employer is going to be notified, they may decide they do not want to proceed at that point.

So the intake process has been a valuable part of helping us to manage our inventory.

Mr. COMER. Thank you.

Madam Chair, I yield back.

Mrs. HAYES. Thank you.

I now recognize from Nevada, Miss Lee.

Ms. LEE. Thank you, Madam Chair. Thank you all for being here and dealing with our vote situation.

Listen, earlier this week this Committee in a bipartisan manner passed the Older Americans Act, which provides critical nutrition, legal, and transportation services for older Americans, which comes obviously at a time when we are experiencing a shift in our national age demographics as more and more baby boomers are retir-

ing. Which brings me to think about the future of work and the number of dynamics that we must evaluate, especially in terms of worker protections.

In my home State of Nevada, we have well known industries that drive our economy. And as every industry is unique, there are always cases that affirm the need for robust worker protections and an overseer of equity in our workplace. As an example, we have Deborah Jeffries, who has been a cocktail server at Bally's Las Vegas Hotel and Casino benefitting from a union contract through Culinary Union 226. She has been able to work no matter her age, which has been an important factor for many companies within the industry who consider it when they are hiring. And as an example, another local casino was just sold and its cocktail servers were all terminated and not rehired because of their age. Deborah obtained her same pay as her male counterparts and has seniority and pay and will eventually retire with security and dignity.

Chair Dhillon, as you said earlier, age discrimination charges are about 20 percent of the charges the EEOC receives. Earlier this year, as the Chair Bonamici talked about, we passed a bipartisan, again POWADA, the Protecting Older Workers Against Discrimination Act. Have you reviewed POWADA? And, in your view, will this legislation strengthen EEOC's ability to enforce Age Discrimination in Employment Act?

Ms. DHILLON. Well, thank you, Congresswoman Lee, for your question.

As I did testify earlier, charges related to age discrimination claims are a substantial part of the EEOC's charge inventory. Indeed—

Ms. LEE. A yes or no, will it—

Ms. DHILLON. I can't comment on a particular piece of legislation. What I can say is that myself, my fellow commissioners, indeed, the entire commission, is motivated and devoted to pursuing these kinds of claims. And if there is additional legislation that is passed, we are committed to enforcing that law as well.

Ms. LEE. Okay. Would you mind providing EEOC's views in writing with respect to that for the Committee?

Ms. DHILLON. We can certainly provide technical assistance to the Committee.

Ms. LEE. Thank you.

As Ranking Member Comer just talked about, in 2008 you had 1,968 FTEs, you reduced your backlog by 19.5 percent, which is incredible. What is even more surprising is according to a report from Politico yesterday, you had on average 758 investigators in 2018, which was down from 825 that EEOC had on average during the Obama Administration.

How, with these limited resources—you spoke about more attention given at intake, were there any other factors that led to this reduction and how were you able to achieve that?

Ms. DHILLON. Well, Congresswoman, I saw that Politico piece as well and I actually reviewed some data and I don't completely agree with the figures that Politico cited. We currently have 765 investigators. We added investigators on staff during fiscal year 2019 and also added investigators on staff in 2018.

But in addition to the intake process, I think the backlog has been managed down so that we now have a workable inventory. What that allows our investigators and our attorneys to do is to tackle the charges when they are new. And it is easier to do because memories are clearer, the evidence is more readily available, and so you can move charges through the process more effectively and more efficiently because the events are still fresh in people's mind.

So I think that part of our ability to effectively manage our inventory now is a function of the fact that the backlog has been reduced. And that is due to a tremendous amount of hard work by all of the employees of the EEOC. And I really think that they should be commended for their work.

Ms. LEE. Thank you.

Madam Chair, before I end, I just would like to submit into the record letters from the Washington Lawyers' Committee sharing workers' experience that detail women of color and workers with disabilities' cases being dismissed or being given the right to sue letters in such little time that it is hard to imagine that these claims could have been investigated. It may be because of your intake procedure, but I would like to enter those into the record.

Mrs. HAYES. Into the record without objection.

I now recognize from South Dakota, Mr. Johnson.

Mr. JOHNSON. Thank you very much.

I want to start by thanking the panelists for their efforts to fight against unlawful discrimination. Some of you have done it for many years and our country is better off because of your efforts, so thank you.

I also want to thank the Chair and the Ranking Member for having this hearing. I think the First Amendment is a beautiful part of the American experience and I think protecting religious liberty has long been a fantastic powerful part of our country's history. So I am glad to continue that conversation.

A question for Ms. Brown Barnes and then, Mr. Leen, you could feed in as well.

But I was intrigued by the 2017 GAO study that did interviews with six faith-based Federal grantees. And all six of those organizations indicated that, you know, maintaining their religious character was important to them. And if there are any key takeaways from that report, whether it was interviews or any particular insights that you have, I would be interested in them.

Ms. BROWN BARNES. The key takeaways is that they felt that coreligionists, or those that share their belief and faith, help them accomplish their mission.

Mr. JOHNSON. I mean it seems to me that would be important for secular organizations too, right? I mean let us have a purpose drive approach toward the mission of this nonprofit, or of this corporation. I mean let us have a shared end in sight. So I would think that is not of importance only to religious organizations, but all organizations. Is that right, you think?

Ms. BROWN BARNES. Yeah, I think that is right, but we just heard specifically that in order to do or provide the type of services, the type of community outreach, the things that they were doing, that it was helpful for them to have coreligionists.

Mr. JOHNSON. Yeah, sure.

Mr. Leen?

Mr. LEEN. What is important to me, relating to religious organizations that are Federal contractors or which to be Federal contractors, is to ensure that we are following recent Supreme Court precedent, executive orders, guidance from the Attorney General, that we are following the First Amendment. That is important to me.

So we have proposed a rule. We have received over 109,000 comments. I am limited in what I can say, other than that, because I need to look at those comments to make sure that we are considering everything that should be considered in proposing a rule.

As stated, though, in the preamble, religious liberty is a core liberty, a core freedom. As I mentioned before, the executive order expressly mentioned 10 protections, religion being one of them. Title VII had a religious exemption. So this is something that goes back many years. So really all the way back to the Bill of Rights.

Mr. JOHNSON. Yeah, I think that is well said and we will pick up there. And I am not asking you to speculate on where the rules would go of course, but rather about the rules in their proposed format.

You know, we had the strongly bipartisan 1993 Religious Freedom Restoration Act, we have had a number of Supreme Court decisions.

Mr. Leen, my assumption would be the proposed rules are in alignment with those decisions and those Congressional acts. Care to elaborate?

Mr. LEEN. Yes. That is the intent of the proposed rule, to be consistent with applicable law and to clarify our regulations, OFCCP's regulations, to be consistent with applicable law.

We are open-minded, we certainly want to get it right, so that is why we are going to take a look at the comments and then make a decision as to how to proceed. But that is the intent of the proposed rule.

Mr. JOHNSON. Ms. Dhillon, I wanted to give you a bite at the apple.

You know this is something that EEOC doesn't deal with maybe quite as much, the topics we have had, but I don't want to shut you out if you have got something to offer.

Ms. DHILLON. Well, I am familiar with OFCCP's NPRM at a high level. Certainly interested in watching the process as it unfolds and as the comments come in, and I applaud them for going through the appropriate rule making process. I think it is the right way to handle an issue like this.

Mr. JOHNSON. Well, thanks very much to all the panelists.

And I yield back.

Mrs. HAYES. Thank you.

And now I will recognize myself for 5 minutes.

Thank you all so much for being here.

According to a 2016 report by the Economic Policy Institute, my home State of Connecticut is second only to New York in terms of statewide income inequality. In order to address pay discrimination and income inequality, we need the data.

So, Chair Dhillon, in your responses to several of the Senate Help Committee Ranking Member Murray's questions during your September confirmation hearings, you stated, and I quote "Pay discrimination is a serious issue and an appropriate focus of the EEOC efforts. I believe that transparency of pay data is a useful tool." Do you still believe that transparency of pay data is a useful tool?

Ms. DHILLON. Yes, I do.

Mrs. HAYES. In that same confirmation hearing, in response to Ranking Member Murray's question, he asked, and I quote, "Will each of you commit to me that you will make finalizing a transparent pay data collection by the EEOC a priority and that it will be finished in a timely manner?", to which you responded yes. Do you still hold that belief to be true?

Ms. DHILLON. Yes, I do.

Mrs. HAYES. So given that you have discontinued the component 2, will you be conducting a pilot program so that we can continue to collect pay data?

Ms. DHILLON. Congresswoman, thank you for your question. We are continuing to collect component 2 pay data. To be clear, we are under court order to do so and the EEOC is complying with that court order and will do so, so long as the order is in effect.

What the EEOC has done is, pursuant to the Paperwork Reduction Act, the PRA, we have indicated that we do not continue—we do not—we are not asking OMB to grant us the authority to continue to collect component 2 pay data in the future. Instead, as we indicated in the PRA, what we intend to do is go through a Title VII notice of rule making process so that we can solicit input and develop a type of data collection that meets our obligations under the PRA, which is to minimize the burden to the entities who are required to respond while matching that burden against the utility of the data to the EEOC.

I do think that a pilot would be part of that. And, in fact, that was one of the recommendations made by the National Academy of Sciences in 2012. The EEOC did not adopt that recommendation and did not conduct a pilot study in connection with the 2016 PRA, but I believe that a pilot study would be appropriate.

Mrs. HAYES. And you have also stated here today, and in the notice of information collection that was published, it says that there is an undue burden for collecting this type of information. Are you aware that the EEOC went through 6 years of analysis, significant interagency consultations, and multiple lengthy notice and comment periods during the issuing of component 2? I am sorry—yes, of component 2? Have you reached out and used any of that data or contacted the outside vendors or any people who collected this information previously?

Ms. DHILLON. Congresswoman, I reviewed the comments that were submitted in 2016. It was not a notice and comment rule making process under the APA, as I believe it should have been. Instead, it was a 60-day PRA notice and in response to that groups submitted comments. And I have reviewed those comments. And the comments pointed out concerns that the respondent community had both with the utility and with the burden.

In terms of the burden, in 2016, the EEOC calculated the burden at being approximately \$53 million. But what they did was they calculated the burden at the employer level. So they treated every employer the same, regardless of size, regardless of the number of employees that they would have to report on, regardless of the configuration of their payroll systems, their HRIS systems, if they even have those kinds of systems in place. They assumed the burden to every employer was the same.

Fast forward to the PRA notice that we submitted last week, at my direction our data scientists and our statisticians redid the burden calculation and they calculated the burden per report that an employer needed to complete because in some cases, if any employer has more than one establishment, they have to file multiple reports. And if an employer is going to submit additional reports, it stands to reason that the burden is higher. And, in fact, when that calculation was rerun, it was determined that the burden was 10 times higher than had originally been calculated.

I would also note that the burden analysis that was conducted as part of the PRA notice that was submitted last week is consistent in methodology with what the EEOC previously did up until 2016. In 2016 the EEOC changed its approach. We went back to the prior approach in connection with the Federal Register notice.

Mrs. HAYES. Thank you.

I would like to ask unanimous consent that I submit a letter into the record from the Examining Policies and Priorities of Equal Opportunity Commission Office.

Without objection, so ordered.

I think that concludes all of our Member questions for today. I remind my colleagues that pursuant to Committee practice, materials for submission for the hearing record must be submitted to the Committee Clerk within 14 days following the last day of the hearing, preferably in Microsoft Word format. The materials submitted must address the subject matter of the hearing. Only a Member of the Committee or an invited witness may submit materials for inclusion in the hearing record. Documents are limited to 50 pages each. Documents longer than 50 pages will be incorporated into the record via an internet link that you must provide to the Committee Clerk within the required timeframe, but please recognize that years from now that link may no longer work.

Again, I want to thank the witnesses for their participation today. What we have heard is very valuable.

Members of the Committee may have some additional questions for you and we ask the witnesses to please respond to those questions in writing. The hearing record will be held open for 14 days in order to receive those responses.

I remind my colleagues that pursuant to Committee practices, witness questions for the hearing record must be submitted to the Majority Committee Staff or Committee Clerk within 7 days. The questions submitted must address the subject matter of the hearing.

I now recognize the distinguished Ranking Member for his closing statement.

Mr. COMER. Well, thank you. And I want to again thank the witnesses for coming to testify today. It is clear from the testimony

heard here today that the Trump Administration, including the EEOC and OFCCP, continues to combat discrimination in the workplace. I am encouraged by the seriousness with which Chair Dhillon and Director Leen take their obligations to enforce non-discrimination laws.

I applaud the EEOC's recognition that the current employer pay data collection is a burdensome and costly mandate on job creators and a threat to the privacy of American workers.

Furthermore, one of the things that makes America exceptional is the First Amendment, including its protection of the free exercise of religion.

I am encouraged by OFCCP's proposed rule to protect the religious freedom of Federal contractors and I hope the final rule will be finalized swiftly.

Thank you again for your testimony and I yield to the Chairwoman.

Mrs. HAYES. Thank you.

I now recognize myself for the purposes of making a closing statement.

Thank you again to our witnesses for being here today. The EEOC and OFCCP's enforcement tools are critical to protecting American workers from discrimination. As our workplace becomes more diverse and as our society confronts pervasive issues like harassment and implicit biases, workers will increasingly rely on effective enforcement to defend their rights to be free from discrimination.

Today's hearing highlighted recent policy shifts at the EEOC and OFCCP that raise serious questions about the agencies' commitments to fulfilling their responsibility to workers across America.

Although this hearing is coming to a close, our oversight of these agencies will continue. Women, people of color, older Americans, workers with disabilities, and the LGBTQ community need our advocacy and oversight efforts to persist.

I hope our witnesses will do everything they can to get these agencies back on track.

If there is no further business, without objection, the Committee stands adjourned.

[Additional submissions by Ms. Brown Barnes follow:]

GAO Highlights

Highlights of [GAO-19-719T](#), a testimony before the Subcommittee on Civil Rights and Human Resources, Committee on Education and Labor, House of Representatives

Why GAO Did This Study

Several federal laws, executive orders, and regulations seek to promote equal employment opportunity by prohibiting employers from discriminating in employment on the basis of race and gender, among other things, and generally require companies contracting with the federal government to comply with affirmative action and other equal employment opportunity provisions. The EEOC and OFCCP are the primary federal agencies that enforce these requirements. Although federal law also generally prohibits employment discrimination based on religion, faith-based organizations may hire based on religion. Some federal grant programs contain statutory restrictions prohibiting this practice; however, since a 2007 DOJ legal opinion, federal agencies have allowed faith-based grantees to use RFRA as a basis for seeking an exemption to allow religious-based hiring.

GAO has issued three reports since September 2016 that address equal employment opportunity (GAO-16-750, GAO-18-69, and GAO-18-164). This testimony is based on these three reports and discusses 1) OFCCP and EEOC's progress in addressing prior GAO recommendations and 2) equal employment opportunity exemptions for faith-based organizations.

To update the status of prior recommendations, GAO reviewed agency guidance and documentation and interviewed agency officials.

View [GAO-19-719T](#). For more information, contact Cindy Brown Barnes at (202) 512-7215 or brownbarnesc@gao.gov.

September 2019

EQUAL EMPLOYMENT OPPORTUNITY

Progress Made on GAO Recommendations to Improve Nondiscrimination Oversight, but Challenges Remain

What GAO Found

The Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) and the Equal Employment Opportunity Commission (EEOC) face challenges in overseeing compliance by employers and federal contractors with applicable federal equal employment opportunity requirements. In its 2016 report, GAO made six recommendations to OFCCP and in its 2017 report made five additional recommendations to OFCCP and one to EEOC to strengthen program oversight. OFCCP has implemented four recommendations, but seven require additional agency action to be fully implemented, as does the one to EEOC. For example:

- In 2016, GAO found that OFCCP's oversight was limited by reliance on contractors' voluntary compliance with affirmative action plan requirements. OFCCP has taken steps to develop a new web portal for collecting those plans annually, but has not yet obtained Office of Management and Budget approval for the collection or launched the portal. GAO also found OFCCP's oversight was limited by a lack of timely staff training. OFCCP has taken steps to implement a new training curriculum, but has not yet implemented its new learning management system that will help ensure timely and regular training.
- In 2017, GAO found that EEOC had not consistently captured information on industry codes, which limits EEOC's ability to identify trends by industry sector and conduct sector-related analyses. EEOC has not yet completed development of its Employer Master List that will include industry codes. GAO also found that OFCCP's methodology for identifying equal employment disparities by industry might not accurately identify industries at greatest risk of noncompliance with affirmative action and nondiscrimination requirements. OFCCP has taken steps to develop a new methodology, but needs to further refine it to ensure that it will identify industries at greatest risk.

From fiscal years 2007 through 2015, few faith-based grantees sought an exemption from nondiscrimination laws related to religious-based hiring under the Religious Freedom Restoration Act of 1993. In October 2017, GAO found that the Departments of Justice (DOJ), Health and Human Services (HHS), and Labor (DOL) had awarded funding to at least 2,586 grantees through at least 53 grant programs that restricted grantees from making employment decisions based on religion. The number of relevant grant programs could be higher because GAO could not identify all such programs due to data limitations. Across the three agencies, GAO identified 117 grantees that were potentially faith-based organizations (FBO). Of the 117 potential FBOs, nine DOJ grantees were FBOs certified as being exempt from statutory restrictions on religious-based hiring. All three agencies required grantees seeking an exemption to self-certify that they were eligible for the exemption, but the agencies' processes for reviewing and approving exemption requests varied. In August 2019, OFCCP issued a proposed rule to clarify the scope and application of the religious exemption to help organizations with federal contracts and subcontracts and federally assisted construction contracts and subcontracts better understand their obligations.



**Table 1: Status of GAO's September 2016
Recommendations to the Office of Federal Contract
Compliance Programs**

1. Revise current scheduling list distribution process	✓
2. Review outreach and compliance efforts	✓
3. Assess existing contractor guidance	✓
4. Focus compliance evaluation on greatest violation risk	X
5. Monitor Affirmative Action Plans	X
6. Provide timely training for new compliance officers	X

✓ Implemented X Not implemented



Table 2: Status of GAO's November 2017 Recommendations to the Office of Federal Contract Compliance Programs (OFCCP) and the Equal Employment Opportunity Commission (EEOC)

OFCCP

1. Require contractors to disaggregate demographic data	✓
2. Use data on closed evaluations to address delays	X
3. Assess methods used to consider industry compliance disparities	X
4. Evaluate establishment-based approach to compliance evaluations	X
5. Evaluate the Functional Affirmative Action Plan	X

EEOC

1. Capture standard industry classification on charges	X
--	---

✓ Implemented X Not implemented

[Questions submitted for the record and their responses follow:]

MAJORITY MEMBERS:
ROBERT C. "BOBBY" SCOTT, VIRGINIA,
Chairman

SUSAN A. DAVIS, CALIFORNIA
RAUL M. GRIJALVA, ARIZONA
JOE COURTNEY, CONNECTICUT
MARCO L. FUDGE, OHIO
GREGORIO KILLI CAMACHO SABLÁN,
NORTHERN MARIANA ISLANDS
FREDERICA S. WILSON, FLORIDA
SUZANNE BONAMICI, OREGON
MARK TAKANO, CALIFORNIA
ALISA S. ADAMS, NORTH CAROLINA
MARK DESAULNIER, CALIFORNIA
DONALD NORCROSS, NEW JERSEY
PRAMILA JAYAPAL, WASHINGTON
JOSEPH D. MORELLE, NEW YORK
SUSAN WILD, PENNSYLVANIA
JOSH HARDER, CALIFORNIA
LUCY MCBEATH, GEORGIA
KIM SCHRIER, WASHINGTON
LAUREN UNDERWOOD, ILLINOIS
JAHANA HAYES, CONNECTICUT
DORNA E. SHALALA, FLORIDA
ANDY LEVIN, MICHIGAN
ELHAN OHAIR, MINNESOTA
DAVID TRONE, MARYLAND
HALEY M. STEVENS, MICHIGAN
SUSIE LEE, NEVADA
LORI TRAHAN, MASSACHUSETTS
JOAQUIN CASTRO, TEXAS



COMMITTEE ON
EDUCATION AND LABOR
U. S. HOUSE OF REPRESENTATIVES
2176 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

October 2, 2019

MINORITY MEMBERS:
VIRGINIA FOXX, NORTH CAROLINA,
Ranking Member

DAVID P. ROE, TENNESSEE
GLENN THOMPSON, PENNSYLVANIA
TIM WALBERG, MICHIGAN
BRETT GUTHRIE, KENTUCKY
BRADLEY BYRNE, ALABAMA
GLENN GROTHMAN, WISCONSIN
ELISE M. STEFANIK, NEW YORK
RICK W. ALLEN, GEORGIA
LLOYD H. SMUCKER, PENNSYLVANIA
JIM BANKS, INDIANA
MARK WALKER, NORTH CAROLINA
JAMES COSPER, KENTUCKY
BEN CLINE, VIRGINIA
RUSSELL FULCHER, OHIO
VAN TAYLOR, TEXAS
STEVEN C. WATKINS, JR., KANSAS
RON WRIGHT, TEXAS
DAN MEUSER, PENNSYLVANIA
DUSTY JOHNSON, SOUTH DAKOTA
FRED KELLER, PENNSYLVANIA
GREGORY F. MURPHY, NORTH CAROLINA

Ms. Cindy Brown Barnes
Director, Education, Workforce, and Income Security
U.S. Government Accountability Office
441 G Street, NW
Washington, D.C. 20548

Dear Ms. Brown Barnes,

I would like to thank you for testifying at the September 19, 2019, Subcommittee on Civil, Rights and Human Services hearing entitled *"Examining the Policies and Priorities of the Equal Employment Opportunity Commission (EEOC) and the Office of Federal Contract Compliance Programs (OFCCP)."*

Please find enclosed additional questions submitted by Committee members following the hearing. Please provide a written response no later than Wednesday, October 9, 2019, for inclusion in the official hearing record. Your responses should be sent to Eunice Ikene of the Committee staff. She can be contacted at 202-225-3725 should you have any questions.

I appreciate your time and continued contribution to the work of the Committee.

Sincerely,

ROBERT C. "BOBBY" SCOTT
Chairman

Enclosure

Civil Rights and Human Services Subcommittee Hearing
“Examining the Policies and Priorities of the Equal Employment Opportunity Commission (EEOC) and the Office of Federal Contract Compliance Programs (OFCCP)”
 Thursday, September 19, 2019
 10:15 a.m.

Chairman Robert C. “Bobby” Scott (D-VA)

- Ms. Barnes Brown, in your testimony, you listed several GAO recommendations which the OFCCP has not yet implemented. Can you please elaborate on the consequences of OFCCP’s failure to implement those, and especially their failure to focus compliance evaluations on the greatest violation risk?

Representative Suzanna Bonamici (D-OR)

- Ms. Brown-Barnes, please provide your opinion about the GAO’s findings regarding the impact of binding arbitration policies on workers, particularly with respect to harassment and sexual harassment claims.

Representative Marcia Fudge (D-OH)

- Ms. Brown-Barnes, GAO notes in its report that “EEOC had identified barriers to recruitment and hiring in the technology sector as a strategic priority, it had not consistently captured information identifying specific industries when conducting investigations”
 - Why would this industry specific information help the EEOC in its enforcement?
 - Has OFCCP and EEOC implemented GAO’s recommendations arising out of its tech diversity report?



COMMITTEE ON
EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES
2176 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

October 2, 2019

MAJORITY MEMBERS:

ROBERT C. "BOBBY" SCOTT, VIRGINIA,
Chairman

SUSAN A. DAVIS, CALIFORNIA
RAUL M. GRIJALVA, ARIZONA
JOE COURTNEY, CONNECTICUT
MARCIA L. FUDGE, OHIO
GREGORIO KILLI CAMACHO SABLON,
NORTHERN MARIANA ISLANDS
FREDERICA S. WILSON, FLORIDA
SUZANNE BONAMICI, OREGON
MARK TAKANO, CALIFORNIA
ALMA S. ADAMS, NORTH CAROLINA
MARK DESAULNIER, CALIFORNIA
DONALD NORCROSS, NEW JERSEY
PRAMILA JAYAPAL, WASHINGTON
JOSEPH D. MORELLE, NEW YORK
SUSAN WILD, PENNSYLVANIA
JOSH HARDER, CALIFORNIA
LUCY McBERTH, GEORGIA
KIM SCHRIER, WASHINGTON
LAUREN UNDERWOOD, ILLINOIS
JAHANA HAYES, CONNECTICUT
DONNA E. SHALALA, FLORIDA
ANDY LEVIN, MICHIGAN
ILHAN OMAR, MINNESOTA
DAVID TRONE, MARYLAND
HALEY M. STEVENS, MICHIGAN
SUSIE LEE, NEVADA
LORI TRAHAN, MASSACHUSETTS
JOAQUIN CASTRO, TEXAS

MINORITY MEMBERS:

VIRGINIA FOIX, NORTH CAROLINA,
Ranking Member

DAVID P. ROE, TENNESSEE
GLENN THOMPSON, PENNSYLVANIA
TIM WALTERS, MICHIGAN
BRETT GUTHRIE, KENTUCKY
BRADLEY BYRNE, ALABAMA
GLENN GROTHMAN, WISCONSIN
ELISE M. STEFANIK, NEW YORK
RICK W. ALLEN, GEORGIA
LLOYD K. SMUCKER, PENNSYLVANIA
JIM SANKS, INDIANA
MARK WALKER, NORTH CAROLINA
JAMES COMER, KENTUCKY
BEN CLINE, VIRGINIA
RUSS FULCHER, IDAHO
VAN TAYLOR, TEXAS
STEVEN C. WATKINS, JR., KANSAS
RON WRIGHT, TEXAS
DAN MEUSER, PENNSYLVANIA
DUSTY JOHNSON, SOUTH DAKOTA
FRED KELLER, PENNSYLVANIA
GREGORY F. MURPHY, NORTH CAROLINA

Ms. Janet Dhillon
Chair
U. S. Equal Employment Opportunity Commission
131 M Street NE, Suite 6NW08F
Washington, D.C. 20507

Dear Chair Dhillon,

I would like to thank you for testifying at the September 19, 2019, Subcommittee on Civil, Rights and Human Services hearing entitled *"Examining the Policies and Priorities of the Equal Employment Opportunity Commission (EEOC) and the Office of Federal Contract Compliance Programs (OFCCP)."*

Please find enclosed additional questions submitted by Committee members following the hearing. Please provide a written response no later than Wednesday, October 9, 2019, for inclusion in the official hearing record. Your responses should be sent to Eunice Ikene of the Committee staff. She can be contacted at 202-225-3725 should you have any questions.

I appreciate your time and continued contribution to the work of the Committee.

Sincerely,

ROBERT C. "BOBBY" SCOTT
Chairman

Enclosure

Civil Rights and Human Services Subcommittee Hearing
“Examining the Policies and Priorities of the Equal Employment Opportunity Commission (EEOC) and the Office of Federal Contract Compliance Programs (OFCCP)”
 Thursday, September 19, 2019
 10:15 a.m.

Chairman Robert C. “Bobby” Scott (D-VA)

- Chair Dhillon, in December 2016, myself and Sen. Murray wrote the EEOC asking that the Commission provide technical assistance to educate employers on the issue of sexual harassment and assault and the dangers posed to workers—especially those employed in isolated circumstances. Can you tell us whether the EEOC will pursue guidance or provide technical assistance in this area?
- Chair Dhillon, are the EEOC staff involved with the charge intake, processing and investigating process required to meet a quota each semester for the number of charge cases they must close? Is there a quota for the number of charges that the EEOC receives that must be classified as A, B, or C charges under the EEOC’s Priority Charge Handling Procedure?
- Chair Dhillon, can you describe for us the difference between how the EEOC interprets Title VII religious exemption and how the OFCCP proposes to interpret EO 11246 with respect to standards of causation? What are the implications of this for workers and the enforcement of Title VII and EO 11246?
- Chair Dhillon, with regards to the employer-sponsored wellness regulations what have you identified as the discriminatory practices? How do you intend to address these discriminatory practices in forthcoming rulemaking?

Representative Suzanne Bonamici (D-OR)

- Chair Dhillon, in the September 12, 2019 Notice of Information Collection Request regarding the EEO-1, the EEOC contends the cost burdens are roughly 10 times higher than previously estimated. EEOC states, “The EEOC has developed a more accurate methodology that deconstructs the total number of reports submitted by report type and by filer type, and then estimates an average burden based on the number and types of reports submitted.”
 - How did the EEOC develop the methodology to determine the new cost benefit analysis cited in the September 12th information request? Please explain and provide this methodology, as well as any details not included in the September 12th Notice.
 - When the Court issued the stay, it found that the EEOC and OMB communicated with the Chamber of Commerce. Please provide details about who the EEOC consulted with both internally and externally when it developed this new cost methodology. Please also provide a detailed explanation and, if it exists, any documentation of these discussions.
 - In light of the EEOC’s new burden assessment, please explain what efforts are under way to identify comprehensive methods to collect pay data from EEO-1 filers.

- Is it your view that comprehensive pay data collection from employers is not useful for enforcement purposes? If so, what evidence do you rely on for that conclusion?
 - Please describe any measures that the agency is taking to identify methods of collecting pay data information outside of an individual investigation.
- Chair Dhillon, how many employers have submitted pay data to the EEOC after the D.C. District Court's order to collect pay data as part of the EEO-1 Form?
 - How will the EEOC use the data that it has received from employers so far?
- Chair Dhillon, was there any consultation or discussion, formal or informal, with industry or employer representatives about the decision not to seek renewal of the Component 2 pay data collection? Please disclose those representatives and provide a detailed explanation and documentation of these discussions.
 - When did that consultation take place?
 - Did you have any consultation or discussion with any worker or civil rights representatives, formal or informal, about the decision not to seek renewal of the Component 2 information collection? Please disclose those representatives and provide a detailed explanation and documentation of these discussions.
- Chair Dhillon, at the September 19th hearing, I asked about the status of the EEOC's proposed harassment guidance, which has been pending at the OMB for approximately two years.
 - Please indicate when the EEOC's guidance on harassment be finalized.
 - Have you spoken with OMB and ascertained why it has not finalized the guidance? Please provide information about whether the delay is related, directly or indirectly, to the inclusion of gender identify and sexual orientation as a form of sex discrimination.
- Chair Dhillon, EEOC's Strategic Enforcement Plan (SEP) for FY 2017-2021 continues to prioritize areas identified in the original 2012 plan, including:
 - 1) Eliminating barriers in recruitment and hiring
 - 2) Protecting vulnerable workers, including immigrant and migrant workers, and underserved communities from discrimination
 - 3) Addressing selected emerging and developing issues
 - 4) Ensuring equal pay protections for all workers
 - 5) Preserving access to the legal system, and
 - 6) Preventing systemic harassment

Is the EEOC continuing to prioritize these areas for enforcement, and, if so, what are some examples of current enforcement efforts in each area?
- Chair Dhillon, the National Substantive Area Priorities outlined in the SEP states that immigrant and migrant workers are "particularly vulnerable to discriminatory practices or policies." What is the EEOC doing to address those vulnerabilities?
- Chair Dhillon, is the EEOC continuing to focus on "protecting lesbians, gay men, bisexuals and transgender (LGBT) people from discrimination based on sex?"
- Chair Dhillon, how is the EEOC continuing to address "discriminatory practices against those who are Muslim or Sikh, or persons of Arab, Middle Eastern or South Asian

descent, as well as persons perceived to be members of these groups, arising from backlash against them from tragic events in the United States and abroad?”

- Chair Dhillon, what is the EEOC doing to focus on "overly broad waivers, releases, and mandatory arbitration provisions" and "employers' failure to maintain and retain applicant and employee data and records required by EEOC regulations?"
- Chair Dhillon, what is the EEOC doing to prevent systemic harassment based on sex, race, disability, and other protected characteristics?
- Chair Dhillon, I have heard from many workers, particularly those in the technology industry, who believe they have been dismissed or denied employment because of their age. Do the EEOC's investigations and enforcement activities confirm what older workers in the technology sector are alleging?

Representative Marcia Fudge (D-OH)

- Chair Dhillon, What is the EEOC's view of the challenges faced by the tech sector? What is the EEOC doing to address the pervasive discrimination in the technology sector?

Representative Kim Schrier (D-WA)

- Chair Dhillon, in the September 12th Notice of Information Collection, the EEOC solicits comments on Paperwork Reduction Act (PRA) approval of Component 1.
 - Why has the EEOC chosen not to seek comment on its newly developed methodology for its cost burden analysis?
 - Why has the EEOC chosen not to solicit comments on its decision not to pursue Component 2?
 - Why has the EEOC categorically chosen not to pursue Component 2 rather than first seeking comment on how to collect this data in a way that may be, in the EEOC's eyes, less cost prohibitive?
- Chair Dhillon, did you consult with any outside vendors who provided employer technical support on filing Component 2 about any tools in development or currently available to help reduce "cost burden" as you've estimated it?
 - Did you do any analysis of whether there are any tools available to assist with the Component 2 pay data collection?

Representative Jahana Hayes (D-CT)

During the September 19, 2019 House Education and Labor subcommittee oversight hearing you affirmed that "transparency of pay data is a useful tool" and that "finalizing a transparent pay data collection by the EEOC [is] a priority."

- What initiatives will you undertake to strengthen the ability of the EEOC and the ability of working people to identify and challenge pay discrimination?
- What steps will you take to ensure that the EEOC finalizes a transparent pay data collection after the current collection concludes?

During the oversight hearing, you stated that you thought there is a better way to collect pay data than Component 2, and that in 2016 employers and industry groups made suggestions to the EEOC that weren't adopted.

- What are the specific employer suggestions that you believe should be adopted for a pay data collection that would yield pay data of appropriate utility for enforcement?
- How would you seek to ensure that critical information about pay and hours worked is collected and submitted by employers?
- Do you believe employers should be required to provide pay data to the EEOC?

During the oversight hearing you affirmed that the EEOC was committed to undertaking a Title VII rulemaking process to develop a pay data collection that would be useful to EEOC enforcement efforts without imposing an "undue" burden on employers.

- When will EEOC initiate such a Title VII rulemaking process?
- Component 2 was adopted after a lengthy and transparent PRA process that included multiple opportunities for public comment (including by employer stakeholders), public hearings, and extensive explanation by EEOC of its analysis and its decision. What information do you believe a Title VII rulemaking process will yield that wasn't available through the PRA approval process?
- You stated at the oversight hearing that you believe a pilot study would be an appropriate part of that rulemaking process. What is the scope of an appropriate pilot study in your judgment? What steps will you take to initiate a pilot study and when will you take these steps?

Representative Susie Lee (D-NV)

EEOC stated in the September 12th Notice that before undertaking a new pay data collection, it should reexamine the recommendations in the EEOC-commissioned 2012 National Academy of Sciences study, "Collecting Compensation Data from Employers." At the oversight hearing you indicated a pilot study was one of the recommendations in the 2012 National Academy of Sciences report.

- When do you anticipate completing that reexamination?
- What would such a reexamination entail? Will there be an opportunity for members of the public or stakeholders to participate?
- The September 12, 2019 Notice states that "the Commission solicits public comment on its intent to seek PRA approval of Component 1 of the EEO-1 under a new OMB control number to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's functions, including whether the information will have practical utility; (2) Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used..."
- Why doesn't the September 12, 2019 Notice specifically invite public comment on the EEOC's decision not to renew Component 2?



COMMITTEE ON
EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES
2176 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

October 2, 2019

MAJORITY MEMBERS:
ROBERT C. "BOBBY" SCOTT, VIRGINIA,
Chairman

SUSAN A. DAVIS, CALIFORNIA
RAUL M. GRIJALVA, ARIZONA
JOE COURTNEY, CONNECTICUT
MARCIA L. FUDGE, OHIO
GREGORIO KILLI CAMACHO SABLON,
NORTHERN MARIANA ISLANDS
FREDERICA S. WILSON, FLORIDA
SUZANNE BONAMICI, OREGON
MARK TAKANO, CALIFORNIA
ALMA S. ADAMS, NORTH CAROLINA
MARK DESAULNIER, CALIFORNIA
DONALD NORCROSS, NEW JERSEY
PRAMILA JAYAPAL, WASHINGTON
JOSEPH D. MORELLE, NEW YORK
SUSAN WILD, PENNSYLVANIA
JOSH HARDER, CALIFORNIA
LUCY McBEATH, GEORGIA
KIM SCHRIER, WASHINGTON
LAUREN UNDERWOOD, ILLINOIS
JAHANA HAYES, CONNECTICUT
DONNA E. SHALALA, FLORIDA
ANDY LEVIN, MICHIGAN
ILHAN OMAR, MINNESOTA
DAVID TRONE, MARYLAND
HALEY M. STEVENS, MICHIGAN
SUSIE LEE, NEVADA
LORI TRAHAN, MASSACHUSETTS
JOAQUIN CASTRO, TEXAS

MINORITY MEMBERS:

VIRGINIA FOIX, NORTH CAROLINA,
Ranking Member
DAVID P. ROE, TENNESSEE
GLENN THOMPSON, PENNSYLVANIA
TIM WALBERS, MICHIGAN
BRETT GUTHRIE, KENTUCKY
BRADLEY BYRNE, ALABAMA
GLENN GROTHMAN, WISCONSIN
ELISE M. STEFANIK, NEW YORK
RICK W. ALLEN, GEORGIA
LLOYD K. SMUCKER, PENNSYLVANIA
JIM SANKS, INDIANA
MARK WALKER, NORTH CAROLINA
JAMES COMER, KENTUCKY
BEN CLINE, VIRGINIA
RUSS FULCHER, IDAHO
VAN TAYLOR, TEXAS
STEVEN C. WATKINS, JR., KANSAS
RON WRIGHT, TEXAS
DAN MEUSER, PENNSYLVANIA
DUSTY JOHNSON, SOUTH DAKOTA
FRED KELLER, PENNSYLVANIA
GREGORY F. MURPHY, NORTH CAROLINA

Mr. Craig E. Leen, Esq.
Director, Office of Federal Contract Compliance
U.S. Department of Labor
200 Constitution Avenue NW, Room C3325
Washington, D.C. 20210

Dear Director Leen,

I would like to thank you for testifying at the September 19, 2019, Subcommittee on Civil, Rights and Human Services hearing entitled *"Examining the Policies and Priorities of the Equal Employment Opportunity Commission (EEOC) and the Office of Federal Contract Compliance Programs (OFCCP)."*

Please find enclosed additional questions submitted by Committee members following the hearing. Please provide a written response no later than Wednesday, October 9, 2019, for inclusion in the official hearing record. Your responses should be sent to Eunice Ikene of the Committee staff. She can be contacted at 202-225-3725 should you have any questions.

I appreciate your time and continued contribution to the work of the Committee.

Sincerely,

ROBERT C. "BOBBY" SCOTT
Chairman

Enclosure

Civil Rights and Human Services Subcommittee Hearing
“Examining the Policies and Priorities of the Equal Employment Opportunity Commission (EEOC) and the Office of Federal Contract Compliance Programs (OFCCP)”
 Thursday, September 19, 2019
 10:15 a.m.

Chairman Robert C. “Bobby” Scott (D-VA)

- Director Leen, The DOL has stated that it received feedback from “some” organizations that they did not seek contracts because they believed they needed broader religious exemptions.
 - How many organizations did DOL hear from?
 - What industries were these organizations in?
 - Are you aware of any information to suggest that these organizations would have been in a position to offer strong competitive bids for federal contracts, but for these concerns?
 - Did you also receive feedback from religious and other organizations in opposition to the directive? If so, how many? What types of organizations?
 - Director Leen, can you tell us what standard of causation the OFCCP would apply to religious organizations when a charge of discrimination is brought? Is this the same standard of causation as applied to other organizations? How would the new rule change that?

Representative Suzanna Bonamici (D-OR)

- Director Leen, did you or others at the Department of Labor participate in any discussion about the decision not to seek renewal of the EEO-1 Component 2 pay data collection? If so, please provide a detailed explanation and documentation about each of these discussions.
- Director Leen, does the OFCCP currently use the data in Component 1 and Component 2? If so, how does OFCCP use the data (e.g. compliance reviews, investigations, or other enforcement activities)?
- Director Leen, on August 15, 2019, the Office of Federal Contract Compliance Programs (OFCCP) published a proposed rule that seeks to significantly expand the number of federal contractors eligible for a religious exemption. This proposed rule would include many contractors beyond those that courts have previously found to be a “religious corporation, association, educational institution, or society.” Such a change would enable many employers to discriminate against their employees for not sharing the same religious beliefs. The preamble to the published proposed rule states: “Some religious organizations have previously provided feedback to OFCCP that they were reluctant to participate as federal contractors because of uncertainty regarding the scope of the religious exemption contained in section 204(c) of Executive Order 11246 and codified in OFCCP’s regulations.”
 - The preamble to the recent proposed rule makes vague mention of “some religious organizations” providing “feedback to OFCCP that they were reluctant to participate as

federal contractors” because of concerns regarding the religious exemption in Executive Order 11246. To what specific organizations does that statement refer?

- Director Leen, before President Obama extended the nondiscrimination protections of EO 11246 to the LGBTQ community with EO 13672, leaders and employees from more than 120 faith-based organizations signed a letter opposing the executive order and claiming that faith-based federal contractors would be excluded from contracting because of the policy. But according to a recent analysis from the Center for American Progress, there was no evidence that EO 13672 systematically prohibited faith-based contractors from contracting with the federal government.
 - The analysis from the Center for American Progress showed that, among faith-based organizations whose employees publicly opposed extending protections for LGBTQ workers and who received a federal contract in the year before EO 13672 went into effect, all but one received a new contract in the year after the EO went into effect. Can OFCCP provide any concrete evidence that the nondiscrimination requirements EO 11246 and its religious exemption as it currently exists have systematically excluded faith-based organizations from federal contracting?
- Director Leen, why did OFCCP decide to use a 30-day comment period rather than a 60-day comment period?

Representative Marcia Fudge (D-OH)

- Director Leen, how many compliance reviews has the OFCCP conducted of high-tech companies who are federal contractors in the last 10 years? What do the compliance reviews reveal?
- Director Leen, how has DOL addressed the recommendations from GAO to address the under representation of African American workers, Hispanic workers and women in technology firms?

[Ms. Brown Barnes responses to questions submitted for the record follow:]

**Questions for the Record – Civil Rights and Human Services Subcommittee Hearing
“Examining the Policies and Priorities of the Equal Employment Opportunity Commission
(EEOC) and the Office of Federal Contract Compliance Programs (OFCCP)”
Thursday, September 19, 2019**

Ms. Barnes Brown, in your testimony, you listed several GAO recommendations which the OFCCP has not yet implemented. Can you please elaborate on the consequences of OFCCP’s failure to implement those, and especially their failure to focus compliance evaluations on the greatest violation risk?

OFCCP has fully implemented 4 of the 11 recommendations from our 2016 and 2017 reports and has made progress in implementing the remaining 7.¹ Fully implementing our recommendations will help OFCCP ensure contractor compliance with federal equal employment opportunity and affirmative action requirements designed to promote and protect a diverse workforce. This is increasingly important as the workforce continues to diversify and many workers face the risk of discrimination in the workplace, such as limited opportunities for hiring and promotion.

In 2016 we reported that due to limitations in OFCCP’s process for selecting contractors for evaluation, OFCCP did not have reasonable assurance that its compliance efforts were focused on those contractors with greatest risk of noncompliance with nondiscrimination and affirmative action requirements.² As we reported, OFCCP only conducted evaluations for about 2 percent of federal contractor establishments in its jurisdiction. Since our report, the number of compliance evaluations conducted has decreased by 65 percent, making it increasingly important that OFCCP maximize the effectiveness of its primary tool for enforcement, compliance evaluations. OFCCP’s contractor selection process is nonrandom and does not produce a generalizable sample of contractors for evaluation. By using a nonrandom process, OFCCP is unable to draw conclusions about noncompliance risk in the overall federal contractor population. Without an effective risk-based contractor selection process, OFCCP may be missing opportunities to evaluate whether there is a significant segment of contractors that may be more likely to violate nondiscrimination and affirmative action requirements. In 2016, we also recommended that OFCCP implement a mechanism to monitor contractors’ affirmative action programs (AAP). Without such monitoring, OFCCP is limited in its ability to ensure that federal contractors are developing and annually updating these plans, as required. Implementing this recommendation would help OFCCP better ensure that contractors are making efforts to create a workforce that is an authentic reflection of the demographics of their relevant, qualified labor pool by providing specific protected classes with equitable access to employment opportunities. Further, OFCCP officials have indicated that information on those federal contractors not complying with annual AAP requirements may be useful in the compliance evaluation selection process and serve as a risk based indicator of noncompliance.

As we recommended in our 2017 report on diversity in the technology sector, OFCCP should also assess the quality of the methods used to incorporate consideration of disparities by industry into its process for selecting contractor establishments for compliance evaluation.³ Without an assessment, OFCCP may use a process that does not effectively identify the industries at greatest risk of potential noncompliance with nondiscrimination and affirmative action requirements.

¹ GAO, *Equal Employment Opportunity: Progress Made on GAO Recommendations to Improve Nondiscrimination Oversight, but Challenges Remain*, GAO-19-719T (Washington, D.C.: Sept. 19, 2019).

² GAO, *Equal Employment Opportunity: Strengthening Oversight Could Improve Federal Contractor Nondiscrimination Compliance*, GAO-16-750 (Washington, D.C.: Sept. 22, 2016).

³ GAO, *Diversity in the Technology Sector: Federal Agencies Could Improve Oversight of Equal Employment Opportunity Requirements*, GAO-18-69 (Washington, D.C.: Nov. 16, 2017).

**Questions for the Record – Civil Rights and Human Services Subcommittee Hearing
“Examining the Policies and Priorities of the Equal Employment Opportunity Commission
(EEOC) and the Office of Federal Contract Compliance Programs (OFCCP)”
Thursday, September 19, 2019**

Ms. Brown-Barnes, please provide your opinion about the GAO’s findings regarding the impact of binding arbitration policies on workers, particularly with respect to harassment and sexual harassment claims.

GAO has not conducted work on binding arbitration with respect to harassment and sexual harassment claims. However, in our November 2017 report on diversity in the technology sector,⁴ we noted that a 2016 EEOC report found that binding arbitration policies, which require individuals to submit their claims to private arbiters rather than courts, can deter workers from bringing discrimination claims to the agency, leaving significant violations in entire segments of the workforce unreported.⁵

Ms. Brown-Barnes, GAO notes in its report that “EEOC had identified barriers to recruitment and hiring in the technology sector as a strategic priority, it had not consistently captured information identifying specific industries when conducting investigations”

Why would this industry specific information help the EEOC in its enforcement?

Industry specific information could help EEOC analyze charge data by industry sector and conduct sector-related analysis that could be used to more effectively focus its limited enforcement resources and outreach activities.

Has OFCCP and EEOC implemented GAO’s recommendations arising out of its tech diversity report?

GAO made six recommendations in the November 2017 Diversity in the Technology Sector report, including one recommendation to EEOC and five recommendations to OFCCP. The table below shows the status of these recommendations and additional actions needed to implement them.

⁴GAO-18-69

⁵U.S. Equal Employment Opportunity Commission, *Advancing Opportunity: A Review of the Systemic Program of the US Equal Employment Opportunity Commission* (Washington, D.C.: July 7, 2016).

**Questions for the Record – Civil Rights and Human Services Subcommittee Hearing
“Examining the Policies and Priorities of the Equal Employment Opportunity Commission
(EEOC) and the Office of Federal Contract Compliance Programs (OFCCP)”
Thursday, September 19, 2019**

Table 2: Status of GAO’s 2017 Recommendations to Improve the Equal Employment Opportunity Commission and Office of Federal Contract Compliance Programs’ Oversight of Equal Employment Opportunity Requirements in the Technology Sector

GAO Recommendations	Additional actions needed to implement recommendations
Implemented	
1. Office of Federal Contract Compliance Programs (OFCCP) should take steps toward requiring contractors to disaggregate demographic data for the purpose of setting placement goals in the affirmative action plan (AAP) rather than setting a single goal for all minorities, incorporating any appropriate accommodation for company size. For example, OFCCP could provide guidance to contractors to include more specific goals in their AAP or assess the feasibility of amending their regulations to require them to do so.	Recommendation implemented; no action needed.
Not Fully Implemented	
1. The Equal Employment Opportunity Commission (EEOC) should develop a timeline to complete the planned effort to clean its database of charges and enforcement actions—referred to as the Integrated Mission System (IMS) data—for a one-year period and add missing industry code data.	Collect sufficient information through its Employer Master List and use it to analyze charge data by industry.
2. OFCCP should analyze internal process data from closed evaluations to better understand the cause of delays that occur during compliance evaluations and make changes accordingly.	Demonstrate that its internal policy changes are addressing the root causes of delays based on data analysis of actual evaluations.
3. OFCCP should assess the quality of the methods used by OFCCP to incorporate consideration of disparities by industry into its process for selecting contractor establishments for compliance evaluation. It should use the results of this assessment in finalizing its procedures for identifying contractor establishments at greatest risk of noncompliance.	Further refine new schedule methodology after completion of the most recent cycle of compliance evaluations.
4. OFCCP should evaluate the current approach used for identifying entities for compliance review and determine whether modifications are needed to reflect current workplace structures and locations or to ensure that subcontractors are included.	Obtain Office of Management and Budget approval for revising how it identifies entities for compliance reviews to reflect current workplace structures and locations or subcontractors.
5. OFCCP should evaluate the Functional Affirmative Action Program to assess its usefulness as an effective alternative to an establishment-based program, and determine what improvements, if any, could be made to better encourage contractor participation.	Evaluate the Functional Affirmative Action Program to assess its usefulness as an effective alternative to AAP.

Source: GAO-18-69, EEOC, and Department of Labor. | GAO-19-719T

[Ms. Dhillon responses to questions submitted for the record follow:]

Civil Rights and Human Services Subcommittee Hearing
“Examining the Policies and Priorities of the Equal Employment Opportunity Commission (EEOC) and the Office of Federal Contract Compliance Programs (OFCCP)”
 Thursday, September 19, 2019
 2:00 PM

Chairman Robert C. “Bobby” Scott (D-VA)

- **Chair Dhillon, in December 2016, myself and Sen. Murray wrote the EEOC asking that the Commission provide technical assistance to educate employers on the issue of sexual harassment and assault and the dangers posed to workers—especially those employed in isolated circumstances. Can you tell us whether the EEOC will pursue guidance or provide technical assistance in this area?**

EEOC Response: EEOC views preventing and addressing all forms of discriminatory harassment, including sexual harassment and assault, as a priority, and these efforts are an important part of our mission-critical work. Highlighted below is a summary of the work the agency has done to address sexual harassment and assault, including for those workers employed in isolated workplaces.

In an effort to prevent and address discriminatory harassment, the agency deploys significant resources to provide education, training and technical assistance to stakeholders, including employers, through its free and fee-based outreach programs. In Fiscal Year (FY) 2019, EEOC conducted over 613 outreach events, with 120,815 participants, addressing the issue of sexual harassment.

In 2016, the Co-Chairs of EEOC’s Select Task Force on the Study of Harassment in the Workplace issued a report that included detailed recommendations for harassment prevention, effective policies to reduce and eliminate harassment, and recommendations for targeted outreach. The report explored ways to help employers and employees prevent such conduct before it rises to the level of illegal harassment and identified factors that may increase risk for workplace harassment. The report identified isolated workplaces as one of the risk factors for harassment and included specific strategies to prevent harassment in these workplaces.

Building on the work of the Select Task Force, in FY 2018, the EEOC developed and began to offer innovative training programs which go above and beyond traditional anti-harassment training for both employers and employees. The training curriculum is built around the universal desire for a respectful workplace. Rather than teaching solely about unlawful behaviors, each program focuses on a continuum of behaviors that undermine respect, from rude and uncivil behavior to abusive behavior and unlawful harassment. The content may be customized for the workplace and includes a segment for employers to conduct a self-assessment of their own harassment prevention policies and procedures. Since FY 2018, 33,000 individuals have been trained on Respectful Workplace, Leading for Respect and Compliance Training.

EEOC also makes available on its website numerous technical assistance publications that educate employers and workers on the issue of sexual harassment and assault, including issues that may arise in isolated workplaces. These include, among others: *Facts about Sexual*

Harassment, <https://www.eeoc.gov/eeoc/publications/fs-sex.cfm>; *Questions and Answers for Small Employers on Employer Liability for Harassment by Supervisors*, <https://www.eeoc.gov/policy/docs/harassment-facts.html>; *Youth at Work: Sexual Harassment is Against the Law*, https://www.eeoc.gov/youth/downloads/sexual_harassment.pdf; and *Questions and Answers: The Application of Title VII and the ADA to Applicants or Employees Who Experience Domestic or Dating Violence, Sexual Assault, or Stalking*, https://www.eeoc.gov/eeoc/publications/qa_domestic_violence.cfm.

- **Chair Dhillon, are the EEOC staff involved with the charge intake, processing and investigating process required to meet a quota each semester for the number of charge cases they must close? Is there a quota for the number of charges that the EEOC receives that must be classified as A, B, or C charges under the EEOC's Priority Charge Handling Procedure?**

EEOC Response: We have not imposed charge closure quotas on EEOC staff, and there is no quota on the number of charges that must be categorized as A, B, or C under our Priority Charge Handling Procedures (PCHP). EEOC staff are dedicated to our mission, to prevent and remedy unlawful discrimination and advance equal opportunity for all in the workplace. Accordingly, we are committed to enforcing the law and providing excellent customer service to the public.

- **Chair Dhillon, can you describe for us the difference between how the EEOC interprets Title VII religious exemption and how the OFCCP proposes to interpret EO 11246 with respect to standards of causation? What are the implications of this for workers and the enforcement of Title VII and EO 11246?**

EEOC Response:

The EEOC follows the standard set out in Title VII, at 42 U.S.C. 2000e2(m). It would be inappropriate for me to comment on standards the OFCCP is considering for causation in the context of religious organizations as they are currently in the midst of the regulatory process.

- **Chair Dhillon, with regards to the employer-sponsored wellness regulations what have you identified as the discriminatory practices? How do you intend to address these discriminatory practices in forthcoming rulemaking?**

EEOC Response: With regards to employer-sponsored wellness plans, discriminatory practices would include the use or administration of a wellness program in a way that constitutes disparate treatment on any basis prohibited by the EEO laws, maintaining a wellness program that has a disparate impact on the basis of any protected characteristic and that cannot be justified by business necessity (except genetic information, since claims of disparate impact are not currently available under Genetic Information Nondiscrimination Act), or failing to make reasonable accommodations under the Americans with Disabilities Act, so that employees with disabilities can participate in a wellness program.

The forthcoming rulemaking under the Americans with Disabilities Act (ADA) and the Genetic Information Nondiscrimination Act (GINA) will address the extent to which employer-sponsored wellness programs may offer incentives for employees to provide health information as part of a wellness program and for employees' family members to provide their own current health status

information when they are offered the opportunity to participate in wellness programs along with employees. Portions of ADA and GINA rules issued in 2016 that addressed this issue were vacated by the district court in *AARP v. EEOC*, 292 F. Supp. 3d 238 (D.D.C. 2017). Once the Commission has approved proposed rules, the public will have an opportunity to comment and the Commission will then issue final rules informed by the public comments.

Portions of the rules not vacated by the district court remain in effect, including: (1) provisions in both rules that employees may not be coerced to participate in a wellness program, and may not be retaliated against, interfered with in the exercise of their ADA or GINA rights, threatened, intimidated, or harassed for refusing to participate, or because their family members refuse to participate; (2) prohibitions on denying health insurance or limiting health insurance for employees or their family members who refuse to participate in wellness programs that collect health information; and (3) confidentiality requirements.

Representative Suzanne Bonamici (D-OR)

- **Chair Dhillon, in the September 12, 2019 Notice of Information Collection Request regarding the EEO-1, the EEOC contends the cost burdens are roughly 10 times higher than previously estimated. EEOC states, “The EEOC has developed a more accurate methodology that deconstructs the total number of reports submitted by report type and by filer type, and then estimates an average burden based on the number and types of reports submitted.”**
 - **How did the EEOC develop the methodology to determine the new cost benefit analysis cited in the September 12th information request? Please explain and provide this methodology, as well as any details not included in the September 12th Notice.**

EEOC Response:

In March 2019, the EEOC began preparing to seek continued approval of the EEO-1 collection under the PRA. Staff in the agency’s Office of Enterprise and Data Analytics (OEDA) revisited the previous methodology for calculating burden estimates utilized by the EEOC for the EEO-1, taking into consideration GAO and OMB guidance on the appropriate methodology for calculating burden estimates in federal information collections.¹ In light of these considerations, OEDA staff believed

¹ See Government Accountability Office Report GAO-18-381, “*PAPERWORK REDUCTION ACT, Agencies Could Better Leverage Review Processes and Public Outreach to Improve Burden Estimates*,” July 2018, <https://www.gao.gov/assets/700/693057.pdf>, p. 8, Footnote a to Figure 2. (“A single information collection request may contain multiple burden hour estimate formulas depending, for example, on whether there are different forms or different types of respondents. The total annual burden hour estimate is the sum of all of individual burden hour estimate formulas. If the information request is for the maximum 3-year period, then the annual burden estimate is the average over that 3-year period.”); see also ROCIS HOW TO Guide for Agency Users of the (ICR) Module, April 5, 2017, https://www.rocis.gov/rocis/jsp3/common/ROCIS_HOW_TO_Guide_for_AGENCY_Users_of_ICR_Module-04052017.pdf, p. 105, ¶ 12. (“Provide estimates of the hour burden of the collection of information. The statement should:

* Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable.

that the EEOC's previous burden estimate for the EEO-1 had insufficiently calculated what the burden would be to submit the data. On May 15, 2019, Janet Dhillon was sworn in as Chair of the EEOC, restoring the EEOC's quorum, which it had lost in January 2019. After Chair Dhillon assumed this role, the Director of OEDA informed her of OEDA's concerns about the previous burden estimates for the EEO-1.

Accordingly, the EEOC re-examined the methodology used to calculate the 2016 burden for the collection of EEO-1 data and concluded that the methodology did not adhere to the standard approach for estimating burden in federal data collections. Unlike the guidance provided by both GAO and OMB, the EEOC had estimated burden at the individual employer level in the 2016 package and not at the individual form level.² Not adhering to this standard practice resulted in an extremely low estimate of the burden on employers. Based on the following analysis and as specified below, the EEOC concluded that the burden estimate associated with the EEO-1 is higher than it previously estimated in 2016.

In 2016, the methodology used to calculate the burden relied almost exclusively on the number of employers or "EEO-1 filers" without considering the variation in burden attributable to the different number and types of EEO-1 reports that different employers file. Essentially, the 2016 methodology treated all employers the same. The EEO-1 Instructions direct an employer with only a single location to file one EEO-1 report, while directing an employer with numerous locations to file a corresponding number of EEO-1 "establishment" reports, as well as a headquarters report and a consolidated report.³ The time and resources used to collect and report

If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.

* If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens.

* Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included under 'Annual Cost to Federal Government!')

² The EEOC refers to the various individual EEO-1 forms that employers must file as "reports". See footnote 3 for an explanation of the types of reports required to be filed.

³ A single-establishment employer is required to submit only one EEO-1 data report—a type 1 EEO-1 Report. A multi-establishment employer is required to submit several reports: The type 2 'Consolidated Report' must include all employees of the employer categorized by race, gender and job category and the type 3 'Headquarters Report' must include employees working at the main office site of the employer and those employees that work from home that report to the corporate office. In addition, a separate EEO-1 report for the headquarters establishment is required even if there are fewer than 50 employees working at the headquarters establishment. Type 4 'Establishment Reports' must be submitted for each physical establishment with 50 or more employees. Employment data must be categorized by race or ethnicity, gender, and job category. Establishment sites with fewer than 50 employees must submit either a type 8 or a type 6 report. An employer submitting type 8 'Establishment Reports' should submit a separate report for each establishment employing fewer than 50 employees. Like the type 4 'Establishment Report', type 8 report employment data must also be categorized by race or ethnicity, gender, and job category. For type 6 'Establishment List', the establishment name, complete address, and total number of employees must be provided for each physical location where fewer than 50 employees are working. Employers choosing a type 6 data report for each establishment employing fewer than 50 employees must manually enter data categorized by race or ethnicity, gender, and job category to the type 2 'Consolidated Report' to include all company employees. Filers choosing to create a type 8 report for each establishment employing fewer than 50 employees must enter employment data categorized by race or

data for a large number of these reports at different locations, some of which are more detailed than others, is necessarily greater than that needed to prepare a single report or a few reports at one or two locations. Nonetheless, the initial 2016 burden methodology “was [exclusively] based on the number of firms filing one or more EEO-1 reports, not on the number of reports submitted or the number of separate establishments submitting reports.”⁴ The final 2016 methodology acknowledged that the number of reports could change the burden on employers, but it still assumed “that the bulk of the tasks performed in completing the EEO-1 report will be completed at the firm level due to the centrality of automation.”⁵ Applying this 2016 methodology, the EEOC concluded that “the total estimated *annual* burden hour costs for employers and contractors that will complete both Components 1 and 2 in 2017 and 2018 will be \$53,546,359.08.”

As explained in the September 12, 2019 Notice of Information Collection, in light of the above, the EEOC developed a more accurate methodology that deconstructs the total number of reports submitted by report type and by filer type, and then estimates an average burden based on the number and types of reports submitted.⁶ These estimates account for the different amounts of time required for different types of EEO-1 reports,⁷ and are based on EEOC experience during the data submission process.

ethnicity, gender, and job category for each type 8 report. The employment data entered for each such establishment on a type 8 report will automatically populate the type 2 “Consolidated Report”.

⁴ *Agency Information Collection Activities; Notice of Submission for OMB Review, Final Comment Request: Revision of the Employer Information Report (EEO-1)*, 81 FR 45479, 45493 (July 14, 2016) (“the EEOC [initially] concluded that most employers would be filing the EEO-1 with a digital file upload by the time they file their EEO-1 reports for 2017 and 2018. Therefore, in the 60-Day Notice, the EEOC reasoned that ‘each additional report filed [would have] just a marginal additional cost.’ Accordingly, the burden calculation in the [2016] 60-Day Notice was based on the number of firms filing one or more EEO-1 reports, not on the number of reports submitted or the number of separate establishments submitting reports.”)

⁵ *Id.* (“Second, the EEOC no longer assumes that all the EEO-1 reports for 2017 and 2018 will be submitted by one data upload filed by the firm on behalf of all the establishments. While still reflecting that the bulk of the tasks performed in completing the EEO-1 report will be completed at the firm level due to the centrality of automation, the EEOC’s 30-Day Notice recognizes that there are certain tasks that will be performed at the establishment level for employers who enter their EEO-1 data directly onto the Joint Reporting Committee’s secure portal. Therefore, the 30-Day Notice burden calculations are based on the number of hours needed to complete the tasks at the firm level and also at the establishment level for the proportion of EEO-1 filers who do not now use centralized, secure data uploads.”)

⁶ See footnote 1, *supra*; see also, e.g., *Mortality in Correctional Institutions*, 84 FR 1507, 1508-09 (2019).

⁷ Using Component 1 2017 data as the basis for an example of the new methodology, 75,043 EEO-1 filers submitted a total of 1,597,036 Component 1 reports to the EEOC. Forty percent, or 30,203 filers, submitted a report for only a single establishment. Single establishment filers are referred to as “Type 1” filers by the EEOC. Each Type 1 filer submitted a single report, yielding a total of 30,203 reports in 2017. These Type 1 filers have the lowest burden, with an average estimated burden of 45 minutes annually to complete their submission of Component 1. Multiple establishment filers are referred to as “Type 2” filers by the EEOC. In 2017, Type 2 filers accounted for 60%, or 44,840 filers of Component 1, and in 2017 submitted a total of 1,566,833 reports, or 98% of all Component 1 EEO-1 reports submitted. Type 2 filers have a higher reporting burden because they are required to submit a combination of reports: a type 2 (“consolidation”) report, a type 3 (“headquarters”) report, and a type 4 establishment report, a type 8 establishment report, or a type 6 establishment list for each establishment. The estimated burden for Type 2 filers varies between 3.5 and 9.5 hours, depending on the report type combination. This new method for calculating the filers’ burden yielded a total estimated burden of 7,643,874 hours for 75,043 filers to submit 1,597,036 reports for data year 2017. Per U.S. Department of Labor’s Bureau of Labor Statistics wage rates, the associated total annual burden hour cost is \$297,381,066 for required filers. The EEOC estimates that the total cost of the administration of the EEO-1 Component data collection to the federal government is \$2 million annually.

- **When the Court issued the stay, it found that the EEOC and OMB communicated with the Chamber of Commerce. Please provide details about who the EEOC consulted with both internally and externally when it developed this new cost methodology. Please also provide a detailed explanation and, if it exists, any documentation of these discussions.**

EEOC Response: As stated earlier, the new cost methodology for the September 12, 2019, Notice, was the product of the EEOC's career statisticians and data scientists. It was not developed based on any direct consultation with any outside organizations. The Court was addressing the 2017 decision to stay the 2016 Paperwork Reduction Act approval, not the development of the 2019 notice.

EEOC is currently compiling for disclosure documentation of external communications regarding the EEO-1 component 2 pay data collection in response to a FOIA request dated May 8, 2019, by Democracy Forward Foundation (Democracy Forward), which is now also the subject of FOIA litigation.⁸ On October 4 and November 25, 2019, the EEOC issued its responses to Democracy Forward's FOIA request. Together, the responses cover the period October 31, 2018, to October 4, 2019, and include responsive email records for that period. Copies of the responsive records the EEOC provided are below.

- **In light of the EEOC's new burden assessment, please explain what efforts are under way to identify comprehensive methods to collect pay data from EEO-1 filers.**

EEOC Response: EEOC is committed to transparency; accordingly, we are committed that any future new pay data collection will be established through a Title VII rulemaking process. This will allow for robust public comment and input. It will also ensure that the data collected by EEOC is useful in carrying out the agency's mission and that there is not undue burden on respondents.

- **Is it your view that comprehensive pay data collection from employers is not useful for enforcement purposes? If so, what evidence do you rely on for that conclusion?**

EEOC Response: Pay discrimination is a critical focus of EEOC's efforts to prevent and remedy unlawful discrimination, and pay transparency is a useful tool that could aid the agency in its efforts. However, it is critical that any data collection undertaken by the EEOC be thoroughly tested to ensure that it is well-designed and will be useful in the construct of the agency's enforcement and educational responsibilities.

- **Please describe any measures that the agency is taking to identify methods of collecting pay data information outside of an individual investigation.**

⁸ *Democracy Forward Found. v. EEOC et al.*, Civil Action No. 119-cv-2306 (D.D.C.)

EEOC Response: EEOC is committed to transparency; accordingly, we are committed that any pay data collection will be established through a Title VII rulemaking process. This will allow for robust public comment and input. It will also ensure that the data collected by EEOC is useful in carrying out the agency's mission and that there is not undue burden on respondents.

As a first step in this process, we are reexamining the EEOC-commissioned 2012 study from the National Academies of Sciences entitled "Collecting Compensation Data from Employers." We are paying particular attention to the recommendations made to the EEOC on the potential benefits and burdens associated with collecting pay data from employers.

- **Chair Dhillon, how many employers have submitted pay data to the EEOC after the D.C. District Court's order to collect pay data as part of the EEO-1 Form?**

EEOC Response: As reported in the November 22, 2019 Status Report to the district court, as of that date, 83.5% of eligible filers have completed submission of Component 2 EEO-1 data. This includes 82.7% of filers submitting Component 2 data for calendar year 2017, and 84.2% of filers submitting Component 2 data for calendar year 2018.

- **How will the EEOC use the data that it has received from employers so far?**

EEOC Response: What the EEOC will do with any Component 2 data it collects may depend, in part, on the outcome of the appeal currently pending before the D.C. Circuit Court of Appeals.⁹ For any data collection, the EEOC recognizes the importance of ensuring data integrity through the comprehensive analysis of data quality and assessment of data utility in a methodologically rigorous and scientifically sound manner, which will determine the appropriate uses of the data.

- **Chair Dhillon, was there any consultation or discussion, formal or informal, with industry or employer representatives about the decision not to seek renewal of the Component 2 pay data collection? Please disclose those representatives and provide a detailed explanation and documentation of these discussions.**
 - **When did that consultation take place?**
 - **Did you have any consultation or discussion with any worker or civil rights representatives, formal or informal, about the decision not to seek renewal of the Component 2 information collection? Please disclose those representatives and provide a detailed explanation and documentation of these discussions.**

EEOC Response: EEOC is currently compiling for disclosure documentation of external communications regarding the EEO-1 component 2 pay data collection in response to a FOIA request dated May 8, 2019, by Democracy Forward Foundation (Democracy Forward), which is now also the subject of FOIA litigation.¹⁰ On October 4 and November 25, 2019, the EEOC issued its responses to Democracy Forward's FOIA request. Together, the responses cover the period October 31, 2018, to October 4, 2019, and include responsive email records for that period. Copies of the responsive records the EEOC provided are below.

⁹ Case No. 19-5130 (D.C. Cir.).

¹⁰ *Democracy Forward Found. v. EEOC et al.*, Civil Action No. 119-cv-2306 (D.D.C.)

- **Chair Dhillon, at the September 19th hearing, I asked about the status of the EEOC's proposed harassment guidance, which has been pending at the OMB for approximately two years.**
 - **Please indicate when the EEOC's guidance on harassment [sic] be finalized.**

EEOC Response:

The harassment guidance was submitted for review pursuant to the OMB interagency coordination and review process governing policy development and associated interactions between agencies. As such, OMB reviews an undertaking subject to the deliberative process, which protects the confidentiality of internal, deliberative material, such as documents containing the analyses, opinions, or recommendations of agency staff, and attorney memoranda containing analysis or recommendations. Because disclosure of privileged documents or information to individuals outside the agency, including disclosure in response to your requests, could constitute a waiver of these privileges, the EEOC is unable to provide that information at this time.

- **Have you spoken with OMB and ascertained why it has not finalized the guidance? Please provide information about whether the delay is related, directly or indirectly, to the inclusion of gender identify and sexual orientation as a form of sex discrimination.**

EEOC Response:

The harassment guidance was submitted for review pursuant to the OMB interagency coordination and review process governing policy development and associated interactions between agencies. As such, OMB reviews an undertaking subject to the deliberative process, which protects the confidentiality of internal, deliberative material, such as documents containing the analyses, opinions, or recommendations of agency staff, and attorney memoranda containing analysis or recommendations. Because disclosure of privileged documents or information to individuals outside the agency, including disclosure in response to your requests, could constitute a waiver of these privileges, the EEOC is unable to provide that information at this time.

Chair Dhillon, EEOC's Strategic Enforcement Plan (SEP) for FY 2017-2021 continues to prioritize areas identified in the original 2012 plan, including:

- 1) **Eliminating barriers in recruitment and hiring**
- 2) **Protecting vulnerable workers, including immigrant and migrant workers, and underserved communities from discrimination**
- 3) **Addressing selected emerging and developing issues**
- 4) **Ensuring equal pay protections for all workers**
- 5) **Preserving access to the legal system, and**
- 6) **Preventing systemic harassment**

Is the EEOC continuing to prioritize these areas for enforcement, and, if so, what are some examples of current enforcement efforts in each area?

EEOC Response: The Commission's goal in identifying a set of substantive area priorities is to ensure that the agency's resources are targeted to advance equal opportunity and freedom from discrimination in the workplace in circumstances where government enforcement is most likely to achieve broad and lasting impact. This is particularly important in integrating the SEP substantive area priorities with the agency's PCHP charge management system, to align enforcement resources with the priorities set forth in the SEP. The Commission takes a multi-pronged response to prevent and remedy unlawful employment discrimination, including education and outreach, enforcement, as well as research and policy development in each of these substantive area priorities. We continue to prioritize these areas in all aspects of our work.

In Fiscal Year 2019, we conducted the following outreach events that support the Strategic Enforcement Plan Priorities:

Priority 1 – Recruitment/Hiring: 641 events;
 Priority 2 – Vulnerable Workers: 1,071 events;
 Priority 3 – Emerging/Developing Issues: 730 events;
 Priority 4 – Equal Pay: 468 events;
 Priority 5 – Access to Legal System: 737 events; and
 Priority 6 – Systemic Harassment: 1,293 events.

2019 SEP TABLE OF EVENTS AND ATTENDEES		
NATIONAL PRIORITIES	EVENTS	ATTENDEES
Recruitment/Hiring	641	65,541
Vulnerable Workers (includes immigrant/migrant farmworkers, human trafficking, limited English proficiency, re-entry, youth and other vulnerable workers)	1,071	145,927
Emerging/Developing Issues	730	79,020
ADAAA	514	63,960
PDA/ADA	286	17,469
LGBT	325	22,057
Complex Employment Relationships	179	11,336
Backlash Discrimination	165	11,230
Equal Pay	468	97,864
Access to Legal System (includes retaliation, recordkeeping violations, waivers, mandatory arbitration)	737	112,393
Systemic Harassment (includes non-sexual and sexual harassment)	1,293	120,815

In addition to our outreach efforts, during FY 2019 we also focused on the SEP priorities in the agency's enforcement efforts. For example, there were systemic investigations in each of the six priority areas and the majority of our systemic investigations involved one or more of the priority areas. We also conducted successful systemic conciliations in each of the six priority areas in FY 2019. Some of these conciliations were public, including: California Department of Human Resources and Ford Motor Company's Kentucky Truck Plant (SEP 1, hiring (disability)), MedStar Health and Medstar Ambulatory Services (SEP 3 (revised attendance policies to allow for reasonable accommodation)), UPS and Cato Corporation (SEP 3, accommodating pregnancy-related limitations), and Barenbrug USA (SEP 5, use of overly broad severance agreements interfering with right to file a charge).

In conciliation agreements that involved strategic priority areas, the EEOC continued to focus on targeted equitable relief, which provides non-monetary and non-generic relief that explicitly addresses the discriminatory employment practices at issue in the case and is designed to prevent similar violations in the future. For example, in one case the employer agreed to appoint an equal

employment opportunity (EEO) consultant, a medical consultant, and an EEO officer to revise its current medical evaluation policies used in hiring and the corresponding medical review process. Another successful conciliation provided for significant changes in how the employer handles sexual harassment complaints, including revisions to its written policies and procedures on harassment, distribution of the revised policies to all new hires and workplace civility and bystander training on sex discrimination and sexual harassment to all employees, including management.

EEOC also continues to prioritize the SEP priority areas in our litigation program. Recent case highlights follow. (NOTE: some of the case examples span multiple SEP priorities, but each case has been listed only once to avoid repetition)

Priority 1 – Hiring: EEOC resolved many suits in FY 2019, including class and systemic cases involving discriminatory barriers to recruitment and hiring. For example, in *EEOC v. Marquez Bros. Int'l*, No. 1:17-cv-44 (E.D. Cal. resolved Sep. 17, 2019), EEOC alleged that the defendant failed to hire non-Hispanic applicants for entry-level positions based on national origin and instead hired less qualified Hispanic applicants. The case was resolved by consent decree for \$2 million for around 880 victims of discrimination, plus injunctive relief including a hiring monitor, hiring goals and measures to ensure hiring transparency, and reporting to EEOC. In *Sherwood Food Dist., LLC*, No. 1:16-cv-2386 (N.D. Ohio resolved Oct. 16, 2018), EEOC alleged that the defendant food warehouse engaged in a pattern or practice of failing to hire women into entry-level laborer positions and failed to retain employment applications. The case resolved by consent decree for \$3.6 million for 410 victims of discrimination, plus injunctive relief. In *EEOC v. New Mexico Corrections Dep't*, No. 1:15-cv-879 (D.N.M. resolved Jun. 7, 2019), EEOC alleged that the defendant denied promotions and unfairly disciplined employees based on age, and subjected employees who complained to retaliation. The case resolved by consent decree for \$700,000 for 76 victims of discrimination, plus injunctive relief.

Priority 2 – Vulnerable Workers: Many EEOC suits are brought to vindicate the rights of vulnerable workers. In FY 2019, the EEOC resolved numerous cases on behalf of vulnerable workers. For example, in *EEOC v. Favorite Farms, Inc.*, 8:17-cv-1292 (M.D. Fla. resolved Dec. 20, 2018), the EEOC alleged that a male supervisor for a fruit and vegetable grower, subjected a seasonal female farmworker to sexual harassment, including rape, and then suspended her in retaliation for complaining of the harassment. The case resolved by jury verdict in the amount of \$850,000. In *EEOC v. Maritime Auto Wash*, 1:17-cv-02463 (D. Md. resolved Dec. 17, 2018), the EEOC alleged that defendant carwash subjected Hispanic employees to a hostile work environment and disparate terms and conditions of employment relating to assignment of duties, overtime pay, wages, and promotion, and discharged them based on race and national origin. The case resolved by a 3-year consent decree providing for \$300,000 to 9 aggrieved individuals. In *EEOC v. Party City Corporation*, 1:18-cv-00838 (D.N.H. resolved Jul. 12, 2019), the EEOC alleged that a store manager for a party goods retailer failed to hire a qualified applicant for an available entry level position because of her disability, autism, and need to use a job coach as a reasonable accommodation. The case resolved by 3-year consent decree providing for \$155,000, injunctions, revised policies, training and reporting. In *EEOC v. Atlantic Cape Fisheries, Inc., and BJ's Services Co., Inc.* No. 1:17-cv-11860 (D. Mass. resolved Jan. 30, 2019), the EEOC alleged that a male line supervisor subjected female production employees working at a scallop processing facility to sexual advances and unwanted touching, and the case was

resolved by a 4-year consent decree providing for \$675,000 in compensatory damages to 14 victims.

Priority 3 – Emerging/Developing Issues

LGBT: In FY 2019, the EEOC resolved the following LGBT discrimination cases by consent decree. In *EEOC v. Apple Metro Corp. d/b/a Applebee's Neighborhood Bar & Grill*, No. 17-cv-4333 (S.D.N.Y. resolved Oct. 25, 2018), EEOC resolved a suit alleging that the defendant permitted co-workers to harass charging party because she is transgender and failed to respond adequately to complaints. EEOC obtained \$100,000 and injunctive relief relating to defendant's harassment procedures and retaliation, as well as training. In *EEOC v. A & E Tire*, No. 17-cv-2362 (D. Colo. resolved Apr. 5, 2019), EEOC resolved a suit alleging that the defendant refused to hire charging party because he is transgender. EEOC obtained \$60,000 and injunctive relief. In *EEOC v. Mejia Corp. d/b/a El Tio Gainesville*, No. 18-cv-1226 (E.D. Va. resolved Aug. 8, 2019), EEOC resolved a suit alleging that the defendant permitted a supervisor and co-workers to harass charging party because he was gay, and to harass another male employee because of his association with charging party. EEOC obtained \$40,000 and injunctive relief.

Backlash Discrimination (Muslim/Sikh/Arab/Middle Eastern/South Asian): In FY 2019, EEOC resolved the following strategic priority cases in this category by consent decree. In *EEOC v. United Parcel Service, Inc.*, 1:15-cv-04141 (E.D.N.Y. resolved Dec. 21, 2018), the EEOC alleged that a nationwide package delivery service, maintained a personal appearance policy which prohibited male employees in public contact positions from wearing beards or long hair, and so discriminated against employees wearing beards or long hair due to their religious beliefs and/or practices. Defendant refused to provide reasonable accommodation to the policy, refused to hire and promote individuals whose religion conflicted with the policy, and placed individuals with religious conflicts into positions with no customer contact. The case resolved by 5-year consent decree providing for \$4.9 million to 112 aggrieved individuals, injunctive relief, revised policies and procedures, training and reporting to EEOC. In *EEOC v. Blue Moon Diner*, 1:18-cv-00567 (D.N.M. resolved Nov. 30, 2018), the EEOC alleged that defendant, a 50's-themed diner and ice cream shop, refused to accommodate Charging Party's sincerely-held religious beliefs and instead constructively discharged her from her part-time hostess/cashier position because of her religion, Muslim, when it insisted she not wear a hijab because it was "too Muslim." The case resolved by 2-year consent decree providing for \$25,000, injunctions, revised policies, training and reporting to EEOC.

Priority 4 – Equal Pay/Pay Discrimination: In FY 2019, the EEOC favorably resolved seven suits involving pay discrimination, including the following cases. In *EEOC v. Work Services, Inc.*, 3:16-cv-03257 (D.S.C. resolved Nov. 27, 2018), the EEOC alleged that a non-profit company that employs individuals with intellectual and developmental disabilities to process turkeys on a piece-rate basis, discriminated on the basis of disability by paying wages at rates less than required by law and applicable regulations, by providing substandard living conditions and health care, and by restricting freedom of movement, communication, and socialization. The case resolved by a 5-year consent decree providing for \$342,000 to 6 claimants, injunctions, training, and other relief. In *EEOC v. Denton Cnty. Health Dep't*, No. 4:17-cv-614 (E.D. Tex. resolved Oct. 24, 2018), EEOC alleged that the defendant paid a primary care clinician less than male doctors performing equal work, and the case resolved by consent decree

providing \$115,000 to the victim. In *EEOC v. Cummins, Inc.*, No. 3:17-cv-1306 (M.D. Tenn. resolved Mar. 29, 2019), EEOC alleged that the defendant call center failed to pay a female employee equal pay for equal work, and the case resolved by consent decree for \$77,500 for the victim.

Priority 5 – Access to Legal System (Waiver/Arbitration): In *Logan v. MGM Grand Detroit Casino*, No. 18-1381 (6th Cir. decided Sept. 25, 2019), the EEOC filed an amicus brief to address a contractual provision that purported to shorten the limitations period for bringing suit under Title VII. The EEOC argued that the provision, which would have required filing suit within six months of the challenged employment action, was unenforceable because it altered the enforcement scheme that Congress crafted. The Sixth Circuit agreed.

Priority 6 – Systemic Harassment: In FY 2019, the EEOC resolved three cases alleging systemic harassment. In *EEOC v. Lucinda Management, LLC, Centennial Food Corporation d/b/a IHOP Restaurant, et al*, No. 2:17-cv-02458 (D. Nev. resolved Feb. 19, 2019), EEOC alleged that male coworkers and managers employed by seven IHOP franchises owned and operated by the same individuals subjected female employees to sexual comments and jokes, requests for sex, graphic text messages, unwelcome touching, and in one case, attempted sexual assault, and the case resolved by consent decree providing \$700,000 to 34 victims. In *EEOC v. East Coast Labor Solutions, LLC, et al*, No. 4:16-cv-01848 (N.D. Ala. resolved Feb. 19, 2019), EEOC resolved a suit alleging that 4 related temporary staffing firms discriminated against Hispanic individuals assigned to a poultry processing plant by denying them promised reimbursements for travel expenses; requiring them to live in defendant-provided rundown housing at three times the cost of the market rental rate for their first four months of employment; assigning them to less desirable, more strenuous, lower-paying jobs than promised, and to “Latino-only” production lines, and subjecting them to ethnic slurs, screaming, mocking, and threats of termination by their non-Latino coworkers and supervisors, and the case resolved by consent decree providing \$475,000 to 10 victims.

- **Chair Dhillon, the National Substantive Area Priorities outlined in the SEP states that immigrant and migrant workers are “particularly vulnerable to discriminatory practices or policies.” What is the EEOC doing to address those vulnerabilities?**

EEOC Response: The agency is working vigorously to protect vulnerable workers. Who qualifies as a “vulnerable worker” may differ based upon various factors including geography, industry and profession. We are developing plans to increase outreach efforts through the newly formed Vulnerable Worker Task Force Initiative. This Task Force will also analyze ongoing enforcement efforts and provide recommendations on ways to enhance the agency’s efforts. Pursuant to the President’s Interagency Task Force to Monitor and Combat Trafficking in Persons, the Commission is also working to increase awareness of and reduce human trafficking. While vulnerable workers may be harder to reach, and cases may be more difficult to investigate, resources will be allocated appropriately to support this important effort.

Meanwhile, the Commission provides outreach and education to particularly vulnerable communities that may be unfamiliar with our laws, such as those who are new to the workforce or low-skilled workers and new immigrants. Through its robust education and outreach program,

the EEOC strategically targets outreach to vulnerable workers and underserved communities. This focused outreach also includes immigrant and farm worker communities, as well as communities where individuals are reluctant to come forward to complain about employment discrimination. In Fiscal Year 2019, there were over 1,092 outreach events with 141,633 attendees involving vulnerable or underserved communities.

- **Chair Dhillon is the EEOC continuing to focus on “protecting lesbians, gay men, bisexuals and transgender (LGBT) people from discrimination based on sex?”**

EEOC Response: We continue to accept and process charges filed by lesbians, gay men, bisexuals and transgender (LGBT) people who allege they have been discriminated against on the basis of sex. To support the agency’s enforcement and advance voluntary compliance efforts, EEOC also conducts outreach and education to employers and workers: we held over 325 outreach events with 22,057 attendees involving LGBT issues in FY 2019.

- **Chair Dhillon how is the EEOC continuing to address “discriminatory practices against those who are Muslim or Sikh, or persons of Arab, Middle Eastern or South Asian descent, as well as persons perceived to be members of these groups, arising from backlash against them from tragic events in the United States and abroad?”**

EEOC Response: EEOC continues to vigorously enforce the Religious Anti-Discrimination provision of Title VII. The Commission originally established this designation in 2001 in response to backlash animus triggered by the events of 9/11. In February 2016, we recast the designation to apply to any charges in which there is reason to believe that the conduct surrounding the charge is motivated by anti-Islamic or anti-Middle Eastern sentiments stemming from a belief that the charging party is connected to or sympathetic toward Muslim terrorists, or Islamic terrorist events/incidents.

Since EEOC first began tracking these charges 18 years ago, we have received 1,834 charges alleging that the employer’s actions were spurred by anti-Muslim “backlash” as described above. The merit factor rate (settlements, withdrawals with benefits and reasonable cause findings) for those charges was almost 25%, with the most frequently raised issues being discharge and harassment. In addition, over the same period of time we received more than 12,860 charges alleging discrimination on the basis of Religion – Muslim.

We have focused our outreach efforts on increasing awareness of potential discrimination based on religion, ethnicity, or country of origin with both employee and employer groups. This also aligns with EEOC’s strategic enforcement plan of prioritizing outreach to vulnerable/ underserved groups. Recognizing that Islamic/Muslim religious beliefs are held by members of many different national, ethnic, and racial groups, staff are encouraged to be as inclusive as possible when planning and conducting outreach activities.

- **Chair Dhillon, what is the EEOC doing to focus on “overly broad waivers, releases, and mandatory arbitration provisions” and “employers’ failure to maintain and retain applicant and employee data and records required by EEOC regulations?”**

EEOC Response: We continue to receive and investigate charges involving these issues. Our efforts are tailored to the evolving case law. One of the public conciliations we reached this year involved an overly broad severance agreement, which the EEOC alleged interfered with employees' rights to file charges and voluntarily cooperate with the EEOC, as well as legally required disclosures to employees subjected to a reduction in force.

- **Chair Dhillon, what is the EEOC doing to prevent systemic harassment based on sex, race, disability, and other protected characteristics?**

EEOC Response: Through our outreach and education efforts we continue to provide training to employee and employers on best practices in preventing all forms of harassment. In FY 2019, the EEOC provided 1,293 education and outreach events on systemic harassment, reaching 120,815 participants. Notably, in FY 2019, EEOC conducted nationwide training on investigating harassment charges which included a section on obtaining effective targeted equitable relief to prevent future discrimination. We also obtained public conciliation agreements in two individual harassment cases (Skyline Unlimited and North Liberty Police Department) to increase public awareness that harassment violates Title VII and employers who engage in harassment will be held accountable.

- **Chair Dhillon, I have heard from many workers, particularly those in the technology industry, who believe they have been dismissed or denied employment because of their age. Do the EEOC’s investigations and enforcement activities confirm what older workers in the technology sector are alleging?**

EEOC Response: We are not aware of any specific findings that would confirm the allegations made about age discrimination in the technology sector. However, EEOC will investigate all allegations of age discrimination that we receive to determine whether there is reasonable cause to believe that age discrimination occurred.

Representative Marcia Fudge (D-OH)

- **Chair Dhillon, what is the EEOC's view of the challenges faced by the tech sector? What is the EEOC doing to address the pervasive discrimination in the technology sector?**

EEOC Response: We are actively tackling persistent barriers to equal employment in all segments of the economy. We know that the best way to eliminate discrimination is to prevent it in the first place. We provide resources to help employers and employees better understand our laws and the concrete steps they can take to promote compliance through our outreach and education efforts.

EEOC filed five lawsuits in FY 2019 challenging discrimination in the tech sector. All five suits challenge disability discrimination, and involve either hiring, reasonable accommodation, or discharge issues. EEOC favorably resolved four lawsuits in FY 2019 challenging discrimination in the tech sector, all of which involved disability discrimination.

Representative Kim Schrier (D-WA)

- **Chair Dhillon, in the September 12th Notice of Information Collection, the EEOC solicits comments on Paperwork Reduction Act (PRA) approval of Component 1.**
 - **Why has the EEOC chosen not to seek comment on its newly developed methodology for its cost burden analysis?**
 - **Why has the EEOC chosen not to solicit comments on its decision not to pursue Component 2?**

EEOC Response: The September 12, 2019 *Federal Register* Notice provides for a 60-day comment period on all topics raised, including the new methodology of the cost burden analysis. The EEOC received over 11,000 public comments on the Notice with almost all of them providing comment on the EEOC's decision not to renew the collection of Component 2. The EEOC has posted the comments publicly at <https://www.regulations.gov/document?D=EEOC-2019-0003-0001>

- **Why has the EEOC categorically chosen not to pursue Component 2 rather than first seeking comment on how to collect this data in a way that may be, in the EEOC's eyes, less cost prohibitive?**

EEOC Response: Based on the standards of the Paperwork Reduction Act, the EEOC decided it could not justify continued collection of Component 2 considering the new burden estimate when balanced against the unproven utility of the data. EEOC is committed to transparency; accordingly, we are committed that any pay data collection the EEOC pursues will be established through a Title VII rulemaking process. This will allow for robust public comment and input. It will also ensure that the data collected by EEOC is useful in carrying out the agency's mission and that there is not undue burden on respondents.

As a first step in this process, we are reexamining the EEOC-commissioned 2012 study from the National Academies of Sciences entitled, “Collecting Compensation Data from Employers.” We are paying particular attention to the recommendations made to the EEOC on the potential benefits and burdens associated with collecting pay data from employers.

- **Chair Dhillon, did you consult with any outside vendors who provided employer technical support on filing Component 2 about any tools in development or currently available to help reduce “cost burden” as you’ve estimated it?**

EEOC Response: The EEOC does not recommend or advocate methods, strategies, or techniques for recordkeeping. The EEOC is responsible for estimating reporting burden. As indicated in the OMB guidance, the agency “Provide[s] an estimate for the total annual cost burden to respondents or record keepers resulting from the collection of information.”¹¹

- **Did you do any analysis of whether there are any tools available to assist with the Component 2 pay data collection?**

EEOC Response: The EEOC does not recommend or advocate methods, strategies, or techniques for record keeping. The EEOC is accountable for estimating reporting burden. As indicated in the OMB guidance, the agency “Provide[s] an estimate for the total annual cost burden to respondents or record keepers resulting from the collection of information.”¹²

Representative Jahana Hayes (D-CT)

During the September 19, 2019 House Education and Labor subcommittee oversight hearing you affirmed that “transparency of pay data is a useful tool” and that “finalizing a transparent pay data collection by the EEOC [is] a priority.”

- **What initiatives will you undertake to strengthen the ability of the EEOC and the ability of working people to identify and challenge pay discrimination?**

EEOC Response: An important part of the EEOC’s mandate is to eliminate pay discrimination based on sex, race, and other bases. The EEOC remains steadfast in its efforts to prevent and remedy unlawful pay discrimination and advance equal opportunity in the workplace. Educating the public about their rights and responsibilities is an essential component of the mission. In FY 2019 alone, the EEOC provided 468 education and outreach events on equal pay, reaching 97,864 attendees. The EEOC also provides important information and resources on compensation discrimination on our website.

¹¹Reference:
https://www.rocis.gov/rocis/jsp3/common/ROCIS_HOW_TO_Guide_for_AGENCY_Users_of_ICR_Module-04052017.pdf page 105, number 13.

¹² Ibid.

Effective enforcement of the laws, including those prohibiting compensation discrimination, is also at the core of our mission. EEOC staff are dedicated to investigating allegations of pay discrimination and seeking redress for those individuals who have been subject to unlawful pay practices. In fiscal year 2018, the agency garnered approximately \$22.1 million through administrative enforcement and litigation on behalf of victims of discrimination whose claims included equal pay violations. More than \$19 million of this came through non-litigation methods, including mediation, settlement, and conciliation.

- **What steps will you take to ensure that the EEOC finalizes a transparent pay data collection after the current collection concludes?**

EEOC Response: EEOC is committed to transparency; accordingly, we are committed that any pay data collection the EEOC pursues will be established through a Title VII rulemaking process. This will allow for robust public comment and input. It will also ensure that the data collected by EEOC is useful in carrying out the agency's mission and that there is not undue burden on respondents.

As a first step in this process, we are reexamining the EEOC-commissioned 2012 study from the National Academies of Sciences entitled "Collecting Compensation Data from Employers." We are paying particular attention to the recommendations made to the EEOC on the potential benefits and burdens associated with collecting pay data from employers.

- **During the oversight hearing, you stated that you thought there is a better way to collect pay data than Component 2, and that in 2016 employers and industry groups made suggestions to the EEOC that weren't adopted. What are the specific employer suggestions that you believe should be adopted for a pay data collection that would yield pay data of appropriate utility for enforcement?**

EEOC Response: EEOC is committed to transparency; accordingly, we are committed that any pay data collection will be established through a Title VII rulemaking process. This will allow for robust public comment and input, to ensure that comments on any proposed data collection are carefully considered and addressed. It will also ensure that the data collected by EEOC is useful in carrying out the agency's mission and that there is not undue burden on respondents.

As a first step in this process, we are reexamining the EEOC-commissioned 2012 study from the National Academies of Sciences entitled "Collecting Compensation Data from Employers." We are paying particular attention to the recommendations made to the EEOC on the potential benefits and burdens associated with collecting pay data from employers.

- **How would you seek to ensure that critical information about pay and hours worked is collected and submitted by employers?**

EEOC Response: EEOC is committed to transparency; accordingly, we are committed that any pay data collection will be established through a Title VII rulemaking process. This will allow for robust public comment and input. It will also ensure that the data collected by EEOC is useful in carrying out the agency's mission and that there is not undue burden on respondents.

As a first step in this process, we are reexamining the EEOC-commissioned 2012 study from the National Academies of Sciences entitled “Collecting Compensation Data from Employers.” We are paying particular attention to the recommendations made to the EEOC on the potential benefits and burdens associated with collecting pay data from employers.

- **Do you believe employers should be required to provide pay data to the EEOC?**

EEOC Response: Pay discrimination is a critical focus of EEOC’s efforts to prevent and remedy unlawful discrimination, and pay transparency is a useful tool that could aid the agency in its efforts. However, it is critical that any data collection undertaken by the EEOC be thoroughly tested to ensure that it is well-designed and will be useful in the construct of the agency’s enforcement and educational responsibilities.

During the oversight hearing you affirmed that the EEOC was committed to undertaking a Title VII rulemaking process to develop a pay data collection that would be useful to EEOC enforcement efforts without imposing an “undue” burden on employers.

- **When will EEOC initiate such a Title VII rulemaking process?**

EEOC Response: EEOC is committed to transparency; accordingly, we are committed that any pay data collection will be established through a Title VII rulemaking process. This will allow for robust public comment and input. It will also ensure that the data collected by EEOC is useful in carrying out the agency’s mission and that there is not undue burden on respondents.

As a first step in this process, we are reexamining the EEOC-commissioned 2012 study from the National Academies of Sciences entitled “Collecting Compensation Data from Employers.” We are paying particular attention to the recommendations made to the EEOC on the potential benefits and burdens associated with collecting pay data from employers. We will proceed as expeditiously as possible, while ensuring that we are carefully weighing the factors that must be considered for an effective rulemaking process.

- **Component 2 was adopted after a lengthy and transparent PRA process that included multiple opportunities for public comment (including by employer stakeholders), public hearings, and extensive explanation by EEOC of its analysis and its decision. What information do you believe a Title VII rulemaking process will yield that wasn’t available through the PRA approval process?**

EEOC Response: The rulemaking process has the added benefit of the statutory protections of the Administrative Procedure Act. Furthermore, a rule will be on a more solid legal foundation than simply adding a pay data collection to the EEO-1 through the PRA process. The EEOC intends to use the recommendations of the National Academies of Sciences, as well as other pertinent factors to assess how pay data collections may enhance the EEOC’s enforcement efforts and to determine the burden that the collection and reporting of pay data may impose on respondents and the government.

- **You stated at the oversight hearing that you believe a pilot study would be an appropriate part of that rulemaking process. What is the scope of an appropriate pilot study in your judgment?**

EEOC Response: The EEOC believes the process would benefit from a reexamination of the recommendations in the EEOC-commissioned 2012 study from the National Academy of Sciences (NAS), entitled “Collecting Compensation Data from Employers.” Specifically, recommendation 2 details an approach to comprehensive, evidence-based, scientifically sound pilot studies.

- **What steps will you take to initiate a pilot study and when will you take these steps?**

EEOC Response: EEOC is committed to transparency; accordingly, we are committed that any pay data collection will be established through a Title VII rulemaking process. This will allow for robust public comment and input. It will also ensure that the data collected by EEOC is useful in carrying out the agency’s mission and that there is not undue burden on respondents.

As a first step in this process, we are reexamining the EEOC-commissioned 2012 study from the National Academies of Sciences entitled “Collecting Compensation Data from Employers.” We are paying particular attention to the recommendations made to the EEOC on the potential benefits and burdens associated with collecting pay data from employers.

Representative Susie Lee (D-NV)

EEOC stated in the September 12th Notice that before undertaking a new pay data collection, it should reexamine the recommendations in the EEOC-commissioned 2012 National Academy of Sciences study, “Collecting Compensation Data from Employers.” At the oversight hearing you indicated a pilot study was one of the recommendations in the 2012 National Academy of Sciences report.

- **When do you anticipate completing that reexamination?**

EEOC Response: EEOC is committed to transparency; accordingly, we are committed that any pay data collection will be established through a Title VII rulemaking process. This will allow for robust public comment and input. It will also ensure that the data collected by EEOC is useful in carrying out the agency’s mission and that there is not undue burden on respondents.

As a first step in this process, we are reexamining the EEOC-commissioned 2012 study from the National Academies of Sciences entitled “Collecting Compensation Data from Employers.” We are paying particular attention to the recommendations made to the EEOC on the potential benefits and burdens associated with collecting pay data from employers.

- **What would such a reexamination entail? Will there be an opportunity for members of the public or stakeholders to participate?**

EEOC Response: EEOC is committed to transparency; accordingly, we are committed that any pay data collection will be established through a Title VII rulemaking process. This will allow for

robust public comment and input. It will also ensure that the data collected by EEOC is useful in carrying out the agency's mission and that there is not undue burden on respondents.

- The September 12, 2019 Notice states that “the Commission solicits public comment on its intent to seek PRA approval of Component 1 of the EEO-1 under a new OMB control number to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's functions, including whether the information will have practical utility; (2) Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used...”

Why doesn't the September 12, 2019 Notice specifically invite public comment on the EEOC's decision not to renew Component 2?

EEOC Response: The September 12, 2019 *Federal Register* Notice provides for a 60-day comment period on all topics raised. The EEOC received over 11,000 public comments on the Notice, and almost all of the comments addressed the EEOC's decision not to renew Component 2. The EEOC posted the comments publicly at <https://www.regulations.gov/document?D=EEOC-2019-0003-0001>

Attachment 1A: <https://www.govinfo.gov/content/pkg/CPRT-116HPRT41267/pdf/CPRT-116HPRT41267.pdf>
 Attachment 1B: <https://www.govinfo.gov/content/pkg/CPRT-116HPRT41268/pdf/CPRT-116HPRT41268.pdf>
 Attachment 2A: <https://www.govinfo.gov/content/pkg/CPRT-116HPRT41280/pdf/CPRT-116HPRT41280.pdf>
 Attachment 2B: <https://www.govinfo.gov/content/pkg/CPRT-116HPRT41281/pdf/CPRT-116HPRT41281.pdf>

[Mr. Leen responses to questions submitted for the record follow:]

Responses of Craig Leen, Director, Office of Federal Contract Compliance Programs, U.S. Department of Labor, to Questions for the Record stemming from September 19, 2019, hearing of the Subcommittee on Civil Rights and Human Services Subcommittee, Committee on Education and Labor, U.S. House of Representatives

QUESTIONS SUBMITTED BY REPRESENTATIVE Robert C. Scott

Mr. Scott: Director Leen, The DOL has stated that it received feedback from “some” organizations that they did not seek contracts because they believed they needed broader religious exemptions.

How many organizations did DOL hear from?

Mr. Leen: Prior to issuing the NPRM, OFCCP received general feedback from approximately 10 organizations, including several religious stakeholders, regarding the organizations’ willingness to participate in federal contracting due to the ambiguity of the existing religious exemptions.

Mr. Scott: What industries were these organizations in?

Mr. Leen: While information on the specific industries represented was not gathered, the organizations that provided feedback included religious universities and other religious non-profit organizations. The organizations represented a variety of beliefs and religions.

Mr. Scott: Are you aware of any information to suggest that these organizations would have been in a position to offer strong competitive bids for federal contracts, but for these concerns?

Mr. Leen: The strength of an organization’s bid is not discussed with OFCCP, therefore, OFCCP is not aware of whether these organizations would have been in a position to offer strong competitive bids for federal contracts. OFCCP is not aware of the strength of a potential bid for any contractor or agency, as that is beyond the scope of OFCCP’s mission.

Mr. Scott: Did you also receive feedback from religious and other organizations in opposition to the directive? If so, how many? What types of organizations?

Mr. Leen: OFCCP received feedback from organizations in support of Directive 2018-03, as well as feedback from some religious organizations in opposition to the Directive. Based on the information collected, three organizations expressed concerns regarding the Directive.

Mr. Scott: Director Leen, can you tell us what standard of causation the OFCCP would apply to religious organizations when a charge of discrimination is brought? Is this the same standard of causation as applied to other organizations? How would the new rule change that?

Mr. Leen: When a discrimination allegation is raised, OFCCP generally follows standards recognized under Title VII case law to determine whether unlawful discrimination has occurred. These Title VII standards are the same for religious and non-religious contractors. The NPRM proposed using a “but-for” causation standard instead of a “motivating factor” standard for determining whether religion was the basis for an employment decision (and thus within the

exemption). OFCCP received numerous comments on this issue and is in the process of analyzing them.

QUESTIONS SUBMITTED BY REPRESENTATIVE Suzanne Bonamici

Ms. Bonamici: Director Leen, did you or others at the Department of Labor participate in any discussion about the decision not to seek renewal of the EEO-1 Component 2 pay data collection? If so, please provide a detailed explanation and documentation about each of these discussions.

Mr. Leen: OFCCP has periodic and ongoing discussions with EEOC under its Memorandum of Understanding. I, along with other Department officials, have had conversations with Chair Janet Dhillon about issues of joint interest to EEOC and OFCCP. To the best of my knowledge, there were no direct discussions between EEOC and OFCCP about EEOC's decision not to seek renewal of the EEO-1 Component 2 pay data collection prior to the decision being made. After the decision was made, there have been subsequent discussions. OFCCP's position in those discussions, consistent with my testimony before the Subcommittee, is that the data would not be useful to OFCCP because the data is too general for any possible finding of discrimination, and OFCCP receives better, more granular data in its audits. OFCCP's limited resources are best used when the agency focuses its time and attention on the data received in its neutrally scheduled audits.

Ms. Bonamici: Director Leen, does the OFCCP currently use the data in Component 1 and Component 2? If so, how does OFCCP use the data (e.g. compliance reviews, investigations, or other enforcement activities)?

Mr. Leen: The Employer Information Report (EEO-1) collects information from private employers regarding the number of employees by job category, sex, and race or ethnicity ("Component 1"). The EEO-1 Report also collects information on whether the employer is a federal contractor. The EEOC collects the information and shares it with OFCCP under the Joint Reporting Committee to minimize the burden on employers and avoid duplicative collection of information. OFCCP uses EEO-1 Component 1 data as a factor in determining which establishments to neutrally select for compliance reviews.

In its FY 2019 Supply and Service Scheduling List Methodology, OFCCP outlined the procedure related to the use of the EEO-1 Component 1 data.

As part of its compliance reviews, OFCCP currently utilizes EEO-1 Component 1 data to verify contractors' Affirmative Action Plan submissions. OFCCP uses the employment counts in the Component 1 data to conduct EEO-1 trend analysis to track a contractor's employment of women and minorities over time.

OFCCP does not currently use the data in Component 2. EEOC is still in the process of collecting Component 2 data.

Ms. Bonamici: Director Leen, on August 15, 2019, the Office of Federal Contract Compliance Programs (OFCCP) published a proposed rule that seeks to significantly expand the number of federal contractors eligible for a religious exemption. This proposed rule would include many contractors beyond those that courts have previously found to be a "religious

corporation, association, educational institution, or society.” Such a change would enable many employers to discriminate against their employees for not sharing the same religious beliefs. The preamble to the published proposed rule states: “Some religious organizations have previously provided feedback to OFCCP that they were reluctant to participate as federal contractors because of uncertainty regarding the scope of the religious exemption contained in section 204(c) of Executive Order 11246 and codified in OFCCP’s regulations.”

The preamble to the recent proposed rule makes vague mention of “some religious organizations” providing “feedback to OFCCP that they were reluctant to participate as federal contractors” because of concerns regarding the religious exemption in Executive Order 11246. To what specific organizations does that statement refer?

Mr. Leen: Prior to issuing the NPRM, OFCCP met with a number of organizations, including Brigham Young University, the National Conference of Catholic Bishops, Catholic University, and Becket. Many shared that the ambiguity in the current regulations has had a chilling effect on organizations’ willingness to compete for government contracts.

Additionally, OFCCP held a town hall meeting leading up to the proposal to gather input from relevant stakeholders and other interested parties. Seven organizations attended the meeting, and three of those (National Association of Evangelicals, Christian Legal Society, and Institutional Religious Freedom Alliance) expressed similar concerns with existing regulations.

Ms. Bonamici: Director Leen, before President Obama extended the nondiscrimination protections of EO 11246 to the LGBTQ community with EO 13672, leaders and employees from more than 120 faith-based organizations signed a letter opposing the executive order and claiming that faith-based federal contractors would be excluded from contracting because of the policy. But according to a recent analysis from the Center for American Progress, there was no evidence that EO 13672 systematically prohibited faith-based contractors from contracting with the federal government.

The analysis from the Center for American Progress showed that, among faith-based organizations whose employees publicly opposed extending protections for LGBTQ workers and who received a federal contract in the year before EO 13672 went into effect, all but one received a new contract in the year after the EO went into effect. Can OFCCP provide any concrete evidence that the nondiscrimination requirements EO 11246 and its religious exemption as it currently exists have systematically excluded faith-based organizations from federal contracting?

Mr. Leen: OFCCP has received anecdotal evidence that organizations that otherwise would seek to become federal contractors expressed reluctance to participate as federal contractors because of uncertainty regarding the scope of the religious exemption contained in Executive Order 11246 and its implementing regulations.

Ms. Bonamici: Director Leen, why did OFCCP decide to use a 30-day comment period rather than a 60-day comment period?

Mr. Leen: The default Departmental position is to provide a 30-day comment period for rules that are not deemed economically significant. The Notice of Proposed Rulemaking,

Implementing Legal Requirements Regarding the Equal Opportunity Clauses Religious Exemption, adds definitions and clarifies an existing subsection of the regulation. It is not an economically significant NPRM; thus the Department opted to use a 30-day comment period.

QUESTIONS SUBMITTED BY REPRESENTATIVE Marcia L. Fudge

Ms. Fudge: Director Leen, how many compliance reviews has the OFCCP conducted of high-tech companies who are federal contractors in the last 10 years? What do the compliance reviews reveal?

Mr. Leen: In the last 10 years, from FY 2010 through the third quarter of FY 2019, OFCCP has conducted 4,384 compliance evaluations of high-tech companies (NAICS Sector 54), with 914 entering into conciliation agreements with OFCCP to address violations found by OFCCP in its review. Conciliation agreements are formal agreements signed by the OFCCP and a contractor's top official identifying the contractor's equal opportunity violations and requiring the implementation of specific remedies. Of the 914 conciliation agreements, the majority found violations that did not include a finding of discrimination. The most frequent violations found included failures to engage in appropriate outreach and recruitment, as well as failures in recordkeeping. Sixty-six of the 914 conciliation agreements included a finding of discrimination for which monetary relief was provided to class members. This monetary relief totaled over \$9,000,000 for more than 7,000 affected class members.

Ms. Fudge: Director Leen, how has DOL addressed the recommendations from GAO to address the under representation of African American workers, Hispanic workers and women in technology firms?

Mr. Leen: In response to these recommendations by GAO, OFCCP uploaded a frequently asked questions (FAQs) document to the agency's website, which recommended that, as a best practice, contractors set disaggregated placement goals for job groups when specific minority groups are underrepresented. OFCCP further explained that, "To do this, a contractor would categorize employees in each job group who identify as White, African-American/Black, Asian/Pacific Islander, American Indian/Alaskan Native, and Hispanic. Then, as done for a single minority goal, the contractor would compare the percentage of qualified people available to work in the reasonable recruitment area to the number of employees in each job group, for each race or ethnic category. If the availability percentage is less than the percentage of employees in a particular category, the contractor would set a placement goal for that particular racial or ethnic group."

Furthermore, OFCCP has hosted multiple town hall meetings in FY 2019 and will continue to do so throughout FY 2020. Town hall meetings best enable OFCCP to gather contractor input and identify opportunities for enhancing compliance assistance as part of the agency's response to GAO's September 2016 Report: *Strengthening Oversight Could Improve Federal Contractor Nondiscrimination Compliance*. OFCCP held two successful town hall meetings for the Tech Industry in February 2019, one in San Jose, California, and the other in Seattle, Washington. A combined total of 57 contractors and other stakeholders attended the two meetings. The attendees ranged from large tech companies like Oracle and Amazon, to telecommunications leaders such as T-Mobile, to local workforce development councils and professional societies.

At these meetings, the participants engaged in a very fruitful discussion, providing questions and suggestions for the agency, in addition to sharing best practices of how to achieve full compliance with their affirmative obligations. Some contractors shared the positive impact of various innovative programs and initiatives that foster equal employment opportunity. The meetings focused on the following topics of discussion:

1. How the companies in attendance define and approach diversity;
2. Whether there are specific influences that make achieving diversity different for the tech industry;
3. The types of disability inclusion programs that are helpful in the tech sector;
4. The effect of diversity on promotions in the tech sector;
5. The use of internships/apprenticeships to create greater diversity;
6. The effect of OFCCP directives on contractors' business; and
7. Ways in which OFCCP may be able to better partner with contractors' diversity efforts.

Through the discussions and information shared at these two town hall meetings, OFCCP heard the concerns and unique issues facing contractors in the tech industry. These discussions were captured and transcribed and OFCCP continues to use the feedback from these events to create a variety of compliance assistance resources.

[Whereupon, at 4:04 p.m., the subcommittee was adjourned.]

