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94th Congress
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MAY 21 1975

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THE EQUAL EMPLOYMENT OPPORTUNITY PROGRAM FOR FEDERAL NONCONSTRUCTION CONTRACTORS CAN BE IMPROVED

A REPORT

PREPARED FOR THE USE OF THE

SUBCOMMITTEE ON FISCAL POLICY

OF THE

JOINT ECONOMIC COMMITTEE
CONGRESS OF THE UNITED STATES

BY THE

GENERAL ACCOUNTING OFFICE

MAY 5, 1975

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LETTERS OF TRANSMITTAL

MAY 2, 1975.

To Members of the Joint Economic Committee:

Transmitted herewith for the use of the Members of the Joint Economic Committee and other Members of Congress is a General Accounting Office report entitled "The Equal Employment Opportunity Program for Federal Nonconstruction Contractors Can Be Improved." The GAO investigation into Federal efforts to end job discrimination among Federal contractors was begun on January 1974 at the request of the Subcommittee on Fiscal Policy.

The GAO report found several deficiencies in the contract compliance program, both in the Department of Labor's Office of Contract Compliance, and in the various compliance agencies. GAO also made several recommendations to the Secretary of Labor for improving the Department's efforts to bring an end to job discrimination on the basis of race, sex, creed, or national origin by Federal contractors.

I commend the Comptroller General on a thorough well-done report. It is the first detailed, comprehensive evaluation of the contract compliance program.

HUBERT H. HUMPHREY,
Chairman, Joint Economic Committee.

APRIL 29, 1975.

Hon. HUBERT H. HUMPHREY,
Chairman, Joint Economic Committee,
Congress of the United States, Washington, D.C.

DEAR MR. CHAIRMAN: Transmitted herewith is a GAO report entitled "The Equal Employment Opportunity Program for Federal Nonconstruction Contractors Can Be Improved." This report was prepared for the Subcommittee on Fiscal Policy at the request of former Congresswoman Martha W. Griffiths and Senator Jacob K. Javits. The investigation by the General Accounting Office was an outgrowth of hearings conducted by Mrs. Griffiths in 1973 on "Economic Problems of Women."

The GAO report highlights a number of serious deficiencies in the Federal Government's contract compliance program which is administered in a number of compliance agencies under the direction of the Department of Labor. GAO found that the Office of Contract Compliance is not adequately monitoring the compliance agencies nor is it providing these agencies with sufficient guidance. One result of these defficiencies is that agencies are approving affirmative action plans which do not meet Federal guidelines.

As a result of its investigation, GAO made a number of recommendations to the Secretary of Labor for improving the contract compliance program.

This investigation by the GAO marks the first thorough examination of the contract compliance program, initiated more than 10 years ago by Executive Order 11246. The assistance of the Comptroller General and the GAO staff who worked on the report are gratefully acknowledged.

RICHARD BOLLING,
Chairman, Subcommittee on Fiscal Policy.

The Equal Employment Opportunity Program For Federal Nonconstruction Contractors Can Be Improved

Department of Labor

BY THE COMPTROLLER GENERAL OF THE UNITED STATES

MWD-75-63

APRIL 29, 1975

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

B-167015

To the Honorable Richard Bolling
Chairman, Subcommittee on
Fiscal Policy
Joint Economic Committee
Congress of the United States
and the Honorable Jacob K. Javits
United States Senate

This report deals with the administration of the contract compliance program for nonconstruction contractors and contains support for testimony given at hearings before the Subcommittee on September 11, 1974. We made our review pursuant to your January 21, 1974, joint request.

Officials of the Departments of Labor and Defense and the General Services Administration have been given an opportunity to review and comment on the contents of this report, and their views were considered in the preparation of the report.

We believe this report would interest committees, Members of Congress, and agency officials. Therefore, as agreed, we plan to distribute copies of this report accordingly.

Comptroller General
of the United States

Contents

		Page
DIGEST		i
CHAPTER		
1	INTRODUCTION	1
	Nonconstruction program	4
2	IMPROVEMENTS NEEDED IN ADMINISTRATION OF THE PROGRAM	7
	Need for assessment of minorities' and women's employment gains	7
	Need to increase monitoring of the compliance agencies	9
	Need for improved and timely guidance to compliance agencies	13
	Need for improved training of compliance agency personnel	16
	Conclusions	18
	Recommendations to the Secretary of Labor	19
3	PROGRAM IMPLEMENTATION BY COMPLIANCE AGENCIES	20
	AAPs not meeting guidelines	20
	Enforcement actions not taken	27
	Contractor universe not identified	30
	Contractor facilities reviewed	32
	Preaward reviews not made or requested	35
	Conclusions	37
	Recommendations to the Secretary of Labor	37
4	PROBLEMS IN COORDINATION BETWEEN EEOC AND THE DEPARTMENT OF LABOR	38
	Complaint data not considered	39
	New memorandum of understanding	40
	Conclusions	40
	Recommendation to the Secretary of Labor	40

CHAPTER		Page
5	AGENCY COMMENTS AND UNRESOLVED ISSUES	42
	Department of Labor comments	42
	Department of Defense comments	52
	General Services Administration comments	53
6	SCOPE OF REVIEW	65

APPENDIX

I	Letter dated January 21, 1974, from the Chairman, Subcommittee on Fiscal Policy of the Joint Economic Committee, and Senator Jacob K. Javits	66
II	Funds and staff devoted to the Federal contract compliance program for nonconstruction contractors	68
III	Reviews conducted, show-cause notices issued, and enforcement actions taken during fiscal years 1972, 1973, and 1974 (to 3-31-74)	69
IV	Department of Labor comments dated February 11, 1975	70
V	Department of Defense comments dated February 6, 1975	80
VI	General Services Administration comments dated February 14, 1975	83

ABBREVIATIONS

AAP	affirmative action program
AEC	Atomic Energy Commission
AID	Agency for International Development
DOD	Department of Defense
EEOC	Equal Employment Opportunity Commission
GAO	General Accounting Office
GSA	General Services Administration
HEW	Department of Health, Education, and Welfare
NASA	National Aeronautics and Space Administration
OFCC	Office of Federal Contract Compliance
USDA	Department of Agriculture
USPS	United States Postal Service
VA	Veterans Administration

COMPTROLLER GENERAL'S REPORT
TO THE HONORABLE RICHARD BOLLING
CHAIRMAN, SUBCOMMITTEE ON
FISCAL POLICY
JOINT ECONOMIC COMMITTEE
CONGRESS OF THE UNITED STATES
AND THE HONORABLE JACOB K. JAVITS
UNITED STATES SENATE

THE EQUAL EMPLOYMENT OPPORTUNITY PROGRAM FOR FEDERAL NONCONSTRUCTION CONTRACTORS CAN BE IMPROVED
Department of Labor

D I G E S T

WHY THE REVIEW WAS MADE

GAO was asked to review the effectiveness of management of the Federal contract compliance program in the nonconstruction industry.

This program is intended to insure that Federal contractors provide equal employment opportunity. The Department of Labor (hereinafter referred to as the Department) has overall responsibility for the program. (See p. 1.)

Specifically, GAO was asked to evaluate:

--Department guidance to and control over the 13 other Federal agencies, called compliance agencies, designated by the Department to be responsible for compliance reviews of nonconstruction contractors.

--Compliance agencies' efforts in implementing Department guidelines for conducting compliance reviews and complaint investigations.

--Application of enforcement measures available to the compliance agencies.

--Coordination of compliance review and complaint investigation activities between the Department and the Equal Employment Opportunity Commission.

FINDINGS AND CONCLUSIONS

Executive Order 11246, issued in September 1965 and amended in October 1967, with certain exceptions, prohibits Federal contractors from discriminating on the basis of race, color, religion, sex, or national origin. The order requires that Federal contractors eliminate employment discrimination and take affirmative action to insure that equal employment opportunity is provided. (See p. 1.)

In fiscal year 1974 over $50 billion in Federal contracts was awarded to nonconstruction contractors that employed about 25 million workers. (See p. 4.)

Department guidelines require each nonconstruction contractor that has 50 or more employees and a Federal contract of $50,000 or more to prepare a written affirmative action program designed to achieve prompt and full utilization of minorities and women at all levels and in all segments of the contractor's work force where deficiencies exist. (See p. 4.)

When contractors fail to comply with the program's provisions, compliance agencies are required to initiate enforcement actions, such as contract cancellation or debarment from future Federal contracts. (See p. 27.)

The Department does not yet have a fully operational system for assessing progress of Federal nonconstruction contractors in increasing employment of minorities and women. (See p. 7.)

The Department needs to increase its monitoring of the nonconstruction compliance program--particularly in regional offices. Since 1972 the Department has completely evaluated the nonconstruction program of only 1 of the 13 compliance agencies. (See pp. 9 and 11.)

The Department of Defense (DOD) and the General Services Administration (GSA), which performed about 59 percent of all compliance reviews from July 1, 1971, through March 31, 1974, have most of their staff resources allocated to the nonconstruction contract compliance program.

In DOD regional offices in Chicago, Philadelphia, and San Francisco, 106 of the 110 professionals are assigned to nonconstruction contract compliance functions. About 33 of the 44 professionals in the Chicago; Washington, D.C.; and San Francisco GSA regional offices work in the nonconstruction program.

In contrast, the Department's regional staffs in Chicago, Philadelphia, and San Francisco consisted of seven professionals, and about only the equivalent of one professional's time was spent on the nonconstruction program. (See pp. 9 and 10.)

The Department needs to provide additional guidance and training. Officials of several agencies cited various areas in which Department guidance and training was needed to enable more thorough compliance reviews. (See pp. 13 and 16.)

Several weaknesses in the compliance agencies' implementation of the nonconstruction program were:

--DOD and GSA were approving affirmative action programs that did not meet the Department's guidelines. (See p. 20.)

--Some compliance agencies were reluctant to initiate enforcement actions and their conciliations with contractors exceeded the Department's time limits. (See p. 27.)

--Twelve of the 13 compliance agencies had not identified all contractors for which the agency was responsible. (See p. 30.)

--Most compliance agencies were not reviewing an adequate proportion of the contractors for which they were responsible. (See p. 32.)

--Some compliance agencies were not always conducting the required preaward reviews, and, contrary to the Department's guidelines, some contracting officers were awarding contracts without requesting compliance agencies to conduct preaward reviews. (See p. 35.)

Coordination between the Department, the compliance agencies, and the

Commission was not adequate. Information was not being exchanged and some compliance activities at contractor facilities had been duplicated. Also some compliance agencies were performing reviews of contractor facilities without considering discrimination complaints on file with the Commission. (See p. 38.)

In September 1974 the Department and the Commission entered into a new memorandum of understanding providing for coordination and consultation. However, unless regional staffs of compliance agencies and the Commission adhere to provisions of the memorandum, little will be accomplished.

Coordination and communication at the regional level is necessary to perform complete compliance reviews and minimize duplication of effort. (See p. 40.)

RECOMMENDATIONS

The Secretary of Labor should:

--Accelerate implementation of a system to measure progress of nonconstruction contractors and to assess program shortcomings in increasing and advancing minorities and women in the work force. (See p. 19.)

--Place greater emphasis on monitoring the nonconstruction program. (See p. 19.)

--Provide adequate and timely guidance to compliance agencies--especially in areas where agencies have requested assistance to perform more complete compliance reviews. (See p. 19.)

--Establish training courses for compliance officers. As a supplement to on-the-job training, centralized training should be offered to compliance officers from all compliance agencies. (See p. 19.)

--Sample and review approved affirmative action programs to insure that compliance agencies are complying with Department guidelines and fully document results of these reviews. (See p. 37.)

--Require compliance agencies to take timely enforcement action with respect to contractors not complying with the Executive order. (See p. 37.)

--Assist compliance agencies to better identify contractors under each agency's responsibility. (See p. 37.)

--Perform periodic tests to determine whether compliance agencies make preaward reviews and whether contracting agencies request preaward clearances when appropriate. (See p. 37.)

--Coordinate with the Commission at headquarters and regional levels and make periodic tests to insure that (1) complaint data on file with the Commission is considered by compliance agencies during reviews and (2) information is exchanged to minimize duplication of effort. (See p. 40.)

AGENCY ACTIONS AND UNRESOLVED ISSUES

The Department said that, in general, this report identified problem areas in its Federal contract

compliance program for nonconstruction contractors. The Department said the report contained many useful recommendations, the majority of which had already been implemented or were being implemented. The Department also said, however, that the report contained numerous factual inaccuracies, conclusions inferred without benefit of complete factual premises, and a serious absence of recognition of numerous pertinent program initiatives undertaken by the Department to resolve many problems cited in the report.

GAO considered the Department's comments and made a number of changes in the report to give recognition to these comments. However, the Department's comments give rise to a number of unresolved issues which are discussed beginning on page 42.

DOD said it was implementing certain corrective actions to improve its administration of the contract compliance program. (See p. 52.)

GSA's comments indicated that it had taken some actions to improve administration of the contract compliance program, but its comments also indicated that it disagreed with some of GAO's findings and conclusions. GAO has made a number of changes in the report to give recognition to GSA's comments. GSA comments giving rise to unresolved issues are discussed beginning on page 53.

CHAPTER 1

INTRODUCTION

The first Executive order to establish policy on preventing employment discrimination by Federal contractors was issued in 1941 and, like most of its successors, was administered by a committee in the Executive Office of the President. Executive Order 11246, issued on September 24, 1965, and amended on October 13, 1967, prohibits discrimination on the basis of race, color, religion, sex, or national origin. The order assigned responsibility for supervising and coordinating the Federal contract compliance program to the Secretary of Labor.

With certain exceptions, the order requires Federal contractors and subcontractors to eliminate employment discrimination and take affirmative action to provide equal employment opportunity at all company facilities, including those not working on a Federal contract. For example, if a Government agency enters into a contract in Washington, D.C., and the contractor has other facilities throughout the United States, each of the contractor's facilities is required to comply with the provisions of the Federal contract compliance program.

Contractors under the Department of Labor's responsibility also fall within the Equal Employment Opportunity Commission's (EEOC's) responsibility under title VII of the 1964 Civil Rights Act, which prohibits discrimination in hiring, upgrading, and other conditions of employment on the basis of race, color, religion, sex, or national origin. EEOC investigates charges of discrimination against employers, labor organizations, and public and private employment agencies. If EEOC finds reasonable cause to believe that a charge is true, it will seek a full remedy through conciliation. The Equal Employment Opportunity Act of 1972 gave EEOC the authority to initiate a civil action to achieve a remedy when conciliation fails.

The Federal contract compliance program is divided into separate programs covering construction and nonconstruction

contractors. In implementing the program in the construction industry, which is characterized by temporary employment, shifting sites of operations, and limited duration of contracts, the Department of Labor uses areawide plans to increase the use of minorities in the industry-associated crafts. The nonconstruction industry deals primarily with supply and service contractors and is characterized by more permanent employment, fixed sites of operation, and Federal contracts over an extended time.

In accordance with the request of the Subcommittee on Fiscal Policy of the Joint Economic Committee, this report deals with our evaluation of the Department's administration of the nonconstruction compliance program and its coordination with EEOC. (See app. I.)

At the time we began our review, the Department had designated 13 Federal agencies, referred to as compliance agencies, to be responsible for enforcing the Executive order and related guidelines for nonconstruction contractors. The Secretary of Labor has delegated some of his authority to the Director of the Office of Federal Contract Compliance (OFCC), within the Department's Employment Standards Administration.

OFCC's responsibilities include

--establishing policies, objectives, priorities, and goals for the program;

--providing leadership, coordination, and enforcement of the program;

--reviewing and evaluating the capability and performance of each compliance agency to insure maximum progress to achieve the objectives of the Executive order; and

--developing and recommending such regulations for issuance by the Secretary of Labor as are necessary for administering the Executive order.

The Department has issued guidelines, and compliance agencies are responsible for carrying out the contract

compliance program in accordance with them. These guidelines concern such matters as the requirements for preparing acceptable affirmative action programs (AAPs) and the procedures for imposing enforcement actions authorized by the Executive order.

On March 28, 1974, the Department requested that we determine whether the equal employment opportunity regulations for public contracts prescribed by a State Fair Employment Practices Commission were in violation of the basic principles of Federal procurement law. After most of the audit work requested by the Subcommittee had been done, the Comptroller General, in responding on July 2, 1974, to the Department's request, stated that these regulations were inconsistent with the basic principles of Federal procurement law.

The Comptroller General also advised the Department that OFCC's

> "* * *Revised Order No. 4, also seems to be in violation of the basic principles of Federal procurement law enunciated in our decisions in 47 Comptroller General 666 (1967) and 48 Comptroller General 326 (1968), in that a contractor can be defaulted under these regulations for its failure to submit an 'acceptable' affirmative action plan despite the fact that these regulations do not seem to contain any <u>definite</u> minimum standards and criteria apprising the prospective bidders of the basis upon which their compliance with the EEO [equal employment opportunity] requirements will be judged."

Although we believe such standards are needed, we evaluated the implementation of the nonconstruction contract compliance program under existing Department guidelines. (See ch. 6.)

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NONCONSTRUCTION PROGRAM

The 13 Department-appointed compliance agencies responsible for enforcing the Executive order and related Department guidelines were the

--Agency for International Development (AID);
--Atomic Energy Commission (AEC);
--Department of Agriculture (USDA);
--Department of Commerce;
--Department of Defense (DOD);
--Department of Health, Education, and Welfare (HEW);
--Department of the Interior;
--Department of the Treasury;
--Department of Transportation;
--General Services Administration (GSA);
--National Aeronautics and Space Administration (NASA);
--United States Postal Service (USPS); and
--Veterans Administration (VA).

In fiscal year 1974 over $50 billion in Federal contracts was awarded to nonconstruction contractors which employed about 25 million workers. The Department generally assigns compliance agencies responsibility for contractors in specified industries, usually on the basis of standard industrial classification codes, irrespective of which Federal agency entered into the contract. For example, GSA has been assigned 24 industries, including utilities and communications, and DOD has been assigned 30. NASA, the principal exception to this method of assignment, was given responsibility only for contractors having NASA contracts and located on or near a NASA facility.

Effective August 1, 1974, the Department reduced the number of compliance agencies responsible for nonconstruction contractors from 13 to 11. The Department transferred AID's compliance responsibility to GSA, eliminated the NASA exception, and assigned NASA's prior responsibilities principally to AEC and DOD. Department guidelines require each nonconstruction contractor that has 50 or more employees and a Federal contract of $50,000 or more to write an AAP for each of its facilities. AAPs are intended to

achieve prompt and full utilization of minorities and women at all levels and in all segments of the contractor's work force where deficiencies exist.

The compliance agencies are responsible for conducting compliance reviews of Federal contractors within the industries assigned to them. Compliance reviews (including preaward reviews, initial compliance reviews, followup reviews, and complaint investigations) consist of investigations during which the compliance officer analyzes each aspect of the contractor's employment policies, systems, and practices to determine adherence to the nondiscrimination and affirmative action requirements. Department guidelines provide that, when the review discloses that the contractor has (1) not prepared a required AAP, (2) deviated substantially from its approved AAP, or (3) had a program which was unacceptable, compliance agencies are required to pursue various enforcement measures.

The 13 compliance agencies conducted about 45,400 nonconstruction compliance reviews during fiscal years 1972, 1973, and the first 3 quarters of 1974. DOD and GSA performed about 26,700 reviews, or about 59 percent of all reviews. (See app. III.)

Funding and staffing

About 13 and 20 percent of OFCC's operating funds during fiscal years 1973 and 1974, respectively, were directly allocated to the nonconstruction program. Following is a table showing the funding breakdown.

	FY 1973		FY 1974	
Program element	Funds	Percent	Funds	Percent
	(thousands)		(thousands)	
Nonconstruction	$ 370	13	$ 560	20
Construction	1,247	45	1,200	42
National office plans, programs, and management support	1,183	42	1,080	38
Total	$2,800	100	$2,840	100

In addition to the funds allocated directly to the nonconstruction program, an indeterminable portion of the funds allocated to national office plans, programs, and management support applies to the nonconstruction program element. Also, according to the Department, during fiscal years 1973 and 1974 more than 80 percent of the time spent by OFCC's Program Policy and Planning staff (one of eight offices or staffs within the headquarters office) was devoted to the nonconstruction program element.

As of June 30, 1973, OFCC headquarters had 55 permanent employees, including 14 assigned to the nonconstruction program. As of March 31, 1974, 17 of the 45 headquarters permanent employees were assigned to the nonconstruction program. The OFCC regional offices had 37 and 49 permanent employees as of June 30, 1973, and March 31, 1974, respectively. According to the Department, regional office employees spent almost all of their time before fiscal year 1975 on the construction program.

Because agency compliance programs are generally funded on an overall basis, we had to obtain estimates of the portion of the funding and staffing that applied only to the nonconstruction program. Based on these estimates about $19.2 million and about 1,050 persons were assigned to the nonconstruction programs of the 13 compliance agencies during fiscal year 1973. The compliance agencies estimated that, in fiscal year 1974, the staffing increased to about 1,170 persons and funding increased to about $21.6 million. (See app. II.) The nonconstruction funding and staffing of DOD and GSA, where we did most of our work, is shown below.

	FY 1973		FY 1974	
Agency	Staff	Funds (thousands)	Staff	Funds (thousands)
DOD	437	$6,686	517	$8,580
GSA	118	$2,065	133	$2,604

CHAPTER 2

IMPROVEMENTS NEEDED IN ADMINISTRATION OF THE PROGRAM

The Department's administration of the program has not been adequate. Several areas need improvement, including:

--Assessment of employment gains realized by minorities and women.

--Monitoring of the compliance agencies.

--Guidance to the compliance agencies.

--Training of compliance personnel.

NEED FOR ASSESSMENT OF MINORITIES' AND WOMEN'S EMPLOYMENT GAINS

Nine years have passed since Executive Order 11246 was issued, but the Department does not yet have a fully operational system to measure the Federal nonconstruction contractors' progress in improving the employment of minorities and women.

The Department has implemented a system to assess women's and minorities' progress. Effective March 1973, the compliance agencies were required to submit coding sheets showing employment data by nine basic job categories (e.g., officials and managers, professionals, laborers, etc.) to the Department after each compliance review. When collected and processed, the data would summarize Federal contractors' work forces, goals, and achievements in employing minorities and women. Department officials said that this system would allow the Department to evaluate individual compliance reviews and the compliance agencies' overall efforts by examining the goals established and the contractors' progress in fulfilling those goals.

The Department's system was not fully operational when we completed our fieldwork in October 1974. Problems had been experienced in (1) the receipt of compliance agency

data, (2) correctness of the data received, and (3) processing the data through the computerized reporting system.

Department regulations require that compliance agencies submit coding sheets containing the necessary employment data after each review. However, this requirement is not being met. From July 1973 through March 1974 the 13 compliance agencies made about 8,900 reviews. The Department does not have data showing the number of coding sheets received for this same time but did have data showing that 3,500 coding sheets were received from March 1973 through March 1974. Thus, some compliance agencies were not submitting the coding sheets as required.

From July 1974 through September 1974, the Department examined about 4,600 coding sheets submitted by the compliance agencies from March 1973 through September 1974. On the basis of this examination, the Department rejected about 3,600 because the submissions contained errors or were not compiled in the required format.

DOD developed a computerized management information system to measure the progress of nonconstruction contractors. DOD conducted about 43 percent of the approximately 45,400 reviews the 13 agencies made from July 1, 1971, to March 31, 1974.

DOD summary statistics for contractor facilities reviewed in calendar year 1973 showed that the total number of employees declined from about 4.6 million in 1969 to about 4.4 million in 1973. However, the report also showed that minorities and women experienced increases in employment as a percentage of total employment for almost all job categories.

GSA had not implemented any management system to assess its nonconstruction contractors' progress at the time of our review. However, in February 1975 GSA informed us that it had taken action to establish a system which will enable continuing measurement of the employment rates of minorities and women by the nine major job categories in all contractor facilities reviewed by GSA. In addition, data will be collected which will identify minority and female representation in the personnel actions of hiring,

promotion, and termination taking place in contractor facilities under review by GSA. According to GSA, this system will enable contractor progress to be assessed.

DOD's system, GSA's system, and the Department's system are similar in certain aspects. Each of these systems requires the compliance officers to report current data and prior-year data on the number of males, females, minority males, and minority females employed in each of nine basic job categories in each contractor's work force.

Considering the similarity of these systems, we believe the Department should (1) consider whether any one of the systems or some combination of the three could meet the total program needs of all compliance agencies and (2) accelerate implementation of the system selected. Because the Department does not yet have a fully operational system, the progress of Federal nonconstruction contractors in improving equal employment opportunity is difficult to measure.

In February 1975 the Department stated that the filing of coding sheets by the compliance agencies had substantially increased and that from July through December 1974 about 5,600 coding sheets had been received. However, the Department, on January 20, 1975, released its first report on its system to assess the employment gains realized by minorities and women. This report shows that the Department's system is still not fully operational inasmuch as the report is based on data received from only 655 contractors.

NEED TO INCREASE MONITORING OF THE COMPLIANCE AGENCIES

Nonconstruction contractors employ about 25 million employees, or over 80 percent of the estimated 30 million employees covered by the Executive order. The compliance agencies are allocating most of their staff and making most of their reviews on nonconstruction contractors. Our review indicates that the Department needs to increase its monitoring of the nonconstruction compliance program--particularly in the regional offices.

Under the Executive order the Department is responsible for administering the nonconstruction program, including monitoring the compliance agencies to insure that they are performing in accordance with the order and the Department's guidelines. At the regional offices visited--Chicago, Philadelphia, and San Francisco--the Department's staff devoted virtually no effort to monitoring the compliance agencies' enforcement of the Executive order at nonconstruction contractors during fiscal years 1972, 1973, and 1974 (through March 31, 1974). During the same period, the DOD and GSA regional staffs spent most of their time on the nonconstruction program.

Below are the Department's and the two compliance agencies' allocations of staff to the nonconstruction program in the three regions visited.

Professional Staff (as of March 31, 1974)

	Department of Labor		DOD		GSA	
Locations	Total	Nonconstruction	Total	Nonconstruction	Total	Nonconstruction
Chicago (note a)	2	0	48	47	12	9
Philadelphia-Washington, D.C. (note b)	1	0	42	40	22	15
San Francisco (note c)	4	1	20	19	10	9
Total	7	1	110	106	44	33

[a]Includes Cleveland suboffice for the Department.
[b]GSA regional office located in Washington, D.C., but responsible for same area as the Department's Philadelphia regional office.
[c]Includes Los Angeles suboffice for the Department.

DOD and GSA staffs, which performed about 59 percent of the reviews during fiscal years 1972 and 1973 and through March 31, 1974, have been increasing. GSA's nonconstruction program increased from a $1,168,000 program with 48 professionals in fiscal year 1972 to an estimated $2,604,000 program with 94 professionals in fiscal year 1974. DOD's total field personnel increased from 149 in 1967 to 509 in March 1974. In fiscal year 1974 DOD estimated that $8,580,000 of the total funds of $8,845,000 and 402 of the 415 professional staff as of March 31, 1974, in the compliance program were assigned to the nonconstruction program.

The Department determined that its field staff should concentrate on the construction program primarily because it believed that areawide plans in the construction industry were necessary to resolve severe problems of underutilization of minorities and discrimination in the construction crafts. The Department believed that the development and monitoring of areawide plans required central coordination. Another reason cited by Department officials for the emphasis given to the construction program by its field staff was the visibility of construction contractors to the community. When minorities were not utilized on construction sites, it became readily apparent to the community. In order to minimize community pressure, the Department policy was to concentrate on improving minority representation in the construction industry.

Department's evaluations of compliance agencies' programs

In fiscal year 1972 the Department evaluated the nonconstruction programs at all 13 compliance agencies to determine the agencies' effectiveness in carrying out the program. However, the scope of these evaluations was restricted to work done at each agency's headquarters. These limited evaluations identified certain deficiencies in staffing, training, conducting compliance reviews, and issuing show-cause notices. Recommendations for corrective actions were directed to the compliance agencies.

Since the 1972 evaluations, comprehensive followup reviews had been done at only 1 of the 13 compliance agencies--NASA. In April and September 1973 the Department reevaluated NASA's contract compliance program and found several deficiencies, including the failure to follow Department requirements and guidelines. As previously noted, effective August 1, 1974, DOD and AEC assumed most of NASA's compliance responsibility.

In its fiscal year 1975 program plan, OFCC indicated that it intends to conduct a formal evaluation of each compliance agency.

Department's review of approved AAPs

The 13 compliance agencies made about 28,700 reviews and approved about 18,900 AAPs of nonconstruction contractors during fiscal years 1973 and 1974 through March 31, 1974. The Department stated that during fiscal years 1973 and 1974 it performed 190 desk audits as part of its monitoring responsibilities. A desk audit consists of such activities as reviewing complaint investigation reports or compliance review reports prepared by compliance officers and providing advice to the compliance agencies on further actions needed.

The Department also stated that these 190 desk audits, with a few exceptions, included an analysis of the contractors' AAPs previously approved by the compliance agencies. However, we were unable to evaluate the adequacy of the Department's reviews of AAPs because in most instances the Department's files did not contain adequate documentation showing the results of its reviews.

The Department further stated that it was taking action to substantiate future reviews of AAPs in its files.

Department's plans to increase monitoring of the compliance agencies

The Department stated in November 1973, during hearings on a supplemental appropriation request, that:

"The Employment Standards Administration [ESA] is aware that the contract compliance program is not meeting all of the goals established for it. We have determined that the most significant obstacle is the lack of resources for ESA to provide the leadership for the compliance agencies envisioned in Executive Order 11246. We must develop our lead agency role if the total contract compliance program is to be effective. To do this, we are requesting 26 positions and $351,000 for this function."

In December 1973 the request for 26 additional positions received approval and increased OFCC's authorized strength from 104 to 130 employees. As of June 30, 1974, OFCC had 126 employees, including 103 permanent and 23 temporarily detailed to OFCC from other parts of the Employment Standards Administration. Sixty-four of these employees were assigned to the 10 regional offices.

In testimony before the Subcommittee on Fiscal Policy of the Joint Economic Committee on September 12, 1974, the Director of OFCC indicated that the Department staff on the nonconstruction program would be augmented by an additional 17 positions. He also said he had directed that 50 percent of the regional office staff time be devoted to monitoring the nonconstruction programs of compliance agencies.

NEED FOR IMPROVED AND TIMELY GUIDANCE TO COMPLIANCE AGENCIES

As previously indicated, the Department has prescribed guidelines to the compliance agencies for their use in administering the program. Also, OFCC has provided guidance to compliance agencies on a case-by-case basis concerning some issues. The guidelines prescribed by the Department cover such areas as performing compliance reviews, required contents of AAPs and goals and timetables, confidentiality and disclosure of information obtained from contractors, and testing and selection procedures.

Compliance agencies have indicated, however, that guidance from the Department has not been timely and complete in the following areas.

Areas Needing Improved and Timely Departmental Guidance

Agency	Compliance reviews	Contents of AAPs	Goals and timetables	Affected class	Back-pay	Confidentiality	Employee testing and selections
AEC				X			
USDA			X	X	X	X	
AID			X	X	X	X	
Commerce	X	X	X	X	X	X	
DOD	X	X	X	X	X	X	
GSA	X		X	X	X	X	X
HEW	X	X	X				
Interior	X		X	X	X	X	X
Transportation		X		X	X	X	
Treasury				X	X	X	
USPS				X	X		
VA	X			X	X		

Affected-class identification and related remedies

Eleven of the 13 compliance agencies cited a need for improved guidance on affected-class problems and related remedies. "Affected class" refers to employees who have been discriminated against and continue to suffer the effects of that discrimination. Revised Order No. 4 states that a remedy for members of an affected class must be provided for a contractor to be found in compliance. Neither the order nor any other Department guidelines establish specific criteria for remedying affected-class problems. According to a Department official, remedies can include revised transfer and promotion systems and financial restitution such as backpay.

DOD and GSA compliance officers often included affected-class determinations as part of compliance reviews. However, DOD and GSA regional officials informed us that they needed additional guidance on remedies. In June 1973 DOD requested the Department to provide guidance on this matter.

Officials of three other compliance agencies said their officers had problems in determining whether affected-class situations existed or whether backpay was needed because the Department had not provided sufficient instructions or guidelines for making such determinations.

Until adequate guidance is provided, compliance agencies will be reluctant to initiate remedies when affected-class problems are identified--notwithstanding the fact that such remedies as backpay relief could act as strong deterrents to discrimination.

The Department issued a memorandum to all compliance agencies in May 1974 explaining its contract compliance program priorities and plans, including issuing new or revised regulations on affected-class, backpay relief, and testing and selection procedures during fiscal year 1975. In July 1974 the Department circulated proposed guidelines on selection procedures to the agencies for comment, and the Department stated that it was working with the Equal Employment Opportunity Coordinating Council on the guidelines. Also, the Department's plans called for it to normally respond within 10 days after receiving requests

for specific guidance or clarification from compliance agencies. As of February 1975 the Department had not issued the new or revised regulations.

NEED FOR IMPROVED TRAINING OF COMPLIANCE AGENCY PERSONNEL

From time to time the Department conducts and participates in training activities for compliance agency personnel. For example, in 1974 the Department held a training session for all compliance agencies concerning newly issued Department guidelines. The Department also participated in training sessions conducted by seven compliance agencies concerning the new guidelines.

The Department, however, has not established a centralized training program to train all compliance personnel responsible for implementing the program. Centralized training would furnish compliance personnel from different agencies a common base of instruction and should provide for more uniform application of Department guidelines.

Instead, in May 1974, the Department directed each compliance agency to institute training programs to insure that its staff was able to professionally investigate and conciliate in a manner consistent with Department policies and guidelines. Each agency was to insure that its compliance personnel knew all Department regulations, orders, and guidelines. The rationale for assigning training responsibility to the compliance agencies centered around (1) the lack of funds to establish a training program and (2) the authorization of only two training officers to conduct OFCC training programs.

Most compliance agency officials informed us that they relied primarily on on-the-job training rather than a formal training program. In our opinion the small size of compliance staffs (see app. II) at most agencies could be a primary reason for this.

The DOD Chicago region has a 2-year, on-the-job training program. A handbook establishes guidelines on the number of hours to be devoted to various topics related to

compliance reviews. During the first year the trainee is usually assigned to a three- or four-man team and performs various segments of the compliance review. An experienced compliance officer and the team leader review all work. During the second year the trainee may conduct complete reviews of smaller contractor facilities.

In the GSA Chicago region, trainees are given 2 weeks of training on the Department's rules and regulations. The new trainee then accompanies an experienced compliance officer on several reviews--usually for 4 weeks--in which the trainee may be involved in as many as six or seven review situations. Following this, the trainee usually conducts compliance reviews on his own.

The Federal Government provides centralized interagency training through the Civil Service Commission for in-house Equal Employment Opportunity programs. EEOC has made known its intentions to establish a training academy to provide professional training for compliance personnel on matters relating to title VII of the Civil Rights Act of 1964. However, in the nonconstruction contract compliance program, each compliance agency must provide staff and facilities to meet its own training needs.

In recent testimony before the Subcommittee on Fiscal Policy of the Joint Economic Committee, GSA's Director of Civil Rights stated that the current training program was not the most desirable and referred to the duplication of nonuniform training. He proposed that the Civil Service Commission be authorized to provide the necessary basic, advanced, and executive level interagency contract compliance training. He said centralized training would help to:

--Insure maximum productive use of available training facilities.

--Reduce substantially the cost for each contract compliance trainee.

--Achieve centralized planning and standardized execution as well as evaluation of the contract compliance training effort.

--Establish a minimum acceptable quality of training for a well defined and steadily increasing training demand.

As will be discussed in chapter 3, our review disclosed several weaknesses in the compliance agencies' implementation of the nonconstruction program--including the approval of AAPs which did not meet the Department's guidelines. We believe these weaknesses are partly attributable to the need for more effective training of compliance officers.

The Director of OFCC agreed that a centralized training program would help to insure that compliance agencies were uniformly implementing the OFCC nonconstruction program requirements. He stated that because of the small size of most of the compliance agencies, OFCC's responsibility should be to provide the training necessary for implementing an effective program. He also stated that the training responsibility was assigned to the compliance agencies instead of to OFCC because funds were insufficient to establish a training program.

CONCLUSIONS

The Department must improve its role as a lead agency if the total contract compliance program is to be effective. A current assessment of nonconstruction contractors' progress in improving their employment of minorities and women is needed.

The Department's monitoring of the nonconstruction program must be an integral part of its lead agency role since the majority of the compliance agencies' efforts are concentrated in the nonconstruction program and most of the workers covered by the Executive order are employed by nonconstruction contractors.

Until the Department provides improved and timely guidance to compliance agencies, the adequacy of compliance reviews performed will remain a problem. (See ch. 3.) Centralized training is needed to supplement on-the-job training and to better prepare compliance officers to administer the program in accordance with Department guidelines.

RECOMMENDATIONS TO THE SECRETARY OF LABOR

We recommend that the Secretary:

--Accelerate implementation of a system to measure the progress of nonconstruction contractors and to assess program shortcomings in increasing and advancing minorities and women in the work force.

--Place greater emphasis on monitoring the nonconstruction program.

--Provide adequate and timely guidance to compliance agencies, especially in areas where agencies have requested assistance to perform more complete compliance reviews.

--Establish training courses for compliance officers. As a supplement to on-the-job training, centralized training should be offered to compliance officers from all compliance agencies.

51-703 O - 75 - 3

CHAPTER 3

PROGRAM IMPLEMENTATION BY COMPLIANCE AGENCIES

Several weaknesses in the compliance agencies' implementation of the nonconstruction program were:

--At least two compliance agencies, DOD and GSA, were approving AAPs that did not meet Department guidelines.

--Some compliance agencies were reluctant to initiate enforcement actions and their conciliations with contractors exceeded Department time limits.

--Of the 13 compliance agencies, 12 had not identified all contractors for which they were responsible.

--Most compliance agencies were not reviewing an adequate proportion of the contractors for which they were responsible.

--Some compliance agencies were not always conducting the required preaward reviews and some contracting agencies were awarding contracts without requesting compliance agencies to conduct preaward reviews as required by Department guidelines.

AAPS NOT MEETING GUIDELINES

DOD and GSA approved AAPs that did not meet the Department standards of Revised Order No. 4, issued in December 1971. To meet the order's standards for acceptability, an AAP must include specific types of data, including (1) analysis of the contractor's work force to determine the utilization of minorities and women, (2) identification of job classifications in which minorities and/or women are being underutilized, (3) goals for improving the employment of minorities and women when a contractor is found to be deficient, i.e., when the contractor is employing fewer minorities and/or women than would reasonably be expected considering their availability within an area where the contractor could be expected to recruit, and (4) timetables for achieving those goals.

According to the Department's guidelines, if contractors follow this program, they should be able to increase the utilization of minorities and women at all levels and in all deficient segments of their work forces.

To determine whether AAPs approved by DOD and GSA met the Department's guidelines, we analyzed a random sample of 120 approved during the first 9 months of fiscal year 1974--20 by DOD and 20 by GSA in each of the 3 regions reviewed.

Analyses of Approved AAPs

Region	GSA			DOD		
	Number reviewed	Not meeting guidelines		Number reviewed	Not meeting guidelines	
		Number	Percent		Number	Percent
Chicago	20	13	65	20	3	15
Philadelphia-Washington, D.C.	20	16	80	20	4	20
San Francisco	20	13	65	20	5	25
Total	60	42	70	60	12	20

Concerning AAPs which we determined did not meet Department guidelines, GSA regional officials agreed with our analyses in 25 of 42 cases and DOD regional officials agreed in 10 of 12 cases.

The most frequently noted types of deficiencies disclosed by our analyses are listed on the following page.

Deficiencies in Approved AAPs

Deficient areas	Number of AAPs: Chicago	San Francisco	Philadelphia-Washington, D.C.	Total
Breakdown of job categories	12	9	10	31
Goals and timetables	15	11	3	29
Work force utilization analysis	16	16	9	41

In AAPs that did not contain a sufficient breakdown of job categories, we found, for example, that an AAP showed 1 contractor employed 49 officials and managers. However, the AAP did not show the number of employees by race and sex in each of the different types of job classifications within the category entitled "officials and managers."

We noted that on May 17, 1972, the Deputy Director of GSA's Office of Civil Rights sent a memorandum to all GSA regional directors of civil rights which stated, in part, that:

> "It has come to our attention that contractor Affirmative Action Plans are being accepted which contain utilization analyses and goals and timetables identified by EEO-1 categories such as Officials, Managers, Professionals, etc.
>
> "This practice is not in compliance with [OFCC's] Revised Order No. 4 which states in Section 60-2.11, Required Utilization Analysis, that the contractor must do an analysis of all major job classifications at each facility to determine if women and/or minorities are being underutilized.* * *

"Underutilization analyses and goals established by EEO-1 category are often meaningless, For example, the category of officials & managers usually includes company presidents and keypunch supervisors which certainly are not jobs with similar content, wage rates and opportunities. Further, if the contractor establishes a goal of two females in Officials & Managers, it is not clear if the goal is in an executive position or if it means two more keypunch supervisors. If it is the latter, this is not really an affirmative action goal as it is probably an area where females are utilized exclusively."

Although Department guidelines require AAPs to be based on job classifications, GSA representatives questioned the reasonableness of requiring small facilities to prepare AAPs using job classifications rather than the nine broad EEO-1 categories.

Another type of deficiency noted was that AAPs did not contain goals and timetables when appropriate. For example, a contractor identified a job in which, on the basis of their availability within an area where the contractor could be expected to recruit, it was determined that the contractor was underutilizing minorities and women.

However, the contractor either failed to set goals or set goals which were not specific enough to correct the underutilization.

A third type of deficiency noted was that AAPs did not contain adequate work force utilization analyses. For example, an AAP showed the total number of employees in a particular job classification by race and sex, but the AAP did not adequately analyze the total number of persons in the community with that particular job skill to determine if the contractor employed fewer minorities and females in that job classification than would reasonably be expected.

Department guidelines require that in determining whether minorities and women are being underutilized in any job classification the contractor must consider certain

specific factors. In the case of an analysis of the utilization of minorities, for example, the contractor must consider at least the following factors:

--The minority population of the labor area surrounding the facility.

--The size of the minority unemployment force in the labor area surrounding the facility.

--The percentage of the minority work force as compared with the total work force in the immediate labor area.

--The general availability of minorities having requisite skills in the immediate labor area.

--The availability of minorities having requisite skills in an area in which the contractor can reasonably recruit.

--The availability of promotable and transferable minorities within the contractor's organization.

--The existence of training institutions capable of training persons in the requisite skills.

--The degree of training which the contractor is reasonably able to undertake as a means of making all job classes available to minorities.

Representatives of GSA, DOD, and selected contractors stated that one persistent problem in developing acceptable AAPs was that the data necessary to analyze all of the eight factors listed above was not always readily available.

A deficient AAP does not, by itself, indicate that a contractor is not committed to the Equal Employment Opportunity program. However, developing AAPs which contain adequate utilization analyses and set goals and timetables when appropriate is the initial step in improving the contractors' positions. These plans can be used to evaluate a contractor's progress in achieving or making a good faith effort to achieve the goals and timetables established.

Suit filed by public interest group alleging approval of deficient AAPs

The Legal Aid Society of Alameda County, California, is a federally funded law project which represents low-income minority persons in Alameda County. Part of its duties involve overseeing the enforcement of laws relating to equal employment opportunity.

In February 1973 the society and others filed a complaint against the Department and USDA seeking, in part, enforcement of the requirements of the Executive order. Subsequently, the society filed a motion for partial summary judgment with the U.S. District Court for the Northern District of California to stop USDA from approving AAPs of contractors in Alameda County which did not comply with Department regulations. The motion claimed that 29 AAPs approved by USDA in Alameda County from August 1972 to January 1973 were actually violating Department regulations.

Some of the violations cited were similar to the deficiencies noted during our review of DOD- and GSA-approved AAPs. Generally, the violations dealt with (1) inadequate utilization analyses to show each job category in which the contractor was deficient in utilizing minorities and women, (2) failure to establish adequate goals and timetables to correct each deficiency, and (3) failure to include additional ingredients required by Department regulations--such as the availability of promotable or transferable minorities and females within the contractors' organizations and the failure to include commitments to undertake specific programs for training minority and female employees.

On June 20, 1974, the court ruled in favor of the society and required USDA to rescind its approval of the 29 AAPs and to institute enforcement proceedings against the contractors. A USDA official informed us in March 1975 that USDA had taken action to comply with the court ruling.

AAPs not prepared

Department guidelines require Federal contractors to develop and maintain current AAPs, with certain exceptions.

These guidelines refer to prior problems of compliance agencies in that many contractors did not have AAPs on file when a compliance investigator visited a contractor establishment.

As shown below, our analysis of the show-cause notices issued by the 3 DOD and GSA regional offices showed that 56 of the 148 notices issued from July 1, 1972, through March 31, 1974, dealt with the contractor's failure to prepare a written AAP or update a previously prepared AAP.

	DOD			GSA		
Region	Show-cause notices issued	No AAP prepared or updated	Percent	Show-cause notices issued	No AAP prepared or updated	Percent
Chicago	40	17	43	11	5	45
Philadelphia-Washington, D.C.	6	4	67	43	12	28
San Francisco	4	3	75	44	15	34
Total	50	24	48	98	32	33

DOD and GSA headquarters officials informed us that contractors were not routinely given the Department guidelines for preparing AAPs. As a result, some contractors may not be fully aware of their equal employment opportunity responsibilities when they receive a Federal contract.

In commenting on this report, GSA stated that there appeared to be a great need to insure that each contractor fully understands exactly what it is expected to do and when this should be done. GSA cited a number of actions it had taken to increase contractors' awareness of their responsibilities under the Executive order (see p. 60).

ENFORCEMENT ACTIONS NOT TAKEN

Compliance agencies are reluctant to initiate enforcement action when contractors are not in compliance with the Executive order; instead, they rely on extended conciliations and negotiations with contractors to achieve compliance. In some instances conciliation exceeded the time limits allowed by the Department.

Department regulations issued in January 1973 state that, except in cases of delays for good cause, an agency must approve a contractor's AAP or issue a show-cause notice within 45 days from the date of the initiation of the onsite investigation.[1] A show-cause notice for noncompliance with the Executive order gives a contractor 30 days to explain why enforcement measures should not be initiated. If the contractor fails to show good cause or fails to remedy the noncompliance, regulations authorize various enforcement measures, including withholding of progress payments, contract cancellation, debarment from future Federal contracts, and referral to the Department of Justice for court action. The contractors must be given the opportunity for a formal hearing before these measures are imposed.

From July 1, 1971, through March 31, 1974, the compliance agencies conducted about 45,400 nonconstruction reviews. A total of 535 show-cause notices were issued, which represented about 1.2 percent of the reviews conducted. Two agencies imposed stronger enforcement actions against 14 contractors. In one case a contractor was debarred from future Federal contracts. Thirteen trucking companies were referred to the Department of Justice for appropriate legal action, and a consent decree has been entered into under which the companies have agreed to stop their discriminatory practices.

DOD and GSA officials said they attempted to persuade contractors to comply with the Executive order and implementing guidelines through conciliation rather than by

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[1]Regulations effective May 15, 1974, revised the time limit to 60 days from the date of receipt of the contractor's AAP and supporting documentation.

invoking formal enforcement actions. Commerce and Treasury Department officials said they preferred to issue warning letters rather than show-cause notices to contractors which did not fully respond to the program's requirements. The Treasury Department, as of June 1974, was developing written enforcement procedures. According to Treasury officials, these procedures will insure that enforcement actions authorized by the Executive order would be fully used when warranted.

NASA also stressed conciliation over enforcement. The Department made two reviews of the NASA program before reassigning its compliance responsibility and concluded that NASA was reluctant to issue show-cause notices or take enforcement actions. The last show-cause notice NASA issued was in March 1972.

Prolonged conciliation with contractors

Department regulations provide for conciliation as a way of obtaining compliance with the Executive order, but, as previously stated, compliance agencies must either approve contractors' AAPs or issue show-cause notices within a certain time limit. We noted instances in which GSA had not complied with the time limit.

In the San Francisco GSA region, in 6 out of 10 cases selected, GSA did not comply with the Department's time limit. These reviews were initiated before May 15, 1974, when the regulations were changed to allow compliance agencies 60 days to approve contractors' AAPs or issue show-cause notices. For example, GSA made an onsite compliance review of a contractor on July 19, 1973, but as of August 28, 1974, had not approved the contractor's AAP or issued a show-cause notice.

In another example, one contractor facility where GSA made an onsite review in October 1973 had several deficiencies in its AAP. GSA sent a list of the deficiencies to the contractor in December 1973. The contractor replied twice to the deficiencies, but the GSA compliance officer determined that problems still existed. As of August 1974 this facility's compliance status had been held in abeyance

pending receipt of additional data. Also, no show-cause notice had been issued and no enforcement action had been taken against this contractor.

In March 1973 GSA issued a memorandum to its regional offices stating show-cause notices should be issued to utility contractors found in noncompliance with Department regulations and that referral to the Department of Justice would be necessary if contractors subsequently refused to comply with the regulations. Our review showed, however, that GSA was not fully complying in all instances with this memorandum. For example, GSA's San Francisco region reviewed a utility contractor in January 1974. GSA officials held a conciliation meeting in May 1974 to discuss deficiencies in the contractor's AAP, but, as of August 1974, the contractor's AAP did not conform to Department regulations. A GSA regional official said that, because the contractor supplied power to certain Federal facilities, he thought a show-cause notice would accomplish nothing and debarment of the contractor could not be considered. Therefore, he planned to continue conciliation until a satisfactory AAP was obtained.

In GSA's Washington, D.C., region, four instances involving utility contractors were noted in which there was extended conciliation after issuance of a show-cause notice. The four show-cause notices were outstanding from 9 to 14 months at the time of our fieldwork. Headquarters officials advised us that conciliations were slow but that imposing stronger enforcement actions, such as debarment of utility contractors, was not practical because they usually were the only suppliers available to the Federal Government.

At the DOD regional offices in Philadelphia and San Francisco, selected case files reviewed did not disclose any indications of excessively delayed conciliation. However, a DOD San Francisco region internal review report issued in April 1974 showed that 33 reviews, or 17 percent of the 195 reviews examined, were in the review process from 60 to 245 days. The report concluded the primary reason some reviews required such a long time to complete was that compliance officers did not prepare and submit their review reports on time. The report cited one case

which was in the review process 186 days and should have resulted in the issuance of a show-cause notice because the contractor was not complying with Department guidelines; however, there was no indication that the compliance officer ever recommended issuing a notice.

In testimony on September 12, 1974, before the Subcommittee on Fiscal Policy of the Joint Economic Committee, the Deputy Assistant Secretary of Defense for Equal Opportunity indicated that, during the program's formative period, the accepted practice was to focus upon conciliation and negotiation between DOD and the contractor. He added that, since the program had matured, DOD no longer anticipated protracted periods of conciliation and negotiation.

We believe compliance agencies should take enforcement action against contractors found in noncompliance with Department regulations and rely less on conciliation and negotiation. The almost nonexistence of enforcement actions taken could imply to contractors that the compliance agencies do not intend to enforce the program.

Although we believe the compliance agencies should more effectively meet their responsibilities under Executive Order 11246 and the implementing regulations, we again note that Revised Order No. 4 may be in violation of Federal procurement law, since it should set forth more definite standards and criteria to apprise prospective bidders of the basis on which their compliance with the equal employment opportunity requirements will be judged.

CONTRACTOR UNIVERSE NOT IDENTIFIED

Department guidelines provide that each compliance agency is responsible for insuring that contractors in its assigned area comply with the Executive order. However, the Department has not developed a method or system to identify all contractor facilities for which each compliance agency is responsible.

Headquarters officials at 12 of the 13 nonconstruction compliance agencies advised us that they did not have complete information on the identity of all contractor facilities for which their agencies were responsible. GSA and DOD

officials at the three regions we visited also said they did not have complete information on all contractor facilities in their regions.

NASA officials stated that they had complete information. However, NASA was responsible only for contractors having NASA contracts and located on or near NASA installations.

At present no single source of information within the Department identifies all contractors subject to Executive Order 11246. The Department estimates that approximately 275,000 Federal nonconstruction contractors are subject to the provisions of the Executive order. For many years the Department's goal has been to obtain a complete list of all Federal contractors. However, at the time of our review, the Department did not have this capability.

A 1972 DOD study on the implementation of the contract compliance program specifically addressed the problems caused by the lack of complete contractor information. The study pointed out that a great amount of time and effort was often required to determine whether or not individual contractors were holding or have held Federal contracts. The study indicated DOD believed it had reasonably good information on DOD contractors but little or no information on contracts awarded by other agencies in DOD-assigned industry codes.

The study further stated that, in addition to the time lost in trying to identify Federal contractors, there was reason to believe that many contractors were never identified and thus never reviewed. The study concluded that all compliance agencies urgently needed a comprehensive list of Federal contractors.

Current Department efforts in identifying contractors subject to the Executive order center on a joint Department-EEOC reporting form (Employer Information Report). All employers with 100 or more employees and subject to title VII of the Civil Rights Act of 1964 and/or Executive Order 11246 are required to submit the reporting form yearly. The Department has the reports compiled by industry and distributes the lists to the compliance agencies. The

Department estimates that about 275,000 nonconstruction contractors are subject to the provisions of Executive Order 11246; however, according to a Department official, the lists include only about 92,000 contractors. The lists are distributed to the compliance agencies about a year after the contractors complete the reporting forms. This delay was attributed to the time needed to compile the lists.

In June 1974 DOD informed the Department in a planning document that the development of a better workload universe by the Department was a matter which deserved the highest priority. DOD stated that estimates were not helpful and that what was needed was definite information that a contractor was in a specific industry code and had a Federal contract subject to Executive Order 11246. In testimony on September 11, 1974, before the Subcommittee on Fiscal Policy of the Joint Economic Committee, the Director of GSA's Office of Civil Rights stated that over 1.1 million out of a total of approximately 2.6 million business establishments in the United States were included in the industry codes assigned to GSA. The GSA official indicated, however, that no single source listed all those which had Federal contracts. Without knowing all contractor facilities for which it is responsible, the compliance agency cannot systematically select for review those which offer the most potential for improving equal employment opportunity.

OFCC, in an October 1974 memorandum to all compliance agencies, pointed out the need for a complete listing which would identify all contractor facilities for which the compliance agencies were responsible. OFCC informed the compliance agencies that OFCC would undertake a study of the feasibility and cost of securing this additional information.

We believe that the Department should take all steps necessary to obtain a comprehensive listing of contractor facilities under each compliance agency's responsibility.

CONTRACTOR FACILITIES REVIEWED

Most compliance agencies have been unable to review all nonconstruction contractor facilities for which they

estimate they are responsible. The following table shows for each compliance agency the number of compliance reviews performed during fiscal years 1973 and 1974 (through March 31, 1974) expressed as a percentage of the total number of contractor facilities for which those agencies estimate they are responsible.

Small Percentage of Government Contractor Facilities Reviewed

Compliance agency	Estimated contractor facilities	Reviews performed expressed as a percentage of estimated universe	
		Fiscal year 1973	Fiscal year 1974 (as of March 31, 1974)
AEC	4,140	14	12
USDA	21,200	4	2
AID	1,200	12	4
Commerce	780	28	20
DOD	36,000	25	10
GSA	23,000	13	10
HEW	4,110	9	8
Interior	4,000	19	10
NASA	260	100	79
USPS	19,000	21	3
Transportation	380	8	7
Treasury	6,000	8	6
VA	12,480	1	1
Total	132,550		

Nine of the 13 nonconstruction compliance agencies reviewed less than 20 percent and 3 agencies reviewed 21 to 28 percent of their contractor facilities in fiscal year 1973. The data available for the first 9 months of fiscal year 1974 indicates that the coverage in fiscal year 1974 was about the same as for fiscal year 1973.

In an October 24, 1974, memorandum to the heads of all agencies, OFCC stated that it had reviewed the compliance

agencies' resource requests for fiscal year 1976 and had sought to obtain increases for agencies that were not reviewing an adequate proportion of their universe. OFCC also stated that compliance agencies covering less than 20 percent of their assigned workload were clearly inadequate and recommended an increase of 83 staff-years and about $1.8 million for the contract compliance program in fiscal year 1976.

In selecting contractors for review, the compliance agencies relied on internally developed selection criteria. GSA's criteria include selection of contractors with past problems, consideration of the status of the local economy, and input from community action groups. According to GSA officials, compliance personnel are encouraged to schedule reviews of several contractors in the same area. Thus, selection may be affected by the proximity to other contractors rather than by the potential for developing opportunities for minorities and women.

In addition to these selection criteria, GSA established a standard that each compliance officer should complete four to six reviews each month. GSA compliance officers in two regions indicated that they often selected small contractors, which required less time to review, so that they would be more likely to achieve the monthly standard. Although Department guidelines do not require contractors with fewer than 50 employees to prepare written AAPs, contractors required to prepare AAPs must prepare an AAP for each facility regardless of size. Eleven of the 40 contractors' facilities whose AAPs we reviewed in these 2 regions had less than 50 employees. Generally, small contractors yield less opportunity for new hires and advancement of minorities and women.

Officials of several other compliance agencies, including DOD, informed us that the size of the contractor's work force determined the priority of selection--larger contractors were given priority in performing compliance reviews.

Since compliance agencies are reviewing only a small percentage of their contractor facilities, we believe compliance agencies should devote their staff resources to contractors which offer the most opportunities for minori-

ties and women. Although smaller contractors should not be entirely excluded from the review process, the selection system used should provide for selecting such contractors on a sample basis to achieve the necessary coverage.

During October 1974 OFCC informed the compliance agencies that it would attempt to identify additional sources of listings of Federal contractors. Using such listings compliance agencies could advise contractors of their responsibility to prepare AAPs and require contractors to notify them after the AAPs have been prepared. The procedure of requiring notification should encourage contractors to prepare AAPs and evaluate their equal employment opportunity situations even though they may not be selected for review. (See p. 25.)

PREAWARD REVIEWS NOT MADE OR REQUESTED

Some compliance agencies are granting preaward clearances without making required compliance reviews, and some contracting officers are awarding contracts exceeding $1 million without requesting a preaward clearance from the responsible compliance agency.

Department regulations require that, before the award of a contract of $1 million or more, the contracting agency request preaward clearance from the responsible compliance agency. If the compliance agency has not performed a compliance review of the contractor within the preceding 12 months, preaward clearance may not be granted unless the compliance agency makes a preaward review and finds the contractor in compliance.

To test adherence to the preaward requirements, we selected 84 contracts, each exceeding $1 million, which were awarded during fiscal year 1974 by GSA, HEW, and DOD. Compliance responsibility for these contracts was assigned to DOD, the Department of the Interior, and HEW.

The compliance agency or contracting agency did not comply with Department preaward requirements for 25 of the 84 contracts selected (29.8 percent), as shown below.

51-703 O - 75 - 4

Compliance agency	Number of contracts			
	Complied with preaward requirement	Failed to comply		
		Preaward not requested	Preaward requested but not performed	Total
HEW	1	7	12	20
Interior	2	0	4	6
DOD	56	1	1	58
	59	8	17	84

For the eight contracts for which preaward clearances were not requested, we could not find, nor could the contracting agency provide, documentation showing that preaward clearances were requested or received. For 17 contracts the contracting agencies requested and received preaward clearances from the compliance agencies; however, the compliance agencies had not made compliance reviews of the 17 contractors during the preceding 12 months and did not make preaward compliance reviews before issuing the clearances.

According to a Department of the Interior compliance official, when a request for preaward clearance is received, a preaward review is not performed, even though the prospective contractor has not been reviewed during the preceding 12 months. He stated that preaward clearances were withheld only if there were outstanding show-cause notices against prospective contractors.

HEW officials informed us in July 1974 that, because only 16 colleges and universities had currently approved AAPs, HEW's policy was to grant a preaward clearance to a school unless it had reviewed the school's AAP, found the AAP deficient, and found that the school was not revising the AAP to correct the deficiencies noted.

An AID official advised us that AID required contractors, during a compliance review, to list their current Federal contracts. As a result, AID found instances of contracts exceeding $1 million awarded by other Federal agencies

to contractors under AID's responsibility. These agencies had not requested preaward clearances from AID.

CONCLUSIONS

Efficient implementation of the nonconstruction program by compliance agencies is important if minorities and women are to achieve equality in employment by Federal contractors.

The approval of AAPs that do not meet Department guidelines allows contractors to avoid commitments to improve their equal employment opportunities. Compliance agencies are not following Department guidelines and instead rely on conciliation rather than impose enforcement measures. The almost nonexistence of enforcement actions could imply to contractors that the compliance agencies do not intend to enforce the program.

The program has been hampered because compliance agencies do not know all the contractors for which they are responsible. Most compliance agencies have been unable to review all contractors for which they estimate they are responsible, and contractors not in compliance with the Executive order may be receiving Federal contracts because of the failure of compliance agencies and contracting agencies to follow the Department's preaward requirements.

RECOMMENDATIONS TO THE SECRETARY OF LABOR

We recommend that the Secretary:

--Sample and review approved AAPs to insure that compliance agencies are complying with Department guidelines and fully document the results of these reviews.

--Require compliance agencies to take timely enforcement action on contractors not complying with the Executive order.

--Assist compliance agencies to better identify contractors under each agency's assigned responsibility.

--Perform periodic tests to determine whether compliance agencies make preaward reviews and whether contracting agencies request preaward clearances when appropriate.

CHAPTER 4

PROBLEMS IN COORDINATION BETWEEN EEOC AND THE DEPARTMENT OF LABOR

Coordination between the Department, the compliance agencies, and EEOC has not been adequate. Information was not being exchanged and some compliance activities at contractor facilities have been duplicated.

Contractors for which the Department has responsibility under Executive Order 11246 also fall within EEOC's responsibilities under title VII of the Civil Rights Act of 1964, as amended. In May 1970 the Department and EEOC entered into a memorandum of understanding which was to reduce the duplication of compliance activities, facilitate the exchange of information, and establish procedures for processing cases against Government contractors subject to the provisions of the Executive order.

EEOC's chief compliance officer told us that the memorandum of understanding had not been implemented for several years. He believes EEOC no longer needs the Department's enforcement power since the 1972 amendment to the Civil Rights Act of 1964 (42 U.S.C. 2000e) granted EEOC litigation authority, and he stated that this authority was more effective than the Department's enforcement powers. According to the officer, EEOC no longer sends the Department any information on its activities, but EEOC still receives and incorporates charges from the compliance agencies in its employment discrimination settlements. A GSA compliance official in the Washington, D.C., region, who indicated that EEOC did not consult or advise GSA of EEO problems with companies which came under GSA's contract compliance responsibility, supported EEOC's position.

Because EEOC and the compliance agencies have not adequately coordinated their operations, duplicate reviews of contractor facilities were made when the compliance agencies and EEOC failed to provide each other with data. One agency had to acquire data for its investigation which the other agency had obtained during its review.

COMPLAINT DATA NOT CONSIDERED

The memorandum of understanding provided, in part, that the Department check with EEOC before making compliance reviews to determine whether outstanding discrimination complaints were filed with EEOC against Federal contractors whose facilities were being reviewed. The memorandum also provided that contacts between EEOC and the Department be made routinely at the regional office level.

We analyzed complaint lists at EEOC to determine whether complaints were outstanding against the contractors whose AAPs we selected for review. For 18 of the 60 DOD contractor facilities and 14 of the 60 GSA contractor facilities, outstanding complaints were on file with EEOC at the time the compliance reviews were made. DOD and GSA regional officials could not give us information showing that the complaints on 14 of the 18 DOD contractor facilities and 13 of the 14 GSA contractor facilities were considered at the time the compliance reviews were made. The following table provides a breakdown by region.

Region	Number of AAPs we selected for review		Number of facilities with complaints at EEOC		Number of facilities where EEOC complaints were not considered	
	DOD	GSA	DOD	GSA	DOD	GSA
Chicago	20	20	7	8	7	8
Philadelphia-Washington, D.C.	20	20	3	4	1	3
San Francisco	20	20	8	2	6	2
Total	60	60	18	14	14	13

According to representatives of four other compliance agencies, their compliance officers, acting on behalf of the Department in performing compliance reviews, were not routinely checking with EEOC before conducting compliance reviews. As a result, the compliance agencies were approving contractors' AAPs without considering as a part of their

compliance reviews whether complaints had been registered with EEOC. Officials of another compliance agency advised us that they requested complaint data from the contractors being reviewed instead of contacting EEOC. We believe that contractors may be reluctant to provide such data to compliance agencies because of the adverse impact this information might have on the approval of their AAPs.

NEW MEMORANDUM OF UNDERSTANDING

In September 1974 EEOC and the Department agreed to a new memorandum of understanding to develop and implement agreements, policies, and practices designed to maximize effort; promote efficiency; and eliminate conflict, competition, duplication, and inconsistency among the operations, functions, and jurisdictions of the Department and EEOC. To fulfill these objectives, the memorandum prescribes specific operating procedures to which the Department and EEOC have agreed. For example, EEOC is required to notify the Director of OFCC and the appropriate agency contract compliance officer of cases being considered for litigation against Federal contractors and provide a summary of the issues and EEOC findings.

CONCLUSIONS

The new memorandum of understanding is the first step to eliminating the problems noted. However, unless the regional staffs of compliance agencies and EEOC adhere to its provisions, little will be accomplished. Coordination and communication at the regional level is necessary to make complete compliance reviews and minimize the duplication of effort. The sharing of knowledge, common problems, and possible solutions between EEOC and the compliance agencies would aid in fulfilling the goal of equal employment.

RECOMMENDATION TO THE SECRETARY OF LABOR

We recommend that the Secretary require OFCC to:

--Coordinate with EEOC at the headquarters and regional levels and make periodic tests to insure that (1)

complaint data on file with EEOC is considered by compliance agencies during reviews and (2) information is exchanged to minimize the duplication of effort.

CHAPTER 5

AGENCY COMMENTS AND UNRESOLVED ISSUES

DEPARTMENT OF LABOR COMMENTS

In commenting on our report (see app. IV), the Department of Labor stated that, in general, the report identified the problem areas in the Department's Federal contract compliance program for nonconstruction contractors. The Department stated that our report contained many useful recommendations, the majority of which have already been implemented or are being implemented. However, the Department also stated that our report contained numerous factual inaccuracies, conclusions inferred without the benefit of complete factual premises, and a serious absence of recognition of numerous pertinent program initiatives undertaken by the Department to resolve many of the problems cited in the report.

We have considered the Department's comments and have made a number of changes in the report to give recognition to these comments. However, the Department's comments give rise to a number of unresolved issues, which are discussed below.

Department comment

The Department stated that it had recently taken several actions to improve the administration of the program. Our fieldwork was substantially completed by mid-1974, and some of the Department's actions had not been fully implemented when most of our work was performed. Therefore, it was not possible for us to evaluate the effect which these recent actions may have on the administration of the program.

Planning and budgeting system

A new system, the planning and budgeting system, was developed by OFCC in May 1974. This system called for specific program plans from each of the compliance agencies--including their proposed manpower and funding resource needs. The Department informed us that each of these program plans

were reviewed, evaluated, and discussed with key officials of the compliance agencies. As a result of these reviews and discussions, the Secretary of Labor sent letters to agency heads recommending resource allocation levels for the agencies and highlighting problems with the agencies' plans and operations. According to the Department, the implementation of this system resulted in a program evaluation of each compliance agency. Also, the Department stated that each compliance agency would be further evaluated during fiscal year 1975.

Fiscal year program plan

For the first time OFCC has developed a fiscal year program plan for fiscal year 1975 for its national and field offices. The fiscal year 1975 program plan outlines specific activities and goals for OFCC. For example, the program plan provides for an observation review program under which OFCC national or field staffs will routinely select agency compliance reviews in which the OFCC staffs will participate as observers. The primary purpose of observation reviews is to serve as an additional instrument for monitoring and evaluating agency performance and identifying program and policy needs.

According to the Department, the fiscal year program plans will provide OFCC with an effective and efficient means to evaluate its direction and control of program operations.

Federal contract compliance handbook

In October 1974 a Department task force was established to formulate a Federal contract compliance handbook for contract compliance officers. Eight of the proposed 14 chapters of the handbook were sent to the compliance agencies for review and comment in January 1975. According to the Department, the guidance in the handbook should assist compliance agencies in implementing and enforcing Department rules and regulations.

Coordination between the Department and EEOC

In September 1974 a revised memorandum of understanding was entered into by the Department and EEOC and published in the Federal Register in October 1974. According to the

Department, this memorandum establishes more efficient and effective procedures for greater coordination and consistency between the Department and EEOC. The memorandum also provides that the Department and EEOC will establish a task force to develop mutually compatible investigative procedures and compliance policies. According to the Department, inputs to this task force have been provided by OFCC regional staffs as a result of individual meetings with compliance agency field officials in the various regions. (See ch. 4.)

Assessment of employment gains realized by minorities and women

The Department has implemented a system to assess the progress made by minorities and women employed by Federal contractors. On January 20, 1975, the Department released its first report derived from this system. The report is based on data obtained from 655 contractors employing about 300,000 people. The report shows that over a 1-year period minority employment expressed as a percentage of total employment increased from 14.3 percent to 15.0 percent. Over the same 1-year period employment of females expressed as a percentage of total employment increased from 26.30 percent to 26.55 percent.

Department comment

"In 1974 OFCC decentralized many functions to the field and assigned significant responsibilities in supply and service to OFCC field offices. The specific functions of the national office and field OFCC activities are enumerated in the Program Plan.

"Most of the OFCC national office efforts have been in the monitoring of the supply and service compliance program.

"Prior to the assignment of certain supply and service functions to field offices, the OFCC field staff was engaged principally in technical assistance, development and monitoring of area-wide plans in construction. The activities of the field during this time were the result of

the OFCC workload and should not imply a misallocation of field resources simply because the compliance agencies were spending a greater proportion of their resources on supply and service activities.

"It is not clear what point is being made with regard to OFCC field staff resources. Because of limited staff and the need to develop and coordinate area-wide plans in construction (which was an OFCC operating function, not an agency function), the field staff was originally allocated in construction. Beginning in FY 1975, about 50% of field staff resources are being spent in supply and service programs."

Our analysis

In August 1974 OFCC regional offices were instructed to devote at least 50 percent of their professional staff time to the nonconstruction segment of the program. The regional offices were given further instructions concerning the specific activities related to the nonconstruction program which were to be undertaken and the proportion of total staff time which was to be used in various activities. For example, OFCC regional offices were instructed to spend from 10 to 25 percent of their staff time performing joint compliance reviews of nonconstruction contractors with the compliance agencies. The OFCC regional office arranges a joint OFCC-agency compliance review in which issues are identified for which the appropriate agency needs direct assistance, and OFCC takes the "lead role" in a second compliance review and pursues whatever compliance and enforcement operations may be necessary. The joint compliance review is generally followed by a written directive containing an appropriate policy position as to how the compliance agency should deal with issues disclosed during the joint review.

One of the basic points of this report is that OFCC was not devoting adequate resources to monitor the implementation of the nonconstruction segment of the program by the compliance agencies. We realize that the construction segment of the program is important. However, because the

compliance agencies were devoting substantial resources in administering the nonconstruction segment of the program and because OFCC has overall responsibility for the nonconstruction segment of the program as well as the construction segment, we believe it is important for OFCC to adequately monitor the compliance agencies' implementation of the nonconstruction segment of the program. We believe that OFCC's directive to its regional offices requiring greater emphasis in monitoring the nonconstruction segment of the program, if complied with, will result in improved OFCC monitoring and control of the nonconstruction program.

Department comment

> "Remedies for affected class and the determination of back pay are complicated issues for which we are presently developing guidance. Both OFCC and the agencies are guided by court decisions and must decide current problems on a case by case basis. The fact that affected class remedies have been developed and back pay has been awarded demonstrates that the program has not been precluded from acting in these areas."

Our analysis

We recognize that a number of backpay settlements have been obtained by the Department and the compliance agencies. Information supplied by the Department and the compliance agencies shows that during fiscal years 1973 and 1974 a total of 91 backpay settlements amounting to about $54 million were obtained. However, there were seven compliance agencies (USDA, AID, NASA, USPS, VA, and the Departments of Transportation and Treasury) which did not obtain any backpay settlements during this period.

Until adequate Department guidelines are made available to the compliance agencies concerning all remedies for affected class and the determination of backpay, these remedies, including the imposition of backpay will not achieve their full potential for use by all compliance agencies as a deterrent to job discrimination.

Department comment

With respect to the recommendations in chapter 2, the Department stated that:

"a) The system to measure progress is being implemented.

"b) Steps have been initiated to place greater emphasis on supply and service programs in the field * * *.

"c) The OFCC team structure does provide the means for adequate and timely guidance. Certain issues, where major legal problems must be resolved, require time to develop.

"d) The Handbook will provide uniform training and guidance to compliance officers."

Our analysis

With respect to a and b above, no further analysis is necessary. (See pp. 7 and 45.)

With respect to the "team structure" referred to in c above, the OFCC headquarters staff includes four nonconstruction divisions, each one of which is responsible for monitoring the actions of one or more compliance agencies. For example, OFCC's Agency Compliance Division II is responsible for the Departments of the Interior and Commerce, VA, and AEC. However, this organizational structure does not, by itself, insure that adequate and timely guidance will be provided to compliance agencies.

With respect to d above, although OFCC's proposed Federal contract compliance handbook should result in improved guidance to compliance officers, the issuance of the handbook will not affect the need for training courses for compliance officers. As stated on page 16, we believe that centralized training courses should be offered to compliance officers from all compliance agencies.

Department comment

In commenting on the section of our report concerning deficiencies in approved AAPs, the Department stated that:

> "The issuance of Technical Guidance Memorandum No. 1 on Order 4, the July 12th amendments to Order 4, and Order 14 will serve to correct most of these problems. It should be recognized that Order 4 represented a major new initiative in the contract compliance program. Therefore, it is not surprising that programs based on EEO-1 job categories were developed since contractors had been reporting employment by those categories. The steps outlined above have been taken to remedy these procedures. Also in many cases, data for the utilization analysis was not readily available. As a result, OFCC worked with the Manpower Administration to implement a program whereby State Employment Services supply availability data to contractors on request."

Our analysis

Technical Guidance Memorandum No. 1 on Revised Order 4 was issued by OFCC on February 22, 1974. The memorandum gives guidance on the proper interpretation of previously issued guidelines covering the contents and review of affirmative action programs. Revised Order 14, issued by the Department on July 12, 1974, points out the essential elements that should at least be addressed in all compliance reviews of Federal contractors.

These steps taken by the Department should help in reducing the instances in which compliance agencies approve AAPs of contractors which do not comply with OFCC guidelines. However, we believe that OFCC should sample and review approved AAPs to insure that compliance agencies are complying with Department guidelines in reviewing and approving AAPs and fully document the results of these reviews. (See pp. 12 and 37.)

Department comment

"Although OFCC is continuing to work on better information in the identification of Government contractors, the situation is not as bleak as depicted in the report. * * *

"In most cases, it is only the smaller contractors with fewer employment opportunities that are not identified. Agencies start with the OFCC provided list of 92,000 establishments (an employer who no longer holds a Government contract is still covered by regulations) and add to this by reports within their own agency (e.g., DOD lists of contracts awarded) or knowledge in the area (e.g., all utilities furnishing services to a Federal facility, any college with an ROTC program, any bank holding Federal deposits). The Commerce Business Daily and other publications are reviewed. Specific inquiries are made of State Employment Services or others with interest in Federal contractors. A pre-award clearance letter can also be issued to all contracting officers."

Our analysis

GSA has suggested to the Department that the Department's Form No. 99 be used to identify contractors subject to the Executive order (see p. 58). The Department's Form No. 99, which must be completed and forwarded to the Department by agencies making contract awards, contains information including the name and address of the contractor receiving the award.

Although we are pleased to note that the Department plans to continue work to gain better information to identify Government contractors, the Department's comment generally indicates that it does not consider this matter to be a serious management problem. Although the compliance agencies have some information identifying certain firms as Government contractors subject to the Executive order, according to GSA and DOD compliance officers, Government contractors are often identified by contacting firms

which are suspected of being Government contractors and asking representatives of those firms if they are Government contractors. If the firms acknowledge that they are Government contractors, then the firms may be scheduled for a compliance review, but if the firms state that they are not Government contractors, the compliance officers accept these statements. We believe that the problem of identifying Government contractors is a management problem deserving more priority and emphasis.

We note that OFCC's Program Guidance Memorandum for fiscal year 1976 states, in part, that:

> "Recent developments have again pointed out the need for a complete universe listing of Federal contractors which could be supplied to each agency so that all the contractor facilities for which the compliance agency is responsible could be identified. Without the knowledge of the identity of all contractor facilities for which it is responsible, it is difficult for the compliance agencies to select for review those contractor facilities which offer the greatest potential for improving equal employment opportunity. During FY 1975, OFCC will attempt to identify additional sources of listings of Federal contractors, which could be incorporated in our existing systems, and undertake a study of the feasibility and cost of securing this information."

Department comment

With regard to the recommendations in chapter 3 the Department stated that:

> "a) Audits of compliance reviews are being conducted as outlined in the OFCC Program Plan * * *.
>
> "b) The OFCC team structure is focusing on timely enforcement.

"c) The system recommended could cost OFCC $355,000. OFCC is seeking other ways of identifying the universe."

* * * * *

"e) OFCC will institute an audit of pre-award clearances."

Our analysis

With respect to a above, the Department stated that it was reviewing AAPs as a part of its desk audit activity (see p. 12). The OFCC program plan for fiscal year 1975 defines desk audit activity as a process by which OFCC, applying select criteria, routinely requests copies of compliance review reports from the compliance agencies for review and evaluation. The program plan, however, does not specifically provide that the desk audit activity will include a review of the AAPs previously approved by the compliance agencies.

We are recommending that the Department sample and review AAPs previously approved by the compliance agencies to insure that compliance agencies are complying with Department guidelines and fully document the results of these reviews. As discussed on p. 12, the desk audit files did not contain adequate documentation showing the results of the Department's review of AAPs.

With respect to b above, an OFCC official informed us that OFCC guidelines effective in May 1974 allow compliance agencies 60 days from the date an AAP is received to either approve or reject the AAP and issue a show-cause notice. In July 1974 OFCC guidelines were further revised to provide that the 60-day period may be extended only for good cause and with the specific approval of OFCC. The OFCC official stated that this new requirement should insure that OFCC is kept abreast of any instances in which the compliance agencies fail to take required enforcement actions in accordance with Department guidelines.

With respect to c above, we did not recommend that the Department enter into a new contract to acquire listings of

51-703 O - 75 - 5

Government contractors. Rather, we suggested OFCC consider the feasibility of using listings of Federal contractors provided under contract to the Department's Manpower Administration. These listings identify contractors with Government contracts of $2,500 or more and are used by the Department to assist veterans in obtaining employment with Government contractors. We were informed that OFCC considered the use of these listings; however, because of certain shortcomings, i.e., contractors not being identified by industrial classification codes, the listings could not be adapted to meet the needs of the contract compliance program.

A Department official informed us a private firm had the capability to provide contractor listings that met the program's needs. The initial cost estimate for such listings was $355,000. However, the Department is still negotiating with the firm and although a final cost estimate has not yet been formulated such listings would probably cost less than the initial estimate.

With respect to e above, a Department official stated that plans have not yet been finalized for performing audits of preaward clearances.

DEPARTMENT OF DEFENSE COMMENTS

In commenting on our report, DOD stated that it was implementing certain corrective actions to improve its administration of the contract compliance program for non-construction contractors (see app. V). These corrective actions include:

--A monitoring system has been implemented to evaluate DOD's progress in meeting its objective of insuring that all AAPs meet OFCC guidelines.

--Responsible management personnel have been admonished to meet time limits established for negotiation and conciliation.

--DOD has taken action to develop more complete listings of contractors.

--Responsible management personnel have been admonished regarding past deficiencies in meeting preaward review requirements, and DOD plans to closely supervise this area.

--Management has been directed to insure that EEOC is consulted before completing a review.

GENERAL SERVICES ADMINISTRATION COMMENTS

GSA's comments indicate that it has taken some actions to improve the administration of the contract compliance program but also indicate that it disagrees with some of our findings and conclusions. Where appropriate, the report has been revised to give recognition to GSA's comments.

GSA comment

"When a comparison of the tables set out in the GAO report is made, it reveals that GSA is maximizing its production of compliance reviews. With less than one-fourth the resources of DOD, GSA is conducting a percentage of compliance reviews well above the average."

Our analysis

We have not compared the different compliance agencies from the standpoint of number of compliance reviews performed in relationship to the staffing and financial resources available to the compliance agencies. We do not believe that such a comparison would necessarily indicate the effectiveness with which each compliance agency is fulfilling its responsibilities because of various factors. For example, the type of contractors assigned to one compliance agency may generally have more employees and may therefore require more time and resources to perform compliance reviews than the type of contractors assigned to a different compliance agency.

GSA comment

"GSA has not been reluctant to initiate affected class remedies. To the contrary, there have been

a significant number of affected class remedies secured from contractors - some of which have involved large back-pay settlements."

Our analysis

The Director of GSA's Office of Civil Rights informed us that information was not readily available showing the total number of affected-class settlements and remedies reached by GSA in recent years. He stated that to determine such information GSA would have to search through each of its review files to determine precisely how many affected-class settlements it had concluded and the different types of remedies imposed and that such an effort would disrupt his Office's work efforts.

GSA was able to provide us with data showing the number of compliance reviews which resulted in backpay awards. This data shows that during fiscal years 1973 and 1974 GSA concluded four backpay settlements with nonconstruction contractors which involved about $13,000 in backpay.

GSA comment

In commenting on the section of the report concerning AAP's not meeting guidelines, GSA stated that:

"GSA is of the opinion that a significant number of the 42 AAPs referred to by GAO realistically met all of the pertinent aspects of the Labor Department's guidelines. It is felt that this interpretive position failed to consider the varying qualifying situations that existed that mitigate these observations. Further, it is felt that 12 of the files reviewed by GAO were files relating to small facilities (less than 50 people) of a major food service company and it was deemed more appropriate by GSA to have an acceptable AAP at company's district level where underutilization of minorities and females could be more adequately monitored.

"The specific purpose of the program is to rectify past discriminatory practices on the part of government contractors. The company files, referred to by GAO, reflect that progress has been made in the EEO field and specifically these companies have addressed themselves to those areas of underutilization by upgrading and hiring minorities and females."

Our analysis

With respect to GSA's comment that a number of the 42 AAPs referred to by us realistically met all of the pertinent aspects of the Department's guidelines, we have reviewed information supplied by GSA citing the qualifying situations concerning these AAPs and we remain convinced that the 42 AAPs do not comply with all mandatory Department guidelines.

For example, in 28 cases we found that the AAP's contained utilization analyses or goals and timetables based on 9 broad job categories (e.g., professionals). Department guidelines require that utilization analyses and goals and timetables must be based on job classifications which are defined as one or a group of jobs having similar content, wage rates, and opportunities.

The information supplied indicates GSA believed that when the 28 AAPs were approved Department guidelines did not specifically require utilization analyses and goals and timetables to be based on job classifications rather than the 9 broad job categories. In May 1972, however, the Deputy Director of GSA's Office of Civil Rights informed GSA's regional offices that Department guidelines specifically required AAPs to be prepared based on job classifications rather than the nine broad job categories (see p. 22). Each of the AAPs we selected for review was reported to us as having been approved during July 1973 through March 1974, which was after the Deputy Director's May 1972 instructions.

GSA's reference to 12 files of a major food service company is incorrect. Our random sample included only seven AAPs of this food service company. Moreover, only 2

of these 7 AAPs were for facilities with fewer than 50 employees. The number of persons employed by each of 4 facilities ranged from 99 to 233 employees. Data showing the number of employees was not available for one of the seven facilities. Department guidelines require that contractors required to prepare AAPs must prepare AAPs for each of the contractors' facilities.

With respect to GSA's statement that the company files of the contractors referred to by us show that progress has been made in the equal employment opportunity field, the Director of GSA's Office of Civil Rights stated that this statement was based on assurances he received from GSA regional office officials who had reviewed the pertinent files. Inasmuch as our review did not include a systematic evaluation of the effectiveness of the contract compliance program in improving the job status of minorities and females, we are not in a position to comment on this GSA statement. However, we discuss in chapter 2 the need for a system to assess the improvement in job status of minorities and females employed by contractors who are subject to the Executive order.

GSA comment

In commenting on the section of our report concerning enforcement actions (see p. 27), GSA stated that:

> "GSA has not been reluctant in taking enforcement action against recalcitrant contractors, as evidenced by GSA enforcement history since 1970. To illustrate:
>
> "(1) GSA has issued half as many show cause letters as all of the compliance agencies have collectively (GAO Report Appendix III). In addition, the GSA 'partnership concept' has been a technique used to obtain conciliated agreement from many large contractors, nationwide.

"(2) Contractors have been passed over who have not been in compliance with the GSA, EEO program.

"(3) A contract has been terminated because of noncompliance.

"(4) Court actions have been initiated by GSA to order contractors to be responsive to Executive Order 11246, as amended.

"(5) Debarment of a contractor has resulted from the GSA contract compliance program."

Our analysis

With respect to (1) above, the Director of GSA's Office of Civil Rights furnished a listing of 10 major contractors with whom GSA had entered into conciliation agreements. With respect to (2) above, the Director furnished a listing of 10 firms which he stated had been "passed over" in making contract awards because the contractors were not in compliance with the Executive order. At least three of the firms were construction contractors.

With respect to (3) above, GSA officials stated that a contract with a lawnmower manufacturing firm was terminated by GSA but that DOD, rather than GSA, was the responsible compliance agency for this contractor.

With respect to (4) above, the Director of GSA's Office of Civil Rights stated that two court actions had been initiated to order contractors to be responsive to the Executive order. Both of these cases involved public utilities.

With respect to (5) above, the Director of GSA's Office of Civil Rights stated that an envelope manufacturing

company was debarred from future Government contracts in calendar year 1974. (See appendix III, footnote c).

We recognize that the informal process of negotiating and conciliating with noncompliant contractors sometimes produces results. Nevertheless, we believe our review has shown that GSA and other compliance agencies are reluctant to impose sanction actions in accordance with Department guidelines and within the time constraints imposed by Department guidelines.

GSA comment

In commenting on the section of chapter 3 dealing with Government contractor identification (see p. 30), GSA stated:

> "In 1972, GSA recommended that Form 99, submitted by contracting officers to the Department of Labor, be used as the basic identification of contractors. No action was taken by the Department of Labor, with respect to this recommendation. A copy of this recommendation was provided to GAO.
>
> "Dun & Bradstreet has recently developed the capability of identifying government contractors by Standard Industrial Code (SIC), and consequently GSA entered into a contract with Dun & Bradstreet to obtain this information. The first Dun & Bradstreet printout has now been received. GSA is currently integrating this information with previously identified contractor facilities into a system which will enable rapid and accurate identification of all known contractor facilities assigned to GSA by the Department of Labor."

Our analysis

On December 20, 1974, GSA contracted with the private firm for listings of Government contractors within GSA's assigned standard industrial classification codes. The cost of this contract is estimated to be about $10,000 for a

6-month period. The private firm of Dun & Bradstreet has a list of over 3 million employment locations together with information identifying related and subsidiary firms by standard industrial classification codes. This compilation of information facilitates the identification of contractors subject to the Executive order.

As discussed on p. 49, the Department is still considering alternatives to improve its system of identifying contractors subject to the Executive order. Also, a Department official informed us that the Department was considering the purchase of listings from the private firm identifying all known contractors' facilities by standard industrial classification codes. If the Department acquires and furnishes to the compliance agencies information identifying all Government contractors for which each compliance agency is responsible, it would be unnecessary for the compliance agencies to attempt to compile such information themselves or purchase it from a private firm.

GSA comment

GSA stated that because of its limited resources it had placed priority on reviewing its major program responsibilities in the utility, communication, and paper industries and major retail companies.

GSA also stated that, if its total universe of contractors had been identified, it would not have been possible to perform any more reviews than were actually performed because of limited resources.

Our analysis

As discussed on p. 34 GSA compliance officers in two regions indicated that they often selected small contractors for review so that they would be more likely to achieve their monthly standard of completing four to six reviews per month, and our review confirmed that GSA frequently selected small contractors--those with fewer than 50 employees--for review.

51-703 O - 75 - 6

With respect to GSA's comment concerning the need for identifying its universe of contractors, we note that OFCC's Contract Compliance Program Guidance Memorandum for fiscal year 1976 states, in part, that:

> "Without the knowledge of the identity of all contractor facilities for which it is responsible, it is difficult for the compliance agencies to select for review those contractor facilities which offer the greatest potential for improving equal employment opportunity * * *."

GSA comment

With respect to the section of this report concerning AAPs not being prepared (see p. 25), GSA stated that it had taken a number of actions to increase contractors' awareness of their responsibilities under the Executive order. GSA stated that:

> "In view of the fact that Federal contractors receive only a minimal amount of instructions from OFCC and government contracting officers, there appears to be a great need to ensure that each contractor fully understands exactly what he is expected to do and when he should accomplish it. To meet this need, GSA has conducted a number of National and Regional Civil Rights Workshops which strongly emphasize the requirements relating to the obligations of the contractors. These workshops began in 1971 and by the end of FY 1975, all regions will have conducted at least one such workshop. As many as four have been conducted in some regions. In addition, several large corporations have been selected for the preparation of model corporate-wide affirmative action plans. These plans represent, in writing, the corporation's equal employment opportunity commitment in respect to the requirements of Executive Order 11246.

"It is GSA's intention to continue to increase its orientation sessions in order to resolve contract compliance issues while they are still workable and before they become more difficult to resolve.

"Another method utilized by GSA to assist contractors is to participate in industry-wide seminars. For example, we have participated in two American Gas Association (AGA) seminars here in the Washington area, wherein several of the more important problem areas were covered in presentations given by our headquarters personnel. These various conferences, seminars, and workshops will continue as long as the need exists. There have been similar work sessions with other large organizations, such as COMSAT, The Marriott Corporation, and the Sears & Roebuck Company. The most outstanding example of cooperation with a major corporation is GSA's close coordination with AT&T over the recent years; and particularly with our participation on the Government Coordinating Committee, along with the Departments of Labor and Justice, and EEOC.

"An example of the effectiveness of GSA's Civil Rights Career Intern Program and Workshop training program deals with an informal complaint which was received from an employee of a large utility company alleging discrimination affecting the employee's salary. The complainant was performing identical work but was not receiving equal pay. The pay difference was $25 bi-monthly. This difference was allegedly caused by a change in starting rates of pay in the position. The most recently hired person (white) was receiving a higher salary than the black employee who had been in the job for several months. This complex issue was resolved informally by a GSA career intern trainee and resulted in a revision of the procedures to ensure future equity for all employees and back

pay for the minority complainant from the date the discrimination began.

"Another example of technical assistance rendered in the early period of GSA's compliance program was its preparation in 1970 of a guide to assist contractors in their preparation of AAPs.

"The GSA Office of Civil Rights has conducted four annual nationwide workshops for all of its civil rights personnel with the inception of this extensive orientation commencing in November of 1970.

"GSA has also pioneered the concept of corporate model plans and Upgrade and Transfer Plans with AT&T in 1972 after long periods of conciliation with that company."

Our analysis

No analysis is necessary.

GSA comment

With respect to the section of our report concerning preaward reviews not being made or requested (see p. 35), GSA stated:

"GSA has consistently followed the Labor Department's guidelines in the conduct of pre-award clearances and reviews. Further, GSA has not been provided any example of an issuance of a clearance without the required review."

Our analysis

Our review did not disclose any instances in which GSA had not complied with the Department's preaward requirements.

GSA comment

In commenting on chapter 4 of this report, GSA stated that:

"GSA has had many instances of cooperative and coordinated efforts with both EEOC and OFCC. Formal working agreements between GSA and EEOC have and are being implemented in resolving EEO problems at certain major utilities.

"GSA has also had key officials of both EEOC and OFCC attend and participate in our civil rights training workshop. In 1974, the Director of EEOC's Compliance Division attended our training session in Denver, Colorado.

"In 1973, a proposal was made to EEOC to assist that agency in reducing the large number of complaints they have that are awaiting investigation or other necessary action.

"OFCC has, on several occasions, requested information from GSA to provide them with data to help them with their projects and they, likewise, have assisted GSA on numerous occasions.

"Currently, GSA has been providing continual assistance with the Government Coordinating Committee in connection with its evaluation of a Consent Decree action. This assistance includes travel to virtually every regional area and the submission of various GSA proposals to the committee for the purpose of a prompt and conclusive resolution."

Our analysis

As pointed out in chapter 4 of this report, for 14 of 60 GSA-approved AAPs we selected for review outstanding complaints were on file with EEOC against the contractors at the time that compliance reviews were performed and in only 1 of these 14 cases were we able to verify that the

complaints were considered by GSA at the time the compliance review was performed.

We recognize that there is some coordination and consultation between OFCC, EEOC, and the compliance agencies on various issues, as GSA's comment indicates. However, we believe that our review indicates that there is a need for improved coordination on a routine basis between the Department, the compliance agencies (acting on behalf of the Department in performing compliance reviews), and EEOC to assure that discrimination complaints are considered by compliance officers as a part of performing compliance reviews.

CHAPTER 6

SCOPE OF REVIEW

At the request of the Chairman, Subcommittee on Fiscal Policy of the Joint Economic Committee, and Senator Jacob K. Javits, we evaluated:

--Department guidance to and control over the Federal agencies assigned compliance review responsibility for nonconstruction contractors.

--Compliance agencies' efforts in implementing the Department guidelines for conducting compliance reviews and complaint investigations.

--Application of enforcement measures available to the compliance agencies.

--Coordination of compliance review and complaint investigation activities between the Department and EEOC.

In accordance with the request, we limited our audit to the nonconstruction program, primarily at the Department and two of the largest compliance agencies--GSA and DOD. We made our audit at each agency's headquarters offices and at regional offices in Chicago; Philadelphia; Washington, D.C.; and San Francisco. We did limited work at EEOC headquarters and at EEOC regional and district offices in Chicago, Philadelphia, and San Francisco. We also did limited work at the headquarters offices of the other compliance agencies responsible for administering the contract compliance program for nonconstruction contractors. At these agencies we held discussions with agency officials and accumulated program data.

APPENDIX I

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EXECUTIVE DIRECTOR

Congress of the United States
JOINT ECONOMIC COMMITTEE
(CREATED PURSUANT TO SEC. 5(a) OF PUBLIC LAW 304, 79TH CONGRESS)
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January 21, 1974

The Honorable Elmer B. Staats
Comptroller General of the United States
U. S. General Accounting Office
Washington, D. C. 20548

Dear Mr. Staats:

The Joint Committee learned in recent hearings that although major legislation and executive initiatives have been implemented in the last ten years to improve the economic position of women, their position has deteriorated rather than improved in the last decade. It appears that this situation has occurred in part because of the sporadic enforcement of Title VII of the Civil Rights Act of 1964 and Executive Orders 11246 and 11375.

This Committee is, of course, concerned that Government contractors and subcontractors might not be instituting the required actions designed to insure that there is no discrimination on the basis of sex among contractors. The Committee therefore requests that the General Accounting Office undertake a review to evaluate the effectiveness of the management of the Federal contract compliance program as it relates to non-construction industries.

The GAO's review should examine (1) the adequacy of the Office of Federal Contract Compliance (OFCC) guidance to, and controls over, the compliance agencies, (2) the adequacy and consistency of compliance agencies' procedures and practices for conducting pre-award reviews, compliance reviews, and complaint investigations, and (3) the resonableness and consistency of application of enforcement procedures used by the compliance agencies specifically with respect to sex discrimination. Since it is not feasible to analyze each of the 19 compliance agencies' activities and their interface with OFCC, GAO might wish to consider reviewing the Department of Defense and General Services Administration compliance activities at three or four selected locations throughout the United States such as Chicago, Philadelphia, and San Francisco.

With respect to the Equal Employment Opportunity Commission (EEOC), the Committee is interested in evaluating the performance of EEOC's operations since March 1972, when it received the power to bring suits in discrimination cases. Some of the questions that we would like GAO to pursue in its investigation of sex-based discrimination are:

[See GAO note, p. 67.]

APPENDIX I

(1) the amount and adequacy of staff work devoted to sex-related discrimination complaints and how these compare with total complaints and total staff resources; (2) EEOC's policy in processing complaints -- does it give priority to class action-type complaints or does it handle cases on a first-come-first-served basis; (3) the criteria used by EEOC in deciding which complaints are selected for litigation; (4) the attempts being made to reduce the backlog of complaints; (5) how effectively has EEOC used its power to bring suits; specifically, whether the staffing is adequate in size and expertise to handle the complaints and prepare suits, whether lack of internal organization accounted for the small number of suits brought in 1972 and 1973, and if so, whether problems in the organizational structure have been resolved. When at all possible GAO should separate sex-related discrimination complaints from other EEOC activity in investigating the above questions.

Inherent in your review would be an evaluation of the coordination of compliance activities between the Federal contract compliance program of OFCC and EEOC's program in private industry. Accordingly, we request GAO to also look into the coordination of compliance review and complaint investigation activities between OFCC and EEOC.

It is our understanding that GAO is in the process of conducting an oversight review of EEOC's performance for the Senate Labor and Public Welfare Committee and that your inquiry for us into sex-related discrimination will be a part of this review.

It would be appreciated if GAO would advise the Joint Economic Committee staff on the progress of this review through periodic oral briefings, and prepared a final report when the review is completed in April or May of 1974, if possible. We welcome your assistance in investigating the government's role in combatting sex-based discrimination.

Sincerely,

Martha W. Griffiths, Chairman
Subcommittee on Fiscal Policy

Jacob K. Javits, U.S.S.
Ranking Minority Member
Joint Economic Committee

GAO note:

This report discusses the problems in coordination between EEOC and the Department of Labor (see ch. 4) but the other requested information concerning EEOC was developed as a part of GAO's review for the Senate Labor and Public Welfare Committee. This information was previously furnished to the Subcommittee on Fiscal Policy and is not included as a part of this report.

FUNDS AND STAFF DEVOTED TO THE FEDERAL CONTRACT COMPLIANCE PROGRAM FOR NONCONSTRUCTION CONTRACTORS

Agency	FY 1973 Staff (June 30, 1973) Professional	FY 1973 Staff (June 30, 1973) Clerical	FY 1973 Funds (thousands)	FY 1974(note a) Staff Professional	FY 1974(note a) Staff Clerical	FY 1974(note a) Funds (thousands)
AEC	52	20	$ 1,361	58	38	$ 2,200
Agriculture	33	17	825	33	16	872
AID	8	2	181	9	2	210
Commerce	17	7	585	16	7	489
DOD	323	114	6,686	402	132	8,580
GSA	89	29	2,065	94	36	2,604
HEW	89	35	2,506	114	47	2,384
Interior	36	11	1,625	41	14	1,661
NASA	19	11	552	14	11	540
USPS	32	32	1,445	7	7	380
Transportation	21	7	528	16	7	636
Treasury	18	10	430	21	10	623
VA	8	9	460	9	7	384
Total	745	304	$19,249	834	334	$21,563

[a]Staffing data is actual as of March 31, 1974. Funding is estimated for all of fiscal year 1974.

APPENDIX II

REVIEWS CONDUCTED, SHOW-CAUSE NOTICES ISSUED, AND ENFORCEMENT ACTIONS TAKEN DURING FISCAL YEARS 1972, 1973, AND 1974 (TO 3-31-74)

Compliance agency	Reviews conducted	Show-cause notices issued: Number	Show-cause notices issued: Percentage of reviews conducted	Enforcement actions (note a)
AEC	1,596	41	2.6	0
Agriculture	1,820	19	1.0	0
AID	287	13	4.6	0
Commerce	604	1	.2	0
DOD	19,621	127	.6	0
GSA	7,071	276	3.9	[c]1
HEW	1,169	3	.3	0
Interior (note b)	1,012	34	3.4	0
NASA	714	1	.1	0
Postal Service	9,684	0	0	[d]13
Transportation	109	10	9.1	0
Treasury	1,112	0	0	0
VA	593	10	1.7	0
Total	45,392	535	1.2	14

[a]Does not include proposed sanction actions or preaward clearances withheld.
[b]Excludes enforcement data for fiscal year 1972 since this data was not available.
[c]One company was debarred after the firm declined to request a hearing. Action was initiated during the period, but debarment was effective in August 1974.
[d]Thirteen trucking companies were referred to the Department of Justice for appropriate legal action, and a consent decree has been entered into under which the companies have agreed to stop their discriminatory practices.

APPENDIX III

APPENDIX IV

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY FOR ADMINISTRATION
WASHINGTON, D.C. 20210

FEB 11 1975

Mr. Gregory J. Ahart
Director
Manpower and Welfare Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Ahart:

The draft report on Improvements Needed in the Equal Employment Opportunity Program for Federal Nonconstruction contractors, Department of Labor B-142233, has been reviewed. In general, the report identifies the problem areas in the Department s Federal Contract Compliance Program covering nonconstruction contractors. It contains many useful recommendations, the majority of which have already been implemented or are in the process of being implemented. However, it also contains numerous factual inaccuracies; conclusions inferred without the benefit of complete factual premises; and, a serious absence of recognition of numerous pertinent program initiatives undertaken by the Department to resolve many of the problems cited in the report. Unfortunately, without the proper recognition of these initiatives, the report provides an improper perspective of the overall status and needs of the program.

Enclosed for your consideration is a list of specific comments that correct factual inaccuracies, provide additional data to clarify misconceptions and improper inferences and some suggestions for change. The comments are identified to the proper page in the draft report.

GAO was asked to evaluate:

-- Department guidance to and control over compliance agencies assigned compliance review responsibility for nonconstruction contractors.

-- Compliance agencies' efforts in implementing Department guidelines for conducting compliance reviews and complaint investigations.

-- Application of enforcement measures available to compliance agencies.

-- Extent of coordination of compliance review and complaint investigation activities between the Department and the Equal Employment Opportunity Commission (EEOC).

In order to accomplish this purpose in a fair, objective and adequate manner, due recognition must be given in the report to the following key program initiatives of the Department. Several of them were in the process of being implemented during the period covered by the report. There have been continued initiatives since October, 1974,to improve enforcement of the program. In view of the importance of the report in the pending court case and Congressional interests, it is essential that the report be as current as possible.

1. A new program, planning and budgeting system was developed in May 1974 by the Office of Federal Contract Compliance (OFCC). This system was approved by the Office of Management and Budget and implemented through the 1974 Program Guidance Memorandum. It called for specific program plans from each of the compliance agencies, including their proposed manpower and funding resource needs. Each of these program plans were reviewed, evaluated and discussed with key officials of the compliance agencies. A series of letters were sent to agency heads by Secretary Brennan recommending resource allocation levels for the agencies and highlighting problems with the agency plans and operations. The implementation of this system resulted in a program evaluation of each compliance agency. In addition, each compliance agency will be further evaluated during FY 75.

2. For the first time, the OFCC has developed a Fiscal Year Program Plan for its national and field offices. The FY 75 Program Plan (a copy of which is enclosed) outlines the specific activities and goals for OFCC. It relates to the various agency program plans generated by the Program Guidance Memorandum and provides OFCC with an effective and efficient means to evaluate its direction and control of program operations.

3. In October 1974 a Department of Labor Task Force was established to formulate a Federal Contract Compliance Handbook for Contract Compliance Officers. The Handbook is a comprehensive, in-depth "how-to-do-it" reference for Federal Contract Compliance Officers. Eight of the proposed fourteen chapters of the Handbook were sent to the compliance agencies for review and comment in January 1975. The guidance in the Handbook should assist compliance agencies in implementing and enforcing Department rules and regulations.

4. In October 1974 a Joint Memorandum of Understanding was signed by Secretary Brennan, Chairman of EEOC, John H. Powell, Jr., and Director of OFCC, Phil Davis, establishing more efficient and effective procedures for greater coordination and consistency between the respective agencies. (A copy is enclosed.) Inputs to this Task Force have been provided by OFCC regional staffs as a result of individual meetings with compliance agency field officials in the various regions.

5. The implementation of Order 14 and the submission of coding sheets to OFCC has resulted in a report on affirmative action program results which is also enclosed. The report measures the progress of supply and service contractors and shows that progress has taken place for minorities and women and will continue under current affirmative action programs. The Department has previously decided that this sytem will be used in lieu of DOD's COMIS system.

[See GAO note, p. 79.]

[See GAO note, p. 79.]

In 1974 OFCC decentralized many functions to the field and assigned significant responsibilities in supply and service to OFCC field offices. The specific functions of the national office and field OFCC activities are enumerated in the Program Plan.

Prior to the assignment of certain supply and service functions to field offices, the OFCC field staff was engaged principally in technical assistance, development and monitoring of area-wide plans in construction. The activities of the field during this time were the result of the OFCC workload and should not imply a misallocation of field resources simply because the compliance agencies were spending a greater proportion of their resources on supply and service activities.

OFCC has conducted and participated in many training activities. For example, after the implementation of Revised Order 14 a training session was held by OFCC for all compliance agencies. OFCC also participated in training conducted by the Atomic Energy Commission, General Services Administration, and the Departments of Interior, Defense, Commerce, Health, Education and Welfare, and Agriculture on Order 14.

[See GAO note, p. 79.]

The responsibilities of OFCC under the Executive Order are complex and many different approaches are necessary to ensure effective enforcement of the Order. OFCC has accomplished much and is achieving a greater monitoring role. Many supply and service activities have been decentralized to its field offices, but there will continue to be problems in coordinating the activities of Government agencies which have achieved degrees of decentralization.

APPENDIX IV

The OFCC staff is available to answer any further questions you may have regarding these comments or other aspects of OFCC operations.

Sincerely,

Fred G. Clark.

FRED G. CLARK
Assistant Secretary for
Administration and Management

Enclosures

APPENDIX IV

[See GAO note, p. 79.]

Pages [9 to 11]

Most of the OFCC national office efforts have been in the monitoring of the supply and service compliance program.

[See GAO note, p. 79.]

Pages [9 to 11]

It is not clear what point is being made with regard to OFCC field staff resources. Because of limited staff and the need to develop and coordinate area-wide plans in construction (which was an OFCC operating function, not an agency function), the field staff was originally allocated in construction. Beginning in FY 1975, about 50% of field staff resources are being spent in supply and service programs.

Page [11]

The reasons cited for field staff emphasis on the construction program are not the principal reasons. The Department decided that area-wide plans in construction were necessary to resolve severe problems of underutilization and discrimination in the construction crafts. The Executive Order itself recognizes the importance of equal employment opportunity in the industry where such a large amount of Federal funds are involved. Federally assisted construction grants are the only type of grants covered by the Order. Clearly, the development and monitoring of area-wide plans required some central coordination. OFCC had no field staff at that time. The compliance agencies allocated 26 of their positions to OFCC for construction area coordinations. The agencies continued to reimburse OFCC for those positions. In order to ease administrative problems, these construction coordinator positions and appropriate funding were finally transferred to the OFCC budget in 1972. OFCC has now assigned additional supply and service responsibilities to the field.

[See GAO note, p. 79.]

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APPENDIX IV

Page [13]

Guidance has been furnished to the agencies in all areas mentioned. While it is true that detailed policy statements regarding affected class remedies and back pay are being developed, OFCC has provided guidance on a case by case basis. Guidance on compliance reviews, the contents of AAP's and goals and timetables have also been provided, as for example in Technical Guidance Memorandum No. 1 on Order 4 (February 22, 1974). Eight guidance memorandums have been prepared on testing and selection procedures, including a detailed Question and Answer booklet. While issues surrounding confidentiality and disclosure are often difficult, the OFCC has provided guidance to the agencies and separate regulations on disclosure (41 CFR 60-40) have been issued, as well as procedures outlined in Order 14 (41 CFR 60-60.4).

[See GAO note, p. 79.]

Page [15]

Remedies for affected class and the determination of back pay are complicated issues for which we are presently developing guidance. Both OFCC and the agencies are guided by court decisions and must decide current problems on a case by case basis. The fact that affected class remedies have been developed and back pay has been awarded demonstrates that the program has not been precluded from acting in these areas.

APPENDIX IV

[See GAO note, p. 79.]

Page [19]

With respect to the recommendations:

a) The system to measure progress is being implemented.

b) Steps have been initiated to place greater emphasis on supply and service programs in the field (see Enclosure 3).

c) The OFCC team structure does provide the means for adequate and timely guidance. Certain issues, where major legal problems must be resolved, require time to develop.

d) The Handbook will provide uniform training and guidance to compliance officers.

Page [22]

The issuance of Technical Guidance Memorandum No. 1 on Order 4, the July 12th amendments to Order 4, and Order 14 will serve to correct most of these problems.
It should be recognized that Order 4 represented a major new initiative in the contract compliance program. Therefore, it is not surprising that programs based on EEO-1 job categories were developed since contractors had been reporting employment by those categories. The steps outlined above have been taken to remedy these procedures. Also in many cases, data for the utilization analysis was not readily available. As a result, OFCC worked with the Manpower Administration to implement a program whereby State Employment Services supply availability data to contractors on request.

[See GAO note, p. 79.]

Pages [30 to 32] Although OFCC is continuing to work on better information in the identification of Government contractors, the situation is not as bleak as depicted in the report ***

[See GAO note, p. 79.]

Pages [30 to 32] In most cases, it is only the smaller contractors with fewer employment opportunities that are not identified. Agencies start with the OFCC provided list of 92,000 establishments (an employer who no longer holds a Government contract is still covered by regulations) and add to this by reports within their own agency (e.g., DOD lists of contracts awarded) or knowledge in the area (e.g., all utilities furnishing services to a Federal facility, any college with an ROTC program, any bank holding Federal deposits). The Commerce Business Daily and other publications are reviewed. Specific inquiries are made of State Employment Services or others with interest in Federal contractors. A pre-award clearance letter can also be issued to all contracting officers.

[See GAO note, p. 79.]

Page [37]. With regard to the recommendations listed:

a) Audits of compliance reviews are being conducted as outlined in the OFCC Program Plan (see Enclosure 3).

b) The OFCC team structure is focusing on timely enforcement.

c) The system recommended could cost OFCC $355,000. OFCC is seeking other ways of identifying the universe.

[See GAO note below.]

Page [37] e) OFCC will institute an audit of pre-award clearances.

GAO note: The deleted comments refer to (1) matters which are not discussed in the final report or (2) Department suggestions for revisions which have been incorporated into the final report.

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D C 20301

MANPOWER AND
RESERVE AFFAIRS
(Equal Opportunity)

Mr. George D. Peck
Assistant Director
Manpower and Welfare Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Peck:

I refer to Mr. Gregory J. Ahart's letter of January 17, 1975 to the Secretary of Defense regarding the proposed report to the Chairman, Subcommittee on Fiscal Policy of the Joint Economic Committee, on improvements needed in the equal employment opportunity program for federal nonconstruction contractors.

DoD offers the following comments (keyed to pages in the draft report):

[See GAO note, p. 82.]

Page [ii] Insuring the quality of Affirmative Action Programs (AAP) which meet OFCC criteria is a major DoD objective. Our standard is a zero rejection rate. Action is now in effect to meet this goal with a monitor system to evaluate progress.

Responsible management personnel have been admonished to meet time limits established for negotiation and conciliation.

While a precise contractor universe is not known, DoD has taken action at the regional contract compliance office level to develop more complete listings. DoD presented this problem to OFCC since DoD is responsible for compliance reviews of contractor facilities having contracts with other federal agencies.

DoD has suggested to OFCC a selection system including options in identifying contractor facilities for review. In the absence of a response, DoD initiated a selection system focusing mainly on the size of work forces.

Further, the DoD system also targeted contractor facilities based on locally developed community data when justified. DoD at the same time continues to review new contractor facilities regardless of size.

DoD objective remains a zero deficiency in meeting preaward review requests. Preawards are receiving DoD priority action. Responsible management personnel have been admonished regarding past deficiencies. This area will be subject to close management supervision.

[See GAO note, p. 82.]

Page [39] Management has been directed to insure that EEOC is consulted prior to completing a review.

[See GAO note below.]

If we may be of further assistance, please let us know.

William J. Perez
Director for Equal Opportunity
(Civilian)

GAO note: The report has been revised to include DOD's suggested revisions.

APPENDIX VI

UNITED STATES OF AMERICA
GENERAL SERVICES ADMINISTRATION
WASHINGTON, DC 20405

B-167015

SEP 11 1975

Honorable Elmer B. Staats
Comptroller General of the United States
General Accounting Office
Washington, D. C. 20548

Dear Mr. Staats:

Thank you for the opportunity to review the draft report to the Chairman, Subcommittee on Fiscal Policy, Joint Economic Committee on Improvements Needed in the Equal Employment Opportunity Program for Federal Non-construction Contractors.

We are pleased to provide you, as an enclosure to this letter, our comments on the points raised and recommendations made in this report.

Sincerely,

Arthur F. Sampson
Administrator

Keep Freedom in Your Future With U.S. Savings Bonds

APPENDIX VI

General Services Administration
Comments on the Draft Report to
the Chairman, Subcommittee on
Fiscal Policy Joint Economic
Committee, on Improvements Needed
in the Equal Employment Opportunity
Program for Federal Non-construction
Contractors, Department of Labor

Chapter 1 - Introduction Page [6]

GAO sets forth a table comparing the non-construction funding and staffing patterns of GSA and DOD. Page[33]of the report contains a table reflecting percentages of contractor facilities reviewed by compliance agencies, in comparison to the estimated contractor facilities.

GSA Comment

When a comparison of the tables set out in the GAO report is made, it reveals that GSA is maximizing its production of compliance reviews. With less than one-fourth the resources of DOD, GSA is conducting a percentage of compliance reviews well above the average.

[See GAO note, p.89.]

Chapter 2 - Improvements Needed in Administration of the Program

(Subheading: Affected Class Identification and Related Remedies)

[A] paragraph [on page 15] of this report indicates a reluctance on the part of compliance agencies to initiate remedies when affected class problems are identified.

GSA Comments

GSA has not been reluctant to initiate affected class remedies. To the contrary, there have been a significant number of affected class remedies secured from contractors - some of which have involved large backpay settlements.

Chapter 3 - Program Implementation by Compliance Agencies

(Subheading: AAPs Not Meeting Guidelines - Pages [20 to 24]

GAO sets forth a table entitled "GAO Analyses of Approved AAPs". The GAO indicates that GSA regional offices had approved 42 out of a random sample of 60 AAPs reviewed, and these 42 AAPs did not meet the Labor Department's guidelines.

GSA Comments:

GSA is of the opinion that a significant number of the 42 AAPs referred to by GAO realistically met all of the pertinent aspects of the Labor Department's guidelines. It is felt that this interpretive position failed to consider the varying qualifying situations that existed that mitigate these observations. Further, it is felt that 12 of the files reviewed by GAO were files relating to small facilities (less than 50 people) of a major food service company and it was deemed more appropriate by GSA to have an acceptable AAP at company's district level where underutilization of minorities and females could be more adequately monitored.

The specific purpose of the program is to rectify past discriminatory practices on the part of government contractors. The company files, referred to by GAO, reflect that progress has been made in the EEO field and specifically these companies have addressed themselves to those areas of underutilization by upgrading and hiring minorities and females.

Chapter 3 - Program Implementation by Compliance Agencies

(Subheading: Enforcement Actions Not Taken and Prolonged Conciliation with Contractors - Pages [27 to 30]

The GAO indicates that compliance agencies are reluctant to initiate enforcement action when contractors are in noncompliance with the Executive Order, but instead rely on extended conciliations and negotiations with contractors to achieve compliance.

GSA Comments

GSA has not been reluctant in taking enforcement action against recalcitrant contractors, as evidenced by GSA enforcement history since 1970. To illustrate:

(1) GSA has issued half as many show cause letters as all of the compliance agencies have collectively (GAO Report Appendix III). In addition, the GSA "partnership concept" has been a technique used to obtain conciliated agreement from many large contractors, nationwide.

(2) Contractors have been passed over who have not been in compliance with the GSA, EEO program.

(3) A contract has been terminated because of noncompliance.

(4) Court actions have been initiated by GSA to order contractors to be responsive to Executive Order 11246, as amended.

(5) Debarment of a contractor has resulted from the GSA contract compliance program.

Chapter 3 - Program Implementation by Compliance Agencies

(Subheading: Contractor Universe Not Identified)

This section comments on the fact that compliance agencies have not fully identified the contractor facilities for which they are responsible.

GSA Comments

[See GAO note, p. 89.]

In 1972, GSA recommended that Form 99, submitted by contracting officers to the Department of Labor, be used as the basic identification of contractors. No action was taken by the Department of Labor, with respect to this recommendation. A copy of this recommendation was provided to GAO.

Dun & Bradstreet has recently developed the capability of identifying government contractors by Standard Industrial Code (SIC), and consequently GSA entered into a contract with Dun & Bradstreet to obtain this information. The first Dun & Bradstreet printout has now been received. GSA is currently integrating this information with previously identified contractor facilities into a system which will enable rapid and accurate identification of all known contractor facilities assigned to GSA by the Department of Labor.

[See GAO note, p. 89.]

APPENDIX VI

[See GAO note, p. 89.]

limited resources, GSA has placed priority on reviewing its major program responsibilities in the utility and communication industries, in the paper industry, and with major retail companies. If GSA's total universe had been identified, it would not have been possible to conduct any more reviews than those accomplished because of limited resources. This condition still exists.

Chapter 3 - Program Implementation by Compliance Agencies

(Subheading: AAPs Not Prepared)

GAO alleges that contractors are not routinely provided with Department of Labor guidelines for preparing an AAP.

GSA Comments

In view of the fact that Federal contractors receive only a minimal amount of instructions from OFCC and government contracting officers, there appears to be a great need to ensure that each contractor fully understands exactly what he is expected to do and when he should accomplish it. To meet this need, GSA has conducted a number of National and Regional Civil Rights Workshops which strongly emphasize the requirements relating to the obligations of the contractors. These workshops began in 1971 and by the end of FY 1975, all regions will have conducted at least one such workshop. As many as four have been conducted in some regions. In addition, several large corporations have been selected for the preparation of model corporate-wide affirmative action plans. These plans represent, in writing, the corporation's equal employment opportunity commitment in respect to the requirements of Executive Order 11246.

It is GSA's intention to continue to increase its orientation sessions in order to resolve contract compliance issues while they are still workable and before they become more difficult to resolve..

Another method utilized by GSA to assist contractors is to participate in industry-wide seminars. For example, we have participated in two American Gas Association (AGA) seminars here in the Washington area, wherein several of the more important problem areas were covered in presentations given by our headquarters personnel. These various conferences, seminars, and workshops will continue as long as the need exists. There have been similar work sessions with other large organizations, such as COMSAT, The Marriott Corporation, and the Sears & Roebuck Company. The most outstanding example

of cooperation with a major corporation is GSA's close coordination with AT&T over the recent years; and particularly with our participation on the Government Coordinating Committee, along with the Departments of Labor and Justice, and EEOC.

An example of the effectiveness of GSA's Civil Rights Career Intern Program and workshop training program deals with an informal complaint which was received from an employee of a large utility company alleging discrimination affecting the employee's salary. The complainant was performing identical work but was not receiving equal pay. The pay difference was $25 bi-monthly. This difference was allegedly caused by a change in starting rates of pay in the position. The most recently hired person (white) was receiving a higher salary than the black employee who had been in the job for several months. This complex issue was resolved informally by a GSA career intern trainee and resulted in a revision of the procedures to ensure future equity for all employees and back pay for the minority complainant from the date the discrimination began.

Another example of technical assistance rendered in the early period of GSA's compliance program was its preparation in 1970 of a guide to assist contractors in their preparation of AAPs.

The GSA Office of Civil Rights has conducted four annual nationwide workshops for all of its civil rights personnel with the inception of this extensive orientation commencing in November of 1970.

GSA has also pioneered the concept of corporate model plans and Upgrade and Transfer Plans with AT&T in 1972 after long periods of conciliation with that company.

Chapter 3 - Program Implementation by Compliance Agencies

(Subheading: Pre-award Reviews Not Performed or Requested Pages [35 to 37]

Some compliance agencies are granting pre-award clearances without having performed required compliance reviews and some contracting officers are awarding contracts in excess of $1 million without requesting a pre-award clearance from the responsible compliance agency.

GSA Comments

GSA has consistently followed the Labor Department's guidelines in the conduct of pre-award clearances and reviews. Further, GSA has not been provided any example of an issuance of a clearance without the required review.

APPENDIX VI

Chapter 4 - Problems in Coordination Between EEOC and the Department of Labor

GAO

Coordination between the Department of Labor and its compliance agencies and EEOC had not been adequate. Information was not being exchanged and there was some duplication of compliance activities on contractor facilities.

GSA Comments

GSA has had many instances of cooperative and coordinated efforts with both EEOC and OFCC. Formal working agreements between GSA and EEOC have and are being implemented in resolving EEO problems at certain major utilities.

GSA has also had key officials of both EEOC and OFCC attend and participate in our civil rights training workshop. In 1974, the Director of EEOC's Compliance Division attended our training session in Denver, Colorado.

In 1973, a proposal was made to EEOC to assist that agency in reducing the large number of complaints they have that are awaiting investigation or other necessary action.

OFCC has, on several occasions, requested information from GSA to provide them with data to help them with their projects and they, likewise, have assisted GSA on numerous occasions.

Currently, GSA has been providing continual assistance with the Government Coordinating Committee in connection with its evaluation of a Consent Decree action. This assistance includes travel to virtually every regional area and the submission of various GSA proposals to the committee for the purpose of a prompt and conclusive resolution.

GAO note: The deleted comments refer to (1) matters which are not discussed in the final report or (2) GSA suggestions for revision which have been incorporated into the final report.