DOCUMENT RESUME

06552 - [B2087089]

Major Federal Equal Employment Opportunity Programs for the Private Sector Should Be Consolidated. HRD-78-72; B-167015. June 9, 1978. Released July 10, 1978. 45 pp. + 7 appendices (55 pp.).

Report to Rep. Augustus F. Hawkins, Chairman, House Committee on Education and Labor: Employment Opportunities Subcommittee; by Robert F. Keller, Acting Comptroller General.

Issue Area: Non-Discrimination and Equal Opportunity Programs: Employment Discrimination in the Private Sector (1002).
Contact: Human Resources Div.
Budget Function: Financial Management Information Systems: Accounting Systems in Operation (1006).
Organization Concerned: Department of Labor; Equal Employment Opportunity Commission.
Congressional Relevance: House Committee on Education and Labor: Employment Opportunities Subcommittee. Rep. Augustus F. Hawkins.
Authority: Civil Rights Act of 1964, title VII (42 U.S.C. 2000e). Age Discrimination in Employment Act of 1967. Rehabilitation Act of 1973. Equal Pay Act. Executive Order 11246. Gilbert v. General Electric, 45 LW 4035 (1976). Skidmore v. Swift and Co., 323 U.S. 134, 140 (1944). Reorganization Plan 1 of 1978.

Two major Federal programs evaluate equal employment opportunity activities of many of the Nation's employers: (1) the title VII program authorized by the Civil Rights Act of 1964 and administered by the Equal Employment Opportunity Commission and State and local fair employment practice agencies; and (2) the contract compliance program established to carry out Executive Order 11246 administered by the Department of Labor. Findings/Conclusions: Many Federal contractors have undergone equal employment evaluations under both the title VII and the contract compliance programs. About 50% of the contractors evaluated were evaluated under both programs; about half of those evaluated under both programs experienced overlap; and about 50% had problems with duplicate reporting and paperwork. Factors which caused the evaluation of the same contractors under both programs included: dual jurisdiction, different approaches and methodologies used by the two programs, and a concentration on firms with a large number of employees. As presently operated, the title VII and contract compliance programs have resulted in: frustration among the people the programs are designed to assist, inefficient use of the Government's resources, discriminatory practices going unchecked because many employers have not been evaluated under either program, and dissatisfaction and confusion among contractors which have fostered negative attitudes toward the Government's equal employment opportunity efforts. Recommendations: The Congress should consolidate the title VII and the contract

compliance programs. (RRS)

7089

REPORT BY THE

Comptroller General

OF THE UNITED STATES

Major Federal Equal Employment Opportunity Programs For The Private Sector Should Be Consolidated

The Chairman, House Subcommittee on Equal Opportunities (now the House Subcommittee on Employment Opportunities), Committee on Education and Labor, requested GAO to identify the extent of overlapping enforcement of equal employment opportunity requirements.

Many Federal contractors are evaluated under both the Equal Employment Opportunity Commission and the Department of Labor. Some evaluations overlap and result in

--duplicate paperwork and reporting,

--inconsistent compliance determinations, and

--confusion to contractors.

On the other hand, many other employers have not been evaluated under either program.

GAO believes consolidation of the two programs should minimize problems and increase the effectiveness of the Federal Government's efforts to achieve equal employment opportunity.

HRD-78-72
JUNE 9, 1978

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

B-167015

The Honorable Augustus F. Hawkins
Chairman, Subcommittee on Employment
Opportunities
Committee on Education and Labor
House of Representatives

Dear Mr. Hawkins:

This report discusses the results of the review we made pursuant to your October 20, 1976, request.

There are two major Federal equal employment opportunity programs--the title VII program administered by the Equal Employment Opportunity Commission and the contract compliance program administered by the Department of Labor and its designated compliance agencies. Our review leads us to the conclusion that these two programs should be consolidated.

As you know, the President recently announced Reorganization Plan No. 1 of 1978 which provides for consolidating several equal employment opportunity functions in the Commission and implementing other reforms. However, the President chose not to consolidate the title VII and contract compliance programs at this time; he indicated that by 1981 he would reassess whether further reorganization of these two programs was necessary.

We believe that our review discloses serious problems of overlapping and inconsistency which are caused by the division of management responsibility between the Commission and the Department of Labor. We also believe that management responsibility for these programs must be consolidated if the problems discussed in this report are to be overcome.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of the report. At that time, we will send copies to interested parties and make copies available to others upon request.

Sincerely yours,

R.F. Keller

ACTING Comptroller General
of the United States

REPORT BY THE COMPTROLLER GENERAL OF THE UNITED STATES

MAJOR FEDERAL EQUAL EMPLOYMENT OPPORTUNITY PROGRAMS FOR THE PRIVATE SECTOR SHOULD BE CONSOLIDATED

D I G E S T

Two major Federal programs evaluate equal employment opportunity activities of many of the Nation's employers.

--The title VII program is authorized by the Civil Rights Act of 1964 and is administered by the Equal Employment Opportunity Commission and designated State and local fair employment practice agencies.

--The contract compliance program was established to carry out Executive Order 11246 and is administered by the Department of Labor and its designated compliance agencies.

Many Federal contractors underwent equal employment evaluations under both the title VII and contract compliance programs. In some cases, there were problems of overlap and inconsistency in these evaluations. GAO's analyses showed that:

--About 50 percent of the Federal contractors evaluated under the contract compliance program were also evaluated under the title VII program. (See p. 7.)

--About 50 percent of the contractors evaluated under both programs experienced overlap--i.e., some of the same employment areas were evaluated under both programs. (See p. 8.)

--About 60 percent of the contractors evaluated under both programs had problems with duplicate reporting and paperwork. (See p. 12.)

HRD-78-72

--Some contractors experienced problems because of remedies imposed under the two programs. For example, contractors were required to make commitments for improvement based on title VII evaluations that were different from the required commitments based on evaluations by the contract compliance agencies. (See p. 14.)

--The equal employment opportunity posture of many other Federal contractors and private employers remains undetermined because these employers have not been evaluated under either program. (See p. 20.)

--Memorandums of understanding between the Equal Employment Opportunity Commission and the Department of Labor intended to provide a system for coordination and avoidance of duplication have not been effectively implemented. The Equal Employment Opportunity Coordinating Council, which was established to improve interagency coordination, has not been successful. (See pp. 30 to 32.)

Several factors caused the evaluation of the same contractors under both programs:

--The establishment of two programs with equal employment opportunity jurisdiction over the same employers. (See p. 18.)

--The different approaches followed by the agencies to evaluate the equal employment opportunity status of employers. Neither program's approach fully satisfies the other program's requirements. (See p. 18.)

--The preference of each program to evaluate large employers whose practices affect large numbers of employees. (See p. 20.)

GAO believes that the title VII and contract compliance programs, as presently operated, have resulted in

--frustration among the very people the programs are intended to assist--minorities and women,

--inefficient use of the Government's available resources because both programs have evaluated many of the same employers,

--discriminatory practices going unchecked because many employers have not been evaluated under either program, and

--dissatisfaction and confusion among contractors which have fostered negative attitudes toward the Government's equal employment opportunity efforts.

GAO also found that overlap and inconsistency problems resulted because of evaluations made solely within the title VII or contract compliance programs. For example, contractors experienced overlap within the title VII program because the Equal Employment Opportunity Commission reinvestigated charges resolved by the State and local fair employment practice agencies. In most instances, the Equal Employment Opportunity Commission, after reinvestigation, arrived at the same findings as the State or local agency. (See p. 22.)

Various proposals to consolidate or merge the title VII and contract compliance programs have been made in the Congress and by the Civil Rights Commission, and minorities and women's special interest groups. (See p. 34.)

In February 1978, the President announced the Reorganization Plan No. 1 of 1978, which will transfer some equal employment programs and functions from other Government agencies to the Equal Employment Opportunity Commission. However, the plan does not provide for consolidating the contract compliance and title VII programs. (See p. 40.)

RECOMMENDATION TO THE CONGRESS

GAO recommends that the Congress consolidate the title VII and contract compliance programs. (See p. 42.)

AGENCY COMMENTS

The Equal Employment Opportunity Commission agreed with the general thrust of this report and said that to ultimately overcome the problems of coordinating the title VII and contract compliance efforts, every component of Federal equal employment enforcement should be consolidated in a single agency. The Commission stated that it strongly believed that such a consolidation must be in an agency whose sole mission is to enforce equal employment laws and regulations. The Commission also (1) referred to reforms implemented pursuant to Reorganization Plan No. 1 of 1978 and to other recent or planned improvements in program administration and (2) stated that these reforms would help in resolving the problems of inconsistency and duplication discussed in this report. (See p. 43.)

Labor generally disagreed with this report and said that the contract compliance program has many advantages over the title VII program which would be jeopardized by consolidating the programs. GAO agrees that the contract compliance program has some advantages over the title VII program, but does not agree that these advantages would be jeopardized by consolidation. In consolidating the two programs, the best features of each program should be retained. (See p. 44.)

Contents

ABBREVIATIONS

AAP	affirmative action program
DOD	Department of Defense
EEOC	Equal Employment Opportunity Commission
ERDA	Energy Research and Development Administration
GAO	General Accounting Office
GSA	General Services Administration
HEW	Department of Health, Education, and Welfare
VA	Veterans Administration

CHAPTER 1

INTRODUCTION

Two major Federal programs evaluate equal employment opportunity activities of many of the Nation's employers:

--The title VII program is authorized by the Civil Rights Act of 1964 (42 U.S.C. 2000e) and is administered by the Equal Employment Opportunity Commission (EEOC) and designated State and local fair employment practice agencies.

--The contract compliance program was established to carry out Executive Order 11246 and is administered by the Department of Labor and its designated compliance agencies.

This report discusses problems associated with having two Federal programs for equal employment opportunity evaluations of the same employers. We previously reported on certain weaknesses and the need for improvement in the title VII and contract compliance programs. (See app. I.)

In addition to these two programs, other Federal equal employment opportunity programs, such as the Age Discrimination in Employment Act of 1967 and the Rehabilitation Act of 1973, mandate nondiscrimination in the private sector. The title VII and contract compliance programs will account for about $112 million, or about 95 percent of the total Federal funding of $118.4 million, for all equal employment opportunity programs affecting the private sector during fiscal year 1978.

In accordance with the request of the Subcommittee on Equal Opportunities (now the Subcommittee on Employment Opportunities), House Committee on Education and Labor, our evaluation was primarily directed to the impact of the title VII and contract compliance programs on those private employers who are Federal contractors. (See app. II.) Our objectives were to determine the extent to which: (1) Federal contractors have been evaluated under both programs, (2) duplication and overlap between the two programs have occurred, and (3) problems of inconsistency and conflict have existed between the programs.

TITLE VII PROGRAM

Title VII of the Civil Rights Act of 1964, which became effective July 2, 1965, prohibits employment discrimination

on the basis of race, color, religion, sex, or national origin. It created and empowered EEOC to seek out and eliminate unlawful employment practices by investigating discrimination charges. The 1972 amendments to title VII authorized EEOC to (1) litigate cases where conciliation was unsuccessful and (2) take action against employers believed to be engaged in a pattern or practice of discrimination. The 1972 amendments extended EEOC's jurisdiction to virtually all non-Federal employers with 15 or more employees, including State and local governments, private firms, and educational institutions. An estimated 70 million employees are covered by title VII of the act. For fiscal year 1977, about $70.5 million and a staff of 2,584 positions were authorized for EEOC.

An employment discrimination charge normally initiates EEOC's investigation. Investigations of charges are usually classified as individual or class (systemic). During investigations of individual charges, EEOC normally limits its inquiry to the allegations of the complainant. During investigations of class charges, the inquiry normally encompasses alleged discrimination affecting a class or group of persons. At the time of our field work, investigations of class charges originated with the filing of a charge by or on behalf of a class of persons, or EEOC expanded an individual discrimination charge to include other persons and like and related issues.

Recently, the EEOC Chair, in reshaping EEOC's organization, directed the Commission's 32 district offices to deemphasize the practice of expanding individual investigations to include other persons and like and related issues. Additionally, pursuant to the Equal Employment Opportunity Act of 1972, which amended section 707 of title VII, EEOC investigates suspected pattern or practice discrimination by employers. These investigations are intended to have a far-reaching impact and to influence the entire operation of an employer or industry.

State and local governments whose fair employment practice laws and enforcement agencies meet certain minimum standards may apply for approval to investigate and resolve title VII charges and obtain funding from EEOC. If a State or local entity has an EEOC-approved fair employment practices agency and has jurisdiction, charges filed with EEOC may be referred to that agency for handling for a period of 60 days. If the charge cannot be referred because there is no approved State or local agency, or when the State or local agency fails to reach an acceptable resolution of

the charge, the charge is normally investigated by 1 of the 32 EEOC district offices. An EEOC investigator may visit the employer's place of business and interview employer officials, the charging party, and coworkers; review employment records; and analyze employee statistics to establish the facts. Information may also be obtained through correspondence and interrogatories without an onsite visit.

When reasonable cause is found to support a finding of discrimination, EEOC attempts to negotiate a remedy through conciliation. When conciliation is successful, a conciliation agreement sets forth (1) the relief to be granted to the charging party and (2) any other corrective actions required to eliminate unlawful employment practices.

When conciliation fails, the case is referred to one of the five EEOC regional litigation centers for possible litigation. However, EEOC does not litigate most referred cases. When EEOC does pursue litigation, employers may be required to submit data on certain aspects of their operations and employment policies in response to interrogatories. When EEOC does not find reasonable cause, or elects not to pursue litigation, the charging party is advised of his/her right to litigate the matter at his/her volition.

CONTRACT COMPLIANCE PROGRAM

Executive Order 11246, issued on September 24, 1965, and amended on October 13, 1967, prohibits employment discrimination by Federal contractors and subcontractors on the basis of race, color, religion, sex, or national origin. 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.

Labor's Office of Federal Contract Compliance Programs was assigned responsibility for directing and coordinating the implementation of the order. At the time of our review, 16 Federal agencies were designated as compliance agencies, with responsibility for enforcing the order and Labor's guidelines at an estimated 325,000 contractors, employing about 30 million persons.

The contract compliance program is divided into two segments--construction, and supply and service (or nonconstruction). EEOC makes few title VII investigations of Federal construction contractors, thus the construction segment was not included in our review.

The funding and staffing of the contract compliance program is shown below.

	Fiscal year 1977					
	Construction		Supply and service		Total	
	Staff	Funds	Staff	Funds	Staff	Funds
		(000 omitted)		(000 omitted)		(000 omitted)
Labor Compliance	79	$ 2,643	49	$ 1,488	128	$ 4,131
agencies	427	9,697	1,137	26,633	1,564	36,330
Total	506	$12,340	1,186	$28,121	1,692	$40,461

Ten of the 16 compliance agencies had responsibility for reviewing supply and service contractors:

--Energy Research and Development Administration (ERDA).

--Department of Agriculture.

--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).

--Veterans Administration (VA).

Labor generally assigns compliance agencies responsibility for supply and service contractors in specified industries on the basis of standard industrial classification codes irrespective of which Federal agency entered into the contract. For example, DOD has been assigned 38 industries, including aircraft and motor vehicle industries, and GSA has been assigned 32 industries, including utilities and communications.

The 10 compliance agencies conducted about 12,300 supply and service reviews during fiscal year 1977. Effective October 1, 1977, Labor reduced the number of supply and service compliance agencies from 10 to 8 by transferring VA's and Agriculture's assigned contractors to other compliance agencies. Also, the compliance functions of ERDA were incorporated into the newly created Department of Energy.

Labor guidelines require each supply and service contractor that has 50 or more employees and a Federal contract of $50,000 or more to write an affirmative action program (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 contractors' work forces where deficiencies exist.

The compliance agencies conduct compliance reviews of Federal contractors within the industries assigned to them. Compliance reviews consist of evaluations during which the compliance officer analyzes each aspect of the contractor's employment policies, systems, practices, and employee statistics to determine adherence to the nondiscrimination and affirmative action requirements.

When the review discloses that the contractor has (1) not prepared a required AAP, (2) deviated substantially from its approved AAP, or (3) created a program which is unacceptable, compliance agencies are required to pursue various enforcement measures after first attempting conciliation to resolve the deficiencies. If conciliation is unsuccessful, the agencies are authorized to impose sanctions, including

--recommending to the Department of Justice that appropriate proceedings be brought to enforce the Executive order;

--recommending to EEOC that an action be brought under title VII of the 1964 Civil Rights Act;

--canceling, terminating, or suspending any contract or portion of any contract; and

--debarring the contractor from further Government contracts.

SCOPE OF REVIEW

We interviewed EEOC, Labor, and selected compliance agency officials; and reviewed policies, regulations, and procedures at headquarters offices in Washington, D.C., and field offices in Chicago, Illinois; Philadelphia, Pennsylvania; and San Francisco, California. We interviewed officials of the California Fair Employment Practice Commission, the Illinois Fair Employment Practices Commission, the Pennsylvania Human Relations Commission, and the Philadelphia Commission on Human Relations. We also obtained the views and opinions of various special interest groups in the field of equal employment opportunity.

We conducted a nationwide questionnaire survey of Federal contractors' experiences in complying with the requirements of the title VII and contract compliance programs. We analyzed case files associated with title VII and contract compliance evaluations of selected Federal contractors in California, Illinois, and Pennsylvania. The purpose of our case file analysis was to obtain an insight into the nature and extent of problems resulting from overlapping evaluations under the two programs.

Our field work was conducted during the period November 1976 through October 1977. Our review was directed primarily at the title VII program and the contract compliance program activities of DOD, GSA, and ERDA, which performed about 9,900 (or about 80 percent) of the estimated 12,300 reviews of supply and service contractors during fiscal year 1977.

CHAPTER 2

OVERLAP AND INCONSISTENCY IN THE TITLE VII AND CONTRACT COMPLIANCE PROGRAMS

Contractors doing business with the Government must comply with the title VII and contract compliance programs. Many contractors undergo equal employment opportunity evaluations under both programs. In some cases, overlapping occurs in the substance of the evaluations, i.e., one program's evaluation partially or substantially duplicates the other program's evaluation. There are also problems of reporting and paperwork duplication, and inconsistency between the two programs. Although both programs have concentrated substantial staff resources on many of the same contractors, the equal employment opportunity posture of many other contractors and private employers remains undetermined.

Major factors causing these problems are

--the existence of two separate programs with similar objectives and dual jurisdiction,

--the different approaches and methodologies used under the two programs, and

--the policy under both programs of giving priority to evaluating employers with large work forces.

Additionally, many contractors have experienced overlapping or duplicative evaluations by EEOC and State or local fair employment practice agencies under the title VII program. In most cases, this overlap resulted from EEOC's reinvestigation of charges resolved by State and local fair employment practice agencies. EEOC usually arrived at similar findings as the State or local agency after reinvestigation. Within the contract compliance program, problems of conflict and inconsistency have occurred because of different standards and procedures of the various Federal compliance agencies evaluating supply and service contractors.

CONTRACTORS EVALUATED UNDER BOTH PROGRAMS

We conducted a nationwide study to assess the extent to which Federal contractors were evaluated under the title VII and contract compliance programs. We asked contractors to provide data on evaluations conducted under the title VII and contract compliance programs during calendar years 1974 through 1976.

DOD, GSA, and ERDA evaluated 8,077 contractors during fiscal year 1976. We sent questionnaires to a random sample of 786 of those contractors and received usable responses from 587 contractors, or about 75 percent. Although we are not certain that the characteristics of nonresponding contractors are the same as those who responded, we believe our findings are representative of the perceptions of 5,978 contractors--about 75 percent of the 8,077 contractors. (For details on sample selection, see app. III, table 1.)

Based on the questionnaire results, we estimate that 3,015 (or about 50 percent) of these contractors were evaluated under both programs during the 3-year period. (See app. III, table 2.) The contractors evaluated under both programs underwent an average of about three reviews under the contract compliance program and about 11 investigations under the title VII program (by EEOC and/or State or local agencies) during the 3-year period.

In responding to our questionnaire, contractors evaluated under both programs were requested to provide their views on

--problems between the title VII and contract compliance programs,

--problems within the title VII program, and

--problems within the contract compliance program.

PROBLEMS BETWEEN THE TWO PROGRAMS

Contractors identified several problem areas concerning evaluations under the title VII and contract compliance programs including overlapping evaluations, duplicative reporting and paperwork requirements, and inconsistencies in remedies required by the agencies.

Overlapping evaluations

Our review showed that overlap in the substance of evaluations did not occur every time an employer was evaluated under both programs. In some instances, the scope of the evaluations and the employment areas evaluated under the two programs resulted in minimal or no overlap. Based on questionnaire results, however, we estimate that about 1,494 (or about 50 percent) of the 3,015 contractors evaluated under both programs experienced overlap. (See app. III, table 3A.)

Our analysis indicated that the overlap occurred as follows:

--An estimated 582 contractors experienced overlap between a compliance agency and EEOC only.

--An estimated 364 contractors experienced overlap between a compliance agency and a State or local fair employment practice agency only.

--An estimated 548 contractors experienced overlap between a compliance agency and both EEOC and State or local fair employment practice agencies.

Contractors identified employee termination, hiring, promotion, layoff, transfer, and compensation as those employment areas in which overlapping evaluations occurred most frequently.

To obtain an insight into the nature and extent of overlap, we analyzed the evaluations performed under the title VII and contract compliance programs for 37 contractors--9 in California, 12 in Illinois, and 16 in Pennsylvania. The 37 contractors were not selected on a statistical sample basis because the compliance agencies, EEOC, and State and local agencies could not always locate their files and records for our examination.

Our analyses showed that the incidence and extent of overlap between the two programs generally depended upon the scope of the title VII investigation. For 22 contractors, the overlap was more significant because EEOC or the State or local agency investigated class charges or broadened investigations of individual charges into class issues. For 15 contractors, there was minimal or no overlap because the title VII investigations were limited to resolving individual charges.

Title VII investigations of class issues generally involved assessments of one or more major employment areas. For example, we noted that class issue investigations frequently included an analysis of the race and sex of persons hired and promoted in various jobs. Such analyses are similar to evaluations normally performed under the contract compliance program.

The following examples are illustrative of the overlapping evaluations by the two programs.

--Between July 1973 and June 1976, a Pennsylvania contractor employing about 880 employees was evaluated

twice by DOD and once by EEOC. The initial DOD evaluation began in January 1974 and was completed in August 1974. The second DOD evaluation began in September 1975 and was completed in March 1976. In 1971 EEOC began an evaluation of an individual charge of demotion based on race. Later in 1971, EEOC expanded the charge to cover additional issues of suspected race discrimination in promotion, wages, and training. EEOC's investigation was concluded in May 1974. The DOD and EEOC evaluations overlapped in several areas. Both DOD and EEOC analyzed contractor work force data by race; recruitment and job advertising policies and practices; testing procedures; promotion, transfer, and demotion policies and statistics; compensation; and seniority systems.

--Another Pennsylvania contractor whose case files we examined employed about 4,800 employees. This contractor had been evaluated by DOD between September and December 1973 and between September 1975 and March 1976. In each instance, the contractor had prepared an AAP and was found in compliance by DOD.

We identified 79 charges filed against this contractor with EEOC or the State and city commissions, including charges alleging race, religion, sex, and national origin discrimination. We examined the files relating to five charges investigated by EEOC, one charge investigated by the State commission, and one charge investigated by the city commission. We did not examine the files relating to the remaining charges because the charges were not investigated during the 3-year period covered by our review, or the investigation files could not be located by the agencies.

There was overlap between DOD's evaluations and charge investigations by EEOC, and the State and city agencies. For example, several evaluations by EEOC, the State, and city agencies involved an analysis of data on race and sex of employees by job classifications; persons hired, terminated, and promoted; and the compensation of persons by race and sex. These areas were also examined by DOD in its two evaluations. Also, we noted in this case that at least nine other charges were consolidated into a section 707 pattern and practice case against the contractor by EEOC. Although EEOC's pattern and practice investigation occurred subsequent to the 3-year time frame covered by our review, the investigation is being directed at suspected discrimination in many aspects of the contractor's employment policies and practices.

EEOC officials declined to make the files available to us on this case because of the possibility of subsequent litigation. However, it is likely that this pattern and practice investigation will further overlap the DOD evaluations.

EEOC advised us that about 60 section 707 pattern and practice cases are in various stages of investigation nationwide. These investigations are intended to have a far-reaching impact and to influence the entire employment practices and policies of large employers or industries.

Title VII investigations of individual charges, when not expanded into class issues, normally involved little analysis of employee statistics and concentrated on resolving the charge through interviews with (1) witnesses, (2) the charging party, and (3) the respondent contractor. Such analysis, in our opinion, generally did not significantly overlap the evaluations performed by the contract compliance agencies, as illustrated by the following example.

--Between June 1975 and May 1976, an Illinois contractor employing about 350 employees was evaluated once by EEOC and once by GSA.

During the period June through September 1975, EEOC investigated a charge of race and national origin discrimination related to the denial of insurance benefits. EEOC gathered evidence, determined the employer's policies, assessed other similarly situated employees, and concluded there was no reasonable cause to believe the case involved discrimination.

During the period November 1975 through May 1976, GSA made a full-scale review of the employer's hiring, promotion, and employment policies; analyzed work force statistics; found the employer in compliance with the contract compliance program; and required affirmative action commitments.

In this case, there was minimal overlap in that the EEOC evaluation was limited to resolving the individual charge, whereas the GSA evaluation was full-scope in nature. GSA's files indicated the contractor's fringe benefits policy was nondiscriminatory, but there was no indication that GSA investigated the insurance benefits granted or denied any specific individual.

In responding to our nationwide questionnaire, about 50 percent of the contractors reviewed under both programs claimed there was overlap between the programs. As previously stated, our case file analysis of the 37 contractors reviewed under the title VII and contract compliance programs showed that 22--about 59 percent--experienced significant overlap between the two programs. Although the perceptions of contractors as to the extent of overlap may differ somewhat from the overlap that actually occurred, we believe that the high percentages identified in our analysis combined with the questionnaire results provides a clear indication of the significance of the problem.

Paperwork and reporting problems

In responding to our questionnaire, one of the most persistent and troublesome areas mentioned by contractors was the paperwork and reporting requirements. We estimate that 1,820 (or about 60 percent) of the contractors evaluated under both programs experienced moderate to very large duplication in complying with the paperwork and reporting requirements associated with the two programs. (See app. III, table 4.) The preparation and submission of EEO-1 forms (Joint Labor--EEOC Annual Report), AAPs, progress reports, and other reports of work force statistical data were identified by contractors as problem areas. Examples of various contractors' comments follow.

> "Workforce analysis entirely different: compliance agency by particular job groups (within job families)--EEOC by specific pay groups across job groups (no relationship to job families)."

\- - - -

> "Some agencies accept breakdown of plant-wide work force by category (labor, semi-skilled, etc.) while others require breakdown by job title, wage structure, etc., for each specific department. Additionally, the requirement of transporting data as to number of people, job rate, duties, etc., to bureau forms from existing published documents is redundant and time consuming."

\- - - -

> "* * * [the present] uncoordinated and inefficient system requires employers to spend great amounts of

time compilin, statistics and preparing reports for a variety of agencies at all levels of government, with high incidence of duplication of effort."

- - - -

"Another area of concern is the fact that industry generally prepares an affirmative action program on a calendar year basis. Yet, EEO-1 reports are required in May or April and compliance review progress reports are due some other time of the year. It seems that much effort can be saved if a single date were used for all such reporting purposes."

- - - -

"Workforce data required quarterly by State (fair employment practices agency) is very complex. Job categories do not match EEO-1. GSA had completely different but equally complex workforce analysis format. As contractor and subcontractor in nearly every State, the non-standardization of forms nearly overwhelms us."

- - - -

"State of Illinois [Fair Employment Practices Commission] Annual * * * Report for prequalification for public contracts, EEO-1 Annual Report, and [Federal Communications Commission] form 395 request basically the same data but with different formats, or with different breakdown of employee statistics. The [State] report, however, requires greater detail on employee statistics, as well as a great deal of information not required on other reports."

Several contractors responding to the questionnaire stated that the reporting and paperwork required in order to obtain contracts from State and local governments was a burden. During our field work, we noted that California, Illinois, and Pennsylvania, and the city of Philadelphia, maintained small-scale contract compliance programs as part of their fair employment practice agencies. The State and local contract compliance programs require contractors to submit various data similar to EEO-1 or AAP data and periodic progress reports as prerequisites for obtaining State or local contracts.

Report of the Commission on Federal Paperwork

In April 1977, the Commission on Federal Paperwork issued a report citing the following paperwork and reporting problems confronting private employers because of the multiple laws and numerous Executive orders dealing with equal employment opportunity:

--Reporting requirements that vary from agency to agency. This lack of uniformity and consistency is most acute for diverse companies that must report to more than one Federal agency.

--The interpretation of guidelines prepared by Federal agencies for affirmative action programs is inconsistent.

--Federal agencies fail to distinguish, as far as repetitive paperwork is concerned, between companies with favorable compliance records and those with compliance problems.

--Government lacks the machinery to work with employers to improve results and cut red tape.

The report stated that the Nation's business establishments spend millions of dollars annually on equal employment opportunity reporting and recordkeeping activities. Using conservative estimates, it was reported that employers' costs for preparing a joint EEOC-Labor form exceeded $12 million annually, although the form appears to be the least difficult of the Federal equal employment opportunity reporting requirements. The report contained a series of recommendations aimed at simplifying procedures so that resources could be freed from the bureaucratic entanglement of unnecessary reporting and paperwork requirements and directed, instead, to achieving the goal of equal employment.

Remedies required by both programs

A primary purpose of the contract compliance program is to obtain contractors' affirmative action commitments in AAPs for improving minorities' and women's job opportunities, including goals and timetables. Under the title VII program, when EEOC finds reasonable cause to support a finding of discrimination, remedial relief is sought. The three types of relief usually sought are (1) money damages, (2) discontinuance of discriminatory employment practices, and (3) affirmative action relief, including goals and timetables.

We noted instances where one agency, after a program evaluation, required contractors to make the same commitments for equal employment improvement that were already agreed to as a result of an earlier evaluation under the other program. In other instances, the two programs required different remedies after separate evaluations. Based on questionnaire results, we estimate that 718--about 24 percent--of the contractors evaluated under both programs undertook commitments to provide remedial relief as a result of EEOC's investigations. About 196 of these 718 contractors agreed to affirmative action goals and timetables required by EEOC. In about 84 of these 196 instances, the goals and timetables were the same or similar to those in the contractors' AAPs, and in about 112 instances, the goals and timetables were different. (See app. III, table 5.)

In California, one of the nine contractors whose case files we analyzed negotiated an agreement with EEOC which cited the contractor's AAP as a remedy for deficiencies. Thus, as a result of EEOC's investigation, the contractor agreed to a recommitment to do essentially what the contractor had previously proposed and had been approved by DOD. Furthermore, the contractor became responsible to two agencies for affirmative action compliance and was required to report progress to both EEOC and DOD.

In Pennsylvania, DOD reviewed a contractor in May 1973, August 1974, and December 1975. In each instance, the contractor was found in compliance and had AAPs in effect for the years 1973 through 1976. In June 1971, EEOC received an individual charge of race discrimination against the contractor. In the course of investigating this charge in April 1973, EEOC found reasonable cause that the contractor had practiced sex discrimination on a class basis. EEOC, in addition to analyzing employee statistics, used information in the contractor's AAP to support its finding of sex discrimination.

EEOC originally asked the contractor to make commitments to hire more women in certain job classifications than the contractor had agreed to with DOD. After extensive conciliation and litigation, EEOC and the contractor entered into an agreement in February 1977 that included the same goals and timetables for women in those job classifications as were required by the AAP.

Case studies of contractors evaluated under both programs

The following examples are illustrative of the problems contractors face in complying with the requirements of the two programs.

--Example A: A contractor in Pennsylvania with about 3,700 employees was reviewed by DOD during April through June 1974. DOD made a full-scale equal employment opportunity evaluation, including an evaluation of maternity leave policy. In response to DOD's inquiry, EEOC stated that it had no active charges against the contractor. Our review showed, however, that EEOC was then investigating at least one charge against the contractor. After completing its review, DOD approved the contractor's AAP and determined that the contractor was in compliance with the contract compliance program.

During March through July 1974, EEOC investigated four charges of discrimination against this contractor. One of these charges had previously been investigated by the State Commission which ruled in favor of the contractor. EEOC investigated the same charge and found in favor of the complainant on the basis of race discrimination in promotion and layoff. Additionally, EEOC expanded this charge to include other issues, and found that the contractor was practicing race discrimination on a class basis in its promotion policies. During conciliation, EEOC attempted to persuade the contractor to prepare an AAP, but the contractor's counterproposal stated that an AAP had already been prepared for and approved by DOD which it would continue to administer. Conciliation was unsuccessful, and EEOC did not pursue litigation.

In investigating another of the charges, EEOC found in favor of the complainant because employees on maternity leave did not receive disability payments, whereas other employees were paid a portion of their salary when temporarily disabled. Four months earlier, DOD had found the same maternity leave policy to be within Labor's guidelines. During its subsequent evaluation conducted between August and October 1975, DOD also found the contractor's maternity leave policy to be deficient. However, DOD's finding involved the contractor's establishment of an arbitrary time limitation

for the use of maternity leave and not the disparate payment finding identified by EEOC. As a result, the evaluations that EEOC and DOD conducted resulted in inconsistent findings.

At the time of our review, Labor's and EEOC's requirements relating to employers' maternity leave policies were inconsistent in some respects. The Supreme Court's decision on General Electric Company v. Gilbert should resolve some or all of the disagreement between Labor and EEOC. On December 7, 1976, the Supreme Court held that General Electric's exclusion of benefits for disability during pregnancy was not a per se violation of title VII, and that the plaintiffs failed to prove a discriminatory effect.

After investigating the third charge, which had previously been investigated by the State Commission, EEOC reaffirmed the State Commission's findings. In the fourth charge, the State Commission waived jurisdiction, and EEOC made the initial charge investigation. In these last two charges, EEOC limited its inquiry to the merits of the allegations.

--Example B: A contractor in California with about 600 employees was reviewed by DOD during July through August 1973 and during May through June 1976. Both evaluations were full-scale and encompassed most employment areas including work force analysis, hiring, termination, promotions, goals, timetables, and compensation. There was no evidence of contact or coordination with EEOC during either of these evaluations. The contractor was found in compliance, and the AAPs were approved under both evaluations.

During October 1974 through January 1975, EEOC investigated a charge of race discrimination in the areas of training and promotion, and found in favor of the complainant. The finding in favor of the complainant with regard to promotion was primarily based on the requirement that the complainant had to pass a test not required of other employees who were promoted. EEOC expanded the charge to analyze the issue of race discrimination within one of the contractor's departments. EEOC analyzed training, testing, promotions, seniority, job classification, compensation, and lines of progression which DOD also analyzed during its two evaluations. Initially, EEOC sought its own

affirmative action remedies. However, a union official pointed out to EEOC that the contractor was already committed to an AAP, and that additional affirmative action remedies would place the contractor in a double-reporting situation. EEOC agreed to accept the contractor's recommitment to its AAP. In February 1976, a conciliation agreement was negotiated between the contractor and EEOC. The contractor, in addition to providing backpay of $1,500 to the complainant, agreed to comply with the provisions of the AAP. EEOC did not contact DOD prior to its investigation.

FACTORS CONTRIBUTING TO OVERLAP AND INCONSISTENCY

Several factors contributed to the overlap and inconsistency between the title VII and contract compliance programs including (1) dual jurisdiction, (2) the different approaches and methodologies used by each program to achieve objectives, and (3) the fact that both programs concentrated on evaluating contractors with large work forces.

Dual jurisdiction and different approaches

As mentioned earlier, the establishment of two programs with equal employment opportunity jurisdiction over many of the same employers has contributed to overlap and inconsistency. The authority and purpose of title VII and the contract compliance programs are similar--identifying and eliminating employment discrimination because of race, sex, color, religion, and national origin. The title VII program covers about 70 million employees, and applies to virtually all employers in the private sector and State and local governments with 15 or more employees. The contract compliance program covers about 30 million employees of Government contractors and subcontractors in the private sector--most of whom are also covered by the title VII program.

Although both programs have similar objectives, the programs follow somewhat different approaches to achieve the objectives. The contract compliance program emphasizes broad-scope reviews of contractors' employment practices and the obtaining of contractors' commitments for future affirmative action to increase the utilization of minorities and women. Less emphasis has been given to obtaining relief, such as back pay, for victims of past discrimination. For example, a task force within Labor, appointed to study the contract

compliance program, issued a preliminary report in September 1977, which stated that fewer than 200 of 10,500 compliance reviews conducted in fiscal year 1976 identified systemic problems requiring remedial relief. The report noted that during fiscal year 1977, the rate at which such problems were identified had not materially increased.

The title VII program, on the other hand, primarily emphasizes investigations of complaints to obtain evidence of discrimination. In the past, EEOC followed the practice of expanding investigations of individual charges to include class, and like or related issues. EEOC has recently shifted emphasis to (1) limit the scope of investigations on individual charges to the specific allegations in the charge and (2) not expand its investigations into class issues. However, EEOC intends to continue investigating class or systemic issues. Such investigations will be performed as separate efforts independent of investigations of individual charges.

When reasonable cause is found that the charges are true, the title VII program seeks remedies, such as backpay or reinstatement, as part of its case resolutions. Under the title VII program, commitments for future affirmative action remedies can also be required.

The different approaches can lead to confusion and bewilderment on the part of both employers and employees. It is not uncommon for a contractor to be found in compliance with the requirements of the contract compliance program but in violation of the requirements of the title VII program.

As part of evaluations by DOD, GSA, and ERDA, most of the 37 contractors whose case files we analyzed identified job classifications where minorities and females were being underutilized. The contractors established goal and timetable commitments as part of the AAPs to correct the underutilization and were found in compliance with Executive Order 11246. In some cases, contractors were subsequently investigated pursuant to the title VII program because a charge was filed, and it was found that the contractors had violated title VII of the Civil Rights Act. This situation can occur when a contractor is found to be in violation of title VII for a specific individual act of discrimination or because relief was not afforded to victims of discrimination, although the contractor's AAP, with regard to future policy for minorities and women, is found acceptable under the contract compliance program.

Consequently, the evaluations of Federal contractors conducted under the contract compliance program usually do not satisfy the title VII program's approach or vice-versa. An EEOC headquarters official stated that Executive Order 11246 gave Labor substantially the same mission as title VII gave EEOC but that Labor decided on concentrating on future affirmative action rather than identifying discrimination and seeking relief for victims of past discrimination. The official believes that Labor's decision to concentrate primarily on affirmative action is crucial to understanding why both programs may evaluate the same employers. It was his opinion that there was little overlap because of the different approaches and that overlap would be more prevalent if both the title VII and contract compliance programs adopted standardized evaluation approaches.

Concentration on firms with large numbers of employees

Federal contractors that were evaluated under both programs generally had large work forces. Based on questionnaire responses, these contractors had an average work force of 1,268 employees. Labor and compliance agency officials indicated that contractors with large work forces were given priority for review because they offered the most hiring and promotion opportunities. EEOC officials indicated that factors considered in selecting charges for investigation included

--potential overall impact on the number of employees affected,

--the age of the charge being investigated, and

--selection of employers with multiple charges to reduce the backlog problem.

The tendency to select larger contractors for greater equal employment opportunity impact has some merit, since both programs are interested in maximizing results. However, because both programs often concentrated their staff resources on large Federal contractors, the equal employment opportunity posture of many other Federal contractors and other private employers remains undetermined. This is evidenced by the (1) sizeable EEOC backlog of uninvestigated charges and (2) significant number of Federal contractors that have not been reviewed under the contract compliance program.

As of February 28, 1977, EEOC's backlog totaled about 126,300 charges. Commission officials acknowledged that many charges were filed against private employers whose equal

employment opportunity status had never been assessed. In July 1977, EEOC's chair announced the implementation of a new rapid charge-processing system which is designed to eliminate EEOC's charge backlog within the next 2 years. Under the new system, EEOC will limit its investigation to individual charges rather than expanding charges into class issues, and place greater emphasis on resolving charges prior to investigation through informal negotiations between the concerned parties.

The equal employment status of many Federal contractors subject to the Executive order is unknown. The following table shows compliance reviews performed by DOD, GSA, and ERDA in fiscal years 1976 and 1977 as a percentage of the estimated number of supply and service contractor facilities they identified as being subject to the Executive order.

Compliance agency	Estimated contractor facilities	Reviews performed expressed as a percentage of estimated contractor facilities	
		Fiscal year 1976	Fiscal year 1977
		(percent)	
ERDA	4,177	22	29
DOD (note a)	21,530	27	29
GSA	24,330	8	16

a/Estimate only includes contractors with 50 or more employees.

Labor and compliance agency officials stated that the equal employment opportunity status of many Federal contractors has not been assessed primarily because of a (1) lack of sufficient resources to provide broad coverage and (2) policy that compliance agencies follow up on previously evaluated contractors to monitor progress.

In commenting on this report (see app. V), EEOC said it had recently announced standards for the selection of employers for systemic inquiries. Under these standards, the size of an employer's work force is relevant, but other factors are also to be considered (e.g., an employer's work force profile compared with similar employers, or the large number of job opportunities offered by high turnover rates or expansion).

PROBLEMS WITHIN THE TITLE VII PROGRAM

Within the title VII program referral, arrangements between EEOC and approved State and local fair employment practice agencies have resulted in overlapping evaluations of the same contractors. Also, in some instances, the evaluations by EEOC's litigation centers have overlapped the evaluations by EEOC's district offices.

Reinvestigation of State/local agency resolutions

Title VII provides for cooperation between EEOC and State or local agencies charged with enforcement of nondiscrimination laws. State and local agencies may apply for designation as approved referral agencies. EEOC requires these agencies to have laws comparable in scope to title VII before they can resolve charges on behalf of EEOC. As of September 23, 1977, EEOC had approved 72 State and local referral agencies.

EEOC reviews each final action by State and local agencies and is required to give substantial weight to the final findings and orders of these agencies. However, in cases where the State and local agencies' final charge resolutions are not acceptable to EEOC, it may reinvestigate the charges.

EEOC reported that during fiscal year 1976, it reviewed 20,519 charges resolved by State and local agencies and rejected 5,794 (or 28 percent) of these resolutions. EEOC does not have summarized data showing how many of the 5,794 State and local agency resolutions were reinvestigated.

Our review indicates that in many such instances, EEOC investigated the same charges investigated by State and local agencies. Federal contractors, in responding to our questionnaire, provided some insight into the overlapping evaluations and reinvestigations by EEOC of State and local agencies' charge resolutions. As noted on page 8, an estimated 3,015 contractors were evaluated under the contract compliance and title VII programs. We estimate that 1,304--about 43 percent--of these contractors were evaluated by both EEOC and State/local agencies within the title VII program. Of these, about 62 percent (or 813 contractors) experienced overlap between EEOC and State or local agency evaluations. (See app. VII, table 6.)

Contractors attributed most of this overlap to EEOC investigation of charges already investigated by State or local agencies. Contractors indicated that, in most cases, EEOC arrived at findings similar to those of the State or local agency.

Examples of several contractors' responses follow.

"In almost all cases the State agencies complete the investigation of a complaint prior to EEOC. However, EEOC attaches no significance to the State investigation report. EEOC representatives have stated, 'We do not attach any weight to the State findings.' Our experience leads us to believe the State reports are never reviewed and the EEOC conducts an independent investigation."

- - - -

"Our overlap occurred when a discrimination charge was filed both with the Federal EEO agency and the State agency. After satisfying the State agency that the complaint was without substance, we had to do the same thing with the Federal agency. We do feel that, if the Federal agency refers a charge to a State agency, final resolution should rest with that agency. Otherwise, the Federal people ought to pursue the investigation themselves."

- - - -

"Most overlap occurs when State agency investigates individual charge and then EEOC does same thing all over again. Although the requirements of State law and title VII may indeed be somewhat different * * * most of the issues are the same. Perhaps complainant should only be allowed to file one place or perhaps EEOC should go out of business in states which have an approved law and enforcement agency."

Our review showed that the extent of EEOC reinvestigations of State or local charge resolutions and the referral relationships varied in the States of California, Illinois, and Pennsylvania.

The California Fair Employment Practice Commission has investigated charges referred by EEOC since 1972. Prior to June 1977, the State commission investigated only individual charges. Beginning in June 1977, the State commission began

to investigate class issues. The following table shows the number and percentage of charge resolutions by the State commission which were rejected by the EEOC San Francisco district office

	Period covered			
	July 1, 1975 to Sept. 30, 1976		Oct. 1, 1976 to Mar. 31, 1977	
	Number	Percent	Number	Percent
Final resolutions accepted by EEOC	370	64	216	65
Final resolutions rejected by EEOC	208	36	116	35
Total actions	578	100	332	100

Although data is not available showing which rejected charges were reinvestigated, the EEOC District Director told us that most rejected charges were reinvestigated and that an estimated 90 percent of the reinvestigations resulted in the same determination as the State commission.

The Illinois Fair Employment Practices Commission has been an approved referral agency for EEOC since 1975. The State commission investigates only individual charges for EEOC since State law does not authorize class investigations.

During 1976, the State commission closed 597 EEOC-referred charges, and the EEOC Chicago district office accepted the findings for 559 of the charges. Most of the remaining 38 charges were not investigated by the State commission because it did not have jurisdiction. Thus, EEOC reinvestigations of charges occurred infrequently in Illinois.

In Pennsylvania, the EEOC Philadelphia district office has referral arrangements with the Pennsylvania Human Relations Commission and the Philadelphia Commission on Human Relations. The State commission has formally investigated charges for EEOC since about 1971; the city commission has done likewise since 1974.

Prior to 1975, the State commission's policy was to expand investigations of individual charges into pattern and practice, and class issues. However, this policy resulted in case backlog problems. Since 1975, the State commission's policy has been to limit individual charge investigations to

the specific allegations. The city commission has never operated under the policy of expanding individual charges into class or systemic issues.

The following table shows the number and percentage of charge resolutions by the State and city commissions which were rejected by the EEOC district office during calendar years 1975 and 1976.

	Calendar years 1975 and 1976			
	City commission		State commission	
	Number	Percent	Number	Percent
Resolutions accepted by EEOC	757	82	414	86
Resolutions rejected by EEOC	169	18	69	14
Total	926	100	483	100

Note: The above data excludes cases closed by the city or State for administrative reasons such as inability to locate complainant, lack of agency jurisdiction, and withdrawal of charge by complainant.

The following table shows the extent of reinvestigation of city and State resolutions rejected by the EEOC district office.

	City commission	State commission
Final findings rejected by EEOC	169	69
Cases reinvestigated by EEOC	74	29
Reinvestigations completed by EEOC	48	22
EEOC findings:		
Same as city/State	28	9
Different than city/ State	20	13

The EEOC Philadelphia district office requires the State and city commissions to provide comprehensive supporting documentation along with their final resolutions. Both

commissions generally provide a copy of the entire investigative file for charges resolved. When reinvestigation is required, the district office attempts to limit the investigative work by using information previously obtained from the State or city commission.

- - - -

A GAO report ("The Equal Employment Opportunity Commission Has Made Limited Progress in Eliminating Employment Discrimination," HRD-76-147, Sept. 28, 1976) previously reported that EEOC's district offices' limited and uneven use of and assistance to State and local agencies had severely curtailed their impact on EEOC's charge resolutions. Problems included:

--Differences in the quality and capabilities of State and local agencies.

--The negative attitudes of some EEOC district offices which view State and local agencies as competitors.

--Rejection of some determinations without explaining the reasons to State and local agencies.

--Refusal of some EEOC regional officials to cooperate in efforts to improve the effectiveness of State and local agencies.

--Personality clashes between EEOC and State and local agency personnel.

We recommended that EEOC maximize the use of approved State and local fair employment practice agencies in resolving individual charges, including where necessary, strengthening the technical capabilities of certain State and local agencies. In responding to this recommendation in June 1976, EEOC stated that it had taken the following actions to improve the effectiveness of State and local agencies:

--Integrated State and local agency charge processing activities into EEOC's work measurement system.

--Amended the compliance manual to include review and acceptance of State and local agency findings.

--Increased field personnel resources directly dedicated to State and local agency liaison monitoring and technical assistance.

--Accepted 72 percent of State and local agency final actions in April 1976.

--Evaluated State and local agency activities to develop recommendations for fiscal years 1977 and 1978.

In commenting on this report, EEOC said it had entered into work-sharing agreements with 42 of the 70 EEOC-funded State and local agencies, and EEOC anticipated that double investigations can be totally avoided wherever there is a work-sharing agreement. Under work-sharing agreements, EEOC and State/local agencies decide in advance what proportion of the joint inventory each agency will process. These agreements specifically define the categories of charges to be assigned to each agency. For example, charges may be assigned, based on geographical area.

Investigative and litigative reviews

In 1972 the Congress empowered EEOC to file suit and litigate those charges which could not be resolved through voluntary means. EEOC's district offices refer all charges which do not result in successful conciliation to the litigation centers for possible litigation. If the case is selected for litigation, some of the same personnel practices and policies of the employer investigated by the district offices are subject to additional analysis by the litigation center. The duplication of investigatory work performed by the district offices occurs, to some extent.

EEOC officials indicated that charges selected for litigation frequently require additional investigative effort because the evidence obtained by the district office is insufficient to support litigation, or the evidence is out of date.

Litigation was taken against 3 of the 16 contractors in Pennsylvania whose case files we examined. Our analysis showed that these contractors underwent additional evaluation by the litigation centers, some of which overlapped the district offices' investigations. For example, in one case, both the EEOC district office and the litigation center analyzed the employer's wages paid to and the utilization of women in certain job categories.

Recently, EEOC's Chair revised the charge-processing procedures to more closely integrate the investigative and litigative functions. EEOC is presently implementing the concept in several field offices in which EEOC investigators and attorneys--located in the same office--work together on charges. A uniform standard is applied to determine if sufficient evidence exists to proceed with conciliation and

litigation. Under this new concept, the overlap between district office and litigation center functions should be minimized.

PROBLEMS WITHIN THE CONTRACT COMPLIANCE PROGRAM

The Department of Labor's policy of assigning compliance agencies responsibility for contractors based on standard industrial classification codes is intended to assure that contractor facilities are usually responsible to only one agency. In responding to our questionnaire, only about 8 percent of the contractors evaluated under the title VII and contract compliance programs indicated that there was overlapping evaluation activity within the contract compliance program. Some contractors perceived overlapping evaluation activity under circumstances which we do not consider to be overlapping. For example, followup evaluations or visits by an agency were sometimes viewed as duplicating the agency's initial review. Also, some contractors believed there was overlapping review activity because different compliance officers performed reviews.

On balance, we do not believe that the problem of overlap within the contract compliance program is significant insofar as individual contractor facilities are concerned.

However, contractors having a number of different locations and involved in several industries may be subject to evaluations by several compliance agencies or different regional offices of the same compliance agency. Eighteen corporations, ranging in size between 2,300 and 400,000 employees, became aware of our review through the questionnaire and voluntarily provided corporate-wide data which reiterated some of the problems between the title VII and contract compliance programs discussed beginning on page 8. In addition, these contractors also cited instances of conflict and inconsistencies within the contract compliance program. The following are some examples.

A corporation with 2,700 employees stated:

> "The burden to the company by the application of different 'requirements' by different or the same compliance agencies and their personnel is tremendous * * * this is especially frustrating because the company realizes that during the next review, there is a high probability that the 'rules' will be changed again."

- - - -

A corporation with 11,500 employees stated:

"* * * different agencies have developed different forms. Approach and emphasis vary with [compliance offices] * * * [We] Have been assigned six compliance agencies, two (GSA and HEW) have not done a compliance review. The others (ERDA, [DOD], Interior, and Veterans Administration) vary a great deal in their approach."

- - - -

A corporation with 7,200 employees stated:

"Affirmative Action Plan Formats--rather than one standardized format for the plans at each of our major facilities, we have three as a result of different requirements between and within compliance agencies."

- - - -

A corporation with 11,500 employees stated:

"Interpretations of [Labor's regulation] were different at each division office of GSA around the country. What was acceptable at one office would frequently be unacceptable at another."

- - - -

A corporation with 23,000 employees stated:

"Within the same agency, different regions will require different forms and format in AAP preparation. ERDA finds underutilization if you have less percent minorities and females in a job group than in the population. [DOD] relates company percent to percent minority/female in surrounding labor force with requisite skills."

In announcing Reorganization Plan No. 1 of 1978, the President stated that on October 1, 1978, he will issue an Executive order to consolidate the contract compliance program within Labor. (See app. IV.) Labor stated this consolidation will obviate the problems between compliance agencies noted by our review.

CHAPTER 3

EFFORTS TO COORDINATE OR CONSOLIDATE THE GOVERNMENT'S MAJOR EQUAL EMPLOYMENT PROGRAMS

The similarities between the objectives and jurisdictions of the title VII and contract compliance programs have been a matter of concern for some time, and efforts to coordinate or consolidate the programs have been unsuccessful. EEOC and Labor have recognized the need to resolve the coordination problems and have entered into memorandums of understanding designed to improve the operations of the two programs. In 1972 the Congress established the Equal Employment Opportunity Coordinating Council in an attempt to provide a means of coordinating the various Federal equal employment opportunity programs.

Several congressional proposals to consolidate the two programs have been considered and rejected. In several reports, the U.S. Commission on Civil Rights has urged that all Government equal employment opportunity programs be merged. Representatives of minorities and women's special interest groups indicated to us that they believed some reorganization was necessary, but had differing views on the needed changes. Although the responses of contractors indicated dissatisfaction with the present situation, no consensus of contractor support for any reorganization alternatives was reached.

COORDINATION MEMORANDUMS NOT FULLY IMPLEMENTED

A memorandum of understanding between EEOC and Labor was entered into in May 1970. The memorandum's purpose was to (1) reduce duplication of compliance activities, (2) facilitate the exchange of information, and (3) establish procedures for processing discrimination cases against Federal contractors. A second memorandum was entered into in September 1974 and was intended to

--maximize effort;

--promote efficiency; and

--eliminate conflict, competition, duplication, and inconsistency among the operations, functions, and jurisdictions of the title VII and contract compliance programs.

A former director of Labor's Office of Federal Contract Compliance Programs informed us that the memorandum was intended to avoid duplication in the two programs and to "rationalize two programs which basically run on parallel tracks."

Prior GAO reports have indicated that the two memorandums of understanding had not been effectively implemented. In our report entitled "The Equal Employment Opportunity Commission Has Made Limited Progress In Eliminating Employment Discrimination" (HRD-76-147, Sept. 28, 1976), we reported that EEOC had failed to effectively implement the 1974 memorandum of understanding because

--program information apparently was not exchanged,

--investigative activity was not effectively coordinated,

--efforts to develop mutually compatible investigative and compliance procedures had met with little success, and

--periodic reviews of the implementation of the memorandum had been minimal.

Also, in an earlier report ("The Equal Employment Opportunity Program for Federal Nonconstruction Contractors Can Be Improved," MWD-75-63, Apr. 29, 1975), we stated that the 1970 memorandum of understanding had not been fully implemented and that coordination between the Department of Labor, the compliance agencies, and EEOC had not been adequate.

Our current work in California, Illinois, and Pennsylvania showed that the 1974 memorandum of understanding is still not being fully implemented. For example, the memorandum provides that EEOC and the compliance agencies will exchange compliance review and charge data and conduct joint agency meetings. However, our review showed that data is rarely exchanged as required by the memorandum, and joint agency meetings are infrequent and unproductive. Most coordination of evaluation activities is primarily informal. In San Francisco, agency officials believed that coordination attempts were too time consuming, considering the limited time available to perform complaint investigations and compliance reviews. Furthermore, some staff did not coordinate because they believed the data was not useful. For example, EEOC staff believed compliance agency files were too broad and numbers oriented to be useful for individual charge investigations. Compliance agency staff believed that EEOC files were too narrow in scope to be useful.

We noted that one reason the data and information exchange provisions of the memorandum had not been fully implemented was that employers had filed suits challenging the legality of the exchange. As a result, the implementation of the exchange provisions of the memorandum had been deferred in some instances pending outcome of the suits.

There was little coordination between EEOC and the compliance agencies for the 37 contractors whose case files we analyzed in the three States. For example, the memorandum of understanding requires that prior to the investigation or review of any facility, the appropriate investigative or compliance officials of EEOC, Labor, or the compliance agencies shall notify each other of their pending activity. In Illinois, the compliance agency staffs contacted EEOC staffs for only 4 of the 25 compliance reviews conducted of the 12 contractors whose case files we analyzed. In California, EEOC staff did not contact compliance agency staffs before investigating any of the charges against the nine contractors whose case files we analyzed. In Pennsylvania, compliance agency staffs contacted EEOC staff in only 10 of 33 compliance reviews conducted at the 16 contractors whose case files we analyzed. In those situations where contacts did occur, the contacts generally consisted of the compliance agency noting the number of charges against the contractor or EEOC noting the number of evaluations and whether the contractor was in compliance. In our opinion, these limited contacts were not adequate to avoid overlapping review or investigative activity.

There were also coordination problems between agencies administering the contract compliance program. Labor assigns the administration of this program to a number of compliance agencies, and it is responsible for providing policy guidance to and supervision of those agencies. However, our prior reviews showed that management problems often arise due to this division of responsibility and authority. Compliance agency officials told us that policy guidance from Labor was often untimely and incomplete, and we found that compliance agencies often did not follow Labor's guidance when it was provided. Compliance agencies and Labor often blame each other for program deficiencies.

COORDINATING COUNCIL INEFFECTIVE

In 1972 the Congress established the Equal Employment Opportunity Coordinating Council, composed of representatives of the Departments of Labor and Justice, EEOC, the Civil Service Commission, and the U.S. Commission on Civil Rights. The Council is responsible for developing and implementing

agreements, policies, and practices to maximize effort, promote efficiency, and eliminate conflict, competition, duplication, and inconsistency among those Federal agencies responsible for equal employment opportunity programs.

We inquired into the Council's activities and found that it has been unable to accomplish its statutory purpose because its members cannot reach a consensus on major policy issues, and the Council has no authority for making majority positions of the Council binding on all member agencies. For example, the main effort of the Council has been the development of equal employment guidelines on employee testing and selection procedures. The guidelines were issued in November 1976 and were adopted by the Departments of Labor and Justice, and the Civil Service Commission. However, EEOC has refused to adopt the guidelines and has retained its own guidelines.

Significant areas of disagreement between the two guidelines concern (1) criteria for determining whether a test or selection device has an adverse impact on minorities and women and (2) acceptable methods of validating a test or selection device, i.e., determining whether a test or selection device is an accurate measure of future job performance. EEOC perceives that the guidelines adopted by the other agencies will significantly weaken its ability to enforce title VII, whereas other Council members perceive EEOC's guidelines to be unrealistic and costly operating standards which employers cannot meet. Consequently, many employers are now subject to two different Federal guidelines on employee testing and selection.

The Council members are presently attempting to resolve the differences between the two sets of guidelines, and on December 30, 1977, the Civil Service Commission, EEOC, and the Departments of Justice and Labor proposed adoption of uniform guidelines on employee selection procedures.

In our report entitled "Problems with Federal Equal Employment Opportunity Guidelines on Employee Selection Procedures Need to be Resolved" (FPCD-77-54, Feb. 2, 1978), we stated that the Council set out in 1973 to develop and adopt uniform guidelines for determining the proper use of tests and other selection procedures consistent with the equal employment opportunity requirements of Federal law. However after 5 years, this work was still not completed. We attributed this lack of progress to disagreements among member agencies of the Council and the inability of the Council to compel member agencies to change their policies and guidelines. We recommended that the President direct the Council to

--establish a means by which member agencies can agree upon and put into practice consistent equal employment opportunity policies and procedures without unreasonable and lengthy delays and

--adopt and use uniform guidelines on employee selection procedures.

PROPOSALS FOR CONSOLIDATION

After the adoption of Executive Order 11246 and title VII of the Civil Rights Act, Federal contractors were required to comply with the requirements of two Federal equal employment programs. During the past several years, proposals have been made to consolidate the title VII and the contract compliance programs. The following is a brief summary of some of the proposals.

Legislative proposals

During the 91st Congress, Senate bill 2453 was reported to the Senate by the Committee on Labor and Public Welfare. The bill originally provided for the transfer of the contract compliance program to EEOC. However, this section was deleted from the bill during Committee deliberations and was not reported to the Senate as part of the bill. The Committee report stated that it was pursuaded that such a transfer would overburden EEOC and that placing all EEOC functions in a single agency was not appropriate at that time.

During the 92d Congress, Senate bill 2515 was reported by the Senate Committee on Labor and Public Welfare. The bill contained a provision to transfer the contract compliance program to EEOC. However, during Senate debate on Senate bill 2515, an amendment was adopted to delete that provision of the bill.

Also during the 92d Congress, the House Committee on Education and Labor reported out House bill 1746, a bill which was ultimately enacted as the Equal Employment Opportunity Act of 1972. The bill as reported originally included a provision to transfer the contract compliance program to EEOC. The House Committee report stated:

1. Jurisdictional overlap between the contract compliance program and EEOC has contributed to confusion and duplication.

2. Efforts to coordinate the overlapping legal jurisdictions have not been effective.

3. Two reports of the U.S. Commission on Civil Rights have recommended the transfer.

Dissenting views in the Committee report included the following reasons for opposing the transfer:

1. The contract compliance program made progress in achieving the Executive order's goal.

2. The transfer would create a hiatus in the administration of the contract compliance program and additionally burden an already overburdened EEOC.

3. The administration of the programs would be unworkable because EEOC would be assuming a dual role of contract compliance and complaint processing of employment discrimination.

When House bill 1746 reached the House floor, it was amended so as not to broaden EEOC's jurisdiction or transfer the contract compliance program to EEOC.

During the 95th Congress, House bill 3504 was referred jointly to the House Committees on Education and Labor and the Judiciary. The bill proposes to

--transfer Labor's authority for administering Executive Order 11246 to EEOC,

--reorganize EEOC,

--eliminate the present EEOC Office of the General Counsel,

--designate a chief executive officer with authority to direct EEOC's administrative and enforcement activities, and

--authorize EEOC to issue cease and desist orders.

Hearings on House bill 3504 were held in May 1978, but no further action has been taken.

Other proposals

The U.S. Commission on Civil Rights has issued several reports which recommended the consolidation of the title VII and contract compliance programs. In July 1975, the Commission proposed that a new antidiscrimination authority, the National Employment Rights Board, be established to replace the contract compliance program and EEOC as well as several other equal employment opportunity programs. The Commission's report concluded that although some progress has been made, the Federal civil rights effort

--has been fundamentally inadequate,

--suffers from a lack of overall leadership and direction,

--is characterized by diffused responsibility among a number of agencies,

--functions with inconsistent policies and standards, and

--has failed to develop strong compliance programs.

In recommending the establishment of a new authority, the Commission stated that the basic elements of fairness and efficiency would be best served by one enforcement agency applying one standard of compliance.

The Commission on Federal Paperwork stated that its mandate was to examine Federal paperwork within the given framework in which programs operated without challenging the basic programs. However, in the case of equal employment programs, the Commission found it virtually impossible to comply with this mandate and recommended that the President and the Congress reorganize equal employment responsibilities to strengthen compliance and streamline procedures. In its April 1977 report, the Commission stated that the existing complex of agencies and philosophies has resulted in

--confusion for employers,

--an emphasis on paper and processes rather than results,

--inconsistent standards for performance,

--a lack of coordination or central direction,

--inadequate program evaluations,

--weak program management, and

--poor training of equal employment personnel.

Opinions of contractors and special interest groups

Contractors' responses to the questionnaire and interviews with representatives of special interest groups indicated general dissatisfaction with the Government's efforts to promote equal employment opportunity through the title VII and contract compliance programs. Opinions of contractors and special interest group representatives varied on ways in which the Government's equal employment efforts could be improved.

Our nationwide questionnaire requested contractors to provide data on the degree of support or opposition for a number of possible options for reorganizing the Government's equal employment programs. The following chart depicts the views on a percentage basis of the contractors who experienced evaluations under both the title VII and contract compliance programs. (See app. III, table 8.)

Contractors' Opinions on Organizing the Government's EEO Programs

Options	Percentage		
	Oppose	Neither oppose or support	Support
1. Present Federal and State/local agencies	78.7	12.2	9.1
2. Present Federal but no State/local agencies	52.2	19.0	28.8
3. Contract compliance and State/local agencies (only)	63.8	18.3	17.9
4. EEOC and State/local agencies (only)	65.3	18.0	16.7
5. A new Federal agency and State/local agencies	67.0	16.7	16.3
6. Contract compliance agencies (only)	41.1	24.7	34.2
7. EEOC (only)	58.8	21.5	19.7
8. A new Federal agency (only)	48.1	19.5	32.4
9. State/local (only)	55.5	20.1	24.4

Contractors generally did not favor any of the options. Option 1 was the most strongly opposed, while options 6 and 8 had the least opposition. These results indicate that although contractors were generally dissatisfied with the present situation, there was not a consensus of support for any option. Narrative comments were provided by 142 contractors. Some contractors expressed confusion concerning the existing situation and offered suggestions on organizing the Government's equal employment programs. A sample of these comments follow:

"We do not feel any of the present agencies/methods really cause us to work toward our goals * * *. We know what needs to be done and what our moral as well as legal obligations are, and the current review processes do not assist us in achieving this end * * *."

- - - -

"A newly-created Federal agency responsible for all equal employment areas and with deferral status to State and local agencies would relieve most of the duplication of effort and inconsistencies which the present multi-agency set-up creates."

- - - -

"We don't need any more agencies. I am strongly opposed to enlarging to more agencies. The ones we have now are not solving the problems. Why create more ineptitude."

- - - -

"This contractor strongly opposes the creation of a new Federal agency and discontinuation of all others. Correcting the negative aspects of the present Federal agencies and State/local agencies would appear to be more productive and more economically feasible."

- - - -

"Present situation counterproductive. So much time and effort required to placate what each particular agency is showering with attention at one time, i.e. sex discrimination, handicapped workers, economically deprived, veterans, etc., that little funds or energies are left for meaningful equal employment opportunity work."

Several women's and minorities' special interest groups were contacted including:

1. AFL-CIO Civil Rights Department.

2. Congressional Black Caucus.

3. Leadership Conference on Civil Rights.

4. National Association for the Advancement of Colored People.

5. National Council of La Raza (represents Hispanics).

6. National Organization of Women.

7. National Urban League.

Representatives of women's and minorities' special interest groups were in general agreement that the present situation is not working effectively. Most believed that the Government's civil rights programs should be reorganized. The following are proposals of several of these groups.

In January 1977, the Leadership Conference on Civil Rights prepared a position paper on measures to reorganize and strengthen the Federal equal employment effort. The Conference, a coalition of 135 labor, liberal, religious, civic, and civil rights organizations, proposed that:

--Labor's responsibilities under Executive Order 11246 and the supervision of compliance agencies be transferred to EEOC.

--The Equal Employment Opportunity Coordinating Council be abolished.

--EEOC be provided with cease and desist authority.

--EEOC's relationsnip's with State/local fair employment practice agencies be improved.

The Congressional Black Caucus proposed that Federal equal employment efforts be consolidated within EEOC but only after EEOC's management problems are resolved. The Caucus believed that changes were needed to regain the confidence of minorities and employers in the ability of the Government to deal effectively and fairly with employment discrimination.

The National Organization of Women proposed that the contract compliance program be operated by EEOC after it has demonstrated the capability to manage it.

1978 CIVIL RIGHTS REORGANIZATION

On February 23, 1978, the President approved Reorganization Plan No. 1 of 1978, which will transfer some equal employment programs and functions from other Government agencies to EEOC. Included are the Civil Service Commission's administration of nondiscrimination and affirmative action requirements in Federal employment, and Labor's administration of the Equal Pay Act and the Age Discrimination in Employment Act. The Reorganization Plan will also abolish the Equal Employment Opportunity Coordinating Council and transfer its functions to EEOC.

The President also announced that on October 1, 1978, he will issue an Executive order to consolidate the contract compliance program by shifting the compliance agencies' functions and positions to Labor. The Reorganization Plan does not provide for consolidation of the contract compliance and title VII programs, but in announcement, the President stated:

> "By 1981, after I have had an opportunity to review the manner in which both the EEOC and the Labor Department are exercising their new responsibilities, I will determine whether further action is appropriate."

(See app. IV for the complete White House Fact Sheet describing Reorganization Plan No. 1 of 1978.)

CHAPTER 4

CONCLUSIONS AND RECOMMENDATION

CONCLUSIONS

Studies by us and others have indicated that over the years, the Government's equal employment opportunity programs have made limited progress in improving the economic status of minorities and women and that serious problems exist in the administration and enforcement of the title VII and contract compliance programs. Although the title VII and contract compliance programs have similar objectives and dual jurisdiction over many of the same employers, the programs use different approaches and have failed to coordinate their activities in evaluating the equal employment opportunity status of these employers. Both programs have concentrated evaluation efforts on many of the same Federal contractors, while the equal employment opportunity posture of many other Federal contractors and private employers remains undetermined.

Overlapping evaluations have resulted since both programs analyzed some of the same employment areas. Contractors cited problems because of the duplicate reporting and paperwork requirements imposed by both programs. In some cases, EEOC and the compliance agencies imposed the same remedies on contractors and in other cases, the findings were different and remedies were inconsistent.

Neither contractors nor representatives of special interest groups were satisfied with the present situation. Many contractors expressed confusion in complying with the equal employment opportunity requirements of two Federal programs. Representatives of special interest groups pointed to the need for reorganization of the Government's civil rights programs. Past efforts to coordinate or consolidate the two programs have been unsuccessful.

In our opinion, consolidation of the title VII and contract compliance programs into a single program has the most potential for eliminating overlap and duplication and offering a consistent Federal equal employment opportunity policy and program. Consolidation could be accomplished by making the contract compliance program a part of the title VII program or vice versa, or by establishing a new program or agency. We believe that the underlying cause of many of the problems between the title VII and contract compliance programs is the division of responsibility between EEOC and Labor and that the Government's overall experience indicates that these programs should be consolidated within a single agency.

Consolidation, in and of itself, may not resolve all of the problems of duplication, overlap, and inconsistency which have been noted in the two programs by us and others. For example, consolidation would not necessarily resolve the problems within the title VII program, such as the relationships between EEOC and State and local agencies discussed on page 22. Also, consolidation would not eliminate the repetitive evaluation of contractors necessary to resolve individual charges of alleged discrimination. Nevertheless, we believe that the predominant problems of overlap and inconsistency are those occurring between the title VII and contract compliance programs' evaluation of systemic or class issues. Consolidation of the two programs would, for the first time, create within the Government a single focal point of management which would have the responsibility and authority to administer a uniform and consistent equal employment opportunity program.

RECOMMENDATION TO THE CONGRESS

We recommend that the Congress consolidate the title VII and contract compliance programs.

CHAPTER 5

AGENCY COMMENTS

EEOC COMMENTS

EEOC agreed with the general thrust of this report and said that to ultimately overcome the problems of coordinating the title VII and contract compliance efforts, every component of Federal equal employment enforcement should be consolidated in a single agency. (See app. V.) EEOC stated that it strongly believed that such a consolidation must be in an agency whose sole mission is to enforce equal employment laws and regulations. EEOC also referred to reforms implemented pursuant to Reorganization Plan No. 1 of 1978 and to other recent or planned improvements in program administration, and expressed the view that these reforms would help in resolving the problems of inconsistency and duplication discussed in this report. Recent or planned reforms cited by EEOC include:

--Establishment of greater uniformity in the methodologies of investigating systemic discrimination charges and the conduct of contract compliance reviews.

--Implementation of the new rapid charge-processing system and backlog charge-processing system to limit investigation to the individual charge rather than expanding to class charges, whenever possible.

--Adoption of combined reporting requirements so that employers need submit only one report acceptable to EEOC and Labor.

--Proposed guidelines on remedial and/or affirmative action under title VII as a step toward unifying remedies and reducing the incidence of conflicting remedies.

--Approved standards for selecting employers for systemic inquiries. Wherever feasible, EEOC and Labor will coordinate and divide investigation and compliance review responsibility.

--Planned integration of State and local fair employment practice agencies' referral systems with EEOC's new rapid charge-processing system.

LABOR COMMENTS AND OUR ANALYSIS

Labor's comment

In commenting on this report (see app. VI), Labor referred to Reorganization Plan No. 1 of 1978 and the President's stated intention of determining by 1981 whether further action is appropriate concerning EEOC's and Labor's responsibilities. Labor said the interval between 1978 and 1981 was needed so that Labor and EEOC could restructure and improve administration of their programs and develop a more sophisticated dialogue regarding any subsequent steps to achieve a unified, coherent Federal structure to combat job discrimination.

Our analysis

We realize that in any major reorganization of Government programs, there is an interval during which restructuring and change occurs. We believe the title VII and contract compliance programs should be consolidated and it is likely that such a consolidation will result in restructuring and change. In our opinion, the interval between 1978 and 1981 could be better utilized for the restructuring and change associated with a consolidation of the title VII and contract compliance programs.

Most of the problems between the title VII and contract compliance programs described in this report are attributable to the division of management responsibility between two agencies. Until the two programs are consolidated, we believe this inherent problem will continue to handicap the effectiveness of the Government's equal employment opportunity efforts.

Labor's comment

Labor said the contract compliance program had certain distinctive advantages over other Federal equal employment programs which might be lost or greatly reduced if the title VII and contract compliance programs are consolidated. The advantages cited by Labor include the following:

--Unlike EEOC, the contract compliance program has authority to initiate compliance investigations independently of discrimination charges.

--The primary focus of the compliance review process is on systemic or class-wide employment problems which affect greater numbers of persons than complaint or charge-oriented procedures.

--The contract compliance program can and does impose higher standards on Government contractors than title VII imposes on employers generally, and the contract compliance program is not bound by the restrictions found in some equal employment laws.

--The contract compliance program is enforced primarily through administrative hearings rather than through cumbersome and time-consuming judicial proceedings.

Our analysis

We agree that the contract compliance program has some advantages over the title VII program. However, it should be noted that EEOC has authority to undertake enforcement activities independent of discrimination charges. This authority is contained in section 707 of title VII, which authorizes the initiation of pattern and practice investigations of employers suspected of discrimination.

Labor's comment indicates it believes that if the title VII and contract compliance programs are consolidated, the advantages of the contract compliance program would be minimized or eliminated, and the consolidated agency would operate primarily on the basis of title VII authority. We believe that in consolidating the two programs, the best features of each program should be retained. We also believe that the higher standards for Government contractors could and should be retained under any consolidation.

Labor's comment

Labor said our report did not adequately describe how contractors included in our study were selected.

Our analysis

We revised appendix III to describe in greater detail the sampling techniques used to select contractors included in our study.

APPENDIX I

PRIOR GAO REPORTS ON TITLE VII AND CONTRACT COMPLIANCE PROGRAMS CONCERNING EQUAL EMPLOYMENT OPPORTUNITY IN THE PRIVATE SECTOR

1. "The Equal Employment Opportunity Program for Federal Nonconstruction Contractors Can Be Improved" (MWD-75-63, Apr. 29, 1975).

2. "More Assurances Needed That Colleges and Universities With Government Contracts Provide Equal Employment Opportunity" (MWD-75-72, Aug. 25, 1975).

3. "The Federal Equal Employment Program for Northeast Oklahoma Construction Projects is Weak" (MWD-76-86, May 28, 1976).

4. "More Action Needed to Insure That Financial Institutions Provide Equal Employment Opportunity," (MWD-76-95, June 24, 1976).

5. "The Equal Employment Opportunity Commission Has Made Limited Progress in Eliminating Employment Discrimination" (HRD-76-147, Sept. 28, 1976).

APPENDIX II

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
COMMITTEE ON EDUCATION AND LABOR
SUBCOMMITTEE ON EQUAL OPPORTUNITIES
619 HOUSE OFFICE BUILDING ANNEX
WASHINGTON, D.C. 20515

October 20, 1976

Honorable Elmer B. Staats
Comptroller General of the United States
General Accounting Office
441 G Street, N.W.
Washington, D. C. 20548

Dear Mr. Staats:

Your staff recently briefed the Subcommittee staff on its survey of the problems in Pennsylvania associated with the duplicative and overlapping enforcement of equal employment opportunity requirements by the Equal Employment Opportunity Commission and Labor's Office of Federal Contract Compliance Programs. I requested that this survey be made to inquire in greater depth into the recommendation by the Civil Rights Commission that all of the Government's EEO programs be consolidated into a single "super" agency.

The survey results as reported by your staff indicate that there are serious problems between EEOC and OFCCP in the development of a coordinated approach to enforcing the Government's EEO requirements. Our Subcommittee plans to decide what legislative recommendations it should make during the next Congress, and to assist us in this effort, I would like for your office to make a more detailed study of this issue on a nationwide basis and report your findings and recommendations by August of next year.

Sincerely,

Augustus F. Hawkins
Chairman

AFH:sgc

TECHNICAL ASPECTS OF NATIONWIDE QUESTIONNAIRE SURVEY OF FEDERAL CONTRACTORS

SAMPLE SELECTION

Three contract compliance agencies--DOD, ERDA, and GSA--perform about 80 percent of all compliance evaluations of supply and service contractors. Labor provided us with lists of contractors evaluated by each of these agencies in fiscal year 1976. We used statistical sampling techniques to take a stratified random sample from each of the agency lists.

We used a statistical sampling formula and applied the following criteria:

--Size of the universe, i.e., the number of compliance reviews performed by each agency.

--An expected 38-percent rate of overlapping evaluations between the title VII and contract compliance programs. The expected 38-percent rate was based on preliminary work by our office in Pennsylvania.

--A 95-percent confidence level.

--A plus or minus 5-percent acceptable sampling error rate.

Based on the formula and above criteria, we computed the sample size for each agency. By dividing the universe by the sample size for each agency, we computed the necessary sampling intervals. Using random numbers, we selected a starting point from each agency's universe and based on the sampling interval, completed the selection of the sample.

Questionnaires were mailed to all Federal contractors in our sample, and about 75 percent returned useable responses. These contractors were located in 46 States and the District of Columbia, and represented a wide range of industries including manufacturing, retail merchandising, electrical and electronic machinery equipment, primary metals, and chemicals. They ranged in size from 3 to 22,500 employees and had an average of 753 employees.

PURPOSE OF QUESTIONNAIRE SURVEY

A primary objective of our questionnaire survey was to obtain information on the number of Federal contractors that underwent equal employment evaluations by the title VII and contract compliance programs. Contractors were requested to provide information relative to the type and nature of evaluations performed under both programs for the period 1974 through 1976. Contractors were also given the opportunity to provide opinions and recommendations on the Government's equal employment programs.

The following tables present summarizations and projections of various information obtained from our questionnaire survey.

Table 1

Random Samples of Federal Supply and Service Contractors Evaluated by DOD, ERDA, and GSA Contract Compliance Agencies During Fiscal Year 1976

	DOD	ERDA	GSA	Total
1. Universe	6,723	676	678	8,077
2. Random sample mailed questionnaires	335	225	226	786
3. Returned:				
3A. Useable	247	163	177	588
3B. Percent (3A ÷ 2) x 100	73.7	72.5	78.3	74.7
4A. Not useable (undeliverable, declined to participate, out of business, etc.)	35	14	15	64
Percent (4A ÷ 2) x 100	10.5	6.2	6.6	9.1
5A. Not returned:	53	48	34	135
Percent (5A ÷ 2) x 100	15.8	21.3	15.1	17.2
6A. Adjusted universe (by compliance agency) (3B x 1) (note a)	4,957	490	531	-
6B. Total adjusted universe (sum of 6A)	-	-	-	5,978

a/Estimates from questionnaire survey are based on universe figures adjusted to reflect the percentage of useable responses.

Table 2

Estimate of Federal Supply and Service Contractors Evaluated Under Both Contract Compliance and Title VII Programs During 1974 Through 1976

		DOD	ERDA	GSA	Total
1.	Adjusted universe (see table 1)	4,957	490	531	5,978
2.	Useable responses (see table 1)	247	163	177	587
3.	Sample contractors also evaluated by title VII program:				
3A.	Number	129	71	71	271
3B.	Percent (3A ÷ 2) x 100	52.2	43.6	40.1	-

Estimate of Contractors Evaluated Under Both Contract Compliance and Title VII Programs

4A.	By compliance agency (3B x 1)	2,589	213	213	-
4B.	Total (sum of 4A)	-	-	-	3,015
	Percent (4B ÷ 1 Total) x 100	-	-	-	50.4

Table 3A

Estimate of Federal Supply and Service Contractors That Experienced Overlapping Evaluations Under The Two Programs During 1974 Through 1976

	DOD	ERDA	GSA	Total
1. Estimate of total contractors evaluated under both contract compliance and title VII programs (see table 2)	2,589	213	213	3,015
2. Sample contractors evaluated under both contract compliance and title VII programs (see table 2)	129	71	71	271
Contractors That Experienced Overlap				
3A. Sample contractors by compliance agency	65	26	37	128
3B. Percent (3A ÷ 2) x 100	50.4	35.6	52.1	-
Estimate of Total Contractors:				
4A. By compliance agency (3B x 1)	1,305	78	111	-
4B. Total (sum of 4A)	-	-	-	1,494
4C. Percent (4B ÷ 1 Total) x 100	-	-	-	49.6

Table 3B

Manner in Which Overlap Occurred for Contractors Evaluated Under Both Programs During 1974 Through 1976

	DOD	ERDA	GSA	Total
1. Estimate of total contractors that experienced overlap (see table 3A)	1,305	78	111	1,494
2. Sample contractors that experienced overlap (see table 3A)	65	26	37	128
Manner in Which Overlap Occured				
For Sample Contractors:				
3. Between compliance agency and EEOC only	26	11	9	-
3A. Percent (3 ÷ 2) x 100	40.0	42.3	24.3	-
4. Between compliance agency and State/local agency only	15	8	13	-
4A. Percent (4 ÷ 2) x 100	23.1	30.7	35.1	-
5. Between compliance agency and both EEOC and State/local agency	24	7	15	-
5A. Percent (5 ÷ 2) x 100	36.9	26.9	40.5	-
Estimate of Total Contractors:				
6A. Between compliance agency and EEOC only				
By compliance agency (3A x 1)	522	33	27	-
6B. Total (sum of 6A)	-	-	-	582
7A. Between compliance agency and State/local agency only				
By compliance agency (4A x 11)	301	24	39	-
7B. Total (sum of 7A)	-	-	-	364
8A. Between compliance agency and both EEOC and State/local agency				
By compliance agency (5A x 1)	482	21	45	-
8B. Total (sum of 8A)	-	-	-	548
9. TOTAL (sum of 6A + 7A + 8A)	-	-	-	1,494

Table 4

Estimate of Contractors That Experienced Paperwork and Reporting Duplication Because of the Two Programs (1974 Through 1976)

	DOD	ERDA	GSA	Total
1. Estimate of total contractors evaluated under both contract compliance and title VII programs (see table 2)	2,589	213	213	3,015
2. Sample contractors evaluated under both contract compliance and title VII programs (see table 2)	129	71	71	271
Paperwork and Reporting Duplication Because of Requirements Imposed by the Two Programs				
Sample contractors that had duplication from a moderate to a very large extent				
3A. By compliance agency	79	39	39	157
3B. Percent (3A - 2) x 100	61.2	54.9	54.9	-
Estimate of Contractors That Had Duplication From a Moderate To Very Large Extent:				
4A. By compliance agency (3B x 1)	1,586	117	117	-
4B. TOTAL (sum of 4A)	-	-	-	1,820
4C. Percent (4B - 1 Total) x 100	-	-	-	60.4

Table 5

Estimates of the Same, Similar, or Different Remedies Required by Both Programs

	DOD	ERDA	GSA	Total
1. Estimate of total contractors evaluated under both contract compliance and title VII programs (see table 2)	2,589	213	213	3,015
2. Sample contractors evaluated under both contract compliance and title VII programs (see table 2)	129	71	71	271
Commitments Made to Provide Remedial Relief as a Result of EEOC Investigations				
3A. Sample contractors by compliance agency	31	20	12	63
Percent (3A ÷ 2) x 100	24.0	28.2	16.9	-
Estimate of Total Contractors:				
4A. By compliance agency (3B x 1)	622	60	36	-
4B. Total (sum of 4A)	---	---	---	718
Percent (4B ÷ 1 Total) x 100	-	-	-	23.8
Relief Required by EEOC Included Commitments to Affirmative Action Goal and Timetables				
5A. Sample contractors by compliance agency	8	6	6	20
5B. Percent (5A ÷ 3A) x 100	25.8	30.0	50.0	-
6. Estimate of Total Contractors:				
6A. By compliance agency (5B x 4A)	160	18	18	-
6B. Total (sum of 6A)	---	---	---	196
EEOC Goals and Timetables Same as or Similar to Those In Affirmative Action Programs Required by Contract Compliance Agency				
7A. Sample contractors by compliance agency	3	3	5	11
7B. Percent (7A ÷ 5A) x 100	37.5	50.0	83.3	-
8. Estimate of Total Contractors:				
8A. By compliance agency (7B x 6A)	60	9	15	-
8B. Total (sum of 8A)	---	---	---	84
EEOC Goals and Timetables Different Than Those In Affirmative Action Programs Required By Contract Compliance Agency				
9A. Sample contractors by compliance agency	5	3	1	9
9B. Percent (9A ÷ 5A) x 100	62.5	50.0	16.7	-
10. Estimate of Total Contractors:				
10A. By compliance agency (9B x 6A)	100	9	3	-
10B. TOTAL (sum of 10A)	---	---	---	112

Table 6

Estimate of Contractors That Experienced Overlapping Evaluations Within the Title VII Program (1974 Through 1976)

		DOD	ERDA	GSA	Total
1.	Estimate of total contractors evaluated under both contract compliance and title VII programs (see table 2)	2,589	213	213	3,015
2.	Sample contractors evaluated under both contract compliance and title VII programs (see table 2)	129	71	71	271
	Sample Contractors Evaluated By Both EEOC and a State/Local Agency Within Title VII Program				
3A.	By compliance agency	56	34	26	116
3B.	Percent (3A ÷ 2) x 100	43.4	47.9	36.6	-
	Estimate of Total Contractors:				
4A.	By compliance agency (3B x 1)	1,124	102	78	-
4B.	Total (sum of 4A)	-	-	-	1,304
4C.	Percent (4B ÷ 1 Total) x 100	-	-	-	43.3
	Sample Contractors That Experience Overlap Between EEOC and A State/Local Agency Within Title VII Program				
5A.	By compliance agency	36	15	15	66
5B.	Percent (5A ÷ 3A) x 100	64.3	44.1	57.7	-
	Estimate of Total Contractors That Experienced Overlap Within Title VII Program:				
6A.	By compliance agency (5B x 4A)	723	45	45	-
6B.	Total (sum of 6A)	-	-	-	813
6C.	Percent (6B - 4B Total) x 100	-	-	-	62.3

Table 7

Projections of Original Random Sample

(95-Percent Confidence Level)

Table	Description	Universe estimate		Range based on sampling error at the 95-percent confidence level	
		Number	Percent	Number	Percent
1	Contractors evaluated under Title VII and Contract Compliance Programs	3,015	50.4	2,711 to 3,319	45.3 to 55.5
3A	Contractors experiencing overlapping evaluations	1,494	49.5	1,274 to 1,714	42.2 to 56.8
3B	Contractors experiencing overlap between compliance agency and EEOC only	582	38.9	430 to 734	28.7 to 49.1
3B	Contractors experiencing overlap between compliance agency and State/local agency only	364	24.4	233 to 495	15.6 to 33.2
3B	Contractors experiencing overlap between compliance agency and both EEOC and State/local agency	548	36.7	397 to 697	26.5 to 46.7
4	Contractors that experienced paperwork and reporting duplication	1,820	60.4	1,606 to 2,034	53.2 to 67.4
5	Contractors that made commitments to provide remedial relief as a result of EEOC investigations	718	23.8	530 to 906	17.6 to 30.0
5	Contractors where relief required by EEOC included commitments to affirmative action goals and timetables	196	27.4	103 to 291	14.3 to 40.5
5	Contractors where EEOC required goals and timetables similar to those required under Contract Compliance Program	84	42.8	31 to 137	15.8 to 69.8
5	Contractors where EEOC required goals and timetables different than those required under Contract Compliance Program	112	57.2	60 to 166	30.2 to 84.2
6	Contractors evaluated by both EEOC and a State/local agency within Title VII Program	1,304	43.3	1,086 to 1,522	36.0 to 50.4
6	Contractors experiencing overlap within Title VII Program	813	62.3	674 to 952	51.7 to 72.9

Table 8

Contractors' Opinions on Organizing the Government's EEO Programs

	Opposed		Neither opposed nor support		Support		Number of responses	Number of nonresponses or no basis to judge	Sample contractors evaluated both programs
	Number	Percent	Number	Percent	Number	Percent			
Options:									
1. Present Federal and State/local agencies	181	78.7	28	12.2	21	9.1	230	41	271
2. Present Federal but no State/local agencies	118	52.2	43	19.0	65	28.8	226	45	271
3. Contract compliance and State/local agencies	139	63.8	40	18.3	39	17.9	218	53	271
4. EEOC and State/local agencies	145	65.3	40	18.0	37	16.7	222	49	271
5. A new Federal agency and State/local agencies	140	67.0	35	16.7	34	16.3	209	62	271
6. Contract compliance agencies (only)	90	41.1	54	24.7	75	34.2	219	52	271
7. EEOC (only)	131	58.8	48	21.5	44	19.7	223	48	271
8. A new Federal agency (only)	101	48.1	41	19.5	68	32.4	210	61	271
9. State/local (only)	116	55.5	42	20.1	51	24.4	209	62	271

Note: Percentage computed based on responses to each specific option.

APPENDIX III

APPENDIX IV

FOR RELEASE AT 2:30 P.M. FEBRUARY 23, 1978

Office of the White House Press Secretary

THE WHITE HOUSE

FACT SHEET

The President sent Congress today a plan to reorganize the Federal Government's equal employment opportunity enforcement activities. The plan makes the Equal Employment Opportunity Commission the principal agency in fair employment enforcement. Together with other Presidential actions announced today, the plan consolidates equal employment opportunity programs and lays the foundation of a single, coherent federal structure to combat job discrimination in all its forms.

The reorganization plan is the third to be recommended by the President under special reorganization authority adopted by Congress in April 1977. Earlier plans have reorganized the Executive Office of the President and created a new International Communication Agency, combining the programs of the United States Information Agency and the State Department's educational and cultural affairs programs. Such reorganization plans go into effect automatically unless either House votes to disapprove them within 60 legislative days.

The equal employment plan sent to Congress today transfers to the Equal Employment Opportunity Commission several nondiscrimination responsibilities currently held by other governmental units. These authorities, which will be transferred on an incremental basis, include the following:

--to coordinate all federal equal employment programs, an authority currently held by the Equal Employment Opportunity Coordinating Council (to be implemented by July 1, 1978);

--to ensure equal employment opportunity for federal employees, now held by the U.S. Civil Service Commission (October 1, 1978);

--to enforce the Equal Pay Act and the Age Discrimination in Employment Act, now held by the Labor Department (July 1, 1979).

The President also announced today that he will issue an Executive Order consolidating responsibility for ensuring nondiscrimination compliance by federal contractors in the Labor Department's Office of Federal Contract Compliance Programs. The Labor Department currently shares this authority with eleven other governmental departments and agencies. Thi consolidation of "contract compliance" responsibility will take effect October 1, 1978. The President said he would review by 1981 all aspects of equal employment opportunity enforcement. His review, to encompass the Labor Department's performance as well as the EEOC's, will determine whether further changes are desirable.

(Note: Page [65 of this report] contains a chart illustrating current allocation of equal employment authority compared with proposed reorganization.)

Agencies and Programs Involved

The Federal Government has been involved directly in combating employment discrimination since 1940 when President Roosevelt issued the first Executive Order prohibiting discrimination by government agencies. Since that time the Congress, the courts and the Executive Branch have taken major steps to extend equal employment opportunity protection throughout the private and public sectors of the economy.

Adoption of each new nondiscrimination prohibition has brought with it a further dispersal of equal employment opportunity responsibility. This fragmentation of nondiscrimination authority among a number of federal agencies has meant confusion and erratic enforcement for employees, regulatory duplication and needless expense for employers.

Today there are almost 40 separate equal employment opportunity requirements which apply to employers in the private and public sectors. Eighteen different departments and agencies have responsibility for enforcing them:

--The Equal Employment Opportunity Commission (EEOC) was established by Title VII of the Civil Rights Act of 1964 to enforce a broad statutory prohibition against discrimination in employment on the basis of race, religion, sex or national origin. The EEOC investigates charges of discrimination and attempts to resolve by conciliation those in which discrimination appears to have occurred. Where conciliation fails, the EEOC may bring suit against private employers or unions.

--The Department of Labor carries out major equal employment responsibilities through its Office of Federal Contract Compliance Programs (OFCCP) and the Wage and Hour Division of the Employment Standards Administration.

The OFCCP has responsibility for enforcement of Executive Order 11246, which prohibits discrimination in employment on the basis of race, religion, sex or national origin, and requires affirmative action by government contractors.

While the Labor Department coordinates enforcement of the "contract compliance" program, it is administered by 11 other departments and agencies. These "compliance agencies" monitor the equal employment compliance of government contractors in designated industrial classifications by conducting pre-award surveys, reviews of affirmative action plans, complaint and routine investigations, and administrative actions to ensure compliance. The OFCCP prescribes the standards and procedures to be followed by compliance agencies and audits their performance. The OFCCP also is responsible for enforcement of statutes requiring government contractors to take affirmative action to employ and advance qualified handicapped individuals, disabled veterans and veterans of the Vietnam era.

Labor's Wage and Hour Division administers the Equal Pay Act of 1963 (EPA) and the Age Discrimination in Employment Act of 1967 (ADEA). The EPA prohibits employers subject to the Fair Labor Standards Act from paying unequal wages to men and women doing essentially the same work. The ADEA created a broad prohibition, similar to that in Title VII, against discrimination on the basis of age for those between the ages of 40 and 65.

--The Department of Justice is responsible for litigation against State and local governments under Title VII. The Department also represents the government in lawsuits to enforce prohibitions against discrimination by government contractors. The Attorney General is authorized, in addition, to file suit in "pattern or practice" cases under several other statutes prohibiting discrimination in federal grant programs.

APPENDIX IV

--The Civil Service Commission (CSC) enforces Title VII and all other nondiscrimination and affirmative action requirements in federal employment. The CSC rules on complaints filed by individuals and monitors affirmative action plans submitted annually by other federal agencies.

--The Equal Employment Opportunity Coordinating Council includes representatives from EEOC, Labor, Justice, CSC and the Civil Rights Commission. It is charged with coordinating the federal equal employment opportunity enforcement effort and with eliminating overlap and inconsistent standards.

--In addition to these major government units, other agencies enforce various equal employment opportunity requirements which apply to specific programs. The Department of Treasury, for example, administers the anti-discrimination prohibitions applicable to recipients of revenue-sharing funds.

Weaknesses of Present Organization

Scattered responsibility for equal employment opportunity enforcement has resulted in the following weaknesses:

--inconsistent compliance standards, investigative programs and paperwork requirements;

--multiple enforcement proceedings in different forums against the same employer;

--confusion among employees about how and where to seek redress;

--inadequate leadership, management and funding at some agencies;

--lack of accountability;

--conflicts between agency program objectives and their responsibility to enforce the civil rights laws.

Summary of Proposed Reorganization

By Reorganization Plan:

1. Abolish the Equal Employment Opportunity Coordinating Council and transfer its duties to the EEOC.

While the Equal Employment Opportunity Coordinating Council was established to eliminate conflict, competition, duplication and inconsistency among federal equal employment programs, these problems have grown worse during the past five years.

The reorganization plan abolishes the Council, which has no staff of its own, and transfers its authority to the EEOC on July 1, 1978. Transfer of the Council's responsibilities to the EEOC places the Commission at the center of equal employment opportunity enforcement. The responsibilities which the EEOC assumes include: the development of substantive equal employment standards applicable to the entire federal government, standardization of federal data collection procedures, creation of joint training programs, establishment of requirements to ensure that information is shared among the enforcement agencies, and development of government-wide complaint and compliance review methods.

The President announced today that when the reorganization plan is approved, he will issue an Executive Order providing for prior consultation by the EEOC with any agency affected by a Commission action. This order will establish a procedure for reviewing major disputed issues within the Executive Office of the President.

2. Transfer responsibility for ensuring equal employment opportunities for federal employees from the Civil Service Commission to the EEOC.

The Civil Service Commission is responsible for enforcing all nondiscrimination and affirmative action requirements in federal employment. Unlike private employees and employees of State and local governments, federal employees must look to their own agencies and to the Civil Service Commission for the vindication of their equal employment rights under Title VII of the Civil Rights Act.

The reorganization plan would transfer authority to ensure equal employment for federal employees to the EEOC on October 1, 1978. The plan would involve the transfer of approximately 100 positions and $6.5 million from the Civil Service Commission to the EEOC. The effect will be to establish for federal employees the same nondiscrimination protections as those afforded non-federal employees.

3. Transfer of responsibility for enforcing the Equal Pay Act and Age Discrimination in Employment Act from the Labor Department to the Equal Employment Opportunity Commission.

The Equal Pay Act of 1963 and the Age Discrimination in Employment Act of 1967 are currently administered by the Labor Department's Wage and Hour Division.

Sex discrimination prohibitions in the Equal Pay Act and the Civil Rights Act (Title VII) are essentially duplicative. While Title VII covers a broader range of discriminatory employment practices based on sex, virtually any violation of the Equal Pay Act also is a violation of the Civil Rights Act. A virtually complete overlap also exists in the coverage of employers, employment agencies and labor organizations between Title VII and the Age Discrimination Act.

Employees and job applicants are confused by this duplication. Also, employers are forced to deal with a number of federal agencies on similar matters, each agency having different standards, rules and procedures.

The reorganization plan transfers the Equal Pay Act enforcement responsibility to the EEOC effective July 1, 1979. The shift will transfer 198 positions and $5.3 million. The objective is to minimize overlap, better allocate resources, and centralize federal enforcement of sex discrimination prohibitions. It will provide the EEOC with additional enforcement powers to strengthen its efforts against sex discrimination in employment. The EEOC would be able to initiate reviews, for example, without first having to engage in prolonged negotiations.

The plan transfers the Age Discrimination in Employment Act enforcement responsibility to the EEOC effective July 1, 1979. This shift will result in the transfer of 119 positions and $3.5 million.

4. Clarify the Attorney General's authority to initiate "pattern or practice" suits under Title VII against State or local governments.

By Executive Order:

Amend Executive Order 11246 to terminate the authority of 11 government agencies currently responsible for ensuring compliance by federal contractors with its nondiscrimination prohibitions and to consolidate this authority in the Office of Contract Compliance Programs of the Labor Department.

Eleven government agencies are now vested with the responsibility to ensure compliance by federal contractors with Executive Order 11246. Issued by President Johnson in 1965, this order prohibits discrimination by government contractors on the basis of race, color, religion or national origin (sex discrimination was added in 1967 by Executive Order 11375.)

The President announced today he will issue an Executive Order amendment consolidating compliance authority in the Office of Federal Contract Compliance Programs on October 1, 1978. This consolidation will establish accountability and promote consistent standards, procedures, and reporting requirements. It would relieve many contractors of the burden of being subject to multiple agencies. (This shift will result in a transfer of 1,571 positions to the Department of Labor.)

APPENDIX IV

COMPARISON OF CURRENT AND PROPOSED ALLOCATION OF EQUAL EMPLOYMENT AUTHORITIES

CURRENT DISPERSED RESPONSIBILITY — EQUAL EMPLOYMENT AUTHORITIES — PROPOSED CONSOLIDATION

AGENCY	PROGRAM	DISCRIMINATION COVERED	EMPLOYERS COVERED
EEOC	TITLE VII	RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN	PRIVATE AND PUBLIC NON-FEDERAL EMPLOYERS AND UNIONS
LABOR (Wage and Hour)	EQUAL PAY ACT, AGE DISCRIMINATION ACT	SEX, AGE	PRIVATE AND PUBLIC NON-FEDERAL EMPLOYERS AND UNIONS
CIVIL SERVICE COMMISSION	TITLE VII, EXECUTIVE ORDER 11478, EQUAL PAY ACT, AGE DISCRIMINATION ACT, REHABILITATION ACT	RACE, COLOR RELIGION, SEX NATIONAL ORIGIN, AGE, HANDICAPPED	FEDERAL GOVERNMENT
EEOCC*	COORDINATION OF ALL FEDERAL EQUAL EMPLOYMENT PROGRAMS	.....	.....
LABOR (OFCCP)	VIETNAM VETERANS READJUSTMENT ACT, REHABILITATION ACT	VETERANS HANDICAPPED	FEDERAL CONTRACTORS
COMMERCE DEFENSE ENERGY EPA GSA HEW HUD INTERIOR SBA DOT TREASURY	EXECUTIVE ORDERS 11246, 11375	RACE, COLOR RELIGION, SEX, NATIONAL ORIGIN	FEDERAL CONTRACTORS
JUSTICE	TITLE VII, EXECUTIVE ORDER 11246, SELECTED FEDERAL GRANT PROGRAMS	RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN VARIED	PUBLIC NON-FEDERAL EMPLOYERS FEDERAL CONTRACTORS AND GRANTEES

AGENCY	TIMING
EEOC	
EEOC	JULY 1979 JULY 1979
EEOC	OCTOBER 1978
EEOC	JULY 1979
LABOR (OFCCP)	OCTOBER 1978
JUSTICE	NO CHANGE

* A number of Federal grant statutes include a provision barring employment discrimination by recipients based on a variety of grounds including race, color, sex, and national origin. Under the reorganization plan, the activities of these agencies will be coordinated by the EEOC.

APPENDIX V

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D. C. 20506

April 3, 1978

OFFICE OF THE CHAIR

Mr. Elmer Staats
Comptroller General of the
United States
Washington, D. C.

Dear Mr. Staats :

Your report on Federal Equal Employment Opportunity (EEO) promises to be a very valuable and timely assessment tool for remedying problems of overlapping responsibility in federal equal employment enforcement. I appreciate the opportunity to comment on it during the draft stage.

You have described well the most significant problems that have plagued the EEOC in the past. I particularly appreciate the recognition your report has given to the internal reforms we have designed to solve those problems that may be corrected unilaterally by this Commission.

Comments on Equal Employment Opportunity Programs for the Private Sector, attached to this letter, are keyed to specific subjects addressed in your draft report, which I hope you find useful in preparing your final report.

I agree with the general thrust of the report. Most of the problems you identify are inevitable consequences of the dispersion of federal responsibility for enforcing the many equal employment laws, regulations, executive orders and policies. It was this dispersion and accompanying duplication and confusion that prompted the President to submit to the Congress Reorganization Plan No. 1 of 1978. He announced at the same time his intention to revise Executive Order 11246 to consolidate all Contract Compliance units in the Office of Federal Contract Compliance, Department of Labor.

As you know, the Plan designates the EEOC as the principal federal equal employment enforcement agency. The clear lesson of reports such as yours, and that of the OMB Civil Rights Reorganization Task Force, is that a coherent federal job discrimination program requires focus in a single agency. Consolidation in one agency creates a focal point to which employers and individuals can look for standards, guidance and information. And with one agency responsible for an effective, cohesive federal program, accountability to the public and the Congress will be assured.

Thus, I agree with your conclusion that to ultimately overcome the problems of coordinating the contract compliance and Title VII efforts, every component of federal EEO enforcement should be in a single agency. We strongly believe that such consolidation must be in an agency whose sole mission is to enforce EEO laws and regulations. The model of an independent or quasi-independent commission to enforce all the equal opportunity laws of a jurisdiction has proven the only endurable model and is in fact used by virtually all the states and localities. Most professionals and human rights groups feel strongly that equal opportunity laws must be enforced by a commission free from everyday political entanglements rather than by a line agency. This point was reiterated time and again by the many groups questioned during the consultation period by the OMB Civil Rights Reorganization Task Force. Thus the OMB decided against recommending a single administration to replace this Commission and recommended instead that the Commission be the single-mission agency vehicle. The multi-mission Department of Labor, although highly capable, would not provide the essential single-mission focus. The President has indicated that he intends to review the operations of EEOC and OFCCP in 1980 to determine whether it is appropriate at that time to consolidate the contract compliance program and EEOC. I am confident that EEOC could have handled a consolidation at this time. However, a two-step process will assure time for improvement for both programs. I look forward to a close relationship with the OFCCP and Director Weldon Rougeau as we move toward a vastly improved equal employment opportunity effort.

In the meantime, the transfer of the responsibilities of the Equal Employment Opportunity Coordinating Council to the EEOC, scheduled under the President's Plan for July 1, 1978, will give us the means to tackle many of the problems of inconsistency and duplication which you identify in your report.

[See GAO note, p. 68.]

The organizational changes mentioned above will not, of course, as you note in the conclusion of your report, cure all the problems you identify. For example, they will barely reach the overlaps associated with State and Local FEP Agencies. EEOC is currently taking steps that will alleviate many of these problems and out internal reorganization and procedural reforms constitute significant steps toward such improvements. As we begin to exercise the new federal coordination role, I am sure we will continue to find ways to establish uniformity and eliminate overlapping burdens on employers.

APPENDIX V

I again wish to thank you for your very constructive criticisms and particularly for your official recognition of the changes we have made to deal with the problems you identify. All your studies and reports relating to EEOC have been very valuable to me and I look forward to your continued reviews and assistance.

Sincerely yours,

Eleanor H. Norton

Eleanor Holmes Norton

EHN/clb
Enclosure

GAO note: Deleted comments refer to material contained in the draft report which has been revised or not included in the final report.

APPENDIX V

COMMENTS
ON
GAO'S DRAFT REPORT ON
EQUAL EMPLOYMENT OPPORTUNITY PROGRAMS FOR THE PRIVATE SECTOR

CHAPTER 1

INTRODUCTION

[See GAO note, p. 68.]

Congress is now considering a request for an FY '78 supplemental which will enable us to implement our new charge processing systems nationwide and to take control of our backlog.

The supplemental increase of $13,950,000 for FY '78 will be used to establish 732 new positions and includes $6 million for State and local fair employment practices agencies. The supplemental funds would bring EEOC's total FY '78 budget to $91 million, and marks an unprecedented increase for EEOC that represents the President's determination to revitalize the government's lead equal employment agency. The support of the OMB and the President for this supplemental was based on the demonstrated progress of the Commission in improving the management and procedural operations of EEOC.

CHAPTER 2

OVERLAP AND INCONSISTENCY

1. Problems Between the Title VII and Contract Compliance Programs

a. Overlapping evaluations. I would agree generally with your assertion that employers' double and sometimes triple exposure to investigation is due to : 1) dual jurisdiction; 2) different approach and methodology of the contract compliance units as compared with the Title VII program and the activities of the State and local fair employment agencies; 3) the priority given to employers with large workforces by both Title VII and the contract compliance program.

With the assumption of the policy-making authority of the Equal Employment Opportunity Coordinating Council as proposed in the President's Reorganization Plan, the EEOC will be able to establish greater uniformity in the methodologies of investigating systemic discrimination charges and the conduct of contract compliance reviews, thus decreasing the need for overlapping investigation and duplicative reporting. This authority will be spelled out explicitly in an Executive Order.

Commission policy to limit investigation of individual charges to the individual harm rather than to expand to class charges is now being implemented in our new Rapid Charge Processing System and Backlog Charge Processing System. The result will be a decrease in overlap, which your report notes seldom occurs on an individual charge that is not expanded into a class investigation.

APPENDIX V

b. Paperwork and reporting problems. Your report identified as one of the most persistent problems the duplication experienced by employers who must comply with the two agencies' paperwork and reporting requirements.

We subscribe to the goal of limiting employers' compliance requirements, and intend to rely on AAP's and compliance progress reports established by the contract compliance program wherever possible. Where additional requirements arise from EEOC investigations, we will work for a combined reporting requirement so that the employer need submit only one report. At the most, the employer should have to submit only supplemental reports. I intend, over the next two years to work with the OFCCP to make common reporting requirements an operating reality.

In house, we are reviewing all six of our employment surveys for : necessity of data, frequency of data and duplication with other agencies. As an example, we have requested that the Office of Federal Statistical Policy and Standards, Department of Commerce, join with EEOC, the Department of Labor and the Veterans Administration to develop one form that will satisfy all of our requirements for data on apprentices and applicants for apprenticeship training.

The transfer of authority of the EEOCC will boost both of these efforts.

c. Remedies required by both programs. Your report states that many employers have been subjected to different and perhaps inconsistent remedies

imposed by EEOC and OFCCP. OFCCP remedies are oriented toward obtaining future opportunities for minorities and women through goals and timetables. EEOC remedies may include goals and timetables, but they are also often remedies for past discrimination, in the form of backpay or the requirement to discontinue discriminatory practices.

However, the real problem has not, at least in recent years, been policy differences between EEOC and OFCCP. The problem has been the barriers erected against uniformity at the operating level. Operating personnel have not been managed in a manner that ensured cooperating in carrying out the policies. As compliance units are consolidated in OFCCP in accordance with the President's plan to reorganize EEO programs, and as the EEOC reforms take full effect, we should see the policy agreement on standards become more prevalent in the practices at the operating levels of both programs.

The Commission's recently proposed Guidelines on Remedial and/or Affirmative Action Appropriate under Title VII (42 FR 64826 December 28, 1977) are a step toward unifying remedies. The proposed guidelines state that an employer who has reason to believe that he or she might be in violation of Title VII may rely on a valid affirmative action plan (such as

that complying with OFCCP regulations) without liability for any Title VII charges resulting from actions taken to implement the plan. We expect a reduction, under these guidelines, in the incidence of conflicting remedies.

2. Factors Contributing to Overlap and Inconsistency

a. Concentration on large contractors. You state that both EEOC and OFCCP tend to concentrate resources on companies with large workforces. The merit of such an approach is that it maximizes results, but it has the drawback of leaving undetermined the EEO posture of many other employers.

The Commission recently announced standards (see attachment) under which companies are to be selected for systemic inquiries. Size of the workforce is relevant of course, but other factors may be equally relevant — a company's workforce profile compared with similar employers, or the large number of job opportunities offered by high turnover rates or expansion.

When the Commission initiates a systemic action, our procedures will require checking with OFCCP and State and local FEPC's to take advantage of their reviews, and we will to the extent legally permissible utilize their data. As EEOC begins utilizing its "EEOCC" authority, investigation standards and remedies will become more uniform. The EEOC and OFCCP will, wherever it is feasible, also begin to coordinate and divide investigation and compliance review responsibility. This should alleviate further the burden of the overlapping "evaluations" you note in your report. However, as your report points out, there are fundamentally different objectives in the two programs which must be reconciled in each case before

a single "evaluation" can serve both programs. The best that can be achieved in some cases is that where different remedies are necessary they will at least be "complimentary" rather than "inconsistent".

3. Problems Within the Title VII Program

a. Reinvestigation of FEP resolutions. The problem you emphasize in this area is the overlapping evaluation of the contractor that occurs when EEOC reinvestigates charges already investigated by State and local fair employment practices agencies.

We have embarked on a plan to totally integrate the FEPC deferral system with our charge processing systems. EEOC's district offices are now reviewing resolutions from fair employment practices agencies (FEPC's) under the same standards that apply to the new EEOC charge processing procedures If a resolution is unacceptable, we will still re-investigate it. However, the new standards focus on a resolution of a charge of individual harm. Where in the past we frequently rejected FEPC resolutions simply because "like and related" or "class" issues were not treated, we now accept those solutions. This substantially increases the acceptance rate of FEPC resolutions. An improvement in the acceptance rate of FEPC resolutions is one of the goals of EEOC. We would hope to rapidly reach a point where only "spot checks" would be necessary to assure that the FEP agencies are applying agreed upon standards. District office officials can effect that goal through improved coordination and working relationships with FEPC's.

Improved coordination is expected to result from the work-sharing agreements now being negotiated with FEPC's. We now have work-sharing agreements with 42 of the 70 funded FEPC's, and we anticipate that double investigations can be totally avoided wherever there is a work-sharing agreement. Under a work-sharing agreement, agencies decide in advance what proportion of the joint inventory each will process. These agreements specifically define the categories of charges which go into making up each agency's share, categorizing by, for example, respondent or geographical area.

Finally, a FEP/EEOC Task Force is currently at work planning a nationwide, integrated charge processing partnership. Specific proposals to eliminate lack of communication, conflict and the absence of technical assistance will be made in the near future and after a process of review will be presented to a conference of FEP agencies.

An FEP questionnaire now awaiting GAO approval will provide the EEOC with data to use in the program planning that underlies our FEPC/EEOC partnership.

CHAPTER 3

EFFORTS TO COORDINATE OR CONSOLIDATE

1. Coordination Memorandums Not Fully Implemented

a. Your report states that the most recent, 1974, Memorandum of Understanding between EEOC and OFCCP still is not being fully implemented. It is true that the memorandum has not been implemented as fully as it

could be. To some extent implementation has been delayed pending court determinations in several jurisdictions. A suit to have the memorandum declared invalid (Reynolds Metal Company v. Brown) has reached the U.S. Supreme Court on a petition for certiorari filed by the respondent this Term. But operating problems are being cleared up, and we can soon count on the memorandum to eliminate some duplicatory data gathering. As the EEOC reforms become fully operational and as the EEOC Systemic Program is increasingly coordinated with the Contract Compliance Program and as the OFCCP absorbs the compliance units from the various agencies, the elimination of operating problems will accelerate. As this happens the memorandum of understanding will become valuable to both programs.

2. Coordinating Council has been ineffective.

a. Your report indicates that the Equal Employment Coordinating Council established in 1972 has not been effective. The report cites the Council's attempt to develop testing and selection guidelines as an example of the Council's inability to establish uniformity and eliminate conflicts.

[See GAO note, p. 68.]

I believe that the fundamental problem with the Council was that it attempted to accomplish action as a "corporate" body. Each agency was thus permitted to stake out its "turf" interest and, for many reasons found it appropriate to do so.

Immediately after assuming the chair at EEOC, I initiated action directly with the staff of each agency having a vital interest in the "Employee Selection Guidelines' . The approach was a "one-on-one" relation with each agency. No attempt was made to bring the "corporate" body of the Council into the process. Within 6 months this one-on-one approach achieved agreement on guidelines that had stymied the Council (as a corporate entity) for more than 3 years.

The four agencies have resolved their differences on the employee selection guidelines and in the fall of 1977 circulated a proposed set of uniform guidelines for comment. After further revisions, the proposed uniform guidelines were published in the Federal Register on December 30, 1977 for notice and comment. A joint public hearing will be held on April 10, 1978 to focus on the key issues identified by the comments received; a final set of uniform guidelines is to be issued soon after. EEOC believes that the areas of agreement between the agencies on guideline issues were substantially greater than the areas of disagreement.

The President's reorganization plan recognizes the flaw in the "Council" concept and assigns the coordinating role to EEOC. I intend to continue the approach used in the case of testing and selection guidelines and am confident that we can begin immediately to achieve the purposes for which the Council was created in 1972.

[See GAO note, p. 68.]

I agree with the President's Plan to transfer EEOCC functions to a single, unifying agency.

APPENDIX V

STANDARDS FOR SELECTION OF SUBJECTS FOR SYSTEMIC DISCRIMINATION PROCEEDINGS

On July 20, 1977, the Commission authorized the establishment of a program intended to address systemic practices of employers and others which discriminate against minorities and women. On September 21, 1977, the Commission authorized and directed the establishment of the Office of Systemic Programs in Headquarters.

The objectives of systemic proceedings shall be to eliminate discriminatory patterns and practices and assure that employment systems operate fairly; eliminate the effects of prior discrimination and obtain for members of the affected class the specific relief to which they are entitled under Title VII.

The Commission hereby approves the following standards for the selection of subjects for systemic inquiry. It shall be sufficient for the Commission to institute a systemic proceeding that a respondent meet one of the standards for selection. These standards are for internal guidance in the exercise of administrative discretion and do not create rights on the part of any person who may become a subject of a systemic proceeding, or any obligation on the part of the Commission to proceed against any particular person. These standards do not foreclose the Commission from instituting systemic proceedings

against any other employer or other persons subject to Title VII whose acts or practices are such that a systemic proceeding will effectuate the purposes of Title VII.

1. Employers or other persons subject to Title VII who continue in effect policies and practices which result in low utilization of available minorities and women despite the clear obligation in Title VII to fairly recruit, hire and promote such persons.
2. Employers or other persons subject to Title VII who employ available minorities and women at a substantially lower rate than other employers in the same labor market who employ persons with the same general level of skills.
3. Employers or other persons subject to Title VII who employ substantial numbers of minorities and women, but employ them at significantly lower rates in higher paid job categories.
4. Employers or other persons subject to Title VII who maintain specific recruitment, hiring, job assignment, promotion, discharge, and other policies and practices relating to the terms and conditions of employment that have an adverse impact on minorities and women, and are not justified by business necessity. Such

policies and practices may include, but are not limited to, those prohibited in Commission Guidelines on Sex Discrimination, 29 C.F.R. 1604; Religious Discrimination, 29 C.F.R. 1605; National Origin Discrimination, 29 C.F.R. 1606 and the Guidelines on Employee Selection Procedures, 29 C.F.R. 1607, and other guidelines as they may be adopted and amended from time to time.

5. Employers or others subject to Title VII whose employment practices have had the effect of restricting or excluding available minorities and women from significant employment opportunities, and who are likely to be used as models for other employers because of such factors as the number of their employees, their impact on the local economy, or their competitive position in the industry.

6. Employers (a) who because of expanding employment or significant turnover rates, even if the employer's workforce is stable or in retrenchment, are likely to have substantial numbers of employment opportunities, and (b) whose practices may not provide available minorities and women with fair access to these opportunities.

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

April 18, 1978

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

Dear Mr. Ahart:

We have reviewed the Draft Report of the Comptroller General of the United States entitled "The Government's Major Equal Employment Opportunity Programs for the Private Sector Should be Consolidated."

Our review revealed that there are significant areas in which the draft report can be improved to make a better contribution to the dialogue on these important questions. The enclosed comments are addressed to these questions, as well as some specific matters in the text.

Sincerely,

ALFRED M. ZUCK
Assistant Secretary for
Administration and Management

Enclosures

Comments on the
Report of the Comptroller General
of the United States - The
Government's Major Equal Employment
Opportunity Programs for the
Private Sector Should be Consolidated

Part I - Some Considerations Which Seem To Have Received Insufficient Weight

The reorganization of Federal equal employment opportunity programs to achieve a unified, coherent Federal structure to combat job discrimination in all its forms has been, and remains, a matter of very high priority to President Carter. On February 23, the President sent to the Congress Reorganization Plan No. 1, which represents his disposition of the issues raised in your report. Under the Plan he will issue an Executive Order on October 1, 1978, to consolidate the contract compliance program into the Department, and, by 1981, after he has had an opportunity to review the manner in which both the EEOC and the Labor Department are exercising their new responsibilities, he will determine whether further action is appropriate. A copy of his Plan is enclosed. See especially pages three and four.

The interval between 1978 and 1981 is vital to the needs of this Department and the EEOC to restructure their programs so they can effectively carry out the new responsibilities they acquire under this Plan, as well as improve the administration of the programs they formally acquired.

This period can also be used constructively to develop a more sophisticated dialogue regarding any subsequent steps to achieve a unified, coherent Federal structure to combat job discrimination. We believe that your final report would make a useful contribution toward this dialogue if it were to give more weight to some of the concepts expressed below. The dialogue would be further advanced if the arguments for and against consolidation are presented so as to encourage the independent judgement of the reader.

Our comments constitute, first, a statement of the distinctive advantages of the contract compliance program over other Federal equal employment programs, which might be lost or greatly reduced with the consolidation your draft report recommends. Although these important concepts were discussed in substantial detail

in the Preliminary Report on the Revitalization of the Federal Contract Compliance Program, published by this Department in September, 1977, we think insufficient attention to them has been given in your draft report. Second, we set forth below responses to some of the arguments advanced in your draft report regarding the potential consolidation offers to avoid duplication, conflict, and apparent inconsistency between the administration of Title VII and the Executive Order.

Distinctive Advantages of the Contract Compliance Program

Three features distinguish the contract compliance program from other Federal EEO programs. First, unlike the Equal Employment Opportunity Commission (EEOC), which also has jurisdiction over private employers, the Executive Order Program has the authority to initiate compliance investigations independently of discrimination charges. By not relying principally on complaints or other evidence of potential discrimination to initiate compliance and enforcement activities, OFCCP concentrates investigative and enforcement resources on those employers who -- because of size, location, vacancy rate, higher paying jobs, patterns of employment of minorities and women and related factors -- are in a position to make the greatest impact on the employment problems of minorities and women.

The compliance review process has an added advantage over complaint or charge-oriented procedures in that its primary focus is on systemic or class-wide employment problems which affect greater numbers of persons. Too frequently, complaint or charge-initiated investigations focus on problems which affect individuals, although substantially the same level of investigative resources is expended in these pursuits as in investigations of alleged systemic abuses.

The Executive Order contract compliance program is perceived as having primarily a prospective orientation, rather than serving a remedial purpose as significant as that under Title VII. In actuality, the obligations of an employer covered by Executive Order 11246 are contractual and, therefore, not greatly constrained in terms of their remedial reach, whether retrospective or prospective. The Executive Order can and does demand a higher standard of Government contractors than Title VII imposes on employers generally. 1/

1/ Contractors Ass'n of Eastern Pa. v. Secretary of Labor, 442 F. 2nd 159 (3rd Cir. 1971), Cert. denied 404 U.S. 854

It should also be noted that the legal principles developed under equal employment opportunity laws generally are often used by OFCCP in enforcing the Executive Order. The principles include procedural matters (e.g., theories of burden or proof) as well as substantive matters (e.g., factual patterns or practices which constitute discrimination). At the same time, the Executive Order Program is not bound by the restrictions found in some of those equal employment laws.

Second, the contract compliance program imposes on Federal contractors an affirmative action duty which is more extensive in impact than the obligations to refrain from employment discrimination or to remedy discrimination uncovered by "pattern and practice" investigations. Under regulations issued pursuant to Executive Order 11246 that have been in effect since 1971, Federal contractors must: identify and correct problems of systemic discrimination; evaluate levels and patterns of employment of minorities and women; establish goals and timetables to achieve prompt and full employment procedures which prevent future discrimination.

The affirmative action obligations attach a degree of sustained self administration to the equal employment requirements of the Executive Order. The goals and timetables element of the obligations operates independently of a finding of discrimination. Although a finding of discrimination is necessary to enforce remedies for affected class and related forms of systemic discrimination, the preliminary determination may be arrived at from prescribed data and information maintained by the contractor for self analysis and self correction purposes. This facilitates a more efficient and effective use of compliance staff and budgetary resources. Further, the affirmative action goals and timetables requirement, if effectively administered, leads inevitably toward a reasonable degree of parity in jobs and income. Maximum attainable progress toward that result is a principal criterion for determining violations.

A third major advantage inherent in the Executive Order Program is that its requirements are enforced primarily through administrative hearings rather than through judicial proceedings. Under administrative proceedings, decisions are arrived at rather promptly and efficiently while the judicial process tends to entail costly, time-consuming (often, multi-year) litigation. An added advantage of the Order's compliance process is that violations which do not raise serious and legitimate questions of law or fact are enforceable outside the context of formal proceedings through the Government's ability to require corrective action as a condition of contract awards.

Duplication, Conflict and Apparent Inconsistency

Duplication, conflict and apparent inconsistency between the Executive Order Program and the EEOC occurs in compliance reviews, compliance investigations, and settlements involving the same contractor/respondent, and in guidelines and regulations. However, as we will show below, these problems are inherent in the program differences and would not be eliminated by consolidation.

The fact that EEOC receives, on an average, some 65,000 charges per year and maintains a backlog of approximately 128,000 charges virtually assures a pending Title VII action against a great many contractors scheduled for a compliance review under Executive Order No. 11246. For reasons of greater payoff, a compliance review focuses on the general scope of an employer's employment system and the impact of that system of minorities and women as classes rather than on individual issues of apparent discrimination. However, EEOC's mandate under Title VII is to investigate and seek disposition of charges of discrimination. According to the Civil Rights Commission's estimate, 65 percent of such charges allege individual or nonsystemic discriminatory practices. Of those which run to systemic issues, an apparent smaller percentage deal with employers' total employment systems. This difference in scope inevitably leads toward inconsistent or conflicting compliance determinations and settlements in that, by virtue of an individual act of discrimination, an employer may be in violation of Title VII, although his system of practices on the whole may not have a disparate effect on minorities and women. Conversely, a differential impact may be corrected through conciliation. Thus the apparent inconsistency does not derive from the separateness of the Executive Order and Title VII programs, but from the fact that employment discrimination is produced by both systemic and nonsystemic practices. Additionally, a settlement which corrects one deficiency does not necessarily resolve the other. This condition prevails whether the settlement is entered into between the employer and EEOC or, between the employer and the Executive Order agency. For example, a conciliation agreement to remedy a systemic violation concluded by EEOC does not purport to resolve pending or future nonsystemic grievances which may even cover the same practice, e.g., hiring, job assignment, promotion, etc. This fact is further illustrated by EEOC's and Labor's operations involving the AT&T settlement, which was arrived at through consolidated efforts under Title VII, the Executive Order, and the Equal Pay Act. Although the settlement covered

virtually every aspect of AT&A's employment system (including recruitment, hiring, job assignment, transfer, promotion and compensation), the pending individual charges were scheduled for subsequent investigation and involved the assignment of the equivalent of 31 investigators for this purpose. In addition, the number of charges of discrimination increased significantly after the settlement.

Further, an apparent inconsistency or contradiction which leads to the bewilderment of client groups and charging parties flows from a more fundamental problem inherent in Title VII's requirements for investigation, conciliation, and litigation. Title VII requires conciliation when investigative findings disclose facts, evidence, or circumstances which give rise to a "reasonable cause to believe" that a charge is true. 1/ If the Commission is unable to conciliate a charge, it may either bring a civil action itself against the respondent, or give notice to the charging party that he/she may bring such action. 2/ However, the standard required for the successful prosecution of lawsuits by the litigation arm of the Commission is that the facts, evidence, and circumstances which support the finding be sufficiently persuasive to "convince the court" that the charge is true. It is for this reason that a substantial proportion of the charges which fail conciliation are rejected for litigation due to inadequate evidence. Although the deficiency is inherent in the legislation, the Commission's Office of the General Counsel has viewed this also as a human problem:

> I believe there is a difference, a human nature difference, in finding reasonable cause when you don't have to go to Federal court and finding reasonable cause when you have to go to Federal court if you can't resolve the matter. 3/

Unlike the Department of Labor, which, in administering the Equal Pay Act, remands a proportion of such cases for further investigation in an attempt to make them more suitable for litigation, EEOC pursues the option in Section 706 (f)(i) of issuing a "right to sue" notice to the charging party who must seek redress on his or her own behalf.

1/ Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000 et seq.) Section 706 (b).
2/ Ibid, Section 705 (f)(1).
3/ Staff Report, p. 35, citing testimony of EEOC General Counsel William Carey before the Subcommittee on Equal Opportunities, September 1974.

APPENDIX VI

> . . . litigation centers do not return charges for further investigation. They may suggest the type of evidence which would be useful in future investigation of the same respondent. 1/

The obvious contradiction or confusion occurs when the charging party, often without means for private litigation or, being unsuccessful in persuading an attorney to take the case, learns that an Executive Order agency has determined the employer to be in compliance on the basis of an acceptable affirmative action compliance program or conciliation agreement. Charging parties and client groups simply fail to understand how one arm of the Government has determined an employer to be in violation while another finds the same employer in compliance with its equal employment obligations. Yet the same apparent contradiction would exist under a consolidated program.

Another form of inconsistency between the two programs occurs in compliance reviews, investigations and settlements involving affected class and related forms of systemic discrimination. An Executive Order compliance review may often fail to ferret out a systemic problem, while a subsequent and duplicate Title VII investigation may uncover such a violation (or vice versa). The inevitable result is a conflicting compliance determination. This problem stems from the failure of EEOC, Justice, and OFCCP to develop standards of investigation, proof and remedy for their own individual guidance as well as for the purpose of assuring interchangable compliance decisions on issues for which EEOC law is largely settled.

The final area in which inconsistency occurs is between certain of EEO's guidelines and OFCCP's regulations and orders. While EEOC's guidelines are given deference to the extent that they ". . . constitute a body of experience and informed judgement to which courts and litigators may properly resort to for guidance",

1/ The Federal Enforcement Effort--1974, p. 517 citing a letter from EEOC Chairman, Lowell Perry, to John A. Buggs, Staff Director, U.S. Commission on Civil Rights, June 6, 1976.

they do not have the force and effect of law. 1/ Consequently, on "frontier" issues, OFCCP must await successful litigation of EEOC's guidelines prior to incorporating them in its regulations and orders for enforcement purposes. 2/ This would also hold true if the two organizations are merged.

II. Some Specific Problems With the Text of the Draft Report

1. Problems with Compliance Agencies

GAO quite properly noted many of the problems stemming from compliance agency overlap and inconsistent interpretation of regulations from agency to agency. We feel that the consolidation of the compliance agencies into the Department of Labor will obviate these problems, and moves to accomplish that objective have already commenced with the President's Reorganization Message of February 23, 1978.

[See GAO note, p. 89.]

1/ Gilbert vs. General Electric, 45 LW 4035 (1976) citing Skidmore v. Swift and Co., 323 U.S. 134, 140 (1944).

2/ The U.S. Commission on Civil Rights has expressed a contrary view. In its Civil Rights Enforcement Effort--1974, p. 665, the Commission recommended: "OFCCP should adopt the Guidelines on Sex Discrimination of the Equal Employment Opportunity Commission." In Gilbert v. General Electric, however, the U.S. Supreme Court overturned a provision of those guidelines which would require that employer policies guaranteeing benefits to other temporary disabilities be extended to pregnancy as a temporary disability.

[See GAO note.]

4. GAO's Research Approach

Beginning on page 11 and continuing throughout the report there is a discussion of data gathered from a random sample of contractors, which clearly provided critically important evidence to support the draft report. Appendix III provides some information on the sample selection and the purpose of a nationwide questionnaire survey of Federal contractors conducted in the preparation of this report. The draft report, however, does not provide sufficient explanations of the research approach to allow for an independent assessment of the usefulness of this evidence. [See GAO note.] In addition, there was no explanation of how the adequacy of the sample size was determined.

[See GAO note.]

GAO note: Deleted comments refer to material contained in the draft report which has been revised or not included in the final report.

APPENDIX VII

U.S. GENERAL ACCOUNTING OFFICE

REVIEW OF E.E.O. AGENCIES DUPLICATION OF EFFORT: SURVEY OF CONTRACTOR FACILITIES

INSTRUCTIONS

The General Accounting Office is an independent establishment responsible to the Congress for reviewing and reporting on the programs and activities of Federal departments and agencies. This questionnaire is intended to provide an opportunity for employers to comment on their experiences and problems in complying with Equal Employment Opportunity (EEO) regulations issued by different Federal agencies and State/local agencies. Consider State/local agencies to include Fair Employment Practice Commissions, Human Rights Commissions, etc. We are concerned with programs administered by the Equal Employment Opportunity Commission, The Department of Labor, and its compliance agencies, which enforce non-discrimination based on race, sex, color, creed, and national origin. Specifically, we want to (1) identify employers who were reviewed/investigated by more than one EEO agency and (2) assess the added burdens which may or may not result from different agencies reviewing the same contractor facility. The questionnaire is an important part of our review. The survey results will be analyzed and reported to the Congress along with the other findings in our review.

This questionnaire is designed to be answered by the director of personnel, the EEO officer, or other officials responsible for the contractor facility's Equal Employment Opportunity practices.

This questionnaire will take approximately 45 minutes to complete. In answering, you certainly may seek assistance or consensus from key staff or assistants on certain matters as you wish.

Government records indicate that your contractor facility location underwent a Federal Contract Compliance Review. In completing this questionnaire please answer only for the business activity that was subject to this review. Your business activity might be an office, manufacturing activity, function or service, a warehouse, or central administrative office, etc., at this contractor facility location.

Be assured that your responses will be treated with the strictest of confidence. The information you provide will be used only to research and evaluate the Equal Employment Opportunity Programs, and not to make determinations about individual people or contractor facilities. Your name and the name of your company will not appear in the report to be based on this study. In fact, access to the addressee information will be limited to the few people responsible for verifying the data base. Furthermore, once verified (in about a month or two), all addressee and other identifying information will be disassociated from your responses. Since no identifiable records will be maintained, no one will be able to tell how you or anyone else responded, no matter what the reason. Your responses will be forever anonymous.

Please enclose your completed questionnaire in the self-addressed envelope and return it within seven days after receiving this questionnaire. We are most grateful for your cooperation, for we cannot make a meaningful report to the U.S. Congress without your assistance and participation.

A. CONTRACTOR FACILITY INFORMATION

1. Name(s)_____ Phone_____
(of person(s) completing form)

Position Title(s)_____

2. Name_____
(of contractor facility)

Mailing Address_____

_____
City State Zip Code

APPENDIX VII

THIS PAGE IS
INTENTIONALLY BLANK
(so that the front page and all identifying information
can be detached from the questionnaire)

GAO note: After this questionnaire was designed, it was decided to exclude contractors reviewed by the Department of the Interior from our study because Interior did not have regional offices located in any of the three States covered by our review.

APPENDIX VII

3. What was the total number of employees on the payroll for this Contractor Facility Location for the dates listed below? *(Write the numbers in the spaces provided.)*

1) As of 31 December 1974	
2) As of 31 December 1975	
3) As of 31 December 1976	

B. EXTENT OF REVIEW/INVESTIGATION

In the next two questions, we want to determine whether you have been reviewed/investigated for Equal Employment Opportunity compliance by any of the four Office of Federal Contract Compliance Program (OFCCP) agencies listed below [Defense Contract Administrative Services Region (DCASR), General Services Administration (GSA), Energy Research and Development Administration (ERDA), Department of the Interior (Interior)] and by the Equal Employment Opportunity Commission (EEOC) or State/local agencies.

4. Has your Contractor Facility been reviewed for equal employment opportunity compliance by any of the four agencies shown below, during the period 1-1-74 through 12-31-76? *(Check "yes" or "no" for each agency.)*

OFCCP Compliance Agency	Reviewed: Yes	Reviewed: No
1) Defense Contract Administrative Services Region (DCASR)		
2) General Services Administration (GSA)		
3) Energy Research and Development Administration (ERDA)		
4) Department of Interior (Interior)		

5. During the period 1-1-74 through 12-31-76, has your Contractor Facility been investigated as the result of a complaint or follow-up, by the Federal Equal Employment Opportunity Commission (EEOC) and/or any State/local agency? *(Check "yes" or "no".)*

1) ☐ Yes
2) ☐ No

If "yes" to any part of question 4 and "yes" to question 5, continue. Otherwise, STOP. Do not continue. Return the uncompleted form in the self-addressed envelope within 7 days after receiving the questionnaire.

6. For the period 1-1-74 through 12-31-76, estimate the number of times you were reviewed by DCASR, GSA, ERDA, or Interior. *(For each agency, write the number of times reviewed.)*

	Number of Times Reviewed: 1-1-74 to 12-31-74 (1)	1-1-75 to 12-31-75 (2)	1-1-76 to 12-31-76 (3)
1) DCASR			
2) GSA			
3) ERDA			
4) Interior			

7. For the same period 1-1-74 through 12-31-76, estimate the number of times you were investigated by EEOC or State or local agencies. *(For each agency, write the numbers in the spaces provided.)*

	Number of Times Investigated: 1-1-74 to 12-31-74 (1)	1-1-75 to 12-31-75 (2)	1-1-76 to 12-31-76 (3)
1) EEOC			
2) State/local agencies			

C. TECHNIQUES AND FOCUS

8. In general, what was the primary method of contact used by each of the agencies to review/investigate your facility? *(Check one for each agency.)*

OFCCP		On site visits (1)	Written inquiries (2)	Question-naires (3)	Telephone (4)
	1) DCASR				
	2) GSA				
	3) ERDA				
	4) Interior				
	5) EEOC				
	6) State/local				

9. Which of the following techniques have been used in reviewing/investigating your Contractor Facility by each of the agencies listed below? *(Check those appropriate for each agency.)*

Agencies	Techniques Used: Records review (1)	On-site observations (2)	Upper or middle management interviews (3)	Analysis of employee statistics (4)	Operating personnel interviews (5)	Interviews limited to those concerned with an incident (6)	Other _____ (7)
1) DCASR							
2) GSA							
3) ERDA							
4) Interior							
5) EEOC							
6) State/local agencies							

10. How often, if at all, was each of the following techniques used by agencies reviewing your facility? *(Check one box for each item.)*

Techniques	Rarely if ever (1)	Sometimes (2)	As often as not (3)	Generally (4)	Almost always or always (5)
1) Review of records					
2) On-site observations					
3) Upper or middle management interviews					
4) Analysis of employee statistics					
5) Operating personnel interviews					
6) Interviews limited to those concerned with an incident					
7) Other (specify) _____					

11. Consider the discrimination investigations conducted by: (1) the EEOC and (2) the State or local agencies during the three year period between 1 January 1974 and 31 December 1976. Which of the following best expresses the primary focus of these Equal Employment Opportunity (EEO) investigations? *(Check one box for each time period for each agency, for a total of six boxes.)*

Primary Focus of EEOC and State/Local Investigations	Agencies: EEOC 1-1-74 to 12-31-74 (1)	EEOC 1-1-75 to 12-31-75 (2)	EEOC 1-1-76 to 12-31-76 (3)	State/Local 1-1-74 to 12-31-74 (4)	State/Local 1-1-75 to 12-31-75 (5)	State/Local 1-1-76 to 12-31-76 (6)
1) Resolving the individual charge						
2) Expanding beyond the individual charge into other EEO matters						
3) Expanding beyond the individual charge into a full-scale review of the facility's entire EEO posture						
4) Not applicable during the time period						
5) Other (Please specify)						

APPENDIX VII

D. OVERLAP IN REVIEW/INVESTIGATION

The following questions are directed toward identifying and determining the extent to which your facility was subjected to overlap in review/investigation by Federal or State/local employment opportunity agencies. Consider review/investigation for discrimination in areas such as the following: hiring, promotion, termination, compensation, testing, layoffs, transfers, and fringe benefits. Again, investigation would be by the EEOC and/or the State/local agency, and review would be by DCASR, GSA, ERDA, or Interior.

12. During the period 1-1-74 through 12-31-76, were there instances where essentially the same areas (hiring, etc.) reviewed or investigated by one agency were overlapped in subsequent investigations or reviews by another agency? *(Check one.)*

    1) ☐ Yes **(Continue.)**
    2) ☐ No **(Go to 15.)**

13. Consider the possibilities for overlapping review/investigation by the four compliance agencies, EEOC, and the State/local agencies, as listed below. How often did the following types of overlapping review/investigation occur? *(Check one for each possibility.)*

Investigation/Review Activity	Never (1)	Once (2)	Twice (3)	Three times (4)	More than three times (5)
1) EEOC and a compliance agency overlapped					
2) State/local agency and a compliance agency overlapped					
3) EEOC overlapped State/local agency					
4) Compliance agency overlapped, between agencies or within one agency					

Comments (15b):

14. Continue to consider the time period 1 January 1974 through 31 December 1976. To what extent, if at all, did you experience overlap in Equal Employment Opportunity areas such as hiring, promotion, termination, compensation, testing, layoffs, transfers, or fringe benefits? *(Check one for each area.)*

	1) To a very small extent	2) To a small extent	3) To a moderate extent	4) To a large extent	5) To a very large extent	6) Not applicable
1) Hiring						
2) Promotion						
3) Termination						
4) Compensation						
5) Testing						
6) Layoff						
7) Transfer						
8) Fringe benefits						
9) Other (specify)						

15a. During the period 1-1-74 to 12-31-76, to what extent, if at all, have any informational/paperwork requirements (such as EEO-1 forms, written Affirmative Action Plan (AAP), progress reports, workforce data, etc.) imposed by the different Equal Employment Opportunity agencies (EEOC, compliance agencies, and State/local agencies) been duplicative, and/or inconsistent, i.e., same basic data requested in different format by different EEO agencies? *(Check one.)*

1) ☐ Little or no extent
2) ☐ To a small extent
3) ☐ To a moderate extent
4) ☐ To a large extent
5) ☐ To a very large extent
6) ☐ Not applicable

15b. If you checked either to a "Large" or "Very Large" extent, please provide a brief but illustrative example, if possible. *(Write in the space below.)*

APPENDIX VII

16. To what extent, if at all, have the administrative, procedural, staff support, and other requirements imposed on you by the different Federal and State/local agencies been a burden? *(Check one box for each item.)*

Administrative or Procedural Requirements	1) Little or no extent	2) To a small extent	3) To a moderate extent	4) To a large extent	5) To a very large extent	6) Not applicable
1) Introduction and exit conference						
2) Top management interviews						
3) Requests for space and supplies						
4) Requests for technical and clerical services						
5) Other (specify)						

17. If you checked either to a "Large" or "Very Large extent," please provide a brief but illustrative example for each such check, if possible. *(Write in the space below.)*

18. Again, consider the time period 1-1-74 through 12-31-76, and your Affirmative Action Plan prepared for your compliance agency. Have you experienced a situation where EEOC or your State/local agencies have used data from your Affirmative Action Plan (AAP) to support the claim that discrimination has occurred? *(Check one.)*

1) ☐ Yes (Continue.)
2) ☐ No (Go to 20.)

19. If yes, please give a brief but illustrative example, if possible.

20. During this same period 1 January 1974 through 31 December 1976, did you reach any predetermination settlements or conciliation agreements with EEOC, or were consent decrees imposed on you by a court or in connection with an EEOC investigation? *(Check one.)*

1) ☐ Yes (Continue.)
2) ☐ No (Go to 23.)

21. Did any of the above EEOC settlements, agreements, or decrees impose requirements on the same EEO areas covered under your Affirmative Action Plan (AAP) prepared for your compliance agency? *(Check one.)*

1) ☐ Yes (Continue.)
2) ☐ No (Go to 23.)

22. Compare EEOC requirements and your Affirmative Action Plan prepared for your compliance agency with respect to meeting goals and timetables, and other requirements. Consider only the areas covered by both the EEOC requirements and the AAP.

1 Did EEOC require a commitment to goals and timetables? *(Check one.)*

1) ☐ Yes (Continue.)
2) ☐ No (Go to [3].)

2 If yes, were these EEOC commitments either more difficult, less difficult, or similar to those of your AAP? *(Check one.)*

1) ☐ Less difficult
2) ☐ Similar to
3) ☐ More difficult

3 To what extent, if at all, did EEOC require you to recommit yourself to the AAP? *(Check one.)*

1) ☐ No commitments required
2) ☐ A general commitment to the AAP
3) ☐ A recommitment to specific parts of the AAP
4) ☐ A recommitment to the entire AAP

4 Did EEOC require a commitment to other requirements that were in addition to those specified in your AAP? *(Check one.)*

1) ☐ Yes
2) ☐ No (Go to 23.)

If yes, please identify these requirements if possible, in the space below.

23. Consider whether there were instances where discrimination charges investigated by a State/local agency were re-investigated by the Federal EEOC. How often did reinvestigations occur, and were the findings similar or different? *(Check one box for each item.)*

	(1) Never	(2) Once	(3) More than once
1) Similar findings			
2) Different findings			
3) Both similar and different findings			

E. INCONSISTENCIES

24. To what extent, have you experienced (from 1 January 1974 through 31 December 1976), if at all, the inconsistencies described below? *(Check one box for each item.)*

	Little or no extent (1)	To a small extent (2)	To a moderate extent (3)	To a large extent (4)	To a very large extent (5)
1) Employment practices, e.g., hiring, compensation, separation, found to be unacceptable by EEOC or a State or local commission, even though a compliance agency had reviewed your employment practices, found you in compliance, and approved your Affirmative Action Program					
2) Other instances of employment practices acceptable to one agency but unacceptable to another					
3) Instances where employment practices, etc. acceptable to an agency in one region are unacceptable to the same agency in another region					
4) Instances where practices acceptable to one investigator/reviewer within an agency was unacceptable to another investigator/reviewer in the same agency?					
5) Lack of uniformity in data collection					
6. Lack of uniformity in forms, format, procedures					
7) Other (specify)					

25. Briefly describe the major inconsistencies in the items you checked as occurring to a "Large" or "Very Large" extent, if possible.

APPENDIX VII

26. When investigators or reviewers make a request that you feel is unreasonable, to what extent, if at all, have you been able to induce them to modify their position? *(Check one for each agency.)*

	1) To little or no extent	2) To some extent	3) To a moderate extent	4) To a great extent	5) To a very great extent
1) DCASR					
2) GSA					
3) ERDA					
4) Interior					
5) EEOC					
6) State/local					

F. ESTIMATE OF STAFF DAYS

In the following questions, we are interested in the number of staff days occasioned by reviews/investigations. We also want to know whether these staff days were spent on reviews/investigations that overlapped.

27. Estimate the number of staff days expended by your facility on equal employment opportunity reviews/investigations conducted between 1 January 1974 through 31 December 1976. *(Write the figure in the space provided.)*

_____ Staff days

28 Of these, estimate the percent expended in reviews/investigations that were overlapping. Estimate only for the second agency, that is, if agency A conducted a review, and agency B's investigation activity overlapped part of A's review effort, estimate time spent by your facility in connection with agency B's effort. *(Write the percentages in the space provided.)*

___ % Staff days in overlap activity

29. Now estimate the number of staff days expended by the various agency/commission personnel on-site in conducting reviews/investigations between 1 January 1974 through 31 December 1976. *(Write the figures in the space provided, or check "No basis to judge.")*

1) ___ Staff days

2) ☐ No basis to judge

30. Of these, estimate the percent expended in reviews/investigations that were overlapping. Again, estimate time spent by the second agency. *(Write the percentages in the space provided, or check "No basis to judge.")*

1) ___ % Staff days in overlap activity

2) ☐ No basis to judge

G. OTHER EEO PROGRAMS

31. The questions we have asked so far have dealt with two Government programs which cover discrimination against people on the basis of race, sex, creed, color, and national origin. The Government does have other programs that cover discrimination as applied to the handicapped, aged, veterans, Viet Nam veterans and programs that require equal pay for equal work. Has your facility experienced any overlap or inconsistencies in reviews or procedures or in requests for paperwork, data, Affirmative Action Plans, or other additional or unique efforts for these programs? *(Check "yes" or "no".)*

1 1) Yes (Continue.)

2) No (Go to 33.)

2 *(If "yes" indicate the area of program overlap by checking the appropriate matrix box.)*

	1) Reviews or procedures	2) Requests for paperwork	3) Requests for data	4) AAP's	5) Other (specify)
1) Handicapped					
2) Aged					
3) Veterans					
4) Viet Nam veterans					
5) Equal pay for equal work					

32. If possible, please provide illustrative examples of those situations you consider are very burdensome.

APPENDIX VII

H. AGENCIES AND AGENCY PERSONNEL

33. In the following questions, you are asked to evaluate the competency of the agency personnel who have reviewed/investigated your facility.

[1] In general, how adequate or inadequate were each of the agency representatives in each of the following areas? *(Indicate your answer by checking one box for each row and column.)*

	1) More than adequate	2) Adequate	3) Marginal	4) Inadequate	5) Very inadequate
1) Stays with facts or issues (as defined in relevant laws)					
2) Knows the laws that were relevant and appropriate					
3) Understands job analysis and job classification					
4) Understands how to review and/or investigate					
5) Understands your job structure, policies and procedures					

If you checked "marginal" or "inadequate" or "very inadequate," in any of the above, **continue. Otherwise,** go to [3].

[2] Which agencies provided marginal or inadequate performance? *(Check only those that apply.)*

	3) Marginal	4) Inadequate	5) Very inadequate
1) DCASR			
2) GSA			
3) ERDA			
4) Interior			
5) EEOC			
6) State/local			

[3] Regardless of the adequacies or inadequacies, how supportive and cooperative, or not, are the agency personnel with reviewing and investigating personnel from other agencies? *(Indicate your answer by checking one box for each row and column.)*

	1) Very supportive and cooperative	2) Supportive and cooperative	3) Marginally supportive and cooperative	4) Nonsupportive and uncooperative	5) Extremely uncooperative
1) DCASR					
2) GSA					
3) ERDA					
4) Interior					
5) EEOC					
6) State/local					

Be sure to turn page.

APPENDIX VII

34. The following are some possible alternatives for organizing equal employment opportunity reviews of your facility. Consider each, and indicate the degree to which you oppose or support the particular alternative. *(Check one box for each item.)*

	1) Strongly oppose	2) Generally oppose	3) Neither oppose nor support	4) Generally support	5) Strongly support	6) No basis to judge
1) Present situation with several Federal agencies and State/local agencies						
2) Present Federal agencies but no State/local compliance agencies						
3) Present OFCCP Agencies and State/local compliance agencies						
4) EEOC and the State/local agencies (only)						
5) A newly created Federal agency and State/local agencies						
6) Present OFCCP agencies (only)						
7) EEOC (only)						
8) A newly created Federal agency (only)						
9) State/local (only)						
10) Other (specify)						

35. If you checked "Strongly oppose" or "Strongly support" for any of the alternatives in question 34, please explain why you strongly oppose or support the particular alternative.

I. CONCLUSION

36. This questionnaire is being used to obtain data from many different kinds of contractor facilities throughout the country. It cannot provide information in the same depth as that obtained in a personal interview or through narrative responses. Therefore, if you feel that there are issues which need further clarification, please feel free to comment on them here or attach an additional sheet. Any further information you can give us will be greatly appreciated.