



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

23061

119718

RELEASED

HUMAN RESOURCES
DIVISION

B-208916

SEPTEMBER 17, 1982

The Honorable Orrin G. Hatch
Chairman, Committee on
Labor and Human Resources
United States Senate

Dear Mr. Chairman:


Subject: The Office of Federal Contract Compliance Programs'
Enforcement of Executive Order 11246 in Chicago
(GAO/HRD-82-119)

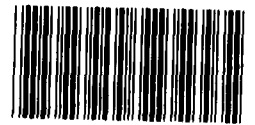
As requested in your October 29, 1981, letter, we reviewed several aspects of the Department of Labor's Office of Federal Contract Compliance Programs' (OFCCP's) enforcement of Executive Order 11246. According to your letter and information provided by your office, your primary concerns were (1) the Executive order's effectiveness in creating employment opportunities for women and minorities and (2) the way OFCCP conducted compliance reviews and resolved deficiencies found during the reviews. At your request, we focused on compliance reviews initiated by OFCCP in Labor's Chicago regional office in 1980.

In May 1982, we briefed members of the Committee staff on the results of our work. At their request we have summarized those results in the enclosure to this letter. As requested by your office, we did not obtain formal agency comments on our findings, but we did discuss them with agency officials. Their comments concerning changes they have made or are planning in their enforcement activities are discussed in the enclosure.

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

Sincerely yours,


Gregory J. Ahart
Director



119718

Enclosure

(209590)

523391

C o n t e n t s

	<u>Page</u>
ENCLOSURE	
I	THE OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS' ENFORCEMENT OF EXECUTIVE ORDER 11246 IN CHICAGO
	1
	OFCCP enforcement activities
	1
	Scope and methodology
	3
	Sample review data
	4
	Contractor responses
	5
	Program changes made or proposed
	6

ATTACHMENT

I	Comparison of employment profiles of employers covered by the order and employers not covered	8
II	Selected data obtained from OFCCP files and interviews concerning GAO sample reviews	11
III	Contractor responses to selected GAO questions about OFCCP compliance reviews	17
IV	Changes contractors suggested in OFCCP's enforcement of Executive Order 11246	22

ABBREVIATIONS

AAP	affirmative action plan
EEO	equal employment opportunity
EEOC	Equal Employment Opportunity Commission
EOS	equal opportunity specialist
GAO	General Accounting Office
OFCCP	Office of Federal Contract Compliance Programs

THE OFFICE OF FEDERAL CONTRACT COMPLIANCE
PROGRAMS' ENFORCEMENT OF EXECUTIVE
ORDER 11246 IN CHICAGO

The information we developed concerning the effectiveness of Executive Order 11246 and several aspects of its enforcement by the Office of Federal Contract Compliance Programs (OFCCP) is detailed in the attachments. The following sections provide background on OFCCP's enforcement policies and procedures, a description of our scope and methodology, highlights of the information contained in the attachments, and a summary of changes OFCCP is making in its enforcement of the order.

OFCCP ENFORCEMENT ACTIVITIES

The order prohibits Federal contractors from discriminating against employees based on their race, color, religion, sex, or national origin. It also requires employers with Federal contracts over \$10,000 to take affirmative action in hiring, training, and promoting qualified or qualifiable minorities and women. Before October 1978 OFCCP was responsible for directing and coordinating Federal agencies' contract compliance activities under the order. In that month the President consolidated responsibility for the contract compliance functions by transferring the agencies' compliance functions to OFCCP.

Although they were not specifically part of our review, OFCCP is also responsible for enforcing section 503 of the Rehabilitation Act of 1973 (29 U.S.C. 793) and section 402 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 2012). These sections require covered contractors to take affirmative action to employ the handicapped and Vietnam era and disabled veterans.

Regulations implementing the order specify contractors' non-discrimination and affirmative action obligations. These obligations differ for supply and service contractors and construction contractors. For example, supply and service contractors must prepare written affirmative action plans (AAPs) that include, among other things:

- An analysis of the availability of women and minorities for employment by the contractor, known as the 8-factor analysis.
- An analysis of areas where women and minorities are underutilized in relation to their availability.
- Contractor-established numerical goals and timetables to overcome any underutilization.

Construction contractors are not required to prepare written plans. Instead, they are required to implement 16 affirmative action steps that are specified in the regulations and to fully document such implementation. Also, numerical goals for construction contractors' employment of minorities and women are set by OFCCP, not by each contractor's analysis. Goals for minorities are established for geographic areas; a nationwide goal has been established for females.

Routinely scheduled compliance reviews are the primary mechanisms for determining whether Federal contractors and subcontractors are fulfilling their nondiscrimination and affirmative action obligations. OFCCP also receives employment discrimination complaints which it investigates or, in some circumstances, refers to the Equal Employment Opportunity Commission (EEOC) for investigation. OFCCP officials told us that in selecting contractors for compliance reviews they consider several factors, such as contractor size and the number of complaints filed. Also, in the past OFCCP "targeted" several industries for emphasis because they were thought to have special potential for improving opportunities for women and minorities. A goal was set for the number of contractors from each targeted industry to be reviewed by each regional office. This policy was discontinued in 1982.

Compliance reviews focus primarily on affirmative action obligations and may include obligations concerning veterans and handicapped persons, as well as obligations under the order. During a review, OFCCP compliance officers, called equal opportunity specialists (EOSs), assess the adequacy of the contractor's AAP and compare it with existing employment practices or, in the case of construction contractors, assess good faith efforts to implement the 16 required steps. OFCCP also often conducts preaward reviews designed to assess a contractor's ability to comply with the order before the contract is awarded.

A compliance review may result in a finding that the contractor is in compliance, with no apparent deficiencies, or in a finding of noncompliance. Where noncompliance is found, various conciliation and enforcement actions may be taken, depending on the nature of the deficiencies and the ability to conciliate a resolution. For relatively minor deficiencies, a contractor may be asked to execute a letter of commitment that specifies the deficiencies, the corrective actions to be taken, and the date the corrective actions will be completed. To settle more serious problems OFCCP prefers to enter into a conciliation agreement with the contractor. A conciliation agreement might include relief for victims of discrimination, such as backpay, seniority credit, or promotions, or affirmative action measures, such as training programs or special recruitment methods. When conciliation efforts fail, OFCCP may recommend that the Department of Labor's Office of the Solicitor initiate administrative enforcement action. Such action can ultimately result in canceling the contract and/or debarring the employer from obtaining future contracts.

OFCCP carries out its duties through a national office in Washington, D.C., 10 Labor regional offices, and 71 area offices in 63 cities.

SCOPE AND METHODOLOGY

At your request we focused on OFCCP compliance reviews initiated in Labor's Chicago regional office in 1980. We conducted our review at OFCCP's headquarters office, the Chicago regional office, and three area offices in the Chicago metropolitan area. The review was made in accordance with the Comptroller General's current "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions."

As agreed with your office, we attempted to get an indication of the order's effectiveness in creating employment opportunities for women and minorities by comparing data on the employment profiles of employers covered by the order and employers not covered. We compared the changes in profiles for employers in the Chicago area from 1975 to 1980 to determine if covered employers' profiles for female and minority employees improved more than those of non-covered employers. The analysis showed that covered employers' profiles did improve somewhat more. However, we could not draw firm conclusions about the order's impact on changes in employment profiles because we could not isolate the order from other factors influencing the profiles and because the available data did not allow us to ensure that the universes of covered and noncovered employers were sufficiently constant to allow meaningful comparison. Attachment I describes the analysis in more detail.

To obtain information concerning the conduct and resolution of compliance reviews, we randomly selected 46 reviews initiated in calendar year 1980 in the three OFCCP area offices in the Chicago metropolitan area. The sample represented 19 percent of both the supply and service contractor and construction contractor reviews initiated by those offices in 1980 and is not necessarily representative of all offices in Chicago or of OFCCP nationally. It included 36 supply and service contractor reviews and 10 construction contractor reviews.

We reviewed OFCCP's files concerning the sampled reviews and interviewed regional and area office officials to obtain information concerning various aspects of OFCCP's compliance activities, such as the length of the review, the reason the contractor was selected, the types of data contractors were asked to provide, and the kinds of deficiencies contractors were cited for. We interviewed representatives of the 46 contractors to obtain their opinions concerning the reviews in our sample and OFCCP's enforcement of the order. We did not follow up on individual contractor criticisms to determine if they were valid or to obtain responses by OFCCP officials. Further, we did not interview representatives of groups protected under the order to obtain their views about OFCCP's compliance

review activities. The data we obtained from our file reviews and contractor interviews are summarized below and detailed in the attachments.

SAMPLE REVIEW DATA

Attachment II presents the information we obtained from OFCCP files and officials concerning the 46 sample reviews. The following information, especially, may be of interest to the Committee.

- Fifteen percent of the sampled contractors had been reviewed more than once since October 1978. All of these were supply and service contractors. In three of the eight cases, the subsequent reviews were initiated to follow up on issues from the earlier review. (See item 1, p. 11.)
- Most of the sampled contractors were selected for review by OFCCP for several reasons. The reasons most frequently cited for selecting supply and service contractors were lack of prior or recent review, large size of the firm, and membership in a targeted industry. All construction contractors were selected, in part, to meet the region's goal for the number of reviews in that industry. Other frequently cited reasons were the contractor's large size and characteristics of the contractor's workforce. (See item 2, p. 11.)
- Over 90 percent of the supply and service contractor and 50 percent of the construction contractor reviews had been closed as of December 31, 1981. The average time for the supply and service reviews was 6 months; the average time for construction reviews was 9 months. However, the reviews that were still open (five construction and two supply and service) had been in process for an average of 17 months. (See items 3 and 4, pp. 11 and 12.)
- In almost 80 percent of the supply and service reviews, OFCCP requested contractors to submit data after the initially required submission of the AAP and supporting documentation. Over one-third of the subsequent data items requested by OFCCP consisted of revisions to previously submitted information, such as job groupings and analyses of workforce, availability, or utilization. Forty percent of the construction contractors were required to submit data. Requests to these contractors represented less than 5 percent of the total data requests in the 46 reviews. (See item 6, p. 12.)

- Twenty-five percent of the supply and service contractors were cited for underutilization of, or failure to meet goals for, females. Nineteen percent of them were cited for underutilization of, or failure to meet goals for, minorities. (See item 7, p. 13.)
- Ninety percent of the construction contractors were cited for failure to meet goals for females and 60 percent were cited for failure to meet goals for minorities. (See item 8, p. 14.)
- Supply and service contractors were most frequently cited for deficiencies in various aspects of their AAPs, such as the availability analysis, utilization analysis, and established goals and timetables. Ninety percent of the construction contractors were cited for insufficient use of minority and female recruiting sources. (See items 7 and 8, pp. 13 and 14.)

CONTRACTOR RESPONSES

We interviewed contractor representatives to obtain their opinions on OFCCP's enforcement of the order. We asked them how well OFCCP conducted the reviews in our sample and resolved the deficiencies found, what changes they believe should be made to the order and its enforcement, and what costs and benefits they attribute to the order and OFCCP's enforcement.

Attachment III summarizes contractor comments about the sample reviews. Supply and service contractors' and construction contractors' criticisms of the program differed somewhat.

- In all but one instance proportionally more construction contractors responded negatively to our questions about the reviews. (See questions 1 through 11, pp. 17 through 21.)
- The most frequent criticisms by supply and service contractors were that the reviews were not completed in a timely manner, the deficiencies were not adequately supported, and the review itself was unjustified. (See questions 1, 8, and 11, pp. 17, 19, and 21.)
- Construction contractors' most frequent criticisms were that their good faith efforts had not been adequately considered, the reviews were not completed in a timely manner, and the deficiencies they were cited for had not been satisfactorily resolved. (See questions 9, 10, and 11, pp. 20 and 21.)

- Forty percent of the construction contractors said they had not been given an adequate opportunity to discuss the review findings. One supply and service contractor made this comment. (See question 7, p. 19.)
- Most contractors were generally satisfied that EOSs and other OFCCP personnel demonstrated professional conduct during the review, although many of them expressed some reservation about the attitude of OFCCP personnel, often stating that the EOSs presumed they were guilty or were confrontational or antagonistic in their approach. (See questions 3 and 4, pp. 17 and 18.)

Contractors suggested a wide variety of changes to OFCCP's enforcement policies and practices. Eighty percent of the supply and service contractors made suggestions. The most frequently suggested changes related to reducing the content and frequency of AAPs, simplifying or eliminating the availability analysis, or having OFCCP conduct reviews only when there is evidence of discrimination or noncompliance. Suggestions by construction contractors most frequently related to reducing paperwork requirements, reducing requirements for smaller contractors, and holding unions more responsible for increasing the number of women and minorities employed in the construction industry. (See attachment IV.)

Contractors were unable to provide meaningful information on costs they incurred in connection with our sample compliance reviews or as a result of their efforts to comply with the order's requirements in general. Only a few contractors maintained such data or could provide any cost estimates, and the information that was provided varied significantly. On the other hand, over 60 percent of the supply and service contractors and 40 percent of the construction contractors said that the order has been beneficial in some manner.

PROGRAM CHANGES MADE OR PROPOSED

In testimony before your Committee on May 26, 1982, and in discussions with us, OFCCP officials outlined a number of program changes that they have taken or plan to take. Officials characterized these changes as management reforms, program initiatives, and regulatory reforms.

Some of the management reforms they discussed included developing systematic procedures and criteria for selecting contractors for review, improving case management, increasing EOS training, and developing EOS performance standards designed, in part, to avoid confrontational and antagonistic attitudes. Officials pointed to formation of liaison groups as a major program initiative to improve agency relationships with contractors. In these groups employers meet to discuss program concerns among themselves, with members of protected groups, and/or with OFCCP officials. Officials also said

they plan to encourage voluntary compliance by offering incentives to contractors, such as extended-duration AAPs or certificates of merit.

The proposed regulatory reforms related to supply and service contractors included approving 5-year AAPs for contractors under certain conditions, reducing the number of contractors who have to develop written plans, simplifying the process for estimating the availability of minorities and women for employment, and establishing more flexible procedures to measure goal attainment. Other proposed regulatory changes relate specifically to construction contractors' affirmative action obligations. For example, Labor has proposed reducing the number of specific affirmative action steps from 16 to 9 and requiring that contractors demonstrate good faith efforts to implement the steps rather than document their efforts. Labor has also proposed to make the OFCCP-mandated goal for hiring women apply to a contractor's total workforce instead of to each trade within its workforce, and further, to accept a contractor's good faith efforts to meet its goal if it does so in its entry-level workforce.

At the time of our review, OFCCP and Labor officials were considering public comments on two sets of regulatory proposals published by Labor on August 25, 1981, and April 23, 1982, and they expected to publish final regulations by late summer 1982. However, in August an OFCCP official told us that publication of final regulations had been postponed indefinitely.

COMPARISON OF EMPLOYMENT PROFILES
OF EMPLOYERS COVERED BY THE ORDER
AND EMPLOYERS NOT COVERED

As agreed with your office, we attempted to get an indication of the effectiveness of Executive Order 11246 by comparing available data on changes in employment profiles of employers covered by the order and those not covered. We compared profiles for employers in the Chicago metropolitan area between 1975 and 1980. Although an analysis of aggregate data showed that the covered employers' profiles improved somewhat more than those of noncovered employers, limitations in the data available for the analysis prevented us from drawing firm conclusions.

DATA LIMITATIONS

The data did not allow us to isolate the order's impact or assure that the universes we compared were consistent. We compared data provided by EEOC on the employment profiles for women and minorities employed by covered and noncovered Chicago employers in 1975 and 1980. EEOC obtained the data from its EEO-1 Forms, which are filed annually by employers with 100 or more employees and show the number of white males, minorities, and women employed in nine job categories. ^{1/} Employers must file a separate form for each establishment with 25 or more employees. The data EEOC provided for covered employers included 5,159 establishments in 1975 and 4,011 in 1980. For noncovered employers the data included 3,318 establishments in 1975 and 4,154 in 1980. During this period, total employment by covered employers decreased from 1,392,770 to 1,165,022, while employment by noncovered employers increased from 580,324 to 733,431.

Using changes in employment profiles as a criterion for the order's effectiveness is complicated by the fact that a number of other factors--such as economic conditions, union agreements, labor market conditions, and equal employment enforcement activities of other Federal agencies--may also affect employers' equal employment opportunity policies and employment profiles. Because of time and resource constraints, we were unable to isolate the order's impact from that of these other factors.

^{1/}On the form, employers also state whether they are a Federal contractor and describe their business. In processing these forms, EEOC classifies firms into industry groups based on the Office of Management and Budget's Standard Industrial Classification Manual.

The employment data available to us had further limitations. The data EEOC provided did not allow us to determine the extent to which employers in the two groups remained constant. For example, an employer's status--covered or not covered by the order--can change as contracts are signed or closed out, and an employer's responsibility for reporting to EEOC can change as its employment size changes. We do not know if the universes of covered and non-covered employers for which EEOC provided data were sufficiently constant to support conclusions about change.

ANALYSIS RESULTS

The analysis of aggregate data for all covered and noncovered employers about whom EEOC provided data showed that the profiles of covered employers improved somewhat more than those of noncovered employers. A similar analysis for employers in selected subindustry groups showed a wide variation in results, including some noncovered employer groups improving more than covered employer groups.

The comparison of aggregate data showed that, generally, the employment profiles for both groups of employers improved. However, the profiles for covered employers as a group improved more than those for noncovered employers, although the net differences in the size of the changes were relatively small, usually less than 2 percentage points. For example, as shown in the table on page 10, the net difference was 1.2 percentage points for white women and 0.7 percentage points for both minority men and minority women. Also, within most of the nine EEO-1 job categories, covered employers generally had more positive changes than noncovered employers; that is,

--in categories in which representation increased, most covered employers' increases were greater, and

--in categories in which representation decreased, most covered employers' decreases were smaller.

To test the representativeness of the aggregate comparison's results, we did a similar comparison between covered and noncovered employers in selected subindustry groups. The data EEOC provided included 104 subindustry groups, such as bakery products, book publishing, and communication equipment, which had both covered and noncovered employers in 1975 and 1980. We compared the changes for covered and noncovered employers in 25 of the largest of these groups. The comparison showed that changes in profiles varied greatly between and even within industries. For example, the employment of white women decreased for both covered and noncovered employers in the bakery products group. However, the decrease was only 0.2 percentage points for covered employers, but 12.1 percentage points for noncovered employers. At the same time, employment of minority men by covered employers in this industry decreased by 5.3 percentage points, but increased by 10.3 percentage points

for noncovered employers. Conversely, while employment of white women increased for both covered and noncovered employers in the commercial and stock savings banks group, the increase was 10.1 percentage points higher for noncovered employers. In contrast, employment of minority men in this industry increased by 1.4 percentage points for covered employers, but decreased by 2.2 percentage points for noncovered employers.

Comparison of Changes in Employment Rates
of Minorities and Women by Covered and Noncovered
Employers in Chicago Between 1975 and 1980

Employment category	Change in employment rates of covered employers			Change in employment rates of noncovered employers			Difference in rate change		
	White women	Minority men	Minority women	White women	Minority men	Minority women	White women	Minority men	Minority women
Total employment	0.2	1.4	1.7	(1.0)	0.7	1.0	1.2	0.7	0.7
White collar:									
Officials and managers	3.0	1.4	0.7	2.2	1.0	0.4	0.8	0.4	0.3
Professionals	7.0	1.9	2.4	0.1	0.4	0.1	6.9	1.5	2.3
Technicians	4.0	2.9	1.0	1.3	1.5	1.5	2.7	1.4	(0.5)
Sales workers	(4.3)	2.2	2.5	3.7	(1.3)	1.9	(8.0)	3.5	0.6
Office and clerical	(0.5)	0.8	3.8	(2.4)	1.0	3.0	1.9	(0.2)	0.8
Blue collar:									
Craftsmen	0.6	3.0	0.3	(1.0)	2.7	0.6	1.6	0.3	(0.3)
Operators	(1.6)	0.7	1.3	(3.0)	0.4	1.1	1.4	0.3	0.2
Laborers	(1.1)	2.0	3.2	(1.9)	(0.3)	0.9	0.8	2.3	2.3
Service workers	2.1	0.5	1.8	(3.9)	3.4	(0.2)	6.0	(2.9)	2.0

SELECTED DATA OBTAINED FROM OFCCP FILES
AND INTERVIEWS CONCERNING GAO SAMPLE REVIEWS

<u>Data item</u>	<u>Supply/service</u>		<u>Construction</u>	
	<u>Number</u>	<u>Percent</u> <u>(note a)</u>	<u>Number</u>	<u>Percent</u> <u>(note b)</u>
1. <u>Number of reviews at contractor locations since October 1978</u> (note c)				
One	29	80	10	100
Two	6	17	-	-
Three	<u>1</u>	3	<u>-</u>	-
Total	<u>36</u>	100	<u>10</u>	100
2. <u>Reasons OFCCP cited for selecting contractors for review</u> (note d)				
Member of targeted industry	11	31	-	-
Attain region's goal for construction contractor reviews	-	-	10	100
Large size of contractor	12	33	5	50
Lack of prior or recent compliance review	15	42	2	20
Characteristics of workforce	3	8	3	30
Appropriate review for EOS trainees	4	11	1	10
Followup on issues from prior review	4	11	-	-
Large contract	3	8	1	10
Complaints filed	3	8	-	-
Presward contract clearance	3	8	-	-
Lack of minorities entering training programs	2	6	-	-
Criterion not identified	1	3	-	-
3. <u>Calendar days expended in reviews</u> (note e)				
0 - 60	4	11	4	40
61 - 180	17	47	1	10
181 - 360	11	31	-	-
361 - 720	<u>4</u>	11	<u>5</u>	50
Total	<u>36</u>	100	<u>10</u>	100

<u>Data item</u>	<u>Supply/service</u>		<u>Construction</u>	
	<u>Number</u>	<u>Percent (note a)</u>	<u>Number</u>	<u>Percent (note b)</u>
4. <u>Review results as of December 31, 1981</u>				
Open:				
Conciliation agreement pending	1	3	4	40
Administrative enforcement pending	<u>1</u>	3	<u>1</u>	10
Total open	<u>2</u>	6	<u>5</u>	50
Closed:				
No deficiencies cited	9	25	-	-
Letter of commitment signed	18	50	3	30
Conciliation agreement signed	6	17	2	20
Other	<u>1</u>	3	<u>-</u>	-
Total closed	<u>34</u>	94	<u>5</u>	50
Total	<u>36</u>	100	<u>10</u>	100
5. <u>Number and disposition of show cause notices issued (note f)</u>				
Reason for issuance:				
Failure to submit AAP in 30 days	3	8	-	-
Failure to submit an acceptable workforce analysis	3	8	-	-
Deficiencies identified during review	<u>-</u>	-	<u>3</u>	30
Total issued	<u>6</u>	17	<u>3</u>	30
Number amended	1	3	-	-
Disposition:				
Rescinded: Issued in error	1	3	-	-
Rescinded: Conciliation agreement signed	3	8	1	10
Open: Pending administrative enforcement or conciliation agreement	2	6	2	20
6. <u>Number of contractors requested to submit data (note g)</u>				
	28	78	4	40

	<u>Number</u>	<u>Percent</u> (<u>note a</u>)
7. <u>Basis for deficiencies most frequently cited (supply and service)</u>		
Regulatory sections most frequently cited:		
41 CFR, Section:		
60-2.13: Additional required ingredients of AAP	17	47
60-2.11: Required utilization analysis	15	42
60-2.12: Establishment of goals and timetables	14	39
60-250 : AAP obligations - veterans	11	31
60-2.23: Identification of problem areas	10	28
60-741 : AAP obligations - handicapped	10	28
60-1.40: Affirmative action compliance programs	8	22
60-2.24: Development and execution of programs	8	22
Regulatory paragraphs most frequently cited:		
41 CFR, 60-2.11: Required utilization analysis		
(b)(1): Availability factors to consider - minorities	11	31
(b)(2): Availability factors to consider - women	11	31
(a): Workforce analysis - definition and requirements	8	22
41 CFR, 60-2.12: Establishment of goals and timetables		
(k): Reasons must be detailed if goals not set	5	14
(h): Separate goals and timetables for minorities and women if warranted	4	11
41 CFR, 60-2.13: Additional required ingredients of AAPs		
(d): Identification of problem areas	10	28
(f): Development and execution of action-oriented programs	9	25
(j): Consideration of minorities and women not currently in the workforce	6	17
(g): Design and implementation of internal audit and reporting systems	5	14
(e): Establishment of goals	5	14
(b): Formal dissemination of policy	4	11
(i): Support of community action programs	4	11
Deficiencies not referenced to a specific regulation:		
Underutilization of, or failure to meet goals for, females	9	25
Underutilization of, or failure to meet goals for, minorities (note h)	7	19

8. Basis for deficiencies most frequently cited (construction)

Regulatory paragraphs cited:

41 CFR, Section 60-4.3:

	<u>Number</u>	<u>Percent</u> (note b)
(a)7(b): Utilization of minority and female recruitment sources	9	90
(c): Referral of off-the-street applicants to a union hiring hall	7	70
(d): Notification to OFCCP of impediments in the referral process to unions	5	50
(e): Development of/or participation in training programs	5	50
(f): Dissemination of equal employment opportunity (EEO) policy	5	50
(g): Review of EEO policy and discussion at meetings	5	50
(i): Direction of recruitment - efforts	5	50
(j): Encouragement of present minority and female employees to recruit others	5	50
(o): Utilization of minority and female subcontractors	5	50
(l): Inventory and evaluation of minority and female personnel	4	40
(m): Ensurance that personnel practices do not have a discriminatory effect	4	40
(h): External dissemination of EEO policy	2	20
(p): Review of supervisors' adherence to EEO policies	3	30
(a): Ensurance of an EEO working environment	2	20
(k): Validation of tests and selection requirements	2	20
(n): Ensurance that facilities are nonsegregated	1	10

Deficiencies not referenced to a specific regulation:

Nonattainment of goals for females	9	90
Nonattainment of goals for minorities (note h)	6	60

- a/Represents the portion of the 36 supply and service contractors in our sample.
- b/Represents the portion of the 10 construction contractors in our sample.
- c/The reasons for subsequent reviews varied. The most frequent reason, followup on deficiencies identified in prior reviews, was cited three times. Some other reasons cited were receipt of complaints and preaward review.
- d/In most cases OFCCP cited several reasons for selecting contractors for review.
- e/Calendar time for supply and service contractor reviews is measured from the date OFCCP received the contractor AAP to the earliest of the date of OFCCP's letter of compliance to the contractor or December 31, 1981. In one case, however, because OFCCP's review was based on an AAP used by the Department of Health, Education, and Welfare in a 1978 review, elapsed time is measured from the date of OFCCP's onsite review instead of the date the AAP was received. Time for reviews at construction contractors is measured from the date of OFCCP's letter notifying the contractor of the impending review.

The average calendar time for closed reviews was 6 months for supply and service contractors and 9 months for construction contractors. As of December 31, 1981, seven of the reviews in our sample had not been closed. On the average these reviews had been in process for 17 months.

- f/A show cause notice is issued if there is reasonable cause to believe the contractor has violated its equal opportunity obligations. The notice requires the contractor to show cause, within 30 days, why appropriate action to ensure compliance should not be instituted.
- g/For supply and service contractors this represents data requested in addition to the initial submission of the AAP and supporting documentation. The 32 contractors who were requested to provide data received requests for a total of 143 data items. Of these, 138 were requested from supply and service contractors. For purposes of analysis and summary we grouped the data items into the following four categories. The numbers in parentheses indicate the portion of the 143 items represented by each category; percentages do not total to 100 due to rounding.
1. Copies of documents, such as correspondence with recruitment sources, union contracts, position descriptions, and benefit policy brochures (37 percent).
 2. Revisions of data previously submitted, such as workforce, availability, and utilization analyses and job groupings (34 percent).
 3. Data lists, including but not limited to promotable minorities and females, employees by department, temporary hires, complaints filed, and maternity leave cases (15 percent).

4. Others, including narratives, special reports or justifications relating to such matters as the 8-factor availability analysis, personnel activity, and termination of minority/female employees (15 percent).

h/Deficiencies concerning nonattainment of goals or underutilization--supply and service contractors establish goals to overcome underutilization--are cited in a variety of ways in OFCCP review documents. Only a few of the supply and service contractors were specifically cited for underutilization or nonattainment of goals. In most of the nine cases, the review documents cited another deficiency or a required corrective action which recognized that underutilization existed, for example, "acceptable goals and timetables were not established to resolve underutilization." All of the nine construction contractors who were cited for not meeting goals were also cited for failure to make good faith efforts to meet the goals. OFCCP files showed that, although the tenth construction contractor in our sample had not met goals for hiring females, it had made good faith efforts to do so. That contractor signed a letter of commitment to increase efforts to meet goals by using two specified recruiting sources.

CONTRACTOR RESPONSES TO SELECTED GAO QUESTIONSABOUT OFCCP COMPLIANCE REVIEWS

The following presents contractors' responses to our questions about the 46 reviews in our sample and summarizes the concerns raised by those who expressed negative opinions.

	<u>Supply/service</u>		<u>Construction</u>	
	<u>Number</u>	<u>Percent</u> (note a)	<u>Number</u>	<u>Percent</u> (note b)
1. <u>Do you feel that the compliance review was justified?</u>				
Yes	21	58	6	60
No	8	22	4	40
No comment or not applicable	7	20	-	-

Comments: Supply and service contractors who said the review was unjustified cited such reasons as an absence of discrimination complaints, a record of goal attainment, favorable results of prior compliance reviews, and lack of problems as indicated by the employer's record of hiring women and minorities. Construction contractors who answered no said the reviews were unjustified because there was no evidence of discrimination or noncompliance, or because they had too few employees.

2. Do you feel that the review was appropriately timed?

Yes	28	77	7	70
No	2	6	3	30
No comment or not applicable	6	17	-	-

Comments: One supply and service contractor questioned the timing of the review because a review had recently been performed (in late 1979) and the other questioned it because the firm was undergoing reorganization. Two construction contractors questioned the timing because the firms were experiencing economic/financial problems. Another said that the review would have been less disruptive if conducted during a less busy time of the year.

3. Were you satisfied that the review staff was qualified?

Yes	29	81	7	70
No	4	11	2	20
No comment or not applicable	3	8	1	10

<u>Supply/service</u>		<u>Construction</u>	
Percent		Percent	
<u>Number</u>	<u>(note a)</u>	<u>Number</u>	<u>(note b)</u>

Comments: Supply and service contractors who answered no said that the EOS had a belligerent or intimidating attitude, limited knowledge of the program and/or the industry, or a nonsystematic approach to requesting and reviewing records. One of the contractors also felt that the EOS's supervisor lacked sufficient program knowledge specifically with respect to the availability analysis. Both construction contractors said the EOS lacked familiarity with industry practices and did not understand that a shortage of females in the industry made it difficult to meet goals.

4. Did the review staff demonstrate professional personal conduct in the performance of the review?

Yes	32	88	9	90
No	2	6	1	10
No comment or not applicable	2	6	-	-

Comments: Contractors who said that review staff did not demonstrate professional conduct said that personnel had a negative attitude. This attitude was described in such terms as "having a chip on the shoulder," "having a preconceived antibusiness attitude," "arrogant," "antagonistic," and "threatening." Many contractors who answered yes to this question also expressed some negative perceptions about the review staff.

5. Did the reviewer(s) make reasonable demands for data?

Yes	30	83	8	80
No	4	11	2	20
No comment or not applicable	2	6	-	-

Comments: Contractors expressed a variety of reasons for questioning the reasonableness of data demands. For example, one contractor felt that the amount of data requested and the depth of records examined were not warranted because of the absence of evidence of discrimination. Another felt that data requests were not reasonable in light of the firm's current poor financial condition.

	<u>Supply/service</u>		<u>Construction</u>	
	<u>Number</u>	<u>Percent</u> <u>(note a)</u>	<u>Number</u>	<u>Percent</u> <u>(note b)</u>
6. <u>Did the reviewer(s) set reasonable time frames for submission of data?</u>				
Yes	28	77	9	90
No	6	17	1	10
No comment or not applicable	2	6	-	-

Comments: Several of the supply and service contractors who said that data submission time frames were unreasonable said that the EOS was insensitive to the contractors' normal workload. Others said that the 30-day target for initial submission of the AAP and supporting documentation was too short and that time frames should generally be longer so that contractors could level their workload. A construction contractor said that data submission time frames were not reasonable because of the firm's poor financial condition.

7. Were you given adequate opportunity to discuss the findings?

Yes	33	91	6	60
No	1	3	4	40
No comment or not applicable	2	6	-	-

Comments: Most contractors who answered no said that the EOS did not listen to their comments or did not give them a chance to discuss the deficiencies.

8. Were the findings adequately supported?

Yes	20	55	5	50
No	11	31	4	40
No comment or not applicable	5	14	1	10

Comments: The most common criticisms by supply and service contractors were that the findings were vague, nonsubstantive, and/or inconsistent with findings in other reviews. Construction contractor criticisms varied. They were that the review findings were nonsubstantive, the reviewer should have accepted the firm's statements as evidence of good faith efforts, it was unreasonable of the reviewer to recommend that nonunion sources be solicited for potential employees, and that the findings reflected insufficient consideration of the firm's small size and financial condition.

	<u>Supply/service</u>		<u>Construction</u>	
	<u>Number</u>	<u>Percent (note a)</u>	<u>Number</u>	<u>Percent (note b)</u>
9. <u>Were you satisfied with the manner in which the findings were settled?</u>				
Yes	29	81	4	40
No	6	17	5	50
No comment or not applicable	1	3	1	10

Comments: Several contractors, particularly construction contractors, suggested that resolution was dictated by OFCCP rather than conciliated. For example, one contractor felt forced to sign a conciliation agreement to avoid the costly alternative of litigation; another felt "blackmailed" into signing a conciliation agreement under the threat of debarment; and another complained about being made to make a verbal commitment that the next hire into one of two positions would be a female. Several other contractors said they had agreed to make changes they thought were unfair or not required by the regulations just to close out the review.

10. Were you satisfied that the reviewer adequately examined your good faith efforts?

Yes	28	78	4	40
No	4	11	6	60
No comment or not applicable	4	11	-	-

Comments: Construction contractors were more critical about the examination of good faith efforts. Two said that the reviewer did not give enough weight to the fact that there are few women in unions. One said the reviewer overemphasized technical regulatory requirements. Two others said that the reviewers simply demonstrated a lack of concern about the contractor's efforts. One indicated that the reviewer did not adequately consider the firm's small size and poor financial condition. Several supply and service contractors said they had not been given enough credit for the progress they had made in non-discrimination and affirmative action.

	<u>Supply/service</u>		<u>Construction</u>	
	<u>Number</u>	<u>Percent</u> <u>(note a)</u>	<u>Number</u>	<u>Percent</u> <u>(note b)</u>
11. <u>Was the review performed in a timely manner?</u>				
Yes	23	63	5	50
No	11	31	5	50
No comment or not applicable	2	6	-	-

Comments: Contractors who were not satisfied with the timeliness in which the review was performed cited OFCCP workload conditions, OFCCP inaction (apparently unexplained), OFCCP rigidity about the wording of a conciliation agreement, excessive data requests, and EOS turnover as factors they believed contributed to the untimeliness. One said that the onsite review took too long.

a/Represents the portion of the 36 supply and service contractor reviews in our sample.

b/Represents the portion of the 10 construction contractor reviews in our sample.

CHANGES CONTRACTORS SUGGESTEDIN OFCCP'S ENFORCEMENTOF EXECUTIVE ORDER 11246

	<u>Number</u>	<u>Percent</u> (note a)
<u>Supply and service contractors</u> <u>suggested changes in:</u>		
OFCCP's enforcement activities:		
Perform compliance reviews where there is evidence of discrimination	4	11
Emphasize substantive issues, not technical requirements, during reviews	4	11
Streamline regulations to eliminate overlap and redundancy, and deemphasize procedural/technical matters	2	6
Direct regulatory efforts at prime contractors	2	6
Other, such as eliminate need for goals where there is fractional underutilization, review larger contractors, improve OFCCP relationship with contractors, and improve EOS attitude and approach (note b)	-	-
AAPs and supporting documentation:		
Reduce the required content	6	17
Require less frequent updating	4	11
Standardize data formats	1	3
Consolidate forms required to log and analyze applicant data	1	3
Availability determinations:		
Eliminate the 8-factor availability analysis	5	14
Develop better availability data	3	8
Require less rigid application of the 8-factor availability analysis	2	6
Give more consideration to commuting costs in determining availability	1	3
OFCCP's function:		
Transfer OFCCP's function to EEOC	1	3
Consolidate OFCCP and EEOC	1	3
Leave affected class and discrimination investigations to EEOC	1	3
Abolish OFCCP and perform compliance reviews when valid complaints of discrimination are filed	1	3

	<u>Number</u>	<u>Percent</u> <u>(note c)</u>
<u>Construction contractors</u>		
<u>suggested that OFCCP:</u>		
Cut program paperwork requirements	3	30
Reduce requirements for small contractors	3	30
Hold unions more responsible for increasing women and minorities in the industry	3	30
Other, such as review contractors only when employment data indicate possible discrimination or noncompliance and lower the OFCCP-mandated goal for employing women and minorities (note d)	-	-

a/Thirty of the 36 supply and service contractors suggested changes. The percent column represents the portion of the 36 contractors who made each suggestion.

b/Eighteen "other" suggestions were made; they are not all listed here.

c/All of the 10 construction contractors suggested changes. The percent column represents the portion of the contractors who made each suggestion.

d/Four "other" suggestions were made; they are not all listed here.