

GAO

Report to Congressional Requesters

March 1986

AFFIRMATIVE ACTION

National Institutes of Health Does Not Fully Meet Federal Requirements





United States
General Accounting Office
Washington, D.C. 20548

Human Resources Division

B-222158

March 5, 1986

The Honorable Steny Hoyer
House of Representatives

The Honorable Louis Stokes
House of Representatives

This report, being issued at your request, discusses the affirmative action program at the National Institutes of Health. In addition to specific issues relating to the Institutes and the Department of Health and Human Services, it deals with a broad issue relating to the Equal Employment Opportunity Commission requirements for federal agencies' affirmative action programs.

We believe there are certain matters that appropriate committees of the Congress concerned not only with the Department of Health and Human Services, but also equal employment opportunity issues should consider. Therefore, as agreed with your offices, in addition to providing copies of this report to the Subcommittees on Labor, Health and Human Services, and Education of the House and Senate Appropriations Committees, we are also sending copies to the cognizant House and Senate committees dealing with equal employment opportunity and the federal civil service. We are also sending copies to the Secretary of Health and Human Services; the Director, Office of Personnel Management; the Director, Office of Management and Budget; and the Chairman of the Equal Employment Opportunity Commission.

Richard L. Fogel
Director

Executive Summary

Representatives Steny Hoyer and Louis Stokes asked GAO to evaluate equal employment opportunity and affirmative action activities at the Department of Health and Human Services' (HHS') National Institutes of Health (NIH). This request was prompted by charges of discrimination against black employees stemming in part from the reorganization of NIH's administrative support services.

Specifically, GAO was asked to assess how

- the reorganization of the Division of Administrative Services affected black employees,
- the discrimination complaints process is working,
- the affirmative action program is working, and
- minorities and women are represented in the work force.

Background

The Congress established a policy of equal employment opportunity for federal employees in amendments to the Civil Rights Act of 1964. In accordance with this policy, the executive branch set up programs to resolve complaints of discrimination and eliminate, through affirmative action, the historical underrepresentation of minorities and women in the federal work force.

The Equal Employment Opportunity Commission (EEOC) is responsible for enforcing fair employment practices. EEOC established formal procedures, which federal departments and agencies are required to follow, to resolve discrimination complaints. EEOC has also required agencies to establish affirmative action programs.

Results in Brief

The NIH reorganization of research support services in the Division of Administrative Services caused anxiety among all employees, and some blacks felt they were treated unfairly. GAO found no evidence, however, that minorities were treated differently than nonminorities as a result of the reorganization.

It takes a long time to investigate, render decisions on, and resolve discrimination complaints filed by NIH employees. Internal management and personnel problems involving those responsible for investigating and resolving discrimination complaints at NIH, as well as within HHS, contributed to the long processing time.

NIH has not fully complied with four of eight EEOC requirements for affirmative action since its plan was approved in February 1983. This noncompliance may have contributed to the continued underrepresentation of minorities and women in NIH as of December 1984. Increased effort, strong commitment, and active support by NIH top management are needed to bring its affirmative action plan into compliance and improve the representation of minorities and women.

Principal Findings

Reorganization

GAO found no evidence that the Division of Administrative Services was targeted for reorganization because it employs many blacks. Both minority and nonminority managers lost responsibilities and prestige, and both minority and nonminority service employees were concerned about layoffs. As of November 1985, however, no employees had been downgraded or dismissed as a result of the reorganization.

Discrimination Complaints Processing

The median time taken by NIH to render decisions on and resolve discrimination complaints after receiving investigation reports from HHS increased from about 230 days in fiscal year 1982 to about 400 in fiscal year 1984. NIH took more time to accomplish these tasks than the other Public Health Service agencies did during these three fiscal years. Several NIH studies completed between 1980 and 1984 documented that internal management and personnel problems at NIH and HHS contributed to the long time it took to resolve discrimination complaints. In January 1984, the NIH Director appointed a new director of the Division of Equal Opportunity, who has taken several actions that NIH management and some minority/women's employee groups believe are improving complaint processing.

Noncompliance With EEOC Affirmative Action Requirements

NIH did not fully comply with four of eight EEOC affirmative action requirements during fiscal years 1983-85. In particular, NIH has not

- established numerical hiring goals for underrepresented groups,
- prepared or fully implemented minority and women's recruitment plans for all organizational components, or
- completed an analysis to identify barriers to achieving full representation of minorities and women.



Moreover, in December 1983, NIH discontinued collecting data on the race, ethnic origin, and gender of job applicants to monitor and evaluate the effectiveness of its affirmative action program. At that time, Office of Management and Budget authorization expired for the continued use of Office of Personnel Management (OPM) Form 1386, the instrument used government-wide to collect these data.

Representation of
Minorities and Women

NIH increased the overall representation of minorities in its work force from 24 percent in 1979 to 27 percent in 1984. However, as of December 1984, minorities and women were underrepresented in 63 of 108 race, ethnic origin, gender, occupation, and grade-level categories.

Recommendations

GAO is recommending that the Secretary of HHS require the Director of NIH to comply with EEOC affirmative action program requirements by (1) establishing numerical hiring goals for all underrepresented groups, (2) developing and implementing minority and female recruitment plans in organizational components that do not have them, and (3) identifying and acting to eliminate employment barriers found to exist for minorities and women.

Agency Comments

In its February 7, 1986, response to GAO, EEOC said that its directives to federal agencies relating to establishing numerical hiring and internal movement goals for underrepresented groups, implementing recruitment programs for minorities and women, and identifying selection barriers affecting minorities and women will expire September 30, 1986, and it is reviewing them to determine whether and, if so, how they should be revised. EEOC also stated that it encourages but does not require agencies to collect data on job applicants' race, ethnic origin, and sex for use in analyzing selection barriers and that it does not consider these data to be essential in establishing hiring goals.

The February 1986 statement is inconsistent with its management directives to federal agencies which say such data are required because they are critical to evaluating the effectiveness of federal affirmative action recruiting efforts.

In generally concurring with GAO's recommendations, HHS stated NIH will establish numerical hiring goals, will prepare minority and female recruitment plans for those organizational components that do not have them, and has barrier analyses underway.

OPM was asked but did not comment on the report.

Matters for Congressional Consideration

When GAO completed its draft of this report in January 1986, it was aware that federal agencies were caught in the middle between EEOC, whose management directives state that this information is required, and OPM, which since December 1983 has not required that this information be collected.

The statement made by EEOC in its February 7, 1986, comments on a draft of this report that it encourages the collection of applicant flow data, and does not require it, clouds this issue even more, and is inconsistent with EEOC's written directives to federal agencies. As a result, the federal agencies will be even more confused than they have been.

The Congress should explore this situation with OPM and EEOC to clarify what these agencies' current positions are concerning the collection of applicant flow data. The Congress can then decide whether it wants to provide additional guidance to executive agencies.

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Abbreviations

EEO	equal employment opportunity
EEOC	Equal Employment Opportunity Commission
FEORP	federal equal opportunity recruitment program
GAO	General Accounting Office
GS	general schedule
HHS	Department of Health and Human Services
NIH	National Institutes of Health
OPM	Office of Personnel Management
PHS	Public Health Service
SMSA	Standard Metropolitan Statistical Area

Introduction

On July 25, 1984, Representatives Louis Stokes and Steny Hoyer asked us to evaluate equal employment opportunity (EEO) and affirmative action activities at the National Institutes of Health (NIH). Their request was prompted by charges from employee groups representing minorities that since 1983 certain NIH management actions had discriminated against black employees. Specifically, these employee groups complained that the management decision to reorganize the Division of Administrative Services was made not to increase efficiency, but to (1) decrease costs by reducing the number of black employees, since they made up most of the division's work force, and (2) take away authority and responsibilities of senior black managers.

In later discussions with the requesters, we agreed to follow up on these charges and to evaluate NIH's compliance with discrimination complaint processing and affirmative action program requirements established for federal agencies by the Equal Employment Opportunity Commission (EEOC). We also agreed to assess how minorities and women are represented in NIH's work force.

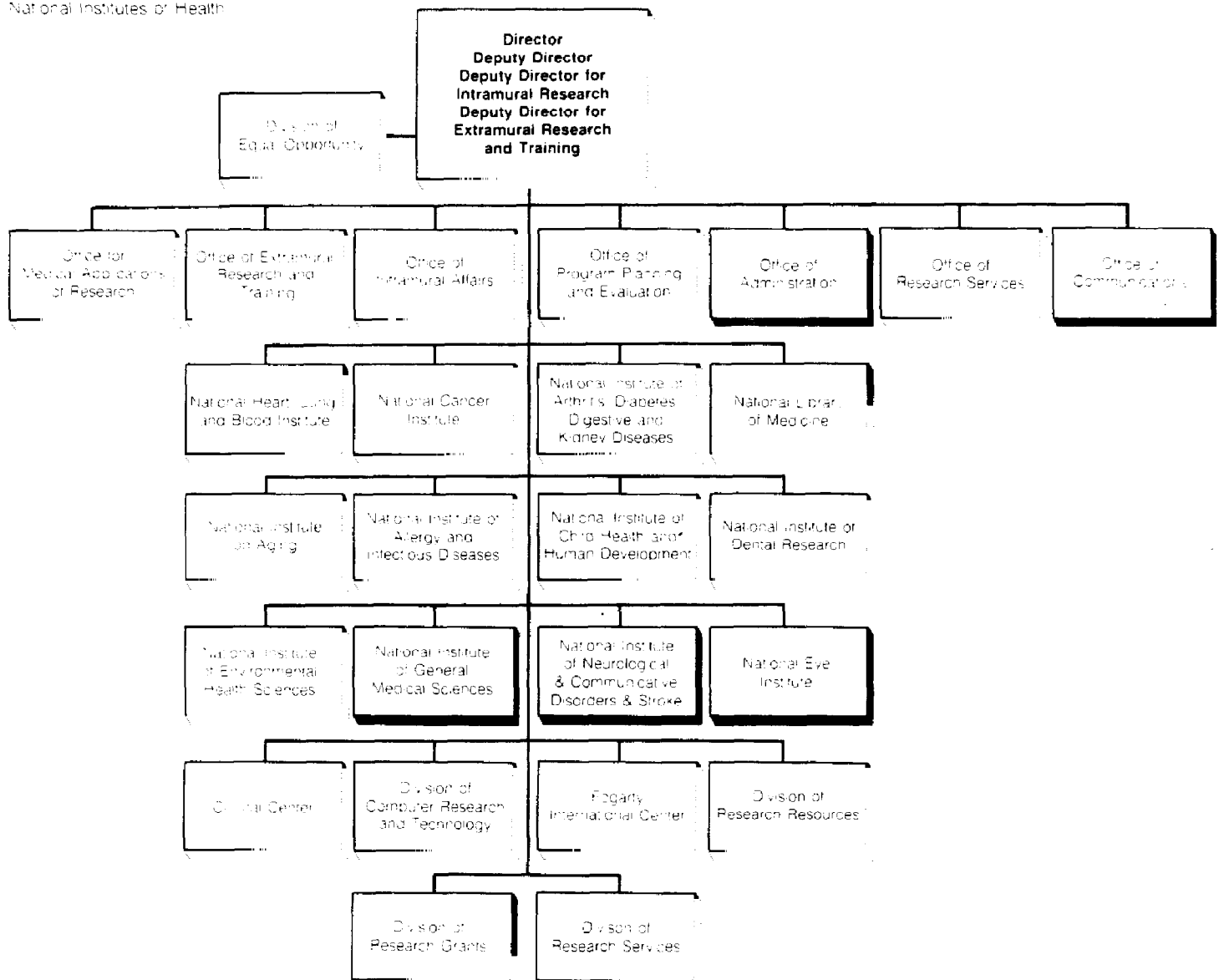
National Institutes of Health

NIH is one of five Public Health Service (PHS) agencies within the Department of Health and Human Services (HHS). NIH conducts its own medical research and supports the research of nonfederal institutions and individual researchers through its research institutes and divisions (see figure 1.1). These organizational components plan and implement their own EEO activities under the guidance of NIH's Division of Equal Opportunity.

**Chapter 1
Introduction**

Figure 1.1: NIH Organization Chart (1983)

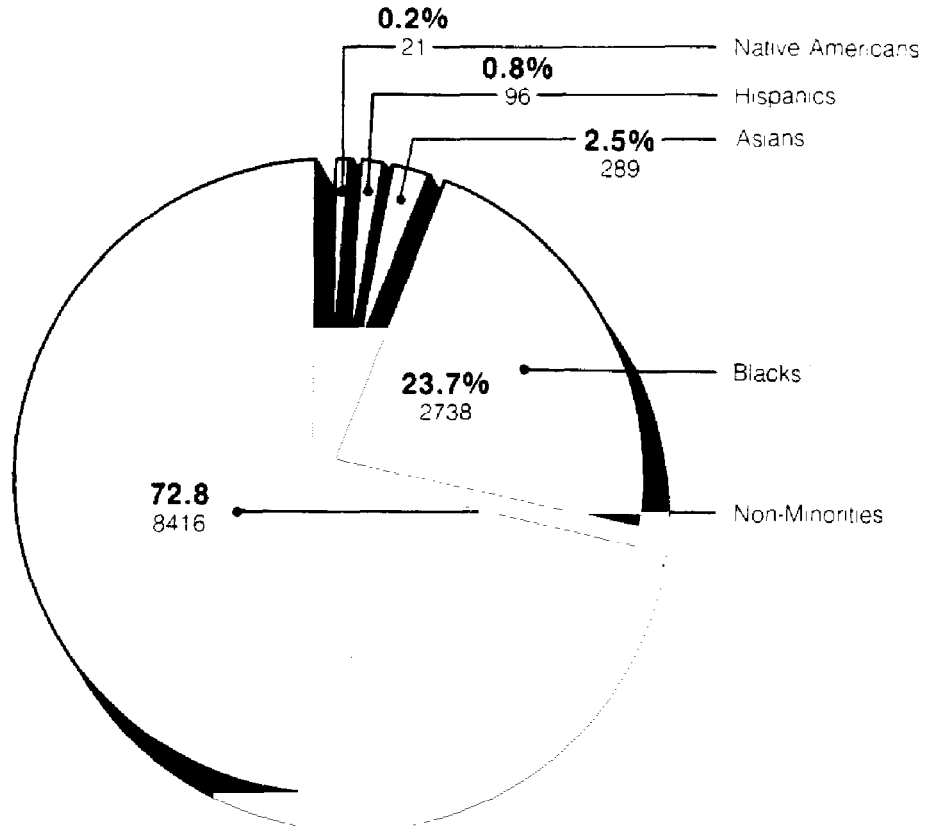
Department of Health and Human Services
Public Health Service
National Institutes of Health



In December 1984, NIH had 11,560 permanent employees, about the same number as in June 1979. During this period, permanent minority

employees increased from 24 to 27 percent of the work force (see figure 1.2).

Figure 1.2: Racial Composition of Permanent NIH Employees (Dec. 1984)



Equal Employment Opportunity

Federal departments and agencies are required by law to design and implement affirmative action programs to overcome the lingering effects of past discrimination in employment practices. EEOC provides guidance, monitors the hiring and promotion of minorities and women, and oversees the government-wide discrimination complaints process. The Office of Personnel Management (OPM) also provides guidance and monitors the recruitment of eligible, qualified minority and women applicants for federal employment.

Processing Complaints of Discrimination

EEOC established the discrimination complaints process to be used by federal agencies. In HHS, the process is as follows:

1. Formal complaints against NIH (and other HHS agencies) are initially investigated by the Department's Division of EEO Complaints Investigations within the Office of the Deputy Assistant Secretary for Personnel.
2. Investigation results are returned to NIH.
3. If the complaint is not resolved, NIH prepares a proposed disposition.
4. If a complainant is dissatisfied with the NIH proposed disposition, he or she may request a final HHS decision with or without an EEOC hearing.
5. If dissatisfied with the EEOC recommendation or the final HHS decision, the complainant may appeal to the EEOC Office of Review and Appeals.
6. If dissatisfied with the EEOC appeals' recommendation and subsequent HHS decision or if 180 calendar days have passed from the date the complaint was filed and the agency has not completed processing it, the complainant may institute action in U.S. district court.

Affirmative Action

The government-wide affirmative action program is intended to remedy the effects of past discrimination. On January 2, 1979, in accordance with Reorganization Plan No. 1 of 1978, responsibility for overseeing federal EEO efforts was transferred from the Civil Service Commission (now OPM) to EEOC. This made EEOC the principal agency in fair employment enforcement.

In 1972 the Congress amended the Civil Rights Act to require agencies to maintain affirmative action programs to ensure implementation of federal EEO policy. The law requires federal agencies to develop and implement affirmative action plans to carry out this program. EEOC requires these plans to include the following elements:

- A work-force profile.
- An assessment of underrepresentation.
- Numerical hiring goals for underrepresented groups.
- An analysis of barriers or impediments to EEO.
- An assessment of innovative staffing strategies.
- An affirmative action self-monitoring plan.
- A summary of key elements of the plan.

Some of these elements are also required by the Uniform Guidelines on Employee Selection Procedures (effective Sept. 1978), which were developed to help private and public organizations comply with requirements of federal law prohibiting employment practices that discriminate on grounds of race, color, religion, sex, and national origin.

In addition, affirmative action plans must include the agency's federal equal opportunity recruitment program initiatives. OPM is responsible for overseeing this program, which was established under section 310 of the Civil Service Reform Act of 1978. The program is intended to increase the number of minorities and women in applicant pools by initiating meaningful outreach and recruitment efforts. Increased representation of minorities and women in applicant pools should eventually result in more hiring from these groups.

HHS has developed Department-wide affirmative action guidelines. PHS, as an HHS subordinate agency, uses these guidelines to prepare more detailed guidance for its subordinate agencies, including NIH. The PHS guidelines are further refined by the NIH Division of Equal Opportunity for the individual institutes and divisions, which are to develop unit plans. The unit plans are to be implemented in the institutes and divisions, where hiring decisions are made.

Other EEO Activities

The Division of Equal Opportunity director heads the formal NIH-wide EEO structure and acts as a link between NIH top management and employees to discuss pertinent issues and problems. The formal structure includes an agency-wide advisory council composed of EEO officers and counselors. EEO officers work directly for their respective institute and division directors. EEO counselors, as a collateral duty, attempt to resolve problems before formal discrimination complaints are filed. As heads of their respective units' EEO operations, the institute and division directors and EEO officers are the counterparts of the NIH Director and the Division of Equal Opportunity. Outside the formal NIH structure, minority and female employees are represented by such groups as the NIH chapter of Blacks in Government and the Self Help for Equal Rights group.

Objectives, Scope, and Methodology

- The objectives of this review were to determine how
- the reorganization of the Division of Administrative Services affected black employees,

- the discrimination complaints process is working,
- minorities and women are represented in the NIH work force, and
- the affirmative action program is working.

To determine how the NIH reorganization of support services affected the Division of Administrative Services and its black employees, we identified changes in the division's mission and organization from the decision to reorganize in November 1979 to June 1985. We also interviewed managers and supervisors concerning changes in their levels of authority and responsibility and their perceptions of racially motivated management actions toward the division and its employees.

To determine how the NIH Division of Equal Opportunity's discrimination complaints process is working, we developed information on the time NIH takes to process such complaints. In addition, we compared the number, rate, and timeliness of NIH complaints processed with those of the other four PHS agencies. We also obtained information from EEOC to compare the time taken by HHS in processing complaints to the time taken by other federal agencies and departments. Moreover, we interviewed officials responsible for the complaints process in NIH, PHS, HHS, and EEOC. We also summarized statistics on the number, type, and organizational locations of NIH discrimination complaints filed during the three most recent fiscal years for which data were readily available—1982, 1983, and 1984.

The requesters asked us to develop statistical data on and analyze minority and female representation in the NIH work force, including policymaking positions (those in the Senior Executive Service and general schedule (GS) 13-15 employees) for fiscal years 1979-84. We developed these data on NIH personnel and determined the extent of minority and female underrepresentation by comparing permanent work-force data with appropriate civilian labor-force data developed by EEOC and adopted by HHS. In addition, we reviewed the results of a November 1984 NIH report that addressed the representation of minorities and women on public advisory committees from 1979 to 1984.

To assess the reliability of the computerized personnel data obtained from HHS, such as occupations and grade levels, we compared the computerized records of a random sample of 473 NIH employees to information on the standard personnel action forms in the employees' official personnel folders. We separately verified the computerized data on each employee's race. We were advised by NIH that the original form for collecting minority information is destroyed after this information is

entered into the computer. Because these original forms are not maintained, we asked the EEO officers at NIH to identify the race of the employees chosen in the random sample.

To determine if NIH was complying with federal affirmative action criteria, we compared its affirmative action program activities with EEOC and OPM requirements. In addition, we interviewed officials at EEOC, OPM, and PHS to gain insight into these requirements and their implementation.

We also interviewed EEO officers, personnel officers, and managers at various NIH components—the National Cancer Institute, National Eye Institute, National Institute of Environmental Health Sciences, Clinical Center, and Office of Research Services, including its Division of Administrative Services. As agreed with the requesters, we evaluated affirmative action plans in a cross-section of NIH organizational components, which accounted for about half of the permanent NIH work force as of December 1984.

We reviewed internal and external management reports concerning the NIH Division of Equal Opportunity, the employee discrimination complaints process, and the affirmative action program. We interviewed representatives of NIH employee groups, such as Blacks in Government and Self Help for Equal Rights, and obtained their views on NIH's complaints process and affirmative action program.

We conducted our review from August 1984 through August 1985 in accordance with generally accepted government audit standards.

Effect of the Reorganization of Support Services on Employees

In 1979 the Director of NIH began reorganizing the research support divisions in order to improve the delivery of support services, including various safety, engineering, and administrative functions. As part of this reorganization, in February 1980 the Director established a new position, associate director of research services. At that time the individual appointed to this position began assuming some of the authority and responsibilities previously delegated to the division managers.

Initially the associate director concentrated on organizing the new Division of Safety and reorganizing the Division of Engineering Services. In 1983 he started to make organizational and functional changes in the Division of Administrative Services.

The new associate director is white, and many of the managers and employees of the Division of Administrative Services are black. As a result, employee groups representing black employees interpreted the reorganization as unfairly targeting the division to reduce the number of black employees and take away the authority and responsibilities of its senior black managers.

Support Services Criticized for Inefficiencies

According to management officials in NIH's bureaus, institutes, and divisions, complaints from scientific researchers prompted the reorganization of the support services' components. The researchers complained, for example, that research supplies, such as drugs and chemicals, were often not delivered on time and that equipment repairs were often not made correctly or promptly. These problems, they said, interfered with their research activities.

To improve these services, the NIH Director in February 1980 appointed the new associate director of research services to take over two existing service organizations, the Division of Administrative Services and the Division of Engineering Services, and a newly formed Division of Safety under a new Office of Research Services (see figure 2.2). In a March 1985 study, the Surveys and Investigations staff of the House Appropriations Committee concluded that NIH support services had generally improved since the reorganization.



Figure 2.1: Division of Administrative
Services Organization Chart Before
Reorganization

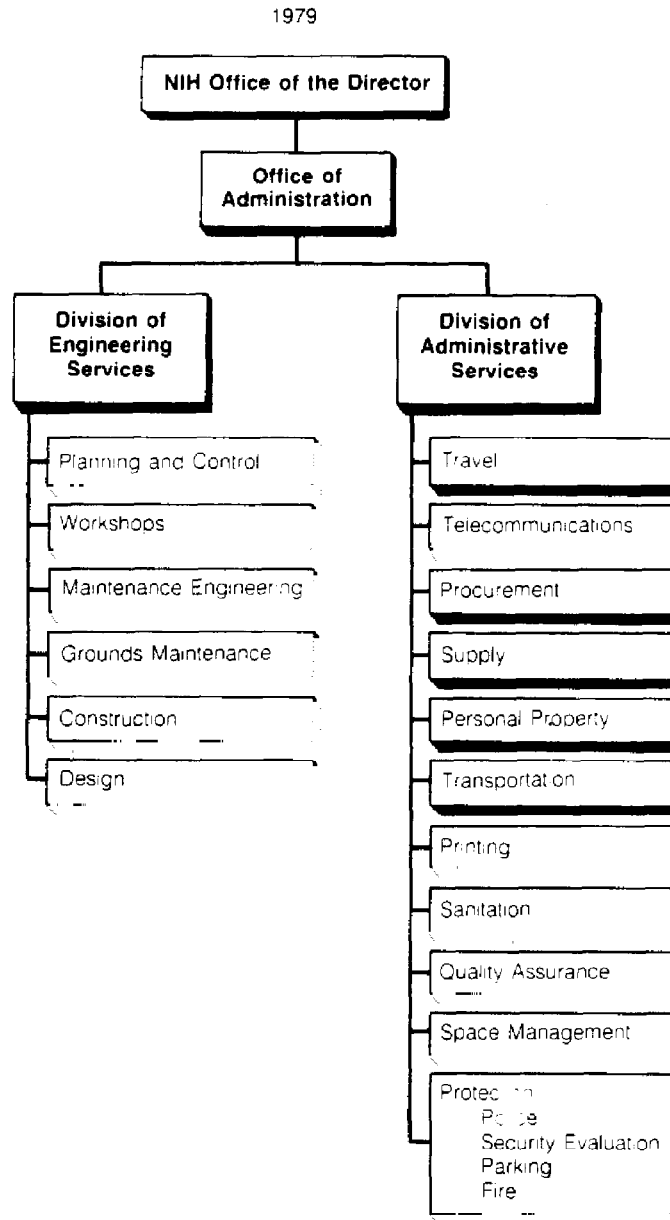
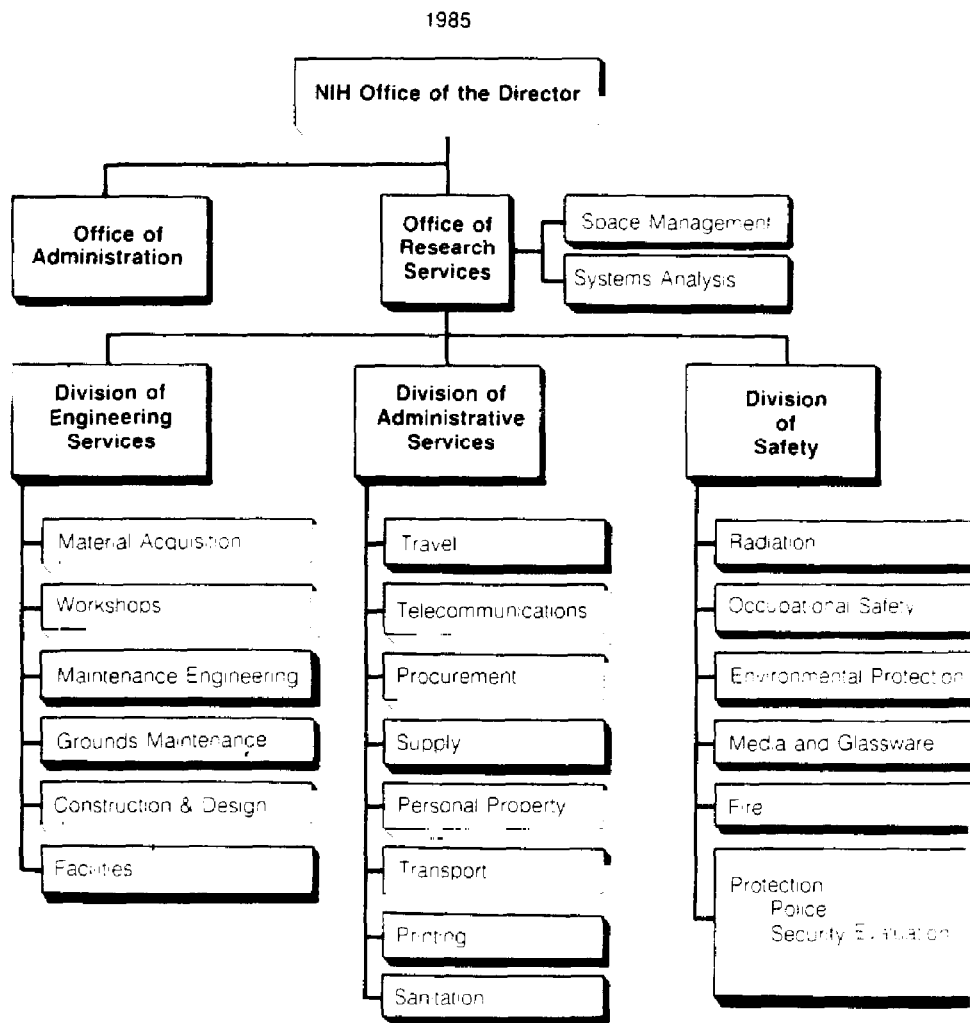


Figure 2.2: Division of Administrative Services Organization Chart After Reorganization

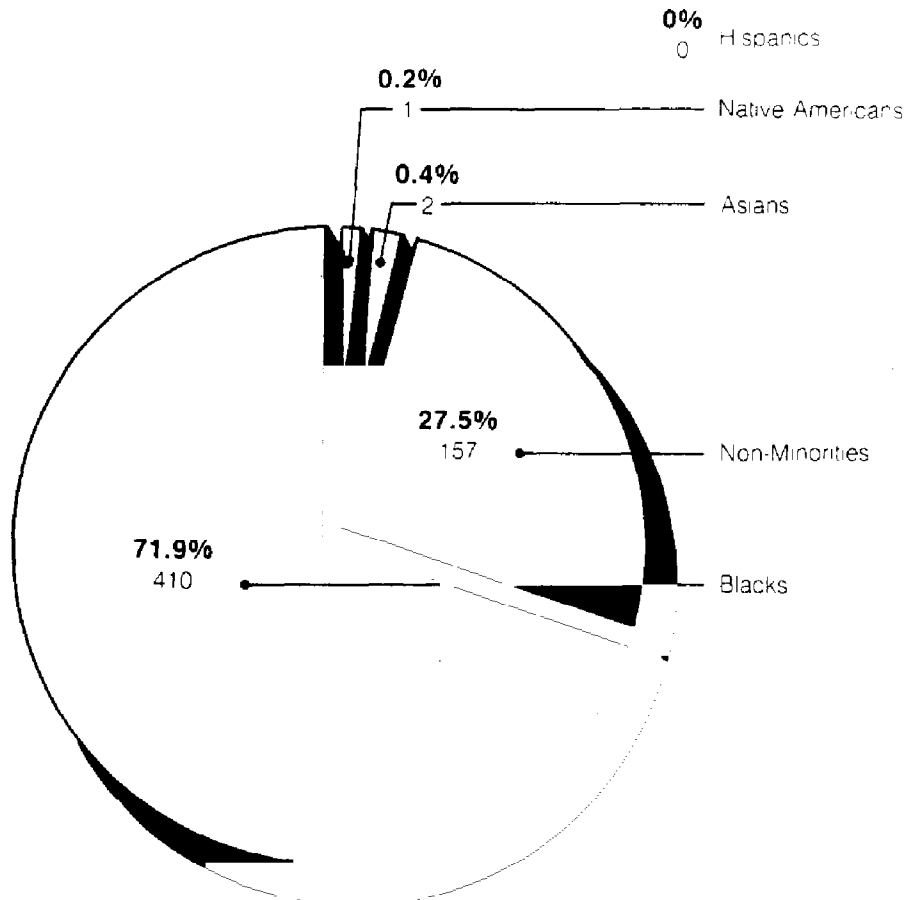


Black Employees Viewed Management Changes as Discriminatory

Controversy arose in 1983, when black employees complained that racism motivated the organizational and functional changes in the Division of Administrative Services. According to representatives of the local chapter of Blacks in Government, these changes unfairly diminished the authority and responsibilities of black managers. Also the division's affirmative action committee charged that the decision to reorganize the division was made not to increase efficiency, but to cut

costs by reducing the number of black employees, since they made up most of the division's work force (see figure 2.3).

Figure 2.3: Racial Composition of Permanent Employees in the Division of Administrative Services (Dec. 1984)



According to the Blacks in Government representatives, NIH's treatment of the division's former manager exemplified the unfair treatment of blacks. This manager, who had headed the division since 1974, had worked his way up from a GS-3 to a GS-15 and was considered by many to be the agency's most successful black employee. The Blacks in Government representatives alleged that the associate director, while reorganizing the division, unfairly diminished the black manager's duties by (1) transferring responsibility for the police and fire protection functions to the new division, (2) transferring responsibilities for the space

management and parking functions to his own office (see figures 2.1 and 2.2), (3) assuming authority for many personnel and travel decisions, and (4) generally dealing directly with lower level managers, thereby circumventing the black manager. These actions, they claimed, were intended to force the manager to retire, which he did when he became eligible in 1984.

Reduction of Authority and Responsibility Not Limited to Black Managers

We confirmed that the changes in organization and management responsibilities identified by employee groups representing blacks had occurred. However, the former manager of the Division of Engineering Services, who is white, was also adversely affected by the reorganization. For example, although no functions within his organization were transferred, some were abolished, his authority over personnel and travel matters was reduced, and the associate director often bypassed him to deal directly with lower level managers. The manager of engineering services retired in 1981 when he became eligible.

The allegations by Blacks in Government representatives about the intent of the reorganization stemmed in large part from a long-running feud between the associate director and the former manager of the Division of Administrative Services. The associate director was one of the division's most vocal critics before 1979, when he was an NIH researcher. The division's manager staunchly defended his organization and objected to any changes. However, in 1979, when the NIH Director placed the division's manager under the control of one of his principal critics, the conflict came to a head. In 1983, the associate director focused his attention on reorganizing the division. This was a year after the black manager had produced and widely circulated throughout NIH a report criticizing the associate director's reorganization plan. In summary, the conflict involving the associate director and the division director, although it peaked in 1983, had started years earlier.

No Employees Terminated or Downgraded Due to the Reorganization

In June 1983 the associate director asked the NIH personnel office to perform a position management review in the Division of Administrative Services. The associate director said this study was undertaken to help him learn about the work of the division's various units. The division's affirmative action committee, however, alleged that the associate director intended to eliminate the jobs of black employees and pointed out that this type of review was not conducted elsewhere in NIH. On July 6, 1983, the committee asked the NIH Director to justify these position

management reviews. In his July 26, 1983, response, the Director confirmed that the review was needed to obtain information on the way division personnel were being used. This response, however, did not change the committee's opinions.

After the position management review was completed, no division employees were downgraded or dismissed. Since then, such reviews have been conducted in the other Office of Research Services units, namely the Division of Engineering Services and the Division of Safety, which employ mostly white employees. Also, in March 1985 the NIH Director asked a productivity committee to review administrative support services and help the various NIH institutes and divisions improve their efficiency. As of December 1985 the Director had not decided on the extent to which support services staff would be affected.

Conclusions

Concerns about the purposes and potential effects of the reorganization of the Division of Administrative Services, and the long-running feud over the adequacy of research support services between the newly appointed white associate director and the black division manager, caused anxiety among all support service employees. Also some black employees perceived that they were being treated unfairly. We found no evidence that the division was targeted for reorganization because it employs many blacks. Both minority and nonminority managers lost responsibilities and prestige, and both minority and nonminority service employees were concerned about layoffs. No employees, however, were downgraded or dismissed as a result of the reorganization.

Processing Discrimination Complaints Takes a Long Time

The average time required to investigate, render decisions on, and resolve discrimination complaints for HHS overall increased from 355 to 529 days between fiscal years 1982 and 1984. These times significantly exceeded the 180-day criterion established by EEOC. Part of the total time involves investigating the complaints—a process carried out centrally by HHS' Division of EEO Complaints Investigations. The rest of the time involves attempting to render decisions and resolve the complaints—a process carried out by the HHS organizational components, such as NIH, which are the subjects of the complaints.

During fiscal years 1982-84, NIH took longer to render decisions on and resolve complaints after receiving investigation reports from HHS than any other PHS agency, and the median time increased from about 230 to 400 days. PHS guidelines stated that this part of the resolution process should take no more than 90 days. NIH employee groups representing minorities and females alleged that the slow processing of discrimination complaints was one indication that the NIH Director is not committed to resolving EEO problems. In January 1984, the Director of NIH appointed a new director of the Division of Equal Opportunity. This new manager initiated a number of actions in 1984 and 1985 to improve the processing of complaints and enhance the division's image among agency employees (see p. 28). The actions appear reasonable, but no data were available for us to conclude that they had expedited the processing of discrimination complaints or improved the division's image.

Discrimination Complaints Process at NIH

The Code of Federal Regulations (29 C.F.R. Part 1613) prescribes procedures for agencies to follow in processing discrimination complaints by federal employees or job applicants. HHS has also issued supplemental guidance to its organizational components. These are the guidelines NIH is to follow:

1. An employee or applicant who believes he or she has been discriminated against takes the problem to an NIH EEO counselor, who attempts to resolve it within 21 days.
2. Should the counselor's efforts fail, the individual has 15 days to file a formal complaint with the HHS Division of EEO Complaints Investigations, which performs an investigation.
3. When the HHS investigation is completed, a report is sent to the NIH Division of Equal Opportunity. In 1984, PHS set 90 days as a goal for its

subordinate agencies to resolve complaints after receiving the HHS investigation reports (before then the goal was 60 days). The division makes the records available to the complainant and attempts to settle the matter. Should the attempt fail, a proposed disposition of the case is prepared by the NIH director, Division of Equal Opportunity. After PHS reviews the proposed disposition, it is sent to the NIH Director for signature. After the Director signs it, the proposed disposition is presented to the complainant.

4. If not satisfied with the proposed disposition, the complainant may request a final HHS decision with or without a hearing before an EEOC complaints examiner. If a hearing is requested, the case is sent to EEOC. The examiner conducts a hearing and makes a recommendation to HHS.

5. HHS then makes a final decision, which may not coincide with the complaints examiner's recommendation. If the complainant is not satisfied, he or she may appeal the HHS decision to EEOC's Office of Review and Appeals.

6. If the complainant or the Department is not satisfied with that office's decision, either can request reconsideration by EEOC's commissioners.

Complainants may take civil action in court after exhausting the administrative procedures described above. Civil action may also be taken if the Department does not make a final decision within 180 days from the date the formal complaint was filed.

Time Required to Close Discrimination Complaints

A previous GAO report¹ and annual EEOC reports indicated that timeliness in investigating, rendering decisions on, and resolving discrimination complaints is a problem throughout the federal government. For example, our 1983 report noted that discrimination complaints throughout the government were not being processed efficiently. This criticism was based primarily on the extensive time taken to render decisions on and resolve complaints. Complaints closed in fiscal year 1981 were in process an average of 611 days—more than twice as long as in fiscal year 1974—with some agencies averaging over 1,000 days. The slow processing was due to poor management by many agencies and

¹Problems Persist in the EEO Complaint Processing System for Federal Employees (GAO/FPCD-83-21, Apr. 7, 1983).

EEOC, the system's cumbersome design, and confusion involving civil service and EEO laws and regulations. According to EEOC records in fiscal year 1983—the most recent data published—the government-wide average time to investigate, render decisions on, and resolve complaints was 308 days. HHS' average time was 480 days in fiscal year 1983 and 529 days in fiscal year 1984.

As shown in table 3.1, the time required to resolve complaints at HHS has increased steadily over the past 3 years and has consistently exceeded the EEOC 180-day limit.

Table 3.1: Average Time to Close Discrimination Complaints at HHS
(Fiscal Years 1982-84)

Fiscal year	Total cases closed	Average number of days
1982	664	355
1983	479	480
1984	441	529

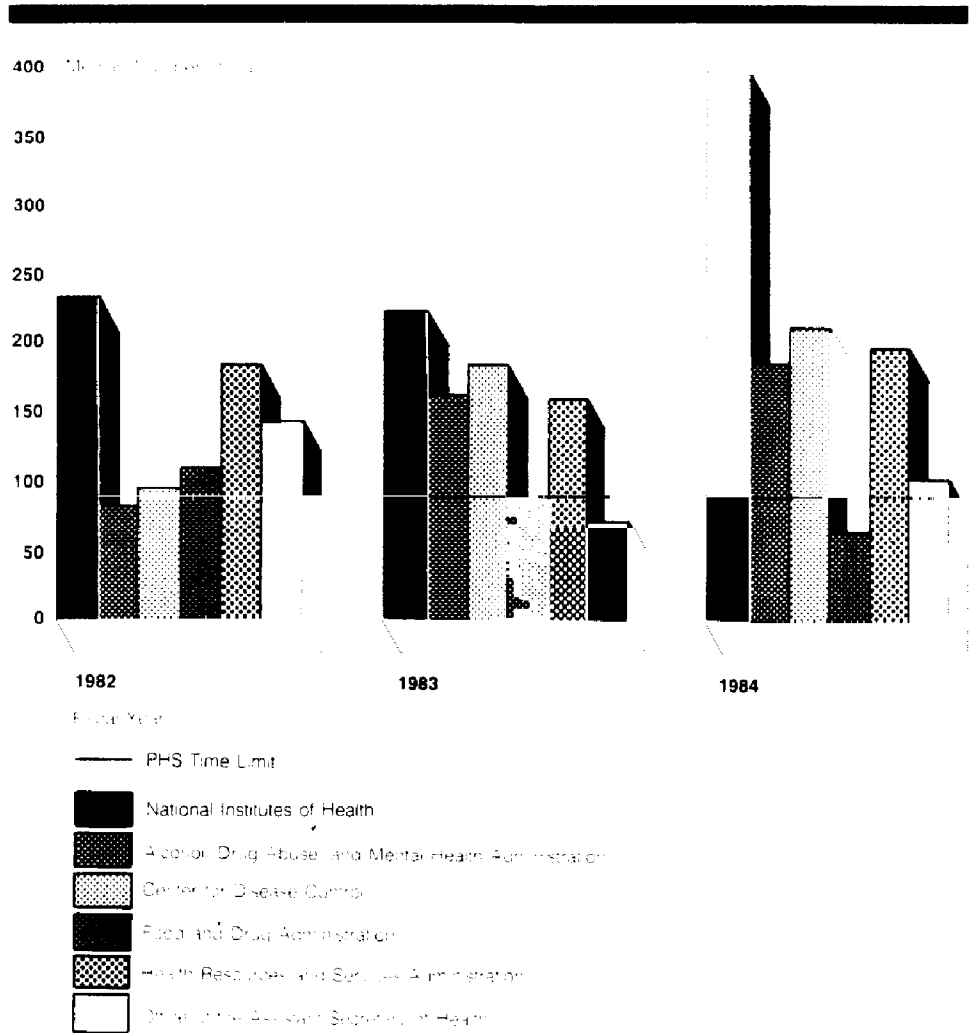
NIH employee groups representing women and various minorities alleged that delays in processing complaints contribute to a perception that NIH management does not fully support EEO efforts. As shown in table 3.2 and figure 3.1, the median number of days taken by NIH to render decisions on and resolve discrimination complaints after receiving HHS investigation reports significantly exceeded the PHS 90-day guideline for these purposes, and NIH consistently exceeded the time taken by most other PHS agencies.

Table 3.2: Median Time to Close Discrimination Complaints in PHS Agencies^a

	Fiscal year 1982		Fiscal year 1983		Fiscal year 1984	
	Number	Days	Number	Days	Number	Days
NIH	15	234	22	223.5	14	395.5
Alcohol, Drug Abuse, and Mental Health Administration	11	81	13	168.5	7	186
Centers for Disease Control	1	95	2	184.5	2	210
Food and Drug Administration	26	110	8	86	11	62.5
Health Resources and Services Administration	25	184.5	12	160	20	193
Office of the Assistant Secretary for Health	21	143	5	71	10	90
Total	99	143	62	153	64	191

^aThese figures represent the median number of days expended between the receipt of the HHS report of investigation and the closing of the complaint in PHS. The figures include complaints (1) canceled or withdrawn, (2) resolved informally, or (3) closed or resolved by issuing a proposed disposition signed by the NIH Director and accepted by the complainant.

Figure 3.1: Time Taken by PHS Agencies to Complete Complaint Processing After Receiving Investigation Reports From HHS (FY 1982-FY 1984)



Management Problems Contributed to Long Processing Time

Several NIH studies completed between 1980 and 1984 showed that management and personnel problems in NIH's Division of Equal Opportunity and HHS' Division of EEO Complaints Investigations contributed to the long time taken to process complaints. For example:

- HHS investigation reports were poorly written and incomplete, requiring extensive follow-up investigation by NIH.

- The NIH Division of Equal Opportunity lost key experienced managers and staff, and the remaining staff did not have the skills to manage the work flow.
- Disposition reports, which were contracted out, were poorly written, requiring extensive revisions by NIH.
- Personality conflicts among staff members prevented effective teamwork.

Management Changes to Improve Complaints Processing

The NIH Director appointed a new director of the Division of Equal Opportunity in January 1984. During 1984 and 1985 the new director initiated the following actions in attempting to improve the processing of discrimination complaints:

- Appointed a new manager of the division's complaints branch.
- Discontinued contracting to have disposition reports prepared.
- Employed a private consultant to train division staff in preparing disposition reports.
- Hired additional support staff.
- Held regular meetings with EEO officers representing the various NIH institutes and divisions.

These actions appear to be reasonable responses to the documented problems the division has had in managing the complaints process, but it is too early to tell whether the timeliness of processing complaints has improved. NIH management and some employee groups have noted, however, that the new complaints branch manager is working to expedite complaint processing.

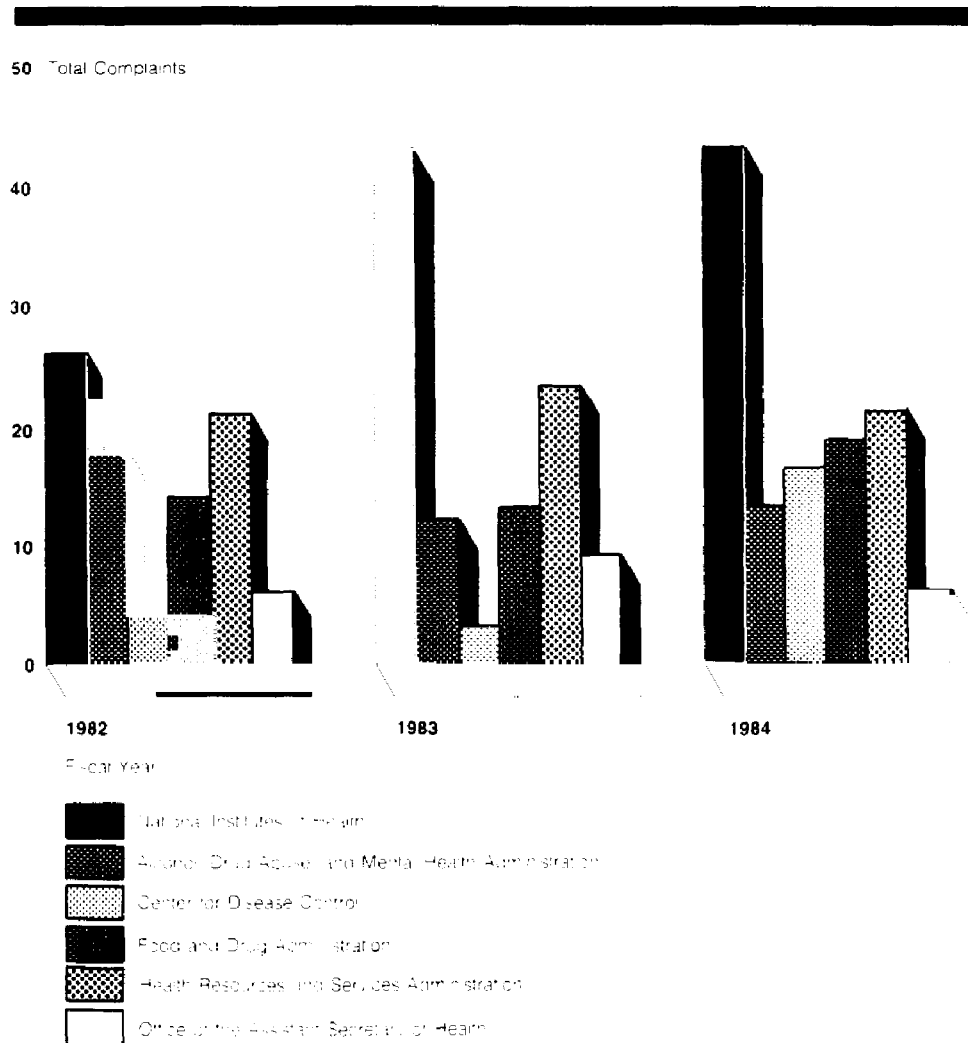
Number of Complaints Filed May Not Be a Good Measure of Discrimination Problems

The number of formal discrimination complaints filed in an organization does not necessarily indicate the extent of discrimination problems. Minority and female groups at NIH contend that, because the complaints process is slow, complicated, and lacking in credibility, employees hesitate to file complaints through established channels. On the other hand, according to the HHS director, Division of EEO Complaints Investigations, a finding of discrimination is made in less than 10 percent of all cases filed in HHS. Many employees have also filed more than one complaint, complicating analysis of the data.

The number of employee discrimination complaints filed formally against PHS agencies between 1982 and 1984 is shown in figure 3.2. NIH

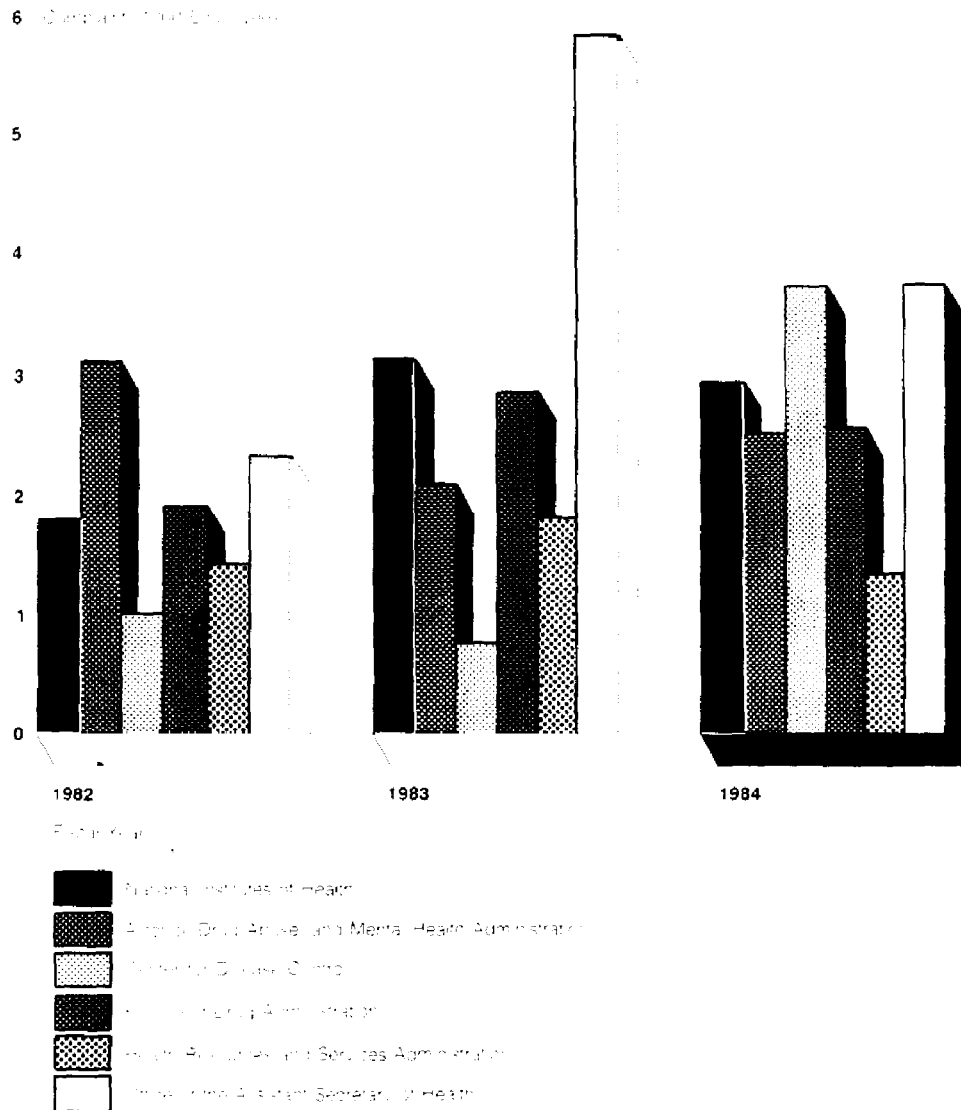
accounted for 29 percent of PHS' complaints in fiscal year 1982, 42 percent in 1983, and 36 percent in 1984.

**Figure 3.2: Total Number of
Discrimination Complaints Filed
Against PHS Agencies
(FY 1982-FY 1984)**



NIH ranks about in the middle of the PHS agencies in terms of complaints per 1,000 employees, as shown in figure 3.3.

Figure 3.3: Ratio of Discrimination Complaints to Employee Population of PHS Agencies (FY 1982-FY 1984)



Conclusions

HHS' Division of EEO Complaints' Investigations and NIH's Division of Equal Opportunity shared responsibility for the long time it took to process employee discrimination complaints during fiscal years 1982-84.

NIH management changes and actions during 1984 and 1985 appear reasonable. In commenting on our draft report in February 1986, HHS advised us that management efforts had resulted in NIH issuing 41 proposed dispositions between December 1984 and August 1985 and eliminating the backlogged cases over which it had control. In a subsequent meeting, the director of the NIH Division of Equal Opportunity advised us that with the backlog eliminated, she expected average processing time to improve.

Some employee groups representing minorities recognized the attempts the division was making to improve this process. Sustained effort and attention by top management are necessary, however, for NIH to further improve the process.

NIH Does Not Fully Comply With EEOC Affirmative Action Requirements

NIH is not fully complying with four of eight EEOC requirements (see pp. 64-65) for federal affirmative action programs established to eliminate the underrepresentation¹ of minorities and females in the federal work force. Specifically, NIH has not

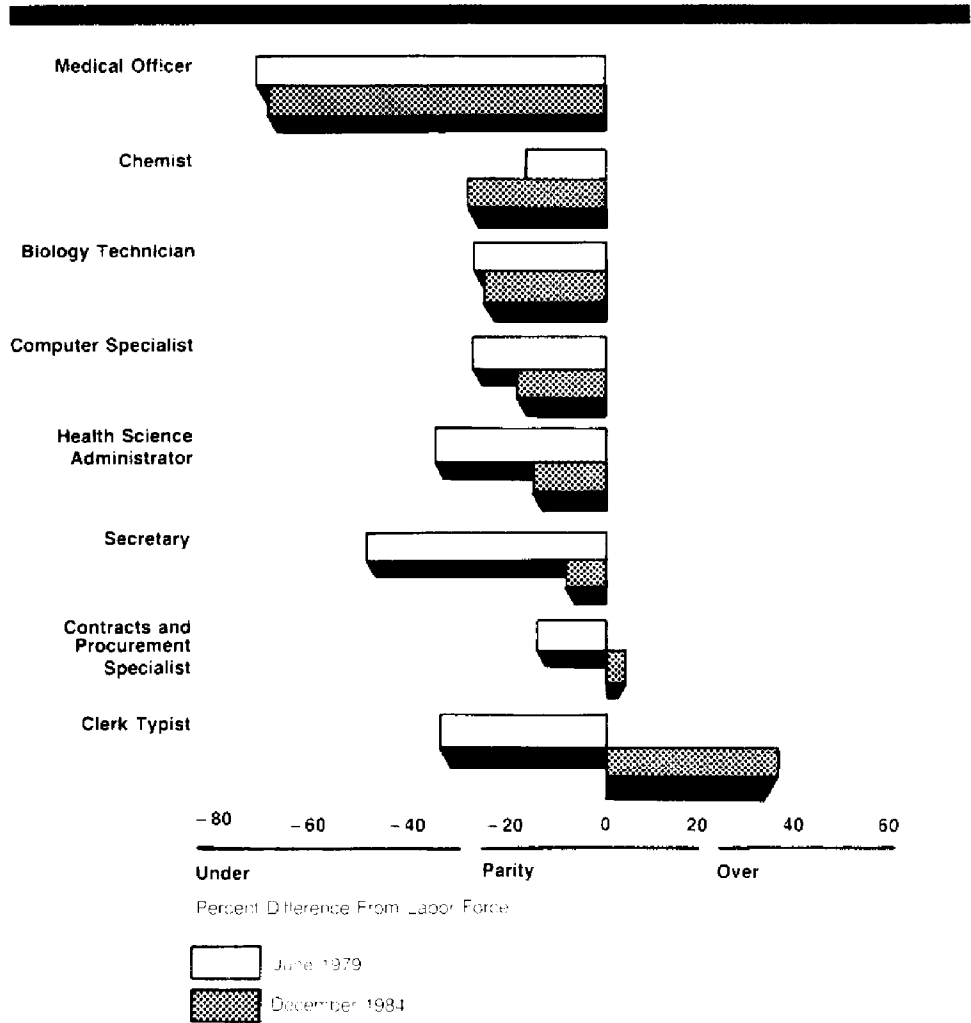
- established numerical hiring goals for underrepresented groups,
- consistently implemented minority and female recruitment strategies,
- collected key data to enable it to monitor or evaluate the affirmative action program, or
- completed an analysis of impediments to EEO.

We believe this noncompliance may have contributed to the underrepresentation found in the NIH work force. NIH has increased the overall number of minorities and women in its work force since 1979. As of December 1984, according to HHS' criteria, minorities and women were underrepresented in 63 of 108 gender, race, ethnic origin, occupation, and grade-level categories (see p. 41).

Although NIH has not established numerical hiring goals for its underrepresented groups, in its fiscal years 1982-86 affirmative action plan approved in February 1983, NIH identified 11 occupations in which significant numbers would be hired. NIH targeted these 11 occupations to improve the representation of minorities and women. Figure 4.1 shows that NIH has increased its overall minority and female representation in seven of eight targeted occupations. Among these seven occupations the increases varied from slight to significant. We examined only 8 of the 11 occupations because in 2 occupations, minorities and women were adequately represented, and in another, adequate data were not available.

¹EEOC in September 1984 issued labor-force data to federal agencies, based on 1980 census data, to determine whether minorities and women are adequately represented in an agency's work force. The statistics, which are called civilian labor-force data, are developed on nationwide and regional bases and include persons aged 16 or over who are not in the Armed Forces. These data estimate the total number of persons employed or seeking employment in a broad variety of occupations. If the percentage of minorities or women in an agency's work force is less than the percentage in the civilian labor force, that group is defined as being underrepresented.

Figure 4.1: Minority/Female Representation in Targeted Occupations Before and After Approval of Affirmative Action Plan (June 1979- Dec. 1984)^a



^aFor comparison purposes, this figure combines the underrepresented minority and women's groups specifically targeted within each occupation. For example, nonminority females were not targeted for priority recruiting in the secretary occupation, so they were not included in the before-and-after comparison in that occupation. The nurse and biologist occupations were also not included because they were fully represented overall.

EEOC Requirements for Implementing Affirmative Action

Federal agencies are required by law to design and implement affirmative action programs to overcome the effects of past discrimination in employment practices. EEOC Management Directive 707, issued in January 1981, instructed federal agencies to develop, submit, and implement equal employment and affirmative employment plans for

minorities and women for fiscal years 1982-86. On August 26, 1983, EEOC issued Management Directive EEO-MD-707A, which provides instructions for annual accomplishment reports and updates of the affirmative action programs. According to EEOC the annual accomplishment report requires information about changes in an agency's work-force profile, underrepresentation indices, hiring accomplishments, internal movement accomplishments, and barrier elimination. The annual update requires information about hiring goals, internal movement goals, and projected barrier elimination activity.

Any agency or agency component that has 500 or more employees must develop a multiyear affirmative action plan, which includes a federal equal opportunity recruitment plan. The eight basic elements of an affirmative action plan are presented in appendix IV.

The director of EEOC's Office of Program Operations, in commenting on a draft of this report in February 1986, advised us that EEOC Management Directives 707 and 707A relating to establishing hiring goals and internal movement goals for underrepresented groups, implementing recruitment programs for minorities and women, and identifying selection barriers affecting minorities and women will expire on September 30, 1986. The director said that EEOC is reviewing the directives to determine whether and, if so, how to revise them.

NIH developed an agency-wide, multiyear affirmative action plan, including a federal equal opportunity recruitment plan for fiscal years 1982-86. This plan was originally approved by the NIH Deputy Director for the Director in February 1983. The NIH plan, however, does not satisfy four of the eight EEOC requirements, as discussed below.

Required Numerical Hiring Goals Not Established

According to EEOC, numerical hiring goals and timetables are key elements of an affirmative action plan because they reflect management's commitment to overcoming underrepresentation, while providing measurable objectives for managers to aim toward when recruiting, hiring, and promoting staff.

Management Directive 707 states that goals are not rigid quotas, but flexible numerical hiring targets intended to remedy historical underrepresentation. EEOC requires numerical goals in agencies and departments for each underrepresented occupation or employment category with 100 or more positions. In a December 9, 1983, memorandum from the Assistant Secretary for Personnel Administration, HHS informed all

subordinate agencies that such goals were required beginning in fiscal year 1984.

As of November 1985, NIH had not complied with either EEOC or HHS requirements to establish numerical goals. The director of the NIH Division of Equal Opportunity advised us in February 1986 that she was aware of the EEOC and HHS requirement to establish numerical hiring goals. She said she attempted to develop them by using the methodology prescribed by HHS, which involved a series of mathematical calculations. Applying this methodology, she told us, resulted in annual numerical hiring goals of less than one person for underrepresented groups in most occupational series targeted for affirmative hiring. Because of the small total number of hiring opportunities in most occupational series during a fiscal year, the director rounded these numbers down to zero.

Recognizing the impracticality of having affirmative action goals of zero when underrepresentation was known to exist, the director decided not to disseminate the results of the goal-setting process to the NIH bureaus, institutes, and divisions or to PHS. In its comments on our draft report, HHS stated that the NIH Director established a committee to explore practical alternatives for setting realistic and achievable goals to increase the representation of minorities and women throughout NIH. The NIH director of the Division of Equal Opportunity told us that this committee was established in about October 1985.

Notwithstanding the small numbers of projected hiring opportunities in the occupational series targeted for affirmative action and the small numbers of qualified persons in the civilian labor force, the EEOC and HHS directives gave NIH options in establishing numerical hiring goals. For example, in calculating numerical goals an agency may combine (1) men and women in an underrepresented group for an occupational series, (2) some or all underrepresented groups within an occupational series, or (3) all grade levels for an underrepresented group within an occupational series. By combining underrepresented groups in these ways, an agency can establish more meaningful and realistic numerical hiring goals and better gauge its movement toward eliminating underrepresentation.

We noted that NIH followed HHS' methodology in attempting to develop numerical hiring goals for fiscal years 1984 and 1985 for each identified underrepresented group; for example, black women, Hispanic men, and Hispanic women. The director of the NIH Division of Equal Opportunity,

however, said she did not combine underrepresented groups when calculating goals.

Minority and Female Recruitment Plans Do Not Comply With Requirements

The NIH minority and female recruiting plans have not been implemented in accordance with EEOC and OPM requirements. The Civil Service Reform Act of 1978 established the minority recruitment program, later renamed the federal equal opportunity recruitment program. This program, directed by OPM, requires agencies to establish recruiting strategies to increase minority and female representation in applicant pools and thereby expand the potential for achieving the numerical hiring goals set forth in the affirmative action plan.

EEOC requires that strategies for achieving minority and female recruitment objectives be incorporated into the agency's or agency component's overall affirmative action program. OPM requires the recruitment plan to include up-to-date strategies aimed at increasing the number of applicants in all underrepresented employee groups, to cover all agency pay plans, and to use the most appropriate and current civilian labor-force data for calculating underrepresentation. The five recruitment plans we reviewed, including the NIH-wide plan, did not meet all these requirements. Four examples of noncompliance are shown below:

1. The NIH-wide minority and female recruitment plan, which is required to cover all agency pay plans, covered only the general schedule and merit pay plans, but not wage grade positions.
2. The National Institute of Environmental Health Sciences' plan incorrectly incorporated Atlanta civilian labor-force data in the work-force underrepresentation calculations although the institute is located in Research Triangle Park, North Carolina.
3. NIH updated its minority and female recruiting plan in fiscal years 1984 and 1985, but numerical hiring goals were not developed for either year, as required by EEOC directives.
4. The Division of Administrative Services did not have a specific plan to recruit Hispanics, Asians, and Native Americans, all underrepresented groups in the division when compared to civilian labor-force data.

In commenting on a draft of this report in February 1986, HHS addressed the first two noncompliance examples cited above. HHS advised us that

although OPM requires agency equal opportunity recruitment program plans to cover all agency pay plans, the instructions and guidance NIH received from PHS did not require plans to be developed for wage system employees during the first year of the plan and made coverage of wage system employees optional for subsequent years' plan development. HHS also stated that NIH's Division of Equal Opportunity began to develop a plan for wage system employees in January 1983 but stopped doing so when the administration began to implement Office of Management and Budget Circular A-76, as revised. This circular encourages agencies to contract for the types of administrative functions, according to HHS, generally performed by wage system employees.

HHS also advised us that when instructions were first circulated for affirmative action plans and equal opportunity recruitment programs, the National Institute for Environmental Health Sciences received conflicting instructions from HHS, PHS, NIH, and the OPM and EEOC Atlanta regional offices regarding which civilian labor-force data should be used to identify underrepresentation.

According to NIH Division of Equal Opportunity data, 17 of 22 NIH organizational components had minority and female recruitment program plans as of November 1985. Implementation of recruitment program requirements varied among five NIH components whose affirmative action plans we reviewed. For example, the National Cancer Institute carried out recruitment strategies and monitored the success of its recruitment program by collecting and analyzing race, gender, and ethnic origin applicant flow data. The Clinical Center, however, was not collecting and analyzing program applicant data. The director of management support services, the Clinical Center's chief personnel officer, said he supports affirmative action, which he believes is evidenced by the composition of his own staff, which is predominately minority and female. He added, however, that affirmative action is not a relatively high priority among the assignments he receives from his supervisor.

Analysis of Impediments to Equal Employment Opportunity Not Completed

According to EEOC, a critical element of agency affirmative action planning is the survey and identification of agency personnel policies, practices, and procedures that may impede progress in meeting affirmative action goals. Agencies are to prepare a "barrier analysis" to identify possible impediments and outline action steps and timetables to eliminate barriers.

Examples of possible impediments include

- the use of unnecessary educational or certification requirements,
- agency rating panels that consistently exclude minorities and women, and
- the lack of an effective mechanism for identifying and using minority and female recruitment sources.

The NIH multiyear affirmative action plan dated February 1983 stated that a preliminary barrier analysis would be completed during fiscal year 1983. In its February 1986 comments, HHS advised us that the Division of Equal Opportunity in NIH conducted a barrier analysis of the nurse occupational series in fiscal year 1983 as far as it could be done without collecting applicant flow data. In a February 1986 meeting after the comments were provided to us, the division's director explained that the analysis consisted of reviewing recruiting efforts and internal hiring policies and procedures. However, the director agreed that the collection of applicant flow data was a missing link in the analysis. According to the director, the NIH Division of Personnel Management had completed similar barrier analyses of the chemist, medical officer, and contract specialist occupational series from August to December 1985.

We reviewed the four reports that NIH identified as being barrier analyses. Each report dealt with a specific job series included in the NIH affirmative action plan and summarized NIH's attempts to identify possible barriers/impediments for underrepresented groups in these series. Because applicant flow data were not collected, however, these barrier analyses were not adequate.

Information for Evaluating Affirmative Action Activities Not Being Collected

Since December 1983, NIH has not collected agency-wide data on the race, ethnic origin, and gender of job applicants as required by EEOC Management Directive 707. The collection of these data was also required by the Uniform Guidelines on Employee Selection Procedures, which became effective on September 25, 1978. EEOC's director of public sector programs advised us in November 1985 that EEOC required this information to be collected because it is considered critical in analyzing barriers to the employment of minorities and women, establishing achievable numerical hiring goals, and monitoring the effectiveness of federal equal opportunity recruiting efforts.

From January 1981 to December 1983, both OPM and EEOC required agencies to collect data on the race, ethnic origin, and gender of job applicants on OPM Form 1386, "Background Survey Questionnaire." NIH collected these data during this time.

In December 1983, however, OPM informed federal agencies and departments that its requirement to collect applicant data was rescinded because the Office of Management and Budget's authorization to use OPM Form 1386 had expired. OPM decided not to request reauthorization to continue using this form because (1) no law or regulation required OPM to collect the data, (2) the data collected were not statistically reliable, and (3) collecting and processing the data was expensive. OPM's rescission of its requirement to collect race, ethnic origin, and gender information on job applicants and the expiration of authority to use Form 1386 to collect these data left federal agencies and components with a dilemma: They were required by EEOC directives to continue collecting these data, but had no officially approved form on which to collect the data.

As a result, in February 1984, the director, NIH Division of Equal Opportunity, and the director, NIH Division of Personnel Management, jointly requested written clarification from the HHS Assistant Secretary for Personnel Administration on the issue of collecting applicant data. In February 1984, HHS' Deputy Assistant Secretary for Personnel Administration requested clarification from OPM's Associate Director for Workforce Effectiveness and Development.

A June 1984 response to HHS from the OPM associate director stated that

"... absent any compelling reason to collect race, sex, and national origin data on applicants I feel we have a responsibility to be aware that the act of collecting such data may be perceived by some members of the public as tainting the federal recruitment and employment process with the suggestion of invidious discrimination."

In November 1985, the OPM Deputy Associate Director for Workforce Effectiveness and Development advised us that federal departments and agencies are not prohibited from collecting these data, just from using OPM Form 1386 as the instrument for doing so. EEOC has final program authority in this area, he added, so if EEOC considers the issue important, it can mandate new requirements in this area.

The EEOC director of public sector programs disagreed that EEOC had final program authority in this area. The director noted that if EEOC had such authority, how could OPM unilaterally and without consulting EEOC (1) withdraw its requirement to collect this information for job applicants and (2) decide not to request reauthorization from the Office of Management and Budget after December 1983 to continue using Form 1386 for this purpose. The director believes OPM has final program authority concerning this issue.

The director of EEOC's Office of Program Operations, in commenting on a draft of this report, advised us in February 1986 that while he would agree that EEOC has a major role in this area, OPM has the final program authority regarding the collection of federal applicant flow data. In that regard, he stated that OPM should have at least consulted EEOC, as well as other federal agencies, before it allowed Form 1386 to expire.

The HHS Deputy Assistant Secretary for Equal Employment Opportunity told us that although HHS considers collecting applicant data to be important, as of November 1985 it had not developed policy guidance for its component agencies on how to meet EEOC's requirement for collecting information on job applicants. As a result, NIH, and probably other HHS components, are not meeting this affirmative action program requirement.

Minorities and Women Still Underrepresented as of December 1984

As of December 1984, based on HHS' criteria,² minorities and women were underrepresented in 63 of 108 gender, race, ethnic origin, occupation, and grade-level categories (GS-1 through GS-15) throughout NIH (see table 4.1). EEOC affirmative action requirements were established to eliminate the persistent underrepresentation of minorities and women in the federal work force. Although a direct link cannot be clearly established, noncompliance with four of eight requirements may explain in part why minorities and women continue to be underrepresented throughout the agency.

Although NIH has made some progress, women and minorities, especially Hispanics, are underrepresented in most occupational categories (see table 4.1), according to HHS' criteria based on the Uniform Guidelines on Employee Selection Procedures.

²According to HHS guidelines, the ultimate objective of affirmative action is to attain parity; that is, the organizational profile in which all employee groups are at or near civilian labor-force rates. The HHS guidelines state that, as a minimum, underrepresented employee groups in HHS should reach no less than 80 percent of civilian labor-force rates.

Chapter 4
 NIH Does Not Fully Comply With EEOC
 Affirmative Action Requirements

Table 4.1: Underrepresentation Measurements at NIH by Occupation Category and Grade Levels 1 Through 15 (December 1984)

Occupation category	Grade	Black		Hispanic		Native American		Asian, Pacific Islander		Non-minority females
		M	F	M	F	M	F	M	F	
Professional	1-8	U	U	U	○	U	U	U	○	○
	9-12	○	○	U	•	U	○	U	○	○
	13-15	•	U	U	U	U	U	○	○	U
Administrative	1-8	•	U	U	U	U	U	U	○	○
	9-12	U	•	U	U	•	U	U	○	○
	13-15	•	•	U	U	U	U	U	U	•
Technical	1-4	○	○	U	•	○	U	•	U	U
	5-6	○	○	U	U	U	○	U	U	•
	7+	○	○	U	U	•	•	U	U	•
Clerical	1-4	U	○	U	U	U	○	U	•	○
	5-6	U	○	U	U	U	○	U	U	○
	7+	U	U	U	U	U	○	U	U	○

M = Male, F = Female.
 U = Underrepresented by more than 20 percent.
 • = Fully represented.
 ○ = Overrepresented by more than 20 percent.

Conclusions

Affirmative action programs are designed to overcome the past effects of discrimination and promote full representation of minorities and women in the work force. NIH increased the representation of minorities and women in its overall work force, as well as in seven of eight occupations targeted in its affirmative action plan. Yet, based on HHS' criteria, in December 1984 minorities and women were underrepresented in 63 of 108 gender, race, ethnic origin, occupation, and grade-level categories. Consequently, more needs to be done to eliminate this underrepresentation. As required by EEOC, the use of numerical hiring goals, development of recruitment plans, and identification and elimination of employment barriers should help increase the representation of minorities and women in the NIH work force. Positive results will not be achieved, however, without strong commitment and active support from NIH top management.

Since December 1983 NIH has not collected information to evaluate the effectiveness of affirmative action activities, including data on the race, gender, and ethnic origin of job applicants. The authority to use OPM Form 1386 to collect these data has expired, and the OPM requirement to collect and analyze the data has been rescinded. EEOC directives to federal agencies require that these data be collected in federal departments and agencies, and NIH officials agreed that collecting this information is important.

Recommendations

We recommend that the Secretary of HHS direct the Director of NIH to comply with EEOC affirmative action program directives by

- establishing numerical hiring goals for all underrepresented groups,
- developing and implementing minority and female recruitment plans in organizational components that do not have them, and
- identifying and eliminating employment barriers for minorities and women.

Agency Comments

In its February 7, 1986, comments on a draft of this report (see app. VI), EEOC stated that it does not require agencies to collect applicant flow data. EEOC said it encourages agencies to collect race/ethnic origin/sex data on applicants for use in the analysis of selection barriers. According to EEOC, however, these data are not essential to establishing numerical hiring goals.

EEOC's statement is inconsistent with its Management Directive 707 to the heads of federal agencies for fiscal years 1982-86. This directive states:

"Agencies must begin immediately to collect and maintain applicant flow data. Although . . . Federal Personnel Management letters recommend collection of such data, EEOC and OPM have agreed that their collection should be mandatory. Such data are extremely important in gauging the success of FEORP [federal equal opportunity recruitment program] activities, as well as in determining adverse impact of selection or promotion techniques used by the agency. (Collection of such data is required for both private and public sector employers, including Federal agencies. See the Uniform Guidelines on Employee Selection Procedures, 43 FR 38,290 (1978).)"

In commenting on a draft of this report in February 1986 (see app. V), HHS stated that NIH has appointed a committee to develop a methodology for establishing goals that will meet EEOC requirements. HHS said that, once these goals are established, this committee will develop a mechanism for their implementation. As discussed on pages 34-36, HHS has already developed a methodology for establishing numerical hiring goals by using a series of mathematical calculations which are applied to estimates of the number of vacancies to be filled, taking into consideration the number of minorities and females already in each job series and the number estimated to be in the civilian labor force. We believe HHS' current methodology can be used to set meaningful numerical hiring goals for underrepresented groups.

HHS concurred with our recommendation that NIH develop and implement minority and female recruitment plans in organizational components that do not have them. HHS said that the NIH Director will direct organizational components that do not have such plans to prepare them.

Regarding our recommendation that HHS require NIH to identify and eliminate employment barriers for minorities and women, HHS said that NIH has completed analyzing four target series and begun the analysis of the remaining series, which it hopes to complete by the end of fiscal year 1986. We reviewed the four reports that NIH identified as being barrier analyses and found that none were adequate because applicant flow data were not being collected.

OPM was asked to, but did not comment on the draft report.

Matters for Congressional Consideration

Without complete data on the gender, race, or ethnic origin of applicants for federal employment, it is doubtful that HHS or any other agency or department can fully assess the effectiveness of its affirmative action program. This matter has government-wide significance and is not one that can be appropriately or adequately dealt with by HHS or other executive branch line agencies.

When we completed our draft of this report in January 1986, we were aware that federal agencies were caught in the middle between EEOC, whose management directives state that this information is required because it is critical to evaluating the effectiveness of federal affirmative action recruiting efforts, and OPM, which since December 1983 has not required that these data be collected. We are not aware of any efforts within the executive branch to clarify this situation.

The statement made by EEOC in its comments on this report, that EEOC encourages the collection of applicant flow data, and does not require it, clouds this issue even more, and is different than EEOC's written directives to federal agencies. As a result, the federal agencies will be even more confused than they have been.

The Congress should therefore explore this situation with OPM and EEOC to clarify what these agencies' current positions are concerning the collection of applicant flow data. Then, the Congress can decide whether it wants to provide additional guidance to executive agencies. These issues are important to all federal agencies and departments because until clear guidance is provided by EEOC and OPM, the other federal agencies and departments will continue in their current dilemma of not knowing what to do.

Representation of Minorities and Women in the NIH Work Force and Policymaking Positions

The Civil Service Reform Act of 1978 (Public Law 95-454) states that a basic policy of civil service reform is to provide a competent, honest, and productive federal work force that reflects the country's diverse population. To measure how well the federal work force reflects the national population, EEOC has developed data on the number of minorities and women working in the national labor force in a wide variety of occupations.

Using EEOC data, we found that although their numbers have increased since 1979, minorities and women continue to be underrepresented in many job categories at NIH. Minorities and women also continue to be underrepresented in supervisory positions, particularly in the Senior Executive Service.

EEOC Labor-Force Data and Methods of Measuring Underrepresentation

In September 1984, EEOC issued labor-force data to federal agencies, based on the 1980 census, for use in determining whether minorities and women are adequately represented in an agency's work force. Until then, agencies had used data based on 1970 census data and 1980 census estimates. These statistics, called civilian labor-force data, are developed on nationwide and regional bases and include persons aged 16 or over who are not in the Armed Forces. These data estimate the total number of persons employed or seeking employment in a wide variety of occupations. If the percentage of minorities or women in an agency's work force is less than the percentage in the civilian labor force, that group is considered underrepresented.

PHS has adopted four sets of EEOC labor-force data to measure underrepresentation at NIH:

1. Washington, D.C., Standard Metropolitan Statistical Area (SMSA) civilian labor-force data—used for entry and mid-level administrative staff; entry, mid-level, and senior technical staff; and clerical employees.
2. Washington, D.C., SMSA professional labor-force data— used for entry-level professional employees, which include medical officers, nurses, biologists, and chemists.
3. National civilian labor-force data—used for mid-level and senior administrators.
4. National professional labor-force data—used for mid-level and senior professionals.

Figures I.1 through I.4 show minority and female representation at NIH in the overall work force, senior administrative and professional positions, and the Senior Executive Service. To facilitate the graphic display of the data in the figures presented in appendixes I-III, we consolidated available information on the representation of minorities and women into four main categories:

- Blacks (includes males and females).
- Other minorities (includes Hispanics, Native Americans, and Asian/Pacific Islanders, males and females).
- Women (includes all females).¹
- Non-minorities (includes white males only).

According to HHS guidelines, the ultimate objective of affirmative action is to attain parity; that is, the organizational profile in which all employee groups are at or near civilian labor-force rates. The HHS guidelines state that, as a minimum, underrepresented employee groups in HHS should be at no less than 80 percent of civilian labor-force rates. Figures I.1 through I.4 and III.1 through III.11, which are based on NIH's data, recognize parity to exist for a minority group when the percentage of minorities employed is within 20 percent of the percentage of minorities that should be employed according to the appropriate labor-force data.

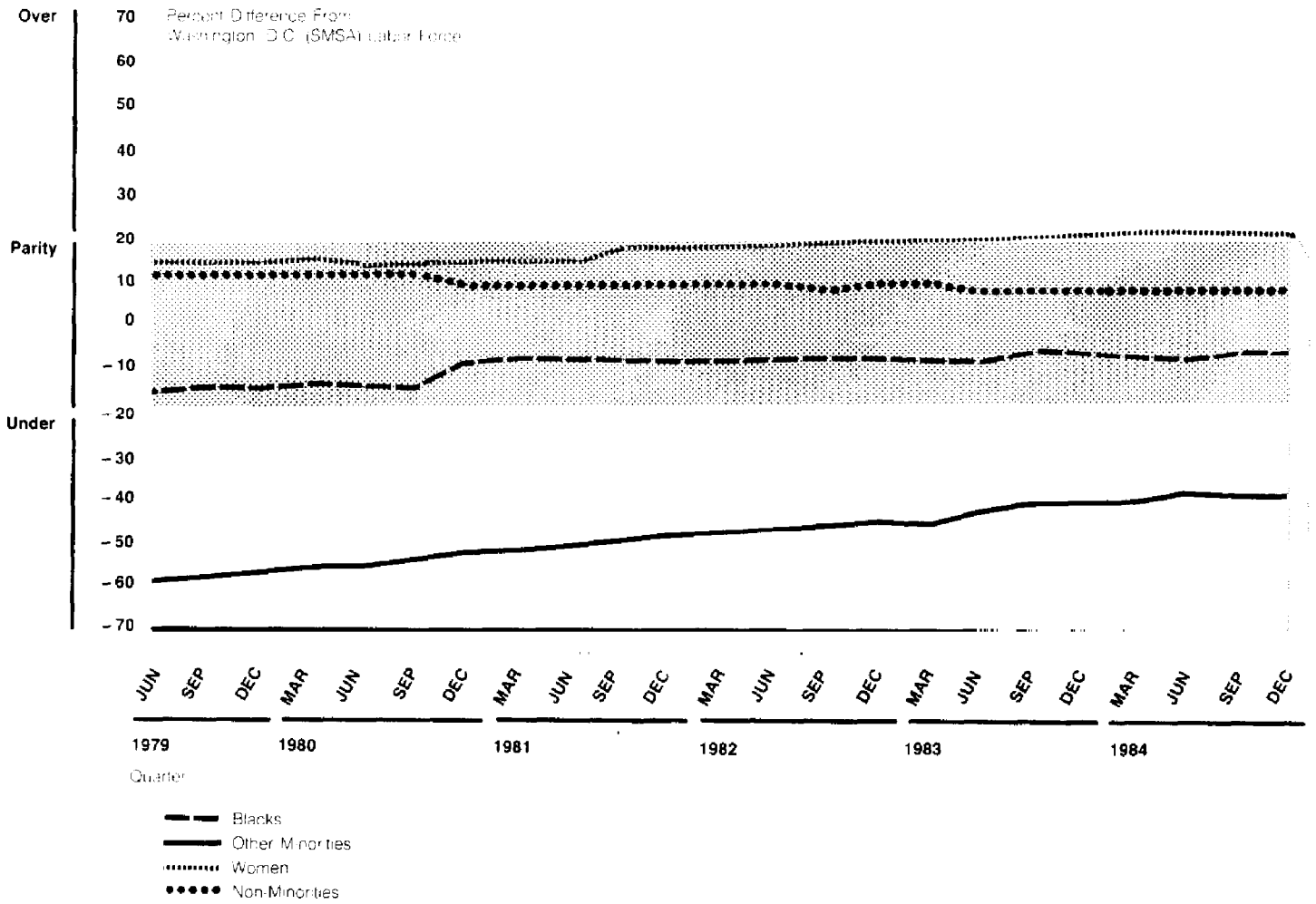
Although Their Numbers Increased, Minorities and Women Underrepresented in Many Occupations in NIH

In relation to the Washington, D.C., SMSA labor-force statistics, blacks and other minorities employed at NIH remain underrepresented, but their numbers have increased over the last 5 years, as shown in figure I.1.

¹By including all females in this category, we recognized that double counting occurred. We intentionally consolidated our data in this manner, however, in order to determine the representation of women as a group in NIH's work force.

**Appendix I
Representation of Minorities and Women in
the NIH Work Force and
Policymaking Positions**

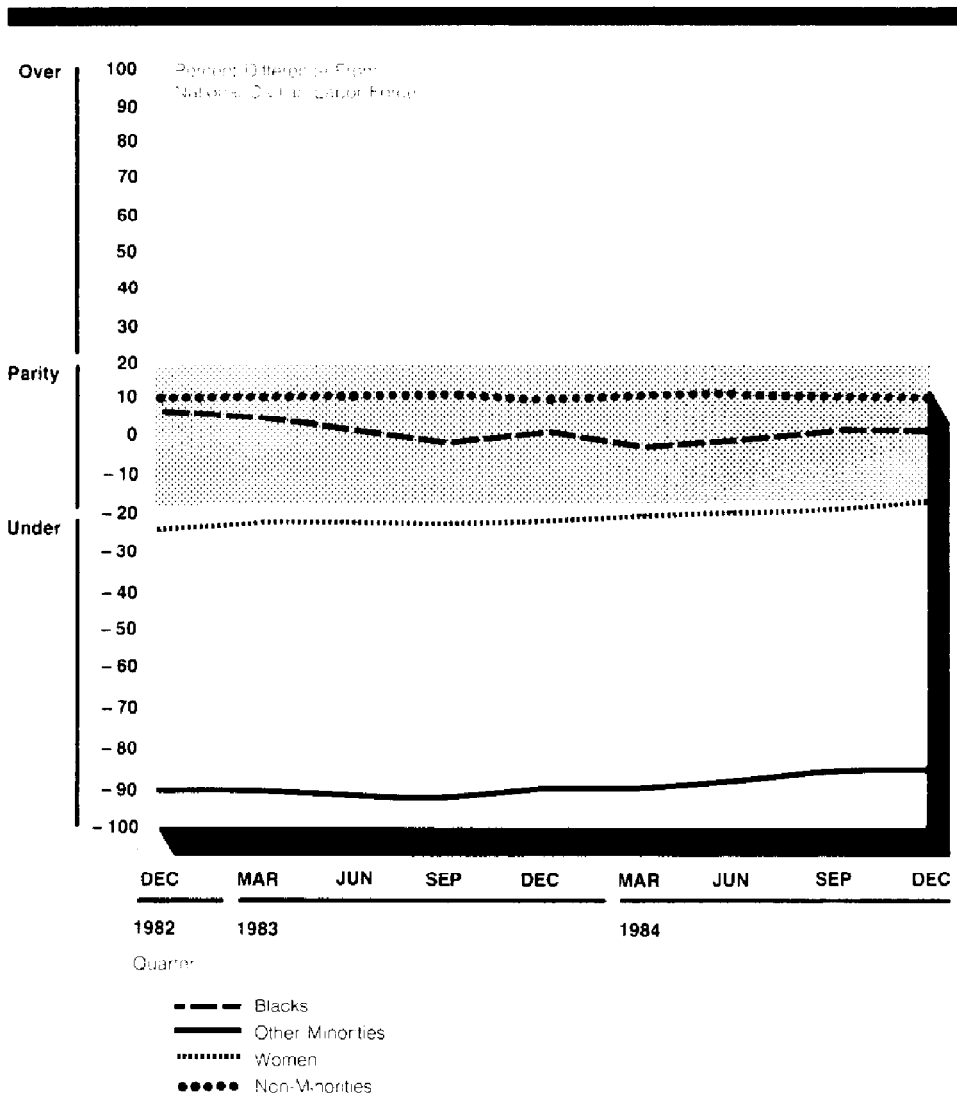
Figure I.1: NIH Permanent Work Force Minority/Female Representation (June 1979-Dec. 1984)



**Appendix I
Representation of Minorities and Women in
the NIH Work Force and
Policymaking Positions**

As figure I.2 shows, among senior administrators in grades 13-15, black males and females were at parity, while other minorities were significantly underrepresented, and women were slightly underrepresented.

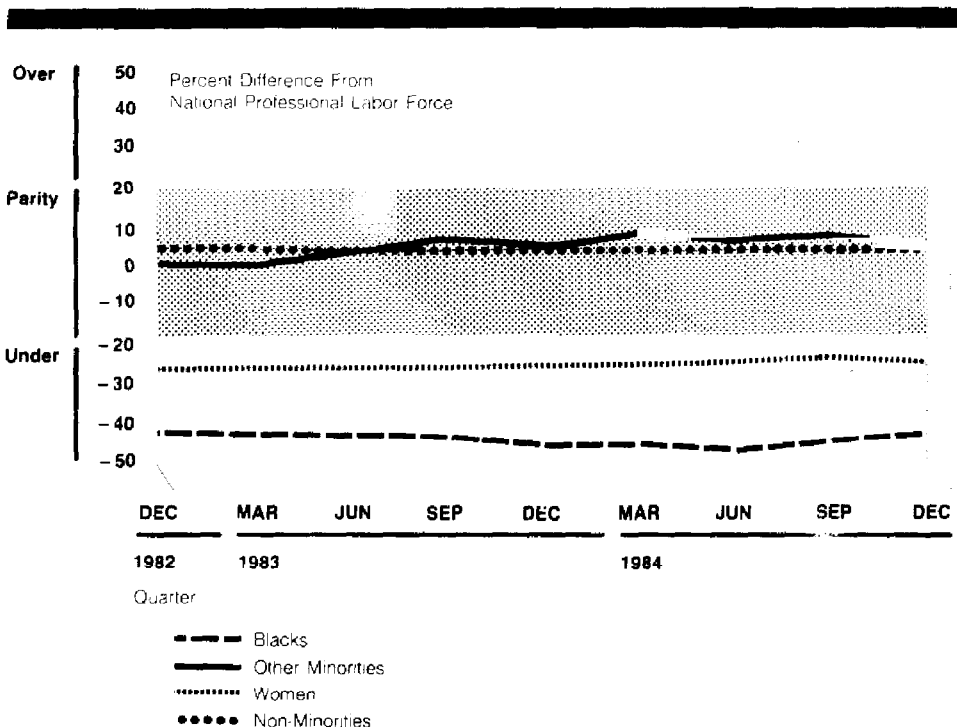
**Figure I.2: Senior Administrative
Occupations Minority/Female
Representation (Dec. 1982-Dec. 1984)**



**Appendix I
Representation of Minorities and Women in
the NIH Work Force and
Policymaking Positions**

Blacks and women were underrepresented in senior professional positions at grades 13-15, while other minorities were at parity, primarily because of the relatively large number of Asians in this group (see figure I.3).

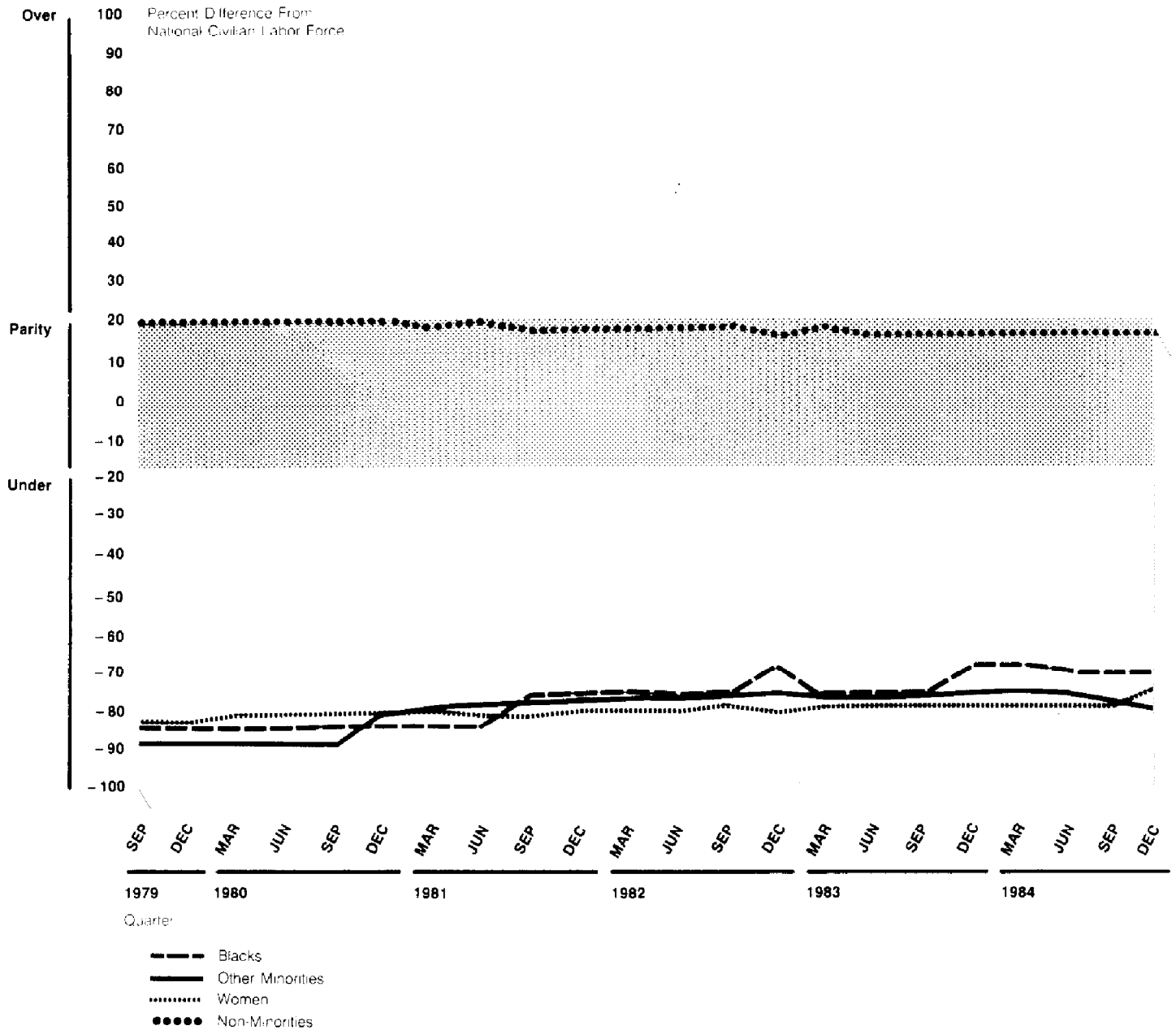
Figure I.3: Senior Professional Occupations Minority/Female Representation (Dec. 1982-Dec. 1984)



At NIH, as of December 1984, 23 (about 13 percent) of 171 Senior Executive Service employees were women or black or Asian men. This was significantly less than the percentages of minorities and women in these types of positions in the national civilian labor force (see figure I.4). There were no Asian women, Hispanics, or Native Americans in the NIH Senior Executive Service as of December 1984.

Appendix I
 Representation of Minorities and Women in
 the NIH Work Force and
 Policymaking Positions

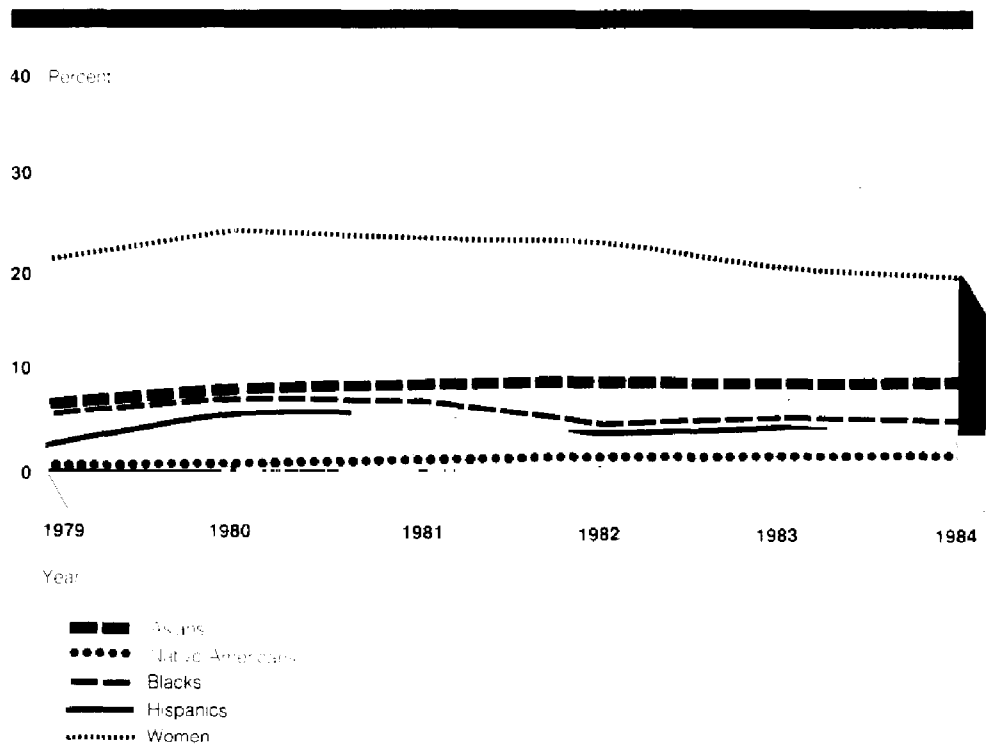
Figure I.4: Senior Executive Service Minority/Female Representation (Sept. 1979-Dec. 1984)



Representation of Minorities and Women on Public Advisory Committees

As of March 1985 about 2,340 persons served on NIH public advisory committees. Most of these committees review grants and cooperative agreement applications; these programs amounted to about \$3.6 billion in fiscal year 1985. The NIH Director initiated special efforts to appoint more minorities and women to public advisory committees. The Director also established a policy of maintaining at least the same overall levels of representation that NIH had in 1980. Figure II.1 shows that the distribution of minorities and women on public advisory committees has not significantly changed from 1980 to 1984.

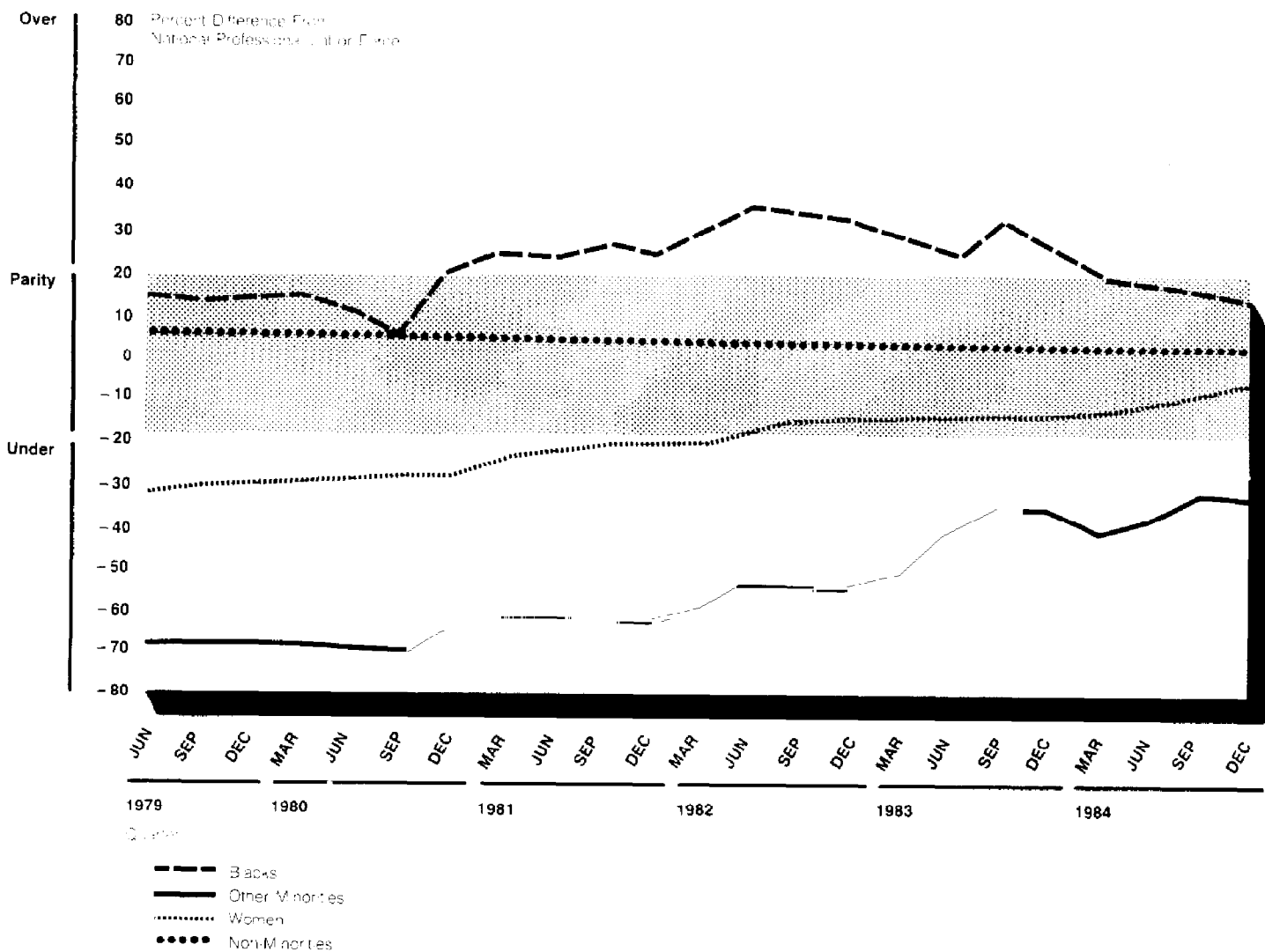
Figure II.1: Public Advisory Committees Minority/Female Membership
(Dec. 1979-Dec. 1984)



Representation of Minorities and Women in the 11 Occupations Targeted for Affirmative Action Recruiting

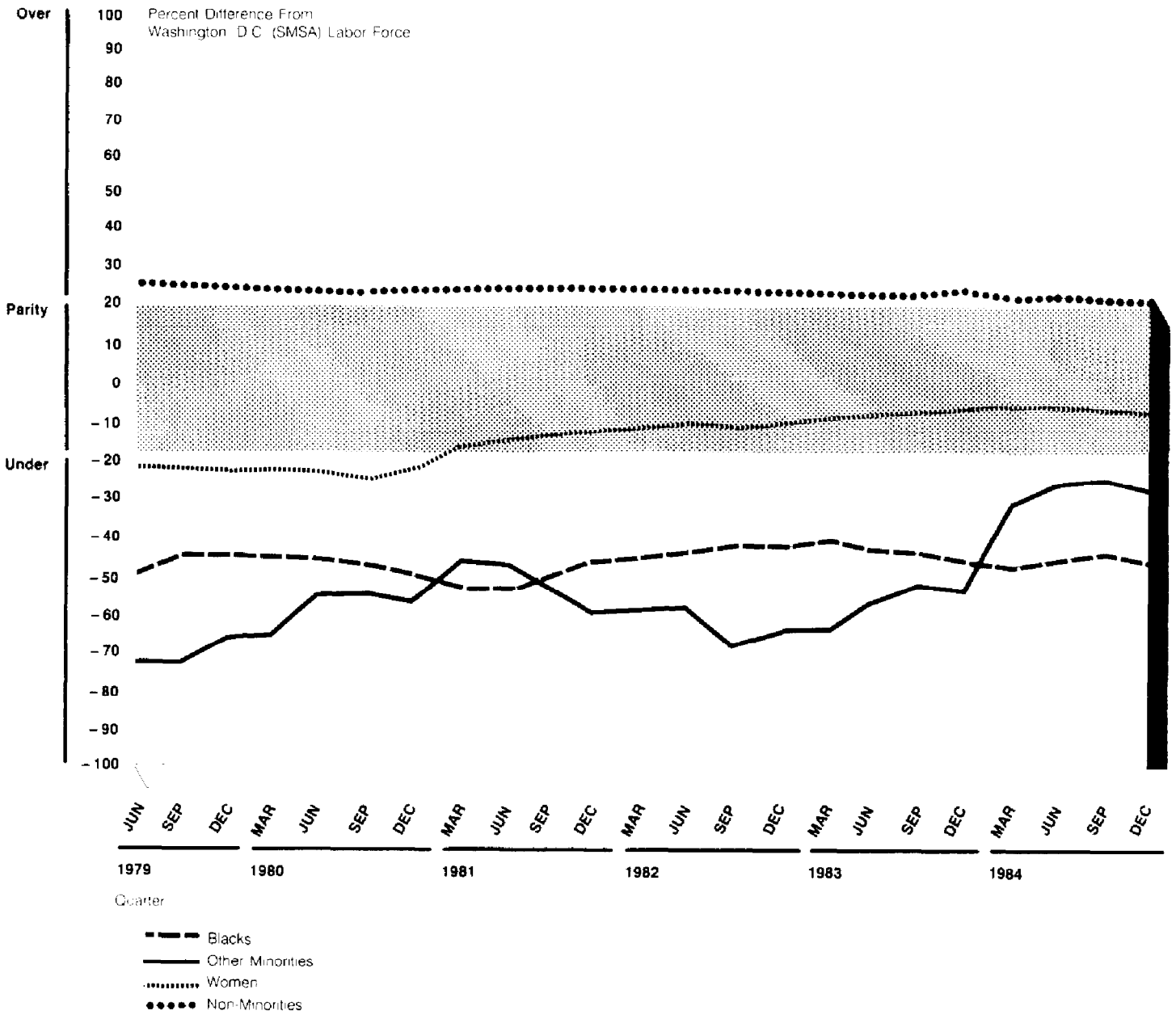
Figures III.1 through III.11 show the progress NIH made from June 1979 to December 1984 in improving its minority and female profile in the 11 occupational series targeted for priority recruiting in its affirmative action plan. In these charts, Native Americans, Hispanics, and Asians/Pacific Islanders have been combined into a single category for comparison.

Figure III.1: Health Science Administrators Minority/Female Representation (June 1979-Dec. 1984)



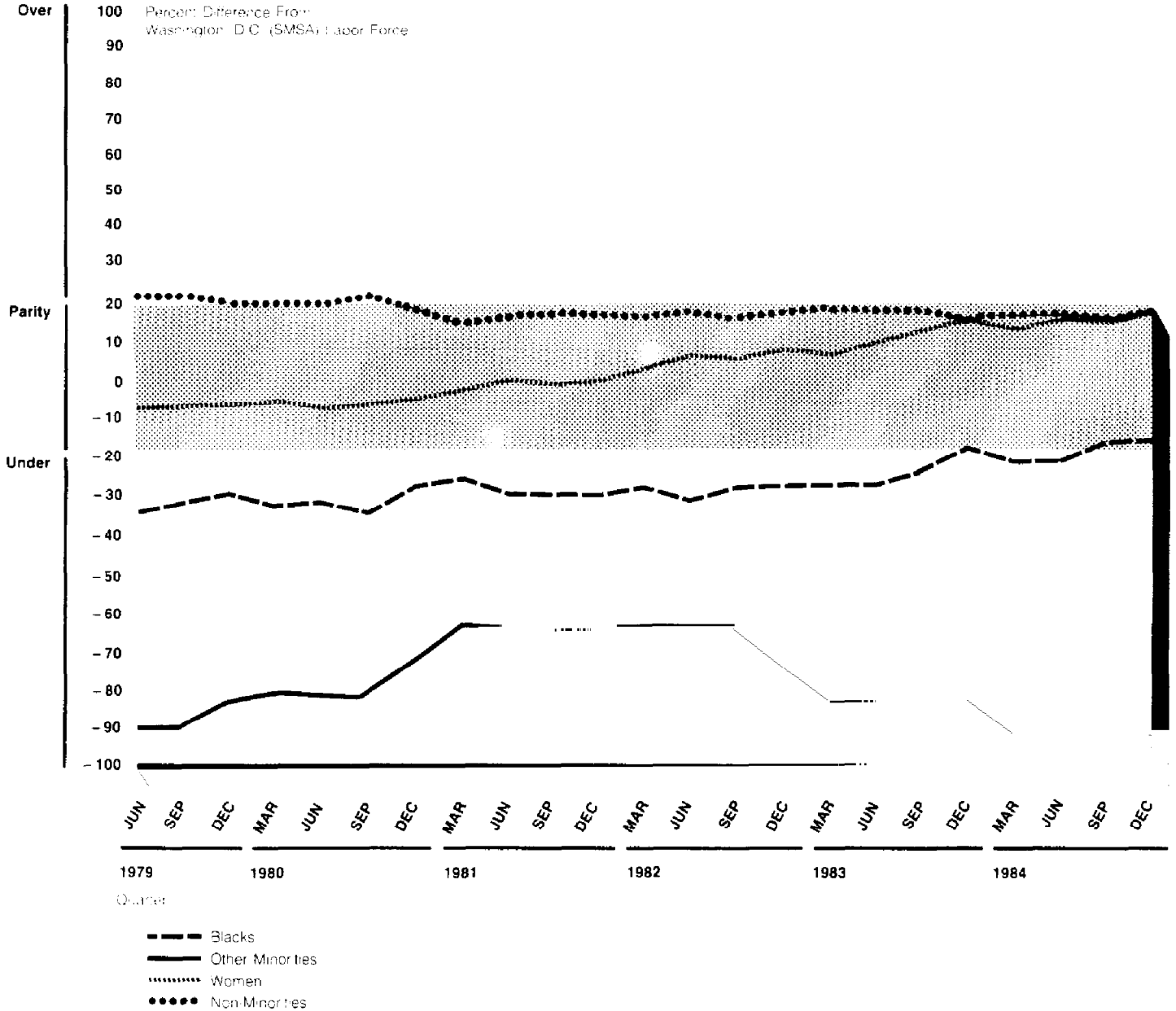
Appendix III
 Representation of Minorities and Women in
 the 11 Occupations Targeted for Affirmative
 Action Recruiting

Figure III.2: Computer Specialists Minority/Female Representation (June 1979-Dec. 1984)



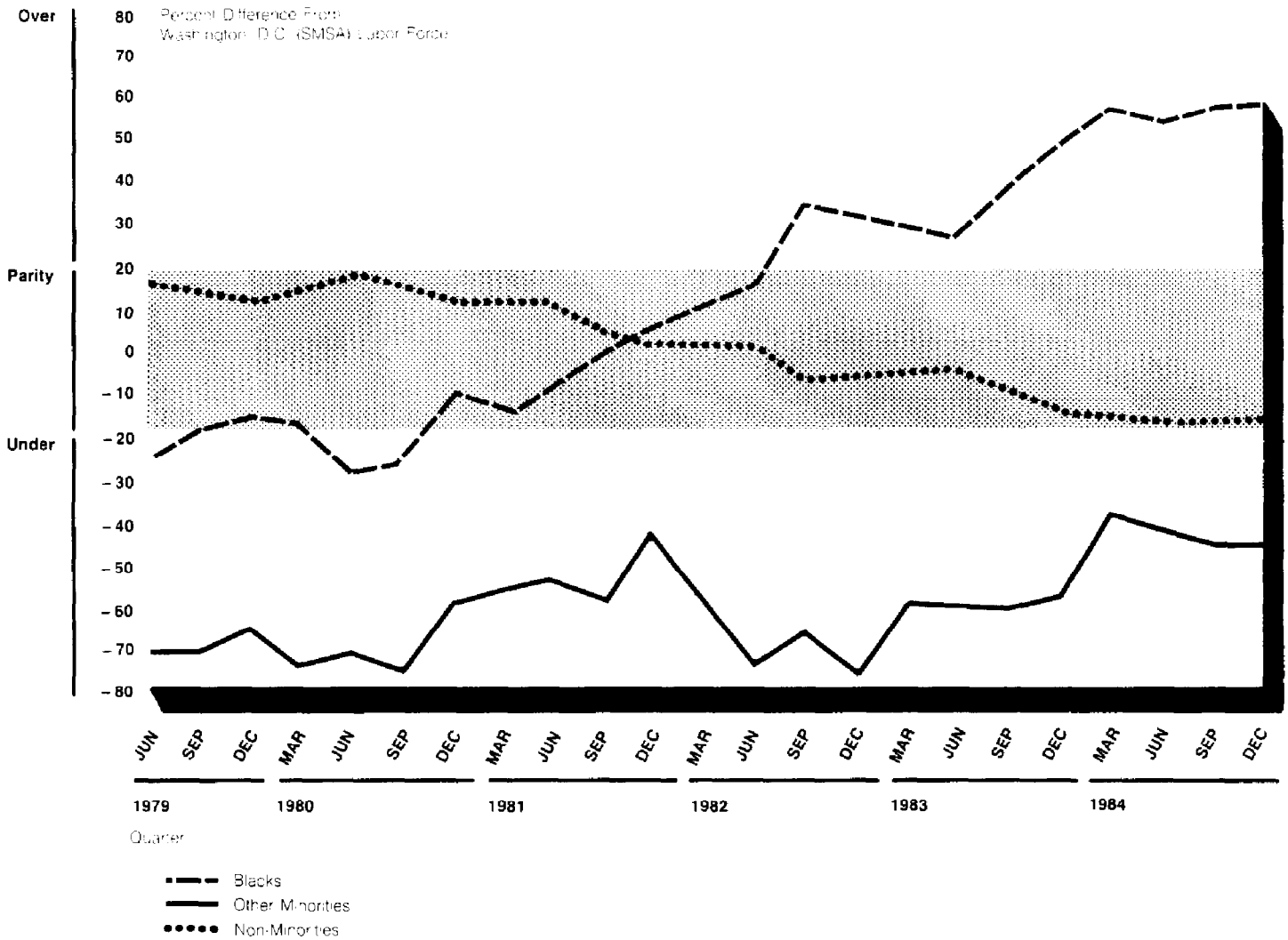
Appendix III
 Representation of Minorities and Women in
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Figure III.3: Contract and Procurement Specialists Minority/Female Representation (June 1979-Dec. 1984)



**Appendix III
Representation of Minorities and Women in
the 11 Occupations Targeted for Affirmative
Action Recruiting**

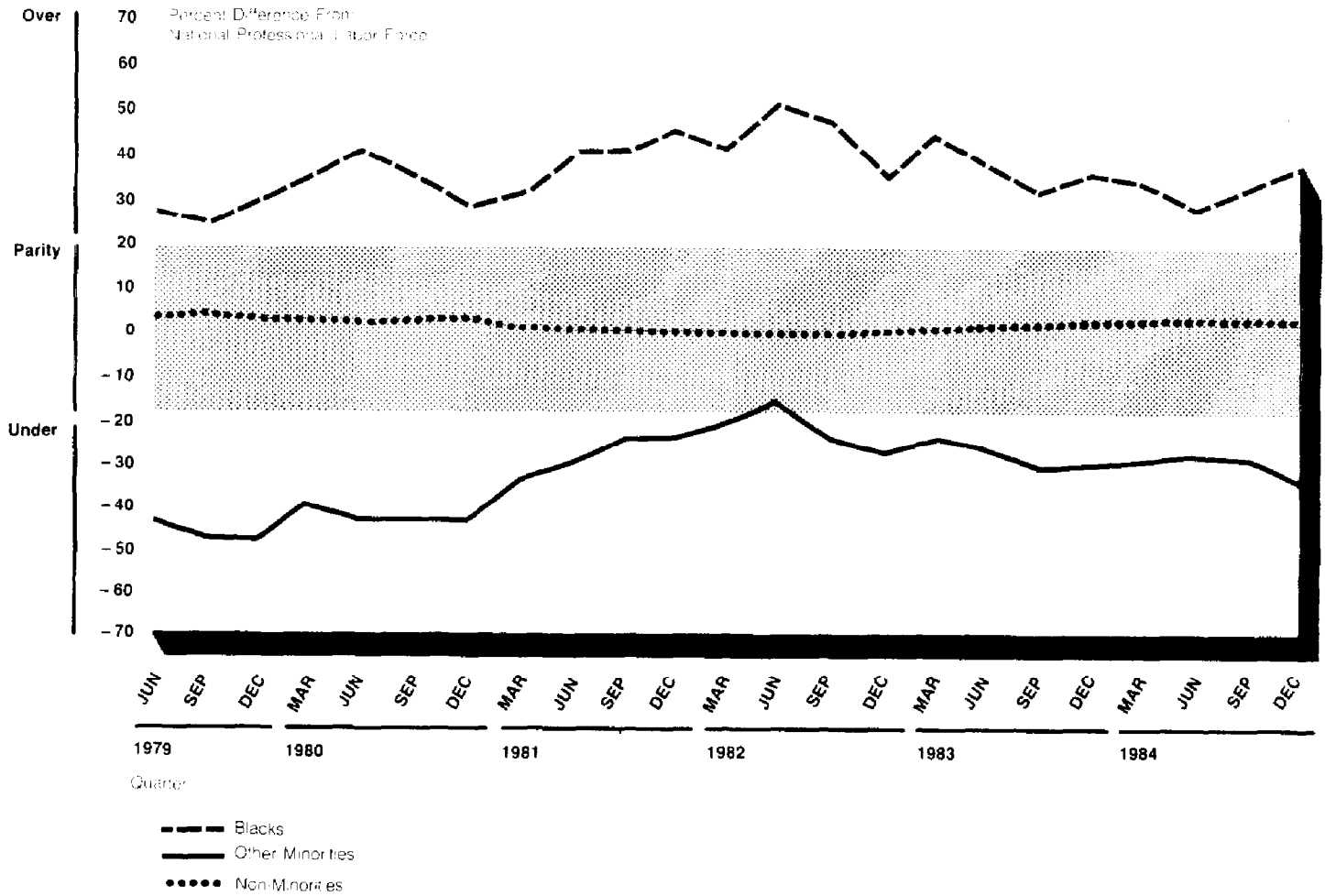
Figure III.4: Clerk Typists Minority Representation^a (June 1979-Dec. 1984)



^aThe representation of women is not displayed because they were more than 80 percent over parity

**Appendix III
Representation of Minorities and Women in
the 11 Occupations Targeted for Affirmative
Action Recruiting**

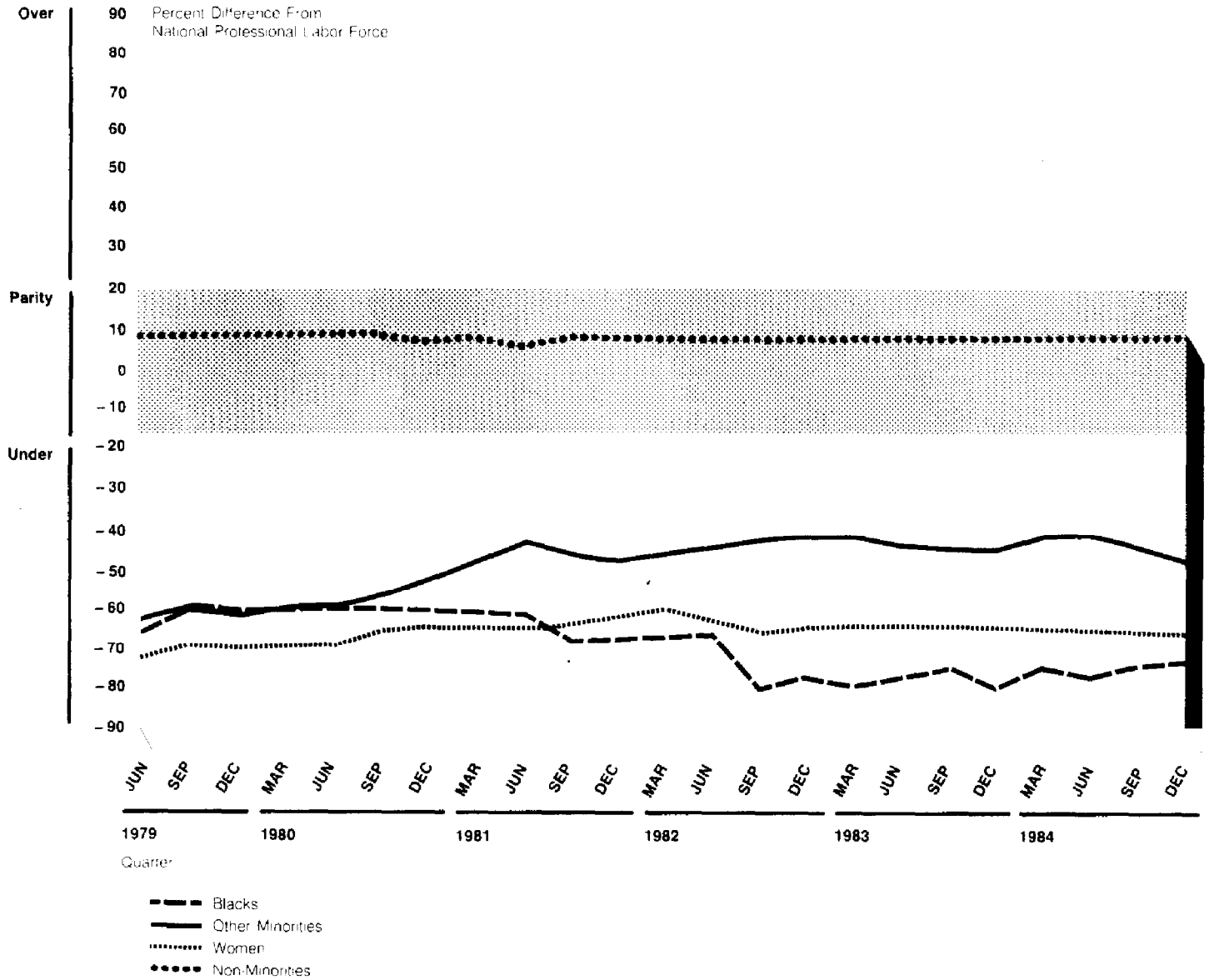
Figure III.5: Nurses Minority Representation^a (June 1979-Dec. 1984)



^aThe representation of women is not displayed because they were more than 70 percent above parity

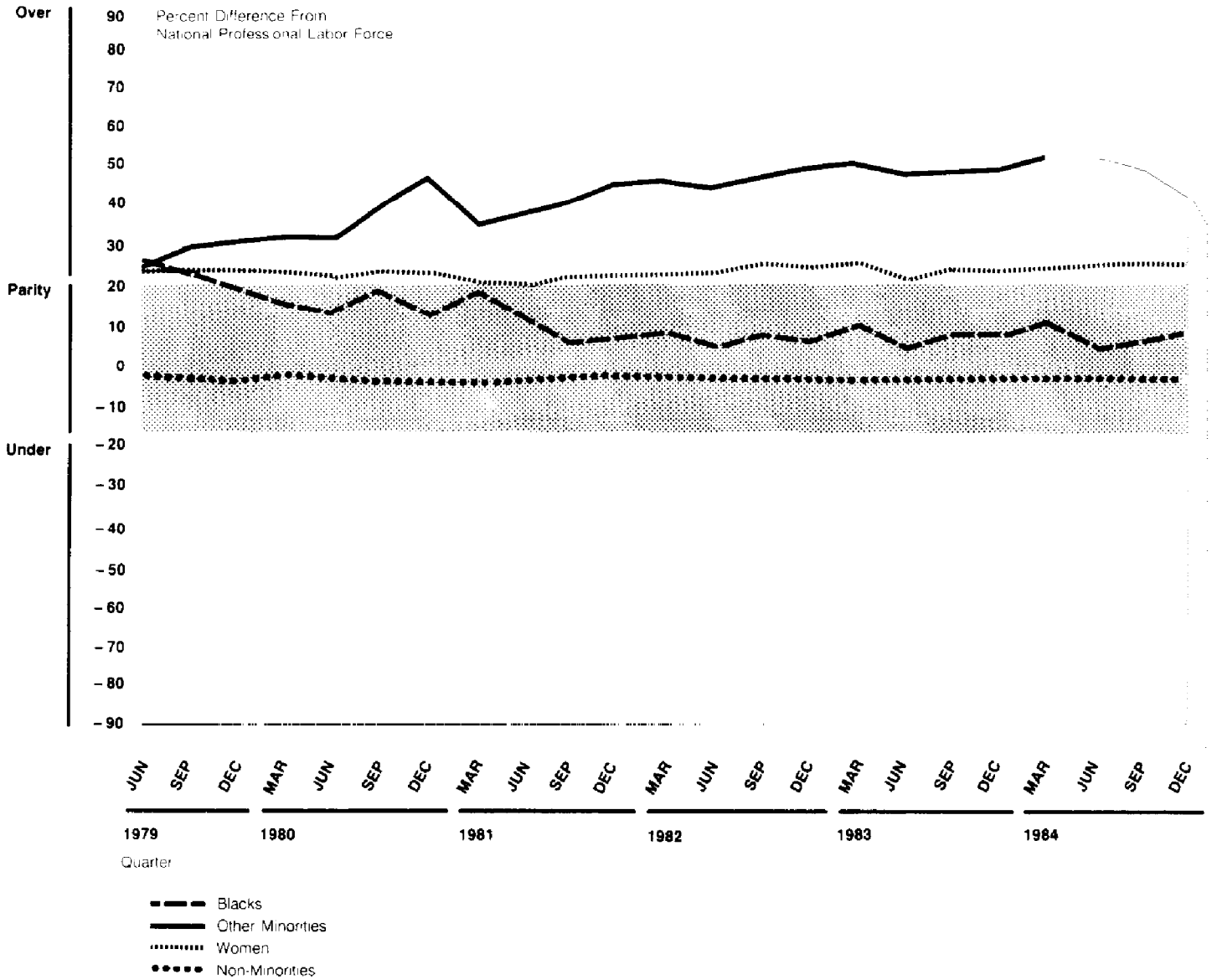
**Appendix III
Representation of Minorities and Women in
the 11 Occupations Targeted for Affirmative
Action Recruiting**

Figure III.6: Medical Officers Minority/Female Representation (June 1979-Dec. 1984)



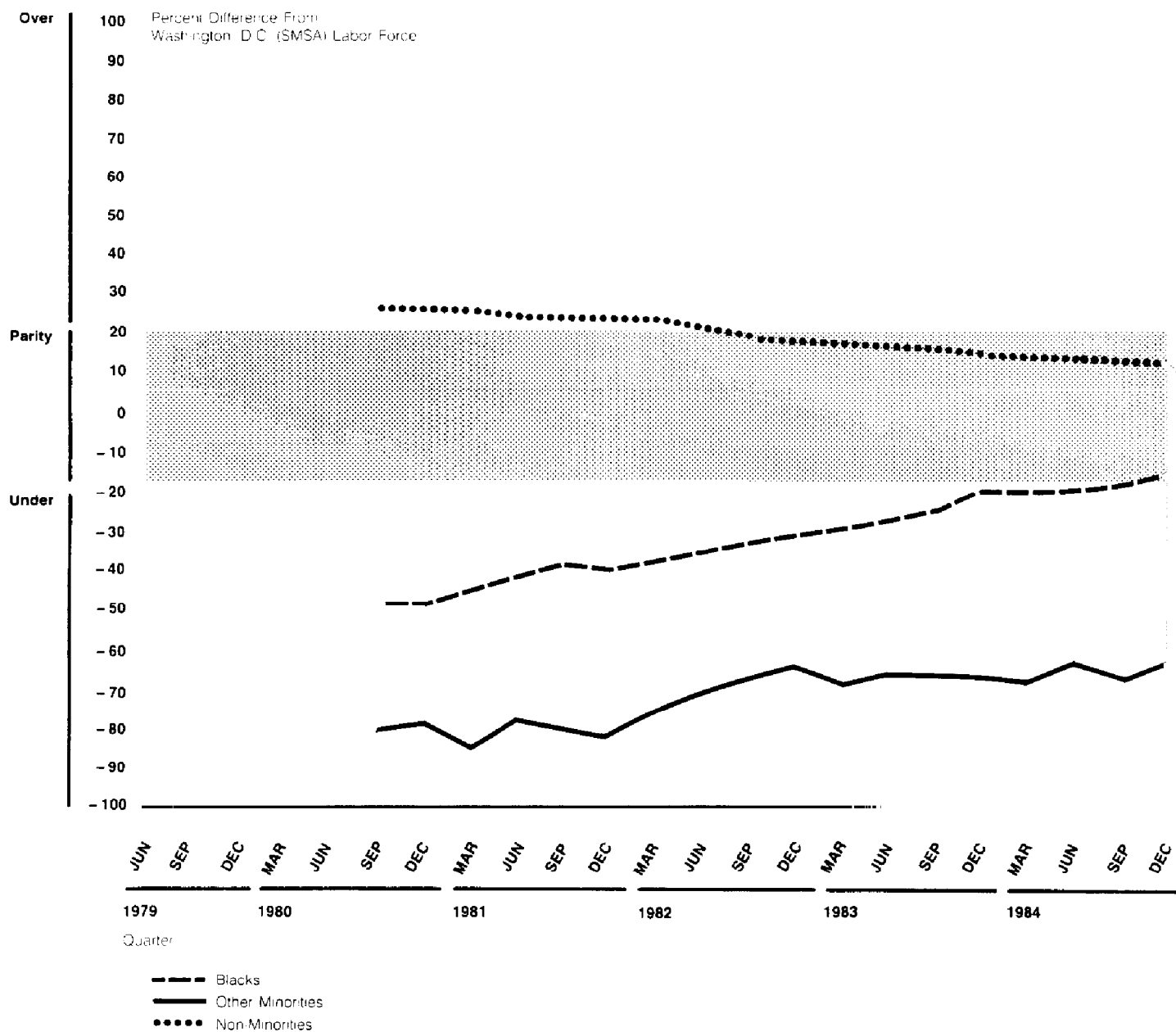
Appendix III
 Representation of Minorities and Women in
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 Action Recruiting

Figure III.7: Chemists Minority/Female Representation (June 1979-Dec. 1984)



**Appendix III
Representation of Minorities and Women in
the 11 Occupations Targeted for Affirmative
Action Recruiting**

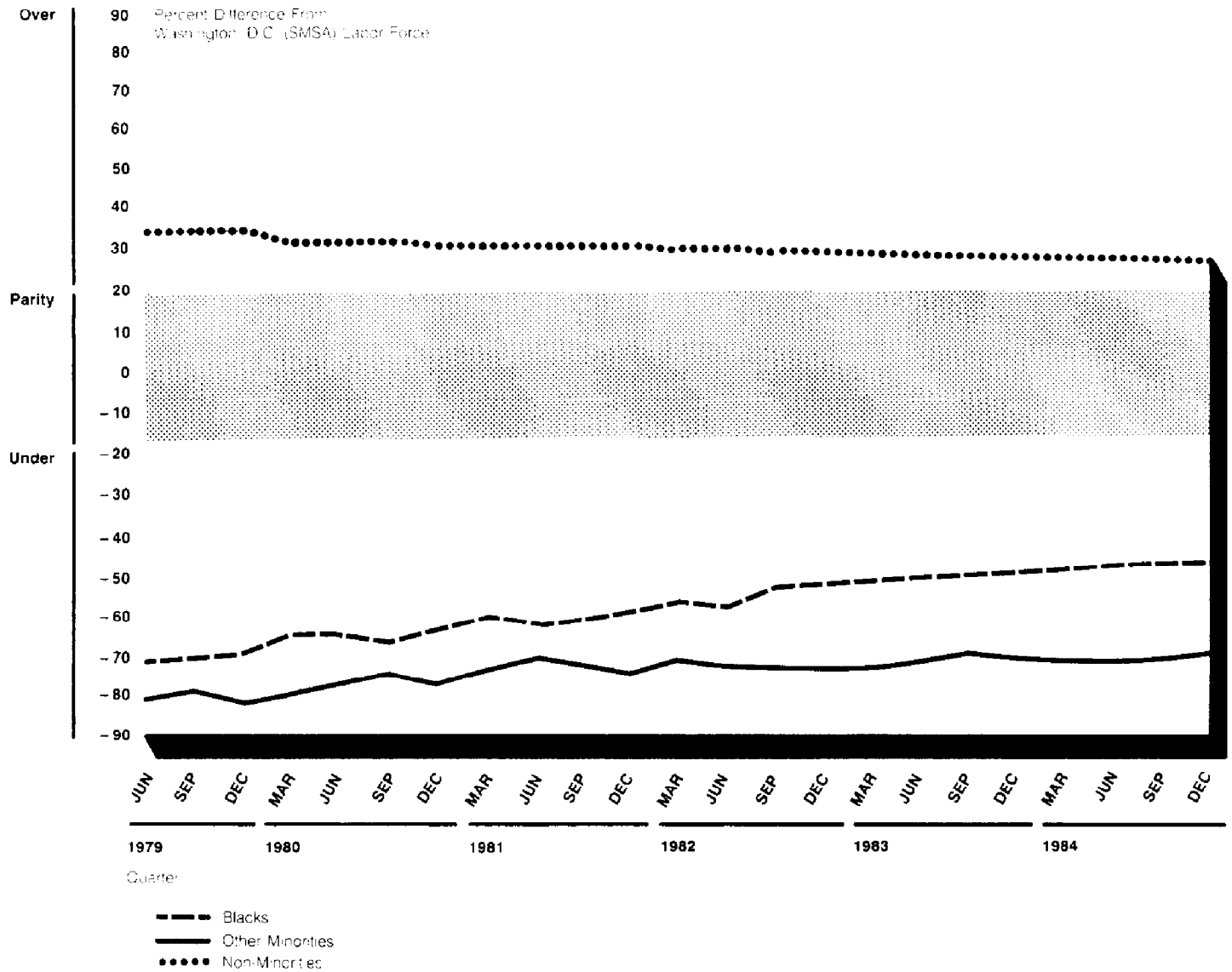
Figure III.8: Clerk Assistants Minority Representation^a (June 1979-Dec. 1984)



^aThe representation of women is not displayed because they were more than 100 percent above parity.

Appendix III
 Representation of Minorities and Women in
 the 11 Occupations Targeted for Affirmative
 Action Recruiting

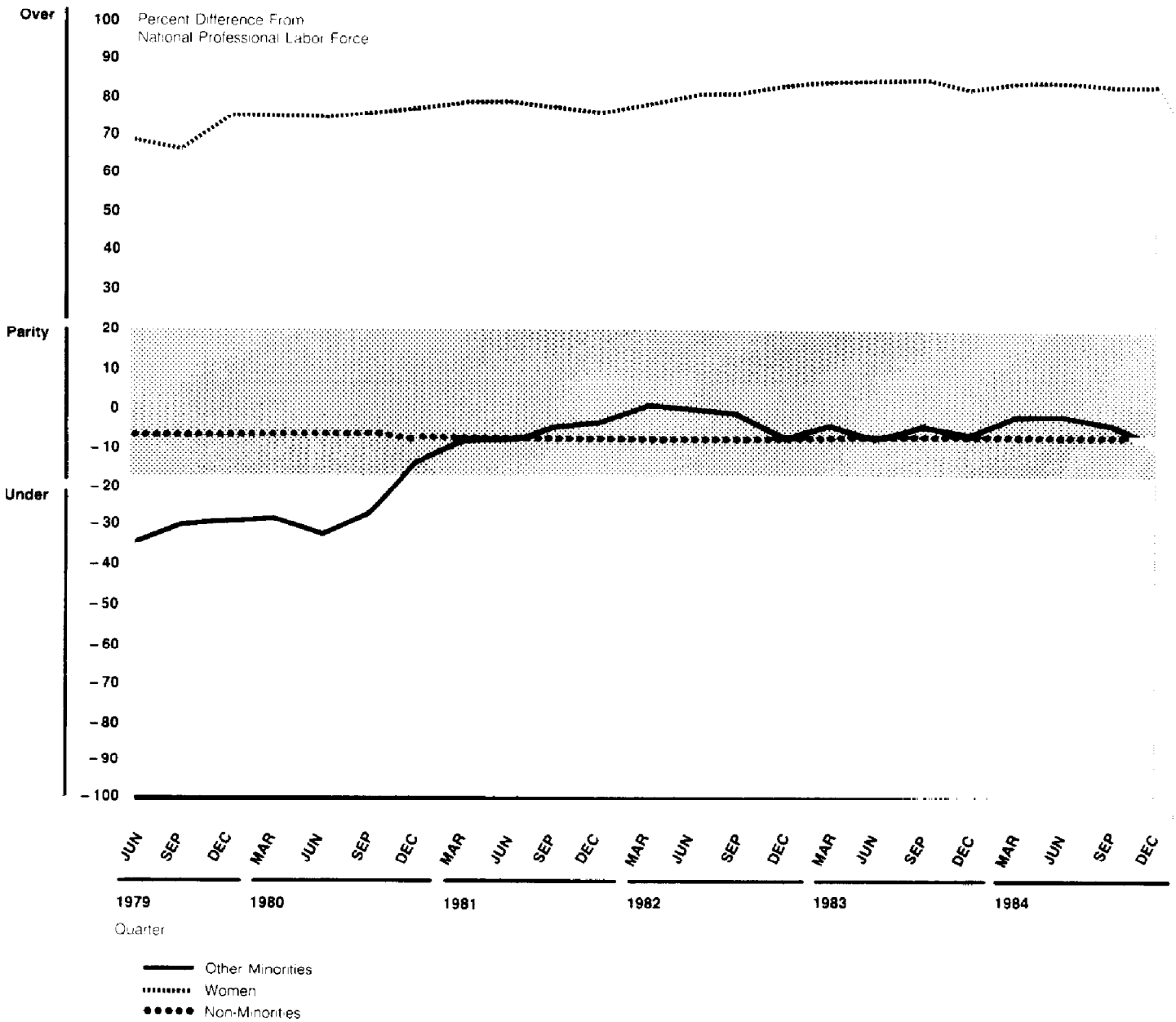
Figure III.9: Secretaries Minority Representation^a (June 1979-Dec. 1984)



^aThe representation of women is not displayed because they were more than 90 percent above parity.

**Appendix III
Representation of Minorities and Women in
the 11 Occupations Targeted for Affirmative
Action Recruiting**

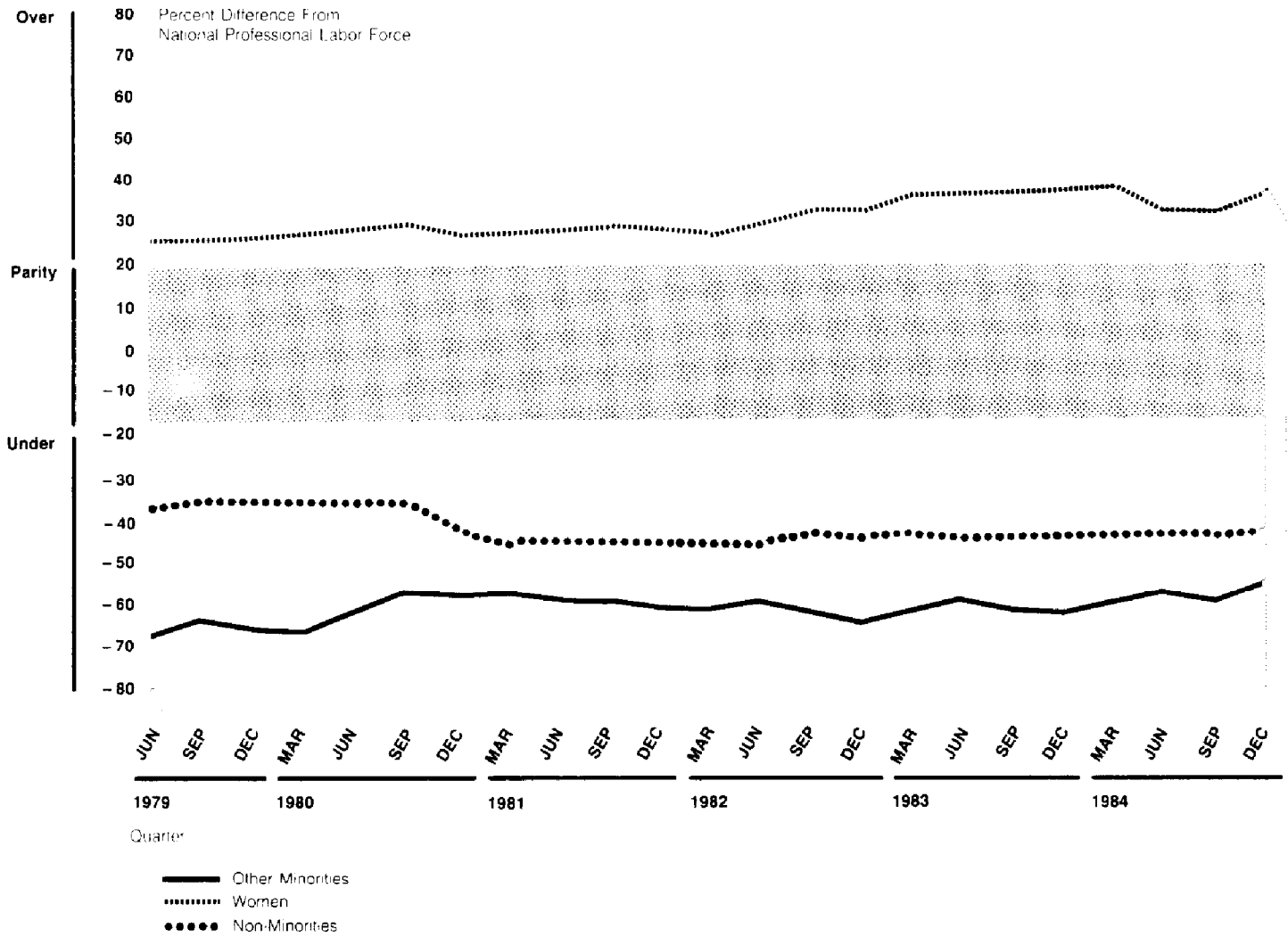
Figure III.10: Biologists Minority/Female Representation^a (June 1979-Dec. 1984)



^aThe representation of blacks is not displayed because they exceeded parity by more than 100 percent.

**Appendix III
Representation of Minorities and Women in
the 11 Occupations Targeted for Affirmative
Action Recruiting**

Figure III.11: Biology Technicians Minority/Female Representation^a (June 1979-Dec. 1984)



^aThe representation of blacks is not displayed because they exceeded parity by more than 80 percent.

Elements of Agency Affirmative Action Plans

The implementing instructions for federal agency affirmative action programs are contained in EEOC Management Directive 707, issued in January 1981. These instructions were issued pursuant to EEOC authority under section 717 of the Civil Rights Act of 1964, as amended. EEOC instructions emphasize a results-oriented process and instruct agencies to use quantifiable goals, timetables, and indices of progress as part of their affirmative action efforts.

EEOC requires that complete affirmative action plans be prepared by installations, units, components, or subcomponents with 500 or more employees unless EEOC and the agency have agreed on other arrangements.

According to EEOC instructions, agency affirmative action plans are to include the following eight major elements:

1. A work-force profile, which illustrates the dispersion of race and national origin groups by sex within employment categories and grade levels.
2. Assessment of underrepresentation. Determinations of underrepresentation are required for both affirmative action and minority and female recruitment plans. These analyses are to identify the degree to which specific minority groups are underrepresented and to give agencies a gauge to objectively incorporate goals and timetables into their affirmative action plans and activities.
3. Numerical hiring goals for underrepresented groups. EEOC instructions require the use of both long-term and annual goals as part of the effort to eliminate underrepresentation in the agency's work force. According to Management Directive 707, goals are not rigid quotas, but flexible hiring targets intended to remedy historical underrepresentation. Numerical goals are required for each occupational series or employment category with 100 or more positions.
4. An analysis of barriers or impediments to equal employment opportunity. EEOC requires each agency to perform an assessment of its personnel policies and practices to identify any that may act as barriers or impediments to the agency's achieving full representation of minorities and women.

5. A copy of its Federal Equal Opportunity Recruitment Plan is to be included in the affirmative action plan. The principal statutory requirements for establishing and conducting minority recruitment are contained in 5 C.F.R. Part 720, subpart B. The regulations implementing section 310 of the 1978 Civil Service Reform Act require that each agency have an up-to-date plan for the recruitment of minorities and women in categories of civil service employment in which they are underrepresented.

6. Descriptions of innovative staffing strategies. In this section, agencies are to identify the range of activities they plan to use to increase representation of minorities and women in the occupations where underrepresentation is found.

7. An affirmative action self-monitoring plan. The monitoring requirements for affirmative action and equal employment opportunity programs are extensive and call for, among other things, the collection of applicant race and national origin data, regular evaluations of the affirmative action program, and annual accomplishment reports.

8. A plan summary. A summary of an agency's multiyear plan is to be prepared to highlight the key elements and goals of its affirmative action efforts.

Advance Comments From the Department of Health and Human Services

Note: A GAO comment supplementing those in the report text appears at the end of this appendix.



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

FEB 13 1986

Mr. Richard L. Fogel
Director, Human Resources
Division
United States General
Accounting Office
Washington, D.C. 20548

Dear Mr. Fogel:

The Secretary asked that I respond to your request for the Department's comments on your draft report, "NIH Affirmative Action: The National Institutes of Health Affirmative Action Program Does Not Fully Comply With Federal Requirements." The enclosed comments represent the tentative position of the Department and are subject to reevaluation when the final version of this report is received.

We appreciate the opportunity to comment on this draft report before its publication.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "R. Kusserow".

Richard P. Kusserow
Inspector General

Enclosure

Appendix V
Advance Comments From the Department of
Health and Human Services

COMMENTS OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
ON THE GENERAL ACCOUNTING OFFICE'S DRAFT REPORT, "THE NATIONAL
INSTITUTES OF HEALTH AFFIRMATIVE ACTION PROGRAM DOES
NOT FULLY COMPLY WITH FEDERAL REQUIREMENTS"

General Comments

The General Accounting Office's (GAO) draft report, "The National Institutes of Health Affirmative Action Program Does Not Fully Comply With Federal Requirements" presents findings of a year long study of the affirmative action program at the National Institutes of Health (NIH).

In reviewing this report, we were pleased to learn that black employees in the Division of Administrative Services were not treated differently than other employees in the Division. We were also pleased with the thoroughness of the investigation and presentation of information on the issue of the collection of applicant flow data and its use in monitoring affirmative action compliance. We believe that the use of similar investigative techniques in the analysis and presentation of facts regarding NIH compliance with other Equal Employment Opportunity Commission (EEOC) requirements for affirmative action and complaints processing would have led to a more accurate and clear presentation of facts.

In this regard, we believe that the GAO report should state that NIH receives its instructions and guidance on Affirmative Action Program and Federal Equal Opportunity Recruitment Program (AAP/FEORP) plan development and implementation from the Department of Health and Human Services (DHHS) and the Public Health Service (PHS). Further, these instructions are consistent with DHHS' interpretation and application of the EEOC management directive for developing affirmative action plans. Given this framework, the GAO report should have concluded that NIH did follow the parent agency instructions on every issue.

We also suggest that a better presentation be made on the structure and relationship between DHHS, PHS, NIH, and, in particular, the structure and functions of the NIH Bureaus, Institutions, and Divisions (BIDs). For instance, the organizational/functional relationship between the NIH Division of Equal Opportunity (DEO) and the BID Equal Employment Opportunity (EEO) offices has a significant impact upon the development and implementation of the varied components of the NIH affirmative action program. Without the benefit of understanding this unique structure, the reader is missing an integral part of the relationship. As an example, given the structure of the organization, the last sentence on page 1 of the draft is misleading and suggestive of more of a direct relationship between the DEO and the BID EEO programs than is actually authorized. Likewise, this structure is a contributing factor to certain comments in the report, allegedly made by individual NIH officials in the BIDs, being used to reach a conclusion attributed to the whole of NIH.

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GAO Recommendations

We recommend that the Secretary of HHS direct the Director of NIH to comply with EEOC affirmative action program directives by requiring that NIH:

1. --Establish numerical hiring goals for all underrepresented groups.

Department Comment

As explained below, NIH has already moved in the area of goal setting consistent with DHHS instructions. No further instructions from the Secretary are necessary.

The Director, NIH, has appointed a committee to develop a methodology for establishing meaningful goals that will meet the EEOC requirements. Once goals are established, this committee will develop a mechanism for implementation of these goals in the NIH BIDs. To augment the committee's actions, the NIH DEO has already investigated the use of automated systems for the calculation of goals and manipulation of data for meeting affirmative action requirements and has proceeded with preparing the documentation required to purchase the necessary computer hardware and software packages.

GAO Recommendation

2. --Develop and implement minority and female recruitment plans in those organizational components that do not have them.

Department Comment

We concur. The Director, NIH, will direct the five components that do not have minority and female recruitment plans to prepare and submit them to the NIH DEO. It should be noted that the Office of the Director (OD) Personnel Office has already begun the development of an AAP/FEORP plan for the OD and the Office of Research Services.

GAO Recommendation

3. --Identify and eliminate employment barriers for minorities and women.

Department Comment

NIH has, since 1982, conducted barrier analyses in accordance with PHS guidance on AAP/FEORP. Analyses of four series have been completed at NIH and no impediments to equal opportunity were found. Analyses of the remaining target series are underway, and it is anticipated that they will be completed before the end of Fiscal Year (FY) 1986. Should any barriers to equal employment opportunities be found, NIH will take appropriate actions to correct the situation.

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Advance Comments From the Department of
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Technical Comments

--Page iii, paragraph 2, lines 12-20

This statement is misleading. As written, it suggests that numerous individuals agreed with the findings. The three separate statements in the text of the draft reflect that such conclusions/opinions were allegedly expressed by three different individuals.

NIH has been supportive of affirmative action efforts. This is evidenced by the NIH Director's commitment to actively recruit and hire an experienced Director for the DEO and to provide adequate resources for the EEO program as far as is possible within the confines of ceiling and budgetary restrictions.

Despite budget cuts and full-time equivalent (FTE) ceiling constraints, NIH has maintained EEO programs at the central and BID levels; maintained funds for recruitment of minorities and women; and continued to provide funds for minority institutional development and for programs that prepare minorities for careers in biomedical research. Further evidence of this commitment is the increase in the representation of minority group members on NIH advisory committees. As of June 1979, only 9.7 percent (196) of 2,027 members were minorities; whereas, in June 1984, 15.4 percent (373) of the 2,423 members were minorities.

The statement that persons responsible for the affirmative action program were unaware of EEOC requirements is incorrect. Staff of the NIH DEO and the NIH Division of Personnel Management (DPM) are fully aware of EEOC requirements and have transmitted EEOC management directives to the BIDs.

--Page 21, Number 4, lines 8-10

This sentence, as stated, is inaccurate and should read "If not satisfied with the proposed disposition, the complainant may request a final HHS decision with or without a hearing before an EEOC complaints' examiner." This change is necessary to comply with the wording of Title 29 Code of Federal Regulations, Sections 1613.217 through 1613.221, Equal Opportunity in the Federal Government. This change should also be made in Chapter 1, page 4, lines 14-16.

Now on p. 3.
See comment 1.

See comment 1.

Now on p. 25.

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Advance Comments From the Department of
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Now on p. 31.

--Page 26, lines 9-11

It should be noted that despite the fact that the NIH DEO lost staff over the past 2 years, it was able to eliminate a longstanding backlog of discrimination complaints. As noted, efforts (e.g., staff training and the addition of an acting branch chief experienced in processing complaints) have been undertaken to address this situation.

Now on p. 28.

--Page 27, lines 3-5

The report should be corrected to show that this program was started and terminated prior to the arrival of the current Director in January 1984.

See comment 1.

Now on p. 31.

--Page 27, paragraph 2, lines 9-12

After discussing the lengthy time required to process complaints at NIH, problems that have contributed to the processing delays, and management changes to improve the processing time, the report concludes that while management actions appear reasonable, it is too early to tell whether the actions have improved the timeliness of complaints processing. The report does not include information obtained concerning the complaints backlog which had existed, largely due to the lengthy processing time.

Information provided the review team reflected that certain efforts undertaken by management had resulted in the issuance of 41 proposed dispositions between December 1984 and August 1985. This activity of issuing proposed dispositions continued and by the time the last contact was made with the review team, all backlogged cases over which NIH had control had been eliminated. The elimination of the backlog has allowed staff to process complaints in accordance with PBS guidelines, as well as, allowed staff time to address other areas involved with complaints processing, i.e., providing appropriate BID staff with relevant information concerning complaints in their BIDs. This information, which was made available to the review team, shows that improvements in the complaints processing system have already begun to materialize.

Now on p. 35.

--Page 35, paragraph 2, lines 10-11

The statement as written is inaccurate and should be reworded as follows: "As of November 1985, NIH established numerical hiring goals but did not circulate them to its bureaus, institutes, and divisions for implementation."

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Although EEOC management directive 707 requires the establishment of numerical goals for underrepresented groups, during the first year of the FYs 1982-1986 planning period, DHHS and agencies under its jurisdiction were not required to develop numerical goals and instead utilized recruitment targets for the most populous series where underrepresentation was found to exist. In January 1984, NIH received instructions from HHS requiring the establishment of percentage goals. NIH prepared the necessary reports as specified in the HHS guidance, and calculated goals by applying the formula specified in the HHS guidance.

Application of the second part of this two part formula resulted in few of the underrepresented groups that had been targeted for recruitment being targeted for hiring. This was because levels in few of the groups met the levels required for setting targeted hiring goals and corresponding time tables. For example, in three of the five professional FEORP series, no one was targeted to be hired. In the remaining two professional series, two black females were targeted to be hired in the nursing series, and one hispanic male and one nonminority female in the chemist series. FY 1984 recruitment targets addressed all underrepresented group members. Rather than to send a signal to NIH BIDs that there were virtually no hiring goals, the decision was made by NIH officials not to circulate these goals for implementation and to investigate a more meaningful method of calculating/determining goals.

Now on p. 35.

--Page 35, paragraph 2, lines 11-19

This statement is incorrect and should be reworded as follows:
"The Director of the NIH Division of Equal Opportunity advised the GAO study team that she was aware of the EEOC requirement to establish numerical hiring goals, that her staff developed goals in accordance with instructions provided by DHHS, but did not circulate these goals to NIH bureau, institutes, and divisions because applying the DHHS formula resulted in virtually none of the underrepresented group members being targeted for hiring. The Director of the NIH Division of Equal Opportunity did redirect resources in the Division to eliminate the longstanding backlog of complaints of discrimination; however, resources were devoted to improving the affirmative action program. Plans have been developed to redeploy staff resources into the Equal Opportunity Branch to provide for a more aggressive affirmative action program. A major restriction to more activity in the affirmative action program has been a longstanding situation of inadequate staff to address the many facets of an affirmative action program. This is further exacerbated by the fact that NIH has sustained large staff reductions since 1984. NIH has lost 1000 FTEs from the 1984 level and the DEO has had to take its share of the reductions, a 7 percent reduction in a 2-year period."

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See comment 1.

--Page 35, paragraph 3, lines 25-28

The Assistant Director for Policy and Evaluation in the NIH DPM does not recall having made such a statement.

Now on p. 36.

--Page 36, paragraph 2, Example #1, lines 20-23

Although the U.S. Office of Personnel Management (OPM) requires that agency FEORP plans "cover all agency pay plans," instructions and guidance received from PHS did not require development of plans for wage system employees during the first year of plan development and made coverage of wage system employees optional for subsequent years' plan development.

NIH DEO did begin the development of a plan for wage system employees in January 1983 but did not continue its development once the Administration began to emphasize implementation of the Office of Management and Budget Circular A-76, and the contracting out of services largely performed by wage system employees.

The statement that the NIH AAP/FEORP plan was not updated since February 1983 is incorrect. In January 1984, NIH completed an update of its AAP in accordance with EEOC Management Directive 707A as instructed by PHS. This update was prepared in conjunction with FY 1983 Accomplishments as specified in the management directive.

Additionally, in accordance with PHS requirements, NIH prepared and submitted to PHS status reports that included updates of its AAP/FEORP Plan for FYs 1983, 1984, and 1985. These reports provided recalculations of underrepresentation indices (URIs), reestablishment of priority recruitment targets in populus occupational series, assessments of progress and achievements made in improving underrepresentation based on calculations of the net change in the URI from the base year to the current year, and assessments of progress made in implementing recruitment strategies. Upon recalculation of underrepresentation indices, priority recruitment targets were reestablished and forwarded to the BIDs for implementation.

It should be noted that the NIH process for implementing FEORP was reviewed and revised during FY 1984 in order to bring it up to date with new requirements. NIH also updated its AAP/FEORP plan by preparing an addendum to cover handicapped individuals and disabled veterans. This addendum was approved by PHS in March 1984 and was updated in September 1984 and in November 1985 by assessing progress made in improving the underrepresentation of handicapped individuals and disabled veterans in the work force and progress made in implementing supplemental plan elements.

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Additionally, NIH, on an annual basis, reviewed the strategies outlined in each of the priority recruitment plans for FEORP target occupations to determine if these strategies were still appropriate and useful in recruiting members of underrepresented groups.

Now on p. 36.

--Page 37, lines 1-6

Although the GAO comment does not reference its source, it is assumed that these comments are excerpts from a December 5, 1984 letter and report to Dr. David P. Rall, Director, National Institute of Environmental Health Sciences (NIEHS), from Mr. David Caldwell, Regional Director, Atlanta Region, OPM, reporting the findings of an OPM review of NIEHS FEORP documents. The statements made by the GAO team are found in the OPM report.

Also found in this report is a commendation of NIEHS' progress toward the elimination of underrepresentation. It was found that 45 of the 60 positions (75 percent) in the series designated for FEORP consideration priority were filled by minority groups members and women. Also, the NIEHS Director was cited as being positively committed to equal employment opportunity, actively supporting the program and for providing adequate resources for the FEORP program.

As background on the NIEHS, it should be noted that at the time the AAP/FEORP instructions were first circulated, NIEHS was caught between instructions and interpretations from DHHS/PHS/NIH and the Atlanta regional offices of OPM and EEOC. It was the belief of the NIEHS EEO Officer that use of Atlanta civilian labor force data was acceptable to OPM in their (NIEHS) efforts to increase the number of underrepresented groups not populous in their Standard Metropolitan Statistical Area. As more fully explained in the December 5, 1984 report, the problem at NIEHS was not so much the failure to comply (which is implied from the context of the statement used in this report), but rather a need to clarify which data is appropriate for use and to be consistent in the use of the appropriate data.

The above circumstance is likely to occur when a component of an agency is geographically isolated as is NIEHS and there is no approval/clearance mechanism for organizations (BIDs) that function in an almost autonomous manner.

See comment 1.

As to the annual update, the NIEHS plan was updated in 1983 and 1984. These updates consisted of recalculations of underrepresentation, reestablishment of priority recruitment targets and assessments of recruitment strategies to determine successful methods of attracting underrepresented groups. These actions are consistent with NIH and PHS requirements for plan updates.

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Now on p. 36.
See comment 1.

--Page 37, line 7

This statement is incorrect. Although EEOC Management Directive 707 requires that planning units with 500 or more employees develop complete plans, NIH receives its instructions for AAP/FEORP plan development from DHHS and PHS. In accordance with DRHS guidance, and PHS instructions, the Clinical Center (CC) prepared and submitted a supplemental AAP/FEORP plan in November 1982. The Department's policy of requiring supplemental plans rather than complete plans for units of 500 or less was a result of an informal agreement to that effect made with EEOC at that time. This plan included calculations of underrepresentation by professional, administrative, technical, clerical, and other categories, designations of management officials with FEORP responsibilities, a FEORP recruitment plan, and a FEORP implementation plan. This plan was updated during FY 1983.

Now on p. 37.

--Page 37, paragraph 2, lines 12-15

The data from NIH DEO indicate that 17 of the 22 NIH organizational components had minority and female recruiting program plans in 1983. These data are updated quarterly as additional reports and analyses are received. GAO's report showing 13 of 22 NIH components should be corrected accordingly.

It is not clear to what data GAO is referring in the phrase "the latest year NIH data were available." Therefore, it is recommended that it be deleted.

Now on p. 37.

--Page 37, paragraph 3, lines 21-26

While it is true that CC has not established a formalized system of analyzing applicant flow data, CC recruitment strategies are in place as referenced in its FEORP Implementation Program. Consequently, the statement is only partially true. Furthermore, the issue of not collecting applicant flow data is not one isolated to CC, this is a governmentwide problem given the lack of guidance from OPM. The report failed to make reference to the fact that CC has begun collecting and evaluating applicant flow data on the Medical Staff Fellows Program, a mechanism used to recruit medical officers to NIH. GAO was informed of this new initiative during its review.

The statement attributed to the CC's Director of Management Support Services (Chief Personnel Officer) on the priority of affirmative action was erroneously interpreted. In a meeting with GAO, the Chief Personnel Officer repeatedly emphasized the fact that while he was not the CC's spokesperson in this area, and while he is supportive of affirmative action and takes it seriously as evidenced by the composition of his own staff which is predominately minority and female, it is not a relatively high

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priority among the assignments that he receives from his supervisor. This remark was not intended to be construed as an assessment of the priority given to affirmative action in the CC. As stated in the draft report, the comment is used to reflect the climate of the CC. Such an indictment is too serious to stand on one individual discussing one set of circumstance.

--Page 38, paragraph 2, lines 14-18

We have no knowledge that a personnel official responsible for barrier analysis said that these analyses had not been completed. To the contrary, the NIH multiyear affirmative action plan, in accordance with PHS guidelines, commits NIH to conducting a preliminary barrier analysis of two occupations, i.e., Nurse, GS-610 and Chemist, GS-1320. There was an agreement between DEO and DPM that DEO would perform the analysis of the Nurse series while DPM would conduct the analysis of the Chemist series. DEO conducted the analysis of the Nurse series as far as it could be done without collecting minority data on applicants since DPM rescinded the requirement to collect applicant data as referred to in Chapter 4 of the report. Similarly, DPM conducted the barrier analysis of the Chemist series. Since that time, DPM has also conducted barrier analyses of the Medical Officer, GS-602 and Contract Specialist, GS-1102 series. Therefore, NIH not only completed the analyses of those series to which it was committed, but completed additional series as well. Thus far, no impediments to equal opportunity have been found.

It should also be noted that NIH participated in the development of the methodology for a PHS-wide study (nine months in duration) on barriers to the employment of Hispanics and Native Americans, conducted a barrier analysis in its component organizations, and participated in analyzing data and writing the PHS final report issued in September 1984. Since that time, NIH has implemented several of the recommendations contained in the PHS report.

Now on p 38.

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The following is GAO's comment on the Department of Health and Human Services' February 13, 1986, letter.

GAO Comment

1. This material has been deleted from the final report.

Advance Comments From the Equal Employment Opportunity Commission



EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C. 20507

FEB 7 1986

Mr. Richard L. Fogel
Director
Human Resources Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Fogel:

Thank you for allowing the Equal Employment Opportunity Commission (EEOC) an opportunity to respond to General Accounting Office (GAO) draft report number GAO/HRD 86-37 entitled "The National Institutes of Health Affirmative Action Program Does Not Fully Comply with Federal Requirements."

With respect to GAO's recommendation that the Secretary of Health and Human Services direct the Director of the National Institutes of Health to establish hiring goals and internal movement goals for underrepresented groups, implement recruitment programs for minorities and women, and identify selection barriers affecting minorities and women in accordance with EEOC Management Directives 707 and 707A, we would like to note that these provisions sunset this year. EEOC is currently reviewing these Directives to determine whether, and if so how, to revise them.

We would also like to clarify certain items in the report. First, the draft report incorrectly states on page 34, that EEOC Management Directive EEO-MD-707 was updated in 1983. EEOC issued Management Directive EEO-MD-707 in 1981. This management directive instructed Federal agencies to develop, submit, and implement equal employment and affirmative employment plans for minorities and women for the period fiscal year 1982 through fiscal year 1986. On August 26, 1983, Management Directive EEO-MD-707A was issued. Management Directive EEO-MD-707A provides instruction for annual accomplishment reports and updates of the affirmative employment (equal employment opportunity) programs for minorities and women based on Management Directive EEO-MD-707.

The annual accomplishment report requires information about changes in an agency's work force profile, underrepresentation indices, hiring accomplishments, internal movement accomplishments, and barrier elimination. The annual update requires information about hiring goals, internal movement goals, and projected barrier elimination activity.

Now on p. 34.

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Now on pp. 4 and 38.

Second, the draft report states the following on page iii in the Executive Summary, and on pages 38 and 39:

Since December 1983, NIH has not collected agency-wide data on race, ethnic origin, and gender of job applicants as required by EEOC Management Directive 707, issued in January 1981, and updated in 1983.

EEOC does not require agencies to collect applicant flow data. EEOC encourages agencies to collect race/ethnic origin/sex data on applicants for use in the analysis of selection barriers. This data, however, is not essential to establishing numerical hiring goals.

Now on p. 39.

Third, the draft report states the following on page 40:

The OPM Deputy Associate Director for Workforce Effectiveness and Development advised us in November 1985 that federal departments and agencies are not prohibited from collecting these data, just from using OPM Form 1386 as the instrument to collect the data. He also told us that EEOC has final program authority in this area, so if EEOC considers the issue important, it can mandate new requirements in this area.

The Office of Personnel Management (OPM) has the leadership responsibility for all personnel functions in the Federal Government. We would agree that EEOC has a major role in this area. However, OPM has the final program authority regarding the collection of Federal applicant flow data. This includes data collection from applicants and Federal employees. In that regard, OPM should have, at least, consulted EEOC, as well as other Federal agencies, before it allowed OPM Form 1386 to expire.

Now on p. 46.

Fourth, the draft report states the following on page 46:

EEOC has developed statistics, based on 1980 Census data, to determine whether minorities and women are adequately represented in an agency's work force.

EEOC issued Revised Appendix B, Labor Force Data to Federal Agencies in September 1984. This data provided labor force data based on the 1980 Census. Previously, agencies had used data based on 1970 Census data and estimates of the 1980 Census.

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Now on p. 47.

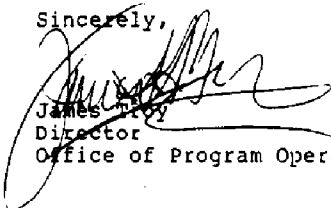
Finally, the draft report states the following on page 48:

According to EEOC, parities exist for a minority group when the percentage of minorities from a group employed in an agency/department is within 20 percent of the percentages of minorities which should be employed according to appropriate civilian labor force/professional labor force data.

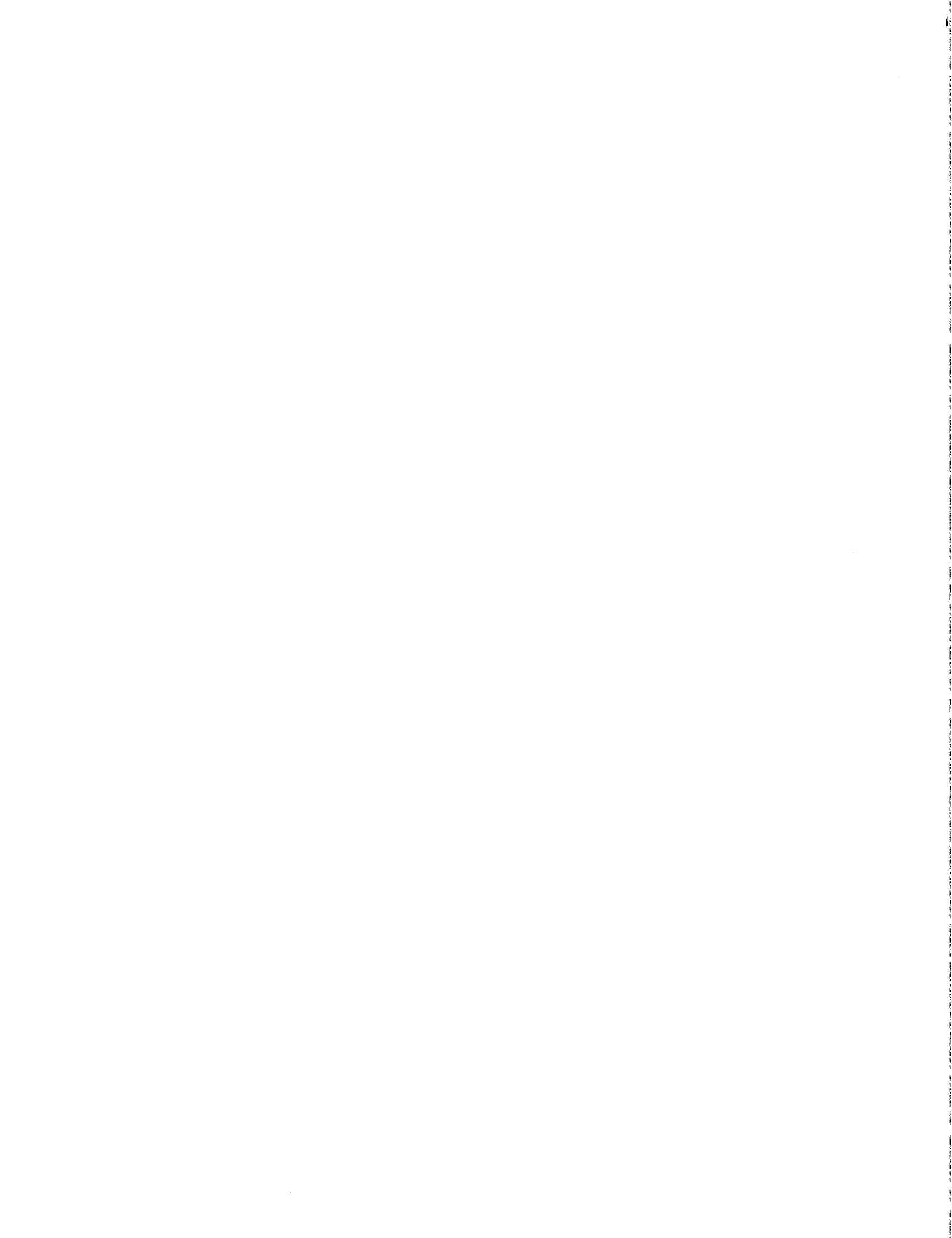
The concept of "parity" or an equivalent concept existing when the representation of minorities or women is within 20 percent of the appropriate labor force data has never been used by EEOC. EEOC instructs Federal agencies to determine whether "underrepresentation" exists. Generally, underrepresentation would exist when the representation of a sex-specific race/ethnic origin group in an occupational series or category within an agency work force is less than the appropriate civilian labor force data.

If you have any questions concerning these comments, please let me know.

Sincerely,



James H. Gray
Director
Office of Program Operations



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