

Outcome Goal 3.2 – Foster Equal Opportunity Workplaces

DOL is committed to fostering workplaces that guarantee equal opportunities and fairness to working Americans. Outcome Goal 3.2 addresses the issue of ensuring equal opportunity exists within the American workplace. DOL pursues this commitment through three performance goals addressing the needs of workers and promoting equality in the workplace. The Employment Standard Administration's (ESA's) Office of Federal Contract Compliance Programs (OFCCP) administers and enforces three equal employment opportunity laws prohibiting Federal contractors from discriminating on the basis of race, color, religion, gender, national origin, disability, and protected veterans' status. By increasing equal opportunity compliance in companies doing business with the Federal government, OFCCP functions to protect the employment rights of thousands of able American workers who might otherwise be unfairly excluded from the workplace.

DOL also works to facilitate the transition of persons with disabilities to the workplace. Although many persons with disabilities want to work, they have often been under-represented in the workforce due to attitudinal, physical, and institutional barriers that prevent them from full participation. The Office of the Assistant Secretary and Management (OASAM) administers Workforce Investment Act (WIA) provisions requiring States to establish policies, procedures, and systems reasonably guaranteeing equal opportunity for all in the workplace.

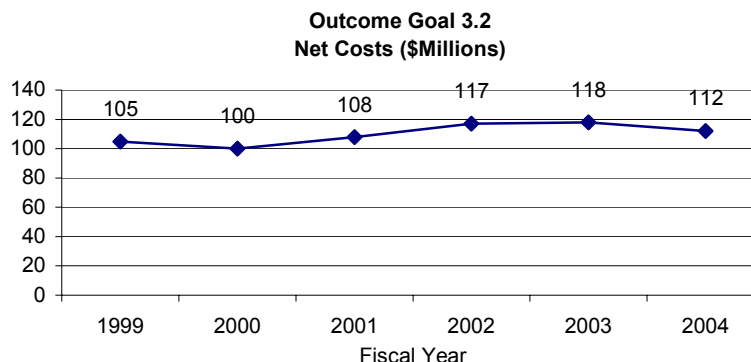
DOL's Veterans' Employment and Training Service (VETS) protects the employment and reemployment rights of persons who are current or past members of the uniformed services, and who encounter barriers in civilian employment related to their service. The legislative authority for these rights and their corresponding protections is established by the Uniformed Services Employment and Reemployment Rights Act (USERRA). VETS investigates complaints filed by veterans who believe their rights have been violated. Recently, all three DOL programs have undertaken efforts to provide compliance assistance to employers about policies and regulations governing equal opportunity workplaces. These activities serve to inform employers about equal opportunity workplace regulations and to promote their awareness of willing and available individuals who can become valued employees.

The table below capsulizes performance goals and achievements supporting this outcome goal, and agencies responsible.

Goal (Agency) – Period Goal Statement [Achievement]	Performance Summary
3.2A (ESA) – FY 2004 Federal contractors achieve equal opportunity workplaces. [Achieved]	Both targets were reached. Incidence of discrimination among evaluated contractors was one percent – well below target. Compliance with all other equal opportunity workplace standards increased to 91 percent, 30 percentage points above the target.
3.2B (OASAM) – FY 2004 States that receive financial assistance under the Workforce Investment Act provide benefits and services to persons with disabilities in a non-discriminatory manner. [Achieved]	All three targets were reached. Most States and their local areas have established policies and procedures to provide universal access to their customer population and programmatic access to customers with disabilities.
3.2C (VETS) – FY 2004 Reduce employer-employee employment issues originating from service members' military obligations conflicting with their civilian employment. [Achieved]	The target was reached. Four key problem areas with the greatest potential for reduction of complaints were identified.

Net Cost of Programs

FY 2004 program costs of \$112 million supported programs to assure that Federal tax dollars are not used to discriminate in the workplace or in the availability of program services. These program costs represent a slight \$6 million decline from FY 2003 costs of \$118 million.



Results Summary

DOL achieved all three of the three performance goals subsumed under Outcome Goal 3.2. In FY 2004, OFCCP completed 6,544 compliance evaluations, focusing on identifying and resolving systemic discrimination violations. This emphasis on compliance encourages Federal contractors to examine their own employment practices.

All WIA State recipients evaluated their largest local workforce investment areas. State and Job Corps Center FY 2003 data show that 1,211 discrimination complaints were filed against the workforce system; of these, 11% were filed on the basis of disability relative to wrongful termination and failure to provide reasonable accommodations.

VETS successfully identified a baseline of key problem areas so that future achievement of Performance Goal 3.2C can be properly assessed. The baseline covers four problem areas that are likely to be the focus of future reduction of complaints: (1) provision of refresher/upgrade training required to qualify for reemployment; (2) prompt reinstatement; (3) seniority; and (4) pension. These will serve as the focus of future measurement of VETS program goals.

A representative from a global human resources outsourcing and consulting firm welcomed participants at *Flex-Options: Making Them Work for You*, an event in Chicago, Illinois co-sponsored by her firm and DOL's Women's Bureau. The panel featured nationally recognized experts from the workplace flexibility field and Women's Bureau Director Shinae Chun and Region V Administrator, Nancy Chen. The Flex-Options project connects women business owners with corporate executives who provide mentoring on how to develop flexible workplace policies. These panels provide an educational forum for networking among women business owners who have expressed interest in developing such policies for their companies. A minimum of 80 women business owners will develop flexible workplace policies by the end of the project.

Photo credit: Women's Bureau staff



Future Challenges

OFCCP has introduced a new contractor selection system based upon a recent program evaluation study of the effectiveness of its civil rights enforcement. OFCCP will gather performance results from completed FY 2005 compliance evaluations²³ and use these and forthcoming evaluation results to improve its selection and investigation techniques in identifying non-compliant contractors.

In FY 2005, OASAM's Civil Rights Center will conduct several activities to enhance equal opportunity in the workplace, including expanding the directory of Equal Opportunity (EO) Officers to include local workforce investment area EO Officers; developing training modules on complaint processing and EO statistical monitoring; and providing on-line EO courses for EO Officers and frontline workers.

VETS's compliance assistance activities will emphasize areas that may reduce the number and severity of USERRA complaints. In September 2004, VETS published a Notice of Proposed Rulemaking (NPRM) under the authority of the USERRA statute. Stakeholders were offered an opportunity to comment on the proposed regulations prior to publication of a Final Rule that clarifies specific protections, VETS' role in the process, and procedures to be followed to implement the protections of the Act. The regulations that result from this proposed rule will, for the first time, provide clear and consistent authoritative guidance to America's employers on USERRA.

²³ Data collected from completed compliance evaluations that were scheduled beginning in July 2004.

Foster Equal Opportunity Workplaces

Performance Goal 3.2A (ESA) – FY 2004

Federal contractors achieve equal opportunity workplaces

Indicators

Reduce the incidence of discrimination among Federal contractors to 9%; and

Increase compliance among Federal contractors in all other respects of equal opportunity workplace standards to 61%.

Program Perspective

ESA's Office of Federal Contract Compliance Programs (OFCCP) administers and enforces three equal employment opportunity laws which prohibit Federal contractors from discriminating on the basis of race, color, religion, gender, national origin, disability, and protected veterans' status. Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; and 38 U.S.C. 4212 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended also require Federal contractors to take steps to ensure equal employment opportunities. Based on the principle that employment opportunities generated by Federal dollars should be equally available to all Americans, these requirements are an integral part of nearly all Federal contracts and the Federal procurement process. By increasing equal opportunity compliance in companies doing business with the Federal government, OFCCP will protect the employment rights of thousands of able American workers who might otherwise be unfairly excluded from the workplace.

Results, Analysis and Future Plans

The goal was achieved. The incidence of discrimination found among evaluated contractors was one percentage point, or eight percent, below the FY 2004 goal of nine percent. Evaluated contractors' compliance with all other equal opportunity workplace standards increased to 91 percent, 30 percentage points above the FY 2004 goal of 61 percent.

OFCCP typically evaluates between four to six percent of the Federal contractor universe each year and focuses its enforcement activities on finding and resolving systemic discrimination. OFCCP adopts this strategy to: (1) prioritize enforcement resources for the worst offenders; (2) encourage employers to self-audit their employment practices; and (3) achieve maximum leverage of resources. OFCCP completed 6,544 compliance evaluations that focused on identifying and resolving systemic discrimination violations. While OFCCP is responsible for enforcing nondiscrimination and equal opportunity requirements, protection of civil rights and assurances of quality workplaces is not solely dependent on finding violations. OFCCP's compliance emphasis and the assistance it provides encourages contractors to examine their own employment practices. More Federal contractors are complying with the nondiscrimination laws, and the reduced regulatory burden on contractors has paid dividends.

OFCCP has introduced a new contractor selection system incorporating recommendations from a 2003 study on the effectiveness of its civil rights enforcement. OFCCP will gather performance results from completed FY 2005 compliance evaluations²⁴ and use these results to evaluate the impact of those recommendations. OFCCP will also improve its selection and investigation techniques in identifying non-compliant contractors based upon an evaluation of the effectiveness of the Equal Opportunity Survey in identifying Federal contractors who may have discriminatory practices.

²⁴ Data collected from completed compliance evaluations that were scheduled beginning in July 2004.



Secretary Chao uses the Secretary of Labor's Opportunity Award, the Exemplary Voluntary Efforts Awards (EVE), and the Exemplary Public Interest Contributions Awards Program to partner with Federal contractors in identifying programs of particular merit for achieving equal opportunity workplaces, thereby encouraging other employers to follow suit. The Opportunity Award was given in 2004 to the SCANA Corporation of Columbia, SC, for its consolidated employment system that fosters fair selection and hiring based on six business-related competencies. The EVE Award winners for 2004 included The Aerospace Corporation of El Segundo, CA, whose Aerospace Institute helps all employees maintain high competencies in technical

and professional skills through computer based curricula. Another EVE Award winner, Dell Computer Corporation of Austin, TX, was honored for its investment in training designed to foster an inclusive environment. LG&E Energy Corporation of Louisville, KY created a Corporate Diversity Council to develop, implement and monitor employment opportunity initiatives. The Tice Electric Company of Portland, OR, another EVE Award winner, provides exemplary support for all employees through pre-apprenticeship education, training, and networking for those who seek employment in the electrical trades.

Photo credit: Shawn T. Moore

Management Issues

The Department continually seeks to simplify regulations and to reduce the regulatory burden on Federal contractors. The Abt Associates, Inc. study will evaluate the effectiveness of the Equal Opportunity Survey as an instrument for identifying contractors engaged in systemic discrimination. Research results will be used to develop and validate a model to identify workplaces where systemic discrimination persists while at the same time meet the Department's goal of reducing regulatory burden.

Statutory changes stemming from the recent Jobs for Veterans Act affect OFCCP regulations. Prior to this legislation, employers with a Federal contract or subcontract of at least \$25,000 were required to take affirmative action to hire and promote qualified, covered veterans. Because this legislation increased the threshold to \$100,000, it reduced the Federal contractor universe for veteran coverage. OFCCP will promulgate regulations to implement the change in this threshold.

The Program Assessment Rating Tool review of OFCCP for the FY 2004 budget indicated the agency could not measure the impact of its civil rights enforcement on the reduction of employment discrimination. As a result, DOL asked Westat to evaluate and measure OFCCP's effectiveness in identifying Federal contractors' discriminatory practices. Westat found that OFCCP's concentration on targeting larger employers and those more likely to discriminate was helpful in enforcing equal employment statutes. Study recommendations outlined techniques that could improve employer targeting even more significantly and OFCCP is incorporating these techniques within its current enforcement strategy. For more information, see Study 19 in Appendix 2.

DOL has also secured technical support, beginning in FY 2004, for a feasibility study and design of a secure web-based construction contractor information system using Federal Procurement Data System – Next Generation data. This reporting system will allow the agency to better identify, collect and report on construction contract awards to both prime contractors and subcontractors. This information system will also allow OFCCP to implement OIG recommendations that it design a better system for selecting and scheduling federal construction contractors for compliance evaluations.

Promote Equal Opportunity Under the Workforce Investment Act

Performance Goal 3.2B (OASAM) – FY 2004

States that receive financial assistance under the Workforce Investment Act provide benefits and services to persons with disabilities in a non-discriminatory manner.

Indicators

Desk reviews conducted of a representative sample of States using the WIA Section 188 Disability Checklist;

Initiate technical assistance reviews of the One-Stop Career systems in the cities of Los Angeles, CA and Houston, TX; and

The nature and number of discrimination complaints filed nationwide under Title I of the WIA, Wagner-Peyser Act funded programs, the Unemployment Insurance program, and against DOL-operated Job Corps Centers based on a longitudinal study spanning FY 2002 through FY 2005.

Program Perspective

Historically, people with disabilities have faced attitudinal, physical, and institutional barriers that prevent them from full participation in the mainstream of life, particularly employment. Persons with disabilities are one of the most under represented groups in the U.S. workforce. A substantial number of disabled persons want to work and can greatly benefit from the workforce system in making the transition from government transfer payment programs to the world of work. Over the last quarter of a century, Congress has enacted laws designed to break down barriers to employing persons with disabilities. Under WIA each Governor is required to establish a Methods of Administration, which is the foundation of policies, procedures, and systems that provide a reasonable guarantee of equality of opportunity in the workforce for all, including persons with disabilities.

Results, Analysis and Future Plans

The goal was achieved. All WIA State-level recipients were required to conduct self-evaluation reviews of their largest local workforce investment area, which exceeded the target of conducting only a sampling. The results of these self-evaluation reviews indicate that most States and their local areas have put in place policies and procedures that provide universal access to their customer population and programmatic access to customers with disabilities. This finding is buttressed by the finding from the full technical assistance review of New York and Florida and their largest local workforce areas, New York City and Miami, respectively.

We also initiated disability technical assistance reviews of California and Texas and their largest local areas, Los Angeles and Houston, respectively. DOL provided compliance assistance training on the Federal disability requirements to key State and local staff and front line workers representing every One-Stop Center in these localities.

States and Job Corps centers complaint log data show that 1,211 discrimination complaints were filed against the workforce system. Of the total number of discrimination complaints filed, 137 or 11 percent were filed on the basis of disability. The dominant issues in these complaints were wrongful termination and failure to provide reasonable accommodations.

In FY 2005 DOL will (1) establish a repository of promising practices on the Civil Rights Center's public website, (2) expand the directory of Equal Opportunity (EO) Officers to include local workforce investment area EO Officers in order to facilitate communication and information sharing, (3) develop training modules on complaint processing and EO statistical monitoring, and (4) develop on-line EO courses.

Management Issues

The General Accountability Office (GAO) announced and initiated a study of disability compliance in the workforce system during FY 2004. In many ways, the GAO study is mirroring the Civil Rights Center technical assistance reviews of the One-Stop Career systems. GAO's study will conclude with a series of recommendations, and the final report is expected during FY 2005.

Assist Veterans' Return to Jobs After Military Obligations

Performance Goal 3.2C (VETS) – FY 2004

Reduce employer-employee employment issues originating from service members' military obligations conflicting with their civilian employment.

Indicator

Establish baseline of key problem areas for reduction in USERRA cases filed by veterans or service members

Program Perspective

VETS protects the employment and reemployment rights of persons who are current or past members of the uniformed services, and who encounter barriers in civilian employment related to their service. Legislative authority for protection of these rights is established by the Uniformed Services Employment and Reemployment Rights Act (USERRA).

VETS investigates individuals' complaints alleging their rights have been violated and provides compliance assistance to employers and to protected individuals. Most violations by employers arise from a lack of awareness of the rights and protections established by USERRA. Similarly, most claims that are found to be without merit result from a lack of awareness on the part of the claimants regarding the specific dimensions of the rights and protections established by USERRA. VETS seeks to reduce both employer violations and the filing of meritless complaints by protected individuals.

Results, Analysis and Future Plans

This goal was achieved. Using DOD's annual survey of the actual experiences of members of Military Reserve and National Guard units, VETS' established a baseline of issues that will help focus activities on improving employer compliance and reducing USERRA complaints.



Michael, a Reservist in the United States Army, was deployed in support of Operation Iraqi Freedom from February 16, 2003 to November 11, 2003. While deployed, Michael became eligible for a career ladder promotion. Upon his return to work, Michael inquired about his promotion. His supervisor informed him that he would have to wait because he was gone for most of the evaluation period. Michael filed a complaint with VETS in February 2004. VETS contacted the employer, outlining the complaint and explaining Michael's rights under USERRA concerning promotions while absent. The employer wrote back still insisting that they had not had sufficient time to evaluate Michael. DVET explained to the employer that they could evaluate him for a short period of time and promote him retroactively. Finally, the employer realized how Michael's career could be affected by the delayed promotion. On March 29, 2004 the employer agreed to promote Michael retroactively and remit \$4,589.60 in back pay.

Photo credit: Stan Williams

The first table below summarizes VETS' baseline analysis. Although the 2004 percentages are consistently higher than the corresponding percentages for 2003, this difference needs to be viewed with considerable caution: 1) This question was a "stand-alone" item in the 2003 survey but in the 2004 survey it was the 11th item in a series of 20, all dealing with USERRA. Therefore, the higher percentages may reflect a difference in how those participating in the 2004 survey responded after being "warmed" to the topic by a series of prior questions, as opposed to how those participating in the 2003 survey responded "cold" to a single question. 2) Percentages are small, so the statistical error of these estimates is high relative to their values. Averaging the results of the two surveys offers a conservative estimate of the overall frequency of these issues, as shown in the last column. The second table groups actual complaints by survey categories in the first table.

Results from the 2003 and 2004 DMDC Surveys²⁵

Categories of USERRA-Related Problems Experienced by Survey Respondents	Percent “YES” 2003	Percent “YES” 2004	Average
Reemployment Issues:			
Prompt Reemployment: (Failed to receive prompt reemployment upon return from military service)	4	6	5
Skill Upgrade and Refresher Opportunities: (Reasonable efforts not made to refresh or upgrade skills to enable you to qualify for reemployment)	6	10	8
Seniority Issues: (Loss of seniority, seniority-related pay, or seniority-related benefits)	7	12	9.5
Health Benefits Issues:			
Continuation: (Failed to receive option to continue employer-provided health insurance)	6	8	7
Reinstatement: (Failed to receive immediate reinstatement of employer-provided health insurance)	4	7	5.5
Pensions: (Military service considered a break in employment for pension benefit purposes)	10	12	11
Type of Service: (Employer differentiated between voluntary and involuntary service)	10	12	11

Prompt reemployment and skill upgrade are key problem areas. Prompt reemployment has long been a priority for USERRA compliance assistance and continuing emphasis upon that issue is likely. However, the percentage of respondents identifying upgrade/refresher training as an issue is higher. Therefore, the provision of skill upgrade/refresher training may be a “sleeper” issue that underlies a number of USERRA reinstatement complaints and is not fully appreciated by VETS or employers.

USERRA Complaints in FY 2003, Grouped by Corresponding Survey Categories

Primary Issue Codes Associated with USERRA Complaints in FY 2003	Percent of Issue Codes Associated with Complaints
Reinstatement	19%
Seniority, Status, Promotion, Pay Rate, Vacation	20%
Pension	4%
Military Obligations Discrimination, Discrimination as Retaliation for any Action, Initial Hiring Discrimination, Layoff	40%
Miscellaneous	17%

Management Issues

In late FY 2004, VETS published a Notice of Proposed Rulemaking (NPRM) under the authority of the USERRA statute. Because the program previously operated without the benefit of regulations, it is expected that a broad spectrum of stakeholders will take the opportunity to comment on the proposed regulations. Among these are likely to be employer associations, labor unions and other employee associations, veteran service organizations, and the Employer Support of the Guard and Reserve, which has a role in providing assistance under USERRA. Publishing the NPRM, responding to comments, and publishing a Final Rule will help to clarify issues regarding specific protections, issues regarding VETS’s role with respect to interested individuals and organizations, and the procedures to implement the protections of the Act.

²⁵ Defense Manpower Data Center (DMDC) 2003 & 2004 surveys’ common question: “In the past 24 months, have you experienced any of the following problems despite your protection under USERRA?”