

August 2008

WOMEN'S EARNINGS

Federal Agencies Should Better Monitor Their Performance in Enforcing Anti- Discrimination Laws

On September 12, 2008, this report was revised because page 3 of the Department of Labor's agency comment letter was omitted from Appendix V.





Highlights of [GAO-08-799](#), a report to congressional requesters

Why GAO Did This Study

In 2003, GAO found that women, on average, earned 80 percent of what men earned in 2000 and workplace discrimination may be one contributing factor. The Equal Employment Opportunity Commission (EEOC) and the Department of Labor (Labor) enforce several laws intended to prevent gender pay discrimination. GAO examined (1) how EEOC enforces laws addressing gender pay disparities among private sector employers and provides outreach and what is known about its performance, and (2) how Labor enforces laws addressing gender pay disparities among federal contractors and provides outreach and what is known about its performance. GAO analyzed relevant laws, regulations, monitoring reports, and agency enforcement data and conducted interviews at the agencies' central offices and two field offices experienced in gender pay cases.

What GAO Recommends

GAO recommends that EEOC and OFCCP monitor performance of their enforcement efforts related to gender pay and that OFCCP ensure its planned new data system uses reliable data, measure performance of its outreach efforts, evaluate the mathematical model used to target contractors, provide links between pertinent guidance, and devise a unique violation code to track any non-compliance with the self-evaluation requirement. EEOC agreed with GAO's recommendation; Labor neither agreed nor disagreed; and both provided additional perspective on their enforcement efforts.

To view the full product, including the scope and methodology, click on [GAO-08-799](#). For more information, contact Anne-Marie Lasowski on (202) 512-7215, or at lasowskia@gao.gov.

WOMEN'S EARNINGS

Federal Agencies Should Better Monitor Their Performance in Enforcing Anti-Discrimination Laws

What GAO Found

EEOC addresses gender pay discrimination primarily by responding to individual charges, initiating investigations, and conducting outreach, but the agency does not fully monitor gender pay enforcement efforts. EEOC prioritizes incoming charges of discrimination against employers that appear to merit further investigation, and GAO's analysis of EEOC data showed that charges of gender pay discrimination were prioritized for investigation more frequently than non-gender pay charges. EEOC collects detailed information on all its enforcement efforts and uses these data to monitor enforcement performance overall as well as by statute, including one statute dedicated to gender pay. However, EEOC does not monitor gender pay enforcement efforts under another statute that covers multiple discrimination topics and under which more than half of gender pay charges are filed. As a result, EEOC does not make complete use of available information to help identify trends related to gender pay cases, set agency priorities, or understand how its gender pay enforcement efforts are contributing to overall performance goals relative to other efforts. EEOC also conducts both fee-based and free outreach on a broad range of topics, which can include gender pay. EEOC monitors the number and type of free outreach activities and holds itself accountable for providing outreach to both employers and employees and obtaining high audience ratings on some fee-based outreach.

Labor's Office of Federal Contract Compliance Programs (OFCCP) conducts compliance evaluations targeted to federal contractors based on whether they may be engaging in systemic discrimination, but efforts to monitor the performance of enforcement and outreach activities are limited. OFCCP uses a mathematical model to select contractors for review based on the likelihood of noncompliance, but it has not yet evaluated the model for how well it predicts systemic discrimination due to resource constraints. In addition, regulations require contractors to conduct a self-evaluation of their compensation systems to identify and address gender pay disparities. However, OFCCP's guidance on this is found in different source documents that are not cross-referenced, and its data system lacks a unique code to help the agency easily determine the extent to which contractors are complying with the self-evaluation requirement. While OFCCP collects enforcement data by type of discrimination and monitors enforcement performance overall, it does not monitor enforcement trends and performance outcomes regarding gender pay or other specific areas of discrimination. Even if it were to do so, questionable reliability of certain enforcement data undermines performance monitoring. As a result, OFCCP may have difficulty determining how best to prioritize its resources among the different types of discrimination it addresses. To increase awareness of anti-discrimination laws, OFCCP also conducts outreach to federal contractors on topics that include gender pay. OFCCP holds itself accountable for achieving a targeted number of events, but does not systematically gather recipient feedback and use it to measure the quality of its outreach efforts. In contrast, Labor's Women's Bureau, which also provides outreach to working women, sets performance targets and systematically measures its impact.

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Abbreviations

EEOC	Equal Employment Opportunity Commission
EPA	Equal Pay Act of 1963
FY	fiscal year
Labor	Department of Labor
OFCCP	Office of Federal Contract Compliance Programs
Title VII	Title VII of the Civil Rights Act of 1964

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United States Government Accountability Office
Washington, DC 20548

August 11, 2008

The Honorable Edward M. Kennedy
Chairman
Committee on Health, Education, Labor,
and Pensions
United States Senate

The Honorable Tom Harkin
Chairman
Subcommittee on Labor, Health and Human
Services, Education, and Related Agencies
Committee on Appropriations
United States Senate

The Honorable Hillary Rodham Clinton
United States Senate

The Honorable Carolyn B. Maloney
House of Representatives

The Equal Pay Act of 1963 and the Civil Rights Act of 1964, along with judicial precedents, are credited in part with narrowing the pay gap between men and women over the past several decades. Despite these gains, in 2003 GAO found that women earned, on average, 80 percent of what men earned in 2000 and that workplace discrimination may be one contributing factor.¹

Discrimination can occur on an individual basis or on a systemic basis, whereby an entire class of individuals is affected by an employer's practices or policies or where there is a broad impact on an industry, profession, company, or geographic location. The Equal Employment Opportunity Commission (EEOC) and the Department of Labor's (Labor) Office of Federal Contract Compliance Programs (OFCCP) are responsible for enforcing federal laws and regulations² that prohibit pay and other

¹GAO, *Women's Earnings: Work Patterns Partially Explain Difference between Men's and Women's Earnings*, GAO-04-35 (Washington, D.C.: Oct. 31, 2003).

²OFCCP also enforces an Executive Order prohibiting certain types of discrimination.

employment discrimination on the basis of sex, race, color, religion, national origin, and disability.³ EEOC oversees the employment practices of more than 600,000 private and public sector employers, in addition to federal government agencies. OFCCP oversees the employment practices of nearly 90,000 federal contractors—private sector employers who have contracts with the federal government. Both EEOC and OFCCP provide outreach and technical assistance to employers, workers, and the general public about rights and responsibilities concerning anti-discrimination laws. In addition, Labor’s Women’s Bureau also provides outreach on topics specific to working women.

In light of the pay gap we reported previously and the potential that workplace discrimination may be one contributing factor, you asked us to examine a broad range of issues concerning gender pay disparities and the enforcement of anti-discrimination laws in the private and public sectors. In this report, we focus on EEOC and Labor enforcement and outreach efforts in the private sector. Specifically, we address (1) how EEOC enforces laws addressing gender pay disparities among private sector employers and provides outreach, and what is known about its performance, and (2) how Labor enforces laws addressing gender pay disparities among federal contractors and provides outreach, and what is known about its performance.

To conduct this work, we reviewed relevant federal laws and regulations and each agency’s policies, procedures, and monitoring reports relevant to enforcement and outreach efforts. We interviewed EEOC and Labor officials in their respective central offices and visited two field offices for each agency. We chose field offices with recent experience with gender pay cases that varied by size and geographic location. We also analyzed EEOC’s and OFCCP’s data on gender pay and non-gender pay cases reviewed from fiscal year (FY) 2000 to FY 2007.⁴ We determined that EEOC’s enforcement data were sufficiently reliable for the purposes of this report by testing it for accuracy and completeness, reviewing documentation about the data and systems that produced them, and interviewing agency officials knowledgeable about the data and data systems. Using similar methods, we found that OFCCP’s enforcement data

³EEOC is also charged with investigating employment discrimination charges based on age.

⁴We initially requested 10 years of agency data on cases investigated from FY 1997 through FY 2007. However, OFCCP was unable to provide data before FY 2000; therefore, we limited our analysis for both agencies to data from FY 2000 through FY 2007.

were not sufficiently reliable for the purposes of this report. Therefore, we could not analyze trends with respect to the number and resolution of gender pay cases. To help assess what is known about the performance of EEOC's and OFCCP's enforcement, outreach, and technical assistance efforts, we reviewed each agency's performance plans, reports, and other management information. We also judgmentally selected and contacted several private sector organizations representing employers, federal contractors, researchers, and women's groups to obtain their views of EEOC's and Labor's enforcement and outreach efforts. Further details of our scope and methodology can be found in appendix I. We conducted our work from July 2007 to August 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Results in Brief

Consistent with its legal mandate, EEOC enforces laws prohibiting gender pay discrimination primarily by responding to charges of discrimination from individuals, conducting a limited number of agency-initiated investigations, and providing outreach and training. EEOC's gender pay charges declined by 35 percent from FY 2000 to FY 2007 and represented about 2 percent of all charges in FY 2007. To effectively use its resources, the agency prioritizes all new charges as they are received according to whether they appear to merit further investigation. About 32 percent of the gender pay charges between FY 2000 and FY 2007 were prioritized for further investigation, compared to about 21 percent of charges related to other types of discrimination. During this 8-year period, EEOC also filed 35 agency-initiated investigations related to gender compensation, representing 19 percent of all agency-initiated investigations. Although EEOC collects detailed data on each charge—including the type of discrimination alleged and relevant statute—and regularly monitors its overall enforcement efforts, the agency does not monitor its gender pay performance in a comprehensive manner. For example, the agency regularly monitors performance information—such as the timeliness and outcome of charges—by applicable statute. As such, it can monitor performance for gender pay enforcement under one relevant law that exclusively deals with gender pay issues, but not under another relevant law—under which more than half of gender pay charges are filed—that addresses both gender pay and non-gender pay discrimination. As a result, EEOC lacks a complete picture to help identify trends, help set agency priorities, and understand the extent to which gender pay enforcement

efforts specifically contribute to its overall performance goals. In addition to enforcement of laws, EEOC conducts both free and fee-based outreach and training for employers and the public, which generally covers a broad range of topics including gender pay. EEOC measures the performance of some fee-based outreach by holding senior regional officials accountable for providing a certain number of events and achieving high quality ratings from participants. For free outreach, where collecting participant feedback is not always feasible, EEOC monitors the number of recipients and the number and type of events to ensure that it reaches both employers and employees.

Labor's enforcement efforts target systemic discrimination, but limitations exist in these efforts as well as in performance monitoring of gender pay enforcement and outreach. Labor's OFCCP selects contractors for a compliance evaluation based, in part, on a mathematical model that predicts the likelihood that the employer may be engaging in systemic discrimination. OFCCP officials said that they have not evaluated the model's effectiveness yet due to lack of resources, but plan to initiate a review later this fiscal year. OFCCP's enforcement responsibilities also include ensuring that contractors self-evaluate their compensation systems to identify disparities, in accordance with its regulations. However, OFCCP's guidance in this area is found in different source documents that are not cross-referenced, and OFCCP cannot easily determine the extent of non-compliance because its data system does not distinguish this violation from other problems with a contractor's records. Like EEOC, OFCCP does not monitor the extent to which its gender pay enforcement efforts contribute to the agency's overall performance goals, although OFCCP has access to fairly detailed information on specific types of discrimination that could be used for this purpose. Even if it did monitor gender pay, OFCCP's ability to assess its enforcement efforts would be undermined by questionable data quality resulting from a lack of standardized data entry instructions and inadequate internal controls. OFCCP officials acknowledged these data problems and said they would be addressed when the data system is replaced next year. In addition to enforcement activities, OFCCP conducts outreach and technical assistance that cover gender pay topics, typically when changes are made to its policies or regulations in this area. OFCCP monitors the number and type of its outreach events, but does not systematically solicit feedback on the quality of these efforts or set related performance targets. Within Labor, the Women's Bureau also conducts outreach through projects that provide services to women but, in contrast to OFCCP, systematically sets targets for its performance and monitors its impact for each of its projects through participant surveys.

We recommend that both EEOC and OFCCP develop methods to monitor their enforcement efforts related to gender pay and that OFCCP help ensure that its planned new data system incorporates adequate internal controls to help improve the reliability of its enforcement data. We also recommend strengthening enforcement efforts at OFCCP to include evaluating the mathematical model used to select contractors for review and improving oversight to help ensure contractors conduct the required compensation self-evaluation. Finally, we recommend that OFCCP systematically gather feedback on and monitor performance of its outreach. In its written comments on a draft of our report, EEOC agreed with our recommendation for more comprehensive monitoring of gender pay discrimination and stated that it has already started examining the best approach to accomplishing this. Labor neither agreed nor disagreed with our recommendations. Both agencies provided additional perspective and information on their enforcement efforts.

Background

EEOC and OFCCP carry out their enforcement responsibilities by either investigating charges of discrimination filed by individuals or by initiating their own reviews of employers' workforces and employment practices in the private sector. They also promote awareness and prevention of discrimination through outreach to the public and technical assistance to employers to help them understand and comply with their legal obligations. In addition, Labor's Women's Bureau provides outreach to women and their employers intended to improve the status of wage-earning women.

EEOC

EEOC was created in 1964 to promote equal opportunity in the workplace and enforces federal laws that prohibit employment discrimination on the basis of race, sex, color, religion, national origin, age, and disability. EEOC investigates charges of employment discrimination from the public, conducts agency-initiated investigations, litigates major cases, and reaches out to the public to educate and prevent discrimination.

The agency investigates charges of gender pay discrimination under two laws:⁵ the Equal Pay Act of 1963 (EPA)⁶ and Title VII of the Civil Rights Act

⁵EEOC also enforces the following federal statutes, which cover issues beyond gender pay discrimination: Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, Title I and Title V of the Americans with Disabilities Act of 1990, and Sections 501 and 505 of the Rehabilitation Act of 1973.

⁶Pub. L. No. 88-38 (codified at 29 U.S.C. § 206(d)), *amending* the Fair Labor Standards Act of 1938.

of 1964 (Title VII).⁷ The EPA generally requires that employers provide men and women equal pay for equal work on jobs that require the same skill, effort, and responsibility and that are performed under similar working conditions.⁸ Title VII, which addresses issues related to equal employment opportunity, makes it unlawful for employers to discriminate against employees with respect to compensation or other aspects of employment on the basis of sex.⁹ See appendix II for a comparison of the key gender pay provisions under the EPA and Title VII.

EEOC's responsibility for providing outreach is also established by law. Title VII requires EEOC to conduct outreach targeted to populations it serves, particularly those that have been historically underserved, in cooperation with other federal agencies,¹⁰ and to provide fee-based training to employers and others on equal employment opportunity topics.¹¹ EEOC conducts outreach to educate the public about their rights under the law, and provides technical assistance to inform employers of their responsibility to comply with anti-discrimination laws.

In addition to its central office in Washington, D.C., EEOC is organized into 15 districts, each with several field, area, and local offices. These offices, with support from the central office, investigate the approximately 80,000 to 90,000 charges that EEOC receives each year, litigate cases, and provide outreach to the public and employers. EEOC has jurisdiction over more than 600,000 employers with over 90 million employees. At the end of FY 2007, EEOC had 2,158 full-time equivalent staff positions, which included 1,093 investigators, trial attorneys, and mediators. Its FY 2007 budget was \$329 million. Since FY 1997, when its budget was \$240 million, EEOC's budget has increased by approximately 6.7 percent after adjusting for inflation.¹²

⁷Pub. L. No. 88-352, Title VII (codified at 42 U.S.C. § 2000e *et seq.*).

⁸However, such differences in pay are permissible if they are attributable to (i) a seniority system; (ii) a merit system; (iii) a system that measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex.

⁹Title VII also provides that it is unlawful to discriminate on the basis of race, color, religion, or national origin. 42 U.S.C. § 2000e-2.

¹⁰42 U.S.C. § 2000e-4(h).

¹¹42 U.S.C. § 2000e-4(j) and (k).

¹²EEOC's inflation-adjusted budget was \$308 million in FY 1997.

OFCCP

Established in 1965, OFCCP is primarily responsible for ensuring that federal contractors, subcontractors, and federally assisted construction contractors comply with applicable federal affirmative action and equal opportunity requirements. OFCCP enforces Executive Order 11246, as amended, which prohibits employment discrimination by federal contractors on the basis of race, sex, creed, color, or national origin.^{13,14} OFCCP also evaluates whether large¹⁵ contractors meet an additional obligation: to develop an affirmative action program that identifies any areas in employment and compensation where employees are not receiving equal opportunities and describes in detail specific steps to remedy the problems.

OFCCP's central office in Washington, D.C., directs the nationwide enforcement of equal employment opportunity laws and regulations, while field staff in OFCCP's six regional offices and 50 district and area offices conduct the actual enforcement activities. These activities include initiating compliance evaluations—reviewing federal contractors' compliance with the applicable laws and regulations—and providing outreach and technical assistance to help contractors comply with federal employment requirements.

In FY 2008, OFCCP had 585 full-time-equivalent staff positions. Its FY 2007 budget was about \$82 million, which is 9 percent higher than its FY 1997 budget of \$76 million after adjusting for inflation.¹⁶

Women's Bureau

Congress established Labor's Women's Bureau in 1920¹⁷ to formulate standards and policies intended to promote the welfare of wage-earning women, improve their working conditions, increase their efficiency, and

¹³In 1965, President Johnson signed Executive Order 11246, which prohibited discrimination on the basis of race, creed, color, or national origin. In 1967, it was amended by Executive Order 11375 to prohibit discrimination on the basis of sex as well.

¹⁴OFCCP also enforces Section 503 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974.

¹⁵OFCCP regulations require that contractors and subcontractors with 50 or more employees and federal contracts of \$50,000 or more, and certain other contractors, develop an affirmative action program.

¹⁶OFCCP's FY 1997 budget was about \$59 million in nominal terms, increasing 40 percent to reach \$82 million in FY 2007.

¹⁷Pub. L. No. 66-259 (codified at 29 U.S.C. § 11).

advance their opportunities for profitable employment. The Bureau operates from its central office in Washington, D.C., as well as from 10 regional offices. In FY 2007, the Women's Bureau's budget was about \$10 million, with an authorized 60 full-time equivalent employees.¹⁸

EEOC-Labor Memorandum of Understanding

In 1999, EEOC and Labor¹⁹ signed a Memorandum of Understanding to enhance the effectiveness of their enforcement efforts specifically regarding compensation discrimination. The memorandum states that EEOC and Labor may share information with each other about potential issues of compensation discrimination,²⁰ provide each other with semi-annual reports of actions taken on compensation discrimination referrals, and meet periodically to coordinate enforcement.

EEOC Responds to Individual Charges of Discrimination and Provides Broad Outreach, but Does Not Track Performance Related to Gender Pay Issues

Consistent with its legal mandate, EEOC addresses gender pay discrimination primarily by responding to individual charges, although it also conducts some agency-initiated investigations. EEOC collects detailed information on its enforcement efforts, but it does not specifically monitor its performance related to gender pay enforcement. As a result, EEOC does not use the information that it collects to identify trends related to gender pay, which could in turn help EEOC understand how its gender pay enforcement efforts contribute to overall performance goals and agency priorities. EEOC also conducts fee-based and free outreach on a broad range of topics, including gender pay. It monitors free outreach to ensure that it reaches both employers and workers and holds senior regional officials accountable for achieving high quality ratings on some fee-based outreach.

¹⁸The Women's Bureau did not provide budget data for FY 1997; therefore, we were unable to analyze its budget trends over the past 10 years. Its FY 2001 budget was \$10 million, 16 percent higher than its FY 2007 budget after adjusting for inflation.

¹⁹The memorandum was signed by Labor's Employment Standards Administration, which is composed of four offices, including OFCCP.

²⁰OFCCP regulations also permit it to refer complaints to EEOC for processing under Title VII, and another Memorandum of Understanding allows for EEOC and OFCCP to refer cases to each other as appropriate.

EEOC Responds to All Individual Charges Using a Prioritized Approach and also Conducts Some Agency-Initiated Investigations

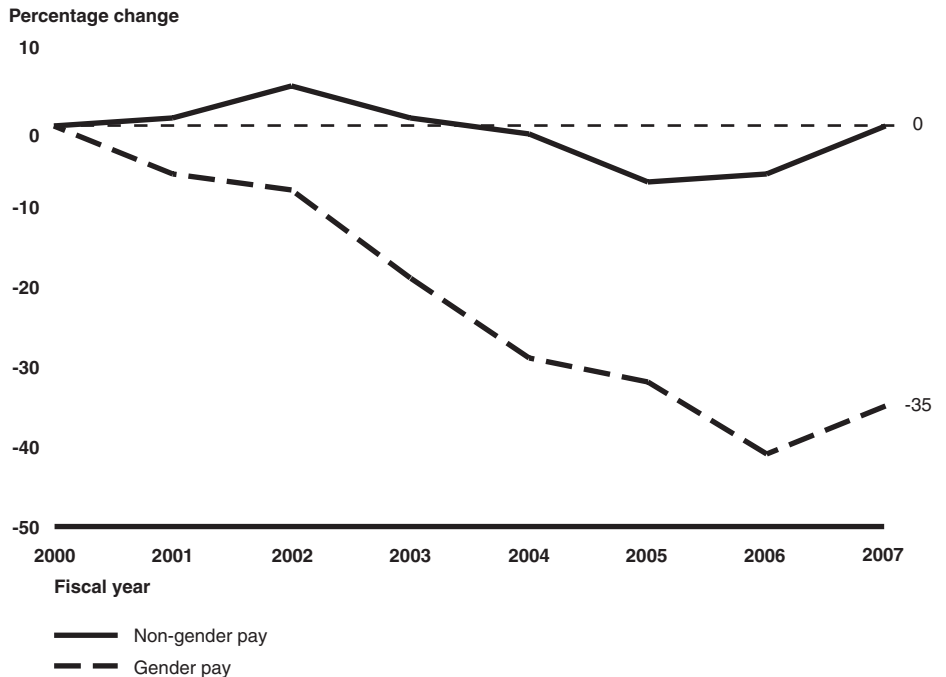
EEOC responds to all individual charges of gender pay discrimination, as well as other individual charges of discrimination, filed under federal law.²¹ Once an individual notifies EEOC of alleged discriminatory treatment, EEOC arranges an interview and the individual decides whether to file a charge of discrimination against the employer.

Over the last 8 years, the number of gender pay charges has decreased while the number of total charges has remained relatively constant. Specifically, from FY 2000 to FY 2007, the number of gender pay charges filed annually with EEOC decreased by 35 percent (from 3,165 to 2,064), while the number of other individual charges filed annually remained relatively constant at approximately 84,000.²² See figure 1. EEOC officials told us they did not know the specific reasons for the downward trend in gender pay charges, but noted that the types of charges filed with the agency can be affected by issues covered in the media, changes in law, or the state of the national economy. In FY 2007, gender pay charges accounted for about 2 percent of all charges.

²¹EEOC is required by law to respond to all charges filed under Title VII. While it is not legally required to pursue all EPA charges filed, agency officials said that EEOC typically does so as a matter of policy.

²²The set of charges analyzed in this report consists of those handled by EEOC. Some of these charges were first received by state or local fair employment practices agencies and subsequently transferred to EEOC for investigation and resolution. Therefore, the number of charges reported here may be slightly higher than the number of charges reported in other sources, such as EEOC's Web site, which includes only those charges initially filed directly with EEOC.

Figure 1: Percentage Change in the Number of Non-Gender Pay and Gender Pay Charges Filed, FY 2000-FY 2007



Source: GAO analysis of EEOC data.

To effectively use its resources, EEOC prioritizes each charge as it is received according to whether it appears to merit further investigation.²³ Specifically:

- EEOC assigns charges that appear to have merit based on the available evidence for further investigation to determine whether the employer violated anti-discrimination laws.²⁴
- EEOC offers mediation services for charges that may have merit, but for which evidence needs to be further developed.²⁵ Mediation between an

²³In 1995, EEOC adopted the “priority charge handling procedure” to give field personnel flexible procedures for processing charges, including the discretion to decide the appropriate level of resources to be used for each charge.

²⁴Charges may also be dismissed at any point if, in the investigator’s best judgment, further investigation will not reveal a violation of the law.

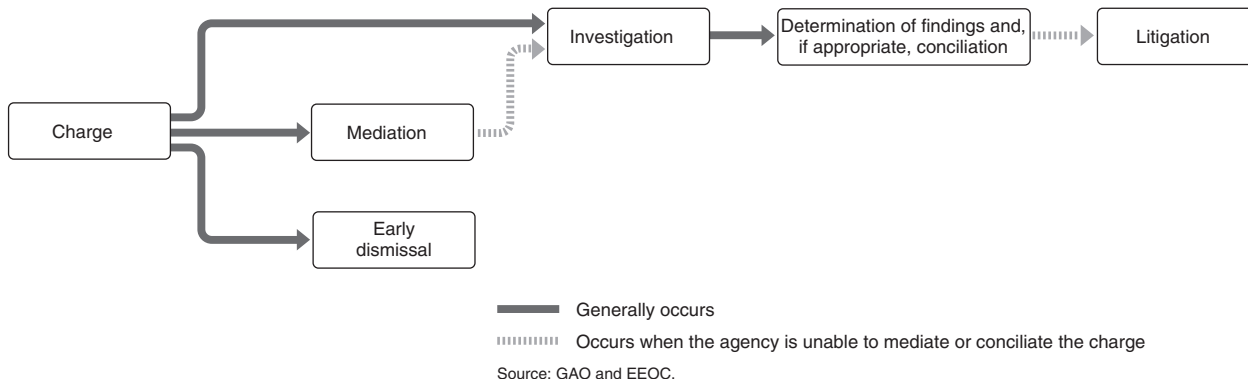
²⁵Under EEOC policy, EEOC does not mediate agency-initiated charges that cover multiple employees or charges filed under the EPA.

individual and employer is offered as an alternative to a lengthy investigation. Participation in the mediation program is confidential, voluntary, and requires the consent of both parties. If mediation is not successful in resolving the charge, it is assigned for investigation.

- EEOC usually dismisses charges that do not appear to have merit or where the agency does not have jurisdiction.

If EEOC finds a violation as a result of its investigation, it attempts to reach an agreement between the charging party and employer through a conciliation process. If conciliation fails, EEOC may decide to litigate the case in federal court. EEOC may resolve any charge with an employer early in the process through settlement, which is a voluntary process. The charge resolution process is depicted in figure 2.

Figure 2: Charge Prioritization and Resolution Process

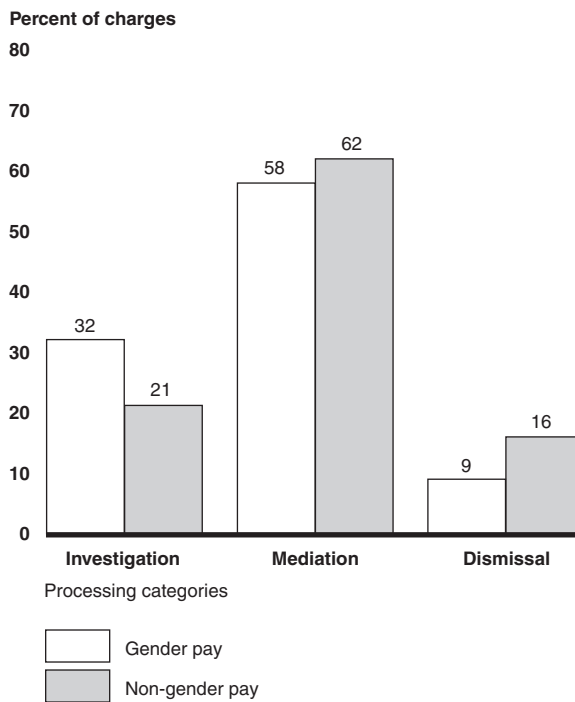


Compared to other types of charges, we found that gender pay charges were less likely to be dismissed and more likely to be prioritized for further investigation. Over the last 8 years, approximately 32 percent of gender pay cases were prioritized for investigation, compared to about 21 percent of non-gender pay charges, as shown in figure 3.²⁶ According to EEOC officials, this difference may be attributable to the apparent

²⁶The prioritization of a charge may change over the course of an investigation. These statistics reflect the priority of the charge at closure or the most recent prioritization for pending charges. EEOC officials reported that from FY 2005–FY 2007, approximately 8 percent of closed charges were upgraded in priority over the course of investigation, while approximately 3 percent were downgraded.

strength of evidence, such as payroll data, initially presented by charging parties in gender pay cases as compared to non-gender pay cases.

Figure 3: Percentage of Gender Pay and Non-Gender Pay Charges Prioritized for Investigation, Mediation, and Dismissal, FY 2000-FY 2007



Source: GAO analysis of EEOC data.

Although EEOC prioritized a greater percentage of gender pay cases for investigation, the agency ultimately obtained a similar rate of outcomes that were favorable to the charging party²⁷ in gender pay cases as it did in all others. Specifically, about 24 percent of gender pay charges, and 21 percent of all other charges, resulted in conciliation, settlement, or a withdrawal that yielded monetary or non-monetary benefits from FY 2000 to FY 2007. Agency officials said the similarity in resolutions may be attributable to the fact that most charges that enter mediation are resolved

²⁷EEOC refers to favorable outcomes for the charging party as “merit factor resolutions.” Merit factor resolutions include negotiated settlements, withdrawals in which the employer provided monetary or non-monetary benefits, successful conciliations, and unsuccessful conciliations. Unsuccessful conciliations are included because the agency found a violation of discrimination laws, even if conciliation was not successful.

in a manner that is favorable to the charging party but that charges filed under the EPA are not mediated, pursuant to EEOC policy.²⁸ According to these officials, even though EPA charges are only one component of all gender pay charges, this may lower the rate of favorable outcomes for gender pay charges relative to non-gender pay charges.

In addition to responding to individual charges, EEOC also initiates a limited number of investigations, including gender pay investigations. As shown in table 1, EEOC filed 35 agency-initiated gender pay investigations and 153 non-gender pay agency-initiated investigations between FY 2000 to FY 2007. The number of EEOC's agency-initiated investigations is small compared to the more than 78,000 individual charges addressed annually over the same period of time. Although EEOC is legally authorized to pursue agency-initiated investigations, it is not required to do so. According to agency officials, the large number of individual charges and the agency's budgetary constraints make it difficult for EEOC's field offices to carry out agency-initiated investigations. At the same time, gender pay cases accounted for 19 percent of all agency-initiated investigations.

Table 1: Number of Agency-Initiated Investigations Filed by Fiscal Year

	2000	2001	2002	2003	2004	2005	2006	2007	Total
Gender pay	4	9	2	13	3	2	1	1	35
Non-gender pay	23	30	30	23	7	4	11	25	153
Total	27	39	32	36	10	6	12	26	188

Source: GAO analysis of EEOC data.

In 2006, EEOC instituted a greater focus on investigations of systemic discrimination. These include agency-initiated charges and individual charges that could benefit many individuals. This increased focus on systemic discrimination may explain an increase in agency-initiated non-gender pay investigations from 4 in 2005 to 25 in 2007. A similar rise is not seen for agency-initiated gender pay cases.

²⁸EEOC officials told us that charges filed only under the EPA are not mediated because discriminatory pay practices may affect a class of individuals, not just the charging party. Additionally, while charging parties in gender pay cases may possess their own payroll data or that of other employees, they often do not have access to the wage data for all affected people or for those who may be most comparable to the charging party. EEOC can collect such data during the investigation process. Also, a full investigation may allow EEOC to uncover systemic discrimination that would have otherwise gone undetected.

In addition, EEOC and OFCCP entered into a Memorandum of Understanding in 1999, agreeing to coordinate efforts on compensation discrimination cases. Pursuant to the memorandum, EEOC officials stated that their field offices have liaisons with area Labor offices and that each agency refers cases to the other. Agency officials said OFCCP has referred some cases to EEOC, but did not know if any of these involved compensation discrimination in recent years.

EEOC's Performance Monitoring Related to Gender Pay Enforcement Is Limited

EEOC has performance goals related to its overall enforcement efforts, which are not specific to gender pay or any other particular type of discrimination issue. The agency's strategic plan defines 10 agencywide performance measures, including the annual percentage increase in the number of people benefiting from EEOC's enforcement program.²⁹ Data on all of EEOC's enforcement efforts, including those related to gender pay, are aggregated to report on the agency's performance relative to these measures.

EEOC uses the data that it collects on every charge to track and regularly report on disaggregated trends and outcomes related to its performance goals, but these reports do not address gender pay cases in a comprehensive manner. For example, EEOC generates monthly and quarterly reports on a number of charge statistics—such as average charge processing time, charge resolutions, and workplace and monetary benefits—by statute, including the EPA and Title VII. While the EPA statistics exclusively reflect gender pay cases, the Title VII statistics cover many topics and are not broken down by type of discrimination, such as gender pay.³⁰ Because over half of gender pay cases are filed only under Title VII (see appendix II), trends involving cases filed under the EPA would not necessarily be representative of all gender pay cases. The

²⁹The other eight performance measures are: (1) the percent of the public confident in EEOC's enforcement efforts, (2) the percent of federal sector hearings resolved in 180 days, (3) the percent of federal appeals resolved in 180 days, (4) the percent of investigative files meeting quality criteria, (5) the percent of parties confident in EEOC's mediation program, (6) the percent of lawsuits successfully resolved, (7) the percent of the public aware of their equal employment opportunity rights and responsibilities, and (8) the percent increase in the number of individuals benefiting from EEOC's enforcement programs for each agency full-time equivalent employee.

³⁰The difference between the EPA and Title VII statistics reflect the scope of coverage of each law. While the EPA applies only to gender pay discrimination, Title VII covers a broad range of employment issues (such as hiring, firing, and promotions) and bases for discrimination (such as race, color, religion, and national origin).

agency also posts annual statistics on its Web site, showing the number of charges filed under particular statutes, such as the EPA, as well as charges pertaining to certain types of discrimination, including gender-based discrimination. The statistics on gender discrimination include but are not broken out by charges related to harassment, hiring, promotion, or gender pay.³¹

EEOC also generates ad hoc reports for specific analyses pertaining to issues of interest to agency stakeholders, such as members of the Commission and community and advocacy groups. With respect to gender pay, EEOC has used its enforcement workload information to help determine human capital needs within the agency. Specifically, EEOC analyzed its litigation workload in 2001 by type of case and, as a result of this analysis, the agency developed a training course on resolving gender discrimination charges, including charges of gender pay discrimination, for its investigative and legal staff.

Because performance information specific to gender pay charges is not regularly monitored and reported, EEOC does not use that information to identify trends or set priorities for enforcement or outreach related specifically to gender pay. While EEOC generally reports charge information by statute, gender pay charges can be processed and resolved under multiple statutes; however, EEOC's reports do not show trends for types of discrimination that are addressed under multiple statutes.³² Reports that show only total charges by statute may make it difficult to discern changes in the number of charges filed for particular types of discrimination that result from new legislation, court decisions, or media coverage of current events. For example, the Supreme Court issued the *Ledbetter v. Goodyear Tire & Rubber Co.* decision in 2007, which affected

³¹Similar statistics are also available for other types of discrimination, including race. These statistics are not broken out by charges related to harassment, hiring, promotion, pay, or other specific issues.

³²EEOC provides statistics for some categories of discrimination charges on its Web site. These include reports on charges generally related to harassment, national origin, pregnancy, race, religion, gender, and sexual harassment. However, these statistics are not broken down by the issue presented in the charge, such as compensation.

the filing timelines for pay discrimination charges under Title VII.³³ EEOC's regular reports would not show whether the number of pay discrimination charges changed following the decision, because it affected a subset of Title VII charges, namely charges of pay discrimination.³⁴

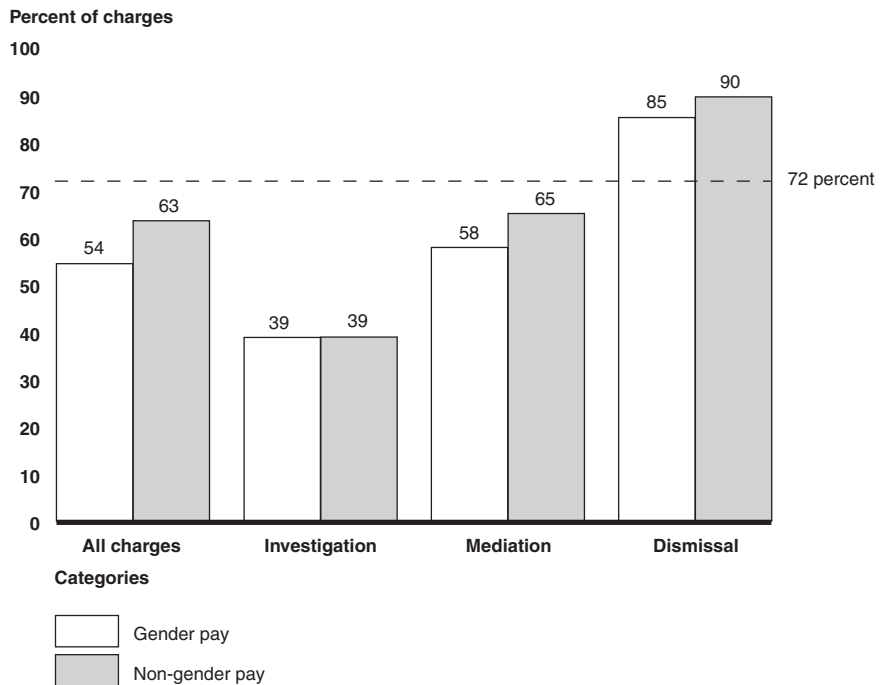
EEOC does not know the extent to which its gender pay efforts, or its enforcement efforts pertaining to any other particular type of discrimination, are contributing to overall performance goals relative to other types of discrimination. For example, EEOC has set an agencywide goal of resolving 72 percent of its cases within 180 days for FY 2007.³⁵ Based on our review of EEOC data, 54 percent of gender pay charges meet the 180-day goal, as compared to 63 percent of all other charges (see figure 4). The only charges that consistently met EEOC's timeliness goal were dismissals.

³³*Ledbetter v. Goodyear Tire & Rubber Co.*, 127 S. Ct. 2162 (2007). In this case, the plaintiff, a female retiree, sued her former employer alleging that poor performance evaluations, based on sex discrimination, earlier in her employment had resulted in lower pay than her male colleagues through the end of her career. The Court considered whether and under what circumstances a plaintiff may bring an action under Title VII alleging illegal pay discrimination when the disparate pay is received during the statutory limitations period, but is the result of intentionally discriminatory pay decisions that occurred outside of the limitations period. In *Ledbetter*, the Court held that the statute of limitations is triggered when a discrete unlawful practice takes place, and concluded that pay decisions, rather than the issuance of paychecks, constitute discrete acts. As a result, a new violation does not occur and a new charging period does not commence upon the occurrence of subsequent nondiscriminatory acts (issuance of paychecks) that entail adverse effects resulting from past discrimination (poor performance evaluations). As a result, her claim was time barred.

³⁴To determine whether the number of pay discrimination charges changed after the *Ledbetter* decision, we analyzed the number of pay charges filed under Title VII and other statutes, such as the EPA, during the 4 months preceding the decision and the 4 months following the decision. We found a 35 percent increase in average monthly filings of all pay discrimination charges and a 31 percent increase in gender pay filings in the 4 months following the decision. There did not appear to be a sustained shift away from filing under Title VII and toward filing under other statutes not affected by *Ledbetter*, such as the EPA, during that period. However, it may be too early to assess what effect, if any, the Court's decision will have on charges filed over time. EEOC issued guidance following the *Ledbetter* decision that instructed investigators to refrain from dismissing pay discrimination charges under Title VII solely on the basis of timeliness without first consulting with the agency's Office of Legal Counsel to determine whether the *Ledbetter* holding applies.

³⁵EEOC's goal for the percentage of charges completed within 180 days has increased from 60 percent in FY 2003 to 72 percent in FY 2007.

Figure 4: Percentage of Gender Pay and Non-Gender Pay Charges, by Category, Resolved in 180 Days or Fewer, FY 2000-FY 2007



Source: GAO analysis of EEOC data.

In addition, even though the number of gender pay charge filings has declined from FY 2000 to FY 2007, they are more frequently referred for further investigation, which takes longer on average than mediation and significantly longer than dismissals (see table 2). Such analyses could provide EEOC a better understanding of its workload, which could assist in setting performance targets related to timeliness. Conversely, without monitoring enforcement trends and performance outcomes by specific type of discrimination, including gender pay, EEOC is not fully equipped to pinpoint relatively effective or ineffective strategies, identify gaps and priorities, or allocate its limited resources to address specific discrimination issues.

Table 2: Average Days to Process Gender Pay and Non-Gender Pay Charges, FY 2000-FY 2007

Charge category	Gender pay	Non-gender pay
Investigation	294	306
Mediation	193	173
Dismissal	92	70

Source: GAO analysis of EEOC data.

EEOC Conducts Outreach Covering Broad Topics, including Gender Pay, and Measures Performance of Some Fee-Based Outreach

EEOC's outreach takes many forms and addresses various audiences. Outreach events include presentations, booths at information fairs, consultations with individuals via phone or in person, media releases, and information available on its Web site. EEOC provides two types of outreach: free events for employers, employee groups, and individuals, and fee-based conferences and training for employers, who may request either pre-planned seminars on broad topics or customized training to address specific needs at their worksite.

Both free and fee-based outreach efforts cover various topics, including gender pay discrimination, but the focus is rarely on a single issue. Topics include various aspects of EEOC's services, such as:

- various types of discrimination (such as compensation),
- different bases for discrimination (such as gender),
- applicable laws (such as the EPA and Title VII), and
- relevant EEOC processes (such as mediation and litigation).

About half of EEOC's free outreach events in FY 2007 included a general overview that, according to EEOC officials, would likely have covered gender pay discrimination along with other topics. In the same year, about 29 percent of the fee-based outreach events covered an overview of EEOC.³⁶

Few EEOC outreach events have specifically focused on gender pay in recent years. For example, in 2007, the EPA was the primary topic at 3 percent of all free outreach events and 2 percent of fee-based events. EEOC's central office also has several national initiatives that focus both

³⁶These percentages are probably low estimates. EEOC's outreach data are not structured in a way that would allow for obtaining an unduplicated count of events by topic.

outreach and enforcement efforts on specific issues, but none have covered gender pay in the past 10 years.³⁷ Officials said this is because the topics of national initiatives are based on the specific interests of agency leadership, along with a general desire for initiatives to focus on a range of issues.

Since FY 2004, EEOC has conducted an increasing number of free outreach events, despite a general decline in EEOC's overall budget for outreach after adjusting for inflation. Between FY 2004 and FY 2007, total outreach events increased by 6 percent, driven largely by a 9 percent increase in free events. At the same time, EEOC's inflation-adjusted spending on outreach fell by 29 percent, driven largely by a 47 percent decline in free outreach spending.³⁸ EEOC officials told us that EEOC's overall declining budget and shifting priorities led to the decline in free outreach spending. They attributed EEOC's ability to conduct more outreach with less money to changes in delivery methods, such as less travel, greater use of technology, and shorter presentations.³⁹ In contrast, EEOC experienced a 22 percent decline in the number of fee-based events and a 23 percent increase in the budget for these events, adjusted for inflation, during the same time period.⁴⁰

EEOC has some mechanisms for monitoring the performance of its fee-based outreach.⁴¹ EEOC surveys audiences at some fee-based seminars and uses this feedback to measure the quality of the outreach, make improvements, and plan future events. EEOC senior regional officials are held responsible for conducting a specific number of these events and are evaluated on achieving ratings of "highly successful" or above, as well as on the percentage of attendees who complete evaluations.

³⁷According to agency officials, the most recent initiative that related to gender occurred in the early 2000s and focused on low-wage earners, including women.

³⁸Free outreach spending decreased 42 percent before adjusting for inflation.

³⁹EEOC data also shows a decline in audience members, but officials attributed this decline to a change in data collection methods.

⁴⁰Federal law established the EEOC Education, Technical Assistance, and Training Revolving Fund, which is to be used to pay the costs of providing fee-based education, technical assistance, and training related to laws administered by the EEOC. The monies in the fund are available only for those purposes.

⁴¹EEOC is required by law to report annually to the President and Congress on its fee-based outreach activities, including the number of persons and entities receiving assistance.

In contrast, free outreach is evaluated on whether it reaches a mix of audiences and promotes agency priorities. EEOC sets nationwide goals for the number of free outreach events conducted in conjunction with some of its national initiatives. It monitors progress toward these goals by using data collected on the number of attendees, type of event, audience characteristics, and topics covered at each event. EEOC also uses its data to evaluate whether each field office's annual outreach plans strike a balance between employers and employees—a balance that officials told us is a priority for the agency. Unlike fee-based outreach, EEOC does not evaluate its free outreach on its level of quality. Senior EEOC officials said that EEOC does not survey or gather feedback from recipients of free outreach, because many free events, such as media releases or information booths, lack a well-defined audience that could provide feedback.

EEOC has faced challenges in measuring the outcomes of its outreach efforts overall. Officials stated that EEOC's outreach contributes to two agencywide performance measures in its strategic plan: public confidence in EEOC's work and public awareness of individual rights and responsibilities. Although EEOC monitors the amount of outreach it provides, it recently stopped using this information to measure the extent to which its outreach efforts helped to achieve its agencywide measures, after determining it could not do so accurately.⁴² However, in 2002, GAO found that while it is difficult to measure outcomes, it is possible to tie intermediate efforts, such as the number of events and attendees, to outcomes using methods such as a logic model.⁴³ EEOC officials told us they are continuing to consider ways to measure the outcomes of EEOC's outreach, including a program evaluation.

⁴²EEOC officials told us that this decision was made after consulting with the Office of Management and Budget as part of the Program Assessment Rating Tool review process.

⁴³A program logic model is an evaluation tool used to describe a program's components and desired results and explain the strategy—or logic—by which the program is expected to achieve its goals. By specifying the program's theory of what is expected at each step, a logic model can help evaluators define measures of the program's progress toward its ultimate goals. See GAO, *Program Evaluation: Strategies for Assessing How Information Dissemination Contributes to Agency Goals*, GAO-02-923 (Washington, D.C.: Sept. 30, 2002).

Labor Targets Systemic Gender Pay Discrimination and Conducts Outreach, but Limitations Exist in Enforcement Efforts and Monitoring Performance

Labor's OFCCP conducts compliance evaluations of federal contractors, including those who may be engaging in systemic gender pay discrimination, but the mathematical model used to target contractors for systemic discrimination has not yet been evaluated. In addition, OFCCP regulations require that contractors conduct self-evaluations of their compensation systems, but relevant guidance is located in different sources and not cross-referenced. The agency also lacks a tracking mechanism to help ensure that contractors meet this requirement. While OFCCP collects detailed enforcement data by type of discrimination, it does not use this data to monitor enforcement trends and performance outcomes regarding gender pay or other specific areas of discrimination. Even if it chose to monitor specific areas of discrimination, questionable reliability of enforcement data undermines OFCCP's ability to monitor performance. As a result, OFCCP does not know the extent to which its gender pay enforcement efforts contribute to agencywide performance goals. OFCCP also conducts outreach to federal contractors on topics that may include gender pay, but does not systematically measure the performance of these efforts. In contrast, Labor's Women's Bureau, which also provides outreach on topics focused on working women, sets specific performance targets and measures its impact.

OFCCP Conducts Compliance Evaluations and Targets Systemic Discrimination

OFCCP's enforcement of employment discrimination, including gender pay-related discrimination, largely consists of compliance evaluations of federal contractors. To help allocate resources efficiently, OFCCP prioritizes some of its evaluations of federal contractors based on whether they may be engaging in any type of systemic discrimination.⁴⁴ The compliance evaluation process begins with the semi-annual selection of contractors.⁴⁵ OFCCP selects contractors for review, in part, using a mathematical model that predicts the likelihood of finding systemic

⁴⁴In addition to pursuing cases of systemic discrimination that affect an entire class of workers within one or more companies under Executive Order 11246, as amended, OFCCP also investigates individual complaints of discrimination by federal contractors filed under section 503 of the Rehabilitation Act of 1973, as amended, the Americans with Disabilities Act of 1990, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended. Consistent with its regulations, OFCCP is to refer all other individual complaints to EEOC under a Memorandum of Understanding.

⁴⁵OFCCP primarily uses the Federal Procurement Data System to identify covered contractors. This data system, managed by the General Services Administration, is a central repository of information on federal government contracts.

discrimination.⁴⁶ The remainder of contractors reviewed are selected based on other factors, including the amount of time elapsed since their prior review and random selection.⁴⁷ OFCCP completed nearly 5,000 compliance evaluations in FY 2007, representing about 5 percent of all federal contractors.

Once OFCCP selects which contractors to review, it uses a tiered approach to identify indicators of systemic discrimination, which in turn determine the extent and resource intensiveness of the compliance evaluation. Every evaluation starts with a desk audit, which is a screening procedure to identify areas requiring further review. OFCCP examines a contractor's compensation practices as part of the evaluation. If no significant indicators of systemic discrimination are found, OFCCP closes the desk audit. However, if such indicators are found, OFCCP conducts a more in-depth compliance evaluation that entails a more rigorous statistical evaluation and an on-site audit.⁴⁸ If, at the end this process, OFCCP finds systemic unexplained differences, such as systemic pay differences between men and women in similar occupations, it issues a notice of violation and begins conciliation negotiations to seek remedial actions to correct deficiencies, such as back pay and retroactive seniority, among other remedies. If conciliation fails, OFCCP can pursue administrative enforcement proceedings against the employer before an administrative law judge, or debar the company from contracting with the federal government.

Under OFCCP policy, the agency does not focus on individual cases of discrimination like EEOC does, but both agencies have agreed to coordinate efforts enforcing legal prohibitions against unlawful pay discrimination, pursuant to a 1999 Memorandum of Understanding. According to a senior OFCCP official, the agency has taken some steps to implement the memorandum's provisions, such as referring individual complaints on compensation and other matters to EEOC as appropriate.

⁴⁶The number of contractors selected by the mathematical model is considered enforcement sensitive by the agency.

⁴⁷In FY 2007, about 30 percent of contractors who were initially included on the list were subsequently removed after being deemed ineligible for review for such reasons as going out of business or having contracts under \$50,000 or fewer than 50 employees. OFCCP then notified the remaining contractors that they had been scheduled for review.

⁴⁸OFCCP regulations permit this on-site audit to be followed by additional off-site analysis, if necessary.

While OFCCP has met periodically with EEOC to discuss enforcement, the official did not know whether compensation cases were discussed at these meetings because OFCCP does not track pay cases specifically for these purposes.

OFCCP Has Not Yet Evaluated Its Mathematical Model to Select Contractors

OFCCP targets contractors based partly on a mathematical model that predicts the likelihood of finding systemic discrimination, but the agency has not yet evaluated it. The model, which is one of three methods used to select contractors for review, is based on research conducted by the firm Westat and assigns a higher likelihood of systemic discrimination to some contractor establishments than others. This model uses multiple factors that compare the workforce profile of the targeted establishment to profiles of other establishments in the same industry classification and to the profile of the local labor market using Census data. While the model predicts the likelihood of discrimination, OFCCP does not make an actual determination of discrimination until further review.

OFCCP officials said that they began using the Westat model in FY 2004, but have not yet assessed how effectively the model predicts systemic discrimination and targets appropriate contractors for review. While OFCCP reported that it originally expected to evaluate the model in 2007, officials told us that they have not done so due to limited resources. Officials indicated that they now plan to do this later in FY 2008, when compliance evaluations from the 2 prior years are completed and sufficient and appropriate staff resources are anticipated. OFCCP officials indicated that the evaluation of the Westat model will incorporate lessons learned from evaluating a prior model used to help select contractors for review: the Equal Opportunity Survey. During the evaluation of that model, OFCCP encountered unreliable data from some of the respondents and low response rates, and did not verify contractors who claimed that the agency did not have jurisdiction over them. According to OFCCP officials, the agency subsequently addressed some of these challenges. For example, OFCCP officials said that the reliability of the data has significantly improved and that an initiative to identify establishments with federal contracts—known as Contracts First⁴⁹—has resulted in a more comprehensive list of establishments that fall under its jurisdiction.

⁴⁹OFCCP began the Contracts First initiative in 2006 to identify establishments that have federal contracts but may not have filed an Employer Information Report (EEO-1 Report), which must be filed by all private employers who have 50 or more employees and have a federal contract, subcontract, or purchase order amounting to \$50,000 or more.

However, because OFCCP has not yet developed evaluation plans for the Westat model, it is unclear whether low response rates will remain an issue and, if so, how this will be addressed. Appendix III contains more information on the Equal Opportunity Survey.

Related Guidance from OFCCP Is Not Cross-Referenced and the Office Lacks a Tracking Mechanism to Help Ensure Contractors Self-Evaluate as Required

In addition to targeting contractors for compliance evaluation, OFCCP enforces discrimination laws by requiring contractors to self-evaluate their compensation systems and other aspects of their employment process.⁵⁰ OFCCP's implementing regulations require that contractors' affirmative action programs identify problem areas. Therefore, contractors must perform in-depth analyses of their employment processes, including their compensation systems, to identify any disparities for women and minorities. However, OFCCP does not always review compliance with the compensation self-evaluation requirement for the contractors selected for a compliance evaluation. Officials in one regional office we visited told us that, during the desk audit, they review whether the contractor's affirmative action program contains a general narrative statement that a self-evaluation was conducted. However, the other regional office we visited did not perform this review. Central office officials expressed little concern over this inconsistency, noting that the compensation self-evaluation aspect of contractors' affirmative action programs during desk audits was not critical, because the desk audit would identify problem areas with or without the contractor's affirmative action program.

Inconsistent reviews of self-evaluation requirements may be due, in part, to the fact that OFCCP's guidance for conducting these reviews is contained in different source documents without clear cross-references or links to each other. Specifically, OFCCP's compliance manual—which is posted to OFCCP's Web site and was last updated in 1998—does not explicitly direct OFCCP investigators to review whether contractors have satisfied the self-evaluation requirement, and does not contain specific procedures for OFCCP investigators to follow when examining a contractor's compensation self-evaluation. Since 1998, OFCCP has issued additional notices that have superseded the manual, one of which, issued in 2006, contains voluntary guidelines for contractors to follow when conducting their compensation self-evaluation.⁵¹ As a result, to ascertain

⁵⁰41 C.F.R. § 60-2.17(b)(3).

⁵¹Other recent guidance not incorporated in the compliance manual includes interpretive standards for systemic compensation discrimination, issued in 2006, and an internal notice regarding analysis of compensation practices at the desk audit stage in 2007.

current policy, investigators and federal contractors have to check multiple information sources. OFCCP's Web site includes references and hyperlinks to some recently issued guidance on other issues, but has no linkages to the voluntary self-evaluation guidelines.

Even when OFCCP discovers through a compliance evaluation that the contractor did not perform the required self-evaluation, OFCCP's compliance evaluation database records this violation as a general recordkeeping violation rather than a specific violation of the self-evaluation requirement, according to OFCCP officials. OFCCP officials stated, however, that while the database lacks a specific code, the underlying information is available in case files. Unless OFCCP performs a manual file review, it cannot easily determine from its database the extent to which contractors are in compliance with the self-evaluation requirement.

Labor Does Not Monitor Performance Related to Gender Pay Enforcement and Underlying Data Are Questionable

OFCCP monitors agencywide enforcement efforts using broad performance measures but does not monitor performance by specific types of discrimination such as gender pay. OFCCP has two broad performance indicators: reducing discrimination and increasing compliance, both of which the agency met in FY 2007. According to agency officials, there are no plans to introduce performance indicators by specific type of discrimination because these two broad indicators appropriately reflect the agency's overall mission, which focuses on discrimination in general. While OFCCP's compliance evaluation database captures detailed data on all types of discrimination, including gender pay, OFCCP does not use the data to monitor its performance regarding gender pay or any other type of discrimination.

OFCCP does conduct internal monitoring beyond its agency performance indicators, but not with respect to gender pay enforcement. OFCCP has stated that compensation discrimination—while not an agency performance indicator—is a national priority; thus, OFCCP has established performance standards for each of its senior regional officials to evaluate how well each region develops systemic compensation cases. However, these standards pertain to pay discrimination overall without specifying whether it is based on gender, race, or some other basis. OFCCP officials also said that they use a number of sources, such as detailed weekly and quarterly reports, along with monthly phone calls, to monitor how well regional offices carry out specific enforcement cases; but this information is not structured to track trends, assess performance outcomes, or prioritize limited agency resources by specific type of

discrimination. In general, OFCCP senior officials said they do not see the benefit of using the data already collected to internally monitor trends in gender pay enforcement—or any other subset of the performance indicators. However, without this type of monitoring, OFCCP may have difficulty determining how best to prioritize its resources among the different types of discrimination it addresses.

Even if OFCCP chose to monitor gender pay enforcement, questionable data reliability would undermine OFCCP's ability to assess how well its overall enforcement efforts were working. While officials said that the reliability of OFCCP's enforcement data has improved significantly since FY 2005, problems still exist with erroneous, inconsistent, or missing data. For example, using OFCCP's data, we were unable to determine the correct number of gender pay cases that OFCCP handled over the 8-year period of our review. In addition, in testing of OFCCP's data, we found incorrect violation codes, inconsistent case closure dates entered, and conciliation or financial agreements dates entered but corresponding violations missing. While OFCCP officials said they check the data accuracy of some compliance evaluations entered into the data system and verify the accuracy of contractor data submitted at regular intervals,⁵² OFCCP officials acknowledged a lack of standardized data entry instructions and adequate internal controls⁵³ to screen for data problems. They added that these problems would be addressed with the planned replacement of the data system next year. OFCCP has requested \$2 million dollars for a new data system in its FY 2009 budget but does not yet have funding for it.

⁵²The percentage of compliance evaluations that are verified and the frequency of contractor data accuracy checks are considered enforcement sensitive by the agency.

⁵³Internal controls comprise the plans, methods, and procedures an organization uses to meet its missions, goals, and objectives. Internal controls used by government agencies may include guidance that defines the specific data to be collected and any documentation needed to support the data and safeguards to ensure data are secure. Some key aspects of internal controls for collecting and reporting data include guidance that provides clear and consistent instructions on which data elements must be captured. They also include data entry procedures and edit check software to help ensure data entry is accurate and consistent. For more information on internal controls, see GAO, *Standards for Internal Controls in the Federal Government*, GAO/AIMD-00-21.3.1 (Washington, D.C.: Nov. 1999).

OFCCP Provides Outreach to Federal Contractors, but Does Not Systematically Measure Its Performance

OFCCP's outreach consists primarily of technical assistance to federal contractors. According to OFCCP officials, targeting federal contractors rather than their employees is consistent with its role as an enforcement agency. Technical assistance may include presentations and workshops at industry group meetings; information and Web-based seminars available on OFCCP's Web site; individual consultation with contractors via telephone, e-mail, or walk-in appointments; and information provided during audits.

OFCCP's technical assistance covers the discrimination issues and laws over which OFCCP has jurisdiction, including gender pay. Most of OFCCP's technical assistance efforts are designed to help federal contractors meet their affirmative action requirements or understand OFCCP's recent policy changes, including two changes involving gender pay. For example, OFCCP issued new guidance in 2006 describing how it will examine contractors' compensation practices by race and gender during audits. Prior to and during the time these changes were implemented, OFCCP officials provided technical assistance on how the new policies would affect contractors.

With respect to performance of its outreach efforts, OFCCP monitors the number of outreach and technical assistance efforts. For example, OFCCP has regional and national goals for the number of outreach events conducted. Regional offices submit weekly reports to the central office, which generally include the date, type, and location of outreach events, but these reports do not always indicate the issue discussed at these events, nor do they include the number of attendees.⁵⁴ OFCCP uses this information to generate quarterly and annual reports measuring its progress toward its outreach targets. OFCCP also tracks the topics of e-mail and telephone inquiries, which it uses to develop the Frequently Asked Questions section of its Web site, and requests feedback from participants in its Web-based seminars.⁵⁵

However, OFCCP's approach to measuring and monitoring the performance of its outreach efforts is less systematic than EEOC's. Like

⁵⁴Officials told us that OFCCP has recently asked field offices to begin tracking the number of audience members, but field offices have not yet begun reporting these data in their weekly or monthly reports.

⁵⁵Web-based seminars are a new development at OFCCP; as of May 2008, there had only been two, although OFCCP plans to hold one each quarter.

EEOC, OFCCP has no agencywide performance measures for outreach and evaluates senior regional officials' performance based on the outreach and technical assistance they provide. Conversely, unlike EEOC, OFCCP has no specific targets related to the quality of outreach that senior officials are required to meet. In addition, OFCCP is less systematic than EEOC in collecting and reporting feedback on the quality of its outreach. Officials told us that contractors and industry groups sometimes contact OFCCP to provide informal feedback on outreach, and representatives of several industry groups we spoke with said that OFCCP's outreach generally meets their needs.⁵⁶ Nonetheless, the weekly reports from the regional offices we reviewed included a few favorable comments from audience members rather than comprehensive feedback from all attendees, making it difficult to objectively determine the audience's overall assessment of the outreach. OFCCP officials said that these informal methods of collecting and reporting feedback are sufficient. However, by not systematically collecting and tracking objective feedback from recipients, OFCCP has no reliable means of measuring the quality of its outreach or using this information to assess the impact of its outreach and improve future efforts.⁵⁷

In addition to not knowing whether its outreach is effective, OFCCP does not know how much it is spending on outreach. Officials estimate about 30 percent of the budget is spent on outreach. However, OFCCP officials we spoke with did not know exactly how much was spent on outreach and technical assistance, and they could not provide details on how these funds are used.⁵⁸ Lacking accurate spending information, OFCCP is unable to gauge the cost-effectiveness of its outreach spending or evaluate whether this spending is in line with its priorities.

⁵⁶Two industry groups told us that the messages of OFCCP's outreach have sometimes been inconsistent, but that the agency is improving its outreach.

⁵⁷In our prior work, we found that obtaining feedback from recipients of outreach is an important tool for assessing its effectiveness. See GAO, *Program Evaluation: Strategies for Assessing How Information Dissemination Contributes to Agency Goals*, [GAO-02-923](#) (Washington, D.C.: Sept. 30, 2002).

⁵⁸OFCCP officials told us they were able to obtain the 30 percent estimate by sampling staff time cards. However, they were unable to use this information to obtain an exact spending amount.

Labor's Women's Bureau Provides Direct Services to Women and Is Meeting Most of Its Goals

Labor's Women's Bureau also provides outreach related to gender pay by creating and promoting programs to address specific needs of working women, such as financial literacy among Generation X women. The Bureau develops these programs as demonstration projects in a few sites for 3 to 4 years and cultivates partnerships to encourage other government, private, or community-based organizations to replicate and fund the projects on a continuing basis. In FY 2007, the Bureau ran three demonstration projects serving at least 2,238 women and 387 employers. Since FY 2005, the Women's Bureau reports 45 replications in over 30 cities, providing services to more than 6,000 women.

Changes to the Women's Bureau in 2002

Prior to 2002, the Women's Bureau was involved with the Equal Pay Matters Initiative, disseminating information to women and employers about gender pay, discrimination, and related topics via its Web site and media campaigns.

The Initiative was discontinued in 2002, when the Bureau changed the focus of its outreach from educating people about gender pay discrimination to providing demonstration projects. These programs now seek to help female workers obtain higher-paying jobs and manage their finances. Officials told us this change was made, in part, to reduce duplication of services provided by other government agencies and that, while outreach no longer focuses on pay discrimination, the Bureau provides information on this topic upon request. Officials also indicated that they changed their approach in order to improve the Bureau's ability to measure its performance and impact, and that the Equal Pay Matters Web site was removed because the Bureau no longer had staff available to keep it up-to-date.

In contrast to OFCCP, the Women's Bureau sets and systematically measures its performance against numerical targets. Like OFCCP, the Women's Bureau has targets for the number of outreach efforts (i.e., demonstration projects) it will conduct. However, in addition to measuring the number of outreach efforts, the Women's Bureau has assigned each project two to three performance measures that gauge the ultimate impact of the project on participants' behavior, using follow-up surveys to gather this information. For example, one project's goal is to increase women's financial security, and its performance measure calculates the percent of participants who decrease their debt or increase their savings. Only one project includes a performance measure related to gender pay, which tracks the percent of participants who increase their earnings after participating in a demonstration project designed to increase women's employment opportunities. While the Bureau did not meet all of its goals for this project in 2007, it exceeded its goals for its other two demonstration projects.

Conclusions

Although the pay gap between men and women has narrowed over the last several decades, as of 2000 women still earned less than their male counterparts, suggesting that discrimination may still exist. This pay gap underscores the importance of the federal government's role of enforcing anti-discrimination laws and raising awareness of legal requirements through outreach. While both EEOC and OFCCP have appropriately set broad goals for enforcing all types of discrimination, limited monitoring of specific enforcement efforts, such as gender pay, relative to other areas, diminishes EEOC's and OFCCP's ability to pinpoint relative workload trends, effective and ineffective strategies, and contributions to performance goals. In turn, these agencies are ultimately less able to strike an effective balance in allocating increasingly limited resources to address overall discrimination issues. A robust performance monitoring effort requires reliable enforcement data to obtain a complete and accurate

picture of how well anti-discrimination laws are being enforced, but the absence of effective internal controls has undermined the reliability of OFCCP's data. Additionally, OFCCP strives to help contractors understand and meet their obligations—spending about one-third of its budget on technical assistance and outreach—yet does not systematically collect and review information that would help it gauge the cost-effectiveness of these efforts.

In addition to improving performance monitoring, OFCCP needs to address limitations in its enforcement, particularly since compensation is a national priority for the agency. Because OFCCP has chosen to use its limited resources to audit selected federal contractors, OFCCP needs an effective means of both prioritizing contractors for compliance evaluations and ensuring contractors carefully evaluate their own pay systems. However, until OFCCP evaluates the mathematical model used to help target contractors, it cannot know how effectively it is using its limited resources, or whether it is missing opportunities to apply a more effective model. Because OFCCP conducts compliance evaluations on about 5 percent of federal contractors each year, contractor self-evaluations are a principle means of achieving compliance with federal law for the vast majority of establishments. However, the absence of links between current and pertinent guidance and the lack of a distinct violation code to help track compliance with the self-evaluation requirement limit OFCCP's oversight in this area.

Recommendations for Executive Action

To gauge how well EEOC is carrying out its responsibilities regarding gender pay discrimination, we recommend that the Chair of the EEOC devise a cost-effective method to improve its ability to monitor the performance of its gender pay enforcement efforts relative to other areas, using information already captured in its databases and supplementing information already reported.

To strengthen OFCCP's enforcement and outreach efforts and gauge the performance of those efforts, we recommend that the Secretary of Labor direct the Director of OFCCP to:

- Evaluate the Westat mathematical model and incorporate lessons learned from the prior model to ensure contractors are appropriately being selected for compliance evaluations and to maximize limited enforcement resources;

-
- Improve oversight of compliance evaluations for contractors by establishing linkages between relevant and current guidance on conducting compensation self-evaluations and devising a unique violation code to document any non-compliance with the compensation self-evaluation requirement;
 - Ensure the planned new data system incorporates standardized data entry instructions and adequate internal controls to screen for erroneous, inconsistent, or missing data, and ensures violation codes are correctly entered;
 - Develop a cost-effective means for monitoring performance of gender pay enforcement efforts relative to other areas, using information generally already captured in existing databases, once determined reliable; and
 - Devise a method for systematically collecting feedback from recipients of outreach and technical assistance and using this information to measure and monitor outreach performance.

Agency Comments and Our Evaluation

EEOC and Labor provided written comments on a draft of this report, which are reprinted in appendixes IV and V, respectively. EEOC also provided several technical comments, which we have incorporated as appropriate.

EEOC agreed with our recommendation that it obtain and review gender pay data and stated it already has undertaken discussions about the best approach for doing so. However, the agency noted that regularly monitoring charges filed under the EPA provides a representative assessment of overall gender pay charge activity and an effective means of monitoring charge activity, given agency resources. As a result, EEOC officials stated they are able to highlight areas of concern and effectively respond to changes in charge activity. In addition, EEOC stated that, because it monitors many different types of discrimination, it cannot meaningfully examine every possible type on a regular basis. We acknowledge that monitoring gender pay charges filed under the EPA can help to inform EEOC's decisions. However, as we noted in our report, more than half of gender pay charges are filed only under Title VII. Further, reviewing gender pay charges filed under only EPA may not reveal the impact of external factors such as new legislation, court decisions, or media coverage that may disproportionately affect charges filed under one law, but not the other. We agree that regular examination of every type of discrimination would not be realistic; therefore, we

limited our recommendation to improving EEOC's ability to monitor its performance regarding gender pay discrimination using available information.

Labor neither agreed nor disagreed with our recommendations, but provided additional perspective on its broader enforcement efforts and clarifying comments regarding some of our findings. With respect to its broader enforcement efforts, Labor stated that it opens more reviews, monitors a larger number of federal contractors than it has in the past, and prioritizes resources where most needed. Labor reports that these efforts have resulted in an increase in both total financial remedies obtained and number of workers benefited.

In response to our recommendation that OFCCP take steps to improve its oversight of contractors' compensation self-evaluations, Labor noted that it does not rely on the self-evaluations during a compliance evaluation and conducts its own audit. However, as we stated previously, OFCCP performs compliance evaluations on about 5 percent of contractors each year; therefore, the compensation self-evaluation remains an important compliance tool for the remaining 95 percent of contractors.

In response to our recommendations that Labor improve its performance monitoring, Labor agreed that improved data quality will enhance its monitoring efforts. In addition, Labor stated that OFCCP employs many methods to monitor performance and does not rely on anecdotes. We clarified our report to acknowledge this point. However, while we identified the tools that Labor relies on to monitor performance, we found they were not structured to track performance by specific type of discrimination.

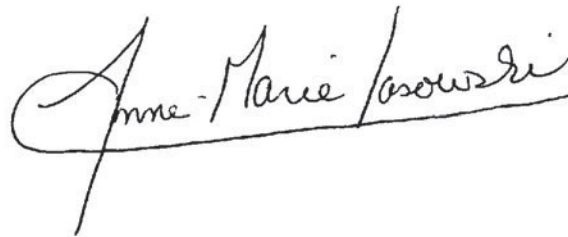
With regard to our discussion of the Westat model, Labor suggested clarifying that the model is only one of several methods used to select contractors for compliance evaluations, not the sole method. Although we had already noted this in the preceding section of our report that describes the contractor selection process, we also incorporated this information in the report section that specifically discusses the Westat model.

Labor disagreed with our assessment in appendix III of the Abt Associates' study of the Equal Opportunity Survey in two respects. First, Labor stated that the number of contractors who did not respond to the survey—claiming no jurisdiction—was reasonable. However, without verifying contractors' claims of no jurisdiction, OFCCP cannot be certain that non-responses did not introduce bias into the results of the study. Second,

Labor noted that Abt analyzed the impact of one group of contractors with missing data and found no effect on the study's conclusions. We revised our report to acknowledge this and clarified that our finding refers to additional contractor establishments with missing data for one or more of the study's four predictor variables. We found no indications that Abt analyzed the impact of missing data with respect to these contractors.

As agreed with your offices, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days after its issue date. At that time, we will send copies of this report to the Secretary of Labor, the Chair of EEOC, relevant congressional committees, and other interested parties. We will make copies available to others upon request. In addition, the report will be available at no charge on GAO's Web site at <http://www.gao.gov>.

A list of related GAO products is included at the end of this report. If you or your staff have any questions about this report, please contact me at (202) 512-7215 or lasowskia@gao.gov. Contacts for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix VI.

A handwritten signature in black ink that reads "Anne-Marie Lasowski". The signature is written in a cursive style with a large initial "A" and a long horizontal stroke at the bottom.

Anne-Marie Lasowski
Acting Director, Education, Workforce,
and Income Security Issues

Appendix I: Scope and Methodology

To obtain information on how the Department of Labor (Labor) and the Equal Employment Opportunity Commission (EEOC) enforce laws and provide outreach addressing gender pay disparities, we reviewed documents and data and conducted interviews. Documents we reviewed included relevant federal laws and regulations; the agencies' policies, plans, monitoring reports, and guidance; outreach materials, such as slides, brochures, and information from Web sites; program assessments; and other documents relevant to enforcement and outreach efforts.

In addition, we interviewed EEOC and Labor officials in their respective central offices and two field offices for each agency. We visited Labor's Office of Federal Contract Compliance Programs (OFCCP) offices in San Francisco and Philadelphia and conducted phone interviews with a senior investigator in Portland, Oregon, with experience handling gender pay cases. We also visited EEOC offices in San Francisco and New York. We selected these locations because they had recent experience with gender pay cases, varied in size, and were geographically disperse. However, they do not constitute a representative sample. In addition to agency staff, we judgmentally selected and interviewed representatives of several private sector organizations representing employers, federal contractors, women's groups, and researchers. While we sought a diversity of viewpoints through these interviews, the views provided do not necessarily represent the opinions of all employers or groups.

Data Reliability and Analysis

We requested data on enforcement and outreach activities from each agency as part of our review of the agencies' efforts regarding gender pay. Specifically, we obtained:

- EEOC data on enforcement and activities for fiscal year (FY) 1997 to FY 2007;
- EEOC data on outreach activities for FY 1998 to FY 2007; and
- OFCCP data on enforcement activities for FY 2000 to FY 2007.¹

While we requested outreach data from OFCCP, the agency does not maintain this information electronically.

¹We requested 10 years of data, but OFCCP was unable to provide data before FY 2000.

We assessed the reliability of the agencies' electronic data by testing the data for accuracy and completeness, reviewing existing information about the data and systems that produced them, and interviewing agency officials knowledgeable about the data and data system. We determined that the EEOC enforcement data we used were sufficiently reliable for the purposes of this report. However, we found that the OFCCP enforcement data was not sufficiently reliable for our use and have not included any analyses of gender pay trends based on these data in this report. We found evidence that critical information, such as the type of violation found during an investigation, was not sufficiently reliable for our use due to concerns over data entry. The agency itself relies on a separate, manual process to compile enforcement statistics for its annual report. We were unable to reproduce these same statistics using its case data system, because some violations were improperly identified during OFCCP's data entry process. OFCCP's current data system, which is almost 20 years old, is slated for replacement in FY 2009.

To assess EEOC's enforcement efforts, we analyzed EEOC's case data from FY 2000 to FY 2007 to determine how many charges of discrimination were filed concerning gender pay disparities, which statutes the charges were filed under, how these charges were classified and resolved, and how many agency-initiated investigations EEOC conducted.² We also analyzed EEOC's data to examine its rates of success under two of its performance goals (e.g., the percentage of cases processed within 180 days and the number of individuals benefited) for gender pay cases compared to non-gender pay cases.

To assess EEOC's outreach efforts, we examined EEOC's outreach and budget data from FY 2004³ to FY 2007 to determine how many free and fee-based outreach and technical assistance activities were conducted, what primary topics were covered, what types of audiences were reached, and how much was spent. EEOC officials told us their methods of counting audience members recently changed. Therefore, although we collected EEOC's data on the number of recipients of its outreach, we did not use

²We initially requested 10 years of agency data on cases investigated from FY 1997 through FY 2007. However, OFCCP was unable to provide data before FY 2000, and we limited our analysis for both agencies to data from FY 2000 through FY 2007.

³While we obtained 10 years' worth of outreach data from EEOC, EEOC changed data systems in 2003, resulting in more comprehensive budget and outreach data beginning in FY 2004. Therefore, we limited our analysis to FY 2004 through FY 2007.

this information in our report, as it was not suitable for year-by-year comparisons.

Finally, to help us understand the context of EEOC's and OFCCP's enforcement and outreach efforts, we presented budget data from both agencies from FY 1997 and FY 2007 to identify the level of funds available over the past 10 years. We adjusted budget numbers for inflation by using the Consumer Price Index to convert nominal dollars to constant 2008 dollars.

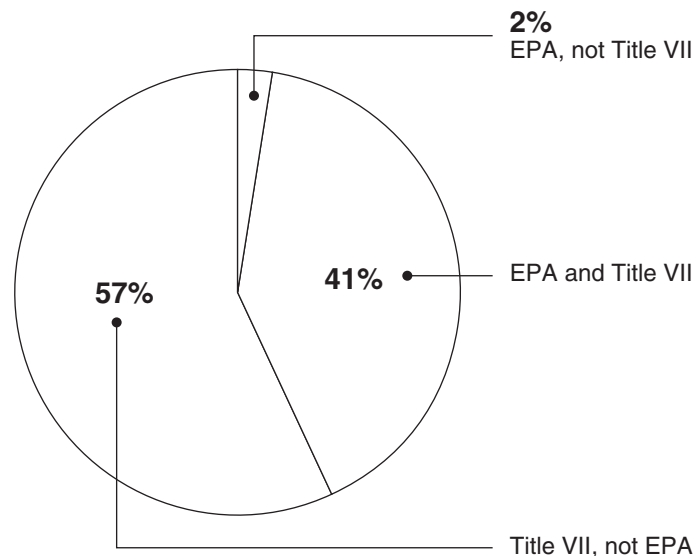
**OFCCP's Equal
Opportunity Survey**

As part of our assessment of OFCCP's Equal Opportunity Survey, we conducted interviews with OFCCP staff and reviewed documents and studies. Specifically, we evaluated the methodology of OFCCP's study of the effectiveness of the Equal Opportunity Survey and reviewed documents related to the development and discontinuation of the survey.

Appendix II: Comparison of Key Gender Pay Provisions under the Equal Pay Act and Title VII of the Civil Rights Act

The Equal Employment Opportunity Commission (EEOC) enforces charges of gender pay discrimination under two laws: the Equal Pay Act of 1963 (EPA) or under Title VII of the Civil Rights Act of 1964 (Title VII). Slightly more than half of EEOC's gender pay charges are filed under Title VII only, while most of the remainder are filed under both the EPA and Title VII. Two percent of the charges are filed under the EPA only, as shown in figure 5.

Figure 5: Filing Rates for Gender Pay Charges under Title VII and the EPA, FY 2000-FY 2007



Source: GAO analysis of EEOC data.

Some of the key provisions of the EPA and Title VII relative to gender pay discrimination are compared in table 3. According to EEOC officials, there are at least two notable differences between the statutes that may account for some of the difference in filing rates:

- The EPA generally requires that employers provide men and women equal pay for equal work on jobs that require the same skill, effort, and responsibility and that are performed under similar working conditions.¹ Title VII, which addresses issues related to equal

¹However, such differences in pay are permissible if they are attributable to (i) a seniority system; (ii) a merit system; (iii) a system that measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex.

Appendix II: Comparison of Key Gender Pay Provisions under the Equal Pay Act and Title VII of the Civil Rights Act

employment opportunity, makes it unlawful for employers to discriminate against employees with respect to compensation or other aspects of employment on the basis of sex, but does not require the same close comparison of workers as the EPA; and

- The remedies available to plaintiffs under Title VII may be more favorable in some cases.

Although some plaintiffs may find it preferable to file under Title VII as compared to the EPA, it also has some disadvantages. Specifically, the statute of limitations under Title VII is shorter (generally within 180 or 300 days of the alleged unlawful employment practice, depending on the state) than under the EPA (within 2 or 3 years after the alleged discrimination occurred, depending on whether the violation was willful or not). In addition, plaintiffs may need to consider the *Ledbetter* decision in determining under which law or laws to file charges.

Table 3: Comparison of Selected Gender Pay Discrimination Provisions of Title VII and the EPA

	Title VII	EPA
Year of enactment	1964	1963
General prohibition	<p>It is an unlawful employment practice for an employer</p> <ul style="list-style-type: none"> • To fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his or her compensation, terms, conditions, or privileges of employment, because of such individual's gender; or • To limit, segregate, or classify his employees or applicants for employment in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee, because of such individual's gender. 	<p>Generally, it is unlawful for employers to discriminate between employees on the basis of sex by paying wages to employees at a rate less than the rate at which they pay wages to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.^a</p>
Statute of limitations	Charges generally must be filed within 180 days after the alleged unlawful employment practice occurred. ^b	A cause of action may be commenced within 2 years after the cause of action accrued, or in the case of a willful violation, within 3 years.
Enforcement agency may self-initiate investigations	Yes ^c	Yes ^d
Civil actions brought by EEOC	Generally, if within 30 days after a charge is filed with EEOC, it has been unable to secure from the employer a conciliation agreement acceptable to EEOC, it may bring a civil action against the employer. ^e	EEOC may bring an action to recover the amount of unpaid wages and an additional equal amount as liquidated damages. Any sums recovered by EEOC on behalf of employees are held in a special account and paid directly to the affected employees. EEOC may also seek injunctive relief.

Appendix II: Comparison of Key Gender Pay Provisions under the Equal Pay Act and Title VII of the Civil Rights Act

	Title VII	EPA
Remedies available to aggrieved employees	<p>If the employer intentionally engaged in unlawful employment practices, the court may issue an injunction and order appropriate affirmative action, which may include, but is not limited to:</p> <ul style="list-style-type: none"> • Reinstatement or hiring of employees, with or without back pay,^l or • Any other equitable relief as the court deems appropriate.^{g,h} <p>Compensatory and punitive damages may be awarded if the employer engaged in unlawful intentional discrimination with malice or reckless indifference to federally protected rights.</p>	Unpaid wages and an additional equal amount as liquidated damages. ^{i,j}
Attorney's fees	The court, in its discretion, may allow the prevailing party, other than EEOC or the U.S., reasonable attorney's fees, including expert fees. ^k	If the plaintiff prevails, the court may require the defendant to pay reasonable attorney's fees and the costs of the action.
Private right of action	Yes. If EEOC dismisses a charge, or if within 180 days from the filing of such charge has not filed a civil action or entered into a conciliation agreement to which the person aggrieved is a party, EEOC shall notify the person aggrieved, who may bring a civil action against the employer within 90 days.	Yes. An action to recover the available remedies may be maintained against any employer by any one or more employees on behalf of themselves or other similarly situated employees. ^l

Source: GAO analysis of applicable federal laws and regulations.

^aHowever, such differences in pay are permissible if they are attributable to (i) a seniority system; (ii) a merit system; (iii) a system that measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex.

^bHowever, if the individual initially filed a complaint with a state or local agency with authority to adjudicate the claim, the 180-day period is extended to 300 days.

^cIn addition to aggrieved parties, members of the Commission may also file charges alleging unlawful employment practices.

^dEEOC may investigate and gather employer data regarding the wages, hours, and other conditions and practices of employment, and may enter and inspect such places and records, question employees, and investigate such facts, conditions, practices, or matters as he may deem necessary or appropriate to determine whether an employer has violated the EPA.

^eHowever, if the employer is a governmental entity, EEOC must refer the case to the Attorney General, who may bring a civil action.

^fBack pay liability cannot accrue from a date more than 2 years prior the filing of a charge with EEOC, and interim earnings or amounts earnable with reasonable diligence by the aggrieved employee reduce the back pay otherwise allowed.

^gMore limited remedies are available if the employer can demonstrate that it would have taken the same action in the absence of impermissible consideration of gender as a motivating factor.

^hCompensatory and punitive damages are available if the employer engaged in unlawful intentional discrimination with malice or reckless indifference to federally protected rights.

ⁱIf the court finds that the employer acted in good faith, the court may, in its discretion, elect to award no liquidated damages or to award less than the amount otherwise called for.

^jIn addition, if the violation is found to be willful, the employer may be subject to criminal penalties, including a fine of up to \$10,000 and/or imprisonment for up to 6 months.

^kEEOC and the U.S. are liable for costs the same as a private person.

^lHowever, if an employee agrees to payment of wages owed as supervised by EEOC, he or she waives the right to file suit and collect liquidated damages. Additionally, employee rights to bring private actions terminate upon the filing of a complaint by EEOC.

Appendix III: Assessment of Equal Opportunity Survey

The Equal Opportunity Survey was introduced in 2000 to help select federal contractors for compliance evaluations based on annually collected data that included compensation by race and gender. The survey was part of the Equal Pay Initiative, which, among other things, provided additional funding for and coordination of the enforcement of the laws against pay discrimination by employers, in part by improving the collection of compensation data.

In developing the survey, the Office of Federal Contract Compliance Programs (OFCCP) commissioned a study to evaluate the survey's power to predict findings of discrimination. This study (Bendick et al) encountered data problems associated with the pilot survey—such as incomplete or inconsistent responses—that prevented a full-scale analysis of its predictive power.¹ A second study (Abt Associates) was subsequently conducted after OFCCP officials said the agency began focusing on systemic discrimination to evaluate how well the model based on the survey could predict this type of discrimination.² The Abt study found that the model's predictive power was only slightly better than a random selection of contractors. OFCCP concluded that the survey was of limited value in predicting systemic discrimination and subsequently discontinued it in 2006.

In reviewing OFCCP's evaluation of and its decision to discontinue the survey, we found that the Abt study's methodology was adequate for the most part, but we also identified several issues. First, more than a quarter of contractors sampled asserted that OFCCP had no jurisdiction to review them and were therefore removed from the sample, but there was no evidence that these contractors' assertions had been verified. Excluding them from the sample could introduce significant bias into the results if some of these establishments were in the scope and were more likely to engage in systemic discrimination than those that remained in the sample. Second, after removing those establishments from the sample, the overall response rate was about 50 percent. This low response rate also potentially biases the study results and calls into question the extent to which the sample is representative. For example, establishments with systemic discrimination in the sample could have very different

¹Bendick, Marc Jr. et al, *The Equal Opportunity Survey: Analysis of a First Wave of Survey Responses* (Washington, D.C.: Sept. 2000).

²Abt Associates Inc., *An Evaluation of OFCCP's Equal Opportunity Survey*, (Cambridge, Mass.: Feb. 2005).

characteristics than those that were not in the sample or asserted no jurisdiction. Finally, although Abt analyzed the impact of one group of contractors with missing data, an additional 388 (15 percent) establishments had missing data for one or more of the final four predictor variables in the model, and we found no indications that the study analyzed these contractors.

Appendix IV: Comments from the Equal Employment Opportunity Commission



U. S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, DC 20507

Office of the Chair

July 15, 2008

Anne-Marie Lasowski, Acting Director
Education, Workforce, and Income Security Issues
U.S. Government Accountability Office
Washington, D.C. 20548

Dear Ms. Lasowski:

Thank you for the opportunity to comment on GAO Report GAO-08-799, "Women's Earnings: Federal Agencies Should Better Monitor Their Performance in Enforcing of Anti-Discrimination Laws." The primary finding made by GAO for the U.S. Equal Employment Opportunity Commission (EEOC) is that while we can monitor our gender pay enforcement of charges filed under EPA, we do not monitor gender pay charges that are filed exclusively under Title VII of the Civil Rights Act of 1964, as amended, and that may address both gender pay and non-gender pay discrimination. The report cites that given this lack of comprehensive monitoring of gender pay charges, EEOC "lacks a complete picture to identify trends, help set agency-wide priorities, and understand the extent to which gender pay enforcement efforts specifically contribute to its overall performance goals."

EEOC generally acknowledges this specific finding. Indeed, in response to the finding, we have already undertaken discussions about determining the best approach to collect gender pay charge data for review and monitoring. However, the collection and monitoring of charge receipt and resolution data at the statute level, specifically the EPA, does provide us with a representative assessment of overall gender pay charge activity. While it is not the comprehensive assessment that GAO suggests as the ideal, given our resources and our need to effectively assess our data in a manageable format, we are able to monitor our gender pay charge activity by our review and tracking of the EPA charge data statistics. Thus, the conclusion GAO reaches on page 36 that EEOC is "less able to strike an effective balance in allocating increasingly limited resources to address overall discrimination issues," is not a true reflection of the decision-making that does occur about our charge enforcement activity. We have been able to utilize our data, including EPA charge data, to effectively respond to changes in charge activity and to highlight areas of concern when needed.

Further, we believe that GAO did not adequately represent EEOC's response to this issue. Specifically, in the course of our meetings with GAO, EEOC responded to this matter by noting that there are a multitude of statute/basis/issue combinations that we are able to monitor by


**Appendix IV: Comments from the Equal
Employment Opportunity Commission**

Anne-Marie Labowski
Page Two

utilizing the data collected in our Integrated Mission System. GAO staff acknowledged this in their discussions with us. Indeed, when there are special emphasis initiatives launched by the Commission, such as the recent E-RACE focus on race and color discrimination or when there is an apparent rise in workplace incidents of racial harassment, EEOC prepares specialized data reports that assist managers in identifying trends and tracking charge activity in these areas. However, given the almost endless combinations of focus areas that EEOC could monitor and address based on data collected in its charge inventory, we simply could not on a regular basis meaningfully examine every possible combination of basis/issues. In response to GAO's recommendation, however, EEOC will obtain and review gender pay charge data.

Thank you for your consideration of these comments.

Sincerely,


Anthony J. Kaminski
Chief Operating Officer

Appendix V: Comments from the Department of Labor

U.S. Department of Labor

Assistant Secretary for
Employment Standards
Washington, D.C. 20210



JUL 22 2008

Ms. Anne-Marie Lasowski
Acting Director
Education, Workforce, and Income Security Issues
U.S. Government Accountability Office
Washington, D. C. 20548

Dear Ms. Lasowski:

Thank you for this opportunity to review and comment on the Government Accountability Office (GAO) draft report GAO-08-799 - *Women's Earnings: Federal Agencies Should Better Monitor Their Performance in Enforcing Anti-Discrimination Laws*.

As you are aware, the Office of Federal Contract Compliance Programs (OFCCP) is responsible for administering and enforcing three equal employment opportunity laws: Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended. Together these laws prohibit federal contractors and subcontractors from discriminating on the bases of race, color, religion, sex, national origin, and status as a protected veteran or individual with a disability. They also require federal contractors and subcontractors to be proactive in employing and advancing the employment of women, minorities, protected veterans and individuals with disabilities.

In 2003, OFCCP revised its investigation procedures to focus on federal contractors who have indicators of *systemic* discrimination. Compared with years past, OFCCP more quickly and accurately screens contractor establishments for indicators of potential discrimination with its Active Case Management (ACM) system. Under ACM, which was fully implemented in each of OFCCP's regions in Fiscal Year (FY) 2005, the agency opens more reviews than it did in the past and the agency uses automated statistical tools to rank and prioritize establishments for further review based on the probability that discrimination would be uncovered during a full-scale review. Under ACM, OFCCP is monitoring a larger portion of the federal contractor universe than it has in the past, and it is prioritizing its resources to address the worst offenders of the law.

These initiatives are making OFCCP a more effective and efficient civil rights enforcement agency—and have produced record enforcement results. In FY 2007, OFCCP enforcement efforts resulted in a record \$51,680,950 in back pay and annualized salary and benefits for a record 22,251 American workers. The nearly \$52 million reflects a 78% increase over financial remedies obtained in FY 2001. Over that same period, the number of workers recompensed by OFCCP agreements grew by 245%. *This marks the third consecutive year that OFCCP has posted record enforcement numbers* (both in terms of dollars and workers benefited).

In addition to its enforcement efforts, OFCCP's compliance assistance efforts have been an integral part of the agency's operations. These efforts include, among other things, widespread distribution of brochures and other written materials that explain the laws and regulations enforced by OFCCP; establishment of formal procedures to respond to e-mail inquiries from the public; electronic postings of information tools, including policy directives, the Federal Contractor Compliance Manual, and the Federal Contractor Compliance E-Laws Advisor to name a few; webinars available to the public; and incentive-based programs to encourage contractor compliance and to share best practices with the contractor community.

In June 2006, for example, OFCCP published the first definitive guidance document on the standards used by OFCCP for evaluating the compensation practices of a covered contractor. The guidance is important because it provides a stronger basis for pursuing investigations of possible systemic compensation discrimination, and highlights the importance of compensation discrimination as an issue to the agency. It also provides a road map to the contractor community on how to perform a self-evaluation of its compensation practices.

In addition, OFCCP regularly updates its on-line Federal Contractor Compliance Assistance Manual through different memoranda and directives that contain hyper-text links within the on-line compliance manual. This approach allows OFCCP to direct attention to current information needs and uses advances in current technology to integrate documents.

The focus of this GAO study is women's earnings. To this end, GAO examined OFCCP's current practices for addressing gender-based compensation discrimination and the outcome of its enforcement efforts. While the focus of this GAO study was limited to pay issues for women, OFCCP's legal mandate and its mission require it to focus equally on pay discrimination against minorities, as well as on many other impediments to equal employment opportunity for all American workers. Accordingly, OFCCP's programs are designed to evaluate all forms of employment discrimination, e.g., hiring, promotion, compensation, etc. for all workers, i.e., males, females, minorities, and non-minorities.

The study raises a concern about OFCCP's monitoring of contractor self-evaluations. It is important to note that OFCCP does not depend on contractor self-evaluation to identify potential discrimination. Regardless of the self-analysis records maintained by a contractor, OFCCP conducts its own audit of a contractor's employment practices, including its compensation practices, during compliance reviews. OFCCP conducts such a review by examining the data submitted by a contractor in response to a scheduling letter, including data regarding compensation.

**Appendix V: Comments from the Department
of Labor**

In line with one of the recommendations advanced by the GAO study, OFCCP believes that its monitoring efforts will be enhanced by improving quality control in its data management system. Currently, OFCCP employs a number of sources to monitor regional performance, track trends, and establish performance priorities, contrary to the GAO conclusion that the OFCCP monitoring efforts are based on anecdotal information. In addition, the planned upgrade of the OFCCP IT system to broaden the range of data input will help to consolidate program monitoring data sources.

On a more specific note, the explanation of how the Westat model is used in the OFCCP's scheduling selection process requires some clarification. The discussion of the model within the study report does not explain that the Westat component is only one of several components used to select scheduling candidates. The report's discussion might lead a reader to conclude that the agency's scheduling list is developed solely through the use of the Westat model. In practice, the Westat model outcomes along with contractor data from multiple other databases are randomly merged to create the OFCCP scheduling list.

Finally, GAO asserts that the Abt study of the Equal Opportunity Survey was potentially flawed because employers who asserted that OFCCP had no jurisdiction were excluded from the sample, and because 15 percent of the establishments surveyed had missing data. OFCCP does not believe that the non-response rate by employers who claimed lack of jurisdiction is a potential flaw of the Abt study because the percentage of employers who declined to respond to the survey for jurisdictional reasons is *lower* than the percentage of employers who successfully challenge OFCCP's jurisdiction for conducting affirmative action reviews. Moreover, because the non-response rate was lower, it is highly likely, given OFCCP's enforcement experience, that most, if not all, employers who claimed lack of jurisdiction were in fact not covered by the survey and therefore would not have a qualitative impact on the findings in the Abt study. It is worth noting that because the lack of jurisdiction has been a longstanding issue for OFCCP, in the past few years OFCCP has initiated the Contracts First program which has significantly increased the number of federal contractors for whom OFCCP can verify jurisdiction. As to GAO's second point, OFCCP had the same concern about missing data. As a result, OFCCP specifically requested that Abt analyze the impact of the missing data. Abt included its analysis of the missing data in Appendix F to its final report and concluded that the missing data did not have a qualitative impact on the main conclusions in their report.

Again, thank you for this opportunity to provide our response to the draft report.

Sincerely,

Victoria A. Lipnic

Appendix VI: GAO Contact and Staff Acknowledgments

GAO Contact

Anne-Marie Lasowski (202) 512-7215 or lasowskia@gao.gov

Acknowledgments

In addition to the contact named above, Michele Grgich, Assistant Director; James Ashley; Elizabeth Curda; Meeta Engle; Christoph Hoashi-Erhardt; Cynthia Grant; Sheila McCoy; Brittini Milam; Christine San; Yunsian Tai; Kate Van Gelder; Charles Willson; Gregory H. Wilmoth; and Elizabeth Wood made major contributions to this report.

Related GAO Products

Equal Employment Opportunity Commission: Sharing Promising Practices and Fully Implementing Strategic Human Capital Planning Can Improve Management of Growing Workload. [GAO-08-589](#). Washington, D.C.: June 30, 2008.

Equal Employment Opportunity: The Policy Framework in the Federal Workplace and the Roles of EEOC and OPM. [GAO-05-195](#). Washington, D.C.: April 29, 2005.

Women's Earnings: Work Patterns Partially Explain Difference between Men's and Women's Earnings. [GAO-04-35](#). Washington, D.C.: Oct. 31, 2003.

Equal Employment Opportunity: Discrimination Complaint Caseloads and Underlying Causes Require EEOC's Sustained Attention. [GAO/T-GGD-00-104](#). Washington, D.C.: Mar. 29, 2000.

Equal Employment Opportunity: DOL Contract Compliance Reviews Could Better Target Federal Contractors. [GAO/HEHS-95-177](#). Washington, D.C.: Sept. 28, 1995.

EEOC: An Overview. [GAO/T-HRD-93-30](#). Washington, D.C.: July 27, 1993.

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