

GAO

Report to the Ranking Minority Member,
Committee on Homeland Security and
Governmental Affairs, U.S. Senate

June 2006

EQUAL EMPLOYMENT OPPORTUNITY

Improved Coordination Needed between EEOC and OPM in Leading Federal Workplace EEO



G A O

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Highlights of [GAO-06-214](#), a report to the Ranking Minority Member, Committee on Homeland Security and Governmental Affairs, U.S. Senate

Why GAO Did This Study

In April 2005 GAO reported on the EEO policy framework in the federal workplace and the roles of EEOC and OPM. This report, in response to a congressional request, provides information on (1) federal agency EEO and human capital managers' views of the EEO framework requirements; (2) their views on the usefulness of guidance and feedback from EEOC and OPM concerning these requirements; and (3) how and to what extent EEOC and OPM coordinate in developing policy, providing guidance, and exercising oversight.

What GAO Recommends

GAO recommends that EEOC and OPM regularly coordinate in carrying out their responsibilities under the EEO framework and seek opportunities for streamlining like reporting requirements. Congress should require OPM and EEOC to annually provide a joint statement of actions taken to implement GAO's recommendations.

EEOC and OPM both acknowledged that their collaborative efforts could be strengthened but took exception to the recommendation to streamline requirements and disagreed with certain statements within the report. GAO continues to believe that exploring opportunities to streamline requirements is important for government effectiveness and efficiency.

www.gao.gov/cgi-bin/getrpt?GAO-06-214.

To view the full product, including the scope and methodology, click on the link above. For more information, contact George H. Stalcup at (202) 512-9490 or stalcupg@gao.gov.

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What GAO Found

EEO and human capital officials in federal agencies we surveyed said that some requirements of the EEO framework contribute more than others to achieving EEO, affirmative employment, and workforce diversity, and in influencing human capital policies, practices, and strategic planning. They also said that some requirements are very similar or redundant, such as EEOC's affirmative employment program and OPM's program for recruiting minorities and women. This creates duplication of effort as agencies sometimes have to submit the same information in different reports to EEOC and OPM. Further, the officials said they experienced added administrative burden because of inconsistent requirements.

The officials also said that guidance from EEOC on EEO, affirmative employment, and workforce diversity issues was more frequent and more useful than that from OPM. Some officials questioned the usefulness of feedback from EEOC and OPM on their agencies' performance or submitted reports. Less than half reported that the feedback was useful or very useful and a substantial number of respondents reported that they received no feedback from OPM. In addition, EEO and human capital officials expressed the strong view that both OPM and EEOC could be doing more to help their agencies.

We found little evidence of coordination at the operating level between EEOC and OPM in developing policy, providing guidance, and exercising oversight, despite overlapping responsibilities in federal workplace EEO. For example, EEOC and OPM officials do not routinely review reports that the other agency receives from federal agencies, even though those reports deal with similar matters. In addition, EEOC and OPM officials do not coordinate with each other when conducting on-site reviews of EEO-related matters at agencies. Good management practice as well as federal statute and executive order call for coordination, and not doing so results in lost opportunity to realize consistency, efficiency, and public value in EEO policy making and oversight. The Office of Management and Budget made a recommendation to OPM in 2005 that it develop a regular/formal working relationship with EEOC with respect to those programs where it shares oversight responsibility with EEOC in order to improve overall government efficiency. Although EEOC officials acknowledged a need to coordinate at the operating level and to develop an institutional coordination process, OPM officials suggested that coordination need not be institutionalized.

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Abbreviations

CPDF	Central Personnel Data File
CLF	civilian labor force
CSRA	Civil Service Reform Act of 1978
DVAAP	Disabled Veterans Affirmative Action Program
EEO	equal employment opportunity
EEOC	Equal Employment Opportunity Commission
EHRI	Enterprise Human Resources Integration
FEORP	Federal Equal Opportunity Recruitment Program
FLRA	Federal Labor Relations Authority
HCAAF	Human Capital Accountability and Assessment Framework

Contents

MD	Management Directive
MSPB	Merit Systems Protection Board
No FEAR	Notification and Federal Employee Antidiscrimination and Retaliation Act
NPR	National Partnership for Reinventing Government
OFCCP	Office of Federal Contract Compliance Programs
OMB	Office of Management and Budget
OPM	Office of Personnel Management
OSC	Office of Special Counsel
PART	Program Assessment Rating Tool
PATCOB	professional, administrative, technical, clerical, other white-collar, and blue-collar
PMA	President's Management Agenda

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United States Government Accountability Office
Washington, D.C. 20548

June 16, 2006

The Honorable Joseph I. Lieberman
Ranking Minority Member
Committee on Homeland Security and Governmental Affairs
United States Senate

Dear Senator Lieberman:

The federal government has a policy to provide a workplace for its employees that is fair, equitable, and free from discrimination and retaliation. To help achieve this policy, the federal government has created a framework of statutes, policies, regulations, and guidance in order to prohibit discrimination, ensure equal employment opportunity (EEO), and value workforce diversity. In April 2005, in response to your request, we reported on the EEO policy framework¹ under which (1) certain personnel practices are prohibited, including unlawful discrimination based on race, color, religion, gender, national origin, age, and disability; (2) avenues of redress are offered when discrimination and retaliation have been alleged;² and (3) affirmative employment and minority recruitment programs are required to ensure EEO in the federal workforce.³

Within the EEO framework, federal agencies are responsible for providing for a fair and nondiscriminatory workplace. The Equal Employment Opportunity Commission (EEOC) and the Office of Personnel Management (OPM) play important roles in fostering a fair, equitable, and inclusive workplace at federal agencies through their leadership and oversight.⁴ EEOC is responsible for the enforcement of antidiscrimination laws and oversight of federal agency EEO programs, and OPM is responsible for

¹GAO, *Equal Employment Opportunity: The Policy Framework in the Federal Workplace and the Roles of EEOC and OPM*, GAO-05-195 (Washington, D.C.: Apr. 29, 2005).

²Federal employees also have legal protections against reprisal, such as for “blowing the whistle” on waste, fraud, and abuse.

³See figure 1 for definitions of EEO, affirmative employment, and workforce diversity.

⁴Although EEOC and OPM have primary responsibility for federal EEO law and policy in the federal workplace, three other agencies—the Office of Special Counsel, the Merit Systems Protection Board, and the Federal Labor Relations Authority—also play a role in federal workplace EEO. In our survey, and in this report, we refer to these five agencies as the central leadership agencies.

ensuring that federal agencies adhere to federal merit system principles, which include nondiscrimination. In carrying out their responsibilities, both EEOC and OPM issue regulations, directives, and guidance that supplement the EEO framework and establish requirements for agencies, oversee agencies' performance in meeting framework requirements, and provide feedback to agencies. EEOC has the additional responsibility of providing leadership and coordination of federal EEO efforts in order to avoid conflict, competition, duplication, and inconsistency.

During the course of our review that led to our April 2005 EEO framework report,⁵ we heard from EEO and human capital officials at selected agencies about similarities and redundancies in EEO-related requirements and concerns about the usefulness of guidance and feedback received from those agencies. In response to your request and to better understand these and other issues, we surveyed EEO and human capital officials in the executive branch to determine their views on (1) the requirements dealing with EEO and workforce diversity and the extent to which the requirements contribute to ensuring EEO and diversity in the workplace and (2) the usefulness of guidance and feedback they receive from EEOC and OPM concerning these requirements. In addition, we examined how and to what extent EEOC and OPM coordinate with each other in developing policy, providing guidance, and exercising oversight of federal line agencies.⁶

To accomplish our objectives, we sent separate surveys to the EEO/civil rights directors and the chief human capital officers/human capital directors at the 45 executive branch agencies (other than the United States Postal Service and intelligence agencies) with 500⁷ or more employees that

⁵GAO-05-195.

⁶Consistent with our April 2005 report, this report focuses on EEOC's affirmative employment program responsibilities within the EEO framework. We previously reported on EEOC's roles and responsibilities for establishing procedures for handling federal employees' allegations of discrimination and providing for the adjudication of complaints and hearing appeals. See GAO, *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), and *Equal Employment Opportunity: Complaint Caseloads Rising, With Effects of New Regulations on Future Trends Unclear*, GAO/GGD-99-128 (Washington, D.C.: Aug. 16, 1999).

⁷EEOC requires agencies with 500 or more employees to include in their annual reports a plan for attaining the essential elements of a model EEO program and a plan to eliminate identified barriers that impede the full realization of EEO for employees and applicants.

are required to file annual reports with EEOC on their affirmative employment program and that also file annual reports with OPM on their Federal Equal Opportunity Recruitment Program (FEORP). Collectively, the 45 agencies employed 97 percent of the nonpostal federal workforce as of September 30, 2004. Of the 90 officials to whom we sent the survey, 83 officials or their designees (92.2 percent) responded from October through December 2004. We received a response from either an EEO or human capital official at all 45 agencies, and from both at 38 agencies. Prior to the survey, we also interviewed EEO and human capital officials at 6 of these 45 agencies. In addition, we reviewed statutes, executive orders, and other executive policies that form the EEO framework as well as EEOC and OPM requirements placed on agencies and compared them to each other. Agency officials expressed their views, through both the survey and interviews, about the extent to which the different framework requirements contribute to EEO, the extent of redundancy between EEO-related requirements and the duplication of effort this causes, the burdens created by EEOC's and OPM's differing policies on data-related issues, and the usefulness of EEOC's and OPM's guidance and feedback. We provide examples of agency officials' comments on these matters; however, we did not independently evaluate the extent to which the different requirements contribute toward EEO, the extent of redundancy of EEO requirements, the merits of differing EEOC and OPM policies, or the usefulness of guidance and feedback.

We discussed with EEOC and OPM how they coordinate with each other in carrying out their roles and responsibilities within the EEO framework. Since the application of EEO laws varies between the branches (executive, legislative, and judicial) of the federal government, this report focuses primarily on the EEO framework applicable to the executive branch. We performed our work from May 2004 through February 2006 in accordance with generally accepted government auditing standards. Further details on our objectives, scope, and methodology are in appendix I.

Results in Brief

EEO and human capital officials in federal agencies who responded to our survey viewed (1) EEOC's affirmative employment program requirements and standards, (2) the executive order requiring procedures for providing reasonable accommodation to individuals with disabilities, and (3) the President's Management Agenda (PMA) scorecard standard on underrepresentation and workforce diversity as the framework elements contributing the most to achieving EEO, affirmative employment, and workforce diversity, and as having the most influence on human capital policies, practices, and strategic planning at their agencies. In contrast,

survey respondents identified (1) OPM's FEORP regulations governing recruitment of underrepresented groups, (2) the executive order on Hispanic employment, and (3) OPM's program for employing disabled veterans as contributing less. About two-thirds of survey respondents also noted that some requirements of the EEO framework are very similar or redundant, such as the requirements under EEOC's affirmative employment program; OPM's regulations for FEORP; and the executive order on Hispanic employment, which OPM oversees. Some agency EEO and human capital officials stated that redundant reporting requirements create duplication of effort, with agencies sometimes having to submit information on the same EEO efforts in different reports to EEOC and OPM. They also said that inconsistent requirements regarding analysis of workforce data create administrative burden.

When asked about the overall helpfulness of EEOC and OPM in their efforts to ensure EEO in the workplace or to achieve affirmative employment or workforce diversity objectives, about 56 percent of survey respondents who had at least some interaction with EEOC said EEOC was of only some, little, or no help, and 80 percent of survey respondents who had at least some interaction with OPM had the same view of OPM. The majority of these respondents said EEOC and OPM should be doing more to help agencies. For example, one agency official said that OPM should do more to share model agency recruiting practices and assist with identifying effective recruitment sources, particularly for people with disabilities, and that EEOC should do more in-depth training and more sharing of model programs and make more suggestions for improvement. Although respondents said that EEOC and OPM should be doing more to help agencies, they did find some usefulness, in varying degrees, in guidance and feedback from EEOC and OPM. For example, with regard to guidance concerning EEO, affirmative employment, or workforce diversity, while about 79 percent of those respondents who had at least some interaction with EEOC said guidance from EEOC personnel concerning EEO, affirmative employment, and workforce diversity was useful or very useful (which we considered a positive response), about 42 percent of respondents who had at least some interaction with OPM said that guidance from OPM personnel was useful or very useful. With regard to feedback on their agency's performance or on reports submitted under the EEO framework, from 45 to 60 percent of respondents who had at least some interaction with EEOC said that feedback from EEOC was useful or very useful, while less than 34 percent of those respondents who had at least some interaction with OPM said that of feedback from OPM.

Over 80 percent of respondents to our survey said more coordination between EEOC and OPM would benefit their agencies. Some agency officials said that the lack of such coordination resulted in added requirements on them and detracted from the efficiency of their own work. In our review, we found evidence that there was little coordination between EEOC and OPM in developing policy, providing guidance, and exercising oversight of federal agencies. For example, when conducting oversight, EEOC and OPM officials do not routinely review reports that the other agency receives from federal agencies, even though those reports deal with similar matters. In addition, EEOC and OPM officials conducting on-site reviews of EEO-related matters at agencies do not coordinate with each other. Policy disagreements and a lack of a mutual understanding of each other's authority, roles, and responsibilities appear to have limited the extent to which the two agencies work together to ensure that EEO is an integral part of human capital management. This lack of coordination is contrary to government policy calling for coordinated EEO effort and good management practice, and results in lost opportunity to realize consistency, efficiency, effectiveness, and public value in EEO policy making and oversight. The Office of Management and Budget (OMB) recommended in 2005 a regular/formal working relationship between the two agencies to improve government efficiency in compliance reviews. In discussions with us, while EEOC officials acknowledged a need to coordinate and develop a formal mechanism to do so, OPM officials expressed a belief that current ad hoc coordination arrangements are sufficient.

We recommend that EEOC and OPM (1) consistent with OMB's recent recommendation, develop a means to communicate and coordinate on a continuing basis in carrying out their responsibilities under the federal workplace EEO framework; (2) explore opportunities to consolidate and streamline like requirements within the framework, including reporting requirements, and to resolve policy inconsistencies and disagreements; and (3) determine from agency EEO and human capital managers what additional guidance they need, how feedback can be more useful, and what more they can do to help agencies provide workplaces that are fair, equitable, and inclusive.

Because the lack of coordination between EEOC and OPM has been a long-standing problem, Congress should require EEOC and OPM to include a joint report to Congress on their progress in implementing our recommendations as part of their respective annual EEO reporting.

We provided EEOC and OPM a draft of this report for their review and comment and received written comments from the heads of both agencies. EEOC and OPM both acknowledged that their collaborative efforts could be strengthened. However, both took exception to the recommendation related to exploring opportunities to consolidate and streamline similar requirements. EEOC and OPM appear to have misinterpreted our conclusions and recommendations as a call to consolidate EEO requirements into a single agency, and noted that there were statutory impediments to streamlining requirements. We are not recommending that oversight for all EEO matters be consolidated into one agency, but rather that the two agencies look for opportunities to consolidate requirements and, where impediments exist, jointly make recommendations to Congress or the executive branch. We clarified this point in the report. Nonetheless, we believe that gaining a mutual understanding of each other's authorities, roles, and responsibilities and determining how those authorities could be exercised in a collaborative way could provide immediate results in improving overall government efficiency in oversight. OMB made a similar recommendation in 2005 to OPM to collaborate with EEOC with respect to those programs where it shares oversight responsibility with EEOC.

Background

It is government policy that equal opportunity be an integral part of every aspect of personnel policy and practice in the employment, development, advancement, and treatment of federal civilian employees.⁸ Various statutes, regulations, directives, executive orders, and other executive policies have been put in place over time to form the framework governing EEO in the federal workplace. This framework, which governs civil rights and personnel management, places primary responsibility on federal agencies to provide workplaces that have a culture of fairness, equity, and inclusiveness free from discrimination. For a further discussion of the EEO framework, see appendix II.

Within the EEO framework, both EEOC and OPM play important roles in leadership and oversight of federal agencies. EEOC's mission is to promote equality of opportunity in the workplace and enforce federal laws prohibiting employment discrimination in both the private and federal sectors. In the federal sector, EEOC is responsible for enforcing the employment discrimination prohibitions under title VII of the Civil Rights

⁸Exec. Order No. 11478, *Equal Employment Opportunity in the Federal Government*, 34 Fed. Reg. 12,985 (Aug. 8, 1969), as amended.

Act of 1964, as amended; the Rehabilitation Act of 1973; the Equal Pay Act of 1973; and the Age Discrimination in Employment Act of 1967, as amended. In this regard, EEOC is responsible for establishing procedures for handling federal employees' allegations of discrimination based on race, color, religion, gender, national origin, age, or disability, and providing for the adjudication of complaints and hearing of appeals. In addition, EEOC establishes requirements and standards for programs to provide equal employment opportunity; monitors federal agencies' compliance with EEO laws and procedures; and reviews and assesses the effectiveness of agencies' programs to promote EEO, including agencies' efforts to identify and eliminate barriers to equality of employment opportunity.

OPM's mission is to build a high-quality and diverse federal workforce based on merit system principles. Under title 5 of the U.S. Code, OPM is responsible for executing, administering, and enforcing civil service laws and regulations in the executive branch, including the merit system principles that require fair and equitable treatment and equal opportunity and prohibit discrimination in all aspects of federal employment.⁹ Title 5 also requires OPM to assist agencies in their equal opportunity recruitment program activities and to oversee and evaluate these agency programs. In carrying out their respective responsibilities, EEOC and OPM are to carry out oversight of each other, with EEOC reviewing OPM's EEO programs and OPM assessing human capital practices at EEOC.

Both EEOC and OPM have articulated specific goals and objectives in their strategic plans to carry out their EEO-related responsibilities. These goals, while differing in some aspects, share a common theme, which is to promote policies that contribute to building high-performing organizations that foster inclusive work cultures. A primary focus for EEOC is to help agencies identify and eliminate barriers to EEO, while a key focus for OPM is to assist agencies in creating diverse candidate pools, including women, minorities, persons with disabilities, and veterans, which can be used in making appointments to the federal service in executive and management positions and leadership feeder ranks.

Carrying out the requirements of the EEO framework within federal agencies is generally shared by human capital and EEO/civil rights offices, with EEO offices taking the lead in programs EEOC oversees and human

⁹5 U.S.C. § 1103(a)(5).

capital offices taking the lead in programs OPM oversees. Individual programs within the framework, their requirements or standards, and EEOC's and OPM's responsibilities are shown in table 1.

Table 1: Selected Requirements on Federal Agencies within the EEO Framework and Central Leadership Agency Oversight Responsibility

Policy	Implementation requirements for federal agencies	Agency responsibility	
		EEOC	OPM
Management Directive 715 providing policy guidance and standards and reporting requirements for programs required under section 717 of title VII of the Civil Rights Act of 1964 and section 501 of the Rehabilitation Act	Develop affirmative employment program plans for all employees and applicants (title VII) and affirmative action program plans for the hiring, placement, and advancement of individuals with disabilities (Rehabilitation Act).	X	
Regulations implementing the Federal Equal Opportunity Recruitment Program authorized by the Civil Service Reform Act of 1978	Conduct a continuing program of recruitment of underrepresented groups—minorities and women—and develop equal opportunity recruiting plans.		X
Regulations implementing the Disabled Veterans Affirmative Action Program authorized by the Vietnam Era Veterans' Readjustment Assistance Act of 1974	Have a program and affirmative action program for the recruitment, employment, and advancement of disabled veterans.		X
Notification and Federal Employee Antidiscrimination and Retaliation Act	Among other things, notify employees of rights and protections, provide training, and submit annual reports to Congress and EEOC. ^a	X ^b	X ^c
Executive Order No. 13163, <i>Increasing the Opportunity for Individuals with Disabilities to Be Employed in the Federal Government</i>	Develop a plan for increasing the opportunity for individuals with disabilities to be employed by the federal government.		X
Executive Order No. 13164, <i>Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation</i>	Establish written procedures for processing requests from individuals with disabilities for reasonable accommodation.	X	
Executive Order No. 13171, <i>Hispanic Employment in the Federal Government</i>	Have an ongoing program for recruitment and career development of Hispanics in federal employment, including developing recruiting plans.		X
President's Management Agenda ^d	Reduce underrepresentation and establish processes to sustain workforce diversity in accordance with PMA scorecard standard.		X
Human Capital Accountability and Assessment Framework ^e	Address human capital standards, including those in areas related to diversity management.		X

Source: GAO.

^aRegulations implementing provisions of the act relating to notification, training, and annual reporting have not been finalized.

^bEEOC receives annual reports agencies submit under title II, Federal Employee Discrimination and Retaliation, and is responsible for issuing rules under title III, EEO Complaint Data Disclosure.

^cOPM is responsible for regulations implementing title II and for reporting on best practices for disciplining employees who committed unlawful discrimination or retaliation.

^dThe PMA, a strategy for improving the management and performance of the federal government, contains five governmentwide goals to improve federal management and deliver results, including the strategic management of human capital. For each goal, agency performance in implementing the PMA is assessed using a scorecard. Among the standards on the scorecard within the strategic management of human capital goal is how well agencies address underrepresentation and implement programs to sustain diversity.

^eOPM developed the Human Capital Accountability and Assessment Framework, providing suggested performance elements and measures to guide agencies toward achieving the PMA human capital standards for success.

Although responsibility for the EEO framework policies is generally assigned to either EEOC or OPM, similarities in implementation requirements for federal agencies and the fact that both EEOC and OPM have jurisdiction over the agencies can result in overlap between programs and in EEOC's and OPM's oversight responsibilities.

In our survey, we asked EEO and human capital officials about their views on the requirements within the EEO framework, and about the guidance and feedback on these requirements they get from the central leadership agencies. (See app. III for excerpts from the survey questionnaire and responses to the excerpted questions.) For the purposes of our report, we defined EEO, affirmative employment, and workforce diversity as shown in figure 1.

Figure 1: Definitions of EEO, Affirmative Employment, and Workforce Diversity

EEO is the policy embodied in law that requires that employment actions be free from prohibited discrimination, including discrimination on the basis of race, color, religion, gender, national origin, age, disability, and retaliation for filing discrimination claims or other protected activity.

Affirmative employment is designed to identify and eliminate discriminatory practices and policies and to ensure EEO. In the federal sector, affirmative employment includes actions by federal departments/agencies to identify and eliminate barriers to EEO in accordance with the policies of EEOC and OPM.

Workforce diversity indicates the extent to which people in a workforce are similar and different from one another, including characteristics protected by law, that is, race, ethnicity, disability, and gender.^a Workforce diversity may also take into account other factors, such as background, education, work roles, and personality.^b

Source: GAO.

^aSee GAO, *Diversity Management: Expert-Identified Leading Practices and Agency Examples*, GAO-05-90 (Washington, D.C.: Jan. 14, 2005), for a discussion on managing workforce diversity.

^bEEOC's roles and responsibilities are limited in scope to those groups protected from discrimination by statute.

We provided the five central leadership agencies—EEOC, OPM, the Office of Special Counsel (OSC), the Merit Systems Protection Board (MSPB), and the Federal Labor Relations Authority (FLRA)—a draft of the survey instrument, considered their comments, and made appropriate changes before sending it to the federal EEO and human capital officials.¹⁰

Survey Respondents View Certain Requirements as Contributing Most to EEO but See Redundancies and Differing Reporting Requirements as Creating Administrative Burden

In answering our questions about the extent to which policies and requirements contributed to ensuring EEO and achieving affirmative employment and workforce diversity at their agencies, survey respondents said that some requirements contributed more while others had a limited impact. Respondents identified Management Directive (MD) 715, Executive Order No. 13164, and the PMA scorecard standard¹¹ as making a greater contribution toward ensuring EEO in their workplaces, while the impact of other policies, such as FEORP, Executive Order No. 13171, and the Disabled Veterans Affirmative Action Program (DVAAP), was more limited. (As we later discuss, a substantial number of respondents said several of these programs had very similar or redundant elements.) Although survey respondents expressed their views on the extent to which the different requirements contribute to EEO and workforce diversity at their agencies, we did not evaluate the value of these requirements toward meeting agency EEO objectives. Table 2 shows the survey results.

¹⁰OSC receives, investigates, and prosecutes allegations of prohibited personnel practices, and certifies agencies' compliance to meet the statutory obligation to inform their workforces about the rights and remedies available to them under civil service laws. MSPB adjudicates employee appeals of personnel actions and conducts studies of the federal merit system to determine whether it is free from prohibited personnel practices. FLRA provides leadership in establishing policies and guidance relating to federal sector labor-management relations and with resolving disputes under the Federal Service Labor-Management Relations Statute.

¹¹The PMA scorecard is used to assess agency performance in implementing the PMA. Each quarter, OMB scores agencies' efforts in implementing the PMA, and OPM evaluates the agencies on human capital.

Table 2: Survey Respondents’ Answers regarding the Extent to Which Various Policies and Requirements Contribute to Ensuring EEO and Achieving Affirmative Employment and Workforce Diversity in Their Agencies (Number and Percentage of Respondents)

Policy/requirement	Great/very great extent	Moderate extent	Some, little or no extent	Don’t know
MD-715 (n=79)	20 (25.2%)	21 (26.6%)	22 (27.9%)	16 (20.3%)
FEORP (n=80)	12 (15.0%)	20 (25.0%)	46 (57.5%)	2 (2.5%)
DVAAP (n=80)	11 (13.8%)	20 (25.0%)	43 (53.8%)	6 (7.5%)
No FEAR Act (n=79)	8 (10.1%)	25 (31.7%)	37 (46.8%)	9 (11.4%)
Executive Order No. 13163, employment of persons with disabilities (n=80)	15 (18.8%)	27 (33.8%)	34 (42.5%)	4 (5.0%)
Executive Order No. 13164, providing reasonable accommodation for employees with disabilities (n=80)	32 (40.0%)	27 (33.8%)	19 (23.8%)	2 (2.5%)
Executive Order No. 13171, Hispanic employment initiative (n=79)	14 (17.7%)	21 (26.6%)	39 (49.4%)	5 (6.3%)
PMA scorecard standard on underrepresentation and workforce diversity (n=80)	19 (23.8%)	18 (22.5%)	24 (30.0%)	19 (23.8%)
HCAAF performance standards (n=79)	12 (15.2%)	19 (24.1%)	25 (31.7%)	23 (29.1%)

Source: GAO survey results.

Because the integration of EEO into human capital is an integral part of government policy, we asked survey respondents the extent to which these policies and requirements influence human capital policies, practices, and strategic planning. We received responses similar to those for the question discussed above.

In explaining why the PMA scorecard standard positively influenced their agencies’ human capital policies, practices, and strategic planning, a number of officials we interviewed noted that the PMA scorecard had given greater visibility to the government’s requirements in dealing with underrepresentation and workforce diversity. These officials shared the view that agency performance in meeting deliverables and its direct connection to the “green (success)-yellow (mixed results)-red (unsatisfactory)” ratings given quarterly, is of major importance to agency management because of how the PMA performance review can affect agency budgets. These ratings are based on OPM’s and OMB’s assessments. Some officials’ interview comments concerning the PMA are shown in figure 2.

Figure 2: Selected Comments from Interviews with EEO Officials about the PMA Scorecard Standard

... the PMA is a driving force on diversity issues, supplanting any influence the FEORP and [EEOC] reports had ... there is no real accountability to EEOC for the [affirmative employment program] while there is a definite “hammer” with the PMA. **Director of management services, and director of EEO, cabinet department**

... top federal agency and departmental management [are] not going to pay attention to issues outside their usual interests, such as EEO/diversity, without an outside agency coming down on them. The PMA and its enforcement by OMB and OPM in the human capital sector definitely seems to be having this effect ... **Attorney-advisor, office of civil rights, cabinet department**

Source: GAO.

Survey Respondents View Some Policies and Programs as Having Very Similar or Redundant Requirements

The statutes, regulations, and policies that form the framework for EEO in the federal government establish a number of requirements that agencies are to carry out or standards they are expected to meet. Elements of the requirements that EEOC and OPM oversee or in fact established have certain common aspects, including measuring representation of or participation by race, ethnic, and gender groups and developing plans to address barriers to equal opportunity. Although we asked for the survey respondents’ views on the extent to which requirements were very similar or redundant and we made observations about where some similarities and redundancies exist, we did not evaluate the degree of similarity or redundancy among these requirements. Survey respondents also commented about the need for EEOC and OPM to better coordinate, with some commenting in particular about the need for the two agencies to work together to eliminate redundant and inconsistent requirements. We discuss the extent to which EEOC and OPM coordinate later in this report.

EEO and human capital officials surveyed were asked to identify the extent to which the elements making up the requirements of certain policies relating to the EEO framework were very similar or redundant with the requirements of at least one other policy, for example, whether any two policy requirements contained common features, such as developing plans, assessing progress, and preparing reports. To obtain more specific views, we asked respondents to select from a list two specific requirements that they believed were redundant; they also had the option of selecting none or responding that they did not know. Of the 81 respondents to this question, 57 (70.4 percent) said that at least one of the requirements was very similar

or redundant to at least one other requirement. FEORP, for which OPM issued implementing regulations, was identified by 41 (50.6 percent) respondents as having very similar or redundant elements with the requirements of another policy; 30 (37 percent) said that EEOC's MD-715 was very similar or redundant with another policy; and 19 (23.5 percent) said this of Executive Order No. 13171, *Hispanic Employment in the Federal Government*,¹² which OPM oversees. When asked specifically to identify two requirements that were very similar to or redundant with each other, 21 (25.9 percent) respondents cited FEORP and MD-715, while another 15 respondents (18.5 percent) cited FEORP and Executive Order No. 13171.

A number of human capital and EEO officials with whom we spoke as well as survey respondents (who, in a few cases, we had previously interviewed) said that the overlap in MD-715, FEORP, and Executive Order No. 13171 requirements resulted in duplication of effort. As we reported in our April 2005 report on the EEO framework, both EEOC, under MD-715, and OPM, under FEORP and Executive Order No. 13171, require that agencies analyze their workforces to determine the representation of employee groups compared to their representation in the civilian labor force (CLF), identify barriers where underrepresentation exists, and develop steps to address barriers.¹³ In addition, agencies are also to report on the status and progress of their efforts annually. Thus, for example, an agency may have to submit similar information on its recruitment efforts, in different formats and at different times of the year, to EEOC for its MD-715 report and to OPM for reports required under FEORP and Executive Order No. 13171.

With regard to redundancies, OPM said that it views EEOC's MD-715 as constituting guidance and not as placing requirements on agencies, adding that the policy reflected in guidance can neither overrule nor stand in place of statutory requirements, such as those under FEORP, or the requirements set forth in executive orders pursuant to statutory delegations. EEOC

¹²Exec. Order No. 13171, 65 Fed. Reg. 61,251 (Oct. 12, 2000).

¹³In addition to workforce statistics, which is a first step in barrier analysis, EEOC's MD-715 instructions look to other information sources, such as EEO complaint data, employee surveys, and exit interview results, to identify areas where barriers may operate to exclude certain groups.

disagreed, however, pointing out that it issued MD-715, articulating agency responsibilities, pursuant to its authority under law and executive order.¹⁴

Many survey respondents reported redundancies in policies and requirements concerning persons with disabilities. There are common elements in EEOC's and OPM's roles in the area of employees with disabilities, which are reflected in requirements in EEOC's MD-715 relating to affirmative action plan requirements in Section 501 of the Rehabilitation Act, and Executive Order No. 13163, *Increasing the Opportunity for Individuals with Disabilities to Be Employed in the Federal Government*,¹⁵ and DVAAP, both administered by OPM. Of 81 respondents, 54 (66.7 percent) said there were redundancies among these requirements concerning persons with disabilities. For example, 39 (48.2 percent) said MD-715 requirements for persons with disabilities had very similar or redundant elements with at least one other requirement, and 36 (44.4 percent) cited Executive Order No. 13163. In identifying which two specific requirements had the most redundancies, 24 (29.6 percent) respondents cited MD-715 and Executive Order No. 13163.

EEO and human capital officials' concerns about redundant requirements mirror the findings of a 1993 report of the National Partnership for Reinventing Government (NPR) (formerly the National Performance Review), *From Red Tape to Results: Creating a Government That Works Better and Costs Less*.¹⁶ The report said that an inordinate amount of resources are devoted to preparing duplicative reports and recommended that reporting requirements for agencies be blended into one comprehensive assessment of EEO and affirmative employment efforts, including specific actions needed to eradicate barriers and increase representation. The report said that such action would help reduce administrative costs and allow agencies to spend more time on results rather than paper processes. At the time the NPR report was issued,

¹⁴Section 717 of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-16; Reorganization Plan No. 1 of 1978, issued pursuant to 5 U.S.C. § 901 et seq.; Executive Order 11478; and Section 501 of the Rehabilitation Act of 1973, as amended by Pub. L. No. 99-506, 100 Stat. 1807, October 21, 1986.

¹⁵Exec. Order No. 13163, 65 Fed. Reg. 46,563 (July 26, 2000).

¹⁶National Partnership for Reinventing Government, *From Red Tape to Results: Creating a Government That Works Better and Cost Less* (Washington, D.C.: September 1993).

primary elements of the EEO framework were more limited, and included EEOC's MD-713 (on persons with disabilities)¹⁷ and MD-714 (on minorities and women),¹⁸ as well as OPM's FEORP requirements. Since then, additional parts of the policy framework have been put into place, including Executive Order Nos. 13163, 13164, and 13171; the Notification and Federal Employee Antidiscrimination and Retaliation (No FEAR) Act; MD-715 (which superseded MD-713 and MD-714); and the PMA and Human Capital Accountability and Assessment Framework (HCAAF) standards. These additions to the framework, and to EEOC's and OPM's responsibilities, have added to the redundancy and administrative burden.

Federal EEO and human capital officials, in responding to our survey and in the course of our interviews, provided specific comments about some of the policies and requirements administered by EEOC and OPM. See figure 3 for some of these comments.

¹⁷EEOC Management Directive 713, *Affirmative Action for Hiring, Placement, and Advancement of Individuals with Handicaps*, October 6, 1987.

¹⁸EEOC Management Directive 714, *Instructions for the Development and Submission of Federal Affirmative Employment Multi-Year Program Plans, Annual Accomplishment Reports, and Annual Plan Updates for FY 1988 through FY 1992*, October 6, 1987.

Figure 3: Selected Comments on Similarities and Redundancies in EEO-Related Programs and Requirements

... there is overlap between the FEORP and [EEOC requirements] as both examine workforce diversity and speak to recruitment and outreach strategies ... There is other overlap between the [EEOC] requirements for persons with disabilities and the executive order dealing with persons with disabilities ... it would be better for EEOC and OPM to have one centralized report that ... would eliminate overlap and inconsistency. **Director of management services, and director of EEO, cabinet department**

There is significant overlap in program areas of OPM and EEO[C] particularly in affirmative action, reasonable accommodation, diversity, and equal employment opportunity. Since these programs/initiatives share many of the same goals and objectives, closer coordination to eliminate duplicative reporting and to maximize ideas, guidance, and resources would be beneficial. **Director of human resources, independent agency**

[EEOC and OPM should] resolve FEORP and MD-715 into one program. **Assistant secretary for EEO, cabinet department**

... someone needs to examine the requirements from Alpha to Omega to determine what is being asked for and, because many of the reports are asking for the same things, determine if there can be a consolidation of the requirements into two or three reports ... FEORP is one report that can go away. **Director of human resources, cabinet department**

Source: GAO.

Survey Respondents Say Different Reporting Policies Create Burdens for Their Agencies

Human capital and EEO officials reported they experience additional administrative burden because EEOC and OPM have different policies in some areas with regard to workforce data collection or analysis. These areas include categorization of data by occupation and race and ethnicity and collection of data on job applicants.

Historically, both EEOC and OPM categorized data on an agency's workforce according to six occupational categories: professional, administrative, technical, clerical, other white-collar, and blue-collar (PATCOB). In 2004, EEOC changed to nine occupational categories: officials and managers, professionals, technicians, sales, office and clerical,

craft workers, operatives, laborers, and service workers.¹⁹ According to EEOC, it made the change because the PATCOB categories were outdated and too imprecise to allow the level of analysis desired, and because EEOC uses the nine categories for private sector workforce analysis. OPM contends that the PATCOB categories continue to support its governmentwide occupation classification responsibility and provide more meaningful crosswalks to national workforce data. OPM also said the nine occupational categories EEOC uses are too broad for meaningful analysis because they combine too many occupations within one category. Further, OPM said that the crosswalk now used by EEOC to classify federal occupations into one of the nine categories is inaccurate and incomplete in some areas.

Under EEOC's previous reporting requirements using the PATCOB categories, agencies could download data from the government's Central Personnel Data File (CPDF), which OPM maintains, to fulfill EEOC analysis and reporting requirements. With the new occupational categories, agencies must now develop computer programs to follow a crosswalk that classifies federal occupations into one of the nine categories. This burden may be lessened in the future. According to EEOC and OPM officials, the two agencies have had discussions about occupational categories in relation to OPM's new Enterprise Human Resources Integration (EHRI) system, which will replace CPDF as the central source for federal workforce data and will afford agencies the opportunity, for a fee, to perform complex workforce analysis and planning tasks and maintain personnel records in electronic form. At the time of our review, EEOC and OPM officials said that a statement of work has been proposed that if approved and put in place could enable EEOC and other agencies to use EHRI for purposes related to MD-715 reporting. However, OPM also noted that there were separate policy and legal implications that must be resolved. In addition, according to OPM, while much of the information sought under MD-715 is contained within the EHRI database, EHRI will not be able to provide data on applicants, non-appropriated fund employees, or CLF comparisons.

¹⁹The nine occupational categories are those on which EEOC requires private sector employers to report. In addition, the officials and managers category is further broken into three categories, executive/senior-level, mid-level, and first level, in order to analyze the progress of women and minorities in leadership ranks.

Some EEO and human capital officials commented that another difference between EEOC and OPM requirements that caused increased administrative burden is how workforce data were reported by race and ethnicity categories. In 1997, OMB issued revisions to standards for the classification of federal data on race and ethnicity which were to be adopted as soon as possible but no later than January 1, 2003.²⁰ In the instructions for MD-715, issued in March 2004, EEOC required agencies to report data to EEOC under the minimum categories designated by OMB under the revised standards for data on race and ethnicity. EEOC encouraged agencies to collect data on race and national origin in a more detailed fashion as required in OMB's revised standards (for example, by allowing employees to identify themselves as members of more than one race) so long as the data can be aggregated into the categories EEOC required under MD-715. EEOC required agencies to resurvey those employees who had previously identified themselves as Asian/Pacific Islander in order to break out those employees into the two new categories (Asians and Native Hawaiian or Other Pacific Islander). EEOC also required agencies to give all new hires and those for whom the agency did not have race or national origin information, the opportunity to self-identify their race and national origin, including the ability to identify their membership in more than one race. OPM updated the CPDF to conform to OMB's revised standards in January 2006. OPM requires data from agencies in accordance with the OMB format for new employees only; it does not require agencies to resurvey their workforces because it has no authority to do so, according to OPM officials.

Another area where a policy disagreement arose that some officials said presents challenges to agencies involved gathering and analyzing applicant-flow data. EEOC, in MD-715, requires agencies to analyze data on race, national origin, gender, and disabilities voluntarily provided by job applicants in order to begin to identify areas where barriers may be excluding certain groups. OPM takes the position that agencies are not required or authorized to collect race, national origin, gender, and age information on applicants. In the past, OPM said it opposed collecting race and national origin data from job applicants because collecting such data would be costly, ineffective, and a reporting burden. According to OPM, agencies collecting applicant data could involve significant legal risks—

²⁰Office of Management and Budget, "Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity," 62 Fed. Reg. 58,782, Oct. 30, 1997. Statistical Policy Directive No. 15.

such collection could be construed as pressuring agencies to engage in preferential treatment in order to achieve “results” in terms of workforce composition, as suggested by certain recent discrimination cases.²¹ EEOC defends the appropriateness of collecting and analyzing applicant data. In commenting on a draft of this report, EEOC said that federal agencies are bound by the *Uniform Guidelines on Employee Selection Procedures* (issued jointly by EEOC, the Civil Service Commission (OPM’s predecessor), and the Departments of Justice and Labor), which requires employers to request racial and ethnic data from applicants and analyze applicant-flow data. Because of OPM’s position that agencies are not required or authorized to collect racial or national origin data from applicants, EEOC officials told us that EEOC has not offered official guidance to agencies concerning applicant-flow data collection, although EEOC has given informal verbal guidance on request.

Figure 4 shows some officials’ comments on reporting requirements.

²¹OPM’s General Counsel refers to several discrimination cases, including *Adarand Constructors, Inc. v. Peña*, 515 U.S. 299 (1995) (under constitutional challenge to Department of Transportation contracting program, the court concluded that any governmental action using race or ethnicity as a basis for decision making will be subject to strict scrutiny if challenged in court), and *MD/DC/DE Broadcasters Assoc. v. Federal Communications Commission*, 236 F.3d 13 (D.C. Cir. 2001), cert. den. 534 U.S. 1113 (the court found the Commission’s regulations establishing EEO programs for its radio licensees unconstitutional because the regulations created pressure on licensees to focus their recruiting efforts on women and minorities until those groups generated a safe proportion of the licensees’ job applicants; the court was critical, among other things, of the Commission’s focus on licensees’ applicant data.)

Figure 4: Selected Comments on EEOC and OPM Reporting Requirements

... the reports [EEOC and OPM] require are, in many cases, redundant and should be streamlined. **Assistant secretary for EEO, cabinet department**

... there are redundant reporting requirements in the FEORP and in [reports required by EEOC] ... it does not make sense to have two agencies collecting the same information on the same issues. **Deputy assistant secretary for human resources, cabinet department**

EEOC and OPM gather [the] same information in conflicting formats. There should be more of a team approach when requesting information from agencies. [This] becomes a problem when we are tasked to provide info for a new requirement (such as MD 715) and reporting needs are so different. **Director, office of EEO, cabinet department**

If these two worked together better, we could make significant progress. The two agencies use different comparative data. OPM lags in directing agencies to update data systems to capture RNO/G codes and training instances. **EEO director, component of cabinet department**

Source: GAO.

Agencies Are More Satisfied with Guidance and Feedback from EEOC Than with That from OPM and Believe Both Could Do More

A large majority of survey respondents and officials we interviewed suggested both EEOC and OPM could do more in their oversight and leadership roles to ensure EEO in the workplace and achieve workforce diversity by providing clearer guidance and feedback and by working together to improve the quality of such guidance.

A majority of agency EEO and human capital officials responding to our survey said that guidance and feedback from EEOC was useful or very useful, while less than half said that about guidance and feedback from OPM.

Officials Believe Both EEOC and OPM Could Do More to Help Agencies with EEO, Workforce Diversity, and Affirmative Employment

Survey respondents who served as points of contact with the central leadership agencies—EEOC, OPM, MSPB, OSC, and FLRA—indicated that on matters concerning EEO, affirmative employment, and workforce diversity they interacted primarily with EEOC and OPM over the 2 years

leading up to our survey.²² Respondents who had at least some interaction with EEOC and OPM did not see either agency as particularly helpful in assisting them in ensuring EEO in the workplace or achieving EEO-related objectives. While, as discussed below, survey participants found some usefulness to guidance and feedback from EEOC and OPM, of those having at least some interaction with these agencies, 27 of 48 respondents (56.3 percent) said that EEOC was of some, little, or no help, and 36 of 45 respondents (80 percent) said the same of OPM. (See table 3.)

Table 3: Survey Respondents’ Perceptions of the Extent of Helpfulness of EEOC and OPM in Ensuring EEO in the Workplace and Achieving Affirmative Employment or Workforce Diversity (Number and Percentage of Respondents)

Agency	Very great	Great	Moderate	Some	Little or no	Don’t know/not applicable
EEOC (n=48)	5 (10.4%)	3 (6.3%)	12 (25.0%)	12 (25.0%)	15 (31.3%)	1 (2.1%)
OPM (n=45)	0 (0.0%)	1 (2.2%)	6 (13.3%)	15 (33.3%)	21 (46.7%)	2 (4.4%)

Source: GAO survey results.

The majority of these respondents—37 of 48 (77.1 percent) for EEOC and 29 of 45 (64.4 percent) for OPM—said those agencies should be doing more to help agencies ensure EEO in the workplace and achieve affirmative employment or workforce diversity. Some of the officials we interviewed and survey respondents offered their comments on how EEOC and OPM could do this. (See fig. 5.)

²²Specifically, 48 of 80 respondents (60 percent) said they had at least some interaction with EEOC, 45 of 81 respondents (56 percent) reported at least some interaction with OPM, 20 of 77 respondents (26 percent) reported at least some interaction with MSPB, 16 of 81 respondents (20 percent) reported at least some interaction with OSC, and 13 of 77 respondents (14 percent) reported at least some interaction with FLRA.

Figure 5: Selected Comments on How EEOC and OPM Can Do More to Help Agencies Ensure EEO in the Workplace and Achieve Affirmative Employment or Workforce Diversity

EEOC and other federal agencies have extensive knowledge and experience in many areas that should be shared to rethink strategic approaches to equality of opportunity and diversity. From my own experience, it would be helpful for EEOC to consider developing proactive, preventative guidances. MD-715 is a good start, but more comprehensive, focused guidance that addresses one major area annually, such as measuring accountability through qualitative benchmarks is needed. I believe that such guidance would help to create an environment for effective and lasting positive accomplishments. EEOC should be held accountable for developing such guidance.

EEO director, independent agency

It would be helpful to get more examples from OPM about how other agencies are doing, as well as more information about federal human resources contractors.

Associate director for human capital planning, cabinet department

[OPM should do] more on sharing benchmarks/model agencies and their recruitment/retention efforts ... assistance with identifying effective recruitment sources, particularly for individuals with disabilities. ***EEO officer, component agency of cabinet department***

EEOC should do more in-depth training on conducting barrier analyses, more sharing of model programs, suggestions on ways to improve, and establishment of benchmarks.

EEO official, component of cabinet department

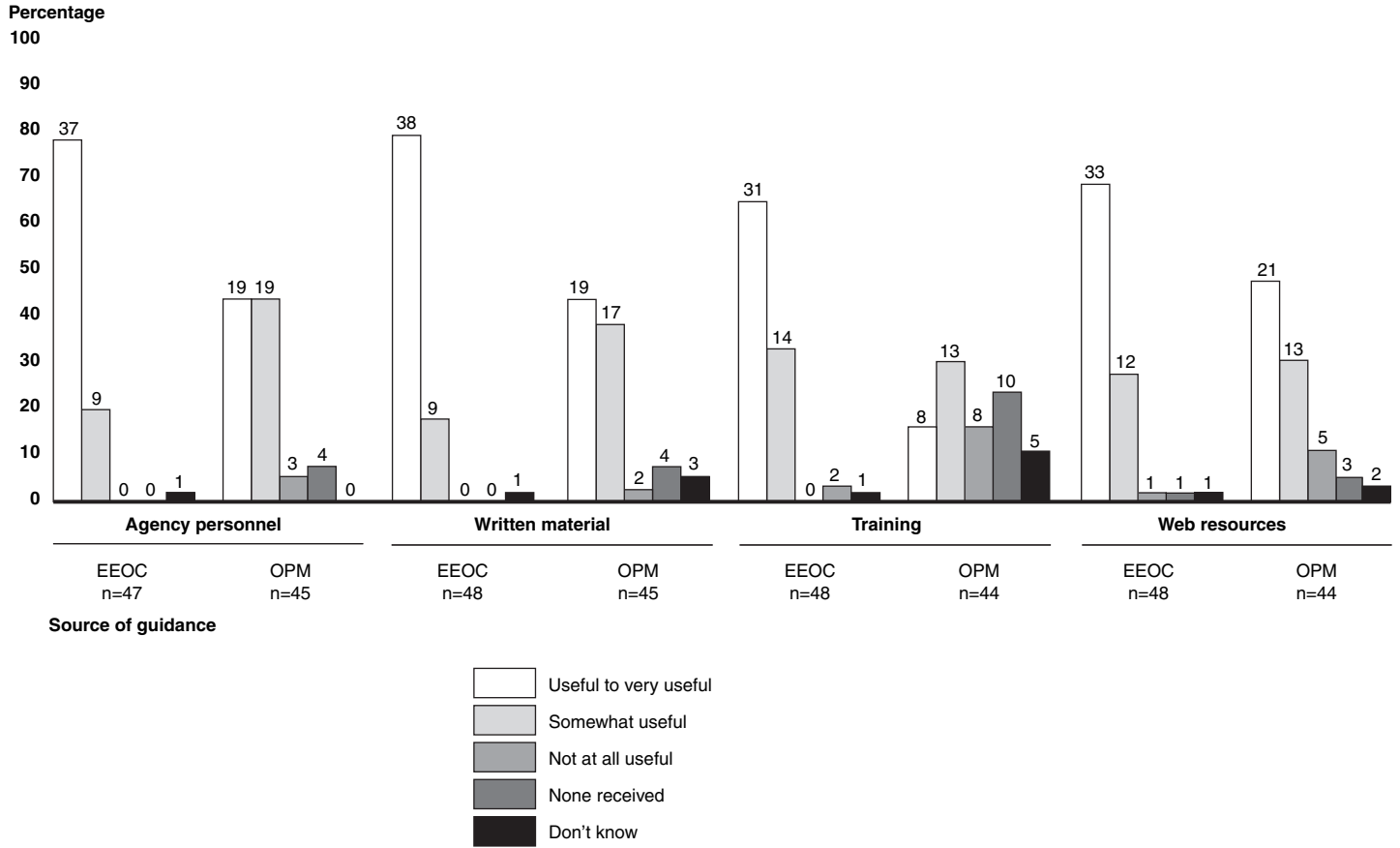
EEOC should work in concert with OPM in developing standardized training for diversity competencies. ***Deputy assistant secretary for EEO, cabinet department***

Source: GAO.

Officials' Views on Guidance and Feedback from EEOC and OPM

Although respondents said that EEOC and OPM should be doing more to help agencies, they did find some usefulness, in varying degrees, in guidance and feedback from EEOC and OPM. For example, with regard to guidance concerning EEO, affirmative employment, or workforce diversity, about 79 percent of the respondents who had at least some interaction with EEOC said that guidance from EEOC personnel was useful or very useful while about 42 percent of respondents who had at least some interaction with OPM said that guidance from OPM personnel was useful or very useful. Figure 6 shows survey respondents' perceptions of the usefulness of guidance from EEOC and OPM.

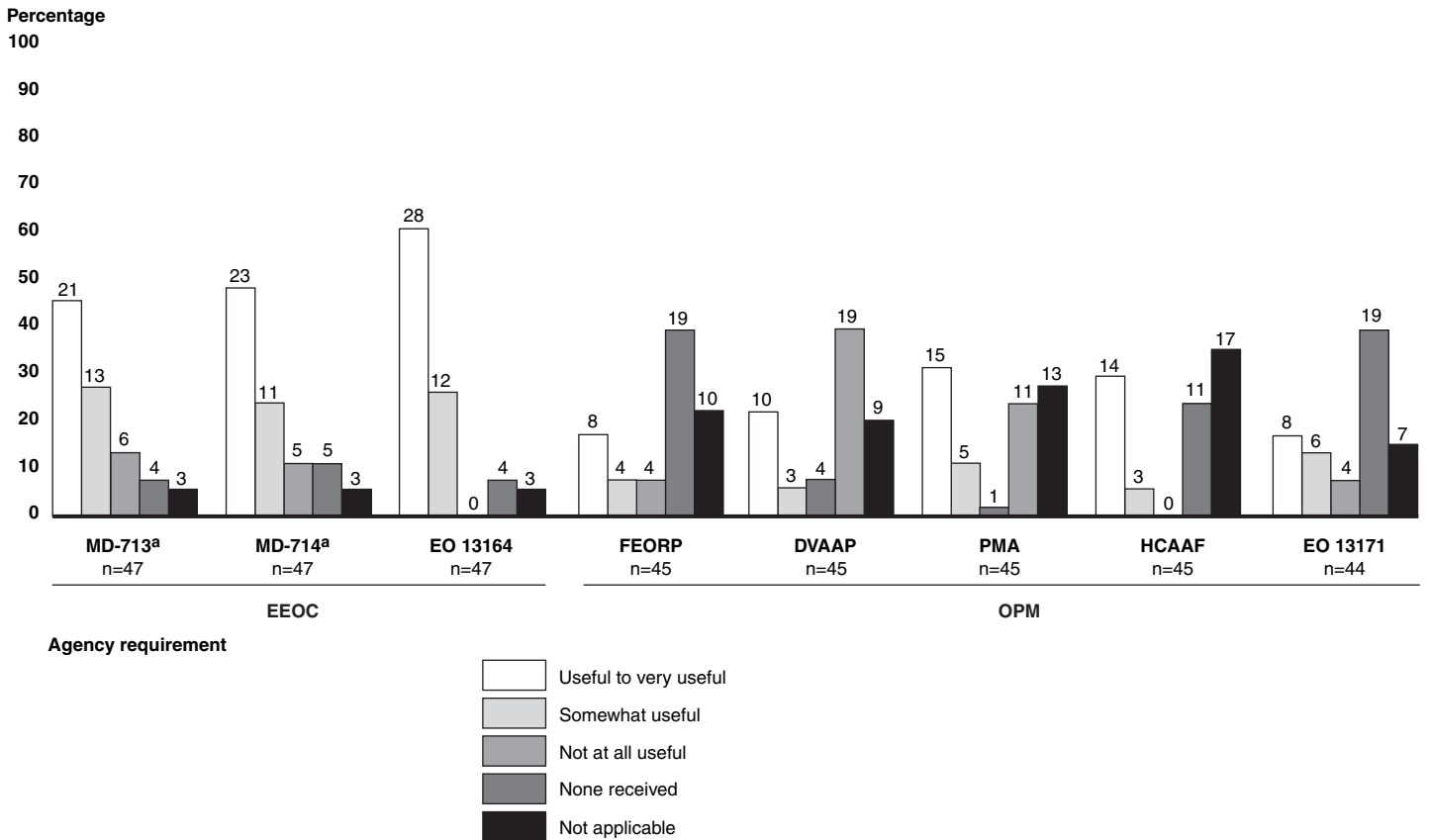
Figure 6: Survey Respondents' Perceptions of the Usefulness of EEOC and OPM Guidance on EEO, in Various Forms (Number and Percentage of Respondents)



Source: GAO.

With regard to feedback on their agencies' performance or on the contents of reports submitted under the EEO framework, from 45 to 60 percent of respondents who had at least some interaction with EEOC said that feedback from EEOC was useful or very useful, while less than 34 percent of those respondents who had at least some interaction with OPM said that of feedback from OPM. Figure 7 shows survey respondents' perceptions on the usefulness of feedback from EEOC and OPM.

Figure 7: Survey Respondents' Perceptions of the Usefulness of EEOC and OPM Feedback on Their Department/Agency's Performance or Contents of Reports or Documents Submitted (Number and Percentage of Respondents)



Source: GAO.

^aMD-713, *Affirmative Action for Hiring, Placement, and Advancement of Individuals with Disabilities*, and MD-714, *Hiring, Placement, and Advancement of Minorities and Women*, were superseded by MD-715 but were still operational during the early part of the survey period.

Figure 8 provides selected critical written comments from survey respondents and EEO and human capital officials we interviewed. These comments provide insight about the limitations of the guidance and feedback from EEOC and OPM.

Figure 8: Selected Comments on EEOC and OPM Guidance and Feedback

OPM has not articulated a lot of its guidance and seems to have a difficult time explaining the guidance that it does have. OPM does not provide feedback on the FEORP submissions. **Acting director of workforce planning, employment and development, cabinet department**

The guidance in MD-715 does not go far enough to assist agencies. **EEO director, component of cabinet department**

[We] have always been able to get support from EEOC; it is a very positive relationship. [T]here is not much guidance there, but [we] receive annual updates and the provision of Title VII training to managers. [An agency EEO official] interfaces regularly with [EEOC staff]. **Assistant director for affirmative employment and diversity, cabinet department**

[T]he lack of accountability to OPM with regard to the FEORP is evidenced by the fact that the 2003 FEORP was not submitted (due to staff limitations and giving priority to the PMA) yet [we] did not hear from OPM. [We have no] knowledge of OPM providing feedback on the FEORP or other reports that are submitted to OPM. **Director of human resources, cabinet department**

EEOC provides limited feedback and provides only general advice ... As for what to do about how to increase the representation of persons with targeted disabilities, EEOC provided general advice but no specific tips. **EEO director, cabinet department**

[We] have never gotten feedback from OPM on FEORP or DVAAP submissions. [We] did get feedback from EEOC on the [affirmative employment] submission back in 2001, as a new [affirmative employment] plan was being developed at about that time. Never in any of its feedback on [affirmative employment] did EEOC discuss resources, even though the regulations and the new and old EEOC directives do call for sufficient resources to maintain an [affirmative employment] program. **Office of civil rights director, cabinet department**

[A senior OPM official] has been interested in [our] work [on the Hispanic Employment Plan] and seemed positive about it, though there has been no substantial feedback from OPM. **Hispanic program manager, cabinet department**

EEOC is always in a "we don't have staff mode." EEOC provides some feedback on reasonable accommodation issues. Some subagencies may get feedback on some things ... and others do not. It would have been helpful if everyone had gotten their feedback at once. **EEO program director, cabinet department**

Source: GAO.

Limited Coordination between EEOC and OPM Limits Efficiency

Respondents to our survey said that more coordination between EEOC and OPM would benefit their agencies, and would not only help reduce or avoid duplication of effort but could also foster better cooperation between EEO and human capital offices within agencies. The overlapping responsibilities

that EEOC and OPM have under the EEO framework create a need and opportunity for coordination between the two agencies. However, we found little coordination or information sharing between EEOC and OPM, particularly among staff responsible for day-to-day oversight of federal agencies. A lack of a mutual understanding of one another's authority, roles, and responsibilities contributes to this limited coordination, which in turn can result in lost opportunity to realize consistency, efficiency, and value in EEO policy making and oversight and in making EEO integral to human capital management.

EEO and Human Capital Officials Said That EEOC-OPM Coordination Would Benefit Their Agencies

In our survey of human capital and EEO managers at 45 federal agencies, we found a strongly and widely expressed view that more coordination between EEOC and OPM would help their agencies. Specifically, we asked the following question concerning coordination between the five central leadership agencies:

“If you believe that increased coordination between any **two** central leadership agencies and the requirements and guidance they provide would benefit your department/agency, which **two** agencies would you pick?”

Of the 80 EEO and human capital officials who responded to the survey, 70 (86 percent) specifically identified EEOC and OPM.

One survey respondent in particular, the chief human capital officer of a cabinet department, noted the potential benefits of EEOC/OPM cooperation on the extent of cooperation between the human capital and EEO staffs within line federal agencies:

“[OPM and EEOC] represent the lead agencies for Human Resources and EEO, respectively. If federal agencies reporting to OPM and EEOC were able to witness and experience increased coordination between these two central leadership agencies, it would encourage better communication and coordination between the HR and EEO programs within the respective agencies.”

Another respondent, the EEO director of a federal commission, said the following:

“EEOC and OPM should lead by example in planning, developing, coordinating and implementing guidance designed to assist federal agencies. An apparent lack of coordination between OPM and EEOC often interferes with successful achievement of systematic integration of EEO/diversity principles and policies into management systems and functions. From my perspective, it is crucial to rethink some reporting initiatives and shift attention to building a strong partnership between OPM and EEOC to fully utilize and

integrate their areas of expertise to avoid fragmentation. OPM should make it a priority [to work together] closer with EEOC in assessing progress and lead the way in providing models of EEO/diversity performance standards.”

The benefits of better coordination within agencies were highlighted by an EEOC official, who stated that review of barrier analysis in reports submitted under MD-715 showed that the highest quality analysis had come from agencies where there was more coordination between human capital and EEO staffs.

Government Policy Has Recognized the Importance of Coordination in Carrying Out EEO; Coordination between EEOC and OPM Is Good Management

For nearly 30 years, government policy has recognized the importance of a coordinated effort in carrying out federal actions to ensure EEO. For example, under the FEORP regulations,²³ OPM provides that it will coordinate with EEOC on activities to implement equal opportunity recruitment programs under FEORP, consistent with law; 5 U.S.C. § 7201, the Reorganization Plan No. 1 of 1978,²⁴ and Executive Order No. 12067, *Providing for Coordination of Federal Equal Opportunity Programs*.²⁵ The reorganization plan and the executive order gave EEOC responsibility for promoting efficiency and eliminating conflict, competition, duplication, and inconsistency in the implementation of EEO requirements, and provided coordination principles for federal departments and agencies to follow in enforcing EEO requirements. Coordination of federal EEO efforts is also guided by EEOC regulation.²⁶

Additions to the EEO framework changing EEOC’s and OPM’s responsibilities since 1978 have made adherence to the underlying principle of coordination between agencies with overlapping responsibilities even more necessary. We have reported that the lack of coordination between federal agencies with overlapping responsibilities creates a situation wherein scarce funds are wasted, program customers are confused and frustrated, and the overall effectiveness of the effort is

²³5 C.F.R. 720.203(f).

²⁴43 Fed. Reg. 19,807, 92 Stat. 3781 (Feb. 23, 1978).

²⁵Exec. Order No. 12067, 43 Fed. Reg. 28,967 (June 30, 1978).

²⁶29 C.F.R. Part 1690.

limited.²⁷ Most recently, in October 2005, we reported that agencies with overlapping responsibilities can enhance and sustain their collaborative efforts and produce more public value by engaging in certain practices, such as defining and articulating a common outcome; agreeing upon agency roles and responsibilities, including leadership; and establishing compatible policies, procedures, and other means to operate across agency boundaries.²⁸ Clearly, these principles apply to EEOC's and OPM's roles within the EEO framework.

The importance of collaboration between EEOC and OPM was recognized over a decade ago by the NPR in its 1993 report *From Red Tape to Results: Creating a Government That Works Better and Costs Less*.²⁹ It stated the following:

“the roles and responsibilities of EEOC and OPM present an opportunity for them to work together to provide leadership and training necessary to integrate EEO into every aspect of human resource management policy and practice. These two agencies must make a concentrated effort to ensure ongoing communications and understanding of EEO and affirmative employment efforts to achieve a diverse, competent, and productive federal workforce. They must provide joint leadership to EEO, civil rights, and personnel professionals to create, develop, review, and improve effective ongoing governmentwide efforts.”

The NPR suggested a number of actions, which could be implemented administratively or by presidential order, which it believed would “decrease duplicated efforts and redundancy... and foster coordinated, governmentwide commitment to creating, implementing, and accomplishing equal opportunity and affirmative employment goals.” These included establishing an Interagency Equal Employment Opportunity and Affirmative Employment Steering Group under the joint chair of EEOC and OPM, and combining all equal opportunity and affirmative employment reports into one comprehensive assessment of the total workforce EEO/affirmative employment data. The report said that

²⁷GAO, *Managing for Results: Using the Results Act to Address Mission Fragmentation and Program Overlap*, GAO/AIMD-97-146 (Washington, D.C.: Aug. 29, 1997), and *Managing for Results: Barriers to Interagency Coordination*, GAO/GGD-00-106 (Washington, D.C.: Mar. 29, 2000).

²⁸GAO, *Results-Oriented Government: Practices That Can Help Enhance and Sustain Collaboration among Federal Agencies*, GAO-06-15 (Washington, D.C.: Oct. 21, 2005).

²⁹National Partnership for Reinventing Government.

implementing the actions would require ongoing commitment and coordination between EEOC and OPM.

Coordination between EEOC and OPM Is Limited, Particularly with Regard to Oversight

Lack of coordination or information sharing was particularly evident between the persons at EEOC and OPM who do the day-to-day work of overseeing EEO at federal agencies. Officials at EEOC told us they do not review agency FEORP reports, and some of those responsible for oversight were not familiar with the FEORP requirements. Regarding their on-site reviews, EEOC officials told us that they were generally unaware of OPM's approach to oversight, including the use of HCAAF, and that they do not coordinate with OPM staff who may be doing or have done similar on-site audits at the same agencies nor do they regularly receive or review material from those OPM audits.

In discussions with OPM staff, we learned that staff engaged in agency oversight do not make use of agency reports to EEOC, nor do they consult EEOC in assessing the element of the PMA scorecard that deals with reducing underrepresentation and sustaining diversity. This occurred even though OPM acknowledged overlap in its *Oversight and Effectiveness Evaluation Handbook* for its Merit Systems Compliance Program, which was used for staff guidance before being withdrawn in 2003. Although no longer in use, OPM's stated premise in the handbook that its enforcement and evaluation responsibilities coincide to a large extent with EEOC responsibilities because EEO is integral to personnel management and to many of the regulations that OPM administers remains valid.

In a 2005 assessment of OPM's Merit Systems Compliance Program, OMB also found a need for OPM to improve its coordination with EEOC. OMB made the assessment using its Program Assessment Rating Tool (PART).³⁰ OMB reported it found no evidence that OPM benchmarks its activities against similar efforts, such as those at EEOC. OMB indicated that although EEOC has the statutory responsibility to coordinate EEO efforts, OPM should seek opportunities for collaboration with EEOC in order to improve overall government efficiency in the area of compliance reviews. OMB noted that although OPM indicated that it was collaborating with EEOC,

³⁰According to OMB, PART, a central element of the PMAs budget and performance integration initiatives, is a diagnostic tool to evaluate federal programs as part of the executive budget formulation process. It applies 25 questions to assess (1) program purpose and design, (2) strategic planning, (3) program management, and (4) program results.

OPM provided no documentary evidence of any collaboration. OMB recommended that OPM collaborate with EEOC on activities that overlap and further recommended that there be a regular/formal working relationship between the two agencies.

In addition, OPM, in preparing the annual FEORP report to Congress, does not consult with EEOC, as EEOC guidelines to OPM regulations indicate it should.³¹ In their discussions with us, some OPM officials responsible for oversight were either (1) unaware of EEOC's affirmative employment program requirements, EEOC's oversight of federal agencies, or both or (2) mistakenly believed that EEOC's authority was limited to dealing with violations of title VII of the Civil Rights Act, in particular, discrimination complaints.

We also found that EEOC and OPM did not, for the most part, coordinate EEO information and guidance on their respective Web sites. While each Web site contains information about each agency's policies, programs, and operations, and both sites contain pages referring to policy and program areas where both agencies have responsibilities, the EEOC Web site had no links to relevant OPM Web pages, and OPM's links to EEOC's Web-based information were not specific, which limited their value. For example, see the following:

- EEOC's Web page entitled "How Other Civil Rights Agencies Address EEO Issues" neither mentioned OPM nor contained any links to the OPM Web site.
- Neither agency Web site had links to the other agency's Web site regarding relevant policies and procedures for persons with disabilities.
- The OPM Web site has an online diversity guide for federal agencies, which covers the demographic and legal framework and offers guidance for building a diverse workforce. In the discussion of title VII as part of the framework, the link provided by OPM is only to EEOC's home page and not to more specific guidance, such as EEOC's Web page entitled "Reference and Research," which lists applicable guidance on federal-sector EEO that would potentially be more relevant and helpful.

³¹Appendix to 5 C.F.R. Part 720.

After we brought this issue to its attention, EEOC undertook an effort, which was still under way at the time of our review, to provide links to relevant information on OPM's Web site. OPM said that because Web pages are subject to change, it is more practical to send a reader to a home page rather than to subject-specific information. However, while the content of Web pages may change, we believe that the subject matter of the pages is less likely to do so.

EEOC officials acknowledged a need for better coordination between the two agencies. EEOC's *Strategic Plan for Fiscal Years 2004–2009* states that the agency “will reinvigorate its leadership of equal employment policies and programs” in accordance with Executive Order No. 12067. However, we noted that the plan does not contain any reference to coordinating with OPM. Senior EEOC officials believed there was a lack of awareness on OPM's part of EEOC's role beyond complaints management. EEOC officials said that there is a need for a formal coordination mechanism. EEOC officials also suggested that EEOC and OPM conduct joint oversight visits of agencies. They also suggested that allowing EEOC to become a member of the Chief Human Capital Officers Council, which the OPM Director chairs, may present an opportunity for closer coordination of EEO and human capital management.

OPM officials, on the other hand, did not think that a formal coordination mechanism was necessary. A senior official in OPM's General Counsel's office told us that (1) there is a need to clarify “boundaries” and that there has probably been some confusion between the OPM and EEOC program and reporting requirements, (2) some EEOC requirements under MD-715 encroach on OPM's authority and responsibility, and (3) OPM has broad authority based on title 5 of the U.S. Code and its placement of responsibility on OPM to enforce the merit system principles. OPM made its concerns known to EEOC in its comments on a draft of MD-715. For example, with regard to the “Model Agency Title VII and Rehabilitation Act Programs” under MD-715, OPM questioned EEOC's authority to tell agencies how to organize their internal structures. OPM also commented that it was unclear whether or how plans for employing persons with disabilities under MD-715 differ from the plans agencies are required to create and submit to OPM under Executive Order No. 13163. According to an official from the General Counsel's Office, EEOC had not been responsive to OPM's concerns.

Conclusions

Because they both have roles and responsibilities in federal workplace EEO under the federal statutory and regulatory framework, it is incumbent upon EEOC and OPM to avoid unnecessary conflict, competition, duplication, and inconsistency in policies and requirements. In order to carry out EEO framework requirements efficiently and effectively, EEOC and OPM need to

- resolve their policy disagreements;
- take a broad and comprehensive view of their overlapping responsibilities;
- engage in serious and substantial efforts to gain a mutual understanding of each other's authorities, roles, and responsibilities under the federal workplace EEO framework;
- determine how those authorities, roles, and responsibilities can be exercised in a collaborative way; and
- enhance their communication and coordination.

EEOC and OPM together need to examine the collective requirements of the EEO framework and determine where and how requirements can be streamlined and consolidated in a way that is consistent with the government's policy goals, supports their respective missions and oversight responsibilities, and reduces administrative burden. In doing so, EEOC and OPM need to consider the judgments that survey respondents made about the value of the different requirements in contributing to their EEO and workforce diversity objectives, and the redundancies they identified that add to their administrative burden.

Besides increasing program administration effectiveness and public value, better coordination between EEOC and OPM could, at the agency level, foster greater involvement between EEO offices and their human capital counterparts in the development of their agencies' human capital plans and policies. In addition to working together on these matters, EEOC and OPM need to work to make their guidance and feedback more useful to federal agencies. Because of the long-standing nature of this lack of effective coordination, additional congressional oversight is necessary to help ensure that the two agencies work together meaningfully. As EEOC and OPM already report annually to Congress on federal workforce EEO,

reporting on steps they have taken to improve coordination would facilitate congressional oversight.

Recommendations for Executive Action

To resolve the issues noted in our report, we recommend that the Chair of EEOC and the Director of OPM take the following five actions:

- Develop means to communicate and coordinate on a continuing basis, establish collaboration protocols, and work to resolve their disagreements to the maximum extent possible concerning their respective responsibilities in developing policy, providing guidance, and exercising oversight under the EEO framework for the federal workplace.
- Explore opportunities to consolidate and streamline similar and redundant requirements and resolve inconsistencies within the EEO framework, including reporting requirements, in a manner that could lead to a single report to fulfill the needs of both EEOC and OPM, particularly related to requirements under MD-715 and FEORP. Where both EEOC and OPM believe that a statute or an executive order is an impediment to streamlining or resolving inconsistencies, the agencies could jointly recommend appropriate action to Congress or the President.
- Work together to improve their collective guidance, feedback, and assistance to other agencies on EEO.
- Determine from agency-level EEO and human capital managers what additional guidance they need in carrying out their responsibilities, how to make their feedback more useful, and what more EEOC and OPM can do to help agencies to ensure EEO in the workplace and achieve workforce diversity objectives.
- Work together to convene regular meetings of senior federal workplace EEO/civil rights officials and chief human capital officers in order to further integrate EEO and human capital.

Examples of how these recommendations could be implemented include (but are not limited to) the following:

- regularly exchanging data from reports submitted by agencies to EEOC and OPM;

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- adopting a common format for reports to EEOC under MD-715 and reports to OPM under FEORP;
 - resolving policy disagreements regarding the collection and use of applicant data;
 - collaborating to help ensure that EHRI can support agencies in meeting both EEOC and OPM reporting requirements;
 - regularly meeting and exchanging information between EEOC and OPM staff performing oversight of the same agency;
 - identifying opportunities for joint reviews of an agency's EEO and workforce diversity efforts;
 - establishing an "e-diversity" Web page created and maintained jointly by EEOC and OPM; and
 - meeting jointly with federal agency EEO and human capital managers during on-site visits.

Matter for Congressional Consideration

The Congress should require EEOC, in its *Annual Report on the Federal Workforce*, and OPM, in its annual FEORP report, to include a joint report of actions they have taken or plan to take to (1) increase coordination and communication with each other, (2) consolidate and streamline like requirements of the EEO framework and resolve inconsistencies, and (3) improve guidance and feedback to agencies.

Agency Comments and Our Evaluation

We provided a draft of this report to the Chair of EEOC and to the Director of OPM for their review and comment. We received written comments from both agencies, which are reprinted in appendixes V and VI, respectively. In commenting on our recommendation that EEOC and OPM develop means to communicate, collaborate, and coordinate on a continuing basis, EEOC stated that it did not disagree that it and OPM could further strengthen their collaborative efforts. While OPM also agreed that there is room for improvement, and that it would reinstate the practice of consulting with EEOC as it prepares the annual FEORP reports, it believed that with respect to other matters, a more appropriate approach was to continue to coordinate on an as-needed basis and that a requirement for formal

coordination would add a layer of complexity to an already complex situation. While we are sensitive to the need to limit unnecessary complexity, as was evident from our survey, areas exist where agencies feel additional administrative burden, in large measure, because OPM and EEOC have not coordinated their oversight efforts. Gaining a mutual understanding of each other's authorities, roles, and responsibilities and determining how those authorities could be exercised collaboratively could provide immediate results in improving overall government efficiency in oversight. OMB made a similar recommendation to OPM in 2005 with respect to those programs where it shares oversight responsibility with EEOC. We also believe that this collaboration could extend to examining the potential for jointly conducting on-site reviews and audits in a manner that would not compromise confidentiality.

EEOC and OPM, in their comments, both seem to have misinterpreted our conclusions and recommendations, inferring that our intent was to have EEO oversight functions merged or "folded" into one of the two agencies. This is not our intention. Our conclusions and recommendations are directed toward streamlining and consolidating the information-gathering process, with the analytic and reporting functions remaining separate as they currently are in each agency.

Both EEOC and OPM stated that they are limited in the steps that they could take to consolidate or streamline agency reporting requirements because regulations, executive orders, or statutes give EEOC or OPM sole responsibility for each program. We agree that statutes and executive orders place responsibility for administering and reporting on certain programs with EEOC or OPM, but they do not mandate the method for collecting information from agencies to carry out the programs. Therefore, these agencies could develop and distribute a common data collection instrument that both EEOC and OPM could use to fulfill their respective responsibilities. We continue to believe that streamlining requirements and resolving inconsistencies within the EEO framework would reduce administrative burdens on agencies, thus allowing them to focus more of their efforts on results. We revised our recommendation to make it clear that where EEOC and OPM believe that a statute or an executive order is an impediment to streamlining or resolving inconsistencies, the agencies could jointly recommend appropriate action to Congress or the President.

OPM expressed concern over use of the phrase "affirmative employment," stating that the phrase may be misunderstood as relating to past EEO programs that have come under criticism and are the subject of ongoing

litigation involving allegations of improper preferential treatment. We are aware of case law that has addressed federal EEO policies or practices and the issue of improper preferential treatment, as well as the ongoing litigation involving allegations of preferential treatment related to affirmative employment plans, which date back to superseded MDs issued by EEOC. However, under the federal antidiscrimination statutes, the federal sector remains obligated to go beyond merely addressing complaints of alleged discrimination—to take positive (affirmative) steps to ensure EEO. It is this federal-sector obligation to which we refer when we use the phrase “affirmative employment.” Further, OPM expresses concern about our reference to “workforce diversity.” We do not believe our use of the term “workforce diversity” is unique or inconsistent with OPM’s broad policies in the area. Rather, as our definition clearly provides, workforce diversity is a very broad concept and is not limited to recognizing the differences protected from discrimination by statute.

We provide additional responses to EEOC’s comments in appendix V and to OPM’s comments in appendix VI.

We are sending copies of this report to the Chair of EEOC, the Director of OPM, and other interested parties. Copies will be made available to others upon request. This report is also available at no charge on GAO’s Web site at <http://www.gao.gov>.

If you or your staff have any questions concerning this report, please contact me at (202) 512-9490. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Staff who made major contributions to this report are listed in appendix VII.

Sincerely yours,



George H. Stalcup
Director, Strategic Issues

Objectives, Scope, and Methodology

Our objectives were to (1) obtain federal agency equal employment opportunity (EEO) and human capital managers' views of the requirements dealing with EEO, affirmative employment, and workforce diversity and the extent to which the requirements contribute to ensuring EEO, affirmative employment, and diversity in the workplace; (2) obtain EEO and human capital managers' views on the guidance and feedback given them by the Equal Employment Opportunity Commission (EEOC) and the Office of Personnel Management (OPM) on EEO, affirmative employment, and workforce diversity issues; and (3) determine how and to what extent EEOC and OPM coordinate with each other in developing policy, providing guidance, and exercising oversight of line agencies, as well as obtaining EEO and human capital managers' views on EEOC and OPM coordination and how it affects their work.

Our primary method for fulfilling these objectives was to design and administer a survey to federal agency EEO and human capital managers. We designed our survey using background information and interview results from audit work done for our previous report on the EEO framework, issued in April 2005.¹ This included (1) the results of a review of the statutory, regulatory, and policy framework governing EEO, affirmative employment, and workforce diversity in the federal government; (2) interviews with EEO and human capital managers at six selected federal agencies; and (3) discussions with senior officials at the central leadership agencies, mostly with officials of EEOC and OPM. The instrument was designed originally by members of the audit team and a survey methodologist, and was reviewed internally by survey professionals and by GAO senior management prior to pretesting. We conducted pretests to ensure that (1) the questions were clear and unambiguous, (2) terminology was used correctly, (3) the questionnaire did not place an undue burden on agency officials, and (4) the survey was comprehensive and unbiased.

We pretested the survey instrument at four federal agencies. At each agency, we did two pretests, one with EEO staff and one with human capital staff, for a total of eight pretests. We revised the draft survey based on the pretest results and subsequently sent a draft of the survey instrument to each of the central leadership agencies—EEOC, OPM, the Office of Special Counsel, the Merit Systems Protection Board, and the Federal Labor Relations Authority—for their review and comment. We then

¹GAO-05-195.

made further revisions as appropriate based on the comments from these agencies.

We prepared a distribution list for the survey, with the survey recipients being a senior manager for EEO and diversity (usually the director of the agency EEO or civil rights office) and a senior human capital manager (usually the chief human capital officer or director of human resources) at each federal agency that (1) had a total employment of 500 or more persons and (2) was required to file an annual affirmative employment report with EEOC and an annual Federal Equal Opportunity Recruitment Program report with OPM. (EEOC requires agencies with 500 or more employees to include in their annual reports a plan for attaining the essential elements of a model EEO program and a plan to eliminate identified barriers that impede the full realization of EEO for employees and applicants.) The final distribution list consisted of 90 recipients—the senior EEO and human capital managers—at 45 agencies. Together, the 45 agencies employed 97 percent of the nonpostal federal workforce as of September 30, 2004. The 45 agencies are listed in appendix IV.

We distributed the survey by e-mail on October 19, 2004, and received replies until December 10, 2004. We received completed surveys from 83 of the 90 managers or their delegates, for a return rate of 92.2 percent. We received completed surveys from both EEO and human capital officials at 38, or 84 percent, of the 45 agencies.

The survey results were keypunched into an electronic database. Because this was not a sample survey, there are no sampling errors. However, the practical difficulties of conducting any survey may introduce errors, commonly referred to as nonsampling errors. For example, difficulties in how a particular question is interpreted, in the sources of information that are available to respondents, or in how the data are entered into a database or were analyzed can introduce unwanted variability into the survey results. We took steps in the development of the questionnaire, the data collection, and the data analysis to minimize these nonsampling errors. We verified the accuracy of a small sample of keypunched records by comparing them to their corresponding questionnaires, and we corrected any errors found. Less than 1 percent of the data items we checked had random keypunch errors that would not have been corrected during data processing. Analysis programs were also independently verified. The questions used in this report were asked in the larger survey of this population. Relevant excerpts from the tabulated results are included in

appendix III (results are presented in percentages, unless otherwise indicated).

We also invited survey recipients to make written comments on the survey instrument concerning the issues covered in the survey. We received a number of such comments, some of which are reproduced in the report. We did not independently verify the statements made in any of the comments.

As stated above, we relied largely on the survey to address the first two objectives. In addition, we considered the results of interviews of EEO and human capital officials at 6 of the 45 agencies. Our response to the third objective, concerning coordination between EEOC and OPM, was based partially on the survey results. For this objective, we also used information that we gathered from senior EEOC and OPM officials and staff involved in agency oversight during our earlier engagement on the EEO framework. We discussed this information, including guidance used by EEOC and OPM staff responsible for agency oversight and knowledge of each other's policies and oversight practices and the nature and extent of their coordination, with these officials to ensure that it was still accurate.

In reporting the survey responses in tabular or graphic form in the report, in accordance with commonly accepted methodological practice, we combined two responses (such as "very useful" and "useful") into one reporting category. In reporting responses to questions concerning the usefulness of EEOC or OPM feedback, we regarded only "very useful" and "useful" as positive responses, and regarded a "somewhat useful" response as not indicating satisfaction with guidance and feedback.

We performed our audit work from May 2004 through February 2006 in accordance with generally accepted government auditing standards.

The Framework for EEO in the Federal Workplace

Statutes, executive orders, and other executive policies form the framework relating to EEO in the federal workplace.¹ This framework, which governs civil rights and personnel management, places primary responsibility on federal agencies to provide workplaces that have a culture of fairness, equity, and inclusiveness free from discrimination.

In 1964, Congress passed the landmark Civil Rights Act, prohibiting discrimination on the basis of race, color, religion, gender, or national origin in a number of areas, including employment, housing, voting, and education. Title VII of the act addresses employment discrimination and created EEOC.² When the Civil Rights Act of 1964 was enacted, the prohibitions against discrimination under title VII did not apply to the federal government as an employer, although the act did state that it was the federal government's policy that employment actions be free of discrimination.³ The government's EEO policy for federal workers had been addressed in executive orders. For example, Executive Order No. 11478, issued in 1969, stated the government's policy to (1) provide equal opportunity in federal employment for all persons; (2) prohibit discrimination in employment because of race, color, religion, gender, or national origin; and (3) promote the full realization of EEO through a continuing affirmative program in each executive department and agency.⁴ According to the order, the policy of equal opportunity should be an integral part of every aspect of personnel policy and practice in the employment, development, advancement, and treatment of federal civilian employees.

Federal workers and applicants for federal employment received broad statutory protection against employment discrimination with the passage of the Equal Employment Opportunity Act of 1972. The hallmark 1972 act extended to federal workers the protections of title VII of the Civil Rights Act of 1964, prohibiting discrimination on the basis of race, color, religion,

¹Although the application of EEO laws varies between the three branches (executive, legislative, and judicial) of the federal government, this appendix focuses primarily on the EEO framework applicable to the executive branch.

²Pub. L. No. 88-352, title VII, 78 Stat. 241, 253-266 (July 2, 1964).

³Section 701(b) of Pub. L. No. 88-352, 78 Stat. 253-254.

⁴Exec. Order No. 11478, 34 Fed. Reg. 12,985 (Aug. 8, 1969). This executive order superseded earlier executive orders prohibiting employment discrimination in the federal government, and since 1969 has been amended to protect additional groups from discrimination.

gender, or national origin in employment matters, such as recruitment, hiring, wages, promotions, benefits, discipline, discharge, and layoffs.⁵ In addition, the 1972 amendments, enacted in part to address the underrepresentation of minorities and women, require each federal department and agency to prepare plans to maintain an affirmative program of EEO. Under the plans, agencies are required to establish training and education programs designed to provide a maximum opportunity for employees to advance and perform at their highest potential.

The Rehabilitation Act of 1973 extended employment discrimination protections to federal employees and applicants for employment with disabilities. Section 501 of the Rehabilitation Act also requires federal departments and agencies to prepare affirmative action program plans for the hiring, placement, and advancement of individuals with disabilities.⁶ These plans are to be updated annually and describe the extent to which the special needs of employees with disabilities are being met and the methods used.

A separate program was established for disabled veterans. The Vietnam Era Veterans' Readjustment Assistance Act of 1974,⁷ as amended, requires agencies to have a separate affirmative action plan for the recruitment, employment, and advancement of disabled veterans that is to be part of agencies' efforts under the Rehabilitation Act for individuals with disabilities. This program is referred to as the Disabled Veterans Adjustment Assistance Program.

Besides the Rehabilitation Act and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, two executive orders issued in 2000 are to enhance EEO in the federal government for persons with disabilities. Executive Order No. 13163, *Increasing the Opportunity for Individuals with Disabilities to Be Employed in the Federal Government*,⁸ was implemented to support the goals of the Rehabilitation Act and promote an

⁵Pub. L. No. 92-261, § 11, 86 Stat. 103, 111-112 (Mar. 24, 1972), codified at 42 U.S.C. § 2000e-16.

⁶Pub. L. No. 93-112, § 501, 87 Stat. 355, 390-391 (Sept. 26, 1973), codified at 29 U.S.C. § 791.

⁷Pub. L. No. 93-508, § 403, 88 Stat. 1578, 1593 (Dec. 3, 1974) codified at 38 U.S.C. § 4214.

⁸Exec. Order No. 13163, 65 Fed. Reg. 46,563 (July 26, 2000).

increase in federal employment opportunities for persons with disabilities. Under the order, agencies are required, among other things, to expand outreach efforts, increase efforts to accommodate disabled individuals, and prepare plans to increase the employment opportunities for individuals with disabilities. Executive Order No. 13164, *Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation*,⁹ promotes a model federal workplace that provides reasonable accommodation for individuals with disabilities in the application process and for employees to perform the essential functions of a position and enjoy benefits and privileges of employment. Under the order, agencies are required to establish written procedures for processing requests for reasonable accommodation.

The Civil Service Reform Act of 1978 (CSRA),¹⁰ in overhauling federal personnel laws, strengthened protections against discrimination and retaliation in the federal workplace and underscored the government's commitment to ensuring EEO and to addressing underrepresentation. The CSRA stated that in order to provide a federal workforce that reflects the nation's diversity and to improve the quality of federal service, federal personnel management should be implemented consistent with merit system principles and free from prohibited personnel practices. The CSRA listed nine merit system principles,¹¹ the first two of which directly apply to EEO in promoting a fair, equitable, and inclusive workplace:

- Recruitment should be of qualified individuals from appropriate sources in an endeavor to achieve a workforce from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills after fair and open competition that ensures that all receive equal opportunity.
- All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.

⁹Exec. Order No. 13164, 65 Fed. Reg. 46,565 (July 26, 2000).

¹⁰Pub. L. No. 95-454, 92 Stat. 1111 (Oct. 13, 1978).

¹¹5 U.S.C. § 2301(b).

The CSRA also required that personnel actions should be free from prohibited personnel practices, including discrimination for or against any employee or applicant for employment based on race, color, religion, gender, national origin, age, handicapping condition, marital status, or political affiliation.¹²

The CSRA further emphasized the government's resolve to ensure EEO and to address underrepresentation. The act required that executive agencies conduct a continuing program for recruiting minorities to address underrepresentation¹³ of minorities in the federal workplace.¹⁴ This program is referred to as the Federal Equal Opportunity Recruitment Program.

Executive Order No. 13171, *Hispanic Employment in the Federal Government*, issued in 2000, affirmed ongoing policies for equality of opportunity in federal employment and recommended additional policies to eliminate the underrepresentation of Hispanics in the federal workforce.¹⁵ The order requires agencies, among other things, to (1) develop recruiting plans for Hispanics that create a fully diverse workforce and (2) assess and eliminate any systemic barriers to the effective recruitment and consideration of Hispanics. The order established the Interagency Task Force to review best practices, provide advice, assess overall executive branch progress, and recommend further actions in eliminating the underrepresentation of Hispanics.

Government policy for dealing with underrepresentation and workforce diversity is also articulated in the implementation of the President's Management Agenda (PMA). The PMA, implemented in fiscal year 2002, is a strategy for improving the management and performance of the federal government. The PMA contains five governmentwide goals to improve

¹²5 U.S.C. §2302(b).

¹³Underrepresentation is a situation in which the number of members of a minority group designation (determined by EEOC in consultation with OPM) within a category of civil service employment constitutes a lower percentage of the total number of employees within the employment category than the percentage that the minority group constituted within the labor force of the United States, as determined under the most recent decennial or mid-decade census, or current population survey. 5 U.S.C. §7201(a)(1).

¹⁴5 U.S.C. §7201.

¹⁵Exec. Order No. 13171, 65 Fed. Reg. 61,251 (Oct. 12, 2000).

federal management and deliver results, including the strategic management of human capital. For each goal, agency performance in implementing the PMA is assessed using a scorecard. Among the standards on the scorecard within the strategic management of human capital goal is how well agencies address underrepresentation and implement programs to sustain diversity. The human capital standards were developed by OPM and the Office of Management and Budget, in consultation with the President's Management Council.

In 2002, acting to address continuing concerns about discrimination and retaliation in the federal workplace, Congress passed the Notification and Federal Employee Antidiscrimination and Retaliation (No FEAR) Act.¹⁶ The provisions of the act attempt, among other things, to enhance the accountability of EEO management and address the causes of and remedies for workplace conflict that can give rise to discrimination and retaliation complaints. The No FEAR Act holds agencies financially accountable for the costs of judgments and settlements in discrimination cases and also focuses on the policies that agencies have implemented to hold individuals who unlawfully discriminate against others accountable for their conduct. Agencies are also to notify and provide training for their employees on their rights and protections in cases of discrimination and reprisal. In addition, the No FEAR Act stipulates that agencies are to submit annual reports that contain discrimination complaint data, an evaluation of the data to identify underlying causes, and actions planned or taken to improve their civil rights and complaint programs.¹⁷ Furthermore, in enacting this law, Congress expressed its intent that federal managers should receive adequate training in managing a diverse workforce, dispute resolution, and other essential communication skills.

Other statutes that protect workers in the private sector also protect federal workers. The Equal Pay Act of 1963¹⁸ protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination. The Age Discrimination in Employment Act,¹⁹

¹⁶Pub. L. No. 107-174, 116 Stat. 566 (May 15, 2002).

¹⁷The requirements of the No FEAR Act went into effect October 1, 2003.

¹⁸Pub. L. No. 88-38, 77 Stat. 56 (June 10, 1963). See 29 U.S.C. § 206 (d).

¹⁹Pub. L. No. 90-202, 81 Stat. 602 (Dec. 15, 1967), amended by Pub. L. No. 93-259, § 28, 88 Stat. 55, 74-75 (Apr. 8, 1974). See 29 U.S.C. §§ 621-634.

Appendix II
The Framework for EEO in the Federal
Workplace

as amended, protects individuals who are 40 years of age or older from age-based employment discrimination.

Excerpts from EEO Leadership Survey Questionnaire and Summary Results



United States Government Accountability Office

Survey of EEO Leadership and Coordination

Introduction

The policy of the U.S. government is to provide federal employees a workplace that is fair, equitable, and free from discrimination and retaliation. To further equal employment opportunity (EEO), the government has created, over time, a statutory, regulatory, and policy framework. This framework requires federal agencies to carry out affirmative employment programs to help bring about a diverse workforce reflective of all segments of society. Enforcement of statutes and regulations is in the hands of five central leadership agencies: the Office of Personnel Management (OPM); the Equal Employment Opportunity Commission (EEOC); the Office of the Special Counsel (OSC); the Merit Systems Protection Board (MSPB); and the Federal Labor Relations Authority (FLRA).

GAO, an independent agency of Congress, is collecting information governmentwide from department and agency representatives serving in human resources and EEO/civil rights offices regarding EEO, affirmative employment, and diversity in the federal workplace. GAO is conducting this survey on the initiative of the Comptroller General, after having received a request from Senator Joseph Lieberman, Ranking Minority Member of the Senate Committee on Governmental Affairs. This survey contains questions about how your department/agency is organized to carry out statutes, regulations, and policies; your perceptions of the various requirements in achieving a diverse and nondiscriminatory workplace; and your perceptions on the guidance central leadership agencies provide. The survey does not address managing and adjudicating individual discrimination complaints, prohibited personnel practices, grievances, and appeals.

You can make an important contribution to this study by responding to this questionnaire, so that GAO may provide the most complete information to Congress. The GAO report to Congress will discuss the usefulness of (1) the various requirements in helping to ensure EEO in your department/agency's workplace and achieving affirmative employment and workforce diversity objectives and (2) guidance and feedback central leadership agencies provide in helping your department/agency carry out the requirements for EEO, affirmative employment, and workforce diversity.

The GAO report will present information from this questionnaire in summary form. The final report will not identify the responses of individuals by name or department/agency.

When answering the questionnaire, please feel free to consult with other appropriate officials within your office for information or comments. However, we ask that you consolidate your office's responses so that you only return **one** copy to GAO. The questionnaire should take about 45 minutes to complete.

If possible, please return this questionnaire within 2 weeks of receiving this e-mail. After that time, if you have not been heard from, GAO will attempt to contact you in order to confirm that you have received this questionnaire. If necessary, GAO may also contact you once we receive your response to clarify information.

Instructions

Please complete this questionnaire in MS-Word, save it, and return it as an attachment via e-mail to Leadership_Survey@gao.gov. If you wish to complete the questionnaire by phone, please call one of the numbers listed below. If you prefer to print the survey out and fax it back, you can fax the survey to (202) 512-2502.

If you have any questions about the **contents** of this questionnaire, please contact

Anthony Lofaro

Phone: (202) 512-8383

e-mail: lofaroa@gao.gov

If you encounter any **technical** difficulties, please contact

Monica Wolford

Phone: (202) 512-2625

e-mail: wolfordm@gao.gov

Thomas Beall

Phone: (202) 512-3278

e-mail: beallt@gao.gov

- Please use your mouse to navigate by clicking on the field, button or check box you wish to answer.
- To select a check box or button, simply click or double click on the center of the box.
- To change or deselect a check box response, simply click on the check box and the 'X' will disappear.
- To change a button response, simply click on the button next to your preferred answer.
- To answer a question that requires that you write a comment, click on the answer box [____] and begin typing. Please do not use double quotation marks in your answer.

Appendix III
Excerpts from EEO Leadership Survey
Questionnaire and Summary Results

- Do not “unlock” this document because this will erase your answers. If you wish to include comments about a particular question, include it, with the question number, in the final question at the end of each section.

Thank you in advance for your cooperation.

Glossary of Policies, Programs, and Activities

DVAAP - Disabled Veterans Affirmative Action Program (requires each department/agency to have a program for the recruitment, advancement, and employment of disabled veterans, and to submit an annual report on the program to OPM).

Employing Individuals with Disabilities, EO 13163 - Executive Order 13163: Increasing the Opportunity for Individuals with Disabilities to be Employed in the Federal Government.

Providing Reasonable Accommodation, EO 13164 - Executive Order 13164: Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation.

Hispanic Employment Initiative, EO 13171 - Executive Order 13171: Hispanic Employment in the Federal Government (requires departments/agencies to have an ongoing program for recruitment and career development of Hispanics in Federal employment, and requires OPM to monitor department/agency programs and provide guidance).

FEORP - Federal Equal Opportunity Recruitment Program (requires departments/agencies to have a continuing program for the recruitment of minorities and women to eliminate underrepresentation and to file annual reports with OPM regarding their efforts).

HCAAF - Human Capital Accountability and Assessment Framework (standards used by OPM to evaluate department/agency human capital performance).

MD 713 - EEOC Management Directive 713: Affirmative Action for Hiring, Placement, and Advancement of Individuals with Handicaps (prepared pursuant to EEOC's authority under Section 501 of the Rehabilitation Act of 1973; mandated adoption of affirmative employment plans for persons with disabilities, and annual reporting of progress to EEOC; replaced by MD 715).

MD 714 - EEOC Management Directive 714: Hiring, Placement, and Advancement of Minorities and Women (prepared pursuant to EEOC's authority under Section 717 of Title VII of the Civil Rights Act of 1964; mandated adoption of affirmative employment plans for African Americans, Hispanics, Asian/Pacific Islanders, Native Americans, and women, and annual reporting of progress to EEOC; replaced by MD 715).

MD 715 - EEOC Management Directive 715 (supercedes Management Directives 713 and 714 and provides policy guidance and standards for establishing and maintaining effective affirmative programs of EEO under Section 717 of Title VII of the Civil Rights Act and effective affirmative action programs under Section 501 of the Rehabilitation Act; issued in October 2003).

Appendix III
Excerpts from EEO Leadership Survey
Questionnaire and Summary Results

No FEAR - Notification and Federal Employee Antidiscrimination and Retaliation Act (requires agencies to report and analyze discrimination complaint data, be accountable for costs of judgments and settlements in discrimination cases, and train managers in skills necessary to manage a diverse workforce).

OSC 2302(c) certification program - Office of Special Counsel's 2302(c) Certification Program (empowers OSC to certify that agencies have taken the actions necessary to ensure that their employees are informed of their rights and available remedies pertaining to prohibited personnel practices under Title V of the U.S. Code, especially for retaliation for whistleblowing).

PMA - President's Management Agenda (a strategy for improving the management and performance of the federal government); contains five governmentwide goals, including strategic management of human capital; the human capital goal contains among its standards for success one relating to agencies' addressing under-representation and implementing programs to sustain diversity.

Appendix III
Excerpts from EEO Leadership Survey
Questionnaire and Summary Results

Q1. Whom should we contact if we have follow-up questions?

1a. Name:

1b. Department/Agency:

1c. Phone:

1d. E-mail:

1e. Office: *[Check only one answer]*

48.1 Human Resources

51.9 EEO or Civil Rights

0.0 Other, please specify:

Organization of EEO, Affirmative Employment, and Workforce Diversity Responsibilities

For the purpose of this questionnaire please use the following definitions:

Equal Employment Opportunity (EEO) is the policy embodied in law that requires employment actions be free from prohibited discrimination, including discrimination on the basis of race, religion, gender, national origin, age, disability, and retaliation for filing discrimination claims or other protected activity.

Affirmative Employment is a program designed to identify and eliminate discriminatory practices and policies and to ensure EEO. In the federal sector, affirmative employment includes actions by federal departments/agencies to identify and eliminate barriers to EEO in accordance with the policies of the EEOC and the OPM.

Workforce Diversity indicates the extent to which people in a workforce are similar and different from each other, including race, ethnicity, disability, and gender. Workforce diversity may also take into account other factors, such as background, education, work roles, and personality.

Leadership Agency Assistance

Office of Personnel Management

Q11. For which of the following, if any, is your office the primary point of contact with OPM? *[Check all that apply]*

46.9 Employing Individuals with Disabilities, EO 13163

49.4 FEORP

51.9 DVAAP

48.1 Hispanic Employment Initiative, EO 13171

37.0 PMA standards on under-representation and workforce diversity

34.6 HCAAF

Q12. What has been the extent, if any, of your office's interaction (i.e., receiving or seeking guidance or feedback) with OPM over the last 2 years on EEO, affirmative employment, or workforce diversity? *[Check only one answer]*

1.2 Very extensive interaction

7.4 Extensive interaction

18.5 Moderate interaction

28.4 Some interaction

42.0 Little or no interaction *[Go to question 21]*

2.5 Don't know *[Go to question 21]*

**Appendix III
Excerpts from EEO Leadership Survey
Questionnaire and Summary Results**

Q13. Overall, during the last 2 years, how useful has guidance concerning EEO, affirmative employment, or workforce diversity from each of the following OPM sources been for your office? *[Check one box for each row]*

Guidance Sources	None received	Very useful	Useful	Somewhat useful	Not at all useful	Don't know
13a OPM personnel	8.9	17.8	24.4	42.2	6.7	0.0
13b Written materials	8.9	11.1	31.1	37.8	4.4	6.7
13c Training	22.7	6.8	11.4	29.6	18.2	11.4
13d Other, please specify:	42.9	14.3	0.0	14.3	0.0	28.6

13e. Overall during the last 2 years, how useful has guidance on EEO, affirmative employment, or workforce diversity from OPM **Web resources** been? *[Check only one answer]*

- 6.8 Not used
- 15.9 Very useful
- 31.8 Useful
- 29.6 Somewhat useful
- 11.4 Not at all useful
- 4.6 Don't know

Q14. How useful was OPM's guidance for the following? *[Check one box for each row]*

Guidance from OPM on	None received	Very useful	Useful	Somewhat useful	Not at all useful	Not applicable
14a Employing Individuals with Disabilities, EO 13163	20.5	9.1	38.6	22.7	4.6	4.6
14b FEORP	15.9	6.8	31.8	27.3	4.6	13.6
14c DVAAP	18.2	11.4	31.8	27.3	4.6	6.8
14d Hispanic Employment Initiative, EO 13171	20.5	15.9	36.4	22.7	0.0	4.6
14e PMA standards on under-representation and workforce diversity	14.0	11.6	23.3	32.6	2.3	16.3
14f HCAAF	16.7	9.5	31.0	16.7	0.0	26.2

**Appendix III
Excerpts from EEO Leadership Survey
Questionnaire and Summary Results**

Q15. How useful was OPM's feedback on your department/agency's performance or feedback on the **contents** of reports or documents submitted to OPM for the following? *[Check one box for each row]*

	Feedback from OPM on	None received	Very useful	Useful	Somewhat useful	Not at all useful	Not applicable
15a	FEORP	42.2	4.4	13.3	8.9	8.9	22.2
15b	DVAAP	42.2	4.4	17.8	6.7	8.9	20.0
15c	Hispanic Employment Initiative, EO 13171	43.2	6.8	11.4	13.6	9.1	15.6
15d	PMA standards on under-representation and workforce diversity	24.4	13.3	20.0	11.1	2.2	28.9
15e	HCAAF	24.4	13.3	17.8	6.7	0.0	37.8

Q16. During the past 2 years, has OPM given technical assistance to staff in your office on aligning your department/agency's affirmative employment, diversity, or human capital goals and measures with OPM's governmentwide cross-cutting affirmative employment, diversity, and human capital goals and measures (such as those in OPM's strategic plan)?

42.2 Yes

44.4 No

11.1 Don't know

2.2 Not familiar with OPM's governmentwide cross-cutting goals and measures

Q17. Over the last 2 years, to what extent, if any, has OPM helped your office ensure EEO in the workplace and achieve affirmative employment or workforce diversity objectives? *[Check only one answer]*

0.0 Very great extent

2.2 Great extent

13.3 Moderate extent

33.3 Some extent

46.7 Little or no extent

4.4 Don't know

Appendix III
Excerpts from EEO Leadership Survey
Questionnaire and Summary Results

Q18. Do you believe OPM **should be doing more** to help your department/agency ensure EEO in the workplace and achieve affirmative employment or workforce diversity objectives? *[Check only one answer]*

64.4 Yes

26.7 No *[Go to question 19]*

8.9 Don't know *[Go to question 19]*

Q18a. Please briefly describe what types of additional assistance from OPM would be most helpful to ensure EEO in the workplace and achieve affirmative employment or workforce diversity objectives.

Q20. If you have any additional comments on the questions in this section or on OPM's assistance to ensure EEO in the workplace and achieve affirmative employment or workforce diversity objectives, please write them below.

Equal Employment Opportunity Commission

Q21. For which of the following, if any, is (or was) your office the primary point of contact with EEOC? *[Check all that apply]*

- 55.6 Previous requirements under MD 713 for employment of persons with disabilities
- 54.3 Previous requirements under MD 714 for minorities and women
- 58.0 Current requirements under MD 715
- 63.0 Providing Reasonable Accommodation, EO 13164

- 25.9 None of the above

Q22. Excluding complaint processing, what has been the extent of your office's interaction (i.e., receiving or seeking guidance or feedback) with EEOC over the last 2 years on EEO, affirmative employment, or workforce diversity? *[Check only one answer]*

- 17.5 Very extensive interaction
- 15.0 Extensive interaction
- 17.5 Moderate interaction
- 10.0 Some interaction
- 33.8 Little or no interaction *[Go to question 30]*
- 6.3 Don't know *[Go to question 30]*

**Appendix III
Excerpts from EEO Leadership Survey
Questionnaire and Summary Results**

Q23. Excluding complaint processing, overall, during the last 2 years, how useful has guidance on EEO, affirmative employment, or workforce diversity from each of the following EEOC sources been for your office? *[Check one box for each row]*

Guidance Sources	None received	Very useful	Useful	Somewhat useful	Not at all useful	Don't know
23a EEOC personnel	0.0	31.9	46.8	19.1	0.0	2.1
23b Written materials	0.0	37.5	41.7	18.8	0.0	2.1
23c Training	4.2	31.3	33.3	29.2	0.0	2.1
23d Other, please specify:	0.0	100.0	0.0	0.0	0.0	0.0

Q23e. Excluding complaint processing, overall, during the last 2 years, how useful has guidance on EEO, affirmative employment, or workforce diversity from EEOC **Web resources** been? *[Check only one answer]*

- 2.1 Not used
- 39.6 Very useful
- 29.2 Useful
- 25.0 Somewhat useful
- 2.1 Not at all useful
- 2.1 Don't know

Q24. How useful was EEOC's guidance for the following? *[Check one box for each row]*

Guidance from EEOC on	None received	Very useful	Useful	Somewhat useful	Not at all useful	Not applicable
24a Previous requirements under MD 713	10.9	19.6	37.0	23.9	6.5	2.2
24b Previous requirements under MD 714	8.7	19.6	41.3	23.9	4.3	2.2
24c Requirements under MD 715	2.1	38.3	25.5	29.8	4.3	0.0
24d Providing Reasonable Accommodation, EO 13164	6.4	42.6	29.8	12.8	0.0	8.5

**Appendix III
Excerpts from EEO Leadership Survey
Questionnaire and Summary Results**

Q25. How useful was EEOC's feedback on your department/agency's performance or feedback on the **contents** of reports or documents submitted to EEOC for the following? *[Check one box for each row]*

	Feedback from EEOC on	None received	Very useful	Useful	Somewhat useful	Not at all useful	Not applicable
25a	Previous requirements under MD 713	8.5	19.1	25.5	27.7	12.8	6.4
25b	Previous requirements under MD 714	10.6	19.1	29.8	23.4	10.6	6.4
25c	Requirements under MD 715	17.0	17.0	8.5	12.8	2.1	42.6
25d	Provision of Reasonable Accommodation, EO 13164	8.5	34.0	25.5	25.5	0.0	6.4

Q26. During the past 2 years, has EEOC given technical assistance to staff in your office on aligning your department/agency's affirmative employment or workforce diversity goals and measures with EEOC's governmentwide cross-cutting affirmative employment or workforce diversity goals and measures (such as those in EEOC's strategic plan)? *[Check only one answer]*

- 31.3 Yes
- 58.3 No
- 2.1 Don't know
- 8.3 Not familiar with EEOC's governmentwide cross-cutting goals and measures

Q27. Excluding complaint processing, over the last 2 years, to what extent, if any, has EEOC helped your office ensure EEO in the workplace and achieve affirmative employment or workforce diversity objectives? *[Check only one answer]*

- 10.4 Very great extent
- 6.3 Great extent
- 25.0 Moderate extent
- 25.0 Some extent
- 31.3 Little or no extent
- 2.1 Don't know

Appendix III
Excerpts from EEO Leadership Survey
Questionnaire and Summary Results

Q28. Do you believe EEOC should be doing more to help your department/agency ensure EEO in the workplace and achieve affirmative employment or workforce diversity objectives? *[Check only one answer]*

77.1 Yes

20.8 No *[Go to question 29]*

2.1 Don't know *[Go to question 29]*

Q28a. Please briefly describe what types of additional assistance from EEOC would be most helpful to ensure EEO in the workplace and achieve affirmative employment or workforce diversity objectives.

Q29. If you have any additional comments on the questions in this section or on EEOC's assistance to ensure EEO in the workplace and achieve affirmative employment or workforce diversity objectives, please write them below.

**Appendix III
Excerpts from EEO Leadership Survey
Questionnaire and Summary Results**

The Impact of Policies and Requirements on EEO, Affirmative Employment, and Workforce Diversity

Q47. To what extent does each of the following contribute to ensuring EEO in your department/agency's workplace and achieving affirmative employment or workforce diversity objectives at your department/agency? *[Check one box for each row]*

Requirements/Activities	Very great extent	Great extent	Moderate extent	Some extent	Little or no extent	Don't know
47a FEORP	3.8	11.3	25.0	30.0	27.5	2.5
47b DVAAP	3.8	10.0	25.0	33.8	20.0	7.5
47c Hispanic Employment Initiative, EO 13171	2.5	15.2	26.6	43.0	6.3	6.3
47d HCAAF performance standards	5.1	10.1	24.1	21.5	10.1	29.1
47e PMA standards on under-representation and workforce diversity	3.8	20.0	22.5	22.5	7.5	23.8
47f OSC 2302(c) certification program	2.6	5.2	11.7	22.1	23.4	35.1
47g No FEAR Act	3.8	6.3	31.6	22.8	24.1	11.4
47h Employing Individuals with Disabilities, EO 13163	5.0	13.8	33.8	32.5	10.0	5.0
47i Providing Reasonable Accommodation, EO 13164	8.8	31.3	33.8	22.5	1.3	2.5
47j Requirements under MD 715	12.7	12.7	26.6	19.0	8.9	20.3

Q47. To what extent did each of the following contribute to ensuring EEO in your department/agency's workplace and achieving affirmative employment or workforce diversity objectives at your department/agency? *[Check one box for each row]*

Requirements/Activities	Very great extent	Great extent	Moderate extent	Some extent	Little or no extent	Don't know
47k Previous requirements under MD 713	3.9	7.9	30.3	34.2	10.5	13.2
47l Previous requirements under MD 714	3.9	7.9	31.6	32.9	10.5	13.2

Appendix III
Excerpts from EEO Leadership Survey
Questionnaire and Summary Results

Q48a. Based on your experience or knowledge, which **two**, if any, of the following that deal with employment of persons with disabilities seem to have very similar or redundant requirements (e.g. developing plans, assessing progress and preparing reports)? *[Check only two boxes]*

(Whole numbers presented instead of percentages.)

- 10 None have very similar or redundant requirements
- 22 DVAAP
- 39 Requirements under MD 715 regarding persons with disabilities
- 36 Employing Individuals with Disabilities, EO 13163
- 5 Providing Reasonable Accommodation, EO 13164
- 0 Other program or policy *(please specify)*
- 17 Don't know

Q48b. Based on your experience or knowledge, which **two**, if any, of the following seem to have very similar or redundant requirements (e.g., developing plans, assessing progress, and preparing reports)? *[Check only two boxes]*

(Whole numbers presented instead of percentages.)

- 9 None have very similar or redundant requirements
- 41 FEORP
- 19 Hispanic Employment Initiative, EO 13171
- 5 HCAAF performance standards
- 8 PMA standards on under-representation and workforce diversity
- 30 Requirements under MD 715
- 6 No FEAR Act
- 0 OSC 2302(c) certification program
- 0 Other program or policy *(please specify)*
- 15 Don't know

Appendix III
Excerpts from EEO Leadership Survey
Questionnaire and Summary Results

Q49. If you believe that increased coordination between any **two** central leadership agencies and the requirements and guidance they provide would benefit your department/agency, which **two** agencies would you pick? *[Check only two boxes]*

(Whole numbers presented instead of percentages.)

3 Don't believe there would be benefit from increased coordination *[Go to question 50]*

71 OPM

74 EEOC

0 OSC

3 MSPB

1 FLRA

2 Don't know *[Go to question 50]*

Q49a. Why did you choose these two agencies?

**Appendix III
Excerpts from EEO Leadership Survey
Questionnaire and Summary Results**

Impact of Requirements on Department/Agency Human Capital Policies

Q51. To what extent, if at all, do the following **currently influence** the formulation of your department/agency's human capital policies, practices, and human capital strategic planning? *[Check one box for each row]*

Requirements/Activities	Very great extent	Great extent	Moderate extent	Some extent	Little or no extent	Don't know
51a FEORP	3.7	3.7	23.5	34.6	25.9	8.6
51b DVAAP	2.5	6.3	17.5	36.3	26.3	11.3
51c Hispanic Employment Initiative, EO 13171	4.9	11.1	29.6	37.0	9.9	7.4
51d HCAAF performance standards	7.6	10.1	32.9	13.9	6.3	29.1
51e PMA standards on under-representation and workforce diversity	8.6	24.7	21.0	17.3	9.9	18.5
51f Requirements under MD 715	6.3	21.3	25.0	23.8	6.3	17.5
51g No FEAR Act	7.5	10.0	25.0	21.3	22.5	13.8
51h Employing Individuals with Disabilities, EO 13163	6.2	12.3	29.6	33.3	11.1	7.4
51i Providing Reasonable Accommodation, EO 13164	7.4	16.0	32.1	24.7	9.9	9.9
51j OSC 2302(c) certification program	3.8	3.8	11.5	17.9	21.8	41.0

Appendix III
Excerpts from EEO Leadership Survey
Questionnaire and Summary Results

Q52. If you have any additional comments on the impacts of these federal requirements on

- helping to ensure EEO in the workplace and achieving affirmative employment or workforce diversity objectives and
- influencing your department/agency's formulation of human capital policy and its human capital strategic plan,

Please write them below.

SUMMARY

Q53. If you have any additional comments on any previous question or any other comments about EEO in the workplace and achieving affirmative employment or workforce diversity objectives, please make them below.

Thank you for completing this survey.

Please save this file now and send GAO a return e-mail, with your file as an attachment.

Agencies from Which Respondents Returned the EEO Leadership Survey Questionnaire

Agency for International Development
Broadcasting Board of Governors
Commodity Futures Trading Commission
Corporation for National Service
Court Services and Offender Supervision Agency
Defense Contract Audit Agency
Defense Education Activity
Defense Finance and Accounting Service
Defense Information Service Agency
Defense Inspector General
Defense Logistics Agency
Defense Threat Reduction Agency
Department of Agriculture
Department of the Air Force
Department of the Army
Department of Commerce
Department of Education
Department of Energy
Department of Health and Human Services
Department of Homeland Security
Department of Housing and Urban Development
Department of the Interior
Department of Justice
Department of Labor
Department of the Navy
Department of State
Department of Transportation
Department of the Treasury
Department of Veterans Affairs
Environmental Protection Agency
Equal Employment Opportunity Commission
Federal Communications Commission
Federal Trade Commission
General Services Administration
National Aeronautics and Space Administration
National Archives and Records Administration
National Credit Union Administration
National Labor Relations Board
National Science Foundation
Nuclear Regulatory Commission
Office of the Secretary of Defense
Office of Personnel Management

Appendix IV
Agencies from Which Respondents Returned
the EEO Leadership Survey Questionnaire

Securities and Exchange Commission
Small Business Administration
Social Security Administration

Comments from the Equal Employment Opportunity Commission

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, D.C. 20507

May 16, 2006

The Honorable David M. Walker
Comptroller General of the United States
United States Government Accountability Office
Washington, D.C. 20548

Dear Mr. Walker:

Thank you for the opportunity to review the report entitled *EQUAL EMPLOYMENT OPPORTUNITY, Improved Coordination Needed between EEOC and OPM in Leading Federal Workplace EEO*. GAO-06-214.

First, we wish to make clear that it is EEOC's view that the multiple areas of information collection which GAO has described as redundant in the GAO report are not in fact unnecessary. Several federal agencies have information collection requirements which overlap but serve different purposes.

By analogy, EEOC and the Office of Federal Contract Compliance Programs serve different legislative mandates but often collect similar information. Also, the Wage and Hour Division of the United States Department of Labor collects payroll information that EEOC seeks in Equal Pay Act cases.

Likewise, OPM's FEORP looks only at recruiting activities and outcomes as well as human capital practices used to recruit and develop the federal workforce. In contrast, reports submitted pursuant to EEOC's Management Directive 715 look at wide-ranging employment activities to ensure that equal employment opportunity is being embraced and implemented by all federal agencies.

In conclusion, let me assure you that the Commission will continue to work closely with the Office of Personnel Management to eliminate reporting inefficiencies while adhering to our respective statutory constraints. Attached to this letter are several more detailed observations we have regarding this report.

Again, thank you for the opportunity to review this report.

Sincerely,

Handwritten signature of Cari M. Dominguez in cursive script.

Cari M. Dominguez
Chair

Attachment

See comment 1.

See comment 2.

OFO Comments on the Draft GAO Leadership Report

Use of Survey Results and Overall Thrust of Report is Misleading

The GAO draft report at several points suggests that various agency officials perceive the requirements of OPM's FEORP program and EEOC's MD-715 as "very similar" or "redundant." The use of the word redundancy in both the survey responses and in the draft implies or creates the impression that certain EEOC and OPM programs coverage and/or reporting requirements are congruent, or similar in most or all respects. However, the FEORP and MD-715 programs are dissimilar in a great number of respects, and the scope of the information analyzed by MD-715 is much broader than FEORP. A short discussion of each program demonstrates this point:

FEORP is limited to recruitment, in the broader sense of hiring, training and career development, by federal agencies. However, OPM by its own admission does not collect applicant flow information about the race, national origin and sex of recruits for federal jobs. Instead agencies comply with FEORP by submitting snapshot workforce information annually to OPM on the workforce by race, national origin and gender of their employees. Agencies also provide anecdotal information on Workforce Planning, Recruitment and Outreach, Mentoring and Career Development Opportunities. Moreover, the 2005 OPM Annual Report to Congress on FEORP actually gives no information on the race, national origin or sex of applicants for federal jobs, or of the impact of agencies' efforts to enhance the diversity of federal recruits. Instead, the Annual FEORP report only provides a snapshot of the race, national origin and sex of individuals *already employed* in the federal workforce, whether recently hired or with 30 years service. The report implies that if the federal workforce is diverse, then federal agency recruitment efforts must be working properly. The FEORP annual report also analyzes employment participation for underrepresentation. Some anecdotal information about agency initiatives in the area of Workforce Planning, Recruitment and Outreach, Mentoring and Career Development Opportunities is reported by individual agencies, but no statistical analysis of those individual agency recruitment efforts, or of agency recruitment efforts government-wide, is provided by OPM in the Annual Report. Finally, OPM, according to survey respondents, does not provide feedback to agencies on their FEORP reports. (Figure 8, page 29)

Contrast that with the much broader scope of EEOC's MD-715 which requires that agencies report by race, national origin, sex and disability of employees and applicants affected by numerous federal agency employment practices from outreach and recruitment (requiring that agencies collect and report applicant flow information) to hiring, participation rates across the general schedule, and in major occupations, training, non-competitive promotions, merit promotions for major occupations, participation in career development and training, awards and separations. Moreover, and unlike OPM's FEORP program, EEOC's practice is to require agencies to do in-depth barrier analysis to identify and eliminate barriers to the employment opportunities, using snapshot information from the agency workforce, underrepresentation analyses and several other sources of information. After agencies submit their MD-715 reports, EEOC provides them feedback, in the form of extensive technical assistance, both in person and in writing.

Now on p. 25.

**Appendix V
Comments from the Equal Employment
Opportunity Commission**

See comment 3.
Now on p. 12.

GAO “did not evaluate the degree of similarity and redundancy among these requirements” (p.15). Because GAO did not conduct a careful comparison of the degree of redundancy of any of the programs mentioned in the draft report, the analysis is insufficient.

Statutory Requirements Limit Options to Streamline Reporting Requirements

Although the survey conducted by GAO reports that several agencies officials expressed views that there is redundancy in some programs (FEORP, CSRA and MD-715, Title VII), (Rehabilitation Act and Executive Order 13163), neither OPM nor EEOC is free to eliminate any redundancy by ignoring the requirements of statutes enacted by Congress or Executive Orders promulgated by the President which assign responsibility over a given program to an individual agency. In other words EEOC clearly cannot simply “fold” OPM’s FEORP requirements into its MD-715 program without going against the plain meaning of the Civil Service Reform Act which assigns responsibility of reporting under the FEORP to OPM. See 5 U.S.C. 7201(e) (requiring OPM to prepare and transmit a report to each House of Congress on FEORP not later than January 31 of each year).

Likewise, EEOC cannot simply absorb OPM’s responsibilities under E.O. 13163 into the MD-715 Rehabilitation Act reporting requirements without ignoring the plain requirements of the Executive Order. See 3 C.F.R. 13163 (d) (requiring that each Federal agency shall prepare a plan to increase the opportunities for individuals with disabilities to be employed in the agency).

See comment 4.

If GAO is suggesting that EEOC and OPM should consolidate allegedly redundant reporting requirements of EEO programs into a single agency, the Commission believes that these solutions should be initiated by Congress and/or the President. This being said, EEOC does not disagree with GAO that the Commission and OPM can further strengthen their collaborative efforts. There is always room for improvement.

General Comments

Now on p. 4.
See comment 5.

GAO’s draft fails to note (p. 6) that its survey was conducted between October 2004 and December 2004 prior to agency submission of annual reports under MD-715 in January 2005 or EEOC’s issuance of feedback letters. Thus, GAO’s comments regarding feedback were likely based on feedback under the now obsolete Management Directives 713 and 714.

See comment 6.

The GAO draft mischaracterizes EEOC’s positions or responses on some issues. For example, GAO reports that EEOC changed the nine occupational categories because the PATCOB categories were outdated and too imprecise to allow the level of analysis desired. However, EEOC expanded to the nine categories not only because this change provided a better refinement and alignment of the data to be evaluated, but also because the nine categories are based on the occupational categories EEOC uses for conducting similar analyses in the private sector. The Commission strives for consistency and uniformity in the enforcement of its EEO responsibilities across sectors.

**Appendix V
Comments from the Equal Employment
Opportunity Commission**

See comment 7.

Also GAO mistakenly notes that EEOC officials said that it had “not offered official guidance to agencies concerning applicant-flow data collection.” In fact, MD-715 requires the collection of applicant flow data. EEOC formed an interagency working group in 2004 to assist in the development of an applicant flow collection form. EEOC sought to accomplish two objectives: to assist in framing the questions on the form that ask for applicant information using the revised race categories and methods approved by OMB, and to ensure that other proper language and guidance was used in creating the forms.

In 2004, several agencies informed EEOC that they would not collect applicant flow data unless and until OPM developed new race reporting codes that could be used by the agencies to report the data in agency personnel and OPM databases. OPM revised the race categories in the CPDF database in August 2005, with required use by January 1, 2006.

Several of GAO’s concerns require further information and/or discussion:

See comment 8.

- The draft report noted “policy inconsistencies and disagreements’ that EEOC and OPM should address and resolve, but failed to specifically identify them;
- An explanation as to how EEOC’s more narrowly defined nine occupational categories could be “too broad for meaningful analysis because they combine too many occupations within one category,” but the six broader categories they replaced are not;
- Specific identification of the inaccuracies and omissions in the “crosswalk“ developed to classify federal occupations into one of the nine categories;
- The basis for the statement that the collection of applicant flow data would be “costly, ineffective and a reporting burden” (p. 23); and
- Support for the statement that collecting applicant data could involve significant legal risks and that such collection could be construed as “pressuring agencies to engage in preferential treatment in order to achieve ‘results’ in terms of workforce composition, as suggested by recent discrimination cases.” It should be noted that federal agencies are bound by the Uniform Guidelines on Employee Selection Procedures (UGESP), which require employers to request race and ethnic data from applicants and analyze applicant flow data. UGESP is a joint federal rule issued by EEOC, DOL, DOJ, and OPM.

Now on p. 18.

See comment 9.

A large part of EEOC’s mission involves proactive prevention of discrimination. In addition to the work that the report describes on page 9, we have an extensive outreach and technical assistance program within the federal sector. We provide this service to all federal agencies, including many who were not participants in the survey that forms the foundation for this report.

Now on p. 7.

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Opportunity Commission

See comment 10.

Please note that we:

- Conduct quarterly EEO Director's meetings which cover a variety of topics, as well as feedback sessions where EEO Directors can share with EEOC issues and suggestions for other training sessions.
- Provide regular opportunities for discussions on topics such as Model EEO Programs.
- Completed 109 Technical Assistance visits to agencies in FY 05; to date, we have completed 75 in-person Technical Assistance visits this fiscal year.
- Conducted 486 in-person training sessions in FY 04 and 05, reaching more than 21,000 federal employees.
- Received and reviewed 120 reasonable accommodation procedures from agencies and provided individualized written feedback on each set of procedures,¹ as well as additional written feedback on 84 procedures that were subsequently resubmitted.
- Recently published *Practical Advice for Drafting and Implementing Reasonable Accommodation Procedures* which summarizes best practices and common problems identified through our review of reasonable accommodation procedures.
- Updated our website to provide direct links to relevant OPM reports. It now links to information on OPM's annual Federal Equal Opportunity Recruitment Program (FEORP) report, as well as OPM's Executive Order 13171 report (Hispanic Employment Program Statistical Reports) at: <http://www.eeoc.gov/abouteeoc/coordination/whatothersdo.html>.

See comment 11.
Now on p. 3.

Lastly, GAO uses workforce data on FY 2004 when FY 2005 data are now available.
(p. 3).

¹ As of March 31, 2006, we have provided written feedback in response to 119 of the 120 submissions. Work on the remaining feedback letter is currently in progress.

The following are GAO's comments on EEOC's letter dated May 16, 2006.

GAO Comments

1. EEOC expresses the view that the multiple areas of information collection, which we have described as redundant, are in fact necessary, and points out that several federal agencies have information collection requirements that overlap but serve different purposes. EEOC offers as an example that it and the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) serve different legislative mandates but often collect similar information. Our research shows that EEOC and OFCCP jointly developed a form (EEO-1) to meet the needs of both agencies. Further, parties make a single submission to the joint committee, made up of EEOC and Department of Labor staff. We believe that EEOC's collaboration with OFCCP is a positive example of collaboration that EEOC and OPM could emulate in seeking opportunities for streamlining and consolidating information gathering from federal agencies.
2. We recognize the differences in EEOC's and OPM's authorized responsibilities. However, this does not obviate our point that similar information to meet both requirements could be collected through a single common instrument, from which EEOC and OPM could extract the information needed for their separate reports. EEOC and OPM should look for ways to minimize the impact of these differences on agencies.
3. This draft report and an earlier report on the EEO framework present similarities and differences in responsibilities of EEOC and OPM and in the requirements they place on agencies. In this report, we present the informed views of EEO and human capital officials surveyed for the report who deal with various requirements daily. In presenting these views, it was beyond the scope of our review to independently analyze the validity of the responses. We believe that it is more appropriate for EEOC and OPM to explore opportunities to streamline and consolidate similar and redundant requirements and, in doing so, to seek the views of agency EEO and human capital managers who are responsible for carrying out the requirements.
4. The statutes and executive orders place responsibility for EEO-related programs on EEOC and OPM, as noted. However, the responsibility relates to administering the programs and reporting results, not in

collecting data. We believe that there is no statutory impediment in title VII or in the CSRA that would prevent EEOC and OPM from devising and distributing a common data collection instrument, the information from which would be subsequently used by the two agencies in separately analyzing the data and reporting under FEORP and Management Directive (MD) 715. Should EEOC and OPM conclude that certain coordination or streamlining efforts might not be authorized under current statutes, executive orders, or regulations, they could modify regulations, request that the President revise relevant executive orders, or request that Congress amend relevant statutes to bring about greater efficiency in how EEOC, OPM, and federal agencies meet the requirements of the EEO framework. We clarified this in the report.

5. Figure 7, which shows survey respondents' perceptions of the usefulness of feedback from EEOC on agency performance or contents of reports or documents submitted under MD-713 and MD-714, contains a note that these requirements were operational during the early part of the survey period. Together, the requirements under MD-713 and MD-714, including submitting annual reports, had much in common with the requirements under MD-715. In addition, EEOC issued feedback letters to agencies on reports submitted under MD-713 and MD-714. Because the first reports under MD-715 were not due until after the survey period, it was not possible to ask survey recipients for their views on feedback from EEOC on these reports. Though MD-713 and MD-714 have been superseded, respondents' views on the usefulness of EEOC feedback are not invalid.
6. EEOC's statement about the professional, administrative, clerical, other white-collar and blue-collar (PATCOB) categories was taken from its guidance "Frequently Asked Questions About Management Directive-715," wherein EEOC said "The EEOC determined that the PATCOB categories are outdated, overly broad and too imprecise to allow the level of analysis desired." In that same guidance, EEOC also said it adopted the same nine occupational categories for use in analyzing the federal workforce to conform with occupational categories on the EEO-1 report used by private employees in reporting information to EEOC in order to provide more useful information and facilitate comparisons between the federal and private sectors. We have modified the report to reflect this.
7. We agree that MD-715 requires that agencies gather and analyze data on applicants' race, national origin, gender, and disabilities and provides a

form for reporting the data gathered. However, in its instructions, EEOC did not provide guidance to agencies on how they should collect such data from applicants, which can only be collected voluntarily, or provide a form that agencies could use to request information from applicants. At the time of our review, no written guidance had been issued in this regard. As we state in our report, EEOC provided verbal guidance when requested by individual agencies.

8. This phrase “policy inconsistencies and disagreements” appears in the summary of the recommendations in the Results in Brief section of the report. The inconsistencies and disagreements are discussed in the report. These include inconsistencies between EEOC and OPM in how federal occupations are categorized for analytical purposes and disagreement on the need and authority to collect race and national origin data from applicants for employment.
9. EEOC commented that further information is needed with regard to our discussion about the occupational categories and applicant flow data. This discussion is intended to illustrate the existence of policy disagreements and differences between EEOC and OPM. The comments to which EEOC refer were made to us by OPM, and were explicitly attributed to OPM in our report. That these differences exist further illustrates the lack of coordination and collaboration between EEOC and OPM, and they are among the issues we recommend that the two agencies resolve.

We clarified the report to include a reference to the *Uniform Guidelines on Employee Selection Procedures*.

10. EEOC’s discussion of the technical assistance it provides does not directly address the findings in our report that, as of the time of our survey in the fall of 2004, some EEO and human capital managers did not consider EEO guidance to be useful, and a substantial number did not consider EEOC feedback to be useful.

EEOC’s *Strategic Plan for Fiscal Year 2004-2009* states that as a means of assessing its performance, the agency will survey federal agency leadership to assess how EEOC’s evaluations enable agencies to improve their EEO programs. This survey, when it is done, will be one means of providing EEOC with more current and comprehensive information on agency views concerning the effectiveness of its guidance and feedback.

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11. The fiscal year 2004 data were used to describe the proportion of the federal workforce employed at the agencies at the time of our survey.

Comments from the Office of Personnel Management

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



OFFICE OF THE DIRECTOR

UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, DC 20415-1000

April 21, 2006

Mr. George H. Stalcup
Director, Strategic Issues
United States Government Accountability Office
Washington, DC 20548

Dear Mr. Stalcup:

Thank you for the opportunity to review and comment on *Equal Employment Opportunity: Improved Coordination Needed between EEOC and OPM in Leading Federal Workforce EEO* (GAO-06-214).

The Office of Personnel Management appreciates the interest in seeking ways to make the Federal government more effective in its efforts to develop a workforce that is drawn from all aspects of this diverse Nation. We agree that there is room for improvement in light of the recognized differences in responsibility and focus between OPM and the Equal Employment Opportunity Commission. We have attached our general and specific comments with this letter.

Please contact Robert Batson to coordinate OPM's further involvement with this matter at 202-606-1000 or via email Robert.Batson@opm.gov.

Sincerely,



Linda M. Springer
Director

cc: Ms. Belva Martin

Appendix VI
Comments from the Office of Personnel
Management

OPM's Comments and Suggestions for
Government Accountability Office (GAO)
Draft Report Entitled:
Equal Employment Opportunity: Improved Coordination Needed between
EEOC and OPM in Leading Federal Workplace EEO

SUMMARY

OPM appreciates the opportunity to review and comment upon this draft report. The report accurately notes that OPM and EEOC operate under different authorities and have different focuses with regard to EEO and merit principles. Some of these differences are appropriately reflected in the policy differences between the two agencies. Nevertheless, the bulk of the report seems to ignore these differences and suggests the two agencies should coordinate even where the regulatory and statutory authority for such coordination is questionable. OPM does agree with, and will reinstate, the practice of consulting with EEOC as it prepares the annual FEORP reports. With respect to other matters, OPM believes the more appropriate approach is for OPM and the EEOC to continue to coordinate on an as-needed basis. From OPM's perspective, this has resulted in effective and cooperative interactions with the EEOC. Moreover, this approach recognizes the differences between the agencies while still supporting coordinated activities where appropriate.

GENERAL COMMENTS

- In general, the report seems to be premised on the view that OPM has the authority to go beyond the grant it received from Congress, to request additional private information from individuals, modify statutory reporting requirements in order to share protected processes and information, and merge audit processes with the EEOC. This view seems to assume that any areas of overlap are simply dysfunctional and could not possibly have been intended, either by Congress, with respect to overlapping statutory obligations, or the Chief Executive, with respect to delegations through Executive orders and the like. OPM, however, is not free to make such assumptions and modify obligations unilaterally.
- The report notes that OPM and EEOC have different focuses, but nevertheless makes recommendations that the two agencies merge into a collective approach, and further suggests – to Congress – that it require the two agencies to adopt these recommendations. Compare page 10 (agencies' focuses) with page 8 (force coordination). It seems to OPM that a formal requirement of coordination simply adds a layer of complexity to a scheme that GAO complains already is duplicative and overly complex.
- On the other hand, the report does not acknowledge that OPM's responsibilities related to EEO-related matters are only one part of its Governmentwide responsibilities. We do not suggest that these issues are not important, but the failure to recognize the substantive differences in EEOC's and OPM's statutory and policy-making roles seems to overlook the fact that at least some of the differences between the agencies (and even the areas of overlap) are necessary, appropriate, and intended by those who created these mandates.

See comment 1.

See comment 2.

Now on pp. 6 and 5.

See comment 3.

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See comment 4.

- The discussion of duplication of efforts continues to assume that the MD-715 is comparable to a statute, regulation, or Executive Order, which is incorrect, and that all of these sources of authority can readily be coordinated. In addition, MD-715 was issued several years after E.O. 13171 and E.O. 13163 and many years after the FEORP statute. OPM is not free to abandon its obligations under these authorities simply because EEOC, working under different authorities, modifies its own requests. Further, some steps have already begun in the direction of coordination through EEOC's discussions with OPM as to ways in which OPM's EHRI program can serve to lessen some of the new reporting requirements agencies face under MD-715.

See comment 5.

- We remain concerned that continued use of the phrase "affirmative employment" throughout the report leads to confusion and misunderstanding. This term and "workforce diversity" have established historical (and plain language) connotations that will not easily be dispelled. Although GAO notes that it has developed its own definitions for the purposes of this report, we question why it is better to strain to find an appropriate meaning for a term that has outlived its usefulness (and has questionable continued legal vitality) than simply to use a more appropriate term. In any event, GAO's unique definitions do not appear until page 12, even though the terms themselves appear on page 1 and throughout the report. As a consequence, the reader could gain the inaccurate perception that OPM's objectives are more extensive than allowed by law and that "workforce diversity" is narrower than intended by OPM policy.

Now on pp. 1 and 9.

See comment 6.

SPECIFIC COMMENTS

Now on p. 1.

See comment 7.

- Page 1, Penultimate line -- "(3) affirmative employment and minority recruitment programs are required to help bring about a diverse workforce" This sentence presents a misleading and problematic description of operative law. While it true that agencies are required to ensure equal employment opportunity, and to include outreach to minorities as part of a comprehensive recruitment program, statutes and regulations need to be read in harmony with current case law, which requires that agencies avoid coercive requirements or recruitment programs focused exclusively on particular groups.

Now on p. 3.

See comment 8.

- Page 3, 1st full paragraph, 1st sentence – MD-715 is not an affirmative employment program, as that term has been historically used (nor is it called an affirmative employment program by the EEOC), and the previous MDs are obsolete, so it is not clear what report is being discussed. In light of the fact that the EEOC's earlier MDs became the subject of litigation (still pending) in the Federal district court, GAO's continued use of the term "affirmative employment" in conjunction with the new directive, MD-715, is particularly unfortunate. It would be more accurate to refer to the MD-715 report as an "annual report" as it is described later.

Now on p. 3.

See comment 9.

Now on p.16.

- Page 4 – Not clear what value the anecdotal recollections serve in this report because you acknowledge that independent evaluations have not taken place. Some of the statements seem to reflect the lack of knowledge of the reporter rather than a meaningful discussion of the relevant issues. For example, on page 20, figure 3, the suggestion that MD-715

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Now on p. 4.
See comment 10.

Now on p. 5.
See comment 11.

Now on p. 7.
See comment 12.

Now on p. 8.
See comment 13.

Now on p. 8.
See comment 14.

and FEORP should be combined does not consider the different authorities on which each is based or the different focus of the reports. Moreover, all of the statistical reporting for FEORP is completed by OPM, not the agencies, while the opposite is true for MD-715. Thus, the reporting burdens on agencies are very different. OPM suggests that GAO reconsider the relevance of the anecdotes from agencies.

- Page 5, lines 10 and 14, refers to "E.O. 13171 on Hispanic underrepresentation." This is not an accurate characterization of the full content of the Executive order, and in light of current misperceptions about "under-representation" and whether it, in fact, can even be established, scientifically, to exist, it would be preferable to refer to the Executive order by its actual title. The correct title is "E.O. 13171 Hispanic Employment in the Federal Government."
- Page 7, 6th line from the top – Sentence states "In addition, OPM and EEOC officials conducting on-site reviews of EEO-related matters at agencies do not coordinate with each other." This is an inaccurate comparison because OPM does not conduct on-site compliance with EEOC's reporting obligations. OPM reviews agencies' progress on diversity issues, but does not review EEOC specific issues.
- Page 10, first full paragraph, final sentence -- states that "a key focus for OPM is to assist agencies in creating diverse candidate pools for federal positions and increasing representation of women, minorities, and persons with disabilities in executive and management positions and leadership feeder ranks." The reference to "increasing representation" should be removed because it suggests a focus on outcome that is constitutionally prohibited. Instead, OPM focuses on assisting agencies with their recruitment efforts and improving access to opportunities for employment and career advancement for all groups, not specific statistical outcomes. We suggest GAO revise this sentence to say "a key focus for OPM is to assist agencies in creating diverse candidate pools, including women, minorities, persons with disabilities, and veterans that can be used in making appointment to the Federal service in executive and management positions and leadership feeder ranks."
- Page 11, Table 1, Row 4 – The No FEAR Act included responsibility for OPM to conduct a comprehensive study, which will be done, in part through the use of the annual reports that agencies submit to Congress and other entities. OPM's role is not really oversight. OPM suggests that GAO revise the heading to simply say "Responsibility" rather than "Oversight Responsibility," then footnote the "X" to indicate that OPM's role is to implement regulations and ultimately report on best practices. The table also needs to make clear that EEOC's oversight, to the extent it exists, is limited to Title III of the Act.
- Page 11, Table 1, Row 7, the description of E.O. 13171 is a bit inaccurate. OPM requires agencies to have a plan for recruitment and career development of minorities and women, including Hispanics. The Annual Hispanic Employment Report (issued in compliance with EO 13171) provides effective human capital practices for creating a diverse

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workforce drawn from all segments of society, as opposed to any exclusive program for recruitment of Hispanics.

See comment 15.

Now on p. 8.

Now on p. 10.

Now on p. 11.

See comment 16.

Now on p. 12.

See comment 9.

Now on p. 12.

See comment 17.

Now on p. 13.

See comment 18.

Now on p. 16.

See comment 9.

Now on p. 18.

See comment 19.

- Page 11, Table 1, Row 8 – There is nothing in the President’s Management Agenda (see <http://www.whitehouse.gov/omb/budget/fy2002/mgmt.pdf>) that requires agencies to “[r]educe underrepresentation” or “sustain workforce diversity” as indicated in this chart. And we don’t believe any of the guidance OPM supplies through its related Strategic Management of Human Capital page does that either. The Human Capital Standards stress maintaining an environment characterized by inclusiveness of individual differences and responsive to the needs of diverse groups of employees.
- Page 13, note 10: See comments concerning PMA above.
- Page 14, Table 2 – The summary combines EEO, affirmative employment and workforce diversity, but the survey questions treated these as alternatives – EEO, affirmative employment OR workforce diversity. It is not clear whether this difference is just a typographical error or a substantive change in analysis. If the latter, such a change in analysis seems likely to affect the outcome and undercut the value of the comparisons the table seeks to make. Also, the combination of “some, little or no extent” seems broad and encompasses potentially meaningful distinctions.
- Page 15, Selected Comments box – The perception of the PMA reported in these comments seems to represent some confusion about the manner in which it operates with respect to diversity.
- Page 16, ¶ 1 -- GAO adjudged that two government programs were “very similar or redundant” if they shared “common features such as developing plans, assessing progress, and preparing reports.” It is difficult to imagine a government program that does not require the development of plans, assessment of progress and preparation of reports. In addition, GAO ignores that the statistical reporting requirements under FEORP are now fulfilled by OPM itself, using the CPDF.
- Page 17, ¶ 1 – The discussion is a bit misleading to the extent that it suggests that analysis performed with respect to one reporting requirement has to be re-done from scratch in order to fulfill a second reporting requirement. Surely agencies find ways to consolidate these efforts.
- Page 20 Figure 3. Second quote refers to overlap by OPM and EEO in the area of “affirmative action.” Affirmative action is a remedial measure now considered to be appropriate only in very limited and particular contexts; it is not a “program” that either agency carries out. This is another example of the questionable value of including these anecdotes in the report.
- Page 22 – It is simply incorrect to state that EEOC “required agencies to report race and ethnicity data in conformance with the minimum categories in OMB standards.” The minimum requirement was that employees have the opportunity to report *both* race and

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Now on p. 20.
See comment 20.

Now on p. 20.
See comment 21.

Now on p. 20.
See comment 22.

Now on p. 22.
See comment 9.

Now on p. 25.
See comment 9.

Now on p. 28.
See comment 23.

Now on p. 28.
See comment 24.

ethnicity. The EEOC's form does not allow for both choices. Moreover, the repeated suggestion (in this report and other reports) that OPM was simply "slow" to make changes to the CPDF is neither justified, nor fair. As we have previously informed GAO, OPM attempted to work with EEOC in a coordinated fashion on this subject, and EEOC was to take the lead. After OPM determined the limitations with the EEOC created categories, that did not comply with OMB standards, however, OPM had to develop a new structure that was consistent with what OMB required.

- Page 24, Figure 4 – At least some of these comments seem outdated because the survey took place before OPM had completed its revisions to the race and ethnicity categories, but if GAO wishes to report on this concern, it seems only fair to acknowledge that it has been addressed to some degree.
- Page 24, ¶1, 2nd and 3rd line, "...EEOC and OPM could do more ... and achieve workforce diversity objectives by providing clearer guidance . . ." The use of the word "objectives" suggests impermissible goals and quotas, so this word should be deleted.
- Page 25, ¶1 Line 5 and 12 -- The word "objectives" appear again and should be deleted for the same reasons as noted above.
- Page 25, Figure 5 -- This is another example of the questionable value of anecdotes in this report. Here the statement is -- "It would be helpful to get more examples from OPM about how other agencies are doing, as well as more information about federal human resources contractor." It is unclear what information the speaker is seeking or how it is relevant to the purposes of this report.
- Page 29, Selected Comments – We request removal of the quote regarding a "senior OPM official" supposedly endorsing an agency Hispanic Employment Plan. It is not clear what the context was or whether this is an accurate characterization of what was actually said. The 4th quote, suggesting a cabinet department got away with failing to comply with its statutory obligation under FEORP, is another example of questionable anecdotes. It may be an isolated incident, the person reporting the comment seems unaware of the possibility that OPM could assess the failure to comply in a future audit, and, in any event, we reported that, in the past two years, OPM has contacted agencies that do not submit their FEORP reports to remind them of their responsibilities under 5 CFR 720.
- Page 33, ¶ 1 – It would be useful to summarize the NPR's proposed actions to clarify which of those suggestions would be within OPM's and EEOC's existing authorities and which would require legislative changes.
- Page 33, ¶2 Line 4 -- "accomplishing equal opportunity and affirmative employment goals. Use of the word "goals" here is problematic because it could be read to mean actions that are constitutionally prohibited. OPM suggests deleting this word.

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Now on p. 29.
See comment 25.

Now on p. 30.

Now on p. 31.
See comment 26.

Now on p. 31.
See comment 27.

Now on p. 54.
See comment 28.

Now on p. 62.
See comment 29.

- Page 34, ¶ 1 – OPM ceased using the OPM handbook in or about 2003 and it is no longer available. In addition, OPM’s oversight process does not evaluate an agency’s EEO program or compliance with an EEOC-approved plan.
- Page 35, 1st full paragraph -- OPM recognizes that the FEORP statute contemplated that OPM would consider EEOC guidance in formulating its program and that the EEOC guidance calls for OPM to consult with EEOC in issuing its annual report to Congress. The program office responsible for FEORP will resume consulting with the EEOC as it prepares the annual reports in the future.
- Page 36, run-over paragraph – GAO seems to have misunderstood OPM’s comment regarding links to pages other than the EEOC’s home page. OPM’s comment was not focused on the substantive information but rather on the technical issue of changing URLs. If OPM links to the existing URLs, for example, for “References and Research,” and the EEOC changes the location of this information on its site, the URL will (likely) change and OPM’s link will be bad. This causes frustration for users. By connecting to the EEOC home page, which has a detailed index, the user can always get to the correct URL.
- Page 36, 5th line from the bottom – Sentence states “EEOC officials also suggest that EEOC and OPM conduct joint oversight visits to agencies.” OPM believes that its oversight responsibilities are very different from EEOC’s responsibilities so joint visits will not be more efficient or effective. In addition, conversations between OPM and the agency undergoing an audit are treated as private, deliberative discussions, so inserting a third-party entity could undercut the relevant protections accorded to such conversations.
- Page 61, Q.14 -- GAO Highlights page, ¶ 2 states, "For example, about 79 percent said that guidance from EEOC personnel on EEO issues was useful or very useful; 42 percent said this from OPM." The response to Q.14, however, suggests that almost 60% considered guidance from OPM on EO 13163, FEORP, DVAAP, and EO 13171 "useful" or "somewhat useful". If you look at the results, 5% of the respondents stated that OPM guidance was "not at all useful" and another 7% selected "not applicable". That means the vast majority of respondents think OPM guidance on these EEO areas is useful. The way the report is written "42 percent said this from OPM" (guidance) is misleading and should be corrected throughout the report.
- Page 69, Qs48a and 48b – It is unclear where the redundancy is perceived based on the way the data is summarized here. The questions ask for comparison but no actual comparison is reflected here. It is important for the reader to be able to see which comparisons are at issue here in order to more accurately evaluate the concerns. There also seems to be a problem with “double counting” because the question allows each respondent to fill in two answers for each of these questions it inflates the count of responses except where the response is negative, i.e. “none” or “don’t know” in which case only one choice is made. This creates a mathematical fallacy. The results are published to the tenth of a point presumably as percentages, but a summation of the results exceeds 100%. A summation even exceeds the number of respondents so it is

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difficult to understand how such a question could ever be expected to produce meaningful data. For such small numbers here, only 83 respondents, whole number responses should be used. The percentage relation further conceals the obfuscation.

The following are GAO's comments on OPM's letter dated April 21, 2006.

GAO Comments

1. We are not recommending that OPM go beyond its statutory authority and do not assume areas of overlap to be dysfunctional and unintended. Our recommendations are intended to help EEOC and OPM develop means to cooperate and collaborate in gathering information from agencies to identify opportunities to reduce the administrative requirements on agencies while satisfying existing EEO framework requirements.
2. We neither recommend that EEOC and OPM merge into a collective approach nor recommend that Congress require EEOC and OPM to adopt the recommendations we make in this report. We recommended that Congress require EEOC and OPM to report annually on actions taken or planned to increase coordination and communications with each other, streamline like requirements and resolve inconsistencies where appropriate, and improve guidance and feedback to agencies.
3. We acknowledge in our report that there are differences in EEOC's and OPM's responsibilities. In the draft provided to OPM for its comment, we state that OPM's mission is to build a high-quality and diverse federal workforce and that under title 5 of the U.S. Code, OPM is responsible for executing, administering, and enforcing civil service laws and regulations in the executive branch, **including** the merit system principles that require fair and equitable treatment and equal opportunity and prohibit discrimination in all aspects of federal employment. The differences in EEOC's and OPM's responsibilities, however, should not preclude the two agencies from exploring, and taking advantage of, opportunities for coordination and cooperation in areas of common interest in the oversight of EEO in federal agencies.
4. In our discussion of duplication of efforts, we were mindful of the legal distinctions between the various components of the EEO framework. See comment 3.
5. OPM expressed concern over use of the phrase "affirmative employment," stating that the phrase may be misunderstood as relating to past EEO programs that have come under criticism and are the subject of ongoing litigation involving allegations of improper preferential treatment. We are aware of case law that has addressed federal EEO policies or practices and the issue of improper preferential

treatment, as well as the ongoing litigation involving allegations of preferential treatment related to affirmative employment plans which date back to superseded management directives issued by EEOC. However, under the federal antidiscrimination statutes, the federal sector remains obligated to go beyond merely addressing complaints of alleged discrimination—to take positive (affirmative) steps to ensure EEO. It is this federal sector obligation to which we refer when we use the phrase “affirmative employment.” Further, OPM expresses concern about our reference to “workforce diversity.” We do not believe our use of the term “workforce diversity” is unique or inconsistent with OPM’s broad policies in the area. Rather, as our definition clearly provides, workforce diversity is a very broad concept and is not limited to recognizing the differences protected from discrimination by statute.

6. We have added a footnote to page 1 referring readers to the definition later in the report.
7. We have modified the report in line with OPM’s comment.
8. Please see comment 5 above regarding our use of the term “affirmative employment.” While OPM specifically objects to our characterization of MD-715 as an affirmative employment program, EEOC, in its comments, raised no objections to our use of this phrase as it relates to MD-715, or otherwise.
9. The statements referred to by OPM are the comments of agency EEO and human capital officials who filled out our survey. They are intended to illustrate the survey results. We did not independently evaluate the validity of the statements made in the comments, and they are not presented as facts or as findings.
10. We have made a change in accordance with OPM’s comment.
11. We understand that OPM and EEOC do not carry out identical reviews; however, workforce diversity issues share a common foundation with EEO issues, which in our view creates the opportunity for cooperation and coordination in oversight. It is important that staff performing work in these areas have an awareness of efforts of the other agency so that their individual and collective efforts could be more efficient.
12. We have changed the wording in accordance with OPM’s comment.

13. We have changed table 1 in accordance with OPM's comment.
14. Executive Order No. 13171 mandates that "the head of each executive department and agency shall establish and maintain a program for the recruitment and career development of Hispanics in Federal employment." In the Fifth Annual Report to the President on Hispanic Employment in the Federal Government, dated February 16, 2006, OPM said it asked federal agencies to identify human capital practices they found effective in recruiting Hispanics.
15. We have modified the discussion of the PMA in the report to clarify our source, in accordance with OPM's comments. (We are referring to the scorecard the Office of Management and Budget (OMB) uses to assess agencies' implementation of the PMA, commonly referred to as the "PMA scorecard" that contains the standard of reducing underrepresentation and sustaining workforce diversity.)
16. We have changed the title of table 2 in accordance with OPM's comments. With regard to OPM's point that the combination of "some, little, or no extent" seems broad, our methodology specialists have advised that collapsing "some extent" with "little or no extent" is a common practice. We have clarified this in appendix I.
17. The reference to "common features" was part of the two survey questions on whether any two of the specific requirements listed were in fact similar or redundant, and refers to those requirements.

While it is true that OPM now supplies agencies with Central Personnel Data File (CPDF) workforce data for their FEORP reports, agencies are still obligated to analyze these data to assess their workforces under FEORP requirements and respond to OPM's requests for information.

18. As stated in our report, we were informed by agency EEO and human capital managers that they have to make separate efforts for each reporting requirement and consider this a significant burden. OPM and EEOC, in their roles as leadership agencies, should work together to understand how their collective requirements affect agencies and explore how administrative burdens on agencies could be reduced.
19. We have modified the report to more fully explain EEOC's requirements as they relate to OMB's revised standards for race and ethnicity classification.

20. We have removed the comment which cited the categories which have since been revised.
21. We have modified the report in accordance with OPM's comment.
22. We have modified the report in accordance with OPM's comment.
23. We have added more specific information concerning the NPR's recommendations to the report.
24. We have modified the report to attribute the comment directly to the NPR.
25. We have modified our discussion of the handbook to reflect OPM's comment.
26. We understood OPM's comments about changing URLs, but believe that it is more convenient for Web users to be able to go directly to the relevant EEOC page than to go to a home page and search for needed information. We believe that necessary changes in the links can be done by coordination between OPM and EEOC Web managers.
27. We do not believe that EEOC's and OPM's responsibilities are so different that these agencies could not explore the opportunity to conduct joint oversight reviews, which may not necessarily entail doing all audit work jointly. We also do not believe that such joint efforts would, in and of themselves, compromise the confidentiality of OPM's oversight work. Moreover, joint efforts would involve both EEO and human capital staff at agencies and, in this way, could help foster collaboration between agency EEO and human capital staff.
28. In our report, we counted as responding positively to EEOC or OPM guidance and feedback only those respondents who answered "useful" or "very useful" to the relevant questions. We regarded "somewhat useful" as a response that did not indicate satisfaction with EEOC or OPM guidance and feedback.
29. We have modified our presentation of the results of the question to use whole numbers rather than percentages.

GAO Contact and Staff Acknowledgments

GAO Contact

George H. Stalcup (202) 512-9490 or stalcupg@gao.gov

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