

Outcome Goal 3.2

Foster Equal Opportunity Workplaces

Overview

DOL is committed to fostering workplaces that guarantee equal opportunities and fairness to working Americans. President Bush has said, "I will constantly speak for the values that unite our country: personal responsibility, equal justice, equal opportunity for everybody. These are important common values." DOL pursues the President's commitment through its efforts to encourage recipients of DOL financial assistance and federal contract awards to comply with laws such as the Civil Rights Act and the Americans with Disabilities Act, and by assuring that Federal contractors afford minorities, women, individuals with disabilities, and veterans an equal opportunity to compete for employment and advancement.

The principle underlying the civil rights and equal employment opportunity provisions that the Department administers is that Federal tax dollars may not be used to perpetuate discrimination in the workplace or in the availability of program services. The requirement that Government contractors refrain from discriminating in employment has been an established part of Federal contracting policy since 1941, when President Roosevelt signed Executive Order 8802, and it continues today. The Employment Standards Administration (ESA) has the responsibility of assuring that employers doing business with the Federal Government comply with the equal employment opportunity and affirmative action provisions of their contracts. ESA enforces laws and regulations protecting employees and applicants from discrimination regardless of their gender, race, color, national origin, religion, disability, or veteran status.

Recipients of Federal financial assistance, such as job training and placement service providers under the Workforce Investment Act (WIA), also must refrain from discriminating when providing services or benefits. DOL's Office of the Assistant Secretary for Administration and Management (OASAM) assures compliance with the civil rights laws that apply to recipients of DOL financial assistance. Education and technical assistance to the States play key roles in promoting voluntary compliance with applicable non-discrimination laws.

Serving The Public

ESA's Office of Federal Contract Compliance Programs (OFCCP) administers and enforces two equal employment opportunity laws and an Executive Order that together prohibit Federal contractors from discriminating on the bases of race, color, religion, gender, national origin, disability, and protected veterans' status and require affirmative steps to ensure equal employment opportunity. These laws apply to nearly all Federal contracts, and are an integral part of the Federal procurement process. They are based on the underlying principle that employment opportunities generated by Federal dollars should be available to all Americans on an equitable and fair basis. OASAM's Civil Rights Center ensures that States establish policies, procedures, and systems to guide the practices of those involved in WIA-funded programs to ensure compliance with Federal equal opportunity and nondiscrimination laws and regulations.

Together, these equal opportunity programs serve much of the American workforce, as more than 25 percent of the labor force in America (26 million workers) work for Federal contractors or subcontractors. In addition, a majority of the American workforce qualifies for job training and/or placement services from programs receiving financial assis-

tance from DOL. Protection of civil rights and assurances of quality workplaces is not solely dependent on finding violations, however. Creating and effectively delivering high quality compliance assistance encourages contractors to comply voluntarily with ESA program requirements. ESA's compliance assistance efforts have led to compliance without the need for a compliance review for contractors who seek to comply in good faith. ESA has selected performance indicators that target its resources to the critical mission of the agency. The Civil Rights Center also employs a variety of techniques to achieve voluntary compliance, such as training and development of tools.

Program Costs

FY 2003 program costs of \$118 million supported programs to assure that Federal tax dollars are not used to discriminate in the workplace or in the availability of program services. This was a slight increase over FY 2002. As discussed in the performance goal narrative that follows, Federal contractor compliance increased substantially in FY 2003, indicating better use of resources by ESA's OFCCP (accountable for over 80 percent of net costs for this outcome goal). This progress can be attributed in part to two new methods of doing business:

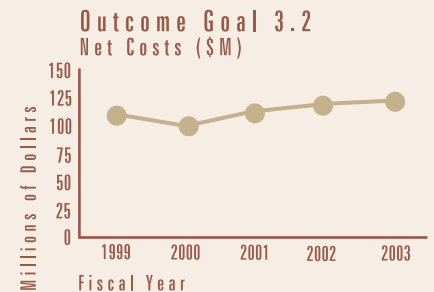
- *Active Case Management.* This model allows the program to review many more establishments than before, but does not require burdensome on-site evaluations. Rather, field managers pursue indicators of systematic personnel problems.
- *Functional Affirmative Action Program Agreements.* These agreements reduce contractors' compliance burden because evaluations are conducted in accordance with functional business practices and not "brick and mortar" establishments.

DOL Challenges for the Future

DOL's procedures and policies for assuring equal opportunity workplaces must be adaptable, so they can reflect and accommodate current and impending economic realities facing Federal contractor industries. The Department must continue to pursue avenues of cooperation, through partnerships with employers, associations, and other Federal agencies to expand equal opportunity for employees and job applicants in those companies that have a contractual relationship with the Federal government.

One way DOL addresses this challenge is through the Secretary of Labor's Opportunity Awards, the Exemplary Voluntary Efforts Awards, and the Exemplary Public Interest Contributions Awards Program, which provide a mechanism for DOL to partner with the private sector in identifying meritorious programs for achieving workplaces that afford equal opportunity. These meritorious programs are then showcased as models for other employers to follow.

DOL must also meet the challenge of continually reviewing program activities and processes for ways to use and manage technology to achieve greater efficiencies, improve service delivery, and lighten burden on constituents. For example, with the increase of new, advanced, and more affordable technology for assisting persons with disabilities, the Department faces an important challenge to ensure that Federal contractors—as well as those programs and agencies that prepare adults and youth for employment—provide the necessary accommodations to support persons with disabilities. As stated earlier, the Department is working steadily toward this goal with employers in several coordinated initiatives.



Foster Equal Opportunity Workplaces

Performance Goal 3.2A (Employment Standards Administration) – FY 2003

Federal contractors achieve equal opportunity workplaces.

Indicators

Reduce the incidence of discrimination among Federal contractors to nine percent.

Increase compliance among Federal contractors in all other respects of equal opportunity workplace standards to 59 percent.

Results:

The goal was achieved. The incidence of discrimination among evaluated contractors fell 7.8 percentage points below the FY 2003 target of nine percent. Evaluated contractors' compliance with all other equal opportunity workplace standards increased to 13.4 percentage points beyond the FY 2003 target to 72.4 percent.

Program Description

ESA's Office of Federal Contract Compliance Programs (OFCCP) administers and enforces three equal employment opportunity (EEO) laws: Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; and 38 U.S.C. 4212 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended. These laws prohibit Federal contractors from discriminating on the bases of race, color, religion, gender, national origin, disability, and protected veterans' status. These laws also require affirmative steps to ensure equal employment opportunity (EEO). These requirements, which are a part of nearly all Federal contracts, are an integral part of the Federal procurement process. They are based on the underlying principle that employment opportunities generated by Federal dollars should be available on an equitable and fair basis for all Americans.

Analysis of Results

ESA has selected performance indicators that target its resources to the critical mission of the agency, because it typically evaluates only four to six percent of the Federal contractor universe each year. In FY 2003, over 6,033 compliance evaluations were completed. The agency reached its performance targets due to its emphasis on encouraging and educating contractors to closely examine their employment practices. In many instances, OFCCP reviews uncover violations that reflect a lack of knowledge on the part of contractors rather than intentional disregard of EEO laws.

Strategies

ESA is focusing its enforcement activities on finding and resolving systemic discrimination. The agency has adopted this strategy to: 1) prioritize enforcement resources by focusing on the worst offenders; 2) encourage employers to engage in self-audits of their employment practices; and 3) achieve maximum leverage of resources to protect the greatest number of workers from discrimination.

While the Department is responsible for enforcing nondiscrimination and equal opportunity requirements, protection of civil rights and assurances of quality workplaces is not solely dependent on finding violations. Creating and effectively delivering high quality compliance assistance encourages contractors to comply voluntarily with requirements. ESA's compliance assistance efforts allow contractors who seek to comply in good faith to become compliant without the need for a compliance review. In FY 2003, OFCCP improved its interactive web applications, increased the number of seminars and workshops delivered, and increased the number of other relevant outreach and public education efforts leading to the prevention of discrimination and helping contractors achieve equal opportunity workplaces.

Management Issues

Data: OFCCP generates summary performance data from an internal management information system (MIS). Input for the MIS data begins at the user level with information generated from two subsystems, the Case Management System and a Financial Agreement Information System. OFCCP is exploring ways to 1) improve the accuracy of data in both systems to report agency results and 2) redesign the entire management information system to improve its ability to establish contractor jurisdiction and to identify contractors that are not in compliance with Federal EEO law.

Management Challenges: The Department continually seeks ways to simplify regulations and reduce the burden on Federal contractors. ESA utilizes its regulatory agenda review to this end. The Department also commissioned the services of Abt Associates, Inc., a research firm, to conduct an empirical study to evaluate the effectiveness of the Equal Opportunity Survey as an instrument for identifying contractors engaged in systemic discrimination. Abt is studying whether ESA can use Equal Opportunity Survey data to target contractor establishments where the likelihood of systemic discrimination is the highest. Abt will use the results of the FY 2003 Equal Opportunity Survey data, including earlier Equal Opportunity Survey data and compliance evaluation data, to develop and validate a model to identify those workplaces in which systemic discrimination exists.

Statutory changes due to the December 2002 enactment of the Jobs for Veterans Act bill will affect OFCCP regulations in 41 CFR Part 60-250. The effect of this legislation will increase the veteran coverage threshold from \$25,000 to \$100,000, thereby reducing the Federal contractor universe for veteran coverage.

External Program Evaluations and Audits: The Program Assessment Rating Tool review of OFCCP indicated that the agency could not measure the impact of its civil rights enforcement on the reduction of employment discrimination. As a result, DOL commissioned the services of an external contractor, Westat, to conduct a comprehensive evaluation and measure the effectiveness of program activities under Executive Order 11246, as amended. Westat will use existing data sources to provide a historical assessment of the impact of OFCCP on the behavior of contractors compared to non-contractors and on contractors subjected to compliance reviews compared to its impact on non-reviewed contractors. A preliminary report will be presented in early FY 2004.

DOL has also secured an independent evaluation, beginning in FY 2004, of its impact on Federal construction contracts. Specifically, the study will evaluate the effectiveness of the construction-related EEO regulations, selection and scheduling procedures for the construction industry, and will examine the agency's compliance review procedures as applied to Federal construction contractors. The external study will also assist the agency in implementing recommendations from an Office of Inspector General report that the agency improve its selection process to: 1) clarify the sources from which construction contractors will be selected for compliance reviews; 2) establish and supply neutral selection criteria; and 3) document the rationale for selection decisions.

Goal Assessment and Future Plans:

OFCCP will examine the results of the program evaluations to improve its selection and investigation techniques to more efficiently identify non-compliant contractors. An improved process should have a significant impact on the outcome of compliance findings and may initially increase findings of discrimination. Performance data from the Westat study will help determine appropriate performance goals and indicators that may require changes to the DOL Strategic Plan.

Promote Equal Opportunity Under the Workforce Investment Act

Performance Goal 3.2B (Office of the Assistant Secretary for Administration and Management) – FY 2003

States that receive financial assistance under the Workforce Investment Act provide benefits and services in a non-discriminatory manner, as evidenced by:

- *Reduction in the number of allegations of disparate impact on the basis of disability; and*
- *Decrease in the number of disparate treatment claims filed on the basis of disability.*

Indicators

FY 2003 technical assistance reviews conducted of a representative sample of the One-Stop Centers in the One-Stop systems of New York City and Miami.

The nature and number of discrimination complaints filed nationwide under Title I of the Workforce Investment Act, Wagner-Peyser Act, Unemployment Insurance, and against DOL-operated Job Corps Centers based on a longitudinal study conducted in FY 2003. The longitudinal study will span FY 2002 through FY 2004.

Specialized Alternative Dispute Resolution (ADR) training for the State of New York's mediators and Equal Opportunity representatives conducted in FY 2003.

Results

The goal was achieved. Targets for all three indicators were reached:

1. Starting in FY 2002, the Civil Rights Center developed a Section 188 Disability Checklist that served as the review guide for One-Stop Center technical assistance reviews in New York and Miami conducted during FY 2003. In New York, all three (100 percent) One-Stop Career Centers were reviewed. In Miami, 13 of the 23 (57 percent) One-Stop Career Centers were reviewed. The reviews in both cities identified areas of non-compliance and the existence of barriers limiting service to persons with disabilities.
2. Discrimination complaint logs were submitted by all WIA, State Workforce Agencies, and Job Corps recipients, which enabled the Civil Rights Center to establish a baseline of complaints filed at State-levels and Job Corps Centers. A substantial number of States and Job Corps Centers were not compliant because they submitted complaint logs that under- or over-reported the number of complaints filed. Other States or Job Corps Centers were not compliant due to incomplete logs that did not include the bases/protected grounds.
3. The Civil Rights Center provided ADR training in three separate sessions (Albany, Buffalo, and New York City) to all 112 New York State designated mediators. The mediators' training familiarized them with the equal opportunity requirements under WIA to better equip them to carryout their responsibilities in mediating complaints of discrimination in the WIA One-Stop Career system. The ADR training was a compliance assistance effort designed specifically to benefit New York State.

Program Description

The equal opportunity and nondiscrimination provisions of the Workforce Investment Act (WIA) provide that no person be discriminated against on the grounds of race, age, sex,

disability, religion, national origin, color, political affiliation or belief and, for beneficiaries only, citizenship or participation in any WIA Title-I financially assisted program or activity. To enforce Federal laws and regulations, the Civil Rights Center focuses on ensuring that States which are recipients of Federal financial assistance under WIA, establish policies, procedures, and systems to guide the practices of those involved in the administration, management, and operation of the WIA.

Analysis of Results

The disability training and disability technical assistance reviews of the City of New York and Miami/Dade County have led to WIA delivery systems that are better prepared to serve persons with disabilities than they were before the reviews. The human factors involved in the delivery of WIA programs and services makes impracticable the goal of eliminating discrimination entirely. However, the Civil Rights Center's focus on the underlying foundation or structure of the delivery system provides the best promise that no person will be discriminated against solely because of his or her disability. In its current state, the data collected for measuring the Civil Rights Center's attainment of this goal cannot be extensively analyzed. In subsequent years, however, the discrimination complaint log evaluation will permit an impact analysis of the Center's activity and a judgment of the indicators.

The discrimination complaint log was initiated to determine the number and nature of discrimination complaints filed within the workforce system funded by the Department. This information will have multiple uses. Analysis of the nature of complaints filed will be useful to determine the protected grounds (e.g., age, race, sex, disability, etc.) upon which people believe the system is discriminating against them. The number of complaints, which are reported by financial assistance recipients, is valuable in identifying pockets of potential discrimination. In addition, the complaint log information is helpful in assisting the Civil Rights Center in determining the focus of its compliance assistance efforts. Lastly, the complaint log data will be useful in measuring the influence of the disability training and technical assistance reviews on reducing the number of disability discrimination complaints filed in the city and State targeted. Since the Section 188 Checklist has been distributed nationwide to all recipients, the complaint log data will be useful in measuring its impact in reducing the number of disability discrimination complaints filed nationally.

The ADR training provided to the State of New York's designated mediators for the workforce had a single purpose – to familiarize the mediators with the equal opportunity and nondiscrimination obligations of financial assistance recipients. The training was provided at the request of the New York State Department of Labor. The State mediators gave superb evaluations of the training provided and are effectively serving as mediators for the State of New York's workforce system.

Strategies

The Civil Rights Center prefers to use a variety of compliance assistance techniques to achieve compliance by recipients. Through the provision of training, development of tools, and issuance of guidance, financial assistance recipients are given support to achieve voluntary compliance.

The Civil Rights Center must allocate its resources in a manner that realizes maximum impact for each investment. To this end, the Civil Rights Center targets the four largest labor market areas – New York, Miami, Houston, and Los Angeles. Because most of America’s workers are located in urban areas, the logic of targeting the four largest labor markets is to get a representative picture of the degree of compliance with equal opportunity and nondiscrimination laws and regulations.

Technology will receive even greater emphasis in meeting the compliance assistance needs of the Department’s financial assistance recipients. The Civil Rights Center’s website will be the repository for “best practices,” self-study on-line courses for frontline workers, and guidance for workforce decision-makers.

Management Issues

Management Challenges: The reauthorization of WIA is pending, and its effect on civil rights impact is uncertain. It is anticipated that some change will be made to the nondiscrimination provisions of the law or in the regulations.

External Program Evaluations and Audits: Federal oversight agencies, such as the U.S. Department of Justice and U.S. Commission on Civil Rights are expected to continue their evaluation of Federal agencies in enforcing Federal civil rights laws and regulations.

Goal Assessment and Future Plans

Based on demonstrated positive results, the Civil Rights Center plans to continue its programs as they are presently constituted.