

## Outcome Goal 3.2 – Foster Equal Opportunity Workplaces

The Department is committed to fostering workplaces that provide equal opportunities to all working Americans. DOL pursues this commitment through two performance goals addressing equality in the workplace. The Employment Standards Administration's (ESA's) Office of Federal Contract Compliance Programs (OFCCP) protects the employment rights of thousands of American workers by enforcing laws and providing compliance assistance regarding equal employment opportunity in companies that do business with the Federal government. DOL's Veterans' Employment and Training Service (VETS) administers the Uniformed Services Employment and Reemployment Rights Act (USERRA), which protects the employment and reemployment rights of uniformed service members who encounter barriers in civilian employment related to their service. VETS educates employers and service members about rights established by the law and it investigates complaints filed by veterans who believe their rights have been violated.

Goal (Agency) and Statement	Performance Summary	FY 2005 Costs (millions)
<b>05-3.2A (ESA)</b> Federal contractors achieve equal opportunity workplaces.	Goal achieved. Both indicator targets reached.	\$99
<b>05-3.2B (VETS)</b> Reduce employer-employee employment issues originating from service members' military obligations conflicting with their civilian employment.	Goal not achieved. One target reached and two not reached.	16

### Results Summary

As indicated in the table above, DOL achieved one performance goal under Outcome Goal 3.2 and did not achieve the other. In FY 2005, the incidence of discrimination among Federal contractors was well below the target. Likewise, compliance among Federal contractors in all other aspects of equal employment opportunity easily exceeded the target. However, both rates are slightly worse than those observed for FY 2004. OFCCP believes this may reflect improved targeting of non-compliant contractors. VETS fell short of 90 and 120-day case resolution targets as a result of greater case work demand and increased Reserve claimants involved in our nation's war effort. Fortunately, these delays did not prevent VETS from reaching the one year timeliness target.

The Office of Federal Contract Compliance Programs (OFCCP) presents annual awards to recognize workplaces with exceptional equal opportunity environments. The awards give the Department an avenue to develop partnerships with Federal contractors and encourage equal opportunity environments.

The Secretary of Labor's Opportunity Award was given in March 2005 to the Cinergy Corporation of Cincinnati, OH for a proliferation of Internet-based communication tools used in day-to-day business operations. Exemplary Voluntary Efforts (EVE) awards were presented to Entergy Corporation of New Orleans and Ivey Mechanical Company of Kosciusko, MS. Pride Industries, Roseville, CA, was recognized for being the nation's largest private sector employer of individuals with disabilities.

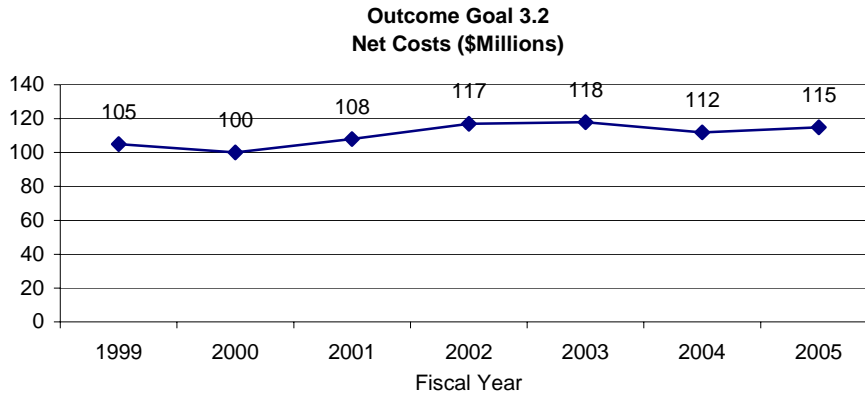
Non-profit Exemplary Public Interest Contributions (EPIC) awards recipients included The Alaska Works Partnership, Inc., which helps rural Alaskans, Alaskan Natives, and women find jobs in the construction trade industry. Other EPIC recipients were Brooklyn, NY's Black Veterans for Social Justice, Inc.'s Homeless Veterans Reintegration Program; The Greater Sacramento Urban League; and Life's Work of Western Pennsylvania, Pittsburgh.

**Photo Credit: DOL ESA**



**Net Cost of Programs**

FY 2005 program costs of \$115 million supported programs to assure that Federal tax dollars are not used to discriminate in the workplace or in the availability of program services. Costs associated with this goal have been virtually constant for several years.



**Future Challenges**

OFCCP’s enforcement strategy continues to focus on systemic discrimination in the workplace. Successful case litigation requires lengthy, intensive studies and analyses of large databases; formal depositions; and investigation of other case-related information. Identification of likely violations is therefore a priority for the contractor compliance program. DOL obtained the assistance of a research firm to evaluate the effectiveness of the Equal Opportunity Survey as an instrument for identifying contractors engaged in systemic discrimination. Several recommendations were made for improved procedures; options are being reviewed. Another study expected to be completed by the end of this calendar year focuses on refining the OFCCP discrimination prediction model. Finally, in order to reduce unnecessary regulatory burdens on compliant contractors, OFCCP proposed and published in a *Notice of Proposed Standards* new guidelines for self-evaluation of compensation practices, which are pending review.

VETS expects further increases in USERRA claims from Guard/Reserve utilization related to the War on Terrorism. In anticipation of increasing workload, beginning in FY 2006 VETS will monitor Guard and Reserve mobilization and demobilization figures from the Department of Defense in a new Progress Index. The Progress Index is a comprehensive set of compliance assistance performance indicators that prioritizes the relative impact of each indicator. The index will be focused primarily on the two key USERRA responsibilities: reemployment and discrimination. Also, to improve USERRA guidance for all stakeholders, VETS is publishing regulations early in FY 2006 to clarify many key aspects of USERRA.

## Foster Equal Opportunity Workplaces

### Performance Goal 05-3.2A (ESA) – FY 2005

*Federal contractors achieve equal opportunity workplaces*

<b>Indicators, Targets and Results</b>	<b>FY 2004 Result</b>	<b>FY 2005 Target</b>	<b>FY 2005 Result</b>	<b>Target Reached*</b>
Incidence of discrimination among Federal contractors	1%	7%	<b>2%</b>	<b>Y</b>
Compliance among Federal contractors in all other aspects of equal opportunity workplace standards	91%	62%	<b>86%</b>	<b>Y</b>
FY 2005 Costs				<b>\$99 Million</b>
*Indicator target reached (Y), substantially reached (S) or not reached (N)				<b>Goal Achieved</b>

#### Program Perspective

ESA's Office of Federal Contract Compliance Programs (OFCCP) administers and enforces three equal employment opportunity laws which prohibit Federal contractors from discriminating on the basis of race, color, religion, gender, national origin, disability, and protected veterans' status. Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; and 38 U.S.C. 4212 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, require Federal contractors take steps to ensure equal employment opportunities.

Based on the principle that employment opportunities generated by Federal dollars should be equally available to all Americans, these legal authorities are an integral part of nearly all Federal contracts, subcontracts, federally assisted construction contracts, and the Federal procurement process. By monitoring and evaluating equal opportunity compliance in Federal contractors' workforces, DOL protects the employment rights of thousands of able American workers who may be otherwise unfairly excluded from the workplace.

OFCCP strategically directs resources toward identifying and removing protected workers' barriers. OFCCP's budgetary resources are allocated to both enforcement and compliance assistance. The indicators of discrimination incidence and compliance among targeted contractors portray the extent to which Federal contractors achieve equal opportunity workplaces, which is OFCCP's performance goal. OFCCP has developed a logic model to draw better connections between its budgetary resources and the achievement of its performance indicators and goal. Further, OFCCP has calculated unit costs for program outputs on a national, regional and individual compliance officer basis.

#### Analysis and Future Plans

DOL typically monitors between four to six percent of the known Federal contractor universe each year and focuses its enforcement activities on finding and resolving systemic discrimination. DOL adopts this strategy to prioritize enforcement resources for the worst offenders; encourage employers to self-audit their employment practices; and achieve maximum leverage of resources. In FY 2005 DOL completed 2730 compliance evaluations. These evaluations focused on large contractors to identify and resolve systemic discrimination violations. While DOL is responsible for enforcing nondiscrimination and equal opportunity requirements, the protection of civil rights is not dependent solely on finding violations. DOL's compliance emphasis and the assistance it provides encourages contractors to examine their own employment practices.

DOL has modified the contractor selection system, incorporating recommendations from a 2003 study on effectiveness. DOL will gather performance results from completed FY 2005 compliance evaluations and use these results to evaluate the efficacy of the study's recommendations. DOL achieved its target of reducing the incidence of discrimination among Federal contractors to 7 percent; however, DOL notes that FY 2005 results are slightly higher than those for FY 2004. DOL believes this increase may be attributed to a modification of the contractor selection system used in FY 2005 that may have better targeted non-compliant contractors. The 86 percent rate for compliance among Federal contractors in all other aspects of Equal Employment Opportunity standards exceeds the FY 2005 target of 62 percent; nonetheless, the five percentage point difference between the FY 2004 result of 91 percent and the FY 2005 result may also be attributed to the modified selection system. DOL exceeded its performance goal during FY 2003-FY 2005 as indicated in the accompanying chart.

In addition, DOL is considering a new “contracts first” initiative for centralizing the agency’s responsibility to verify contractor jurisdiction before a compliance evaluation can be conducted. This initiative will further streamline the contractor selection process and allow more resources to be directed toward compliance. This initiative uses Federal databases with information on awarded Federal contracts as the primary source for determining the universe of Federal contractors subject to the laws enforced by the OFCCP and to potential compliance evaluations. Use of these data will significantly reduce the amount of field staff enforcement hours used to research contract coverage for jurisdiction purposes.

OFCCP’s program-related strategies to ensure that Federal contractors achieve equal employment workplaces are shaped by external factors and trends such as the total number of Federal contractors; company acquisitions and mergers; and turnover in the Federal contractor community and the need to determine contractor jurisdiction efficiently.

### **Management Issues**

OFCCP’s performance data are based on information contained in its case management information system. OFCCP plans systems upgrades by: 1) enhancing automated compliance evaluation and class complaint investigation data collection and information management, including historical contractor database and centralized jurisdiction determinations; 2) developing and delivering standardized, statistical tools for compliance officers and managers; and 3) centralizing nationwide managerial cost accounting data collection and reporting capability. OFCCP’s performance data are based on actual accomplishment reported in its Case Management System (CMS). OFCCP has implemented internal controls to ensure the accuracy of its data. These controls include an on-line manual that provides guidance to field staff on entering case completions data, a requirement that completed case data be certified by field managers, cross-referencing preliminary discrimination case closures to ensure complete accuracy, and verification of case findings.

OFCCP’s enforcement strategy continues to focus on finding and remedying systemic discrimination in the workplace. The methods for litigating cases of systemic discrimination require the Federal government to meet a high burden of proof. The costs are substantial. For example, expert witnesses are necessary to support the litigation of complex systemic discrimination cases. Successful case litigation requires lengthy and intensive studies and analysis of large databases; formal depositions; and investigation of other case-related information.

DOL evaluated the effectiveness of the Equal Opportunity Survey as an instrument for identifying contractors engaged in systemic discrimination (Study 30 in Appendix 2). The study provided OFCCP with some suggestions for data analysis which are now under review. DOL hired the Eastern Research Group (ERG) (Study 31 in Appendix 2) to help develop a web-based information system for collecting information on Federal construction contracts, and a prototype system is being evaluated. Another study that is underway focuses on refining the OFCCP discrimination prediction model; conclusions are expected by December 31, 2005.

DOL continually seeks to simplify regulations and reduce regulatory burden on Federal contractors. The most recent regulation change eliminates the requirement for on-site visits to Federal contractors in compliance checks, giving contractors the option to submit their data to OFCCP for inspection. DOL also proposed and published in a *Notice of Proposed Standards* new guidelines for evaluating systemic compensation discrimination under Executive Order 11246 and new guidelines for self-evaluation of compensation practices. Both are pending approval. The proposal and the public comments are being reviewed by ESA and OFCCP executive staff.

OFCCP was initially assessed through the PART in FY 2002 and was rated Results Not Demonstrated. The PART found that OFCCP could not quantify the impact of its civil rights enforcement efforts. OFCCP implemented the PART recommendations, which included developing the measures for this performance goal: incidence of discrimination and level of compliance. Based on its new measures and its improved performance, OFCCP was reassessed through the PART in FY 2004. Its current rating is Adequate.

## Assist Veterans' Return to Jobs After Military Obligations

### Performance Goal 05-3.2B (VETS) – FY 2005

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

<b>Indicators, Targets and Results</b>	<b>FY 2004 Result</b>	<b>FY 2005 Target</b>	<b>FY 2005 Result</b>	<b>Target Reached*</b>
Percent of USERRA cases resolved within 90 days of filing	84.2%	85%	<b>80.4%</b>	<b>N</b>
Percent of USERRA cases resolved within 120 days of filing	91.9%	92%	<b>88.4%</b>	<b>N</b>
Percent of USERRA cases resolved within one year of filing	99.5%	99%	<b>99.8%</b>	<b>Y</b>
FY 2005 Costs				<b>\$16 Million</b>
*Indicator target reached (Y), substantially reached (S) or not reached (N)				<b>Goal Not Achieved</b>

#### Program Perspective

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

VETS provides compliance assistance to employers and protected individuals, and investigates individuals' complaints alleging their rights have been violated. VETS seeks to reduce both employer violations and the filing of meritless complaints by protected individuals. The FY 2005 USERRA Performance Goal and associated indicators focus on resolving filed claims. Most violations and meritless complaints could be avoided with greater knowledge of the rights and protections established by USERRA. For this reason VETS has an active compliance assistance program directed to employers and members of National Guard and Reserve units to increase knowledge and understanding of USERRA's significant provisions.

The two external factors having the greatest impact on VETS' achievement of USERRA goals are the economy and increases in military active duty periods. Both of these factors cause more service members to face difficulties associated with their civilian employment or reemployment. While the economy remains steady, the U.S. war effort continues to increase Guard and Reserve active duty by significant numbers. This trend will likely increase VETS USERRA activity.

#### Analysis and Future Plans

This goal was not achieved. VETS attributes falling short of the 90 and 120-day targets to its increased emphasis on the highest possible quality in customer service. On occasion, highly effective case work demanded more time than the targeted 90 or 120 days. This was especially the case when working with Reserve claimants involved in our nation's war effort. These Reservists and Guard members were not always readily available to consult with VETS on case-related matters due to their war-related duties, locations, and movements. Ultimately, VETS did demonstrate progress in FY 2005 toward the overall goal by exceeding the one year timeliness target.

Tracking the percentage of cases resolved in a timely manner addresses just one dimension of challenges under USERRA. VETS plans a more specific goal statement and more useful indicators for FY 2006 which will better reflect its USERRA responsibilities. The new goal statement is "Reduce USERRA violations in reemployment, discrimination, and other areas, and reduce meritless complaints by protected individuals, originating from service members' military obligations conflicting with their civilian employment." VETS has developed a comprehensive "USERRA Progress Index" to sharpen how it measures reduction of violations and meritless complaints. The Progress Index will use rigorously documented indicators and targets that measure cases and assistance (non-case-related contacts). These indicators will be consolidated and weighted in a manner that prioritizes the relative impact of each indicator, yielding an indexed measure of demonstrated progress against violations and meritless complaints.

The new Progress Index is focused on the predominant sector of USERRA activity: National Guard and Reserve components. Since FY 1997, claims from the Guard/Reserve comprised 81 percent of all USERRA claims; in FY 2004, 87 percent were Guard/Reserve claims. VETS expects this trend to continue and possibly increase due to Guard/Reserve mobilizations/demobilizations relating to the ongoing War on Terrorism. To account for the increasing demand for USERRA compliance and USERRA assistance, Guard and Reserve mobilization and demobilization figures from the Department of Defense will be used in the Progress Index.

Other entities engaged in USERRA support affect USERRA violations and meritless complaints, and yet are outside the scope of VETS' efforts. These include the Employer Support of the Guard and Reserve (ESGR) and the U.S. Office of Special Counsel (OSC) in its ongoing Federal USERRA demonstration. As such, the Progress Index will not measure the USERRA impact of ESGR, OSC, or any other external entity.



Nebraska Director for Veterans' Employment and Training Service (VETS) participates in the annual Employer Support for Guard and Reserve (ESGR) meeting. Each year, Nebraska VETS and ESGR team together and provide basic USERRA technical assistance, briefings and presentations at military mobilizations and demobilizations. These informative sessions range from entire units to individual service members. This team shares a common mission to work continuously towards improving an already successful approach to assisting service members in Nebraska. This approach was evident during the 2005 annual meeting. A highlight of the meeting was introducing the "Five Star Employer" program. The program invites employers to sign a "Statement of Support" which defines their commitment to supporting

service members while in uniform. The program recognizes the employer's actions with certificates and news releases to the public. The Nebraska program capped off its successful year by adding 16 new Ombudsmen to increase its total to 67 members.

### Management Issues

To improve USERRA guidance for all stakeholders and thereby facilitate progress in all performance indicators, VETS is initiating USERRA regulations for the first time. These new regulations (to be published in the Code of Federal Regulations) will help to clarify many key aspects of USERRA, including: specific USERRA protections; VETS role with respect to interested individuals and organizations; and procedures necessary to implement the Act's protections. As a result of its FY 2005 efforts compiling and analyzing comments received in the Notice of Proposed Rulemaking process, VETS anticipates finalizing its new USERRA regulations early in FY 2006.

A study of 19,000 Guard and Reservists released in October 2004, *Survey of USERRA Issues for Returning Military Members*, found that USERRA provides valuable protections to employees in the civilian workforce who also perform military duties (see Study 32 in Appendix 2). Over 80 percent of National Guard and Reserve members who have completed active duty return to work with their previous employers, and a majority report having no problems with this return. However, some Guard and Reserve members do encounter problems. Based on the findings, VETS changed the way USERRA information is provided to both the employer community and the men and women who are protected by the law.