

The Enforcement of Affirmative Action Compliance in Indiana Under Executive Order 11246

**The Indiana Advisory Committee to the
U.S. Commission on Civil Rights**

September 1996

A report of the Indiana Advisory Committee to the United States Commission on Civil Rights prepared for the information and consideration of the Commission. This report will be considered by the Commission and the Commission will make public its reaction. The findings and recommendations of the report should not be attributed to the Commission but only to the Indiana Advisory Committee.

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I

The United States Commission on Civil Rights

The United States Commission on Civil Rights, first created by the Civil Rights Act of 1957, and reestablished by the United States Commission on Civil Rights Act of 1983, is an independent, bipartisan agency of the Federal Government. By the terms of the 1983 act, as amended by the Civil Rights Commission Amendments Act of 1994, the Commission is charged with the following duties pertaining to discrimination or denials of the equal protection of the laws based on race, color, religion, sex, age, disability, or national origin, or in the administration of justice: investigation of individual discriminatory denials of the right to vote; study and collection of information relating to discrimination or denials of the equal protection of the law; appraisal of the laws and policies of the United States with respect to discrimination or denials of equal protection of the law; maintenance of a national clearinghouse for information respecting discrimination or denials of equal protection of the law; investigation of patterns or practices of fraud or discrimination in the conduct of Federal elections; and preparation and issuance of public service announcements and advertising campaigns to discourage discrimination or denials of equal protection of the law. The Commission is also required to submit reports to the President and the Congress at such times as the Commission, the Congress, or the President shall deem desirable.

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Letter of Transmittal

Indiana Advisory Committee to the
U.S. Commission on Civil Rights

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The Indiana Advisory Committee submits this report, *The Enforcement of Affirmative Action Compliance in Indiana Under Executive Order 11246*, as part of its responsibility to advise the Commission on civil rights issues within the State. The report is an analysis of the operation of the Office of Federal Contract Compliance Programs, U.S. Department of Labor, in its enforcement of affirmative action compliance on Federal contractors. The report was unanimously approved by the Advisory Committee by a 13-0 vote with all members concurring on all parts and on all findings and recommendations.

The Advisory Committee held a factfinding meeting on April 20, 1995, in Indianapolis, and April 27, 1995, in South Bend to obtain information about the level and type of compliance enforcement of affirmative action under Executive Order 11246. Organizations invited to send representatives included the Office of Federal Contract Compliance Programs, U.S. Department of Labor, businesses, law firms, and local community groups.

The Advisory Committee is indebted to staff in the Midwestern Regional Office, U.S. Commission on Civil Rights, for its assistance in organizing the factfinding and preparing this report. The Advisory Committee trusts the Commission will find this report of value in its monitoring of civil rights enforcement at the national level.

Respectfully,



Paul Chase, *Chairperson*
Indiana Advisory Committee

Indiana Advisory Committee to the U.S. Commission on Civil Rights

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Contents

Introduction	1
Background	2
Executive Orders and the Affirmative Action Obligation	2
Affirmative Action Responsibilities of Federal Contractors	4
Federal Government Enforcement of Affirmative Action	6
Studies of the OFCCP and Affirmative Action Enforcement	8
Early Federal Enforcement of Affirmative Action Compliance in Indiana	9
Part 1	
Enforcement of Affirmative Action Compliance in Nonconstruction Industries	11
OFCCP Enforcement Activity	14
The OFCCP and the Community	22
Perspectives from the Business Community	23
Perspectives from Government Agencies and Community Groups	35
Part 2	
Enforcement of Affirmative Action Compliance in the Construction Industry and Apprentice Programs	41
OFCCP Enforcement Activity	41
The Indianapolis Hometown Plan	46
Apprentice Programs	52
Part 3	
Findings and Recommendations	54
Tables	
Table 1. Significant Executive Orders and Affirmative Action	3
Table 2. OFCCP Nationwide Activities for Fiscal Year 1993	7
Table 3. OFCCP Nonconstruction Compliance Reviews by Type, Oct. 1, 1992–Sept. 30, 1994 ...	12
Table 4. Indiana Nonconstruction Federal Contractors and OFCCP Reviews by County	13
Table 5. SIC Titles, Codes, and Proportion of Federal Nonconstruction Contractors and OFCCP Reviews in Indiana	16
Table 6. OFCCP Review Rates and Federal Contractor Rates by SIC Code	17
Table 7. Percentage of Reviewed Contractors Found Deficient by Deficiency and District Office	19
Table 8. Noncompliance Finding Rates of OFCCP Compliance Officers, Indianapolis District Office	20
Table 9. Results Testing Dependence of Finding Affirmative Action Programs in Noncompliance	21
Table 10. Results Testing Dependence of Changes in Minority Employment on Changes in Employment, Employment, and Past Minority Employment	27
Table 11. OFCCP Construction Compliance Reviews by Type, Oct. 1, 1992–Sept. 30, 1994	42
Table 12. Indiana Construction Compliance Reviews by County, Oct. 1, 1992–Sept. 30, 1994 ...	43
Table 13. Minority and Female Trade Employment of Reviewed Construction Contractors	45
Table 14. Deficiencies Cited in Construction Reviews	45
Table 15. Length of OFCCP Construction Reviews	46
Map 1. Indiana State Areas, Counties, and MSAs	44

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Appendices

Appendix A. Presenters at the Factfinding Meetings 60
Appendix B. Response of the OFCCP 61
Appendix C. Indiana Chamber of Commerce Survey 63
Appendix D. 1992 OFCCP Audit of Indianapolis Hometown Plan 68

Introduction

Indiana Advisory Committee Study

The Indiana Advisory Committee studied the enforcement of affirmative action compliance under Executive Order 11246 in Indiana. Specifically, the Advisory Committee attempted to learn about the activity of the Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, in Indiana, and its relation with the community. Two factfinding meetings were held to collect information, the first in Indianapolis, Indiana, on April 20, 1995, and the second in South Bend, Indiana, on April 27, 1995. Additional background information on OFCCP activities was obtained prior and subsequent to the factfinding meetings.

The Advisory Committee heard testimony and received information from representatives of the OFCCP, including the regional director, and the district directors of the Indianapolis district office and the Chicago district office; representatives from the Indiana Chamber of Commerce, who presented survey information on OFCCP compliance reviews; attorneys with extensive experience representing Indiana companies in their dealings with the OFCCP; representatives from two other U.S. Department of Labor agencies, the Bureau of Apprenticeship and Training (BAT) and the Veterans Employment Training Services (VETS); representatives of Indianapolis' Hometown Plan, who presented information on the OFCCP's work

with construction firms; individuals from employment organizations serving minorities, women, and the disabled; and other individuals with specific knowledge of the OFCCP and the impact of its programs.

The report has three sections. Part one details the work of the OFCCP in enforcing affirmative action compliance among nonconstruction firms in Indiana. It includes estimation of the Federal contractor universe in Indiana, selection criteria for choosing firms to review, and an analysis of OFCCP review activity in the State for the last 2 years. Testimony is presented by affected parties as to the efficacy of these efforts.

Part two examines the OFCCP efforts in enforcing affirmative action compliance among construction firms and apprentice programs. A history of the Indianapolis Hometown Plan is offered, and of the relationship between the OFCCP and the Hometown Plan. There is also a section on the relationship between BAT and the OFCCP.

In part three, the Indiana Advisory Committee presents its findings and recommendations. The Committee is structured to be diverse and includes representation from both major political parties. It is independent of any national, State, or local administration or policy group. The findings and recommendations are the unanimous sentiment of the Advisory Committee and are made in a genuine spirit of cooperation and bipartisanship.

Background

1. Executive Orders and the Affirmative Action Obligation

Federal contractors and subcontractors are required to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin.¹ The OFCCP is the Federal agency that enforces this Federal affirmative action obligation. The OFCCP's responsibility and authority can be traced through a series of Executive orders.

The first Executive order addressing the employment practices of Federal contractors was issued by Franklin D. Roosevelt on June 25, 1941. Executive Order 8802 required defense contractors and Federal agencies to pledge nondiscrimination in employment on the basis of race, creed, color, or national origin. The order directed departments and agencies "concerned with vocational and training programs for defense production. . . [to] take special measures appropriate to assure that such programs are administered without discrimination because of race, creed, color, or national origin."²

Executive Order 8802 was followed by Executive Order 9346, issued in 1943. This order required all Federal contractors and subcontractors to go beyond a pledge of nondiscrimination and include in their contracts with the government a provision that obligated them to nondiscrimination in employment practices.³ Both Executive Orders 8802 and 9346 established special com-

mittees within existing offices to oversee compliance with the orders: no agency in the Federal Government, however, was charged with the responsibility for enforcing these Executive orders.

Specifically, Executive Order 8802 established in the Office of Production Management a Committee on Fair Employment Practice mandated "to receive and investigate complaints of discrimination in violations of the order and . . . [to] take appropriate steps to redress grievances which it finds valid."⁴ Executive Order 9346 established a Committee on Fair Employment in the Office for Emergency Management charged with the responsibility to, among other things, take appropriate steps to eliminate such discrimination as was forbidden by the order.

In 1951 President Harry S. Truman issued Executive Order 10308 creating the President's Committee on Government Contract Compliance. The order was designed to "improve the means for obtaining compliance with . . . nondiscrimination provisions" of Executive Orders 8802 and 9346.⁵ Under this order each agency was "primarily responsible for obtaining compliance by any contractor or subcontractor . . . [and authorized to] take appropriate measures to bring about the said compliance."⁶ Still, the Committee on Government Contract Compliance was given advisory powers only and had no enforcement authority.

Two years later President Dwight D. Eisenhower issued Executive Order 10479, which abolished the Committee on Government Contract Compliance and replaced it with the Government Contract Committee.⁷ This Committee was

1 41 C.F.R. § 60-1.1 et seq. (1995).

2 Exec. Order No. 8802, 3 C.F.R. 957 (1938-1943).

3 Exec. Order No. 9346, 3 C.F.R. 1280 (1938-1943).

4 Ibid.

5 Exec. Order No. 10308, 3 C.F.R. 837 (1949-1953).

6 Ibid.

TABLE 1

Significant Executive Orders and Affirmative Action

Order	Year	President	Action
8802	1941	Roosevelt	Required defense contractors to pledge nondiscrimination
9346	1943	Roosevelt	Requires nondiscrimination from defense contractors
10308	1951	Truman	Created president's committee on contract compliance
10479	1953	Eisenhower	Strengthened contract compliance committee authority
10925	1961	Kennedy	Government contractors required to take affirmative action
11114	1963	Kennedy	Extended E. O. 10925 to Federal construction contracts
11246	1965	Johnson	Transferred responsibility for contract compliance to the Department of Labor
11375	1967	Johnson	Extended protection status of order 11246 to women
12086	1978	Carter	Centralized authority for enforcing E.O. 11246 to the Secretary of Labor, i.e. Office of Federal Contract Compliance Programs

Source: Midwestern Regional Office, USCCR.

authorized to recommend to contracting agencies means for the improvement of compliance, and to receive and forward to the appropriate agency complaints of alleged violations of the nondiscrimination provisions. The order also authorized the Committee to establish and maintain relationships with State and local bodies and non-governmental entities to facilitate compliance with the nondiscrimination policy through persuasion and conciliation.⁸

In 1961 President John F. Kennedy issued Executive Order 10925, which, among other things, established the President's Committee on Equal Employment Opportunity.⁹ This Committee was authorized to oversee the equal opportunity and nondiscrimination requirements of Federal con-

tractors. Executive Order 10925 contained the first language mandating government contractors to take "affirmative action to ensure that applicants . . . and employees . . . are treated . . . without regard to their race, creed, color, or national origin."¹⁰ The President followed Order 10925 with Executive Order 11114, which extended coverage of 10925 to Federal construction contracts.¹¹

Executive Order 11246 was signed on September 24, 1965, by President Lyndon B. Johnson.¹² This Executive order mandated an equal employment opportunity (EEO) clause in every Federal Government contract. In the EEO clause, providers of goods and services to the Federal Government agree to a policy of both nondiscrimination

7 Exec. Order No. 10479, 3 C.F.R. 961 (1949-1953).

8 Ibid.

9 Exec. Order No. 10925, 3 C.F.R. 448 (1959-1963 Comp.).

10 Ibid., § 301.

11 Exec. Order No. 11114, 3 C.F.R. 774 (1959-1963 Comp.).

12 Exec. Order No. 11246, 3 C.F.R. 339 (1964-1965 Comp.).

and affirmative action as part of their contractual obligations to the Federal Government. Executive Order 11246 also transferred the duties and functions of the President's Committee on Equal Opportunity to the Department of Labor and other Federal contracting agencies. In January 1966, the Office of Federal Contract Compliance of the Department of Labor was created to administer Executive Order 11246. In 1967 President Johnson amended Executive Order 11246 with Executive Order 11375, which included gender as a protected status.¹³

Executive Order 11246, as amended, is considered the defining authority for the present affirmative action obligation among Federal contractors and subcontractors. Early enforcement, however, was not uniform. From the issuance of the order until the late 1970s, although the Secretary of Labor had oversight responsibility for the implementation of the order, each principal contracting agency in the Federal Government maintained its own contract compliance office and conducted its own compliance review of contractors and subcontractors, notwithstanding the Secretary of Labor's oversight responsibility. Under this practice, for instance, the Department of Defense had its own contract compliance office that monitored the compliance of defense contractors with Executive Order 11246. Other Federal agencies, such as the Department of Agriculture and Department of Transportation, had similar offices.

President Jimmy Carter eliminated this practice in 1978 with the issuance of Executive Order 12086. Under this new mandate, all responsibility and authority for the enforcement of Executive

Order 11246, as amended, was transferred from the various individual contracting agencies and centralized with the OFCCP in the Department of Labor.

2. Affirmative Action Responsibilities of Federal Contractors

Affirmative action under Executive Order 11246 is a deliberate and intentional expanded recruitment search for qualified minorities and females. With the presence of equal employment opportunity laws and more minority and female applicants, more opportunities are available to minorities and females. Under the Executive order, in all areas of contract compliance, employers with Federal contracts are required to do more than refrain from discrimination. Affirmative action is intended to help broaden the employment opportunities of the traditional victims of job discrimination—minorities, women, those of various religious and ethnic groups, individuals with disabilities, and covered veterans.¹⁴

Affirmative action requires, in this context, that positive steps be taken to provide equal employment opportunity. Special affirmative action efforts by Federal contractors in outreach, recruitment, training, and other areas are designed to help members of protected groups compete for jobs and promotions on an equal footing with other applicants and employees. As part of the affirmative action obligation, nonconstruction Federal contractors are required to develop a written affirmative action plan (AAP) if the contractor has a work force of 50 or more employees and a contract exceeding \$50,000.¹⁵ According to

¹³ Exec. Order No. 11375, 3 C.F.R. 684 (1966-1970 Comp.).

¹⁴ 41 C.F.R. § 60-2.10 reads:

"An affirmative action program is a set of specific and results oriented procedures to which a contractor commits itself to apply every good faith effort. The objective of those procedures plus such efforts is equal employment opportunity. Procedures without effort to make them work are meaningless, and effort, undirected by specific and meaningful procedures, is inadequate. An acceptable affirmative action program must include an analysis of areas within which the contractor is deficient in the utilization of minority groups and women, and further, goals and timetables to which the contractor's good faith efforts must be directed to correct the deficiencies and, thus to achieve prompt and full utilization of minorities and women at all levels and in all segments of its work force where deficiencies exist."

See also, U.S. DOL, OFCCP, *Making EEO and Affirmative Action Work* (1993), p. 8.

¹⁵ 41 C.F.R. § 60-1.40(a) (1995).

Federal regulations, an affirmative action program must contain the following:

- (1) a work force analysis, which is a listing of each job title ranked from the lowest paid to the highest paid within each department or other similar organizational unit, including departmental supervision;¹⁶
- (2) job groups, which are collections of jobs similar in content, wage rates, and opportunities;¹⁷
- (3) availability analysis, which is a determination of minorities and women available for employment in a job group;¹⁸
- (4) a utilization analysis, which is an analysis of all job groups at the facility and a determination if minorities or women are currently being underutilized in any one or more of the job groups, underutilization being defined as having fewer minorities or women in a particular job group than would reasonably be expected by their availability;¹⁹ and
- (5) establishment of goals and timetables, which are specific, measurable targets for increasing minority and female employment in job groups where there is underutilization.²⁰

Affirmative action programs must be summarized and updated annually.²¹ In addition to the

above components, Federal regulations require that affirmative action programs also contain:

- (1) the reaffirmation of the contractor's equal employment opportunity policy in all personnel actions,
- (2) formal internal and external dissemination of the contractor's policy,
- (3) establishment of responsibilities for implementation of the contractor's affirmative action programs,
- (4) identification of problem areas by organizational units and job group,
- (5) establishment of timetables for meeting minority/female employment goals,
- (6) development and execution of action-oriented programs designed to eliminate problems and further designed to attain established goals and objectives,
- (7) design and implementation of internal audit and reporting systems to measure effectiveness of the total program,
- (8) compliance of personnel policies and practices with the Sex Discrimination Guidelines,
- (9) active support of local and national community action programs and community service programs, designed to improve the employment opportunities of minorities and women, and

16 41 C.F.R. § 60-2.11.

17 Ibid. Jobs are collected into job groups from the different departments set out in the work force analysis and generally contain similar EEO-1 designations, i.e., officials and managers, professionals, technicians, sales workers, office and clerical workers, skilled craftsmen, semiskilled craftsmen, laborers, and service workers.

18 Ibid. In determining availability, the contractor is required to consider the following factors: (1) the minority population of the labor area surrounding the facility, (2) the size of minority/female unemployment force in the labor area surrounding the facility, (3) the percentage of the minority/female work force as compared with the total work force in the immediate labor area, (4) the general availability of minorities/females having requisite skills in the immediate labor area, (5) the general availability of minorities/females having requisite skills in an area the contractor can reasonably recruit, (6) the availability of promotable and transferable minorities/females within the contractor's organization, (7) the existence of training institutions capable of training persons in the requisite skills, and (8) the degree of training which the contractor is reasonably able to undertake as a means of making all job classes available to minorities.

19 Ibid.

20 41 C.F.R. § 60-2.12. The regulations in this part state that goals in this context are not to be quotas. "Goals may not be rigid and inflexible quotas which must be met, but must be targets reasonably attainable by means of applying every good faith effort to make all aspects of the entire affirmative action program work."

21 41 C.F.R. § 60-2.14 (1995).

(10) consideration of minorities and women not currently in the work force having requisite skills who can be recruited through affirmative action measures.²²

Affirmative action obligations for construction contractors differ from nonconstruction firms and apply to all firms which hold any Federal or federally assisted construction contract in excess of \$10,000. A specific written affirmative action plan is not required. However, goals and timetables for minority and female participation, expressed in percentage terms for the contractor's aggregate work force in each trade on all construction work in the covered area, must be included in all solicitations for offers and bids on Federal and federally assisted construction contracts.²³ Construction contractors are also required to engage in 16 specific affirmative actions designed to increase minority and female employment.²⁴ These include such activities as developing on-the-job training opportunities for minorities and females, reviewing annually the contractor's affirmative action obligations with management and supervisory personnel, directing recruitment activity to minority and female community organizations, ensuring employment practices and policies do not have a discriminatory impact, and reviewing annually supervisors' adherence to the EEO policy.

3. Federal Government Enforcement of Affirmative Action

The OFCCP is the Federal Government's enforcement agency for Executive Order 11246. Along with a national office in Washington, D.C., OFCCP is comprised of 10 regional offices and district and field offices in each region. Federal

contractors in Indiana are under the jurisdiction of Region V, which has its offices in Chicago, Illinois.²⁵ Equal opportunity specialists (EOSs) in the district and field offices are the Federal officials who actually conduct the reviews and investigations of Federal contractors' compliance with applicable equal employment opportunity regulations under the Executive order. Reviews and investigations by the EOSs may include issues of systemic discrimination and/or failure by the Federal contractors to develop or make a good faith effort to implement acceptable affirmative action plans. EOSs also provide technical assistance in developing affirmative action plans where a covered Federal contract is being reviewed for the first time, and prepare recommendations for enforcement action when noncompliance issues between the OFCCP and a Federal contractor cannot be conciliated.²⁶

In these efforts, the OFCCP works with other Labor Department agencies. These include the Office of the Solicitor, which advises on ethical, legal, and enforcement issues; the Women's Bureau, which emphasizes the needs of working women; the Bureau of Apprenticeship and Training, which establishes policies to promote equal opportunities in the recruitment and selection of apprentices; and the Employment and Training Administration, which administers Labor Department job training programs for current work force needs. OFCCP district office personnel may also develop liaisons with local community groups, business organizations, and employment organizations in enforcing compliance with the Executive order.

Currently, two OFCCP district offices have jurisdiction for Indiana. The Chicago district office reviews Federal contractors in the northwest part

22 41 C.F.R. § 60-2.13 (1995).

23 41 C.F.R. § 60-4.2 (1995).

24 41 C.F.R. § 60-4.3 (1995). The specific 16 required affirmative actions are set out in Part 2.

25 In 1995 the OFCCP began a consolidation of regional offices. Under one proposed consolidation, the regional office in Chicago will assume the duties of region VII with jurisdiction over Iowa, Kansas, Missouri, and Nebraska in addition to the current States over which it has jurisdiction, Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

26 U.S. DOL, OFCCP, Equal Opportunity Specialist GS-0360-12 job description.

TABLE 2
OFCCP Nationwide Activities for Fiscal Year 1993

Outputs:	Amounts:
Compliance reviews	4,456
Complaint investigations	979
Compliance assistance	17,300 contractors
Linkages	1,357
LOC/CA monitoring	4,064
Apprenticeship reviews	48
 Outcomes:	 Amounts:
Employees receiving benefits	1.9 million
Financial awards obtained	\$34.5 million
Employees receiving financial awards	16,387
Backpay obtained	\$14.7 million
Backpay recipients	6,110
Contractors in which employment practices were found in violation	3,278

LOC: Letter of commitment

CA: Conciliation agreement

Source: OFCCP, U.S. Department of Labor.

of the State, while the State's other areas are controlled by the Indianapolis district office.²⁷ Because of the large universe of Federal contractors, only a subset of all Federal contractors have their affirmative action program audited by the OFCCP in any one year.

The OFCCP has three types of compliance reviews: (1) supply and service, (2) construction, and (3) corporate management ("glass ceiling"). Supply and service reviews and construction reviews may be initiated by routine selection of area contractors, a pending contract award, or a complaint made against the contractor. Corporate management reviews are a special type of the standard supply and service review with special procedures designed to identify systemic barriers to the career advancement of minorities and women. These reviews typically target corporate management selection, hiring, and promotion

practices and are coordinated by regional office staff.

Federal rules and regulations set forth the administrative and judicial procedures to be followed in the event of an alleged violation. Contractors or subcontractors cited for violating the EEO and affirmative action requirements may have a formal hearing before an administrative law judge. If conciliation is not reached before or after the hearing, sanctions may be imposed. Contractors or subcontractors could lose their government contracts or subcontracts; have payments withheld by the government; or be debarred that is, declared ineligible for any Federal contract work. In some cases the Department of Justice, on behalf of the Department of Labor, may file suit in Federal court against a contractor for violation of the contract requirements.

Table 2 illustrates that at the national level the OFCCP conducted 4,456 compliance reviews in

²⁷ The Indianapolis district office also has responsibility for contractors in southern Illinois, while the Chicago district office also reviews contractors in Northern Illinois.

fiscal year 1993. In fiscal year 1994 the number of compliance reviews decreased to 4,179. In terms of enforcement actions, however, the number of referrals to the Solicitor of the Department of Labor increased in the most recent fiscal year. In fiscal year 1993, the agency made 46 referrals to the Solicitor; in fiscal year 1994, 75 referrals were made. In addition to the above activities, for fiscal year 1993 the OFCCP did 979 complaint investigations and conducted 48 apprenticeship reviews.²⁸

4. Studies of the OFCCP and Affirmative Action Enforcement

The first study of affirmative action enforcement compliance under Executive Order 11246 was by the U.S. Commission on Civil Rights in 1969. The Commission's report recounted the administrative functions of the OFCCP and concluded that non-compliance with the program had no costs for employers, as sanctions, e.g., debarment, were never imposed, and employers who continued to discriminate openly obtained protection from members of Congress. Subsequent to that study, the Commission has published over 20 national and State Advisory Committee reports on affirmative action.²⁹

The Commission did another study in 1987. That study found that during the period 1981-1985, first-time reviews of contractors increased substantially, the numbers of employees covered by compliance reviews increased substantially, and the OFCCP continued to find the same rate of violations in its reviews. It also found that to

compensate for the reduction in staff, the emphasis of the agency review process shifted more to the contractor's affirmative action obligations and less on employment discrimination, reserving those investigations for the EEOC.³⁰

Several studies of the OFCCP's affirmative action program have been done in the past 30 years. A 1972 study of nonconstruction industries in the Chicago area, conducted under a grant from the Department of Labor, examined the behavior of Federal and nonfederal contractors and found:

- (1) the existence of a government contract caused an increase in the black employment of a contractor's work force,
- (2) government contracts did not seem to spur any upward mobility among minorities in these firms,
- (3) compliance reviews caused an additional increase in the percentage of blacks employed at the firms reviewed, and
- (4) the program seemed to have little impact on the employment of other minorities or women.³¹

In 1982 Paul Osterman examined the effectiveness of the OFCCP affirmative action program by measuring differences in quit rates between females working at covered firms and females working at firms not subject to affirmative action. He found the female quit rate lower in covered firms and the female quit rate lower still at firms audited by the government for their compliance with affirmative action rules and regulations.³²

28 U.S. Department of Labor, Employment Standards Administration, OFCCP.

29 Other reports by the U.S. Commission on Civil Rights and its State Advisory Committees include: *Federal Civil Rights Enforcement Effort* (1971); *The Federal Civil Rights Enforcement Effort* (1974); *Affirmative Action in Salt Lake's Criminal Justice Agencies* (1978); *Private Sector Affirmative Action: Omaha* (1979); *Affirmative Action in the 1980s: Dismantling the Process of Discrimination* (1981); *Consultations on the Affirmative Action Statement of the U.S. Commission on Civil Rights* (1981); *Affirmative Action and Equal Employment, Knoxville and Oak Ridge* (1982); *Affirmative Action in Michigan Cities* (1982); *Bringing an Industry into the 80's, Affirmative Action in Seafood Processing* (1983); *Local Affirmative Action Efforts--Missouri* (1983); and *Selected Affirmative Action Topics in Employment and Business Set-Asides* (1985).

30 U.S. Commission on Civil Rights, *Federal Enforcement of Equal Employment Requirements* (July 1987), chap. 4.

31 Gerald Burnam, *The Economics of Discrimination: The Impact of Public Policy*, report prepared under contract to the Assistant Secretary of Labor, U.S. Department of Labor (June 1972).

32 Paul Osterman, "Affirmative Action and Opportunity: A Study of Female Quit Rates," *The Review of Economics and Statistics*, November 1982.

In the 1980s Jonathon Leonard did a series of papers on the OFCCP and the effect of the affirmative action program on the labor market. With access to agency audit data, these studies of affirmative action were of a mature government program with a developed nomenclature and standard operating procedures. Leonard found: (1) evidence of occupational upgrading of minorities in covered firms, (2) a greater increase of minority employment ratios in covered firms as opposed to noncovered firms, (3) higher minority employment ratios in firms that had had a compliance review by the government, and (4) affirmative action goals and timetables, although not considered or enforced as rigid quotas, nevertheless had a positive effect in increasing minority employment. He also found: (5) larger firms are more likely to be audited, and (6) affirmative action appeared to have increased the demand for skilled minority labor more than for unskilled labor.³³

5. Early Enforcement of Affirmative Action Compliance in Indiana

The Federal enforcement structure of affirmative action compliance in Indiana under Executive Order 11246 follows the changes made at the national level. When the order was first promulgated, individual Federal contracting agencies established contract compliance units to enforce compliance. Numerous agencies in the State had active contract compliance units, e.g., the Departments of Agriculture, Commerce, Defense, and Transportation.

Although the compliance units of the Federal Government in the State were scattered throughout numerous departments and agencies, an attempt at uniformity was made in 1970 with the issuance of Technical Memorandum No. 4 by the Secretary of Labor. That memorandum established specific guidelines for all contract compliance agencies in evaluating affirmative action programs. In that memorandum, Order No. 4, the Secretary of Labor mandated the following:

- (1) a work force analysis,
- (2) the establishment of job groups,
- (3) an availability analysis,
- (4) utilization analysis for minorities and females, and
- (5) the establishment of goals and timetables for minorities and females in job groups where there is underutilization.

The largest contract compliance unit in the State operated within the Department of Defense, administratively controlled by the Department of Defense Acquisition and Management Services Administration (DCASMA) at Fort Benjamin Harrison in Indianapolis. In 1970 five compliance officers (equal employment opportunity specialists) worked as an independent team evaluating the compliance of defense contractors with the provisions of the Executive order 11246. This office would form the nucleus of future contract compliance enforcement units in the State.

Theodore R. Hood began working with the contract compliance unit at DCASMA in 1969 and became its first director in 1971. In 1978 by Executive Order 12,086, all contract compliance agencies in the State were consolidated into two OFCCP district offices. Both district offices were located in Indianapolis. The Indianapolis South district office had responsibility for the southern half of the State and southern Illinois. The Indianapolis North district office had responsibility for the northern half of the State with the exception of the far northern counties, which were under control of the Chicago district office.

Hood was made district director of the Indianapolis North office, and the office maintained its physical location at Fort Harrison. In 1981 the two Indiana OFCCP district offices merged and Hood was named district director. He continued to serve as district director of the Indianapolis district office until his retirement in 1988. Hood spoke about the preaffirmative action climate in Indiana and his understanding of the Federal

³³ Jonathon S. Leonard, "The Impact of Affirmative Action on Employment," *Journal of Labor Economics*, October 1984; "Affirmative Action as Earnings Redistribution: The Targeting of Compliance Reviews," *Journal of Labor Economics*, July 1985; "What Promises Are Worth: The Impact of Affirmative Action Goals," *Journal of Human Resources*, July 1985.

affirmative action contract compliance program in the State.

I was born in Indianapolis. I was raised here. I have seen a considerable amount of change with respect to employment, and I would say that the OFCCP has been instrumental in many of the changes.

In Indiana a black person could not drive a trolley. There was only one fire station with three or four black firemen. This is when they had nondiscrimination. There was almost no penetration at all in the work force as far as blacks and women. They had almost no jobs.³⁴

There was a time when we did not have affirmative action, we just had nondiscrimination. That was President Roosevelt's initial action. . . . We tried nondiscrimination for many, many years and nondiscrimination produced no results.³⁵

In some of the major companies in Indiana you would be surprised at the progress that has been made. For example, in some of the major companies in Indiana in the 1970s, we had less than 3 or 4 women in facilities that had 8,000 or 9,000 people. . . . [So] there has been some tremendous progress.

To comment about affirmative action and the dialogue that is going on now, most people do not even know what affirmative action is. I hear about all these unqualified men and women who are getting these jobs. . . . There is no such thing that OFCCP is requiring contractors to hire unqualified people. . . . I am not trying to tell you that there hasn't been some reverse discrimination. With any law that is out there, there is going to be something that happens where the law is not applied correctly. But to hear all these stories you hear, they are blown up.³⁶

34 Theodore R. Hood, testimony before the Indiana Advisory Committee to the U.S. Commission on Civil Rights, factfinding meeting, Apr. 20, 1995, Indianapolis, IN, p. 141.

35 Ibid., pp. 152-53.

36 Ibid., pp. 148-49.

Part 1

Enforcement of Affirmative Action Compliance in Nonconstruction Industries

In a 1995 speech to Federal contractors in the Chicago area, Shirley Wilcher, director of the Office of Federal Contract Compliance Programs (OFCCP), set out the enforcement tone of the Agency.¹ She told employers that the enforcement of Federal guidelines for affirmative action and equal opportunity employment was a national priority because it adds to the competitive strength of the economy. In her opinion, members of minority groups have become disenfranchised from society because they feel opportunities for employment, education, and advancement have been denied them. Through wider affirmative action enforcement, the OFCCP can play a role in eliminating this inefficiency in the employment sector and improve the American work ethic. Wilcher set out three components of the Agency's strategy in enforcing the provisions of Executive Order 11246:

- (1) increased use of sanctions and civil penalties,
- (2) streamlining compliance requirements, and
- (3) more efficient use of Agency resources.

She told the employers, "I believe in enforcement, and I believe in sanctions." She said her perspective on enforcement will mean greater use of sanctions and civil penalties. She also noted that OFCCP will pursue cooperative investigations with other Federal agencies to build cases against chronic offenders.²

The OFCCP director also stated her intent to streamline recordkeeping procedures in order to make compliance and the enforcement of compliance easier. According to Wilcher, the regulations relative to the OFCCP are being revised so that employers can comply with the law more easily and more efficiently. The revisions should be available for public comment before the end of fiscal year 1995.³

She acknowledged that the OFCCP is working with fewer resources than in previous years, and that the administration's priorities for reinventing government might thin its ranks further. To compensate for the loss of resources, she said her enforcement goals will be accomplished through a more focused approach on employers with systemic patterns of discriminatory behavior. She said the OFCCP will also focus on violations by contractors in so-called growth industries, i.e., companies with growing employment.⁴

To learn about the OFCCP's contract compliance enforcement effort in Indiana, three representatives from the OFCCP testified on affirmative action enforcement compliance activities. They were: Halcolm Holliman, OFCCP region V director, Philip M. Stepteau, Indianapolis OFCCP district office director, and Sandra Hueneman, Chicago OFCCP assistant district office director. The three discussed: (1) the authority of the OFCCP; (2) OFCCP staffing, resources, and contractor selection process; (3) OFCCP enforcement activity; and (4) working relationships between

1 Shirley Wilcher, speech delivered before the Region V Industrial Liaison Group, Chicago, IL, Feb. 28, 1995, as reported by the Bureau of National Affairs, Mar. 3, 1995, p. A3.

2 Ibid.

3 Ibid.

4 Ibid.

TABLE 3
OFCCP Nonconstruction Compliance
Reviews by Type, Office
1992-Sept. 30, 1994

Indianapolis		
	Number	Percent
Initial	33	27.5%
Followup	87	72.5%
Chicago		
	Number	Percent
Initial	10	76.9%
Followup	3	23.1%
Total		
	Number	Percent
Initial	43	32.3%
Followup	90	67.7%

Source: Midwestern Regional Office, USCCR, from Region V, OFCCP, U.S. Department of Labor data.

the OFCCP and employers and community groups.

Additionally, the Advisory Committee obtained from the OFCCP and analyzed the records of compliance reviews conducted in Indiana for the 2-year period, October 1, 1992-September 30, 1994. During that time 133 nonconstruction compliance reviews were completed. Thirteen compliance reviews were conducted by the Chicago district office, and 120 reviews were conducted by the Indianapolis district office. No firm was reviewed twice in the 2-year period. The 133 firms reviewed are approximately 7.8 percent of Indiana firms employing more than 50 employees with Federal

contracts. This estimate is based upon analysis of EEO-1 reports.⁵ On the report a contractor self-identifies whether it is a Federal Government contractor. For fiscal year 1993, 1,706 non-construction firms in Indiana submitting EEO-1 reports identified themselves as Federal Government contractors.⁶

The Federal contract compliance program is now 30 years old, and many firms in the State have been reviewed by the U.S. Department of Labor. Still, during the 1993 and 1994 program years, 43 of the 133 nonconstruction reviews (32.3 percent) were initial reviews, i.e., first-time audits of a firm's affirmative action compliance. However, the review activity of the two district offices in the State diverged with respect to the number of initial audits. For the Chicago district office, 77 percent of its reviews in Indiana were initial reviews; while for the Indianapolis district office, 28 percent of its reviews were first-time audits.

In Indiana there are 92 counties; in 86 of the counties at least one company self-identified as a Federal contractor. The average number of identified Federal contractors in any one county is 20. Marion County, located in the center of the State and encompassing the State capital Indianapolis, had the most self-identified Federal contractors, 383. The next four counties with the largest number of Federal contractors were: Allen County, 150; Lake County, 96; St. Joseph County, 83; and Vanderburgh County, 69.

According to former Indianapolis OFCCP district director Theodore Hood, no definitive list of Federal contractors exists either by State or nationally. He added that this was a concern during his tenure with the OFCCP, because the complete Federal contractor universe in his area of

5 Private sector employers with 100 or more employees and employers with 50 or more employees that are government contractors or depositories of government funds are required to submit an EEO-1 form each year to the Joint Reporting Committee, which collects the data for the U.S. Equal Employment Opportunity Commission and the OFCCP. The employee reporting threshold is lower for Federal contractors because firms with a Federal contract exceeding \$50,000 and a work force of 50 or more employees are required to develop a written affirmative action plan (41 C.F.R. § 60-1.40(a)(1995)). The EEO-1 form requires firms to list by race and sex all employees in one of nine occupational groups: officials and managers, professionals, technicians, sales, office and clerical, crafts, operatives, laborers, and service workers. Information contained on individual EEO-1 reports is considered confidential.

6 U.S. Department of Labor, OFCCP, EEO-1 List of Federal Contractors in Indiana for FY 1993, April 1995, Midwestern Regional Office files. The OFCCP does not rely on EEO-1 reports to determine if firms are Federal contractors.

TABLE 4

Indiana Non-organizational Federal Contractors and OFCCP Reviews by County

County	Federal contractors	OFCCP reviews	County	Federal contractors	OFCCP reviews
Adams	8	1	Lawrence	7	0
Allen	150	10	Madison	20	1
Bartholemew	26	3	Marion	383	38
Benton	3	0	Marshall	10	0
Blackford	6	1	Martin	3	0
Boone	5	1	Miami	5	2
Cass	11	1	Monroe	31	3
Clark	15	4	Montgomery	11	0
Clay	2	0	Morgan	8	1
Clinton	8	1	Newton	4	0
Daviess	4	2	Noble ¹	19	0
Dearborn	3	0	Orange	3	0
Decatur	10	3	Owen	2	0
Dekalb ¹	16	0	Perry	4	0
Delaware	35	2	Pike	2	0
Dubois	22	2	Porter ¹	31	1
Elkhart ¹	62	1	Posey	6	0
Fayette	5	1	Pulaski	2	0
Floyd	15	1	Putnam	3	1
Fountain	1	0	Randolph	2	1
Franklin	2	0	Ripley	5	2
Fulton ¹	7	1	Rush	4	0
Gibson	7	1	Scott	3	0
Grant	28	2	Shelby	12	1
Greene	6	1	Spencer	3	0
Hamilton	38	2	Starke ¹	2	0
Hancock	4	1	Steuben ¹	16	1
Harrison	4	0	St. Joseph ¹	83	1
Hendricks	6	1	Sullivan	8	0
Henry	6	0	Switzerland	2	0
Howard	29	1	Tippecanoe	41	2
Huntington	14	1	Tipton	3	0
Jackson	13	0	Vanderburgh	69	8
Jasper	2	0	Vermillion	4	0
Jay	4	1	Vigo	41	5
Jefferson	8	1	Wabash	10	1
Jennings	1	0	Warren	2	0
Johnson	18	2	Warrick	9	1
Knox ¹	14	1	Washington	1	0
Kosciusko ¹	27	0	Wayne	24	3
LaGrange ¹	7	0	Wells	7	2
Lake ¹	96	5	White	3	1
LaPorte ¹	37	2	Whitley	11	0

¹ Counties in Chicago OFCCP district area.

Source: Midwestern Regional Office, USCCR, from U.S. Department of Labor data.

operations was never known to him, nor could it be known to the other district directors.⁷

OFCCP nonconstruction review activity for the 2-year period October 1, 1992–September 30, 1994, impacted 50 counties in the State. The county having the most compliance activity was Marion County, with 38 reviews.⁸ Following Marion County, the OFCCP was most active in Allen County, 10 reviews; Vanderburgh County, 8 reviews; Lake County, 5 reviews; and Vigo County, 5 reviews. Table 4 lists by county the number of Federal contractors and the number of OFCCP reviews.

There is a significant and positive correlation ($r=0.94$) between the number of Federal contractors in a county and the number of OFCCP reviews in the county.⁹ This indicates that the OFCCP is dispersing its compliance effort throughout the State and conducting compliance reviews proportionate with the geographic location of Federal contractors. Examining the three counties with the largest concentration of Federal contractors, Marion County, Allen County, and Lake County, this relationship is evident. Marion County has 22.4 percent of the State's Federal nonconstruction contractors and was the site of 28.6 percent of the OFCCP reviews. Similarly, Allen and Lake Counties have 8.8 and 5.6 percent, respectively, of the State's Federal contractors and were the site of 7.5 and 3.7 percent of reviews.

Only one area of the State appears to have been neglected in the relevant 2-year period (October 1, 1992–September 30, 1994). In the extreme north-east section of the State, the four-county area encompassing Dekalb, Noble, Steuben, and Whitley Counties has 62 self-identified nonconstruction Federal contractors (3.6 percent), and there

has been only one OFCCP review in the area. The Chicago district office has jurisdiction for this area of the State.

1. OFCCP Enforcement Activity in Indiana

Halcolm Holliman, OFCCP Region V director, described the authority of the OFCCP and the particular affirmative action requirement placed upon contractors. He stressed that affirmative action does not mandate either preferential treatment of minorities or quotas:

The Department of Labor's Office of Federal Contract Compliance Program enforces Executive Order 11246, section 504 of the Rehabilitation Act, and the Vietnam Era Veterans Readjustment Act. Taken together these laws ban discrimination and require Federal contractors and subcontractors as a condition of their government contracts to take affirmative action to ensure minorities and women, individuals with disabilities, and veterans have an equal opportunity to compete for employment with these contractors and subcontractors.¹⁰

A distinguishing feature of the affirmative action program under the laws administered by the OFCCP is that the contractor is obligated to analyze its work force, evaluate the total scope of its personnel practices, and identify barriers to equal employment. Where such barriers are disclosed, the contractor is obligated as a part of its contractual obligation to take affirmative action, including where appropriate, establishing goals to address the under utilization of women and minorities.¹¹

Affirmative action does not mandate preferential treatment. It does not mandate hiring unqualified workers or using quotas. Moreover, any form of preferential

7 Theodore R. Hood, testimony, factfinding of the Indiana Advisory Committee to the United States Commission on Civil Rights, Indianapolis, IN, Apr. 20, 1995, p. 146 (hereafter referred to as Indianapolis Transcript).

8 The Indianapolis district office is located in Marion County.

9 The measure of linear relationship between two variables, x and y , is estimated by the sample correlation coefficient, r . Setting s_x as sample standard deviation for each variable,

$$r = \frac{s_{xy}}{s_x s_y}$$

10 Halcolm Holliman testimony, Indianapolis Transcript, pp. 35–36.

11 Ibid., p. 37.

treatment in the selection process, including the use of quotas is unlawful under OFCCP guidelines.¹²

OFCCP staffing has declined in recent years. In 1991 the Agency had a total nationwide staff of 918. At the beginning of fiscal year 1995, nationwide staff was 829.¹³ Part of the decline in employment is due to restructuring. Regions V and VII of the OFCCP recently merged, and other regional office mergers are planned.¹⁴ It is anticipated that the number of district offices in the regions will also decrease. There are also plans to eliminate some management positions and replace them with senior compliance officers, i.e., individuals whose job functions would be to conduct the more complicated reviews and be a source of expert assistance to junior compliance officers in the district office.¹⁵

At the start of fiscal year 1995, the Indianapolis district office had 15 staff: 1 district director, 2 assistant district directors, 11 compliance officers, and 2 support staff.¹⁶ The Chicago district office is larger, staffed with 1 district director, 2 assistant district directors, 18 compliance officers, and 4 support staff.¹⁷ According to OFCCP officials, the staffing decline has prompted more deliberation in the selection of contractors for review. According to Holliman:

[We in the OFCCP] decided we could increase our effectiveness by focusing on those contractors who were operating in growth industries. We decided to focus our activities there. . . . Business services is one of those areas—motor freight and air transportation. Computer manufacturing and motor vehicle manufacturing are

[also] seeing an increase in activity. We also decided rather than conduct repeated reviews of those we had already examined, we would focus on initial reviews—contractors that had never been reviewed before. . . . And this year we decided to have a small contractor initiative, conducting a certain percentage of our reviews in that area.¹⁸

Sandra Hueneman, assistant district director, OFCCP Chicago district office, reiterated Holliman's testimony concerning OFCCP's selection of companies for review. She stated that the Chicago district office selects companies for review based on: (1) their EEO-1 reporting, i.e., the racial/gender composition of their work force; (2) contractors with a history of problems with the Agency; (3) contractors in growth industries; (4) small contractors with less than 250 employees; and (5) contractors that have not been reviewed before.¹⁹

The Advisory Committee examined the types of firms reviewed by the OFCCP. To classify all establishment-based economic statistics, the Federal Government uses the Standard Industrial Classification (SIC) to define the entire composite of economic activities and structure of the economy. The major industry titles, corresponding SIC numbers, the ratio of Federal contractors in nonconstruction industries, and OFCCP review activity in Indiana are shown in table 5.

In the 2-year period, October 1, 1992–September 30, 1994, of the 133 nonconstruction compliance reviews: 1 (0.8 percent) was agriculture/mining; 88 (66.2 percent) were manufacturing; 5 (3.7 percent) were transportation; 3 (2.2 percent) were

12 Ibid., pp. 37–38.

13 Ibid., p. 41.

14 Prior to consolidation of region V and region VII, region VII had its headquarters in Kansas City, MO, and had jurisdiction over activities in Iowa, Kansas, Missouri, and Nebraska.

15 Halcolm Holliman, testimony, Indianapolis Transcript, p. 53.

16 Philip Stepteau, testimony, Indianapolis transcript, p. 48. The district staff now has one assistant district director.

17 Sandra Hueneman, testimony, factfinding meeting of the Indiana Advisory Committee to the U.S. Commission on Civil Rights, South Bend, IN, Apr. 27, 1995, transcript, p. 14 (hereafter referred to as South Bend Transcript).

18 Ibid., pp. 44–45.

19 Ibid., pp. 10–11.

TABLE 5
SIC Title Codes, and Proportion of Federal Nonconstruction Contractors and OFCCP
Reviews in Indiana

Industry classification	SIC	Percent	Review rate
Agriculture and mining	01-14	1.3	0.8
Manufacturing	20-39	42.8	66.2
Transportation	40-47	4.4	3.7
Communications	48	4.0	2.2
Utilities and sanitary svcs.	49	4.3	7.5
Wholesale and retail trade	50-59	13.5	0.8
Finance and banking	60	9.3	6.0
Insurance and real estate	61-69	4.5	3.0
Services	70-79	7.7	4.5
Professional services	81-89	8.1	5.3
Public administration	91-97	NA ¹	0.0

¹ All public administration entities submit an EEO-4 form in lieu of an EEO-1 form. EEO-4 forms were not analyzed.
 Source: Midwestern Regional Office, USCCR, from Region V, OFCCP, USDOL. Proportion of Federal contractors based upon 1993 EEO-1 reports.

communications; 10 (7.5 percent) were utilities; 1 (0.8 percent) was wholesale or retail trade; 8 (6.0 percent) were banking and financial services; 4 (3.0 percent) were insurance and real estate; 6 (4.5 percent) were general services; and 7 (5.3 percent) were professional services, which would include educational institutions. No reviews were conducted of State or local public government entities.

Although the percentage of OFCCP reviews of manufacturing facilities (66.2 percent) is higher than the representation of such firms with Federal contracts in the general economy of the State (42.8 percent), the overall correlation between the rates of general SIC classifications of Federal contractors and OFCCP review activity is significant

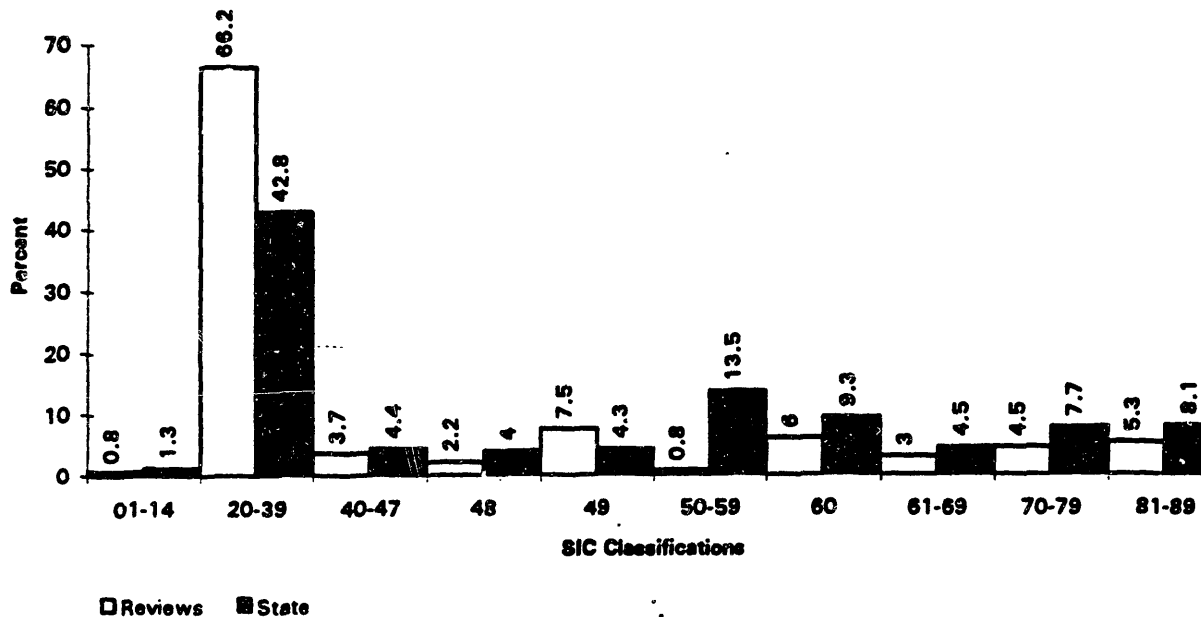
and positive ($r=0.95$).²⁰ This indicates that the OFCCP is undertaking its compliance effort among industries proportionate to the representation of such industries among Federal contractors.

Apart from manufacturing, the only other SIC classification where the proportion of OFCCP review activity exceeds the proportion of Federal contractors is utilities. In all other SIC categories, the proportion of OFCCP review activity in an industry is less than the industry's proportion of the Federal contractor universe in the State. To illustrate, the wholesale and retail trade is 13.5 percent of Federal contractors, while OFCCP review activity of such enterprises was less than 1 percent of all reviews.

²⁰ The measure of linear relationship between two variables, x and y, is estimated by the sample correlation coefficient, r. Setting s = sample standard deviation for each variable,

$$r = b \sqrt{\frac{s_x}{s_y}}$$

TABLE 6
OFCCP Review Rates and Federal Contractor Rates by SIC Code



The review process of the OFCCP is bifurcated into two processes. In one part the OFCCP compliance officer examines the contractor's personnel activities to determine if there has been illegal discrimination. In a second part the reviewer examines the contractor's affirmative action program and makes an assessment to determine technical compliance with the regulations and the good faith efforts undertaken by the contractor to meet its affirmative action obligation.

Holliman noted that the total number of reviews done by OFCCP has been declining with the reduction in staff. In 1990 the Agency conducted 6,000 reviews nationwide. Four years later in fiscal year 1994 approximately 4,100 reviews were completed by the Agency. He added, however, that the quality of the compliance review

has increased; the Department continues to gain financial settlements for victims of discrimination, and contractors who remain in noncompliance status are debarred from future Federal contracts. Addressing the enforcement of laws against illegal discrimination in the review activity, Holliman stated:

Those 4,100 reviews are more quality reviews. . . . We think we are better trained and better equipped . . . and [have] other things that allow us to do a better job.²¹

During fiscal year 1994 . . . nearly \$40 million in total financial settlements was recovered for victims of discrimination; \$17.5 million of that was recovered in the 10 Midwestern States (of region V). Five contractors were debarred for failure to meet the obligations, a record number of debarments for the OFCCP.²²

²¹ Halcolm Holliman, testimony, Indianapolis Transcript, p. 86.

²² Ibid., p. 39.

Compliance review activity in Indiana has not resulted in large monetary settlements for illegal discrimination or the debarment of contractors. In the 2-year period, October 1, 1992–September 30, 1994, a finding of illegal discrimination was made in 1 of the 133 nonconstruction compliance reviews. As part of being deemed in compliance, the contractor agreed to \$13,574 in pay and benefits to an employee. In another review, though there was no finding of illegal discrimination, a different contractor agreed to make a \$12,000 accommodation for a disabled employee.²³

The second part of the OFCCP compliance review is the determination of the contractor's compliance with affirmative action obligations, including the attainment of minority and female hiring goals. A contractor's compliance status is not judged solely on whether the employment goals and timetables are met, but is determined by the entire program and the good faith efforts to make the program work towards the realization of the program's goals.²⁴ In evaluating good faith effort, the OFCCP examines the efforts undertaken by the contractor to find qualified minorities and females and employ them in those jobs where they are absent or there is an underutilization based on determined availability.²⁵

Criteria for establishing good faith effort are not quantifiable. The recognition of good faith and technical compliance with the required components of a written affirmative action program are subject to the interpretation of the compliance officer conducting the review. To attempt some degree of uniformity across offices and investigators, the OFCCP has an operations manual setting out basic policies and procedures to be fol-

lowed in evaluating good faith efforts and technical compliance.

The Agency has a contract compliance manual that sets out for the compliance officers basic policies and procedures to be followed. . . . Also, [OFCCP] is providing significant training to the staff, offered essentially by the same people on a national basis. So [employees] are getting the same message and the same approaches being explained to them [in order] to provide some uniformity and consistency to the review process.

The measure of good faith [though], is on an individual contractor basis. The Agency goes in and conducts a review and finds, for example, that a Federal contractor is underutilized in certain job groups. The contractor has an obligation under the regulations to develop goals and timetables for that job group to overcome that underutilization. It is not a violation on the part of the employer for failure to meet the goal. The real measure is good faith efforts. The Agency examines in depth [the contractor's] activities. . . . We examine and evaluate the seriousness of those efforts.²⁶

When a contractor is found in noncompliance with the rules and regulations governing Executive Order 11246—i.e., (1) illegal discrimination, (2) failure to take good faith efforts, and/or (3) technical violations of the rules and regulations in developing a written affirmative action program—the contractor is required to sign a conciliation agreement or enter into a letter of commitment.²⁷ Conciliation agreements are required when there is a finding of discrimination, lack of good faith effort, or major technical violations.²⁸ A letter of commitment is generally used for minor technical violations.²⁹ Conciliation agreements and letters of commitment can also

23 U.S. Department of Labor, OFCCP, CRIS reports.

24 Sandra Hueneman, testimony, South Bend Transcript, pp. 12–13.

25 Ibid.

26 Halcolm Holliman, testimony, Indianapolis Transcript, pp. 63–64.

27 41 C.F.R. § 60-1.33 (1995).

28 Ibid.

29 Halcolm Holliman, testimony, pp. 64–65.

TABLE 7
Percentage of Reviewed Contractors Found Deficient by Deficiency and District Office

	Chicago	Indianapolis
Good faith		
Recruitment	38.5	25.4
AAP performance	30.8	36.1
Technical compliance		
Recordkeeping	53.8	40.1
Utilization analysis	46.2	43.4
EEO policies	23.1	24.6
Monitoring required	38.5	63.3
Average review time	3.8 mos	3.3 mos

Source: Midwestern Regional Office, USCCR, from Region V, OFCCP, USDOL records.

contain linkage agreements and monitoring requirements. Linkage agreements establish formal liaisons between the contractor and community organizations that can refer qualified minorities and females. Monitoring requirements mandate the contractor to submit progress reports to the OFCCP. The Agency monitors these reports. In cases where the reports indicate compliance with the rules and regulations, the contractor is found in compliance.³⁰

To examine the uniformity of different equal opportunity specialists (EOSs) and the two offices, the Advisory Committee analyzed the compliance reviews by different compliance officers in the Chicago and Indianapolis district offices for the 2-year period October 1, 1992–September 30, 1994. The variables in the analysis included: length of the review, compliance officer time on-site at the contractor's facility, followup requirements on the contractor, and noted deficiencies in the contractor's affirmative action program.

The deficiencies were subdivided into three categories: (1) lack of good faith efforts, (2) technical affirmative action program deficiencies, and (3) discrimination issues. Lack of good faith effort included recruitment endeavors and general performance under the affirmative action program.³¹ Technical affirmative action program deficiencies were considered improper utilization analysis, recordkeeping, EEO policies, or other affirmative action plan requirements.

The Chicago district office found inadequate recruitment in 5 of its 13 compliance reviews (38.5 percent). The Indianapolis district office found inadequate recruitment in 31 of its 120 reviews (25.8 percent). In affirmative action program performance, the Chicago district office found deficient efforts in 4 of its 13 reviews (30.8 percent), while the Indianapolis office found a similar deficiency in 44 of its 120 reviews (36.7 percent). The differences, however, were not significant.³²

³⁰ Ibid.

³¹ Accommodation for disabled workers was also considered a good faith effort issue, but only one deficiency for insufficient accommodation was made. The variable was consequently dropped from the analysis.

³² Testing for the difference between two proportions at the 0.05 significance level.

-TABLE 8**Noncompliance Finding Rates of OFCCP Compliance Officers, Indianapolis District Office**

Deficiency Reviews	Performance deficiency	Recruitment deficiency		
	rate	rate	rate	rate
EOS 1	18	98.9%	44.4%	11.1%
EOS 2	12	83.3	08.3	25.0
EOS 3	9	77.8	33.3	33.3
EOS 4	14	78.6	14.3	35.7
EOS 5	15	80.9	66.7	66.7
EOS 6	13	53.8	15.3	15.3
EOS 7	11	81.8	36.3	54.5
EOS 8	9	100.0	77.7	54.5
EOS 9	17	76.5	35.3	11.7

Source: **Midwestern Regional Office, USCCR, from Regions V, OFCCP, USDOL records.**

Some differences in the rate of deficiency findings were observed between the two offices in program technical violations. Recordkeeping deficiencies were found by the Chicago office at a 53.8 percent rate; the rate for the Indianapolis district office was 40.1 percent. The deficiency incidence, however, was similar between the two offices in utilization analysis and EEO policies.

The two offices also diverged regarding finding at least one deficiency during the review of a contractor's affirmative action program. Only 1 contractor of the 13 reviewed by the Chicago district office (7.7 percent) was not cited for some deficiency in its affirmative action program. In contrast, the Indianapolis district office found 26 of the 120 companies reviewed without deficiency (21.7 percent). However, the Indianapolis district office mandated more followup monitoring by requiring the submission of quarterly reports to the district office in 76 of the 120 reviewed contractors (63.3 percent) as compared to 5 of 13 contractors (38.5 percent) by the Chicago office.

Internally, among Indianapolis district office compliance officers, the rate of finding some defi-

ciency in a company's affirmative action program was fairly consistent across examiners. Nine of the office's compliance officers conducted 118 of the 120 reviews. One compliance officer found some deficiency in every one of his/her nine reviews, a 100 percent deficiency finding rate. Another compliance officer found at least one deficiency in 7 of his/her 13 reviews, a deficiency finding rate of 53.8 percent. The rate of finding at least one affirmative action program deficiency for the compliance officers in the Indianapolis district office is shown in table 8.³³

Differences among compliance officers evaluating good faith effort are observed. For example, EOS 8 found affirmative action program efforts deficient in 77.7 percent of his/her reviews, while EOS 2 found the same deficiency in just 8.3 percent of his/her reviews. EOS 5 found recruitment efforts deficient in 66.7 percent of his/her reviews, while EOSs 1 and 9 found recruitment efforts deficient in just 11 percent of their reviews.

The finding of violations by compliance officers may be independent of the compliance officer and dependent upon exogenous factors, e.g., total

³³ Compliance officers purposely remain unidentified in this analysis.

TABLE 9

Results Testing Dependence of Finding Affirmative Action Programs in Noncompliance

Dependent variable: Affirmative action program violation(s)

Independent variable	Coefficient	Std. error	t-stat
Employment	-0.002	0.001	-1.63
Minority employment rate	0.112	0.403	0.28
Reason for the review	0.485	0.508	0.95
Type of review	0.084	0.301	0.28
Months for the review	0.266	0.126	2.11
Hours spent on the review	-0.003	0.508	0.34

Source: Midwestern Regional Office, USCCR.

employment, type of review, initial or followup review, and the proportion of minority employees. To test whether affirmative action violations are related to such external variables, a probit analysis was conducted.

The finding of at least one affirmative action violation was set as the dependent variable (no violation=0, deficiency=1) and total employment, minority employment rate, type of review (normal supply & service=0, preaward, corporate management, and other=1), reason for the review (followup=0, initial=1) were the external, independent variables.³⁴ Also added to the analysis was the time expended on the review, both in months and actual review hours.

Formally,

$$\text{Prob}\{\text{AAPV}=0\} = 1 - P(\beta_0 + \beta_1\text{EMP} + \beta_2\text{MIN} + \beta_3\text{TYP} + \beta_4\text{RSN} + \beta_5\text{MOS} + \beta_6\text{HS})$$

where,

EMP=total employment

MIN=minority employment rate

TYP=type of compliance review

RSN=reason for compliance review

MOS=months to complete compliance review, and

HRS=EOS hours spent on compliance review.

The analysis shows all variables, with the exception of months of time to complete the review, without significant association to a finding of a contractor in noncompliance. There is, however, a positive and significant relationship between the number of months it takes to complete a review and a finding of one or more deficiencies in the contractor's affirmative action program. Since probit analysis indicates that the external factors—type of review, reason for the review, size of the contractor, and rate of minority employment at the contractor—are not associated with the finding of an affirmative action program violation, disparities among compliance officers in their rates of finding deficiencies during compliance reviews would not be expected to be observed.

The above is a preliminary indication that real disparities exist among OFCCP compliance officers in interpreting what is considered non-compliance in an affirmative action program. This suggests the presence of a subjective element in compliance reviews, notwithstanding the OFCCP policy and procedure manual setting out standards for evaluating good faith efforts.

The OFCCP also investigates complaints filed with the Agency, which allege discrimination on

34 Probit analysis tests whether $P(X)$, the cumulative normal distribution of a qualitative dependent variable, with zero mean, and unit variance, does not exceed X .

the basis of race, color, religion, national origin, gender, disability, or veteran status. There is a memorandum of understanding with the Equal Employment Opportunity Commission (EEOC) that includes provisions for the referral of complaints from the OFCCP to the EEOC of an individual nature. The OFCCP only retains jurisdiction if the complaint involves a class of individuals.³⁵ As a result, complaint activity is a minimal part of the OFCCP workload.³⁶

In the 1-year period, October 1, 1992–September 30, 1993, the Indianapolis district office investigated five complaints in its entire area of jurisdiction; two of the complaints were under the authority of Executive Order 11246, and three under section 503 of the Rehabilitation Act. The Chicago district office investigated 17 complaints; 5 of the complaints were Executive Order 11246 complaints, and 12 were under section 503.

2. The OFCCP and the Community

OFCCP officials testified that the Agency is attempting to improve its relationship with the business community in three areas: (1) cost control, (2) working relationship, and (3) technical compliance with affirmative action guidelines. One concern expressed by contractors concerning OFCCP compliance audits is the cost incurred by the contractor. Hueneman testified that the Agency is attempting to control this cost by citing specific areas of concern in a letter to the contractor prior to an onsite review of the facility. In this manner, the "OFCCP lets the contractor know that [the OFCCP is] conducting a focused review."³⁷

To improve the relationship between the OFCCP and the business community, the OFCCP has formed business liaison groups to discuss mutual issues outside of the formal compliance review. Liaison groups were initially implemented nationwide by the Department in the 1980s. Such

groups were not formed in Indiana, however, until 1993. Phil Stepteau, district director, OFCCP Indianapolis district office, spoke about this new initiative in Indiana:

One of the things we initiated in the past year [in the Indianapolis district office] is . . . a liaison group of about 40 members representing various industries in Indianapolis and Indiana. . . . We meet, hopefully quarterly, to discuss issues. . . . It eases the contractors' apprehension as to what to expect from us.³⁸

OFCCP is also willing to provide technical assistance to contractors in the development of an affirmative action program. Under the sponsorship of the Indiana Affirmative Action Association, the district director of the Indiana district office and two compliance officers offered a 1-day seminar on March 23, 1995, in Fort Wayne, Indiana. The seminar addressed technical compliance with the affirmative action guidelines, compliance review procedures, and new Department initiatives. Expressing the willingness of the Department to assist Federal contractors in meeting their affirmative action obligation, Hueneman told the Advisory Committee:

The OFCCP will provide technical assistance to contractors in putting together their affirmative action program, and we will provide technical assistance as far as recruitment sources and try to get them into compliance. Regulations do not require that a contractor go out and hire consultants; we do provide technical assistance.³⁹

According to Hueneman, the OFCCP also works closely with other Department of Labor agencies, such as the Women's Bureau about the needs of working women and the Bureau of Apprenticeship and Training regarding recruitment and selection of individual persons for

35 Halcolm Holliman, testimony, Indianapolis Transcript, p. 77.

36 Philip Stepteau, testimony, Indianapolis Transcript, p. 49.

37 Sandra Hueneman, testimony, South Bend Transcript, pp. 14–15.

38 Philip Stepteau, testimony, Indianapolis Transcript, pp. 51–52.

39 Sandra Hueneman, testimony, South Bend Transcript, pp. 17–18.

apprenticeship programs.⁴⁰ She also stated that her office "contacts the Equal Employment Opportunity Commission for every review . . . as well as the [State] Department of Employment Security."⁴¹ Stepteau added that the OFCCP also holds town meetings with community organizations that can serve as minority and female recruitment sources and delivery agents to Federal contractors.⁴²

The OFCCP is beginning to focus and develop an annual report. All Federal contractors and subcontractors will have to send on an annual basis an affirmative action report that summarizes all of their activity for the past year. We will use this as a tool [for scheduling reviews].⁴³

a. Perspectives from the Business Community

Three groups of individuals from the business community made presentations to the Advisory Committee: (1) the Indiana Chamber of Commerce; (2) two law firms, which represented clients reviewed by the OFCCP; and (3) company officials from five major employers in the State. The spokesperson from the Indiana Chamber of Commerce spoke on the training it provided regarding affirmative action compliance and the feelings of member companies on compliance and the enforcement of affirmative action. The two representatives from area law firms testified to their experiences dealing with the OFCCP during compliance reviews and in the conciliation and resolution of alleged deficiencies. Individuals from several major Indiana employers spoke on the effect affirmative action compliance had on their company's personnel decisions and their relationship with the OFCCP.

(1) Perspectives from the Indiana Chamber of Commerce and Two Law Firms on OFCCP Compliance Enforcement Activity

Kathy McKimmie, vice president of human resources of the Indiana Chamber of Commerce, expressed concerns about the complexity of compliance with the affirmative action requirements. She noted that for many years the Indiana Chamber of Commerce has sponsored a seminar on writing and updating affirmative action plans under Executive Order 11246.⁴⁴ Despite the quality of the program and the expertise of the instructors, many of those attending remain dependent upon outside consultants to write and develop their affirmative action plans.

For many years, the Indiana Chamber of Commerce has sponsored a seminar on writing and updating affirmative action plans. Mr. Martin J. Klaper, attorney with Ice, Miller, Donadio & Ryan, and Ms. Evelyn Freeman, a consultant from Wisconsin, have conducted the seminar for the chamber. . . . We could not find two more qualified people to conduct our program. Yet, despite the caliber of the program, the requirements of the affirmative action plan are so complex and time consuming that many seminar attendees leave without the confidence they need to adequately fulfill the requirements.

Our program used to be 1 day in length. We expanded it to 2 days and our speakers made themselves available in the evening. Still it is difficult for attendees to grasp all that is necessary in the number-crunching requirements. Many companies do not even try to do the plans themselves. They use consultants to develop the plan from the start. Others, even those who attend seminars, use consultants to assist.⁴⁵

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Philip Stepteau, testimony, Indianapolis Transcript, p. 51.

⁴³ Ibid., pp. 53-54.

⁴⁴ The Indiana Chamber of Commerce is the oldest and largest broad-based business advocacy association in the State, with a membership base of more than 5,000 businesses.

⁴⁵ Kathy McKimmie, prepared statement for the Indiana Advisory Committee to the U.S. Commission on Civil Rights, factfinding meeting, Indianapolis, IN, Apr. 20, 1995 (hereafter referred to as McKimmie Statement).

To gather background information for the factfinding meeting, the chamber of commerce surveyed participants from its last three affirmative action seminars. Ninety-three surveys were mailed, and 19 responses were received (a response rate of 20.4 percent). Fifteen respondents answered the survey (16.1 percent), and four respondents provided narrative responses in lieu of answering the survey questionnaire. The survey results are in appendix C.

All 15 respondents answering the survey have an affirmative action program; only one company (6.7 percent) has an employee whose only function is to handle affirmative action. Six of the 15 respondents (40 percent) used a consultant to write the affirmative action program. The cost of developing the affirmative action plan ranged from \$600 to \$6,000.

Eight of the firms responding replied that their company had been audited by the OFCCP; several had been reviewed more than once. Five of the eight reviews were in the last 2 years, 1993 or 1994. In describing the experience of those OFCCP audits, comments from the survey respondents were:

- Extremely time-consuming [5 respondents]
It becomes a full-time job for a period of time. Data is needed in a specific format.
Many internal steps need to be taken by CEO-lots of communication is required to employees.
All employees policies are examined.
It was necessary to add much information to AA [affirmative action] plan.
- Fair process [2 respondents]
- Very few "positive" results; usually a fight/battle over "picky" issues
- Compliance officer acted like he had personal vendetta against our company. He already had names of minorities who he wanted to interview and each one had previously filed a charge with the EEOC. None of the charges were found to have any merit. He was very nit picky. Determined to find a reason to issue a complaint.
- Reasonable auditor
- Unpleasant

- Grueling experience
- The compliance officer has a lot of authority! In many instances they are not very qualified which results in a lot of wasted time.⁴⁶

In the same survey, when asked about problems in the way the OFCCP enforces affirmative action compliance, respondents commented on the inconsistency of the review process and the complexity of developing an acceptable program. Comments included:

- Too much depends on competence, attitude, etc. of person assigned to audit.
- Development of [affirmative action] plan is complicated and it is impossible to obtain accurate information
- Disorganization.
- The plan is incredibly difficult to prepare; if it could be standardized, it would be helpful.
- There must be a consistent way to apply the rules. Should not be on a witch hunt. Process needs to be streamlined—too cumbersome now.
- For an event that you do once a year—it requires relearning on how to compile the data. It is like doing your taxes.
- Too rigid with details, such as paper format while losing sight of real purpose.
- Lack of full understanding of business necessities and results to customers. Some auditors are weak in assimilating business needs, but strong in bureaucratic "red tape."
- The person in charge in Indianapolis is unreachable for even a clarification. This conversation could help us to understand or perhaps explain why a compliance officer puts us "through the hoop." They deal in a very heavy handed way!
- Making complicated calculations to determine underutilization.⁴⁷

Finally, the representative from the chamber of commerce were critical of the OFCCP's liaison with area businesses. McKimmie related that many businesses are reluctant to contact regulatory agencies directly because they fear the contact will trigger an inspection or audit, so they rely on the Indiana Chamber of Commerce as an

⁴⁶ Indiana Chamber of Commerce, "Affirmative Action Survey Results," Apr. 20, 1995, (hereafter cited as Chamber Survey).

⁴⁷ Chamber Survey, p. 4.

information conduit. McKimmie further maintained that, in her experience, the OFCCP has tended to be more reluctant than other agencies to share general information with the chamber.

I was told that one reason for their reluctance was the fact that we conducted seminars for which we charged a fee. There seems to be an opinion within OFCCP that technical assistance cannot be provided to individuals or organizations who then sell their services. I would not consider the chamber, a business-advocacy organization, in that category. No other agency with which we have dealt has this policy.⁴⁸

Stepteau sustained McKimmie's assertion. He acknowledged that currently the Indianapolis district office does not participate in the chamber's affirmative action training, because of the fee charged participants.

The reason the OFCCP does not participate is because the Indiana Chamber of Commerce charges a fee to all of the participants to attend the training. The OFCCP is willing to provide technical assistance to Federal contractors for free.⁴⁹

Representatives from the Indianapolis district office have recently participated in affirmative action training for businesses in the State. On March 23, 1995, Stepteau and two OFCCP compliance officers made a half-day presentation to personnel officers in Fort Wayne, Indiana. The discussion concerned the OFCCP's glass ceiling initiative and review practices of the district office.

The policy of not working with the Indiana Chamber of Commerce or providing general information at seminars appears to be a more recent policy of the OFCCP. Hood testified, "I cannot answer for what has happened in the last 6 years, but [when I was] director of the OFCCP in Indi-

ana we had good interface with the chamber. We met with them [and] went to their seminars."⁵⁰

Two prominent attorneys in the State with extensive experience representing companies audited by the OFCCP testified before the Advisory Committee. Martin J. Klaper is a partner with Ice, Miller, Donadio & Ryan and has practiced law in Indiana for approximately 25 years, representing management exclusively. His practice is limited to labor and employment matters, and within labor and employment a focus on civil rights, including equal employment opportunities and affirmative action. David Swider is a management labor employment law attorney with the firm of Bose, McKinney & Evans and has represented companies in such matters since 1978. He has extensive experience representing companies undergoing OFCCP compliance reviews and in the development of affirmative action plans. Between the two, they have been involved in well over 100 OFCCP compliance reviews in Indiana.

Klaper prefaced his remarks commenting on his long experience dealing with the OFCCP in Indiana, noting "I doubt very seriously if there is another lawyer in this State who has dealt with the . . . OFCCP more frequently or over a longer period of time than I have."⁵¹ He also offered that his associates and "colleagues with whom [he] practiced law would support [his] views and comments" on the operations of the OFCCP.⁵²

If the purpose of today's meeting is to find out how the Indianapolis office of the OFCCP is doing, I would suggest that it is doing quite well. The performance of this office has improved greatly over the last 10 years, and the rate of improvement is also increasing. The local office is staffed by individuals who are generally formally educated and who have been trained to do the work that they are employed to do. What I would describe as the "I got you" approach that used to typify audits that were conducted by this office years ago has

48 McKimmie Statement.

49 Philip Stepteau, telephone interview, Aug. 29, 1995.

50 Theodore R. Hood, testimony, Indianapolis Transcript, p. 146.

51 Martin J. Klaper, testimony, Indianapolis Transcript, pp. 9-10.

52 Ibid., p. 18.

very much disappeared. The local office today is much more user friendly.

[The office] is interested in providing technical assistance and this interest exceeds finding violations of Executive orders. The equal opportunity specialists [EOS] who a decade ago saw his or her role primarily as one of a prosecutor or persecutor [are] gone. They have been pretty much replaced by EOSs who have been much better trained to investigate and audit. These persons are not predisposed to thinking that every contractor is a violator of the law and usually arrive at the audit with no preconceived notions as to what they are going to find.⁵³

If you look at what it was to do business with [the OFCCP] 15 years ago and what it is to do business with this office today, it is day and night. There may be still some people who are dissatisfied, but if they are dissatisfied now, they should have been around 15 years ago, because they would have been really dissatisfied. . . . The attitude which says, "Hey, I got you," which was very prevalent 15 years ago, is not something you find very often anymore.⁵⁴

Klaper offered recommendations to improve the operating efficiency of the OFCCP.

There are simply too many government contracts and too many government contractors to allow each to be audited yearly. Accordingly, I think it is imperative that the Agency be very selective about who it will audit. Where I think the Agency in general has not performed well is identifying who it will audit and where it will expend its resources. . . . If I had the authority to operate the [OFCCP] office, here is how I would select a contractor for audit.

First, once a year I would send every contractor a letter requesting . . . every contractor within my district to provide a list of every individual who has been hired or promoted in the preceding 12-month period. I would also ask the contractor to identify whether any of the

persons were hired or promoted into a job group where the contractor recognizes underutilization. Second, I would request each contractor to rank by pay from lowest to highest all persons in each EEO [equal employment opportunity] job category. . . . Following receipt of the hire, promotion, and pay information by EEO category, I would prioritize full-fledged audits of contractors. I would first visit those contractors who have had the most employment activity. . . . It makes no sense to waste enforcement dollars auditing contractors who have had little if any employment activity and who, therefore, had few if any opportunities to . . . engage in good faith affirmative action activities. I would next schedule for audit those contractors whose EEO job category by salary data reflected a concentration of protected persons in the lower levels of a particular EEO category.⁵⁵

If you are interested in increasing the utilization of women and people of color and of making sure that women and people of color not only get in the door, but get into the room, you have to focus on [companies where there are] opportunities to make improvement. Good faith efforts are measured against what you try to do. You may not be successful, but good faith efforts require some energy and activity. I have a host of clients who are committed to civil rights and decent treatment for all people, but they have had no opportunities to add new employees because their work forces have [declined].⁵⁶

Holliman informed the Advisory Committee that portions of Klaper's suggestions regarding selecting firms for review were in the process of being implemented by the OFCCP.

The OFCCP is beginning to focus and develop an annual report. All Federal contractors and subcontractors will have to send, on an annual basis, an affirmative action report that summarizes all of their activity for the past year. [The OFCCP intends] to use this as a tool [for scheduling reviews].⁵⁷

53 Ibid., pp. 9-10.

54 Ibid., pp. 30-31.

55 Ibid., pp. 11-13.

56 Ibid., p. 26.

57 Malcolm Holliman, testimony, Indianapolis Transcript, pp. 53-54.

TABLE 10

Results Testing Dependence of Changes in Minority Employment on Changes in Employment, Employment, and Past Minority Employment

Dependent variable: Change in minority employment

Independent variable	Coefficient	Std. error	t-stat
Change in employment	1.165	0.184	6.32
Total employment	0.002	0.008	0.18
Past min. emp. rate	-251.154	112.304	-2.24

Source: Midwestern Regional Office, USCCR.

The Advisory Committee sought to determine the potential effectiveness of Klaper's scheduling recommendations. Commission staff examined the records of the 87 followup reviews conducted by the Indianapolis district office during the period October 1, 1992, to September 30, 1994, relating changes in total employment with changes in minority employment. Data for 85 of the 87 followup case files were available.

For the 85 contractors with available review data, total employment increased at 42 firms (49.4 percent), decreased at 37 firms (43.5 percent), and remained constant at 6 establishments.

As such, in followup-type reviews conducted by the Indianapolis district office, the OFCCP was reviewing contractors with decreasing or stable work forces in half of its review activity.

To determine if increasing employment at firms previously reviewed by the OFCCP was related to increases in minority employment, the measure of correlation was computed between change in employment and change in minority

employment.⁵⁸ A positive and significant correlation ($r=0.56$) was found between a change in employment and a change in minority employment.

Multivariate regression analysis was employed to test whether changes in minority employment were associated with changes in employment (see table 10).⁵⁹ Current employment and past minority employment proportion were added as variables to control for firm size and the lagged effect of previous minority employment levels. Formally,

$$DMINEMP = \alpha + \beta_1 DEMP + \beta_2 EMP + \beta_3 PASTMINEMP + \epsilon$$

where:

DMINEMP = change in minority employment,

DEMP = change in employment,

EMP = current facility employment, and

PASTMINEMP = proportion of past minority employment.

⁵⁸ Changes in employment/minority employment were calculated as:

$$100 * (\log(X_t) - \log(X_{t-1})),$$

where,

X_t = employment (minority employment), and

X_{t-1} = past employment (minority employment).

⁵⁹ Changes in employment at the 85 firms ranged from an increase of 1,696 to a decrease of 1,942 ($\mu=8.1$, $\sigma=36.5$). Changes in minority employment ranged from an increase of 302 to a decrease of 220 ($\mu=7.5$, $\sigma=51.3$). Because of the high variance in employment change, use of the natural log to compute the percent changes is optimal as it expresses proportional changes in the variables, thereby controlling for the magnitude of the change across observations.

Changes in employment were found to have a positive and significant impact on changes in minority employment ($\beta=1.165$). Total employment was found to have virtually no relationship with changes in minority employment ($\beta=0.002$). Proportion of minority employment in the past had a negative and significant association ($\beta=-251.1$). This is support for the assertion of Klaper that targeting facilities with increasing employment should be the essential factor in scheduling contractors for review.

Klaper addressed preaward reviews and glass ceiling audits.

I think it important that preaward reviews be mandatory for contracts involving significant sums of money. . . . My experience with contractors is that they are more aggressive about the affirmative action that they are willing to take in an effort to get a contract than they are when it comes to taking actions to retain a contract.⁶⁰

[Also] in terms of the preaward process, usually when one is talking about a large government contract, there is some anticipation that the contractor will be adding personnel in some fashion or another to meet the contract or, just as importantly, will be engaging in subcontracts to meet the contract.⁶¹

I have a technical suggestion [for OFCCP] relating to the conduct of the glass ceiling or corporate management reviews [CMR]. I think all corporate management reviews ought to be preceded by normal onsite reviews. The onsite review should not be conducted concurrently with the corporate management review. By conducting the regular audit first, the EOS from the district office can compile all the relevant data necessary for the persons who will be conducting the corporate management review. . . . Areas of concern that are uncovered during the normal audit preceding the corporate management review should be identified and the contractor

provided an opportunity to address perceived problems prior to the commencement of the corporate management review.⁶²

Klaper concluded with comments on the disability-related audit functions of the OFCCP, the Americans with Disabilities Act, and contractor compliance with such provisions for the disabled.

The disability-related audit functions of the OFCCP have been [in place] for some time through the Agency's enforcement of the Veteran's Act and section 504 of the Rehabilitation Act. Both have a real strong parallel to what is known as the ADA [Americans with Disabilities Act]. . . . One of the things the OFCCP does, which is a positive, is they do an audit of the employer's outreach efforts for disabled Americans. That type of audit brings to life many of the provisions which otherwise would only come to life if someone filed a complaint. So I think the ADA was no burden for my government contractors because they already were up and running; they understood what it was, they understood who a disabled person was, and they understood accommodations.⁶³

Swider opened his remarks commenting on his experience with affirmative action enforcement and the OFCCP, attesting to a "thorough familiarity with affirmative action [dating] back to 1979 . . . representing scores of companies in compliance reviews."⁶⁴ He added that he believes that in general his "views [on the affirmative action program as enforced by the OFCCP] are consistent with many people in management."⁶⁵

Affirmative action under Executive Order 11246, as it is designed, should not create the kind of problems that have brought us together today. . . . Real affirmative action creates greater equal employment opportunity; the theory being that if one goes to nontraditional sources—to minority institutions, advertise in minority

60 Martin J. Klaper, testimony, Indianapolis Transcript, pp. 13-14.

61 Ibid., p. 21.

62 Ibid., pp. 14-15.

63 Ibid., pp. 32-33.

64 David Swider, testimony, Indianapolis Transcript, pp. 154-55.

65 Ibid., p. 155.

and female publications—the number of minority and female candidates who [apply] and have the necessary requisite qualifications increases. You are not required [under affirmative action] to hire anybody who is unqualified or anybody who is less qualified than somebody else if the credentials are set in a nondiscriminatory fashion.⁶⁶

I think two major problems have arisen because of the way Executive Order 11246 is enforced by the OFCCP. One is that there is more of an emphasis on form over substance. . . . If the Agency is looking to further opportunities for minorities and females, the regulations create a spider web of problems for employers, trying to understand them, and then putting together the numbers.

The required availability analysis is a good example. There is no need for the eight factors listed in the regulations. For the most part the eight factors really do not tell what is really available in terms of qualified females and minorities in the recruitment area or in an organization. . . . [All] that is needed is an examination [of] what is externally available—if the recruitment is from the outside—and where those recruitment sources of qualified people exist, and what is internally available. That reduces the analysis down to two factors, not eight. Similarly, the work force analysis can also be simplified . . .⁶⁷

This is not to suggest throw the baby out with the bath water. I think generally what is trying to be accomplished with the numbers is a reasonable approach, but it does take a lot of time for employers. It also costs money. I do not think money costs are the problem, but wasting money on unnecessary costs is not efficient, and I think that can be remedied. . . . There were proposed regulations going back to 1980 in the Carter administration that sought to streamline the approach. I think that is a good idea.⁶⁸

The second issue relates more to substance. I am not sure that it makes sense to have the same agency which is out trying to further this goal of affirmative action

also carrying a discrimination stick. There is another agency for that—the Equal Employment Opportunity Commission. In addition, there is a whole host of State and local organizations doing antidiscrimination work. It creates real problems for employers when the OFCCP comes in and is looking for discrimination, and at the same time is trying to further affirmative action objectives.⁶⁹

Swider offered an example of this conflict for employers, and with it illustrated how innocent goals for the employment of minorities and females can be transformed into an inordinate emphasis on numbers.

As an example of the conflict between affirmative action enforcement and antidiscrimination enforcement, if an employer does not have any minorities in his/her applicant flow, that employer has not committed discrimination. When the statistics are run, the employer has zero minority applicants and zero minority hires—no problem from a discrimination standard. But in this case the employer has not done all that can be done for affirmative action purposes.

Now let the OFCCP do an affirmative action audit, which results in widening the recruitment net to institutions which bring a flow of minorities and females into the work force. The next time the OFCCP visits the employer has a positive applicant flow of minorities and females. Now, however, he/she faces a statistical analysis which focuses not so much on affirmative action, but potentially on discrimination. This is because the OFCCP does not comment on the job the employer did in getting minorities and females into the applicant flow, but why the minorities and females were not hired or moved up. . . . This is where one slides from goals, which are the targets for good faith efforts, to quotas, because now the employer understands that the game must be played by the numbers.⁷⁰

I believe whenever the OFCCP concentrates on statistics, particularly in the large groups, problems will be

66 Ibid., pp. 155–56.

67 Ibid., pp. 156–58.

68 Ibid., pp. 157 and 158.

69 Ibid., pp. 158–59.

70 Ibid., pp. 159–60.

found. What happens in those instances is the employer gets punished. Instead of the employer being commended for the efforts to make the affirmative action program work, the Agency undertakes enforcement proceedings against the alleged discrimination practice. This is not to suggest that the OFCCP should not be aware of discrimination issues during its reviews, . . . rather I suggest that the OFCCP should not have the authority or responsibility to investigate discrimination. The OFCCP should, when it encounters such potential problems, refer them to the Equal Employment Opportunity Commission.⁷¹

Swider was queried by the Advisory Committee as to the kinds of regulatory problems his clients faced in complying with the mandate of affirmative action. He gave two specific examples and expressed a general concern about the climate of race relations and nondiscrimination enforcement.

In the availability analysis there are eight factors to be used to derive one ultimate number. The regulations are not too cumbersome in this respect . . . but a lot of the calculations which are done are meaningless to the end product . . .⁷²

In the work force analysis the employer is required to take its organization and divide it into departments or similar subunits and rank from lowest paid to highest paid the jobs and the number of people in each of the categories by race and sex. It is simple on its face, but as applied, what is a department? What is a similar subunit?⁷³

. . . I think that we as a society, the more we talk about race or other protected statuses, the more we give an indication that it is a problem, or a determinative factor, that is necessarily being used by businesses all the time in making decisions. I am sure that this is not the case, because it does not make good business sense. . . . But if you give the individual that sense that all deci-

sions are based on color or gender or disability, then when he or she is denied the job or promotion or some other opportunity, the first place they look for the reason of the denial is to race, sex, or disability. I think this type of atmosphere creates a problem for society.⁷⁴

Swider concluded with three additional points.

[First] . . . I think affirmative action has done a lot of good, there is no question about that. It has sensitized people, but so has vigorous enforcement of existing nondiscrimination laws. . . . However, there is so much baggage applied to the term affirmative action that another term is needed; the vernacular must change before there will be greater acceptance of the program. I have not thought of what that term might be, perhaps affirmative equal employment.⁷⁵

[Second] . . . employers are constantly at my seminars to learn what they need to do to comply with the law. They want to know. They do not want to discriminate. They particularly do not want to discriminate and get a charge filed against them because it does not cost somebody a dime to file the charge, but it costs the employer money to defend.

[Finally] . . . we also need to educate the applicants, the employees, and others to what discrimination is. . . . The first time something happens to many of them, they go and file a discrimination charge without thinking. Such actions just perpetuate the problem and the debate. . . . Everybody disagrees on how many of the charges that are filed really have merit. In terms of the numbers I see, not a great percentage.⁷⁶

(2) Perspectives of Large Indiana Employers on OFCCP Compliance Enforcement Activity

The Advisory Committee heard from representatives of five major employers in Indiana about compliance with the affirmative action obligation

71 Ibid., pp. 161-62.

72 Ibid., pp. 163-64.

73 Ibid., p. 164.

74 Ibid., p. 168.

75 Ibid., pp. 166 and 170.

76 Ibid., pp. 170-72.

and the work of the OFCCP. Brenda Pitts, vice president of human resources for Cummins Engine Company, located in Columbus with 26,000 employees worldwide, talked about her company's longstanding commitment to affirmative action, the company's experiences with the OFCCP, and ways enforcement can be more effective. Cummins Engine is a \$5 billion corporation with operations and facilities worldwide. The organization, which recently celebrated its 75th anniversary, has its headquarters and manufacturing base in Columbus, Indiana.

We [at Cummins] do affirmative action because we believe it is good business, particularly for companies who are engaged in a global marketplace. We have to be able to hire the best talent in the world to be able to be competitive for the long term. Second, we [do affirmative action because] we think it is right⁷⁷

In terms of our suppliers, we do have in our purchasing [department] a group that sets certain standards that we audit our suppliers against. We include [affirmative action] as part of that.⁷⁸

[Cummins] was the first company in Indiana to undergo a glass ceiling audit. We found it extremely helpful because . . . we have been able to use what we learned from this audit to accelerate our progress [in] moving protected class people up through our organization. . . . Most companies today who are successful are used to [OFCCP] auditing; we . . . welcome the audits as a way of learning⁷⁹

The change [in OFCCP audits] in the last 17 years has been one where—when I was preparing an affirmative action plan—it was simply bring me your truckload of data and we will look at it. . . . It did not speak to how you were going about that and sharing information on how you could improve it. It also tended to be adversarial. . . . What I see now is that I am able to sit down and

discuss these issues as a business person to a business person⁸⁰

[There are several reasons] why our experience [with the OFCCP] has been positive, as opposed to some other [companies' negative experiences]. One [is] that the approach has been a partnership. We have the same purpose, which is the advancement and utilization of all different types of protected class people. . . . [Another] major effort has been the sharing of business practices. Given that the OFCCP works with a number of different firms and corporations and groups, they are able to give us some good thoughts and suggestions. . . . The [last] thing is that the competency of the [OFCCP] has vastly increased over the past few years⁸¹

Affirmative action is a good thing and we have made tremendous progress, [but] there is always room for improvement. . . . In terms of improving [the program], . . . the major thing would be [a] focus on [company efforts to] reach out to the community and help all of the groups, particularly those who may not have the resources that others have. Second, [the OFCCP should] use data as a way of helping us [and others] understand what the true impact of affirmative action has been and how we can improve the effort. Sometimes we spend too much time and effort just analyzing and collecting data, and not much time is spent on actually implementing affirmative action plans⁸²

Paul Bayless, assistant affirmative action officer at Indiana University-Purdue University at Indianapolis (IUPUI), located in Indianapolis with 16,000 employees, commented on affirmative action and OFCCP enforcement. Bayless has 17 years' experience with large public universities in Indiana as an affirmative action coordinator, being the principal corporate representative in six OFCCP reviews dating to 1978. He made seven points:

77 Brenda Pitts, testimony, Indianapolis Transcript, pp. 101-02.

78 Ibid., pp. 111-12.

79 Ibid., pp. 101-02.

80 Ibid., p. 115.

81 Ibid., pp. 102-03.

82 Ibid., pp. 104-05.

One, . . . OFCCP's impact measure is the positive change [at a facility] brought by its [review] activity

Two, because of the WEAL [Women's Action Equity League] consent decree mandating that OFCCP conduct preaward compliance reviews . . . nearly every large university has put together a very comprehensive and sophisticated affirmative action plan

Three, the ivory tower of academia has been an especially tough nut to crack for the OFCCP. The Agency has always struggled with understanding the nature and complexity of universities . . . [and] the OFCCP has had difficulty applying its routine analyses [to the university setting]

Four, I found [my] six compliance reviews in 15 years to have been very useful because they invariably uncovered some area which we had missed in our internal analysis

Five, . . . one criticism often heard is that some OFCCP staff have been overbearing and heavy handed. While there certainly were instances where I disagreed over just what were reasonable demands for data or material, on balance I have enjoyed an excellent working relationship with OFCCP staff in Indianapolis. . . . I have had the good fortune to have been personally acquainted with each of the OFCCP regional directors as far back as 1980. To me they have all exemplified the highest standard of professionalism and dedication to public service.

Six, a decade ago I, like [some others], would have levied the criticism that the OFCCP sometimes paid more attention to form than substance. . . . Based on my recent experience, this kind of [approach] is all but disappeared

[Seven], . . . the greatest impact from OFCCP is indirect. While OFCCP's presence has not necessarily led to dramatic increases in faculty hiring, nearly all [my colleagues at universities in Indiana] say that the leverage that the affirmative action office obtains from the threat of an OFCCP review allows us to obtain data

and to institute procedures and to change policies that would not happen without that leverage.⁸³

In preparation for the factfinding meeting, Bayless obtained OFCCP affirmative action review information from the six largest universities in the State: Ball State University, Indiana University, Indiana State University, Purdue University, the University of Notre Dame, and Vincennes University.⁸⁴ He found the Agency's schedule of university audits in the State skewed, but found general support among university affirmative action officials for the OFCCP presence.

I found Purdue [University] had had as many compliance reviews as the other [major universities] combined. Indiana University underwent its last review in 1984, Ball State . . . was reviewed in 1983, and Indiana State has never been [reviewed]. Notre Dame falls under the jurisdiction of the Chicago office [and has had one review]

The assistant director at Indiana University recalled that its 1984 compliance review . . . focused almost exclusively in the skilled trades and dealt very little with faculty or the academic departments. The results of that review strengthened the affirmative action office and there were substantial changes in personnel practices

The director at Ball State chuckled that "OFCCP does not seem to exist for me" [and] expressed no regrets at that lack of attention noting that her hands were full responding to investigations by the Indiana Civil Rights Commission, the Office for Civil Rights [U.S. Department of Education], and the EEOC.

The director at Indiana State said emphatically, "Even though we have never had an OFCCP review, I would welcome one. It would give me . . . more cooperation from deans and department heads."

Vincennes has had the most recent contact, having just completed a review in November 1994. The affirmative action officer . . . described her reaction . . . as positive. "They [the OFCCP] did not come is swinging an ax. The

83 Paul Bayless, testimony, Indianapolis Transcript, pp. 93-100.

84 Bayless also contacted the University of Notre Dame but did not survey them upon learning they would make a separate presentation at the factfinding meeting.

focus was on complying with the law and making progress towards real work force equality. . . .⁸⁵

Dan Russell testified that he has been responsible for developing affirmative action plans since 1974 with several major employers in Indiana. Most of those operations have been manufacturing. His most recent experience with the OFCCP has been in his representation of Magnavox Electronic Systems, located in Fort Wayne with 2,500 employees.⁸⁶

Prior to [the downsizing] we [Magnavox] were primarily a target company, if you will, because we were one of the largest electronic military tactical equipment companies in Indiana. Up to probably the last 3 or 4 years we were audited [by the OFCCP] almost every year. . . .⁸⁷

I think most EEO officers welcome OFCCP in their organization for the following reasons. One, many times what happens is the EEO officer is not able to facilitate those issues of concern at the level at which they need to be addressed without the presence of the OFCCP. . . . [For example] within Magnavox . . . years ago we initiated a quarterly review on affirmative action for our CEO and his executive staff; there were no other discussions⁸⁸

Now there is a whole different visibility [because of the OFCCP presence]. Because of our business trends and diversification, we are looking at the year 2000 [with] a new awareness [of EEO] at this point in time. I think without the presence of the OFCCP we would not be as successful in our endeavors for EEO. . . . Without the presence of the OFCCP, it precludes a lot of [minority and female employment] growth in business and industry.⁸⁹

For the last year and a half [Magnavox] has had a vice president attend each of the [Industrial Liaison Group] meetings. Through that effort they have recommended other individuals within the organization to support and attend the liaison group. So that represents the commitment and the feeling of at least Magnavox personnel in how important [the ILG] is to the company.⁹⁰

Susan Rosander, human resources director for Society National Bank of Indiana, located in South Bend with 1,600 employees, talked about: (1) OFCCP reviews, (2) the bank's commitment to affirmative action, and (3) affirmative action initiatives by the bank.

The last time [the bank] was audited was more than 7 years ago. . . . and it was a very positive, informational experience. We were found in compliance; there were no problems. I believe back in 1992 Society Bank was honored with the Eve award. . . . There are other parts of our organization [in other locations] which have been through a [more recent] audit⁹¹

The bank has a multicultural committee comprised of different backgrounds focused on [several] initiatives. One of those is career development and one is networking and finding the opportunity for people who are entering the work force. . . . What this committee is really focused to do is to help minorities and females see things from a big picture. . . . Human resources has a very strong commitment to the mix of candidates that we present to hiring managers for their selection. We have a screening process and, with an eye on affirmative action goals, we have a voice in the business which enables us to influence towards diversity in our organization those kinds of decisions.⁹²

Affirmative action as it relates to our business [is] viewed as an instrumental tool in helping us achieve

85 Paul Bayless, testimony, Indianapolis Transcript, pp. 97-99.

86 Dan Russell, testimony, Indianapolis Transcript, p. 106.

87 Ibid., pp. 106-07.

88 Ibid., p. 116.

89 Ibid., p. 117.

90 Ibid., pp. 125-26.

91 Ibid., pp. 51-52.

92 Ibid., pp. 58-59.

our business objectives. . . . We have a major focus on multicultural programs and initiatives throughout our organization, which focus on diversity in the workplace. Affirmative action is an instrumental tool to help us measure our effectiveness in that regard and is valuable. . . . I review our plan quarterly [and] share it with senior management. But it is one tool of many that we use.⁹³

We have many outreach programs, especially for the youth. . . . We have a partnership with the [South Bend] Jackson Middle School, where we mentor 12 to 15 targeted children who are on the fence . . . and could use a positive influence in their lives. . . . Most of those youths who are minority and/or female . . . and come from rough backgrounds . . .⁹⁴

[In addition] we have a youth apprenticeship program. . . . [and] a job readiness program [for minorities]. . . . Professional minority men and women from the community help us facilitate [these] Saturday sessions [which] can lead to employment with our organization. We will employ 10 youths from the summer internship with us.⁹⁵

We [also] are very strong promoters of the Inroads Program. . . . Part of this program is pre-job training [for disadvantaged youths]. The readiness training [is based on the belief] that orientation to company and corporate culture is instrumental to their success.

Commitment by senior management has been phenomenal, and the support of middle management in recognizing the value of all of these programs has really made it work.⁹⁶

Roger Mullins, personnel director at the University of Notre Dame, the largest employer in the South Bend area with 5,000 full- and part-time employees, addressed the Advisory Committee

about affirmative action and the enforcement of compliance by the OFCCP. The university annually receives \$29 million in grants and contracts from the Federal Government, which is 9 percent of the university's overall revenue. Mullins estimated that in terms of annual costs, the university expends approximately \$100,000 on affirmative action efforts and compliance activities.⁹⁷ Mullins addressed issues dealing with: OFCCP enforcement efforts; the university's commitment to affirmative action; and specific affirmative action initiatives.

At [Notre Dame University] we certainly recognize our obligation to comply with the numbers [and forms] that are necessary and [part of] the normal affirmative action plans and documents, and we spend a lot of effort and energy to make sure that we are in compliance. We have not sought help [from the OFCCP] outside the auditing process.⁹⁸

[The University of Notre Dame] was audited in the late 1980s. We found the experience to be positive. I must admit that there was a lot of emphasis on the format of the report and display of the information. It seemed to be important [to the OFCCP] how the information was shown. The OFCCP recommendations related to our audit were primarily related to format and display.

At the time of the audit, we found [the OFCCP] to be very helpful to us. . . . Not only did they point out certain deficiencies to us, but they had suggestions on how to correct them. We did not use an outside [consultant] in the process.⁹⁹

More important to us, however, is the spirit of what we are trying to do. I am not trying to minimize the importance of compliance because that is an important part of doing business, but it is much more important to us to comply with the spirit of the regulation to achieve a

93 Susan Rosander, testimony, South Bend Transcript, pp. 44-45.

94 Ibid., p. 44.

95 Ibid., pp. 44-45.

96 Ibid., pp. 45-46.

97 Roger Mullins, testimony, South Bend Transcript, p. 68.

98 Ibid., pp. 47-48.

99 Ibid., p. 52.

diversity mix. We have placed a lot of effort over the past several years in making sure that our student body is representative of the demographic groups in the United States. That requires us to have representative faculty and staff and administrators, so that [students] can see that Notre Dame's commitment is true to the spirit of the law.¹⁰⁰

We have what we call a cultural diversity committee at Notre Dame. The purpose of the committee is to evaluate and offer recommendations for change in every aspect of the academic community. It reviews and audits the student admission process. It reviews and audits the quality of student life once the student arrives. [It] looks at the number of faculty we have, both traditional minority and women, and looks at creating programs to attract and retain those faculty members. We do the same thing on the staff side of the university. . . . We [also] integrate cultural diversity training in our leadership development program . . . to help these [managers] understand that cultural differences do matter and they are important and cannot have any influence on how they lead and manage people.¹⁰¹

We do not have a specific goal or objective in terms of numbers in employing the disabled, [though that] obviously is an integral part of our [affirmative action] plan. We have close working relationship with the local services in South Bend, and we place a lot of emphasis on hiring disabled persons. I must admit that the ADA [Americans with Disabilities Act] is a most challenging piece of law for employers to comply with . . . because it sets forth so many avenues and remedies in terms of reasonable accommodation, but does not adequately define for the employer what it is . . .¹⁰²

b. Perspectives from Government Agencies and Community Groups

Representatives from government agencies, community groups, and organizations testified on their experiences and perceptions of the OFCCP compliance enforcement activity and its interac-

tion with their organizations. Three government officials from Federal, State, and local agencies spoke to the Advisory Committee: (1) George Patrick, assistant State director of the Veterans Employment and Training Service (VETS), U.S. Department of Labor; (2) Dwala G. Toombs, director of affirmative action and equal employment opportunity, State of Indiana; and (3) Cynthia Love-Bush, deputy director of the South Bend Human Rights Commission.

The OFCCP enforces compliance of affirmative action with respect to disabled veterans and veterans of the Vietnam Era under the Vietnam Veterans Readjustment Act of 1973.¹⁰³ Federal contractors are required to list all job openings with the State employment service. VETS ensures that State employment services give preference to eligible veterans in their services and investigates veteran complaints dealing with employment reinstatement. According to Patrick:

My Agency, per se, is not an enforcement agency; that is where the OFCCP comes in. There has been a memorandum of understanding between the Assistant Secretary for Veteran's Employment and Training and the Assistant Secretary for OFCCP that we cooperate in terms of trying to get disabled veterans placed with Federal contractors. If problems arise in not getting cooperation from employers [or] from the State employment service, then we report those to the OFCCP.¹⁰⁴

Periodically we get requests from OFCCP asking us to take a look at the files and see if various employers are listing their openings with state employment services. . . . If an employer is a Federal [contractor] and has 50 or more employees and does \$50,000 worth of government business, they are required to have an affirmative action plan onsite . . . to advance in employment disabled veterans and veterans of the Vietnam era.¹⁰⁵

100 Ibid., pp. 47-48.

101 Ibid., pp. 53-54.

102 Ibid., pp. 63-64.

103 38 U.S.C. §§ 2011-2013(19).

104 George Patrick, testimony, Indianapolis Transcript, pp. 237 and 240.

105 Ibid., pp. 238-39.

Toombs directs the affirmative action and equal employment opportunity division of the personnel division for the State of Indiana. Her office monitors individual State agency affirmative action efforts and general compliance by State agency's with equal employment opportunity laws. According to Toombs.¹⁰⁶

State agencies [in Indiana] publish affirmative action plans annually. Those plans are reviewed by our office. . . . Some agencies deal with the OFCCP on a regular basis because they receive the specified amount of Federal funds. Most agencies, however, do not. . . . [So] very few [State] agencies would be familiar with OFCCP or even audited by the OFCCP. That is a concern of mine because if we do away with affirmative action [enforcement], it will be harder for us as affirmative action coordinators in State government to prod our managers into maintaining affirmative action or increasing their efforts.¹⁰⁷

OFCCP does not come in and conduct a general audit of State government. That is my responsibility. . . . We work with agencies to establish timetables for improvement and progress. We compare their previous year's affirmative action plan to their current year affirmative action plan to make sure they are making progress. We cannot sue State agencies, so we encourage agencies to work with us and so far we have been successful in that. . . . [But the OFCCP] could come in [to audit] the [State's] department of health and monitor what they have done.¹⁰⁸

The Advisory Committee's analysis of the 133 service and supply compliance reviews by the OFCCP for the 2-year period, October 1, 1992-September 30, 1994, showed no local or State agency audited by the OFCCP.

Toombs concluded:

The programs that we have in place have been in place and we anticipate that this will continue as long as affirmative action continues. . . . Agencies now know that we are a force that they are going to have to reckon with if they are not progressive in meeting their goals. . . . A small [number] of agencies have excluded their affirmative action efforts from the performance appraisals for their managers and supervisors. Other agencies have not, but that is something that we have considered and hope to implement for all agencies.¹⁰⁹

The South Bend Human Rights Commission has an agreement with the Equal Employment Opportunity Commission (EEOC) to accept charges of discrimination and to investigate the complaints over which the local commission has jurisdiction. Love-Bush summarized for the Advisory Committee the complaint load at her commission and its connection to affirmative action.

For the period 1993 through 1995, a total of 597 complaints were filed with the South Bend Human Rights Commission. Of the 597 complaints, 301 were EEOC only, which meant we lacked jurisdiction in those complaints. . . . Of the 597 complaints filed, 304 were based on race alone. . . . And we are talking about the issues such as hiring, promotions, and discharge.¹¹⁰

[In] those cases that we investigate, we see a large number of probable cause findings. In those probable cause findings, we still have employers who deny that they have discriminated against an employee or potential applicant. . . . Based on the number of complaints received by the South Bend Human Rights Commission, it is evident that affirmative action is needed to continue to eradicate past discriminatory practices to ensure equality for all.¹¹¹

In response to questions from the Committee about the working relationship between the

106 Toombs clarified that her remarks were personal opinion and not necessarily attributable to or the policy of the State of Indiana or the State's personnel department.

107 Dwala Toombs, testimony, Indianapolis Transcript, p. 292.

108 Ibid., pp. 296-97.

109 Ibid., pp. 299-300.

110 Cynthia Love-Bush, testimony, South Bend Transcript, pp. 75-76.

111 Ibid., pp. 76-77.

South Bend Human Rights Commission and the OFCCP, Love-Bush replied:

I have not heard of any [contact]. . . . That does not say [though] that they did not contact City personnel. . . . It would be a good working relationship, but I think given the dynamics of how we work they would be more inclined to refer directly to EEOC. . . .¹¹²

Five individuals from community groups and organizations addressed the Advisory Committee. Rikki Goldstein represented the Fort Wayne Women's Bureau. The Fort Wayne Women's Bureau is a nonprofit organization devoted to education and service in addressing the difficulties and impediments that prevent women from full participation in business, employment, and other aspects of life. Goldstein told the Advisory Committee:

As an agency dedicated to promoting equity and opportunity, the Fort Wayne Women's Bureau receives a plethora of affirmative action letters from area employers, many of them from the rural communities surrounding Fort Wayne. Most simply state their policy with the caveat that should they need employees in the future, they will notify us. In most cases, that is the last I hear.¹¹³

From the perspective of the Women's Bureau there is a compelling need for enforcement of affirmative action. . . . Unless a company offers an orientation and some training as part of affirmative action, women continue to be discouraged from applying for typically male occupations for which they probably could do as well with some on-the-job training. I have received only one letter of these affirmative action letters [from employers] which even alluded to offering on the job training, and I have not received any job offers. . . . Until companies are compelled to deal with issues which are perceived to be women's issues, affirmative action ex-

ists only in policy statements. I believe [affirmative action] compliance needs to be closely monitored with factors such as sexual harassment, child care, health benefits, full-time employment, and training for new hires. . . .¹¹⁴

We have linkages [with some area employers, for example] with Indiana-Purdue Fort Wayne. We have done training for their staff, for students, and they list the Women's Bureau as a resource for legal and discrimination questions.¹¹⁵

In response to questions from the Committee about the working relationship between the Women's Bureau and the OFCCP, Goldstein replied:

I have not heard from them. I think I did get one telephone call asking if I had received a letter from a rural manufacturer. . . . I have worked [at the Fort Wayne Women's Bureau] for 19 years and have gotten one contact from the OFCCP that I recall. . . . If the OFCCP were to find someone in noncompliance, we are in a position . . . to train them. . . . So we are available and the OFCCP could use us, but they don't.¹¹⁶

Nancy Griffin, from the Indianapolis Resource Center for Independent Living, addressed the Committee. The Indianapolis Resource Center for Independent Living provides services to people with disabilities of all ages and types of disabilities as well as supportive employment services for people with the most severe developmental disabilities. Griffin commented on her organization's dealings with the OFCCP and presented a survey of other organizations' knowledge of the OFCCP.

I have been aware of OFCCP, knew that they were in town, [and] made the point of looking them up. . . . I have used them on a few occasions as a technical assistant to clarify points when people have contacted our

112 Ibid., pp. 99-100.

113 Rikki Goldstein, testimony, South Bend Transcript, p. 79.

114 Ibid., pp. 79-81.

115 Ibid., p. 102.

116 Ibid., pp. 99-100.

organization for assistance. . . . They have been responsive, but the contact has always been one way.¹¹⁷

When you think about the barriers for employment for people with disabilities, they are all over the board. Access is just one. The big one is attitude. . . . [People with disabilities] are perceived so differently and with so many limitations, particularly in business because we have not traditionally been in the work force. . . . I would be delighted to work with the OFCCP in order to sensitize employers to the rights of people with disabilities.¹¹⁸

In preparation [for the factfinding] I contacted 18 organizations and agencies around the State which provide services to people within Indiana. . . . They are primarily based in Indianapolis, but I did contact organizations in Vincennes, Lafayette, Louisville, Marion, and Fort Wayne. I was asking . . . about the role and responsibility of the OFCCP

The State Office of Vocational Rehabilitation. . . . agreed to send out a memorandum to all of their local offices across the State asking about their connections with the OFCCP. They got one response. . . . The Marion office called me and said they were aware of OFCCP's audits [of] some employers in that community and [they] receive a list of available jobs. . . . But of all the people they had referred, none had been employed

I contacted the Lafayette Coalition of Persons with Disabilities who told me that prior to the passage of the Americans with Disabilities Act they had filed some complaints with the OFCCP under section 503 and section 504 and had felt that they had gotten very, very good assistance. . . . But it has been two years since they had done anything and had not had any contact since.

I contacted the Indiana Protection and Advocacy Service, the Equal Employment Opportunity Commission, the Indiana Civil Rights Commission, all of whom enforce laws that have to do with the rights of people with

disabilities to employment. They all said that they had very, very limited contact

I called the State director for ADA compliance with the State of Indiana for Title 1. He had heard of the OFCCP, but he did not know there was a local office. . . . The other organizations I contacted either had never heard of the OFCCP, did not understand about affirmative action and how it affected [people] with disabilities, [and] had no knowledge of the Agency's role.¹¹⁹

I also want to comment . . . about good faith effort and how immeasurable and mushy and hard it is to get your hands on [it]. . . . I would love to have employers coming to me asking how they can accommodate a worker with a disability, how to find qualified applicants with disabilities. It is just not happening. . . . If we could get connected to employers so that it is not this horrible mystery, . . . I think people would look at audits and say, "Oh, here is an opportunity to improve and here are the resources to help us do it." . . . Good faith effort is not that tough. Good faith effort is easy to demonstrate. . . .¹²⁰

Cyrus Butler, from the Indianapolis Urban League; talked to the Committee. In commenting about affirmative action enforcement, he drew upon his dual experience in the corporate sector and in community work.

When I was in a large corporation, we did a lot to make sure that we were in line with company goals and plans and visions. There are a lot of corporations that are doing [these affirmative action] things and people [of color and females] have become accepted. At the same time there is a lot of work yet to be done because at the Urban League we get complaints everyday from people who feel they have been discriminated against. . . .¹²¹

The position at the Urban League has been [to] work with most of the major corporations in central Indiana [when] they come to us when they are not getting [minorities] coming in through their employment

117 Nancy Griffin, testimony, Indianapolis Transcript, p. 258.

118 Ibid., p. 259.

119 Ibid., pp. 251-55.

120 Ibid., pp. 282-84.

121 Cy Butler, testimony, Indianapolis Transcript, p. 261.

offices who meet certain standards. . . . Our role has been one of a positive nature, not necessarily complaining about every employer that is out there that could be doing more, but working with those employers to try to help them meet their goals and objectives¹²²

We feel strongly that this whole debate over affirmative action is taking the country backwards in the wrong direction. For that reason we have developed our own resolution . . . reaffirming our strong belief that affirmative action is still necessary. Any matched studies will show that minorities are still disadvantaged when it comes to housing, employment, and so forth. Recent [studies] demonstrate that a white individual and a black individual with the same skills, same education, the same everything—same basic people—the largest percentage of the minorities will lose out in that competition with that equally matched white individual¹²³

[One] thing the OFCCP can do in this age of downsizing, . . . [is] go back and take a look and see where [minorities] stand [now], because I think it really is true that the last hired is the first fired when it comes to . . . downsizing. So people can stand up and apple polish about how great they have been doing, but over the past 2 or 3 years there have been lots of minorities . . . dropping out of the middle class. . . . I would like to see [the OFCCP] audit that, . . . and look at . . . numbers 5 years ago and look at . . . numbers today.¹²⁴

Debra Pinneyei, representing Employment Services for Career Directions, spoke with the Committee. Career Directions is a rehabilitation facility in Elkhart County helping persons with disabilities obtain employment in the community. Pinneyei talked about her work with area employ-

ers and her perception of their commitment to employing the disabled.

I often prepare a lot of facts when I am going in [to visit an employer] to let the employer know a reasonable accommodation may be as simple as allowing individuals to take a break earlier. It is education.¹²⁵

We get letters [from] companies saying they are interested [in employing the disabled]. They are cursory . . . telling us if we have anyone who might be interested, go down to their local work force development office [where] they do their hiring. Our persons would never get a job if we sent them down through those steps. We also have companies that . . . are thrilled [to work with us]. They are interested in working with us and . . . have been willing to make some real accommodations.¹²⁶

I think affirmative action has made a difference. . . . I [also] think the education portion is not there, and it is still a mystery and a scary law to businesses in all areas. I think we need to continue to educate [employers as to] what the law is.¹²⁷

In response to questions from the Committee about the working relationship between Employment Services for Career Directions and the OFCCP, Pinneyei replied that her facility had no relationship with the OFCCP.¹²⁸

Father Boniface Hardin is president of Martin University, Indianapolis.¹²⁹ Martin University is located in the central section of Indianapolis and was founded to serve the unique needs of low-income minorities and adults. Hardin has worked as a consultant to major corporations in their implementation of affirmative action programs.

122 Ibid., pp. 263 and 265.

123 Ibid., pp. 265–66.

124 Ibid., pp. 278–79.

125 Debra Pinneyei, testimony, South Bend transcript, p. 83.

126 Ibid., pp. 83–84.

127 Ibid., p. 106.

128 Ibid., p. 99.

129 Boniface Hardin, a Roman Catholic priest, is a member of the Benedictine Order. He founded Martin University, then college, in 1976.

He offered his perspective on affirmative action enforcement.

As far as affirmative action being enforced, we will have to continue to work on the concept, but we may have to change the vocabulary. Affirmative action is a red flag. . . . and I find that [some] speak [on it from a position] of ignorance. . . .¹³⁰

I think [some] really mean to dismember the corrective action that affirmative action has brought to many of us. [Affirmative action] has done many things, maybe not everything, but without affirmative action we would not even be sitting here today, nor have the

contrast that we have. But at the same time, it has lots of weaknesses [which] sometimes provoke [intergroup strife]¹³¹

I think most of [those trying] to eliminate affirmative action . . . do not understand it is a corrective action. . . . I am talking about the disparate impact on us [the minority community]. I do not care how intelligent or what degree you have or where you are, [without affirmative action] you are going to end up on the low end of the totem pole again and we will never get back to where we were. . . . We are going to lose it all. . . . Take Indianapolis for instance, . . . [black people] do not have any power in this community as black people. . . . There still is much to be done.¹³²

130 Ibid., pp. 139 and 143.

131 Ibid., pp. 143-44.

132 Ibid., pp. 144 and 151.

Part 2

Enforcement of Affirmative Action Compliance in the Construction Industry and Apprentice Programs

1. OFCCP Enforcement Activity

The Office of Federal Contract Compliance Programs (OFCCP) reviews the compliance of construction firms with affirmative action requirements. Under rules and regulations issued by the Secretary of Labor, all construction contractors and subcontractors who hold any Federal or federally assisted construction contract in excess of \$10,000 fall under this jurisdiction.¹ Affirmative action obligations, however, differ between Federal construction contractors and service and supply contractors.

Construction contractors include in their solicitation for offers and bids on Federal and federally assisted construction contracts or subcontracts in excess of \$10,000 a notice of requirement for affirmative action to ensure equal employment opportunity. In this notice goals and timetables for minority and female participation, expressed in percentages of the contractor's aggregate work force in each trade on all construction work, are listed. The goals are applicable to all the contractor's construction work performed in the covered area, whether or not it is Federal or federally assisted.²

Specific goals for employing minorities and females in each trade or craft in each covered area are issued by the Secretary of Labor. Goals for minority employment vary from trade to trade within a geographical area, and each minority trade goal varies from geographical area to geographical area. The Secretary of Labor has established a single employment goal in the construction industry for females at 6 percent for all trades and all areas. The construction contractor

is also obligated to implement and document 16 specific affirmative action steps that are examined during a compliance review audit. These actions include:

- (1) ensure and maintain a working environment free of harassment and intimidation;
- (2) establish and maintain a current list of minority and female recruitment sources;
- (3) maintain a current file of minority and female applicants;
- (4) inform the OFCCP when a union referral process impedes the contractor's efforts in meeting its obligations;
- (5) develop on-the-job training opportunities for minorities and females;
- (6) disseminate the contractor's equal employment opportunity policy to employees and unions;
- (7) review annually the company's equal employment opportunity policy and affirmative action obligations;
- (8) direct recruitment efforts to minority and female community organizations;
- (9) disseminate the contractor's equal employment opportunity policy externally and in all solicitations for employment;
- (10) encourage present minority and female employees to recruit other minorities and females;
- (11) validate all tests and other selection criteria;
- (12) evaluate annually all minority and female employees for promotion opportunities;
- (13) ensure that personnel practices do not

¹ 41 C.F.R. § 60-4.1 (1995).

² 41 C.F.R. § 60-4.3(d)(1995).

- have a discriminatory effect;
- (14) ensure that all facilities and company activities are nonsegregated;
- (15) document and maintain records of all solicitations for subcontracts from minority- and female-owned firms; and
- (16) review annually the adherence of supervisors to the company's equal employment and affirmative action obligations.³

The Advisory Committee obtained from the OFCCP and analyzed the records of construction compliance reviews conducted in Indiana for the 2-year period, October 1, 1992–September 30, 1994. In that period 84 construction compliance reviews were completed. Eighteen compliance reviews (21.4 percent) were conducted by the Chicago district office, and 66 compliance reviews (78.6 percent) were conducted by the Indianapolis district office. One firm was reviewed twice in the 2-year period.

TABLE 11
OFCCP Construction Reviews by Type
Oct 1, 1992–Sept 30, 1994

Indianapolis		
	Number	Percent
Initial	37	56%
Followup	29	44%
Chicago		
	Number	Percent
Initial	10	56%
Followup	8	44%
Total		
	Number	Percent
Initial	47	56%
Followup	37	44%

Source: Midwestern Regional Office, USCCR, from Region V, OFCCP, USDOL data.

Forty-seven (56 percent) of the construction reviews in the State were initial reviews, while 37

(44 percent) were followup reviews. The ratio of initial to follow-up reviews was consistent between the two district offices operating in Indiana. The Chicago district office did 10 initial construction reviews (56 percent); the Indianapolis district office did 37 initial construction reviews (56 percent). The OFCCP conducted at least one construction compliance review in 27 of the State's 92 counties. Similar to nonconstruction review activity, the county with the most construction compliance reviews was Marion County, with 28 reviews, (33.3 percent of all construction reviews). Following Marion County, the OFCCP was most active in Allen County, 10 reviews (12 percent); Lake County, 6 reviews (7.1 percent); Vanderburg County, 4 reviews (4.7 percent); and Vigo and Monroe Counties, 3 reviews each (3.6 percent). Table 12 lists, by county, the number of construction reviews.

Most areas of Indiana were affected by OFCCP construction review activity. Dividing the State into nine areas: northwest, north central, northeast, west central, central, east central, southwest, south central, and southeast, only the east central and southeast sectors of the State had no construction review activity in the 2-year period October 1, 1992–September 30, 1994. The northwest and north central areas are under the jurisdiction of the Chicago district office, both the Indianapolis and Chicago district offices control portions of the northeast area, and the remainder of the State is the responsibility of the Indianapolis district office. Map 1 depicts the nine sectors, counties, and metropolitan statistical areas (MSAs).

In northern Indiana, the northwest sector, which includes the Gary area, had eight reviews; the north central area, which includes the cities of Elkhart and South Bend, had eight reviews, and the northeast area, which includes the Fort Wayne area, had 13 reviews. In central Indiana, the west central area, which includes Terre Haute, had eight reviews; the central area, which includes the City of Indianapolis, had 38 reviews; and the east central area, which includes the cities of Muncie and Richmond, had no reviews. In

³ 41 C.F.R. § 60-4.3(a)(7)(1995).

TABLE 12

**Indiana Construction Compliance Reviews
by County, Oct. 1, 1992-Sept. 30, 1994**

County	Reviews
Adams	1
Allen	10
Bartholemew	1
Benton	1
Cass	1
Clark	1
Dubois	1
Floyd	1
Greene	1
Hendricks	1
Jackson	1
Jennings	1
Johnson	1
Kosciusko ¹	1
Lake ¹	6
LaPorte ¹	2
Marion	28
Monroe	3
Porter ¹	2
Shelby	2
St. Joseph ¹	6
Tippecanoe	2
Vanderberg	4
Vermillion	1
Vigo	3
White	1
Whitely ¹	1

¹ Counties in Chicago OFCCP district area.

Source: Midwestern Regional Office, USCCR, from Region V, OFCCP, U.S.DOL data.

southern Indiana, the southwest sector, which includes Evansville, had five reviews; the south central area, which includes New Albany, had four reviews; and the southeast sector had no reviews.

Enforcement procedures for construction contractors are the same as for nonconstruction companies, and are used when a contractor is found in noncompliance with the rules and regulations governing Executive Order 11246, i.e., (1) illegal discrimination, (2) failure to take good faith ef-

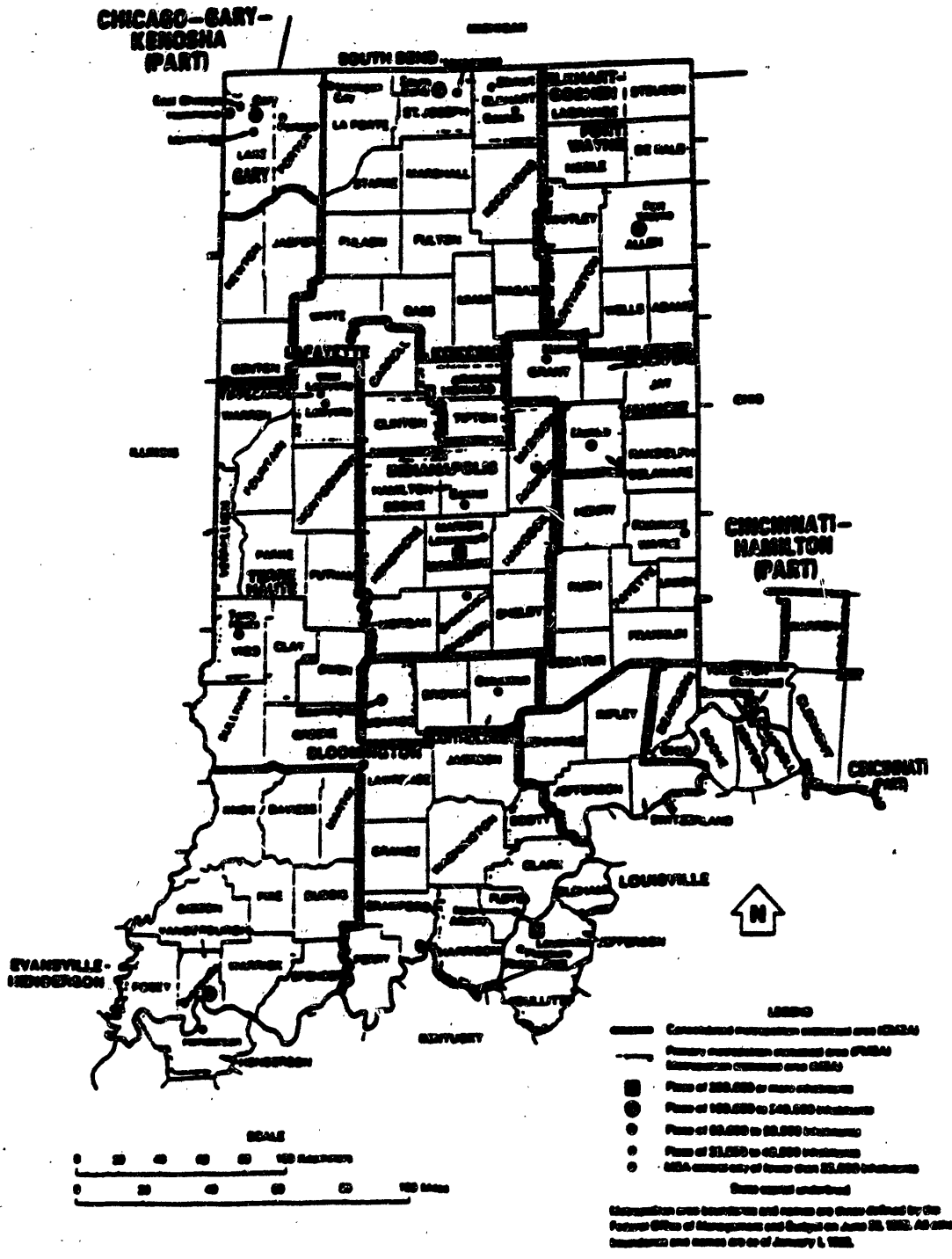
forts, and/or (3) noncompliance with one or more of the 16 required affirmative action steps. Conciliation agreements are required when there is a finding of discrimination, lack of good faith effort, or major deficiencies in documenting or doing the 16 affirmative action steps. A letter of commitment is used for minor violations of the 16 required affirmative actions. Conciliation agreements and letters of commitment can also contain linkage agreements and monitoring requirements. Linkage agreements establish formal liaisons between the contractor and community organizations that can refer qualified minorities and females. Monitoring requirements mandate the contractor to submit progress reports to the OFCCP. The Agency monitors these reports. In cases where the reports indicate compliance with the rules and regulations, the contractor is found in compliance.

Employment data was available for 81 of the 84 construction firms audited in the 2-year period, October 1, 1992-September 30, 1994. Descriptive statistics and correlations were calculated for total trade employment, minority trade employment, and female trade employment. Trade employment includes individuals working in a skilled construction trade. Similar data was also analyzed for (1) type of review, i.e., initial or followup, (2) duration of the review, and (3) enforcement activity, i.e., conciliation agreement.

Employment at audited construction firms averaged 63. The smallest company reviewed had 4 employees, while the largest firm had 400 employees. Average minority employment was 6, with the largest number of minority employees at one firm being 40. Ten companies (12.3 percent) had no minority employees. Total female employment averaged 2.6 employees, with one firm employing 34 females. Twenty-nine companies (35.8 percent) had no female craft workers.

Minority and female craft employment ratios were computed and examined. The average percentage of minority craft employment was 12.2 percent; the highest minority percentage at one firm was 55.5 percent. The average percentage of female craft workers was 4.4 percent; the highest female percentage at one firm was 29.6 percent. Aggregate average minority craft percentage employment and female craft percentage employment is shown in table 13.

Map 1 Indiana State Areas, Counties, and MSAs



Source: Midwestern Regional Office, USCCR, from U.S. Department of Commerce, Economic and Statistics Administration, Bureau of the Census

TABLE 13

Minority and Female Trade Employment of Reviewed Construction Contractors

	Average	Maximum	Minimum
Total employment	63.3	400	4
Minority	6.6	40	0
Minority percentage	12.2%	40.0%	0.0%
Female	2.6	34	0
Female percentage	4.4%	5.8%	0.0%

Source: Midwestern Regional Office, USCCR.

Construction reviews in Indiana usually resulted in findings of significant technical violations, requiring the contractor to sign a conciliation agreement to correct the deficiencies. Sixty-seven of the 84 construction reviews (79.9 percent) conducted in Indiana during the 2-year period resulted in a conciliation agreement being executed. Recruitment was the most often cited deficiency, determined insufficient in 56 of the 84 audits (66.7 percent). Performance under the plan was the next most frequent cited deficiency, noted in 27 reviews (32.1 percent).⁴

Hiring and/or placement was cited as a deficiency in five reviews, but no findings of employment discrimination were made by the Agency. Inadequate accommodation for disabled workers was cited in five audits (6 percent). In one review a contractor agreed to invest \$15,000 in accommodations for disabled workers.

On average a construction review took 1 month from the initiation of the review with an onsite visit by the OFCCP to a notification of compliance. The longest time for a construction review was 7 months; the shortest was 1 day. Eighteen reviews (21.4 percent) took just 1 day. One review was 10 days in length; 21 reviews lasted 15 days; another 21 reviews took 1 month. Eight reviews took 1½ months to complete; nine reviews lasted

TABLE 14

Deficiencies Cited in Construction Reviews

	Number	Percent
Recruitment	39	46.4
Performance under plan	10	11.9
Recruitment and performance	17	20.2
Hiring and/or placement	5	5.9
Accommodation	5	5.9

Source: Midwestern Regional Office, USCCR, from Region V, OFCCP, USDOL.

2 months; and six reviews lasted 3 or more months.⁵

There was little correlation between the time involved in completing a construction review and either the type of review, i.e., initial or followup, or the enforcement action by the Agency, i.e., presence of a conciliation agreement. The correlation between a review resulting in the execution of a conciliation agreement was positive, but insignificant, $r = 0.13$. The correlation between an initial review and the length of time to complete the review was zero, $r = 0.006$.

⁴ In 17 reviews, both recruitment and performance under the plan were cited as deficiencies.

⁵ Review time is measured as the time period beginning with the initial onsite visit of the OFCCP to the issuance of a letter of compliance by the agency. As such, review time does not necessarily reflect time onsite at the contractor's facility and/or worksites.

Ten audits reviewed contractors who had no minority employees in craft positions. The counties of those reviewed construction contractors, the minority population of those counties, and the number of trade employees at the reviewed firms were:

Allen	13.2 percent	30
DuBois	0.9 percent	29
Floyd	4.9 percent	16
Hendricks	1.9 percent	50
Marion	23.5 percent	50 and 24
Monroe	15.3 percent	85
Shelby	1.6 percent	4
Vigo	7.9 percent	25 and 27

Two of the construction reviews where there were no minority craft workers were followup reviews. Those reviews were in Monroe County and Vigo County. Despite a second review by the OFCCP, the Federal contractors—both located in areas with a substantial minority population—continued to have no minority construction trade employees.

A positive relationship between a follow-up review and a conciliation agreement being executed is a preliminary indicator that prior reviews did not induce changes in the original affirmative action employment activities of the contractor. There was a positive, though insignificant, correlation between the review being a followup review and a conciliation agreement being executed.

The length of time to complete a review appears to be independent of whether or not it is a first-time review of the contractor and whether substantial problems are uncovered by the review. Analysis also showed that the length of the review process unrelated to the number of employees, $r=0.03$.

2. The Indianapolis Hometown Plan

Federal regulations allow for construction contractors to be signatories to hometown plans. Hometown plans are voluntary agreements entered into by a coalition of building contractors,

TABLE 15
Length of OFCCP Construction Reviews

	Number	Percent
1 day	18	21.4
10 days	1	1.2
15 days	21	25.0
1 month	21	25.0
1½ months	8	9.5
2 months	9	10.7
3 months	2	2.4
4 months	1	1.2
5 months	1	1.2
6 months	1	1.2
7 months	1	1.2

Source: Midwestern Regional Office, USCCR, from Region V, OFCCP, USDOL.

trade associations, unions, community groups, and government to develop and increase minority and female employment in the building trades. Federal regulations read:

A contractor participating, either individually or through an association, in an approved Hometown Plan . . . shall comply with its affirmative action obligations under executive Order 11246 by complying with its obligations under the plan: *Provided*, That each contractor and subcontractor participating in an approved plan is individually required to comply with the equal opportunity clause set forth in 41 CFR 60-1.4; to make a good faith effort to achieve the goals for each trade participating in the plan in which it has employees; and that the overall good performance by other contractors or subcontractors toward a goal in an approved plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the plan's goals and timetables. If a contractor is not participating in an approved hometown plan it shall comply with the specifications set forth in § 60-4.3 of this part and with the goals and timetables for the appropriate area as listed in the notice required by 41 CFR 60-4.2 with regard to that trade. . . .⁶

⁶ 41 C.F.R. § 60-4.5. Note that the reference in this part to section 60-4.3 refers to the 16 affirmative action steps required of Federal construction contractors.

A hometown plan exists in Indiana, the Indianapolis Plan, which provides a variety of services to facilitate the placement of minorities, women, and disadvantaged workers in the building trades. The primary services offered by the Indianapolis Plan are: (1) recruitment and outreach, (2) job orientation and placement, (3) apprenticeship preparation, and (4) counseling and supportive services.

The Indianapolis Plan was originally activated in 1970 under the guidance of Richard J. Lugar,⁷ then mayor of the City of Indianapolis, and Juan C. Solomon, then chairman of the Indianapolis Metropolitan Manpower Commission. A task force, which included the Building Trades Council, the General and Specialty Contractor Association, and the Minority Coalition of Indianapolis, was created to develop an agreement in compliance with Executive Order 11246. A general agreement was signed on April 9, 1970. Subsequently, representatives of the unions, contractors, and the African American community met and negotiated supplemental agreements specifying goals and timetables for minority employment in the particular crafts. By June 17, 1971, all 17 crafts in Indianapolis had signed agreements.⁸

The approved April 9, 1970, memorandum stated the overall goal of the Indianapolis Plan to be the achievement in 5 years of a level of minority employment in the construction crafts equal to the minority groups' percentage of the population in Marion County.⁹ The document also established the administrative committee and subordinate operation committees to coordinate and direct the program. The administrative committee appointed and directed the activities of a full-time director, who in turn supervised a staff of recruiters/counselors, education specialists, and clerical workers. The administrative committee also re-

viewed the operations of the staff and individual crafts.¹⁰

The Indianapolis Plan was funded through a contract with the U.S. Department of Labor. The enactment of the Comprehensive Employment Training Act (CETA) of 1973 required a contract with the Division of Manpower, City of Indianapolis, which funded the program beginning in 1974.

With the enactment of the Job Training Partnership Act (JTPA) of 1980, funding for the Indianapolis Plan was obtained through this source.¹¹ JTPA funding, however, required that recipients meet the U.S. Department of Labor economically disadvantaged guidelines.

The Indianapolis Plan is one of three hometown plans still in existence in Region V. Two others operate in Dayton, Ohio, and Cincinnati, Ohio. Currently the Indianapolis Hometown Plan is funded through private grant money and membership dues, and 180 contractors are signatory to the plan.

Michael Elder, executive director of the Indianapolis Plan, spoke on the program's current funding and operation:

The Indianapolis Plan is 20 years old. It is a local approach to recruit minorities and females to the union building construction trades industry through our apprenticeship programs. We use an outreach concept. We educate the candidate and do pretraining approximately 300 hours of classroom trainingshoring up any deficiencies the client might have towards the apprenticeship examination. Upon the conclusion of that classroom training, we offer employment with one of our 180 signatory contractors.

The [Indianapolis] Plan acts as a triangular structure: organized labor, contractor members, and the community. The program is certified with the United States Department of Labor Bureau of Apprenticeship and

7 Richard J. Lugar (R-IN) currently is the senior United States Senator from Indiana.

8 Richard L. Rowan and Lester Rubin, "Opening the Skilled Construction Trades to Blacks," *Labor Relations and Public Policy Series* (University of Pennsylvania (1972)), pp. 123-24 (hereafter cited as Construction Study).

9 Memorandum of Understanding, Apr. 9, 1970.

10 Construction Study, p. 137.

11 "The Indianapolis Plan for Equal Employment," *The Indianapolis Plan* (1976), p. 4.

Training, which allows us to work these individuals as preapprentices on Federal and State jobs.

The Federal register [requires] signatory contractors to have a collective bargaining agreement [and have this assignment set out] in the memorandum of understanding. So we are . . . locked into an apprenticeship . . . sponsored by joint labor-management committees.¹²

The OFCCP has authority to review the operation of hometown plans and recommend continued certification to the Secretary of Labor.¹³ The first review of the Indianapolis Plan by the Agency was in 1971. The review found most craft signatories in noncompliance and gave them an additional 3 months to produce results or else be held in noncompliance and thereby be placed under government-determined bid requirements.¹⁴

The Indianapolis Plan experienced a series of financial and management problems during the 1977-1980 period. Changes of staff and directors occurred frequently with accompanying uncertainty regarding records. In 1980 the Indianapolis district office of the OFCCP reviewed the Indianapolis Plan's operations and recommended withdrawal of approval. The recommendation, however, was not followed by the United States Department of Labor.¹⁵ In late 1980 a new director was appointed and the Indianapolis Plan entered into an agreement with the City of Indianapolis. The agreement was a renewable arrangement calling for the hometown plan to recruit CETA participants and prepare them for entry into apprenticeship training. Training was accompanied by placement on a construction job as a trainee at

a pay rate approved by the Bureau of Apprenticeship and Training, U.S. Department of Labor.¹⁶

The new management and operation of the Indianapolis Plan received conditional support from the OFCCP. A 1987 OFCCP audit of the plan recommended:

We are . . . recommending that the [Indianapolis] Plan be given a 2-year extension. The recommendation is based on the fact that the Plan has excellent support from the Private Industry Council, the City of Indianapolis, the local contractors association, the Federal Bureau of Apprenticeship and Training, and local labor unions. Funding support, especially from the Private Industry Council, is excellent and sufficient for their needs. Also, most important, they are training minorities and women in basic construction skills and they are putting people to work with the cooperation of management and labor.¹⁷

Elder spoke about the Indianapolis Plan's current operation and recent accomplishments.

Signatory contractors to the [Indianapolis] Hometown Plan must submit a monthly 257 manpower utilization report every month whether they are doing [Federal] covered work or not. It is very clear in the [Federal] regulations that I am supposed to be the OFCCP to the signatory contractors. . . . It is our philosophy that a contractor should be in compliance all the time, not just when they have Federal work. There is a provision [that if they are not] I will put them out of compliance with the [Indianapolis] Hometown Plan and notify the OFCCP.¹⁸

When a client walks in our office, he or she is administered a test of adult basic education that rates the person's math skills, reading skills, and high school

12 Michael Elder, testimony before the Indiana Advisory Committee to the U.S. Commission on Civil Rights, factfinding meeting, Indianapolis, IN, Apr. 20, 1995, pp. 179-80 (hereafter cited as Indianapolis Transcript).

13 41 C.F.R. § 60-4.5(a).

14 Construction Study, p. 139.

15 Theodore R. Hood, Indianapolis OFCCP District Director, letter to John R. Checkett, Assistant Regional Administrator, OFCCP, U.S. DOL, July 30, 1987.

16 Ibid.

17 Ibid.

18 John Elder, testimony, Indianapolis Transcript, pp. 193-94.

grade equivalency. We then start the syllabus, tutoring in preparation for [the apprentice] examination. . . . Tutoring the exam is part of the program, then going to work and getting good work reports.

Since April 1, 1994, through April 1, 1995, we have employed 74 black females, 60 white females. The jobs ranged from \$8.10 to \$17 an hour. All have full benefit packages.¹⁹

Last year our females had an average entry level wage of \$8.27 an hour plus a benefit package. . . . The Indianapolis Hometown Plan has produced 358 jobs in central Indiana. . . . Most plans went by the wayside between 1980 and 1984. We stayed intact because [former Indianapolis] mayor Bill Hudnut saw its merit and funded us through a 3-5 year period when there were no dollars.²⁰

OFCCP officials were queried about the Indianapolis Plan and its operation. Stepteau, the Indianapolis OFCCP office district director, responded:

The [Indianapolis Plan] seems to be very effective in what they do. . . . They recruit, train, and place trainees or preapprentices to contractors that are signatories to the [Indianapolis] Plan. Not all of the contractors are [Federal] government contractors that would fall under our jurisdiction, but quite a few do and we review these contractors.

The [Indianapolis] Hometown Plan representatives sometimes participate as observers . . . in the review process. They work with the contractors. So although I think our objectives are the same, sometimes the way each Agency goes about it may differ.

The [signatory] contractors nonetheless are required to adhere to the regulations if they have a Federal contract. But in all, I think there is a good relationship

[between the OFCCP and the Indianapolis Plan]. I have a great deal of respect for what they do, although we still have to enforce our regulations.²¹

In 1992 the Indianapolis OFCCP district office began its most recent review of the Indianapolis Plan. The audit included an examination of minority and female placement activity by the Indianapolis Plan, onsite visits to contractor signatories, an inspection of monthly employment utilization reports, and an appraisal of the activities of 15 unions. Unions surveyed included: asbestos workers, boilermakers, carpenters, cement masons, electricians, elevator constructors, glaziers, iron workers, painters, plumbers and steamfitters, sheet metal workers, sprinkler fitters, operating engineers, plasterers, and roofers.²²

The reviewers found that during calendar year 1991 the Indianapolis Plan reported 235 total placements (60 percent minorities, 18 percent women). Placements in the trades and crafts included the following:²³

Carpenters	27 (19 minority, 3 women)
Electricians	197 (112 minority, 34 women)
Sheet metal workers	2 (2 minority, 2 women)
Plumbers	1 (1 minority)
Painters	2 (2 minority, 1 woman)
Laborers	4 (3 minority, 2 women)
Others	2 (1 minority)

Thirty Indianapolis Plan trainees became apprentices during 1991 in the following areas:²⁴

19 Ibid., pp. 207-08.

20 Ibid., pp. 187-86.

21 Philip Stepteau, testimony, Indianapolis Transcript, pp. 76-77.

22 Indianapolis Hometown Plan Audit, OFCCP, U.S. Department of Labor, Nov. 21, 1994, p. 5. The audit report is in appendix D.

23 Ibid.

24 Ibid.

Bricklayers	2 (1 minority)
Carpenters	2 (1 minority)
Electricians	11 (5 minority, 2 women)
Ironworkers	3 (1 minority)
Millwrights	1 (1 woman)
Painters	3 (2 minority, 1 woman)
Plumbers	2 (1 minority)
Sheet metal workers	5 (4 minority, 1 woman)

The audit concluded that the management of the Indianapolis Plan should be more active in monitoring and evaluating activities of contractors and unions. The failure of some contractors to submit 257s (forms indicating the hours worked by race, gender, and craft), the lack of trainee participation or lack of trainee participation at the expected rates by some crafts, and the failure or inability of some crafts to report participation rates raised questions about how the Indianapolis Plan could measure a contractor's or craft's good faith efforts.²⁵

The review noted that an impression existed among signatory contractors, that as participating contractors, the Indianapolis Plan undertakes sufficient efforts to satisfy many, if not most, of the specific 16 affirmative action steps. Federal regulations address the affirmative action obligations of plan signatories:

Each Plan participating contractor is individually required to make a good faith effort to achieve the goals for each trade participating in the Plan in which it has employees. Concerns have been raised by the Plan over the past several years of its responsibility for documenting good faith efforts and affirmative action steps, specifically the 16 affirmative action steps at 41 CFR 60-4.3(a)(7)(a) through (p). Plan contractors are apparently under the impression that as participating contractors the Plan has undertaken sufficient efforts to satisfy many if not most of the specific 16 AA steps. . . .

The Plan and contractors have been advised that being signatory to the Plan does not relieve the contractor of its obligation to demonstrate compliance with the 16 steps.²⁶

The audit also found that the Indianapolis Plan needed to be amended and updated to reflect changes in policy and procedure that have occurred subsequent to its origin, but which have not been communicated to signatories, unions, community groups, and potential clients.²⁷ A recommendation was made to the national office by the OFCCP regional office to grant the Indianapolis Hometown Plan a 1-year provisional extension.

We recommend that . . . the Indianapolis Hometown Plan be granted a provisional extension of one year from the date of National Office acceptance of this recommendation. At the end of that year, OFCCP will return for a follow-up review. . . .²⁸

On February 17, 1995, the National Office of the OFCCP approved the recommendation and extended the Indianapolis Plan for a 1-year period. The executive director of the Indianapolis Plan was notified of the audit result on May 18, 1995, and informed that it should anticipate another audit of the Indianapolis Plan beginning in March 1996.²⁹ Elder spoke about his perception of the Indianapolis Plan's relationship with the OFCCP.

In the past there has been [some effort by the OFCCP] to decertify the [Indianapolis] Plan. I think simply because we were the only surviving creature out there and were a nuisance. I do not think they feel that way today. . . . With them or without them, we are going to stay in business. We are expanding and growing very fast. There is a total commitment by the building trades, statewide organizations, and employers to keep this thing alive. . . . We offer technical assistance to our

²⁵ Ibid., p. 10.

²⁶ 41 C.F.R. § 60-4.5(a).

²⁷ Indianapolis Hometown Plan Audit, OFCCP, U.S. Department of Labor, Nov. 21, 1994, p. 9.

²⁸ Ibid.

²⁹ Philip M. Stepteanu, letter to Michael J. Elder, May 18, 1995, Indianapolis district office, OFCCP, files.

employer members about Federal regulations and the OFCCP and we do attend audits. . . . The OFCCP audits us every 4 or 5 years. . . .³⁰

Under the original plan [contractors] were to be given a compliance status as long as the craft was in compliance. Somewhere that has been lost and the OFCCP does not distinguish between signatory plan contractors from nonsignatory contractors. The [Federal] regulation . . . is very clear. . . . Contractors who are not signatory to a [hometown] plan must comply with the 16 affirmative action steps. My biggest problem with the OFCCP is they want to impose the 16 affirmative action steps on the signatory plan contractors. . . .³¹

It does not seem to matter [if a contractor is signatory to the Indianapolis Plan]. The OFCCP is going to audit who they are going to audit, whether they are signatory or in compliance with our standards. In July, during the peak of construction season, it is pretty devastating to a contractor when he has to stop and open his payroll records for a year. [The review] takes at least a week.³²

We put a membership fee on our contractors, \$250 and \$500, depending on the size of the employer. . . . I charge a contractor \$500 and say I am an affirmative action program. I will help you set your regulations and show you how to stay in compliance, and wham, he is audited [by the OFCCP]. He says, "I am not going to pay you \$500 anymore, because I can get audited by myself."³³

When the OFCCP conducts an audit and the contractor is found to be in noncompliance, the [OFCCP] makes recommendations. One of the recommendations is they give the contractor eight sources to recruit from. I am treated as one of the eight. . . . You can not seem to convince [the OFCCP] that this program is more than just one of the [community] agencies. . . . We are just listed as one . . . to call.³⁴

Elder also addressed his concern with the OFCCP's assessment of good faith effort by construction contractors to recruit, train, and employ minorities and females.

It is the opinion of the examiner if you are in compliance. The next time you go through an audit and it is examiner B, it is his opinion. I do not see a lot of leeway given to good faith effort.

A construction contractor may be in noncompliance through no fault of his own. . . . Because of the nature of the business . . . we annually rotate apprentices [through] the entire industry. The contractor may, through no fault of his own, rotate out minorities and females. Now he is in noncompliance individually, but as an industry he is in compliance.

In Indianapolis our Federal goal is 12.5 percent minority employment. We are at 13.3 percent. Yet we are still getting individual employers cited for noncompliance.³⁵

There is no rhyme or reason under the rules and regulations [demonstrating] good faith efforts. You do not have to be in compliance, you have to demonstrate good faith effort. It comes down to the point of how did you recruit. . . . It is totally arbitrary. There is nothing in the [OFCCP] manual that says what is good faith. It is up to the individual auditor. It is totally subjective and no two operate the same. I will almost guarantee you we can pick any contractor and send three auditors [from the OFCCP] and you will get three different results. . . . They will not find them guilty of the same violation. . . . All I am trying to tell you is the guy that is doing nothing is treated the same as the guy that is trying to do a lot. They are both guilty unless they have the magical number, and that is not what the legislation was intending to do. It was to recognize those employers who tried to do right.³⁶

30 Michael J. Elder, testimony, Indianapolis transcript, pp. 186-87.

31 Ibid., pp. 188-89. Elder is referring to the Federal regulations 41 C.F.R. § 60-4.5(a) cited on page 70.

32 Ibid., p. 194.

33 Ibid., pp. 210-11.

34 Ibid., p. 214.

35 Ibid., pp. 189-90.

36 Ibid., pp. 220-21 and 223-24.

Elder also spoke about the Indianapolis Plan's efforts to employ the disabled.

[Employing the disabled] has been one of the hardest things for us to really deal with because we are in the construction industry. . . . There is virtually nothing we [can] do for a person in a wheelchair. Impaired hearing, we can certainly work with that, but it is really hard. [That is] because of the nature of our business and the machinery and loads moving across building sites. . . . [We have turned away] a few [disabled applicants], but they were very, very impaired. We just did not really know what to do at that point in time. We refer them . . . for other services.³⁷

3. Apprentice Programs

The National Apprenticeship Program is the term used to describe the coalition of management, labor and government that supports the apprenticeship program in the United States and the aggregate nationwide of such programs and enrolled apprentices. Apprentice programs are operated by employers, employer associations, or jointly by management and labor on a voluntary basis. Government's role is to provide support services to these program sponsors.

Apprenticeship, in simplest terms, is training in occupations that require a wide and diverse range of skills and knowledge, as well as maturity and independence of judgment. It involves planned, day-by-day training on the job and experience under proper supervision, combined with related technical instruction. As practiced by modern industry, apprenticeship is a business-like system designed to provide workers entering industry with comprehensive training by exposing them to the practical and theoretical aspects of the work required in a highly skilled occupation.

Under the National Apprenticeship Act, the Bureau of Apprenticeship and Training (BAT), U.S. Department of Labor, is responsible for providing service to existing apprenticeship programs and technical assistance to organizations

who would like to establish an apprenticeship program. BAT works very closely with State Apprenticeship Councils (SAC) and the educational system to deliver support services at the national, State, and local level. The Bureau provides technical assistance in several areas, including: analysis of training content, development of selection procedures consistent with Title 29 CFR Part 30, development of administrative procedures consistent with Title 29 CFR Part 29, program evaluation, and registration of apprentice programs.

John Delgado, State Director in Indiana for the Bureau of Apprenticeship and Training, spoke about affirmative action in apprentice programs, the responsibility of BAT in ensuring equal employment opportunity for women and minorities, and affirmative action enforcement done by the Agency in apprentice programs.

Every one of [BAT's] programs which has five or more apprentices in that particular program has to have an affirmative action plan in their standards. We work by two different regulations. One is 29 [Part] 29, the labor standards on apprenticeship programs; the other one is Equal Employment Opportunity of Apprenticeship and Training Programs, 29 Part 30. All our apprentice programs, [if] they have five or more continuous apprentices in those programs, must have an affirmative action plan [included].³⁸

Understand, apprenticeship is a volunteer program. A program sponsor can get into the program and they can get out of the program whenever they want, whether it be a joint apprenticeship committee [or] there are several people signatory to the program.³⁹

[BAT] does compliance reviews on all programs with five or more continuous apprentices. [And those programs] have to have an affirmative action program. BAT did over 75 compliance reviews in the State of Indiana [in 1994]. We make suggestions to these programs whenever they are not meeting the [affirmative action] goals and timetables.⁴⁰

³⁷ Ibid., p. 201.

³⁸ John Delgado, testimony, Indianapolis Transcript, pp. 229-30.

³⁹ Ibid., p. 230.

Delgado said BAT assesses affirmative action compliance in apprenticeship programs. The evaluation is a standardized and includes an examination of a program's: policy statement, the dissemination of policy, designation of reporting responsibility, utilization analysis, goals and timetables, assessment of present employment practices, and action programs necessary to overcome problem areas, and internal monitoring and reporting. According to Delgado, despite BAT's activities in this area, the OFCCP does a similar audit of apprentice programs during its review process.

OFCCP in November 1990 was given jurisdiction over [41 CFR] 29.30, which is equal employment opportunity in apprenticeship programs. The [OFCCP] can

conduct compliance reviews on apprenticeship programs now the same way BAT does. . . . In the last 5 years there have not been more than 5 compliance reviews of [apprentice programs] done by OFCCP in Indiana, . . . [but] why do we have two [affirmative action] compliance reviews by BAT and OFCCP?

BAT is doing compliance reviews. . . . I am sure OFCCP can find [deficiencies] and cite them. BAT per se is not an enforcement agency. We do enforce and try to make sure that [companies] are meeting their affirmative action goals . . . under the apprenticeship standards, selection standards, the ratio, the wages for these apprentices and all the labor standards. I feel we have made several gains through BAT without the OFCCP as far as recruiting minorities and females into the work force.⁴¹

40 Ibid., pp. 230-31.

41 Ibid., pp. 232-33.

Part 3

Findings and Recommendations

The Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, is the Federal agency responsible for enforcing compliance with the affirmative action obligation of Federal contractors. The authority for this responsibility is Executive Order 11246, as amended, issued by President Lyndon B. Johnson in 1965. Since it was initially issued, the Executive order and its affirmative action requirement have been enforced, and thus affirmed, by the Nixon, Ford, Carter, Reagan, Bush, and Clinton administrations.

Affirmative action in this circumstance refers only to matters of employment. Moreover, the obligation is directed only to companies and firms doing business with the Federal Government. The Federal Government has issued regulations in Title 41, Part 60 of the Code of Federal Regulations, to codify the obligations of Federal contractors with respect to this affirmative action. Such regulations include: 41 C.F.R. 60-1, which deals with the obligations of contractors and subcontractors; 60-2, affirmative action programs; and 60-4, construction contractor affirmative action requirements. Other parts in chapter 60 dealing with activities of the OFCCP and the enforcement of affirmative action compliance are: uniform guidelines of employee selection procedures (60-3); sex discrimination guidelines (60-20); rules of practice for administrative proceedings to enforce Executive Order 11246 (60-30); examination and copying of OFCCP documents (60-40); guidelines on discrimination because of religion or national origin (60-50); contractor evaluation procedures for contractors for supplies and services (60-60); affirmative action obligations of contractors and subcontractors for disabled veterans and veterans of the Vietnam era (60-250); and affirmative action for disabled workers (60-741).

Companies with 50 or more employees that supply annually \$50,000 or more in nonconstruction supplies and services to the Federal Government have, as part of their affirmative action

commitment, an obligation to develop a written affirmative action program. As part of this program the company must determine the availability of females and minorities for each of the firm's different job groups. If the utilization of females and/or minorities at the company in a particular job group is less than the determined availability, the firm must set a goal and make a good faith effort to recruit and hire qualified individuals of the underutilized group.

Affirmative action obligations for construction companies with Federal contracts differ from supply and service contractors. Construction firms are required to: (1) establish female and minority employment goals by craft or trade, and (2) undertake 16 affirmative action steps. Construction contractors may participate in hometown plans. Such plans are local agreements, whereby building contractors, trade associations, unions, community groups, and government develop a local program to increase female and minority employment in the building trades.

The principal method employed by the OFCCP to enforce compliance of the affirmative action obligation under Executive Order 11246, as amended, is the compliance review. Compliance reviews are conducted by compliance officers, who are located in district and field offices. These compliance reviews are initiated by the OFCCP.

During the audit, the compliance officer examines the contractor's activities for: (1) nondiscriminatory activity, (2) affirmative action, including good faith effort, and (3) technical compliance with the rules and regulations in developing a written affirmative action program. If the Agency determines that the Federal contractor is in non-compliance, cited deficiencies can be remedied informally through a conciliation agreement. When cited deficiencies are not mediated informally, enforcement proceedings against the company can be initiated, and, if upheld through the administrative hearing process, may result in the

debarment of the company from present and future Federal contracts.

Two district offices of the OFCCP operate in the State of Indiana. The Indianapolis district office reviews firms in the central and southern regions of the State; the office also has responsibility for reviewing firms in the southern half of Illinois. The Chicago district office is responsible for reviewing Federal contractors in the northern part of Indiana; it also has responsibility for the northern half of Illinois. Both district offices report to the region V office, located in Chicago, Illinois.

The Indiana Advisory Committee to the U.S. Commission on Civil Rights examined the work and operation of the OFCCP in Indiana in enforcing compliance of affirmative action under Executive Order 11246. The Advisory Committee, recognizing that the very concept of affirmative action is an embattled public policy, engaged in this study with a deliberate and bipartisan deportment. It offers the following findings and recommendations.

Finding 1: The enforcement of affirmative action compliance by the OFCCP in Indiana has helped to ensure that employers take more responsibility in seeking, recruiting, and hiring women, minorities, and individuals with disabilities than might otherwise have been the case. OFCCP audits bring the issue of equal employment opportunity to the attention of the highest levels of company management, making both affirmative action and equal employment opportunity a company priority.¹

Recommendation 1: The OFCCP and its essential function should be retained.

Finding 2: In the 2-year period, October 1, 1992–September 30, 1994, 217 Federal contractors in Indiana were reviewed for their compliance with Executive Order 11246, as amended. This included 133 reviews of supply and service contractors, and 84 reviews of construction con-

tractors. On average, 109 Federal contractors in the State are reviewed annually by the OFCCP for their compliance with affirmative action requirements.

In addition, OFCCP compliance review activity in Indiana is diffused throughout the State. Firms in 62 of the State's 92 counties (67 percent) had their affirmative action programs reviewed by the Agency in the 2-year period, October 1, 1992–September 30, 1994.

Federal contractors in Indiana have not been significantly affected by Agency allegations of illegal employment discrimination. In the 2-year period, October 1, 1992–September 30, 1994, a finding of illegal discrimination was made in only one of the 217 compliance reviews in the State. The involved contractor agreed to pay \$13,574 in pay and benefits. Further, the Agency has not pursued the debarment of any Federal contractor in the State for noncompliance with the affirmative action requirements.²

Recommendation 2: The Advisory Committee is pleased to learn that the OFCCP has not limited its reviews to companies located in the area immediately surrounding the district office. The Committee encourages the OFCCP to continue its practice of ensuring that the review process touches every part of the State.

Finding 3: In enforcing affirmative action compliance in Indiana, the attitude of the OFCCP with respect to Federal contractors has improved significantly in recent years. The attitude of the Agency is less adversarial today than in years past. In earlier years the OFCCP appears to have been regarded by the business community as overly zealous in its pursuit of affirmative action offenders and, at times, unnecessarily demanding in the standards it utilized to assess noncompliance.

Today the OFCCP has a more cooperative relationship with area businesses, especially with larger employers. The OFCCP is doing outreach to the business community, such as the Industrial

1 Parts 1 and 2, pp.15–76.

2 Part 1, pp. 15–57.

Liaison Groups (ILGs). These associations appear to be productive for both the Agency and businesses. A residual climate of distrust for the OFCCP, however, is still apparent among smaller employers.

Additionally, pursuant to its present policy of not taking part at training sessions where participants are charged a fee, the OFCCP presently does not work with the Indiana Chamber of Commerce, the State's largest business advocacy association with a membership base of more than 5,000 businesses, in its training of Federal contractors on affirmative action compliance.³

Recommendation 3: A special initiative should be undertaken by the OFCCP to improve its working relationship with smaller employers.

Similarly, the Advisory Committee recommends that the OFCCP evaluate how the Agency can work with the Indiana Chamber of Commerce in its training of Federal contractors on affirmative action compliance.

Finding 4: One of the most important decisions the OFCCP makes involves the targeting of its reviews. The audit selection process does not appear to be programmatic or systematic. There is evidence that increases in a contractor's work force have a significant relationship with greater employment opportunities for females and minorities. Yet, among nonconstruction contractors reviewed a second time by the Indianapolis district office, 50 percent had decreasing or stable rates of employment.

Compliance review activity in Indiana was skewed to manufacturing facilities and construction industries. Reviews of manufacturers constituted 40.5 percent (88 of 217) percent of all reviews in the 2-year period, October 1, 1992–September 30, 1994, and reviews of construction companies were 38.7 percent of all reviews (84 of 217) during that time.

The two Agency district offices operating in Indiana often do different types of compliance activity; 77 percent of the Chicago district office

supply and service reviews in Indiana were first time audits, while 27 percent of the Indianapolis office supply and service reviews were initial audits. The offices were similar, however, in rates of initial reviews of construction contractors.

Additionally, the OFCCP does not know the Federal contractor universe in Indiana. No definitive list of Federal contractors exists for the OFCCP to draw upon in its selection process.⁴

Recommendation 4: A more efficient selection procedure can enhance the program's effectiveness. An applied standard for determining a priority for which firms are audited needs to be implemented. One fundamental criterion should be facilities with expanding employment opportunities. Firms that do not have expanding employment have less opportunities to undertake effective affirmative action.

OFCCP officials testified that a proposal under consideration by the Agency would require Federal contractors to submit a brief annual report, describing employment patterns. The Advisory Committee believes this to be a reasonable request of Federal contractors. The Committee urges the Agency to adopt such a reporting process, and use it to give priority in the review process to firms experiencing expanding employment opportunities.

Additionally, the Advisory Committee believes it imperative that the Agency devise a system to identify all Federal contractors. Plans to obtain annual employment reports or systematically audit Federal contractors cannot succeed if the OFCCP does not know who the Federal contractors are.

Finding 5: The determination of availability, i.e., the proper applicant pool, is not a precise process under the current regulations, and the appropriate application and consideration of each factor is an inexact mechanism. The technical aspects of the utilization analysis, including work force analysis, formation of job groups, and the setting of goals, are cumbersome.

³ Ibid.

⁴ Parts 1 and 2, pp. 15–76.

The Advisory Committee found there often to be an excessive emphasis by the Agency on the format of the program. Examples were presented to the Advisory Committee by Federal contractors in which OFCCP representatives seemed more interested in the formal manifestations of compliance than in actual compliance itself. Some firms were compelled to spend many costly hours to exhibit the "display" features of the regulations. Smaller employers, in particular, without a full-time affirmative action staff often must spend additional monies on outside consultants to comply with the requirements of the written affirmative action program.⁵

Recommendation 5: Audits by the OFCCP could be conducted in a less burdensome ways than is currently the case. The utilization analysis, including work force analysis, formation of job groups, and the setting of goals, need to be simplified and made more "user friendly." Standardized forms could be developed by the Agency and provided to Federal contractors. This would allow for uniformity in affirmative action programs, and consistency in the evaluation of technical compliance.

Similarly, acceptable application of the eight regulatory factors in determining minority and female availability needs to be clearer. The OFCCP should make the mechanics of the process more explicit and based on the established applicant flow of the contractor to particular job groups. This would give greater precision to the determination of availability and reduce some of the subjectivity inherent to the review process.

Finding 6: A criterion used by the OFCCP in assessing affirmative action compliance is "good faith" effort. The discrepancies in the rates of contractor compliance with good faith efforts found between the two district offices and among different OFCCP compliance officers are unlikely to be attributable merely to the random allotment

of contractors between the two offices and among the compliance officers.⁶

Recommendation 6: The standard for evaluating good faith effort needs attention from the OFCCP. Subjective enforcement of finding good faith efforts insufficient when goals are not attained forces employers to place an inordinate emphasis on numbers.

Simple quantitative measures can never be reliably employed to judge compliance under this standard. The only fair measure in judging good faith effort would be one that emphasizes: (1) activities undertaken to locate a pool of qualified females and/or minorities, and (2) actions to hire from that pool.

Finding 7: Reviews of construction companies in Indiana during the 2-year period, October 1, 1992–September 30, 1994, routinely cited inadequate recruitment as a deficiency. Over 67 percent of the construction reviews during this time had inadequate recruitment cited as a deficiency. Yet, construction review activity does not appear to have resulted in increasing the participation of women and minorities in the building trades. Ten of the construction firms previously audited by the Agency still had no female construction workers; eight of the construction firms previously audited had no minority craft workers.⁷

Recommendation 7: The Agency should internally examine why its construction compliance review activity in the State has only a marginal impact on increasing employment opportunities for minorities and females in the construction trades.

Finding 8: Technical assistance is offered by the OFCCP to Federal contractors, but usually only after an audit has been initiated. Offerings of technical assistance to the covered business community are not routinely available.⁸

5 Ibid.

6 Ibid.

7 Part 2, pp. 58–76.

8 Part 1, pp. 15–57, and app. B, pp. 84–85.

Recommendation 8: The Advisory Committee recommends the OFCCP assist companies in the compliance with affirmative action prior to the initiation of formal Agency audits. The Agency should publicize this willingness to make itself available to provide technical assistance. As part of its operational procedure, the OFCCP should offer technical assistance in initial visits to Federal contractors. Similarly, when the OFCCP notifies a contractor of a pending review, the Agency should make an offer, in its notification letter, of technical assistance prior to the onset of the review. The use of standardized forms, as set out in recommendation 5, could be used in these instances.

Finding 9: Hometown plans are voluntary local agreements between construction contractors, building trades, unions, community groups, and local government to facilitate the placement of females and minorities in the building trades. The regulations of the OFCCP specifically allow for hometown plans, provided they are certified by the OFCCP. By regulation, signatories to hometown plans certified by the OFCCP do not have to undertake the 16 affirmative action steps for construction contractors.

The Indianapolis Plan does recruitment, orientation, apprenticeship preparation, trainee program operation, and job development and placement. Female and minority participation rates through the plan exceed the currently established goals for females and minority construction trade workers. Still, signatories to the plan are audited by the OFCCP.

The Indianapolis Plan has been reviewed twice by the Indianapolis district office in the last 10 years. In 1987 the plan was audited and recommended for a 2-year extension. The plan received its most recent audit in 1992. The compliance officers who conducted the audit again recommended the plan be given a 2-year extension. A recommendation to extend the hometown plan on a provisional basis was sent to management of the

Indianapolis Hometown Plan in March 1995, 3 years after the audit was initiated.⁹

Recommendation 9: The Advisory Committee believes the Indianapolis Hometown Plan is an effective operation in placing females and minorities into the building trades.

The OFCCP practice of auditing construction contractors who are signatories to the Plan curtails their incentive to participate in the Plan, duplicates burdens on contractors, and is an inefficient use of Agency resources. The Committee recommends that if the OFCCP certifies the Plan, signatories to the Plan should not be subjected to an individual audit.

The Advisory Committee believes that the 3-year time period between the Agency's review of the plan and its notification to plan management of approval is excessive. The Agency should do better in its turnaround time of hometown plan audits.

Finding 10: The Bureau of Apprenticeship and Training (BAT), U.S. Department of Labor, is responsible for providing service to existing apprenticeship programs and technical assistance to organizations which would like to establish an apprenticeship program. Under BAT regulations all apprentice programs with five or more apprentices must have an affirmative action program, and BAT is required to audit the program for its affirmative action compliance. In some cases the OFCCP and BAT duplicate the work of each other, as the OFCCP audits apprentice programs of Federal contractors for affirmative action compliance during its normal review process.¹⁰

Recommendation 10: Both BAT and OFCCP are in the U.S. Department of Labor, yet both on occasion conduct affirmative action audits of the same apprentice program. Funding of scarce resources cannot be justified in these circumstances. The two agencies should reassess their practices in this regard, and responsibility for enforcing affirmative action compliance in

⁹ Part 2, pp. 58-76.

¹⁰ Part 2, pp. 58-76.

apprentice programs should become the sole purview of just one U.S. Department of Labor agency.

Finding 11: Information presented to the Advisory Committee at the factfinding meeting gave evidence that the OFCCP has minimal contact and coordination with State and local government civil rights enforcement agencies and local community groups. The sentiment heard by the Advisory Committee from community groups about the OFCCP is one of an Agency that is distant.¹¹

Recommendation 11: The Agency should take a more affirmative effort to create active liaisons with local and State government civil rights agencies. Additionally, the OFCCP needs to improve its presence in the community.

Finding 12: The OFCCP review process amplifies many of the outreach and accommodation provisions of the Americans with Disabilities

Act (ADA). Disabled workers are part of the OFCCP's affirmative action enforcement responsibility under section 503 of the Rehabilitation Act of 1974. In three of the Agency's 217 reviews in Indiana, contractors agreed to make investments in accommodations for disabled workers.¹²

Recommendation 12: Affirmative action enforcement compliance by the OFCCP may well serve as a model for effective implementation of the Americans with Disabilities Act (ADA), as most employers subject to OFCCP regulation have been working for some time under affirmative action guidelines to eliminate barriers to equal employment opportunity faced by individuals with disabilities. The Advisory Committee urges the OFCCP to continue enforcing affirmative action for disabled workers as a priority in its compliance reviews, and to pay particular attention to the employment of individuals with disabilities in the construction industry.

¹¹ Part 1, pp. 15-57.

¹² Parts 1 and 2, pp. 15-76.

Appendix A Presenters at the Factfinding Meetings

**April 20, 1995
Indianapolis, Indiana**

Martin J. Klaper, Ice, Miller, Donadio & Ryan
Halcolm Holliman, OFCCP, USDOL
Philip Stepteau, OFCCP, USDOL
Paul Bayless, IUPUI
Brenda Pitts, Cummins Engine Co.
Dan Russell, Magnavox Electronics Systems Co.
Kathy McKimmie, Indiana Chamber of Commerce
Theodore R. Hoed
Boniface Hardin, Martin University
David Swider, Bose, McKinney & Evans
Michael Elder, Indianapolis Hometown Plan
Herman Oliver, Indianapolis Hometown Plan
John Delgado, BAT, USDOL
George Patrick, VETS, USDOL
Nancy Griffin, Indianapolis Resource Center
Cy Butler, Indianapolis Urban League
Dwala Toombs, State of Indiana

**April 27, 1995
South Bend, Indiana**

Sandra Hueneman, OFCCP, USDOL
Roger Mullins, University of Notre Dame
Susan Rosander, Society National Bank
Rikki Goldstein, Fort Wayne Women's Bureau
Cynthia Love-Bush, South Bend Human Rights Commission
Debra Pinney, Career Directions
Jerry Price

Appendix B

Response of the OFCCP

Pursuant to administrative procedure of the U.S. Commission on Civil Rights, a draft of the report, *The Enforcement of Affirmative Action Compliance in Indiana Under Executive Order 11246*, was sent to the Regional Director, Region V, OFCCP, U.S. Department of Labor, for review and comment. The enclosed November 3, 1995, letter from Halcolm Holliman, Regional Director, OFCCP, Region V, is the affected agency's response to the draft report.

U.S. Department of Labor

**Employment Standards Administration
Office of Federal Contract
Compliance Programs
230 S. Dearborn Street
Room 570
Chicago, IL 60604**

**FN (312) 353-0335
FAX (312) 353-2813
TDD (312) 353-2158**



Reply to the Attention of:

November 3, 1995

**Ms. Constance M. Davis
Regional Director
United States Commission on
Civil Rights
Midwest Regional Office
55 W. Monroe St. - Suite 410
Chicago, IL 60603**

Dear Ms. Davis:

Thank you for the opportunity to review and comment on the draft report entitled *Enforcement of Affirmative Action Compliance in Indiana under Executive Order 11246* prepared by the Indianapolis Advisory Committee.

I would like to include two comments for the report in order to clarify some testimony presented:

- 1) We are always willing to offer free technical assistance to individuals, and groups, and encourage people to utilize our services. However, we do not generally participate in sessions where a fee is charged to the attendees.**
- 2) Our regulations apply to employers who are Federal Government contractors. Page 45 of the report contains a brief history of review activity for universities in Indiana. The scheduling of a review can only be done where the school holds a contract with the Federal Government. We have been unable to establish the necessary contract jurisdiction at Indiana State University, or Ball State University, in recent years.**

I appreciate your invitation to participate in the hearing process. We will use your findings to help build on our strengths and improve our shortcomings in the future.

Thank you again for inviting us to participate.

Sincerely,

**HALCOLM HOLLIMAN
Regional Director
OFCCP, Region V**

Appendix C Indiana Chamber of Commerce Survey

Surveys Mailed March 31, 1995 = 93

Surveys Received = 15

(Note: An additional four companies sent narrative responses instead of completing the survey.)

% Response = 20%

of Employees

100 or below = 1

100 - 500 = 7

500 - 1000 = 3

Over 1000 = 4

How long have you been a federal contractor/sub-contractor?

4 yrs

20 yrs. (3)

Since 1970's (2)

32 yrs.

"Many years"

Since the beginning of time for the law (4)

Do you have an Affirmative Action Plan?

Yes - 15

No - 0

Who is responsible for developing your plan?

Personnel Director/Supervisor/Manager (3)

Vice President of Personnel (1)

Human Resources Vice President (1)

Human Resources Director/Manager/Administrator (6)

Director of Employee Relations (2)

EEO Specialist (1)

Director of Corporate Services (1)

Do you have a full-time person responsible to handle only AA?

Yes - 1

No - 14

How many hours did it take to develop the initial plan?

- Several months
- Several weeks
- 175 hours
- 120 hours
- 80 hours (2)
- 60 hours
- 40 hours (3)
- Don't know/already in place when they took over (5)

Did you use a consultant to write your plan?

Yes - 6 No - 9

If so, what was the cost?

- \$600
- \$2000 (2)
- \$3500 (This company had a full-time AA staff person.)
- \$4000 - \$6000

How many hours are spent per month on affirmative action?

- Varies (2)
- Minimal at this time
- 1 hour
- 1-2 hours
- 5 hours (2)
- 8+ hours
- 10 hours
- 10-15 hours (2)
- 15-25 hours
- 40+ hours
- 50 hours

How many hours are needed to do the annual update?

- Current plan inadequate - could not estimate at this time
- 4 hours
- 10 hours
- 30-40 hours
- 40 hours (8)
- 60 hours
- 120-160 hours
- Approx 2-3 weeks

Have you ever had a compliance review by OFCCP?

Yes - 8

No - 7

If yes, please give dates and describe experience.

Dates:

1981

1982

1986

1987

1989

1991

1992

1993 (2)

1994 (3)

Experiences:

Extremely time consuming (5)

It becomes a full time job for a period of time. Data is needed in a specific format. Many internal steps need to be taken by CEO - lots of communication is required to employees. All employee policies are examined. It was necessary to add much information to AA plans.

Fair process (2)

Very few "positive" results: usually a fight/battle over "picky" issues.

Compliance Officer acted like he had personal vendetta against our company. He already had names of minorities who he wanted to interview and each one had previously filed a charge with the EEOC. None of the charges were found to have any merit. He was very nit picky. Determined to find a reason to issue a complaint.

Reasonable auditor

Unpleasant

Grueling experience

The Compliance Officer has a lot of authority! In many instances they are not very qualified which results in a lot of wasted time.

Were any allegations of discrimination made by the OFCCP as the result of the review?

Yes - 3

No - 4

Remarks:

Failure to promote eligible females to supervisory positions

Not in compliance with all the recordkeeping requirements

Based on disciplinary actions issued/Compliance Officer wanted to force us to put our attendance policy in writing

Made us re-do our job groups, workforce analysis and availability

Have you ever requested information or technical assistance from the OFCCP?

Yes - 3

No - 12

If yes, please describe what you received and how helpful it was.

Very confusing advice/not helpful at all
Recruiting info - useful
Voluntary Assistance Program

If you have requested assistance on more than one occasion, was advice given you consistent?

Yes - 1

Objectively, do you view the benefits of AA to protected groups as outweighing the cost to business of compliance?

Yes - 6

No - 9

What problems do you see in the way the OFCCP is presently administering AA requirements?

Too much depends on competence, attitude, etc. of person assigned to audit.
Development of plan is complicated and it is impossible to obtain accurate information since the provision of information is optional for applicants and employees.
Disorganization
The plan is incredibly difficult to prepare/if it could be standardized, it would be helpful.
There must be a consistent way to apply the rules. Should not be on a witch hunt.
Process needs to be streamlined - too cumbersome now.
For an event that you do once a year - it requires re-learning on how to compile the data. It's like doing your taxes.
Lack of full understanding of business necessities and results to customers. Some auditors are weak in assimilating business needs, but strong in bureaucratic "red tape".
Too rigid with details, such as paper format while losing sight of real purpose.
The person in charge in Indianapolis is unreachable for even a clarification. This conversation could help us to understand or perhaps explain why a compliance officer puts us "through the hoop". They deal in a very heavy handed way!
Totally unacceptable!
Making complicated calculations to determine underutilization.

What suggestions do you have to improve the process?

Disband: let EEOC, courts, etc., handle issues (which are already covered by too many laws/agencies at State/Federal level!)

Simplify

Have employers be fair minded and objective in their hiring and practices.

Make information for preparing plan and gathering data readily available. Too much data is required. It is a cumbersome process. Adverse impact analysis has no meaning for employers of less than 1000 employees on promotions and terminations. May be OK for hires if there is an indication of underutilization. Where there is no indication of underutilization, adverse impact analysis is a waste of time. The compliance review has too many steps where the numbers indicate that there is no underutilization - there is no need to nit pick. The emphasis should be on areas that indicate underutilization.

For them to take into consideration the type of work which is required of applicants, before making broad statements that anyone should be able to do a particular job. Train the Compliance Officers, at least some, to be more understanding when dealing with contractors who are making good faith efforts and not to come into a plant with an agenda to nail the contractor. Keep their personal feelings out of their jobs.

Require companies to keep basic data that can be made available, i.e., turnover ratios. Job group with some analysis.

More timely - on-site audit should be quick and auditors should leave premises ready to write conclusions in an expeditious manner.

If we have a difference of opinion between the company and the Compliance Officer, we should be able to give our position. Only services infractions should result in show-cause to be issued; not technical discrepancies. The company has no recourse, they are always on the defensive. Because the 8 factor analysis is so complex and the info on census statistics so outdated, it turns out to be a frustrating exercise. This needs to be improved or simplified. Same for adverse impact ratio.

Commitment to hire "qualified" minorities and females.

Please include any other information you feel is important.

"I feel like the program is a big gotch ya."

"I think affirmative action programs can be very positive. The most negative things about them is the incompetent bureaucrats who come on-site to analyze the effects. Nine out of ten compliance coordinators appear to justify their existence by demanding unreasonable rearrangement of statistics. Why not change their role and let them help contractors come into compliance. The 8 factor analysis is a joke. There has to be a better way! We need to put a more positive slant on affirmative action because companies need all the qualified bodies they can get."

Appendix D 1992 OFCCP Audit of Indianapolis Hometown Plan

U.S. Department of Labor

Employment Standards Administration
Office of Federal Contract
Compliance Programs

230 South Dearborn Street
Room 570
Chicago, Illinois 60604



Reply to the Attention of:

TELE: (312) 353-6552
FAX (312) 353-8887
TDD (312) 353-2158

NOV 21 1994

MEMORANDUM FOR: SHIRLEY J. WILCHER
Deputy Assistant Secretary for
Federal Contract Compliance Programs

ATTENTION: THERESA LEE
Acting Director, Division of Program
Operations

FROM: Signed: Malcolm Holliman
MALCOLM HOLLIMAN
Regional Director
OFCCP, Region V

SUBJECT: Indianapolis Hometown Plan Audit

The following are the findings and recommendations resulting from the January 8, 1992 audit of the Indianapolis Hometown Plan conducted by the Indianapolis District Office. A review of the file by this office resulted in the District Office revisiting the Plan and several contractors to obtain additional information. In addition, other intervening projects and priorities prevented a more timely issuance of these findings. I apologize for the delay.

By letter dated March 31, 1994, Director Elder was provided a summary of our findings and recommendations and offered an opportunity to inform us whether he is amenable to developing and implementing procedures that will bring the Indianapolis Hometown Plan into compliance with those recommendations. Director Elder responded on April 26, 1994 that the Plan has already taken the steps to address the issues covered in OFCCP's March 1994 letter and is awaiting OFCCP nomination of an individual to participate in future Plan committee meetings. A copy of his letter is attached.

Attached are copies of the Indianapolis Hometown Plan and summaries prepared by the District Office.

I. BACKGROUND

The Indianapolis Plan originated as a result of a Memorandum of Understanding (MOU) dated March 4, 1970. The Plan developers were comprised of representatives of the Marion County Building Trades Council, contractors associations and The Minority Coalition of Indianapolis. The MOU originally specified a five-year duration for its effort and provided for the development of goals for minority participation in the trades as Journeymen, Apprentices, Advance Trainees and Trainees. As further specified in the MOU, the Plan is to be governed by an Administrative Committee of thirteen members, a Chairman and 4 members recommended by representatives of the Marion County Building Trades, contractors associations and the Minority Coalition of Indianapolis. OFCCP approval of the Plan occurred September 11, 1970.

It has been reported that the Plan experienced financial and management problems between 1970 and 1980 mainly due to changes of staff and directors, resulting in uncertainties regarding the manner in which records were kept. Also, the 1978 OFCCP consolidation left some gaps in activities and records regarding the Plan which resulted in incomplete historical documents for this period.

The Indianapolis Plan was originally funded by the USDOL in 1970. The enactment of the Comprehensive Employment Training Act (CETA) led to funding upon the Division of Manpower, City of Indianapolis in 1974. Subsequently, the Job Training Partnership Act (JTPA) came into existence. Under both CETA and then JTPA the Plan had to adapt its goals to comply with the requirements of the agencies which require that recipients meet DOL economically disadvantaged guidelines. These economically disadvantaged guidelines included welfare recipients, high school dropouts, youth, disabled, veterans and chronically unemployed.

As a result of the contractual changes per the JTPA, the Plan as a contract sub-provider operates on the basis of a performance based reimbursement system. Thus, program operating funds are secured by demonstrating to the grant recipient (JTPA local entity) that the Plan provides the above referenced services to those select groups per DOL economically disadvantaged guidelines.

In late 1980 the Plan appointed a new Director and entered into an arrangement with the City of Indianapolis to conduct location and placement of JTPA participants and to prepare them for entry into apprenticeship training. Preparation of the participants takes the form of training sessions providing orientation, review and practice on subjects important in the building trades, in addition to the application and selection procedures for their apprenticeship programs. This training is accompanied by placement on a construction job as a trainee at a pay rate which has been approved by the Bureau of Apprenticeship & Training. The Plan also provides training in these sessions so that

participants can earn a G.E.D. Diploma if they have not finished High School. In addition to training and placement of candidates, the Plan is also the construction affirmative action monitor for the City of Indianapolis.

Michael J. Elder, Director of the Plan since late 1980, is a Journeyman Electrician who has long been active in the trade. Compliance review reports since Elder's arrival have professed that communication and cooperation between Elder and Plan signatories have been very good.

Available Regional Office records indicate that on April 10, 1985, the Director, OFCCP, granted approval for extension of the Indianapolis Hometown Plan for a two year period. Also included in the Director's memorandum was concurrence with Region V's recommendation to place Glaziers and Carpenters in nonparticipating status, the dropping of Elevator Constructor and Asbestos Workers and Tile, Terrazzo and Marble Helpers. The last Plan audit was concluded in 1987, and resulted in the most recent approval dated April 16, 1987 which extends the Plan for two years. As a result of the 1987 audit, the following was the status for each craft:

Participating Crafts-Bid I

1. Electricians
2. Painters
3. Laborers
4. Cement Masons
5. Lathers
6. Sheet Metal
7. Bricklayers, Masons, Tilesetters, and Terrazzo Workers
8. Operating Engineers
9. Plumbers

Non-Participating Crafts-Bid II

1. Carpenters District Council
2. Glaziers
3. Roofers
4. Asbestos Workers
5. Elevator Constructors
6. Tile, Terrazzo, and Marble Helpers
7. Iron Workers
8. Plasterers

II. FINDINGS AND ANALYSIS

A. Policy guidance provides that an acceptable Hometown Plan is

one which would assure significant opportunities for a full range of skill training and employment for minorities and women. Hometown Plans are normally formed through a liaison of business, community and union. It would appear, from the information gathered during the 1991 audit of the Plan, that the community has little involvement in development, referral or other processes associated with trainee opportunities provided through the Plan, despite the fact that several minority organizations (the NAACP, Southern Christian Leadership Council, Indianapolis Urban League, etc.) are signatories to the Plan.

The 1970 MOU provides that the Mayor of the City of Indianapolis, or a designated Representative, is to serve as Chairman of the Administrative Committee, and the Marion County Building Trades Council ((union), the Employers Association (business) and the Minority Coalition (community) would each select four (4) representatives to serve on the Plan's management group, the Administrative Committee. However, the Plan's Administrative Committee is now comprised of ten (10) members, with the union, business and community each selecting only three (3) representatives. Further, it was learned from Director Elder that the Minority Coalition is no longer a viable organization.

At the conclusion of the review, the three (3) representatives for the Minority Coalition were Charles Montgomery, Sr., President and Founder of the Martin Luther King Community Development Center, A.D. Ford, a Plan Founder, who is employed by Housing & Community Services, City of Indianapolis; and David Baird, one of the earlier trainees of the Plan who completed the Electrical Apprentice Program. Subsequent to the completion of the onsite phase of the compliance review process, it was learned that Sharon Arnold, a minority female, was selected to replace David Baird. Sharon Arnold is a WBE contractor. A.D. Ford, who is one of the original representatives appointed by the Minority Coalition, is a municipal employee whose job is concerned with Section 8 housing. The possibility of a conflict of interests is apparent in these situations.

In addition, data gathered during the conduct of the onsite indicates that the electrical trade is beneficiary of a vast majority (84%) of the Plan's placements. Accordingly, it would appear that the Plan is unable to provide adequate service to approximately 90% of its signatories.

B. During calendar year 1991, the Plan reported some 235 total trainee placements (60% minorities and 18% females). The minority placement level for Marion County was 70%. The vast majority (84%) of these placements were as electrical trainees with electrical contractors. Of the total placements with electrical contractors, 33% of the placements were with one contractor. Electrical contractors, however, comprise less than 10% of the Indianapolis Plan signatory contractors.

Placements were as follows:

Carpenters	27 (19 min., 3 fem.)
Electricians	197 (112 min., 34 fem.)
Sheet Metal	2 (2 min., 2 fem.)
Plumbers	1 (min.)
Painters	2 (2 min., 1 fem.)
Laborers	4 (3 min., 2 fem.)
Others	2 (min.)

There were some 30 Plan trainees who became apprentices during the last (1991) selection procedure:

Bricklayers	2 (min.)
Carpenters	2 (min.)
Electricians	11 (5 min., 2 fem.)
Ironworkers	3 (min.) another 8 min. were also indentured
Millwrights	1 (fem.)
Painters	3 (2 min., 1 fem.)
Plumbers	2 (min.)
Sheet Metal	5 (4 min., 1 fem.)

Placements occurring during the 1987 Plan audit (1985/1986 activity) indicate a similar hiring pattern, i.e., approximately 48% of all trainee hires were into electrical jobs with Electrical contractors.

C. Onsite visits were made to two (2) Plan contractors and two (2) union/Joint Apprenticeship Committees as follows:

ELECTRICAL

ERMCO

Indianapolis Electrical JATC

SHEET METAL

Apex Ventilating

Sheet Metal Workers Local

ERMCO was the largest Electrical contractor in the metropolitan area in 1991 and had the highest participation rate with the Plan among all the contractors.

Approximately 60% of those selected for the Electrical Apprenticeship program were Plan Trainees. Eleven of them were indentured, while another three were awaiting placement.

Apex Ventilating has placed a significant number of pre apprentices/trainees. However, only two(2) were recent Plan trainees. Apex had 29 placements (6 min., 3 fem.), the largest number of apprentices assigned.

D. Plan signatory contractors are to submit the Monthly Utilization Reports (form CC-257's) to the Hometown Plan office. There is no systematic procedure for monitoring 257's to ensure that Contractor's are complying. Further, there is no consistent review of those reports that were submitted to ensure participation by all Plan contractors and determine accountability.

E. During the audit the following unions were contacted:

Asbestos
 Carpenters
 Cement Masons
 Electricians
 Elevator Constructors
 Glaziers
 Iron Workers
 Operating Engineers (no response)
 Painters
 Plumbers & Steamfitters
 Sheet Metal
 Plasterers (No Response)
 Roofers (No Response)

OFCCP's evaluation of the above unions is as follows:

Asbestos Workers: This craft was essentially in a non-participating status with the Plan during the audit periods. It does, however maintain a significant representation of minority and women apprentices (15% & 7.5% respectively, although the total active membership has less minority and female representation (6.8% & 1.6% respectively). The minority and female work participation rates were somewhat greater than the membership percentage.

CURRENT STATUS: Bid I

Carpenters: This craft is an active participant with the Plan. However, it failed to fully respond to OFCCP's inquiry. Several union locals were contacted and some did not respond. However, the largest and most active in the Marion County area did respond. Two (2) minority Plan trainees were selected for the apprentice program during the audit period. The total active reported membership is comprised of 3.6% minority and 1.1% female.

CURRENT STATUS: Bid I

Cement Masons: This craft does not actively participate with the Plan, although there is reportedly a positive relationship with the Plan staff. Minority union membership is some 58% and female

membership is less than 1%. The female representation since the last audit was approximately 3% of new members; minorities were 6% of new members. Similar work participation rates were reported.

CURRENT STATUS: Bid I

Electricians: This craft has the highest participation rate with the Plan. It also has the largest number of Plan trainees indentured into the apprenticeship program. Minority union membership is some 6% and female membership is 2%. The participation rates were not reported.

CURRENT STATUS: Bid I

Elevator Constructors: This craft is a non-participating and Bid II craft. It reported some 6.4% minority and 1.6% female membership. The minority and female work participation rates were significantly less than its membership.

CURRENT STATUS: Should not be shown as a member of the Plan; has been removed since 1978.

Glaziers: This is a non-participating craft. It reported some 9% minority membership; no females. The minority participation rate was significantly less than its membership.

CURRENT STATUS: Bid II

Iron Workers: This craft is an active participant with the Plan. It most recently placed some 11 minorities into the apprenticeship program. While these placements were not primarily Plan trainees, the Plan and at least one (1) particular contractor that was reviewed during 1991 played significant roles in this accomplishment. The minority and female union memberships are 11.9% and 0.4% respectively. Minorities and females have even better work participation rates.

CURRENT STATUS: Bid II

Painters: The craft is an active participant with the Plan. There were two(2) minority Plan Trainees indentured as apprentices. The minority and female union membership are 4.3% and 1% respectively. Minorities and women have similar work participation rates.

CURRENT STATUS: Bid I

Plumbers & Steamfitters: This craft is an active participant with the Plan. There were five (5) Plan trainees (4 Black and 1 female) accepted for the apprenticeship program. The minority and female union membership are 18.3% and 3.0% respectively. Minorities and women have significant work participation.

CURRENT STATUS: Bid I

Sheet Metal Workers: This craft is an active participant with the Plan. There were five (5) Plan trainees (4 black and 1 female) accepted for the apprenticeship program. The minority and female union memberships are 18.3% and 3.0% respectively. Minorities and females have similar work participation rates.

CURRENT STATUS: Bid I

Sprinkler Fitters: This craft did not report any activity with the Plan although it did report new minority and female journeyworkers and apprentices since the last audit. Also, the Plan acknowledged a good working relationship. The total active membership (statewide) is only 91 with minority and female membership comprising 11% and 1% respectively. Minorities and females have similar work participation rates.

CURRENT STATUS: Non-signatory

Operating Engineers, Plasterers, and Roofers: An evaluation of these crafts could not be performed as they failed to respond to OPCCP's inquiry and there was no record of participation with the Plan.

CURRENT STATUS: Bid I

F. Each Plan participating contractor is individually required to make a good faith effort to achieve the goals for each trade participating in the Plan in which it has employees. Concerns have been raised by the Plan over the past several years of its responsibility for documenting good faith efforts and affirmative action steps, specifically the 16 Affirmative Action steps at 41 CFR 60-4.3 a 7 (a) through (p). Plan contractors are apparently under the impression that as participating contractors the Plan has undertaken sufficient efforts to satisfy many if not most of the specific 16 AA steps. Discussions arose during the audit on the procedures and processes regarding the Plan's attempt to satisfy the affirmative action specifications for its contractors. No formalized procedures or processes have been developed. The Plan and contractors have been advised that being signatory to the Plan does not relieve the contractor of its obligation to demonstrate compliance with the 16 steps.