AFFIRMATIVE ACTION IN EMPLOYMENT IN OKLAHOMA

A report of the Oklahoma 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. In the meantime, the recommendations in this report should not be attributed to the Commission, but only to the Oklahoma Advisory Committee.

February, 1981

AFFIRMATIVE ACTION IN EMPLOYMENT
IN OKLAHOMA

A report of the Oklahoma Advisory Committee to the
United States Commission on Civil Rights

ATTRIBUTION:

The findings and recommendations contained in this report are those of the Oklahoma Advisory Committee to the United States Commission on Civil Rights and as such, are not attributable to the Commission. This report has been prepared by the State Advisory Committee for submission to the Commission and will be considered by the Commission in formulating its recommendations to the President and the Congress.

RIGHTS OF RESPONSE

Prior to the publication of a report, the State Advisory Committee affords to all individuals or organizations that may be defamed, degraded or incriminated by any material contained in the report an opportunity to respond in writing to such material. All responses have been incorporated, appended or otherwise reflected in the publication.

LETTER OF TRANSMITTAL

OKLAHOMA ADVISORY COMMITTEE TO THE
U.S. COMMISSION ON CIVIL RIGHTS

February, 1981

MEMBERS OF THE COMMISSION

Arthur S. Flemming, Chairman
Mary Frances Berry, Vice Chair
Stephen Horn
Blandina Cardenas Ramirez
Jill S. Ruckelshaus
Murray Saltzman

Louis Nunez, Staff Director

Sirs and Mesdames:

In March, 1980, the Oklahoma Advisory Committee conducted a two-day factfinding meeting at the State Capitol in Oklahoma City. The purpose of the meeting was to receive information on the process and procedures by which federally required affirmative action plans are developed, monitored and enforced, and on the perceptions of employers and interested groups and individuals on this enforcement process.

This report provides a summary of the major issues which emerged during the factfinding meeting and in the preliminary interviews conducted by Commission staff prior to the meeting. The main purpose of this report is to identify areas of major concern and to document the need for continuing attention and strengthening efforts on the part of the federal government in the area of affirmative action enforcement.

We are not making recommendations for specific action at this point. We believe that the issues in this report will be typical of those found in similar meetings in the other nine regions. If such findings are consistent, then we would expect that recommendations for action will be covered in the national report.

It is our sincere hope that the combined efforts of the various State Advisory Committees that participated in this project and the Commission will result in the realization of affirmative action goals throughout the nation.

Respectfully submitted,

Hannah Atkins, Chairperson
Oklahoma Advisory Committee

MEMBERSHIP

of the

OKLAHOMA ADVISORY COMMITTEE

to the

UNITED STATES COMMISSION ON CIVIL RIGHTS

Hannah Atkins, Chairperson
Oklahoma City

Earl D. Mitchell, Jr., Vice Chairperson
Stillwater

Merton M. Bulla
Oklahoma City

Charlene Craig
Oklahoma City

Cleta Deatherage
Norman

June Echo-Hawk
Tulsa

Millie Giago
Oklahoma City

Penny B. Williams
Tulsa

George Henderson
Norman

John H. Nelson
Lawton

Wanda Peltier
Shawnee

Carole Taylor
Okmulgee

Gloria Valencia-Weber
Stillwater

Frances M. Wise
Oklahoma City

ACKNOWLEDGEMENTS

The preparation of this report was directed by J. Richard Avena, Director of the Southwestern Regional Office.

This publication was written by Mary Davis Minter. The following staff members also participated in the preparation of the report: Gloria Cabrera, John F. Dulles, II, Ernest Gerlach, Norma Valle and Patty Welch.

THE UNITED STATES COMMISSION ON CIVIL RIGHTS

The United States Commission on Civil Rights, created by the Civil Rights Act of 1957, is an independent, bipartisan agency of the executive branch of the Federal Government. By the terms of the Act, as amended, the Commission is charged with the following duties pertaining to denial of the equal protection of the laws based on race, color, sex, religion, or national origin: investigation of individual discriminatory denials of the right to vote, study of legal developments with respect to denials of the equal protection of the law; appraisal of the laws and policies of the United States with respect to denials of equal protection of the law; maintenance of a national clearinghouse for information respecting denials of equal protection of the law; and investigation of patterns or practices of fraud or discrimination in the conduct of Federal elections. 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.

THE STATE ADVISORY COMMITTEES

An Advisory Committee to the United States Commission on Civil Rights has been established in each of the 50 States and the District of Columbia pursuant to section 105(c) of the Civil Rights Act of 1957 as amended. The Advisory Committees are made up of responsible persons who serve without compensation. Their functions under their mandate from the Commission are to: advise the Commission of all relevant information concerning their respective States on matters within the jurisdiction of the Commission; advise the Commission on matters of mutual concern in the preparation of reports of the Commission to the President and the Congress; receive reports, suggestions and recommendations from individuals, public and private organizations, and public officials upon matters pertinent to inquiries conducted by the State Advisory Committee; initiate and forward advice and recommendations to the Commission upon matters in which the Commission shall request the assistance of the State Advisory Committee; and attend, as observers, any open hearing or conference which the Commission may hold within the State.

TABLE OF CONTENTS

		Page
CHAPTER I:	INTRODUCTION	1
	Overview of Federal Enforcement Agencies	8
CHAPTER II:	ISSUES EMERGING FROM OKLAHOMA FACTFINDING MEETING	12
	SUMMARY	37
	References	
	Appendix	

CHAPTER I

INTRODUCTION

According to the Federal Register,

> ...an affirmative action program is a set of specific and result-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 workforce where deficiencies exist.[1]

It has been slightly less than two decades since the United States committed itself to eliminating unfair discrimination of minorities and women in the job market. As recently as the early 1960's, the attitude of the Federal government toward discrimination in employment could have been characterized as either indifferent to or actively encouraging such practices. The passage of the Civil Rights Act of 1964 marked a change in national conscience. Embodied in the passage of the Civil Rights Act of 1964 were both the recognition that employment discrimination was wrong, and perhaps more importantly, the presence of a national commitment to equal employment opportunity.[2]

Almost two decades have now gone by since the enactment of that Civil Rights Act of 1964. Some progress has been made but clearly, neither the spirit nor the letter of the law has been fulfilled. In fact, as late as 1977, the U.S. Commission on Civil Rights found disturbing evidence "that members of groups historically victimized by discriminatory practices were still bearing the burden of such injustices."[3] In a statement issued during that year, the Commission noted that disparities in employment of whites and minorities had increased.[4] At least part of the increasing disparity in major indicators (such as employment rates, income levels and job categories) could be attributed to persistent discriminatory practices.[5]

Efforts on the part of Federal enforcement agencies to ensure compliance with the law have often met with resistance on the part of agencies and contractors. Consequently, negotiations toward conciliations and affirmative remedies often consumed so much time that only a relatively few cases were processed to completion.[6] Often, despite the fact that there was significant evidence that discriminatory practices existed, the cases had to be resolved in the courts.

In some instances, even when employers did take affirmative steps to end current discriminatory practices in employment and to remedy the effects of such past practices, these efforts were sometimes challenged in court (see e.g., United Steelworkers of America v. Weber).[7] There have been charges of "reverse discrimination" and preferential treatment to minorities at the cost of whites, usually white males. These charges often sprang from the fact that employers, agencies, universities, etc., indicated that they were setting aside a given number of slots for

minority applicants. While these slots may have represented an increase to the usual recruitment number, the act of setting these slots aside solely for minorities and/or women was interpreted differently by white males. To them there appeared to be a threat that minorities and women were taking away jobs, training slots, etc., that had been occupied by whites and probably males. Some such situations have also been challenged in court and the resulting cases represent some of the landmark decisions in establishing the continued need for affirmative action in employment and in shaping the form that affirmative action would take, at least in the early eighties.

Two of the more widely publicized cases challenging the constitutionality of affirmative action were decided by the U.S. Supreme Court. These were the case of Regents of the University of California v. Bakke,[8] often referred to as the Bakke case, and the case of the United Steelworkers of America v. Weber, also known as the Weber case.

In the Bakke case, the court ruled that the special admissions program being implemented by the University of California at Davis was illegal and ordered the institution to admit Alan Bakke (a white male alleging reverse discrimination) into the medical school where he was seeking admission. At the same time, however, the court also ruled that race may be one of a number of factors considered by the school in passing on applications. It was decided that while rigid, inflexible quotas could not be set aside solely for minorities or others, the use of affirmative, flexible goals were permissible. The ruling of the court in this case resulted in confusion and uncertainty in terms of directions for affirmative action programs. It appeared that semantic

differences over the use of words "goals" as opposed to "quotas" might well result in inactivity for fear of incurring litigation costs if affirmative action plans were challenged.

The next year, 1979, the court heard the Weber case. In Weber, the question of whether a company could voluntarily establish an affirmative action program in the absence of a prior determination of discrimination was tested. In this instance, Kaiser Aluminum at its Gramercy, Louisiana, plant, with the support of the union, tried to increase the number of blacks in skilled jobs by voluntarily establishing an affirmative action plan. The plan called for 50 percent of the training slots to be set aside for blacks. This action was challenged by Brian Weber, a white male who charged that the selection of blacks with less seniority than he, for the training program, was discriminatory against Weber. This time the court ruled the plan to be permissible. In explaining this decision, the court noted that "Title VII's prohibition...against racial discrimination does not condemn all private, voluntary, race-conscious affirmative action plans."[11] While Title VII prohibits any federally imposed requirements that employers give preferential treatment to minorities to redress an imbalance in their work forces,[12] the Kaiser-United Steelworkers of America plan falls within the permissible limits, according to the Court.[13]

The Weber case was important for still other reasons. As the U.S. Commission on Civil Rights noted:

> In arriving at this decision, the court conceded that a literal interpretation of Title VII's prohibition against discrimination in employment based on race

> would support the argument that this race-conscious plan discriminates against white employees, and therefore, arguably is unlawful. The court decided, however, that the purpose of the act and not its literal language determines the lawfulness of affirmative action plans.

Further,

> By focusing on the need to improve the opportunities of the victims of discrimination, the court interpreted Title VII to encourage voluntary or local remedies to employment discrimination.[14]

After the Bakke and Weber decisions, President Carter issued a memorandum to Federal agency heads reaffirming the United States' commitment to affirmative action. Although in the past, employers were encouraged to take actions that would effectively end current discriminatory practices and remediate effects of past actions, obviously stronger measures were necessary. Consequently, revisions in the enforcement mechanisms were set in motion to ensure compliance of affirmative action by Federal contractors and other recipients of Federal funds, as mandated by various legislative and administrative practices (see discussion below).

In 1978, President Carter effected a reorganization.[15] At that time, some of the responsibilities for enforcement of affirmative action were shifted from one agency or department to another. This shift appeared to have been accompanied by widespread confusion and misunderstanding, both of the concept of affirmative action and the Federal guidelines for developing and reviewing affirmative action plans, and for monitoring the progress of federally-funded agencies toward planned agency goals. It seemed too early, however, to judge the effectiveness of the reorganization during the first year. The

agencies responsible for enforcement had been re-establishing both their roles and their enforcement procedures during this time.

In early 1980, the U.S. Commission on Civil Rights undertook a project to provide a clear description of affirmative action required by Federal mandates, a description of how and by whom such mandates are monitored and enforced, and a summary of how various groups, including contractors, civic and community groups, local government officials and others perceive the process for enforcing Federal mandates for affirmative action. State Advisory Committees to the U.S. Commission on Civil Rights conducted investigations and factfinding meetings in each of the ten regions throughout the United States. A report detailing these national findings will be published by the Commission and made available to the general public.

The Oklahoma Advisory Committee to the U.S. Commission on Civil Rights was one of the participants in this national project. On March 27 and 28, 1980, the Oklahoma Advisory Committee held its State factfinding meeting on affirmative action.

The national report on affirmative action, to be issued by the Commission, will include detailed information on the statutory authority, agency regulations and procedures used in the Federal enforcement effort. The following report highlights the more salient issues emerging from the two-day meeting in Oklahoma. It also provides a very brief summary of the responsibilities for enforcement of affirmative action by each of the major Federal enforcement agencies.

The Oklahoma Advisory Committee held its two-day factfinding meeting on affirmative action at the Sequoyah Underground Auditorium in

Oklahoma City. The Affirmative Action Subcommittee to the Advisory Committee conducted the meeting with staff assistance from the Southwestern Regional Office and the national office of the U.S. Commission on Civil Rights. The purpose of the meeting was fourfold: to provide a description of how affirmative action plans are developed within Oklahoma as a result of Federal requirements; to describe the process by which compliance with Federal requirements is reviewed, maintained and enforced; to identify and further contrast differences in the intended process and the actual process of monitoring and enforcing Federally required affirmative action; and to describe the perceptions that employers, special interest groups and individual citizens in the community have toward Federal enforcement of affirmative action.

Participants in the factfinding meeting included representatives of Federal enforcement agencies; public employers at the Federal, State and local government levels, and public universities; private employers from Tulsa, Lawton and Oklahoma City, who have Federal contracts; representatives from labor; civil rights groups; and other interested individuals from the communities in Oklahoma.

In addition to those groups who actually participated in the factfinding meeting, the State Advisory Committee invited officials from the cities of Tulsa and Oklahoma City and from the Oklahoma City Chamber of Commerce to participate. Although these groups initially accepted the invitation to participate, they did not send representatives. The Oklahoma City Chamber of Commerce declined the invitation and notified the State Advisory Committee immediately prior to the factfinding meet-

ing. Also, both of the cities submitted letters declining the invitation. The letters from the cities did not reach the Southwestern Regional Office staff until after the factfinding meeting was completed.

All of the individuals who did participate had been invited by the Oklahoma Advisory Committee and appeared on an entirely voluntary basis. Some made statements on their perceptions of how affirmative action requirements are being implemented in Oklahoma and all responded to directed questions from the Committee.

From the statements and responses of participants at the factfinding meeting, the Oklahoma Advisory Committee has identified some of the more salient issues that emerged. The issues identified and discussed in the following section are based on the public record of the proceedings from the factfinding meeting[16] and other documents related thereto.

OVERVIEW OF FEDERAL ENFORCEMENT AGENCIES

The responsibility for enforcing Federal affirmative action requirements rests with several Federal agencies. In 1978, the President reduced the number of agencies sharing this responsibility. Except for the grant-in-aid programs, in which affiramtive action is enforced by the individual Federal grantor agencies, enforcement authority for Federal affirmative action requirements rests with three Federal agencies: The U.S. Department of Labor's Office of Federal Contract Compliance Programs (for private employers having contracts with the

Federal government),[17] the Equal Employment Opportunity Commission (for Federal agencies[18] and for private companies in which the development of an affirmative action plan is required to remedy specific class or systemic discrimination within the company),[19] and the Office of Personnel Management (which is responsible primarily for monitoring the personnel systems of State and local agencies seeking Federal funds[20] and for overseeing the Federal recruitment efforts).[21] While the Office of Federal Contract Compliance Programs and the Equal Employment Opportunity Commission have specific statutory authority for enforcement, the Office of Personnel Management has enforcement authority only over grants awarded by its own agency.

This section provides only a thumbnail sketch of the roles of these major enforcement agencies to provide the reader a brief background of how Federal enforcement efforts are organized. A more complete report on the role and authority of the various Federal enforcement agencies will be available in the Commission's national report on affirmative action (see Introduction to this report).[23]

The Federal agencies which provide grants-in-aid to communities are not bound by a uniform set of enforcement efforts. These agencies and their respective roles in the Federal affirmative action effort are discussed only in terms of issues which emerged in the factfinding meeting (see Chapter II of this report).

Office of Federal Contract Compliance Programs (OFCCP)

Executive Order 12086[24] gives to the OFCCP, a division of the Employment Services Administration of the U.S. Department of Labor (DOL),

sole responsibility for enforcement of affirmative action requirements among Federal contractors as set forth in Executive Order 11246 as amended.[25]

The procedures to be used by the OFCCP in monitoring and enforcing affirmative action are set forth in the Federal Contract Compliance Manual.[26] This document was designed to ensure uniform implementation of procedures and regulations and to serve as a guide for the compliance officers (i.e., the persons responsible for conducting reviews and monitoring the efforts of the contractors).

Equal Employment Opportunity Commission (EEOC)

This is an independent Federal regulating agency with primary responsibility for enforcing Title VII of the Civil Rights Act (CRA). Executive Order 12067 establishes EEOC as the lead agency for coordinating all equal employment opportunity actions among Federal agencies. At the same time, EEOC has the responsibility for maintaining compliance with other aspects of Title VII of the Civil Rights Act, as amended.[27] A major part of EEOC's efforts in this area has been the resolution of complaints. It is noted that while resolution of most individual complaints does not involve a requirement for developing and maintaining an affirmative action plan, there are occasions in which such plans are required as part of an "affirmative remedy" to previous systemic or class discriminatory actions on the part of an employer.[28]

At the time of the Oklahoma factfinding meeting, most of EEOC's resources were directed at complaint resolution. The agency's role in Federal affirmative action was still emerging at that time. In fact, 1980 had been designated as a "transition year," in which the agency developed and disseminated policy regulations and procedures to other

Federal agencies under its jurisdiction, and in which staff would be recruited and trained for the new responsibilities.

Office of Personnel Management (OPM)

The Office of Personnel Management (OPM), formerly the U.S. Civil Service Commission, was given the responsibility for implementing the program known as the Federal Equal Opportunity Recruitment Program (FEORP), a minority recruitment program directed at eliminating underrepresentation of minorities in various categories of Federal civil service employment.[29]

EEOC is required to assist OPM by establishing guidelines for FEORP and to oversee and evaluate the efforts of other Federal agencies in determining minority underrepresentation in organization work forces.[30]

The only authority for enforcement of affirmative action plans by OPM is in conjunction with its responsibilities under the Intergovernmental Personnel Act (IPA)[31] covering grants awarded by OPM under this Act. At the same time, however, the same act authorizes OPM to conduct reviews and analyses of agency plans for complying with merit principles (discussed in a subsequent section of this report). Consequently, OPM oversees and evaluates the efforts of several State and local agencies which receive funds from other Federal agencies such as the Department of Agriculture (DOA), Department of Labor (DOL), and the Department of Health and Human Services (DHHS),[32] but in this role, OPM has no enforcement authority.