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Implementation of Federal Civil Rights Laws in Iowa

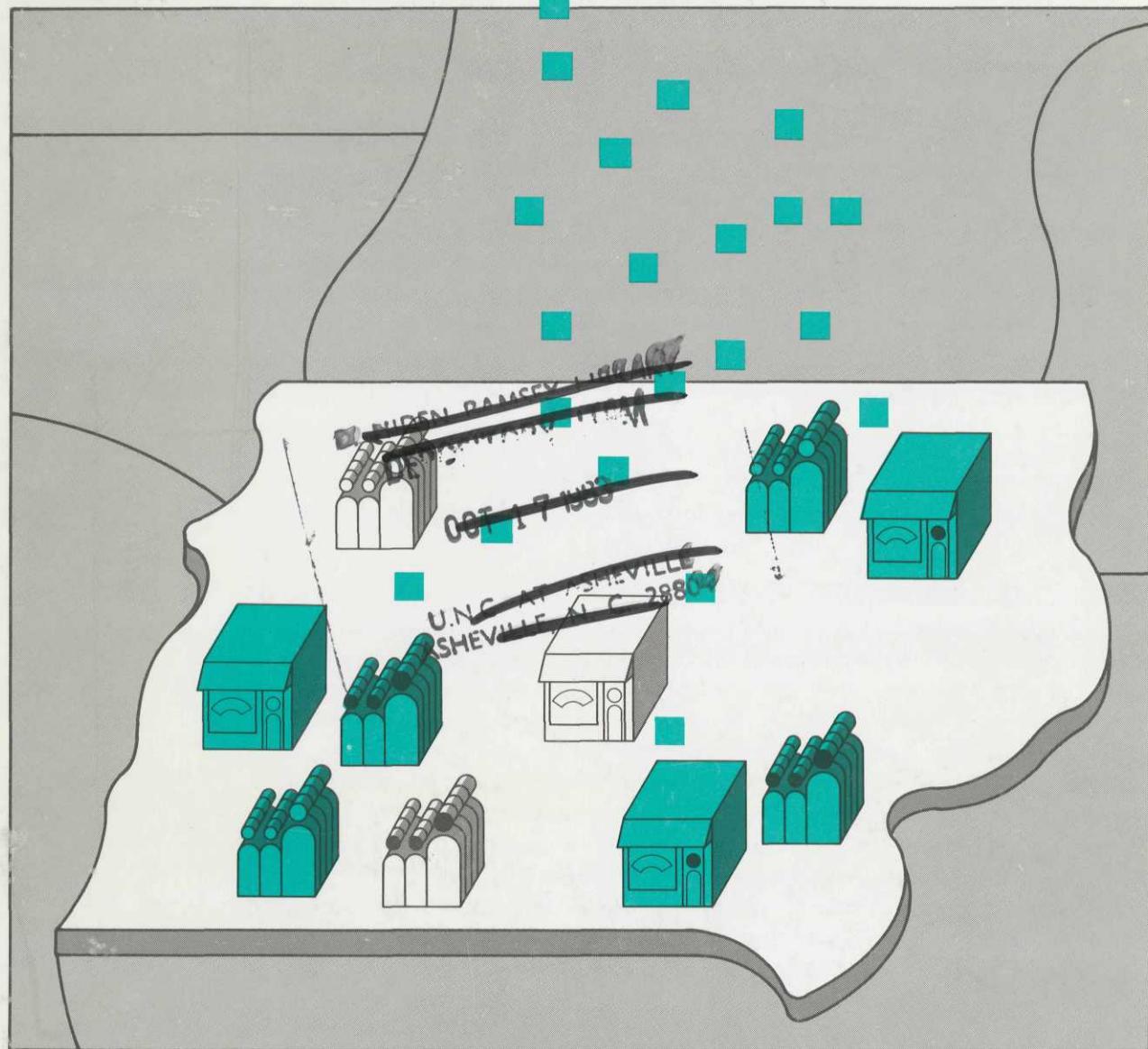
Nondiscrimination in the Block Grants and Minority Business Participation

September 1983

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A report of the Iowa 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 contents of this report should not be attributed to the Commission but only to the Iowa Advisory Committee.

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Implementation of Federal Civil Rights Laws in Iowa

Nondiscrimination in the Block Grants and Minority Business Participation

—A report prepared by the Iowa Advisory Committee to the U.S. Commission on Civil Rights

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The findings and conclusions contained in this report are those of the Iowa 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 Congress.

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LETTER OF TRANSMITTAL

Iowa Advisory Committee to the
U.S. Commission on Civil Rights
September 1983

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John Hope III, *Acting Staff Director*

Dear Commissioners:

The Iowa Advisory Committee submits this report on its study of enforcement of nondiscrimination assurances in the block grant programs by Iowa State agencies and contract compliance efforts by the U.S. Postal Service. The Advisory Committee obtained information for this study from the Iowa Departments of Health, Human Services and General Services, the Iowa Office of Programming and Planning, the Iowa Energy Policy Council, the Iowa Civil Rights Commission, U.S. Departments of Health and Human Services and Housing and Urban Development, the U.S. Postal Service and participants in the contracting process for the Urbandale, Iowa, post office project. All agencies and persons mentioned in this report were given an opportunity to comment on a draft of the report and their comments and corrections have been incorporated.

The Advisory Committee found that State efforts to ensure compliance with Federal antidiscrimination laws have, generally, been insufficient to meet the obligations the State and its agencies assumed in accepting such funds in the past. Although some improvements are contemplated, much of the future machinery is likely to be equally insufficient. The Committee recommends that the Governor, as ex officio guarantor of compliance with Federal antidiscrimination laws, should consider ways by which the compliance efforts could be made sufficient. He might consider assigning full responsibility for monitoring to the Iowa Civil Rights Commission and providing additional resources for that. He might further consider assigning full responsibility for all contract compliance efforts involving discrimination to the Iowa Civil Rights Commission and providing, in coordination with the legislature, adequate resources for that, including the necessary authority, staff and funding.

The Advisory Committee found that absent any significant change in the allocation of responsibility for antidiscrimination contract compliance, the State agencies administering Federal funds could do much more than they are doing to ensure adequate enforcement of Federal and State antidiscrimination laws. The Committee urges the agencies administering Federal programs to strengthen the quality of the evaluative tools they use to assess compliance with antidiscrimination laws, heighten the priority assigned to antidiscrimination activities in general administrative reviews, and allocate additional resources to agency affirmative action officers so they can effectively review the compliance of grantees, contractors, vendors with antidiscrimination contract provisions.

The Advisory Committee found that the level of resources available to Federal civil rights agencies in Region VII to review contract compliance is clearly far less than needed to adequately monitor State compliance with antidiscrimination assurances and grantee performance. The Committee urges the U.S. Commission on Civil Rights consider conducting a new review of Federal contract compliance efforts in which it would consider how "New Federalism" principles could be used to make the entire compliance effort more effective.

The Advisory Committee finds that as a consequence of regulatory deficiencies and deficient Postal Service review and compliance efforts, the Postal Service failed to take steps to ensure that a good faith effort was employed and that all responsible and competitive minority subcontractors could participate in the Urbandale Post Office project. Further, the Postal Service issued no regulations to ensure that women or handicapped-owned businesses had a chance to participate. The Postal Service is unique in allowing contractors to count toward minority business enterprise (MBE) goals supplies purchased by MBE subcontractors from non-MBE sources. The Committee urges the Commission to review the Postal Service's contracting regulations and make appropriate recommendations to the Postmaster General for changes that would ensure full opportunity for participation by minority, women, and handicapped-owned businesses in the construction program. The Postmaster General also should be asked to order a complete review of the process by which subcontracting was conducted for the Urbandale Post Office project and review the monitoring efforts of his staff in ensuring compliance with Postal Service regulations and contracts, furnish a detailed report to the Commission and indicate what corrective action he proposes to require to prevent repetition of any deficiencies. The Commission might suggest that the Postmaster General alter his procurement regulations to preclude "broker-type" subcontracts with MBE subcontractors being counted toward MBE goals for more than the value of the services furnished by the MBE.

We urge you to concur with our recommendations and to assist the Committee in its followup activities.

Respectfully,

GREGORY H. WILLIAMS, *Chairperson*
Iowa Advisory Committee

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1. Introduction

The Iowa Advisory Committee review of State and local civil rights agencies noted the reluctance of these agencies to accept deferral authority for enforcement of Federal antidiscrimination laws and regulations beyond those already assumed.¹ In view of the transfer of substantial responsibility for Federal review of the use of Federal funds contained in Pub. L. 97-35 in connection with the new block grant programs, the Advisory Committee decided it would be appropriate to see what would be done by the responsible State agencies that would administer these new funds. Its study parallels a similar study recently completed by the Missouri Advisory Committee.² The Missouri study disclosed a comprehensive system administered by the responsible State agencies for ensuring compliance with Federal civil rights requirements but only limited resources devoted to implementation.³ The Iowa Advisory Committee sought to determine what efforts Iowa State agencies had made or would make.

In addition, since over one year has now past since the new block grants were awarded, the Advisory Committee wanted to know whether the allocations of these funds had a discriminatory effect on the availability of the services covered. To determine this, it asked the administering Iowa State agencies to provide information on the beneficiaries of the block grant programs in fiscal years 1982 and

1983. The Committee also asked for information on the procedures used to allocate funds and the extent of public participation in the allocation process.

Information for this study was provided by the Iowa Departments of General Services, Health and Human Services, the Iowa Office for Planning and Programming, the Iowa Energy Policy Council, the Iowa Civil Rights Commission and the regional offices of the U.S. Departments of Health and Human Services and Housing and Urban Development. The Iowa Department of Substance Abuse failed to provide any information, although it also administers one of the Federal block grants.

The exact current status of the civil rights requirements administered by the Department of Health and Human Services under the provisions of the Omnibus Budget Reconciliation Act of 1981⁴ has been clarified in the Final Rules issued on July 6, 1982.⁵ With some exceptions these rules merely reference earlier regulations governing compliance with laws prohibiting discrimination on the bases of race, color, national origin, handicap and age. These rules continue in effect and, to the extent that they were deficient, they remain so.⁶

The statutory language establishing each of the block grants, except social services, references other

¹ Iowa Advisory Committee, *Iowa Civil Rights Agencies* (September 1982).

² Missouri Advisory Committee, *State and Federal Civil Rights Enforcement in Missouri—Nondiscrimination in the New Health and Human Services Block Grant Programs* (October 1982).

³ Ibid.

⁴ Pub. L. 97-35.

⁵ 47 Fed. Reg. 29472-29493 (1982).

⁶ 45 C.F.R. Parts 80 and 81 implement Title VI of the Civil Rights Act of 1964, as amended, by prohibiting discrimination on the bases of race, color, and national origin in many programs of Federal financial assistance. 45 C.F.R. Part 84 prohibits discrimination on the basis of handicap and 45 C.F.R. Part 90 prohibits discrimination on the basis of age in such programs.

statutes that prohibit discrimination based on age, handicap, race, color, and national origin.⁷ In addition, the provisions establishing the block grants for preventive health care; alcohol, drug abuse and mental health; primary health care; and, maternal and child health services contain prohibitions of discrimination based on religion or sex.⁸ Although there are no antidiscrimination clauses in the legislation covering the social services block grant, the Department of Health and Human Services, in its final regulations commentary states:

Congress has made clear that States and their grantees have the responsibility to prohibit discrimination on the basis of race, color, national origin, age and handicap. In addition, several of the block grants require that religious and sex discrimination be prohibited as well. The Secretary interprets existing laws against discrimination in federally assisted programs as applying to the social services block grant.⁹

All State applicants must provide an assurance of compliance with the provisions of Pub. L. 97-35 and therefore with the nondiscrimination clauses in the various sections cited above.¹⁰ Pursuant to regulation, they also must provide assurances of compliance with Title VI of the Civil Rights Act and Sec. 504 of the Rehabilitation Act.¹¹ In the interim regulations these had been waived for some of the block grant applications.¹² That waiver has been withdrawn.¹³

The final regulations specify that the complaint procedures to be utilized for discrimination complaints are the same that were utilized in the past—viz those established under the various antidiscrimination laws—and that complaint procedures specified in Pub. L. 97-35 do not apply to these situations.¹⁴ The Department of Health and Human Services states that “regulations implementing novel aspects of the block grant nondiscrimination provisions are being developed and will be published in the future.”¹⁵ These would relate to prohibitions of discrimination based on religion or sex. The Department of Health and Human Services apparently will continue to monitor compliance with antidiscrimination laws using the same processes, including period-

⁷ Pub. L. 97-35, §§508(a)(1), 677(a), 1908(a)(1), 1918(a)(1), 1930(a)(1), 2606(a).

⁸ Pub. L. 97-35, §§508(a)(2), 1908(a)(2), 1918(a)(2), 1930(a)(2).

⁹ 47 Fed. Reg. 29480 (1982).

¹⁰ For example see Pub. L. 97-35, §1905(a)(c)(1).

¹¹ 45 C.F.R. §80.4 and 45 C.F.R. §84.5.

¹² 46 Fed. Reg. 48585 (1981).

¹³ No specific section notes this change. See 47 Fed. Reg. 29480 (1982).

ic compliance reviews, specified in regulations for the administration of the Civil Rights Act, Rehabilitation Act and other antidiscrimination regulations.

The Department of Housing and Urban Development nondiscrimination regulations governing non-entitlement community development block grants, now allocated by States pursuant to Pub. L. 97-35, are also unchanged from the predecessor program.¹⁶

In chapter 2 of this report the Advisory Committee summarizes the external compliance efforts of the Iowa agencies expending block grant funds. Their internal affirmative action efforts have been reviewed by this Advisory Committee in its study, *State Government Affirmative Action in Mid-America: An Update*.¹⁷ We have also included data on CETA compliance activities although those are not block granted. In chapter 3 the Advisory Committee summarizes the data it received on the utilization of funds and the allocation process. In chapter 4 the Committee reviews the activities of Federal and State civil rights compliance agencies. In addition to reviewing State efforts, the Committee also reviewed the efforts of the U.S. Postal Service to ensure nondiscrimination in its contracting activities. To do so it obtained information from the Postal Service and participants in the contracting process involving construction of a facility in Urbandale. The results are reported in chapter 5. Chapter 6 contains the Committee's conclusions, findings and recommendations. These are intended to assist the U.S. Commission on Civil Rights in its program planning efforts.

The Advisory Committee appreciates the efforts of the Iowa Departments of Human Services, Health and General Services, the Iowa Office for Planning and Programming, the Iowa Energy Policy Council, the Iowa Civil Rights Commission and U.S. Departments of Housing and Urban Development and Health and Human Services, the Postal Service and participants in the Urbandale Post Office contracting process. They have been provided a chance to comment on a preliminary draft of this report and relevant comments or corrections have been incorporated or otherwise reflected in the final draft.

¹⁴ 47 Fed. Reg. 29480 (1982).

¹⁵ Ibid.

¹⁶ See: 24 C.F.R. §1.4, 24 C.F.R. §570.601 and 45 C.F.R. Part 84.

¹⁷ Iowa Advisory Committee, *State Government Affirmative Action in Mid-America: An Update* (March 1982).

2. Contract Compliance Efforts of State Agencies

Most of the Federal funds received by the State under the various block grant programs are passed on to local level grant recipients by contracts between them and the State that include prohibitions against discrimination under either State or Federal law or regulation. While the Federal granting agencies have retained authority to review civil rights compliance, the States have (and indeed always have had) a concurrent responsibility to ensure that the antidiscrimination provisions of their contracts are enforced. Most State agencies have not reviewed the effectiveness of their contract compliance efforts. However, the agencies reviewed in this report have designed contract compliance procedures and plan to begin implementation. The only federally-funded operating program that has been subject to review is the Comprehensive Employment and Training Act program in which Office for Planning and Programming self-evaluated its own efforts. Presumably the successor program will be reviewed in a similar fashion. Both the Departments of Health and Human Services administrative efforts have been reviewed by the U.S. Department of Health and Human Services and the small cities block grant program administration has been reviewed by U.S. Department of Housing and Urban Development.

None of the agencies with multiple federally-funded programs had an agencywide procedure for evaluation and compliance monitoring. Each developed program specific procedures and practices. Thus, the Department of Health reported on two of its divisions, the Department of Human Services on two programs and the Office for Planning and Programming on four programs (two block grant and two others). In addition to these agencies and the Iowa Energy Policy Council, the Advisory Committee also reviews the practice of the General Services Department because this agency serves as purchaser for many of the supplies and services utilized by the other State agencies.

Department of Health

The Iowa Department of Health assigns responsibility for nondiscrimination contract compliance to the division responsible for administering a particular group of contracts. These agencies obtain the assistance of the department's affirmative action officer when problems occur.¹ The Personal and Family Health division is responsible for the Women, Infants and Children (WIC), Maternal and Child Health, Fluoridation, Dental and Family Planning contracts. The State's six Regional Supervisory

¹ Norman L. Pawlewski, Commissioner of Public Health, letter to CSRO staff, Jan. 14, 1983 (hereafter cited as Health Department Letter).

Nurses oversee Home Health Care provided by the counties' public health nurses.²

The terms of the State's contracts provide that the contractor shall not discriminate in either employment practices or provision of services. Also, the contractor shall: advertise that it is an equal opportunity employer, notify any unions with which it has an agreement to this effect and post appropriate notices. It is also required to comply with both Federal and State prohibitions against discrimination and furnish whatever data the Department of Health requires to verify compliance. Contractors are to include the various nondiscrimination clauses of their contracts with the State in any subcontract or purchase order and are required to take whatever action the department orders in the event of non-compliance by their subcontractors. Violations of the antidiscrimination clauses may result in cancellation, termination or suspension of contracts in whole or in part and contractors may be declared ineligible for further contracts. There may also be specific penalties and remedies under the Iowa Civil Rights Act of 1965.³ In short, every recipient of Federal funds through contract with the Division of Personal and Family Health is subject to both Federal and State antidiscrimination requirements. Noncompliance would constitute a breach of contract for which the State has a remedy.

The department states that "Where appropriate, statistics are gathered on protected class participation in departmental programs. These statistics are compared to the percentages of protected classes in particular areas of the State and statewide." A system for gathering similar information on handicapped persons' participation is being developed.⁴

Formal reviews are conducted annually by the Division of Personal and Family Health on 37 contractors that receive funds through its programs. As part of a pre-contract review, "analysis is made of those agencies which includes review of . . . agency employment practices, agency policies and procedures, building accessibility, accounting procedures and qualifications of staff."⁵ Of the 17 items reviewed, one requires "agency's management and

operating policies must be clearly stated; systematically communicated throughout the organization; and conform with applicable laws and external regulations."⁶ The guidelines for the contractors' policy and procedures manuals specify that any employer of 15 or more persons with a contract exceeding \$50,000 must develop an affirmative action program and plan "to include data on all job classifications" and a "policy statement prohibiting discrimination."⁷ Approximately 10 percent of the 37 contractors do not fall within the 15 or more persons/\$50,000 requirement. However, the department states that they too have complied with the guidelines at the department's request.⁸ The department states that "all appropriate civil rights regulations have been implemented by its contract agencies."⁹ It is not evident how compliance with Title VI or Section 504 could be assured.

The on-site follow-up review guidelines contain 13 items. Contractors are asked whether a Sec. 504 self-evaluation has been completed to assure opportunity for the handicapped and what progress has been made to implement the needed changes since the last evaluation. The department states its affirmative action officer reviews the 504 self-evaluations to ensure compliance with Federal rules and regulations. But nothing is asked about discrimination based on race, sex or other prohibited bases of discrimination.¹⁰

Another evaluation checklist provided to the Advisory Committee shows that the State does check to determine whether the nondiscrimination clause is included in the contractor's personnel manual and whether the required notice of opportunity to complain to the State or Federal agencies about discrimination is posted.¹¹ The former is deficient because it merely requires the clause be in the personnel manual. It does not require any test of compliance with either employment or service nondiscrimination requirements. But the department does receive and analyze quarterly reports showing contracting agencies breakdown of program participants by race and sex. The poster, while providing full information on how to complain to the depart-

² David Ancell, Affirmative Action Officer, Iowa Department of Health, telephone interview, Feb. 18, 1983.

³ Health Department Letter, attachment 2 "General Conditions," pp. 4-5.

⁴ Health Department Letter.

⁵ Ibid.

⁶ Ibid., attachment 3.

⁷ Ibid., attachment 3.

⁸ Ibid., attachment 3 and Norman L. Pawlewski, letter to CSRO staff, June 14, 1983 (hereafter cited as DH Comment Letter).

⁹ DH Comment Letter.

¹⁰ Health Department Letter, attachment 3 and DH Comment Letter.

¹¹ Health Department Letter, attachment 3.

ment's affirmative action officer, does not provide addresses of other civil rights agencies it mentions—merely stating they are available. But the WIC Poster, "And Justice for All" is complete.¹²

The department's Community Health Division has approximately 130 contracts with local boards of health for support of public health nursing services. The nursing agencies are supervised, on an informal basis, by the State Regional Supervisory Nurses. "Although the supervisory nurses do not perform a formal compliance visit, they review county board of health meeting minutes and care review committee minutes, and consult with local nurses on a continuing basis."¹³ These informal reviews can result in informal resolution of any discrimination problems that may be revealed.¹⁴ In addition, these county health units are certified as Home Health Agencies under the Medicare program and are surveyed every two years by the U.S. Health Care Financing Administration as certified Home Health Agencies; they may receive medicaid funds from the Department of Human Services. The Department of Health affirmative action officer believes that the informal reviews do give it good persuasive control and that negotiations to remedy problems have been no trouble.¹⁵

The Disease Prevention Division also distributes block grant funds. Since these go to local governments whose affirmative action and equal opportunity efforts are reviewed by other divisions, separate compliance reviews are not conducted.¹⁶

The department has conducted a substantial self-analysis of its obligations under Sec. 504 of the Rehabilitation Act to avoid discrimination against the handicapped. It also provides an evaluation of provision of services, licensing procedures and testing. The department stated that it explored other issues such as: employment, physical accessibility, provision of services in most integrated settings, reasonable accommodation vs. undue hardship, provision of services to hearing or visually impaired participants and other specific program issues although the results were not always reported in the self-evaluation because no action was needed.¹⁷

The department's affirmative action officer stated "the department's contractors have been receptive to performing the requirements imposed by civil rights laws and regulations. Many of the contractors are required to perform similar requirements for Federal grants from other agencies. If a contracting agency did not conform with civil rights requirements, the contract provisions of suspension and termination would be progressively enforced and new contractors would then be sought. Such measures have never been taken to date for noncompliance with civil rights regulations."¹⁸ The Advisory Committee's research does not provide data on the efficacy of the process. If the department has been successful in obtaining informal resolution of non-compliance problems that is clearly the best possible resolution. If, however, it has obtained compliance by not making substantial demands, then there is a need for a commitment to demand better compliance.

Complaints about program services or about the practices of contractors can be filed directly with the Department of Health affirmative action officer who will treat them as grievances. In the case of contractors, there are also internal grievance procedures that can be used. Notice of a right to complain must be posted at all facilities. While there have been two complaints recently, there had been none in the preceding few years. By and large, the agency's affirmative action officer settles disputes informally before they become formal complaints.¹⁹ These complaints allege discrimination but actually concern limits on the services that local home health agencies can provide.²⁰ Complaints addressed to the contractors are monitored by the program administrators of the various programs.²¹

The department's efforts to ensure compliance with the civil rights laws was reviewed by the U.S. Department of Health and Human Services (HHS) in a review that was completed in September 1982. At that time the Department of Health had yet to formally designate a Title VI officer who assumes responsibility for agency Title VI enforcement efforts, although the department's affirmative action compliance officer believed he was the coordinator.

¹² Ibid., attachment 5 and DH Comment Letter.

¹³ Health Department Letter.

¹⁴ David Ancell, telephone interview, Feb. 18, 1983.

¹⁵ Ibid. and DH Comment Letter.

¹⁶ David Ancell, telephone interview, Feb. 22, 1983.

¹⁷ Health Department Letter, attachment 6.

¹⁸ DH Comment Letter.

¹⁹ David Ancell, telephone interview, Feb. 24, 1983.

²⁰ DH Comment Letter.

²¹ David Ancell, telephone interview, Feb. 24, 1983.

Although a review conducted in 1968 had found that the department had no referral policy or procedure, none had yet been developed. In fact, at the time of the 1982 review, the department was unable to locate its "Methods of Administration" commitment regarding enforcement of Title VI services. The department was urged to develop a formal policy to ensure that referrals for service would be on a nondiscriminatory basis and that procedures be devised to ensure against discrimination by provider agencies. HHS was satisfied that the interpreter services provided by the Muscatine Migrant Committee, the Muscatine Community Nursing Service and Department of Refugee Health were sufficient. HHS also was satisfied with the methods of service to the handicapped. But it urged that a better means be developed to ensure that the blind are notified of the available services. HHS also noted that the department did not collect data on all handicapped persons receiving services. It urged that an adequate data collection mechanism be developed.²² The affirmative action compliance officer has now been formally designated the Title VI officer. The department has developed an appropriate formal referral procedure. It has revised its methods of administration. It has taken steps to provide non-written information on services so that the blind can know what is available. It is in the process of establishing an effective system for collecting data on utilization of services by handicapped persons.²³ HHS is continuing to monitor the department's efforts.²⁴

Department of Human Services

There are no current compliance procedures for either Title XIX Nursing Program Providers or Title XX Purchase of Service Vendors. However, prior to April 1979, the Department of Human Services did conduct on-site reviews of Title XIX providers' compliance with Title VI and has a plan to resume these reviews. Similarly, the department has a plan in an advanced stage to begin antidiscrimination reviews of Title XX vendors.²⁵

²² HHS, *Investigative Report*, Review No. 07827008 (Sept. 21, 1982).

²³ David Ancell, telephone interview, Mar. 14, 1983.

²⁴ Caroline Hill, Equal Opportunity Specialist, telephone interview, Mar. 14, 1983.

²⁵ Michael V. Reagen, Ph.D., Commissioner, Iowa Department of Human Services, letter to CSRO staff, Feb. 10, 1983 (hereafter cited as Human Services Letter).

Utilization and independent professional reviews that included civil rights compliance were conducted by the department prior to April 1979 on nursing homes that received Title XIX funding. In that year the responsibility and staff for such reviews were transferred to the Iowa Foundation for Medical Care (the State's professional standards review organization).²⁶ It has apparently taken four years since then for the State to begin a new antidiscrimination review process.

Beginning around June 1983, the department proposes to utilize staff of the Division of Community Programs and others to conduct reviews of all facilities within a year. In addition it proposes to conduct desk audits of each annual renewal and the Bureau of Audits will include compliance with antidiscrimination requirements in its triennial audits.

Past procedures contained in the agreement for intermediate care facilities required the facilities to maintain census records of their populations but not to do so by race or sex. The antidiscrimination clause merely required agreement not to violate the various antidiscrimination laws and regulations and did not contain any requirement for positive action to ensure nondiscrimination.²⁷

Use of the compliance reporting forms and audits will begin by about June 30, 1983. Of the 456 facilities subject to review, the department expects to review all in the first year and conduct about 50 in every year thereafter. The self-evaluation form is complete in that it asks for full information on patients by race and sex, their use of medicare and medicaid, the facilities to which they are assigned and information about doctors.²⁸ The form also asks for information on paid staff of the facility.²⁹

Plans for review of 325 Title XX vendors are in a more advanced stage. The department expects to conduct annually about 290 on-site reviews by the project managers. A compliance questionnaire has been developed and tested. The project managers will visit each facility on a regular, ongoing basis to

²⁶ Ibid.

²⁷ Ibid., attachment I-A1.

²⁸ Ibid., attachment I-A2.

²⁹ Ibid. and Barbara Oliver-Hall, letter to Chairperson, Iowa Advisory Committee, June 3, 1983 (hereafter cited as DHS Comment Letter).

review contract compliance and provide technical assistance.³⁰

The proposed questionnaire is complete except for the omission of a request for actual data on employment and utilization of the various groups. The department is revising this instrument and will include data on employment. Apparently, a separate desk audit will not be conducted prior to the on-site review to determine whether the numbers look right and the data is complete. This would appear wasteful, since it is easier and more effective to review such data prior to on-site reviews where issues of apparent noncompliance can be investigated.³¹ But the department insists since managers are on-site several times a year this procedure is efficient.³²

The department has already conducted a comprehensive Sec. 504 of the Rehabilitation Act review of some but not all Title XX vendors.³³ The review document if used is complete and comprehensive.³⁴

Because the various procedures used are still to be implemented, the department has no track record of compliance enforcement. The best of data will be useless unless the department commits itself to complete compliance by its contractors or vendors.

Like the Department of Health, the Department of Human Services has a poster indicating to recipients of services how they can complain about any discrimination. It includes all the various Federal and State agencies that can provide a remedy. Over the past three years they had about three or four external complaints relative to purchase of service providers; two of these were closed to the satisfaction of all parties and two recent complaints on purchase of services contracts remain pending.³⁵

The activities of the department were reviewed by the U.S. Department of Health and Human Services in a review conducted during February 1982. This was to review corrective action taken to resolve violations found during a 1978 review. In 1978 the department was instructed to develop a formal "methods of administration" to ensure compliance with Title VI, take action to eliminate barriers facing Spanish-speaking and Hispanic individuals, collect better data on the race/ethnic origin of clients in the medicaid program, cease referring

individuals to the Senior Companion Program in the Blackhawk district until that agency complied with Title VI, identify participants by handicap, notify all staff of the identity of the Sec. 504 coordinator and strengthen that person's role, make plans for eliminating architectural barriers in recipients' facilities. The reviewer, in 1982, recommended a finding of noncompliance with Title VI but compliance with Sec. 504. Although the methods of administration for Title VI are included in a State Plan submitted to the Health Care Financing Administration, the plan has not been widely circulated. The department's affirmative action officer has been formally assigned both Title VI and Sec. 504 responsibilities. But the department continued not to have an effective means of monitoring its programs to ensure compliance with Title VI. It has obtained assurances from providers and vendors and promised to conduct program audits on at least an annual basis. The department did attempt to ensure that referrals would not be made to agencies that discriminate. It did so by educating its own staff and that of its recipients. Efforts to place social services or income maintenance workers in the Linn and Lee county offices were unsuccessful, the department alleged, because Spanish-speaking persons were not on the relevant registers. But the department did identify employees with some Spanish speaking skills who could serve as interpreters. Although data on the race of medicaid recipients is now collected, the department was unable to tell HHS who analyzed the data. The Senior Companion Program had come into compliance with Title VI.³⁶ The department was in the midst of a reorganization when the letter of deficiency arrived from HHS. It has corrected and circulated some pieces of the methods of administration. But others are still being prepared. It expects to have the entire methods of administration revised and ready for circulation by July 1, 1983. It is still working on some segments, such as the survey of the handicapped and is still revising others such as the data collection procedures.³⁷ It has completed its survey of handicapped employees.³⁸ HHS has closed its review, based on the commitments for change made by the department. It will review

³⁰ Human Services Letter and DHS Comment Letter.

³¹ Human Services Letter, attachment 1-B2 and DHS Comment Letter.

³² DHS Comment Letter.

³³ Human Services Letter.

³⁴ Ibid., attachment 1-B2.

³⁵ Barbara Oliver-Hall, telephone interview, Feb. 24, 1983.

³⁶ HHS/OCR, *Investigative Report No. 07817005* (nd.) and Lois Carter, Regional Manager, HHS/OCR, letter to Chairperson, Iowa Advisory Committee, June 6, 1983.

³⁷ Barbara Oliver-Hall, telephone interview, Mar. 15, 1983 and DHS Comment Letter.

³⁸ DHS Comment Letter.

implementation in a subsequent review when resources permit. HHS approved of the department's efforts to make interim modifications in the methods of administration as changes were needed.³⁹

Office for Planning and Programming(OPP)

The Office for Planning and Programming administers a wide array of activities only a few of which have Federal components. It provided data on four: the Community Services Block Grant, the Community Development Block Grant, the criminal justice program and the Comprehensive Employment and Training Act program.

The most limited review process involves the Office for Criminal and Juvenile Justice Planning. This merely requires civil rights assurances as part of applications and equal employment opportunity certification of grantees and subcontractors. The agency, because of insufficient staff, has not done any compliance reviews.⁴⁰

In describing its activities under the Comprehensive Employment and Training Act, OPP stated:

The Comprehensive Employment and Training Act requires that each CETA Prime Sponsor receiving funds under this Act establish an independent unit to monitor compliance with the requirements of CETA, the regulations issued thereunder, and the comprehensive employment and training plan. The procedure utilized conforms with a November 2, 1979 U.S. Department of Labor Prime Sponsor directive specifying that CETA subrecipients and contractors be monitored at least once a year where administratively feasible. Otherwise, each subrecipient providing activities or services funded at a level of \$50,000 or more during the grant year shall be monitored at least once and subrecipients providing activities and services under \$50,000 per grant year shall be monitored on a sample basis. The sample selected is at least 20 percent of the total dollars involved in all such contract agreements.⁴¹

Of about 63 items in the monitoring report, four relate to equal opportunity. These ask:

- Are there formal written Equal Employment Opportunity/Affirmative Action policies? (e.g., general postings, employee handbook, official policy statements, grievances procedures)
- Is there a designated EEO officer or contract person? (e.g., verify specific responsibilities)

³⁹ Frank Campbell, Equal Opportunity Specialist, telephone interview, Mar. 22, 1983.

⁴⁰ Edward J. Stanek, Ph.D., Director, Office for Planning and Programming, letter to CSRO staff, Jan. 17, 1983 (hereafter cited as OPP Letter).

- Are nondiscriminatory hiring practices in effect? (e.g., analyze job descriptions, verify procedures for ensuring nondiscrimination, verify extent to which eligible population are included in work force)

- To the maximum extent feasible are the physical facilities accessible to the handicapped including visual and hearing impaired?⁴²

In principle, these are useful. However, it is hard to assess their practical effect. As four of many items, they may get relatively short-shrift from reviewers concerned about other items. There is no question that would encourage the reviewer to explore the beneficiaries of the program to determine whether they are subject to discrimination. This might have been done simply by asking the race/sex of participants program by program and comparing that to the population or to the unemployed or to the available labor force. While the question on EEO/AA policies is complete, it does not ask about the validity of the policies. Thus, the reviewer is not encouraged to explore the sufficiency of efforts. The amount of time authorized to the EEO officer is not reviewed. While this might normally not be a problem, larger contractors would need a full-time EEO officer while actually having only a part-time one. And the quantity of time allocated, while not conclusive, would be an indication of the care the office took in fulfilling the EEO mandates. The analysis of nondiscriminatory hiring practices excludes any consideration of the extent to which recruitment, selection or promotion practices might be discriminatory even if no immediate discriminatory effect is evident. There is no reference at all to affirmative recruitment efforts. The guidelines on job descriptions do not specify that Federal employment procedures are to be used, and the specific procedures for ensuring nondiscrimination in employment are unspecified. In consequence, a reviewer with other concerns or little experience in EO could give very short-shrift to this section and still find compliance within the terms of the mandate. The question on access for the handicapped does not specify what is required. Again, a reviewer without expertise could find compliance when another would find noncompliance. OPP stated that its Division of Human Resources Coordination recog-

⁴¹ Ibid., CETA attachment.

⁴² Ibid., attachment CETA No. 2.

nized these deficiencies and was working with U.S. Department of Labor to plan appropriate training for staff.⁴³

There were 39 contractors. No equal opportunity monitoring was conducted prior to the 1982 fiscal year. In that year eight reviews were conducted that included use of the items discussed above.⁴⁴

In 1981 and 1982 OPP conducted self-analyses of its CETA programs that included discussions of antidiscrimination efforts. In 1981 it noted that specific action had been taken to overcome sex stereotyping. This consisted of a workshop on nontraditional occupations and planning sessions to eliminate barriers. This hardly seems substantial unless OPP knew there was no discriminatory assignment to training (which it could not know from its monitoring records). The independent reviewer merely urged that efforts should continue. Apparently for the first time, the agency's affirmative action officer had been given compliance responsibilities. The report noted that the prime sponsor (OPP) had generated data on significant segments but did not analyze the data. The prime sponsor had not implemented a specific affirmative action plan for outreach to, training, placement and advancement of the handicapped. The program operators responded that "Further training will be held, especially training regarding the selection, training/service and placement of minorities." The prime sponsor had not developed or implemented a system to provide opportunities to compete for procurement contracts to small and minority businesses; its sole activity was to mail RFPs to selected such businesses when they were being issued.⁴⁵ By 1982 conditions had improved somewhat. The prime sponsor was reported to have a system to monitor participation rates, developed specific training to overcome sex stereotypes and worked with the relevant State agency to eliminate architectural barriers. The prime sponsor was checking on minority termination rates. It had not yet developed a plan to reach and utilize the handicapped.⁴⁶ These reports suggest that OPP was indeed monitoring its own contract compliance efforts reasonably effectively. But they lack detail on the work of various outstations and subcontractors. It would be hard to

tell from these whether subcontractors were actually doing anything.

There are 19 community action agencies funded under the community services block grant program. Although they are monitored four times per year, no formal reviews of civil rights compliance have been conducted. The State only assumed responsibility for these programs in October 1981.⁴⁷

The monitoring guidelines include a wide-range of items. Matters that include affirmative action or contract compliance with antidiscrimination rules and regulations constitute a considerable portion. However, while the monitoring official is required to ask for documentation on some items, those pertaining to antidiscrimination are not among them. Thus, the monitor must ensure there is documentation showing service by group but not review the documentation. The monitor does ask whether there are EO policy and affirmative action planning documents and to see copies but there are no guidelines for the review of these documents. In the outreach center monitoring form the monitor is asked to determine whether potential clients are notified of the program and how clients are chosen but no guidelines are provided to determine when discrimination may exist. In its quarterly report, each agency is asked to provide data on client characteristics. In its grant application each agency is asked whether its personnel policies are consistent with all State and Federal laws and to provide a copy of these policies.⁴⁸

The OPP affirmative action officer noted in a memorandum to his director that, having assumed responsibility for a program formerly run by a Federal agency, OPP should assume responsibility for the civil rights compliance by providing regular and comprehensive training in equal opportunity and affirmative action; by developing a complaint system that matched what had been available; by prohibiting discrimination not only based on race, color, national origin or sex but also on creed, religion, age, handicap, political affiliation or citizen-

⁴³ Douglas K. True, Deputy Director, OPP, letter to Chairperson, Iowa Advisory Committee, June 6, 1983 (hereafter cited as OPP Comment Letter).

⁴⁴ OPP Letter, CETA attachment.

⁴⁵ Ibid., attachment CETA No. 4.

⁴⁶ Ibid., attachment CETA No. 5.

⁴⁷ OPP Letter, Community Services Block Grant (CSBG) attachment.

⁴⁸ Ibid., attachment CSBG No. 1.

ship. He also noted the need for a standardized format for comparing service to population.⁴⁹ Commenting on this point, OPP stated:

There has indeed been a sharp decrease in equal opportunity/affirmative action effort between the CSA and CSBG areas. It is inappropriate, however, to compare with or expect the same level of compliance and enforcement as CSA. Two major reasons:

- a. We are a new program with few Federal guidelines.
- b. We have limited administrative costs.

A comparison of the CSA and CSBG programs follows:

1. CSA: Office (Ks. City) in operation since 1965—over 15 years. Strictly regulated from Federal government.

CSBG: Office (Des Moines) in operation approximately 20 months. Few guidelines.

2. CSA: Staff: 54 full time in 1981—*3 full time plus interns devoted totally to Equal Opportunity*. Salary budgeted alone exceeds \$1 million/year.

CSBG: Staff: 3.7 FTR's *budgeted*. 2 actual full time staff for program. Total administrative dollars limited to \$126,000 this year by law. (With carryover—totaled \$147,000).

3. CSA: *Workload*: 54 staff—110 grantees in 4 State region (55 CAA's, 4 SEOO's, 41 LPA's). Field reps assigned 8 agencies a piece at max.

CSBG: *Workload*: 2 staff plus limited support staff. 19 grantees in Iowa. Field Rep responsible for all 19 agencies.⁵⁰

OPP went on to note:

During the first 20 months of CSBG operation OPP has concentrated upon transitioning the 19 CAA's from CSA to the State program while assuring fiscal and program integrity. Equal Opportunity efforts have been limited in scope to this point. This is primarily due to priorities inherent in the responsible initiation of a program with few guidelines and limited funding. To date, OPP has placed major responsibility for compliance on local agencies, reserving the right to require documentation upon notice. OPP is further working with IEPC and IDOH, apparently at your suggestion, to begin coordination of EO compliance enforcement among these State agencies.⁵¹

There is no complaint resolution process for the State community services block grants. OPP was not aware of any complaints to other agencies.⁵² OPP commented that while it recognized the need for a formal complaint process of its own, "the intensity of this is tempered with the fact that agencies are also funded by other funding sources. . .each of which has extensive complaint processes. There is an excellent chance that many complaints could be funneled through one of these. Also, our agency procedure may be sufficient with appropriate appeal rights to HHS."⁵³ OPP noted that it also provides technical assistance on equal opportunity matters when requested to do so. "This has consisted of referring questions to ..[the agency's affirmative action officer] and sending out memos when new guidelines are released."⁵⁴

There were 98 communities in Iowa that received community development block grant allocations. 1982 was the first year in which they received these funds and since contracts were only recently let, the State has yet to conduct formal compliance reviews.⁵⁵

The monitoring questionnaire used appears to be comprehensive. It requires the program managers of OPP to calculate the potential service population, applicant population and beneficiary population by race. But such calculations by sex, age, or handicap are not required.⁵⁶ They also require calculation, by job category of the utilization of minorities and women in the workforce compared to the labor force. The labor force data are to be drawn from county statistics.⁵⁷ They then ask relevant questions about the extent of benefit to minorities and women in program and employment. The employment section asks whether there is an affirmative action plan and monitoring system and whether the kinds of commitments normally contained in an affirmative action plan to ensure nondiscrimination have been carried out. The questionnaire also asks for information on compliance by the grantee with Title VIII but not whether fair housing practices are evident in the community or locally enforced.⁵⁸

To assist it in managing this project, OPP began negotiations with the Iowa Civil Rights Commission

⁴⁹ Ibid., attachment CSBG No. 2.

⁵⁰ OPP Comment Letter.

⁵¹ OPP Comment Letter.

⁵² OPP Letter, CSBG attachment.

⁵³ OPP Comment Letter.

⁵⁴ Ibid.

⁵⁵ OPP Letter and attachment CDBG No. 5.

⁵⁶ OPP Letter, attachment.

⁵⁷ OPP Letter, attachment CDBG No. 2.

⁵⁸ Ibid.

and U.S. Department of Housing and Urban Development for an agreement under which the Commission and HUD would notify OPP when they receive complaints of discrimination against a recipient of community development funds. Since HUD has retained the right to process all complaints about the program, this would have served as a valuable means of monitoring compliance.⁵⁹ But subsequent OPP review suggested that formal coordinative agreements were not necessary since HUD did routinely notify OPP about complaints against CDBG recipients. What would happen regarding complaints filed with the Iowa Civil Rights Commission remains unclear.⁶⁰

It is apparent that there is a wide variation in the potential effectiveness of contract compliance efforts of the various units of OPP. It is unclear, given the relatively small scope of the agency, why this should be the case. It is clear that, when desired, potentially effective contract compliance mechanisms can be designed by the agency. Whether these or others will prove effective in practice remains to be seen as the agency develops a track record.

Iowa Energy Policy Council

The Iowa Energy Policy Council (IEPC) administers the Low Income Energy Assistance Program block grant. It notes that it "is a relatively small agency and we do not have the resources to employ a full-time affirmative action officer."⁶¹

The agency stated that:

In all of our contracts we require the contractor to comply with all relevant provisions [of the various civil rights laws, State and Federal]. . . . These provisions, along with other contract provisions, are reviewed at the time of contract execution or reauthorization. Our own agency staff are kept informed by information from the Iowa Civil Rights Commission and by attending training sessions of the Iowa Management Training System.⁶²

The agency does not conduct separate and specific civil rights compliance reviews.⁶³ In its monitoring questionnaire regarding outreach, it does seek to determine what locations or agencies have been used to reach potential recipients. The listing is broad, but

⁵⁹ Ibid., attachment CDBG No. 3; and Joseph C. Ellis, Affirmative Action Compliance Officer, letter to CSRO staff, Feb. 2, 1983.

⁶⁰ OPP Comment Letter and attachments.

⁶¹ Robert F. Tyson, Director, Iowa Energy Policy Council, letter to CSRO staff, Mar. 14, 1983.

⁶² Ibid.

⁶³ Ibid.

does not include specific reference to minority organizations (although it does include churches) or the organizations serving the handicapped.⁶⁴ It does ask the providers to state whether specific outreach efforts will reach the elderly, handicapped and persons with limited English-speaking ability.⁶⁵ The agency proposes to add some additional questions to this document. These will be:

- 1) Has an on-site civil rights review/audit been performed on any of your agency's programs in the past? If yes, list program(s) and year(s) of review.
- 2) Have you developed and publicized an affirmative action plan? Indicate the date(s) of the plan. Do you have an affirmative action officer?
- 3) Are there posters and other nondiscrimination items currently displayed at the agency? At the outreach offices? Does this include information in languages other than English? If yes, list the other languages.
- 4) Do you have an established complaint procedure for use by employees and applicants of the program?⁶⁶

In addition, there is a monitoring report form used by the agency to review management and administration. This asks about training and staffing. It also asks whether there are appropriate facilities for persons with children, the handicapped and elderly and about the means by which employees are recruited.⁶⁷ Much more could be asked. It would be reasonable for the agency to determine whether there are minority staff persons, especially whether there are staff who speak languages other than English in areas where there are significant non-English speaking populations. It would help to know whether staff training included efforts to prevent conscious or unconscious discrimination and instruction on the application of Federal and State prohibitions of discrimination. While the new questions will ask about the availability of the grantees' affirmative action plan, the quality of the plan will not be reviewed.

Although it has not received any complaints in the past three years, if any were received, they would be referred to the agency's part-time EEO officer who would discuss the complaint with the recipient's

⁶⁴ Dennis Guffey, Deputy Director, IEPC, letter to CSRO staff, Mar. 22, 1983, attachment "Low-Income Home Energy Assistance Program: Monitoring Questionnaire—Outreach."

⁶⁵ Ibid.

⁶⁶ Dennis Guffey, letter to CSRO staff, Mar. 22, 1983.

⁶⁷ Ibid., attachment "Management and Administration."

director to assess the validity of the complaint and possible remedy. If the complainant is not satisfied with the proposed solution, the complainant could take the complaint to the Iowa Civil Rights Commission.⁶⁸

The Iowa Energy Policy Council's civil rights procedures have not been reviewed by any Federal agency, nor have any of its grantees been reviewed.⁶⁹

Since the grantees for energy assistance funds are, for the most part, community action agencies in their communities, the necessity of an effective compliance system is somewhat less than might otherwise be the case. Nonetheless, because Office of Planning and Programming also has an obligation to review such agencies, the Energy Policy Council might benefit from a cooperative relationship that would include joint compliance reviews and joint application of sanctions, if any are necessary. This should be easier once the Energy Policy Council determines from its revised questionnaire which of the agencies it funds also are funded by OPP.

Department of General Services

Because the Iowa Department of General Services purchases most of the supplies and services and provides office space for the State agencies that administer block grant programs, the Advisory Committee sought to determine whether the acquisitions/purchases process assured equal opportunity. In fact, the nondiscrimination provisions administered by the department are weak and compliance mechanism nonexistent.

The regulations do provide that "a bidder may be suspended or removed from approved vendors listing" if there has been a "determination by the civil rights commission that a vendor conducts discriminatory employment practices in violation of civil rights legislation and executive order."⁷⁰ The Department of General Services commented:

If we receive a complaint, we are aware of the need to process it to the Civil Rights Commission for a finding, and we are pledged to do so in a timely and objective manner. Likewise, we expect the Civil Rights Commission to notify us of their findings. Our actions with such

⁶⁸ Robert Tyson, letter to CSRO staff, Mar. 14, 1983.

⁶⁹ Ibid.

⁷⁰ Jack T. Pitzer, Ph.D., Chief Purchasing Officer, Department of General Services, letter and attachments to Chairperson, Iowa Advisory Committee, Feb. 24, 1983 (hereafter cited as DGS Letter).

⁷¹ Jack T. Pitzer, Ph.D., Chief Purchasing Officer, Department

findings are clearly stipulated in the Administrative Rules: We remove the vendor from our approved vendors list. Further, under the terms of our contractual clauses and the Iowa Executive Order, the contractor would be considered in breach of contract.⁷¹

The Iowa Civil Rights Commission, when asked about the procedures to implement this practice stated that the following provisions of the Iowa Code would apply:

In the case of a respondent who is found by the commission to have engaged in a discriminatory or unfair practice in the course of performing under a contract or subcontract with the State or political subdivision or agency, if the practice was authorized, requested, commanded, performed, or knowingly or recklessly tolerated by the board of directors of the respondent or by an officer or executive agent acting within the scope of his or her employment, the commission shall so certify to the contracting agency. Unless the commission's finding of a discriminatory or unfair practice is reversed in the course of judicial review, the finding of discrimination is binding on the contracting agency.

Upon receiving a certification made under this subsection, a contracting agency may take appropriate action to terminate a contract or portion thereof previously entered into with the respondent, either absolutely or on condition that the respondent carry out a program of compliance with the provisions of this chapter; and assist the State and all political subdivisions and agencies thereof to refrain from entering into further contracts.⁷²

But the Iowa Civil Rights Commission has no way of knowing whether an employer charged with discrimination is a State contractor or subcontractor unless the case reaches the hearing stage. If a case is resolved prior to that (for example by voluntary agreement between the parties) then there would be no information in the file to indicate that the employer was a State contractor/subcontractor. Indeed, in most cases such an agreement would not involve a formal finding of discrimination although a remedy might have been obtained for the charging party. In fact, only a very small proportion of the

of General Services, letter to Chairperson, Iowa Advisory Committee, May 25, 1983 (hereafter cited as DGS Comment Letter).

⁷² Iowa Code sec. 601A.15(8), (b), (2), (3) cited in Louis Martin, Esq., Director of Compliance, Iowa Civil Rights Commission, letter to CSRO staff, June 15, 1983.

Commission's caseload reaches the public hearing stage.⁷³ Consequently, there is little opportunity for the Commission to identify potential breaches of the State contract compliance statute.

The "Standard Terms and Conditions" provide that a bidder agrees not to discriminate and that the contracting agency "upon receipt of satisfactory evidence of such discrimination, shall have the right to cancel this service." A further clause requires that the contractor agree to:

comply with the provisions of Federal, State and local regulations to ensure that no employee or applicant for employment is discriminated against because of race, religion, color, sex, or national origin. The contractor shall have an affirmative action plan and shall provide the appropriate State or Federal agencies with reports required to ensure compliance with equal employment legislation and regulations. The contractor shall ensure that all authorized subcontractors comply with the provisions of the clause. Iowa Executive Order No. 15, dated April 2, 1973, requires every contractor or subcontractor to have on file a copy of his affirmative action program prior to making a bid and that a breach of this provision shall be regarded as a material breach of contract.⁷⁴

In fact, the only check made by the Department of General Services is that the Invitation to Bid is signed. This contains the agreement that "if awarded a contract. . . bidder will not engage in any discriminatory employment practices. . . and that they will in all contracts comply with the 11 statutes of the State of Iowa against discrimination. Failure to do so could be deemed a material breach of contract."⁷⁵

The Department of General Services does not conduct on-site compliance reviews and apparently does not even review affirmative action plans of contractors because it lacks the staff to do so.⁷⁶ In short, there is no way by which the department can know whether a contractor/vendor is in compliance with the Governor's executive order requiring non-discrimination. The department's affirmative action plan does not require any additional effort in this regard.⁷⁷

Commenting on a draft of this report, the Chief Purchasing Officer of the Department of General Services stated:

During the five years that I have been Chief Purchasing Officer of the Department of General Services, there have

been no failures of any contractors to sign the required certification and no complaints to me directly or through the Iowa Civil Rights Commission of any discriminatory practices by any contractors with which we do business.

Your questionnaire did not address the volume of complaints or any other measures of discriminatory practices. It would seem that documented findings of discriminatory practices by contractors would be the proper measure to determine whether purchases were free or not free of discrimination, but you did not seek such information.

Your study merely seems to have compared the contractual documentation we provided with a standard that we are not aware of and evaluated this documentation as weak. To our knowledge, the practices and documentation we use are basically the same as the majority of State purchasing entities in the Midwest. We do not understand your conclusion. . . .

The Department of General Services is responsible for proper purchasing and contracting techniques and has never been mandated the responsibility or provided the qualified staff to conduct on-site compliance reviews. We believe that this function is more appropriate to an organization such as the Iowa Civil Rights Commission which has the statutory mandate and the resources to audit and analyze the staffing patterns of our contractors.

Be assured that this department is committed to supporting equal employment opportunities, and we believe that we have done everything legally required for that end.⁷⁸

The Chief Purchasing Officer's response suggests the limits of his agency's capabilities. But its failure to review contractors to determine whether they have affirmative action plans or to determine whether those plans meet the Federal, State or local legal requirements either by departmental action or by automatic referral of such documents to another agency for review severely limits the scope of its compliance efforts. It is hard to understand why the department would expect complaints of employment discrimination when, as it points out, there are Federal, State and local agencies with well-publicized responsibility to receive and process such complaints. Absent formal agreements, it is hard to imagine how the department could expect to know about complaints of employment discrimination against its contractors or subcontractors. Since affirmative action plans are not a requirement imposed by such agencies, absent a finding of discrimination, it is unclear how the department

⁷³ Louis Martin, telephone interview, June 27, 1983 and Iowa Civil Rights Commission, *Annual Report, July 1, 1979-June 30, 1980* (n.d.).

⁷⁴ DGS Comment Letter, attachment.

⁷⁵ DGS Letter.

⁷⁶ Ibid.

⁷⁷ Ibid., attachment.

⁷⁸ DGS Comment Letter.

would determine that the contractual requirement for affirmative action plans had been breached.⁷⁹ The Chief Purchasing Officer stated that "We are very willing to seek improvements in our operation when suggestions are made for which we have the

⁷⁹ See: 13 Advisory Committees, *Promises and Perceptions* (October 1981), Chap. 3.

⁸⁰ DGS Comment Letter.

mandate and the resources to implement."⁸⁰ Review to assure the existence and adequacy of contractor affirmative action plans ought not to be insuperable problems. Such documentation is already required by the State of Missouri.⁸¹

⁸¹ See: Missouri Advisory Committee, *State Government Contract Compliance Efforts in Missouri* (March 1983), pp. 12-13.

3. The Block Grant Process and Its Impact

During the first two years of block grant activity few decisions were discretionary. Despite the intent to allow States freedom to decide, "grandfather" clauses were inserted into Pub. L. 97-35 and subsequent Federal legislation that essentially provided little opportunity for States to allocate resources for some programs.

The community services block grant administered by the U.S. Department of Health and Human Services and in Iowa by the Office of Planning and Programming required all the existing community action agencies receive between 90-95 percent of the available funding. Thus, the allocation became purely mathematical.¹

The community development block grant program also was administered by OPP. Under this block grant the State divided applicants into two categories: cities with less than 2,500 population and the 54 smallest counties who were to share 35 percent of the funds and cities with over 2,500 population and the 45 largest counties who were to share 65 percent. Set-asides were established based on community size and additional points were awarded based on poverty level, housing distress, tax base, magnitude of need, project impact, local effort and the percent of low and moderate income persons benefiting. In addition to publishing its plan, the agency held five public hearings around the State to get citizen input.²

Under the provisions of the "Community Programs Human Services Plan for July 1982-June 1983" the social services block grant funds are allocated to counties on a formula based on 50 percent of the previous year's funding and 50 percent of the poverty population. The policies are framed by a 32 member statewide advisory committee. The Department of Human Services stated:

The citizen participation process for the Social Services Block Grant was similar to the process utilized under the old Title XX regulations. The Department developed a proposed plan and asked interested persons to examine it and submit comments. To make certain that people were apprised of the process, we alerted the media, sent letters to members of the Statewide Title XX Committee and a large diverse group of other people (including provider organizations, members of county boards of supervisors, citizens, etc.). We also placed an advertisement in the two newspaper(s) of largest circulation in each of our eight districts indicating where the plan could be reviewed and when the public comment would commence and end. Notices were placed in newspapers in the cities of Ottumwa, Council Bluffs, Des Moines, Burlington, Carroll, Creston, Cedar Rapids, Marshalltown, Davenport, Dubuque, Waterloo, Decorah, Mason City, Fort Dodge, Sioux City and Spencer.

Public hearings were then held in each of the district offices. Departmental staff attended and recorded the meetings; in some cases, members of county boards of supervisors also attended. The comments received were forwarded to the Department's Division of Community Programs for consideration.

¹ Edward Stanek, letter to CSRO staff, attachment 3, Jan. 17, 1983.

² Ibid., attachment CDBG no. 4.

Most of the comments were incorporated into the final report. Comments from individuals requesting more money, which we could not provide, or those discussing issues not relevant to the pre-expenditure report were not incorporated.³

Actual allocation of funding will be done by the county governments.⁴ The State did add some of its own funds to retain Homemaker and Chore services for which the block grant did not provide sufficient funds.⁵

The Department of Health administers the Maternal and Child Health block grant. It awards grants at funding levels staff feels necessary based on grant applications prepared by local boards of health and private nonprofit agencies and the review of these by the Maternal and Child Health Section staff for feasibility and comprehensiveness of services. The only public hearings were those held by the legislature in connection with the appropriation process.⁶ During the first year (1982) the funds were awarded pro-rata based on the previous year's awards. There were minor modifications to this basis for fiscal 1983.⁷

The low income energy assistance program grants are all made to community action agencies. The grants to these actually increased between fiscal year 1982 and 1983. There were substantial increases to agencies serving the Iowa communities with substantial minority populations.⁸

Assessing the impact of block grant funding on minorities and women proved difficult. The program data records varied widely, as did information about who the beneficiaries were (especially where these were not the actual recipients of funds but received funding services).

The Iowa Department of Human Services did have records that allowed it to report the level of benefits to women and minorities in fiscal 1982, the first year of the block grant. These show that of clients receiving benefits under the department's block grant programs, 5.8 percent were black, 1.6 percent were Indo-Chinese, 0.8 percent were Indian

³ Michael V. Reagen, Ph.D., letter to CSRO staff, Feb. 10, 1983.

⁴ Ibid., attachment, *Community Programs Human Services Plan, July 1, 1982—June 30, 1983.*

⁵ Ibid., *Governor's Proposed Plan for 1982 Under Title XX.*

⁶ Norman L. Pawlewski, letter to CSRO staff, Jan. 14, 1983, attachment 8.

⁷ Ibid.

⁸ Robert F. Tyson, letter to CSRO staff, Mar. 14, 1983, attachment list of grants.

⁹ Michael Reagen, letter to CSRO staff, Feb. 10, 1983, attachment 9A.

or Alaskan Native, 0.7 percent were Hispanic, 0.2 percent were Pacific Islander and there was no data on 0.4 percent. Women were 58.3 percent of the clients.⁹

The Department of Health's list of Maternal and Child Health Block Grant contracts for fiscal years 1982 and 1983 indicate a steady increase in the allocation of funds for agencies serving substantial numbers of minorities.¹⁰ The grants under the Preventive Health and Health Services Block Grant went largely for ambulance services and fluoridation projects whose impact was less divisible by client group.¹¹

Community Development Block Grant funding had only recently been issued to 98 smaller communities and counties in the State.¹² There was thus no comparative data to allow assessment of changes over time in funding for projects or to communities with substantial minority populations.

Community Services Block Grant funding was distributed to community action agencies by formula, substantially in the same way it had been prior to block granting. Since these agencies serve primarily low income and disadvantaged persons, there should have been no substantial change in service except to the extent that overall funding for all agencies was cut due to decrease in the total funding available.

The Iowa Energy Policy Council administers the Low-Income Home Energy Assistance block grant. As part of its planning process, it held public hearings across the State on a draft plan. In drafting that plan it reported consulting with the Iowa Commission on Aging, Iowa Committee on Employment of the Handicapped, Iowa Department of Human Services, the Governor's Staff and the local community action agencies.¹³ The plan was made available for comment at each of the Department of Human Services offices in the State and at all local community action agency offices.¹⁴

In short, so far as could be determined, little changed from the pre-block grant period when the new granting process began. To some extent, this

¹⁰ Norman Pawlewski, letter to CSRO staff, Jan. 14, 1983, attachment 8.

¹¹ Ibid. and David Ancell, telephone interview, Feb. 24, 1983.

¹² Edward Stanek, letter to CSRO staff, CDBG attachment, Jan. 17, 1983.

¹³ Robert F. Tyson, Director, Iowa Energy Policy Council, letter to CSRO staff, Mar. 14, 1983.

¹⁴ Ibid., program plans for 1981 and 1982, assurance 12.

was clearly a function of federally-imposed constraints. But it also was the consequence of continued adherence by State agencies to pre-block grant strategies for allocation even when they had the

discretion to make changes. Not surprisingly, therefore, the allocation of benefits to minorities and women remained substantially unchanged from year to year.

4. Federal and State Monitoring of Block Grant Administration

By and large, administering State agencies were responsible for determining the sufficiency of their own efforts to assure nondiscrimination. There was no State agency with coordinating responsibility and Federal efforts varied widely.

Most of the block grants are funded in the budget of the U.S. Department of Health and Human Services. Its regulatory requirements are spelled out in the Introduction to this report. HHS's proposed compliance efforts for fiscal year 1982 (October 1981-September 1982) included 16 compliance reviews during the course of the year (some of which were carried over from fiscal 1981). Of these, two would be in Iowa: a review based on Title VI of the 1964 Civil Rights Act and Sec. 504 of the Rehabilitation Act covering the activities of the Iowa Department of Health and a review based on Title VI and the Hill-Burton Act assurances of the activities of Mercy Hospital in Des Moines. The latter was a carry-over review, it had been stalled while the department reassessed its policy of what constituted an acceptable level of voluntary care under the Hill-Burton assurances.¹ Clearly, the proposed activity in Iowa would cover only an infinitesimal portion of the universe of reviewable activities and organizations. The Office of Planning and Programming reported it had no contact with the Department of Health and Human Services regarding civil rights compliance and had received no technical assis-

tance.² However, the Department of Human Services reported that "The monitoring efforts of HHS/OCR can be characterized as being thorough. HHS/OCR has provided and continues to provide technical assistance upon request."³ And the Department of Health commented "The Federal agencies have been very helpful in assisting the department in implementing appropriate policy in areas where the department has been deficient."⁴ According to the Department of Health it had been the subject of three Department of Health and Human Services reviews.⁵ The Department of Human Services reported it had been the subject of two reviews in 1981—one a general Title VI and Section 504 monitoring review, the other a more detailed review of Purchase of Service contracts, also based on Title VI and Section 504.⁶

The activities of both the Iowa Departments of Health and Human Services have been reviewed by the Office for Civil Rights of the U.S. Department of Health and Human Services and by its predecessor agency, the Office for Civil Rights of the Department of Health, Education and Welfare. Although a September 1978 compliance review of the Department of Human Services noted significant noncompliance with both Title VI and Sec. 504, HHS did not conduct a follow-up review to ensure implementation of needed changes until February 1981. That review found continued significant non-

¹ Lois Carter, Acting Director, Office for Civil Rights, letter to CSRO staff, Apr. 2, 1983, attachment.

² Edward J. Stanek, letter to CSRO staff, Jan. 17, 1983.

³ Michael Reagen, letter to CSRO staff, Feb. 10, 1983.

⁴ Norman Pawlewski, letter to CSRO staff, Jan. 14, 1983.

⁵ Ibid.

⁶ Michael Reagen, letter to CSRO staff, Feb. 10, 1983.

compliance with Title VI. The Iowa Department of Health had not been the subject of a compliance review since completion of a review in June 1971 (based on data collected in October 1970). It was found that significant deficiencies existed in the department's compliance with Title VI, in its means of assuring nondiscrimination in the provision of services, in its means of informing the blind of the availability of services, and in its data collection and analysis.⁷ Neither of these analyses noted the significant deficiencies in compliance noted in this report, although some are alluded to.

HHS does provide interim technical assistance, on-site when necessary, through its "Voluntary Compliance and Outreach Team." It reported regular contact between HHS and the two State agencies. The reviews of the State Departments of Health and Human Services have been closed. They will be subject to a new review when resources permit.⁸

OCR stated that during the period 1979-1982 it had received 30 complaints regarding Iowa programs or institutions and conducted eight compliance reviews. It also conducted 44 pre-grant reviews. The regional technical assistance staff had

393 contacts with Iowa agencies, institutions or persons. It processed many complaints against the Department of Human Services and some against hospitals in the State. It planned no reviews in Iowa during FY 1983.⁹

The U.S. Department of Housing and Urban Development's Omaha area office did conduct a program review of Office of Planning and Programming administration of its non-entitlement program. It urged OPP to establish separate files for fair housing and equal opportunity issues and strengthen its commitment to encouraging use of minority business enterprises in the grant activities.¹⁰ HUD failed to note the deficiencies in the fair housing compliance effort noted in this report.

Currently, the Iowa Civil Rights Commission does monitor the affirmative action efforts of other State agencies but not their contract compliance activities. The Commission has proposed that it be given funds by the legislature so that it can operate an effective contract compliance review program.¹¹ Since the monitoring effort is currently the responsibility of one person, he could hardly assume additional responsibilities with any degree of success.

⁷ HHS/OCR *Investigative Reports* Nos. 07817005 and 07827008.

⁸ Caroline Hill, telephone interview, Mar. 14, 1983; Frank Campbell, telephone interview, Mar. 22, 1983 and Lois V. Carter, letter to Chairperson, Iowa Advisory Committee, June 6, 1983.

⁹ Lois Carter, letter to CSRO staff, Apr. 2, 1983.

¹⁰ Roger M. Massey, Area Manager, HUD, letter to Dr. Edward J. Stanek, Director, OPP, Jan. 13, 1983.

¹¹ Ta-Yu Yang, Affirmative Action Director, Iowa Civil Rights Commission, letter to CSRO staff, Jan. 24, 1983.

5. Federal Contract Compliance Efforts

To see what the Federal Government had done to ensure opportunities for minorities and women, the Advisory Committee reviewed U.S. Postal Service activities connected to construction of the Urbandale station in suburban Des Moines. This was chosen because the contracting process provoked some criticism and because the Postal Service had regulations requiring minority participation.

Postal Service regulations require that on contracts in excess of \$500,000 for construction there be goals for participation by minority contractors as subcontractors. These goals are to be between five and 20 percent of the dollar value of all subcontracts in a contract. If they are above or below that level an in-depth analysis must be made by the design architect/engineer. These goals are approved by the Contracting Officer. There are no goals for architect/engineer design contracts, but contracting opportunities for these must be advertised in the *Commerce Business Daily*. Following award of a contract, the Postal Service's Minority Business Enterprise (MBE) Program Coordinator must develop a recordkeeping system which identifies and assesses MBE contract awards, MBE subcontract goals, and other affirmative action efforts. Included in the records must be information about procedures adopted to comply with the MBE program, awards to MBEs measured against goals, information about specific efforts to identify and award contracts to MBEs. If there are specific written complaints alleging violation of the MBE program in a specific

contract those must be investigated and the complainant informed of the Postal Service's determination. If a failure to comply is found, the Postal Service's Contracting Officer must begin conciliation procedures to resolve noncompliance. At any time, the contracting officer may conduct an on-site compliance review and the contractor must cooperate. The contracting officer must promptly issue a determination either of compliance or noncompliance. If the latter, the contracting officer must start conciliation efforts.¹

The special provisions of the Postal Service contracts for construction require that no later than 30 days after the award of a contract and thereafter on each calendar year quarter the contractor submit the report of minority business enterprise subcontracting program form. The special provisions state that "If the aggregate amount of the minority business awarded, or to be awarded, is less than the specified percentage, the contractor may be deemed to be in breach of his contractual obligation unless he submits. . .not more than fifteen calendar days from the date of the request, information which the contracting officer deems adequate to demonstrate that the contractor has made every good faith effort to meet the requirement." The data required to meet this test are: "the name of each firm solicited for a quotation on each subcontract, the price quoted by each, whether the firm solicited was a minority

¹ U.S. Postal Service, Real Estate and Buildings Department, *Bulletin*, No. DC-81-20 (June 24, 1981).

business and the reason for not subcontracting with a minority business firm when applicable."² The contractor is also to state his efforts to maximize minority business participation which might include contacting SBA, trade organizations, minority contractor organizations, community organizations and other sources of names. If the documentation, in the view of the contracting officer, does not show a good faith effort, the contracting officer can terminate all or a portion of the contract for default.³

Describing its activities, the Postal Service told the Advisory Committee:

Each ad placed in the *Commerce Business Daily* requesting A/E services contains a statement regarding MBE participation. This encourages MBE firms to submit their qualifications and also encourages non-MBE firms to include minorities as consultants or joint venture participants in projects. During the design stage, A/E's investigate and recommend MBE subcontracting goals to be included in large construction contracts. In fixed-price construction contracts above \$10,000, contractors are required to make a "best effort" to give MBE's maximum practicable opportunities to participate. Contracts in excess of \$500,000 require the establishment of a formal MBE subcontracting program.

Our record clearly shows the Postal Service has a dynamic MBE Program. Our accomplishments are such because of our commitment to this program which utilizes minorities in both competitive and directly negotiated contracts.

Headquarters USPS has a full-time MBE Coordinator and the program receives attention and encouragement from Postal Service top management. The coordinator reports directly to the Director of the Office of Design and Construction Management and the program is monitored by the Assistant Postmaster General, Real Estate and Buildings Department as well as his superior, the Senior Assistant Postmaster General for Administration. The Coordinator monitors progress nationwide and ensures program compliance. She is responsible for our construction contracting policy as it exists today and audits offices and analyzes data/accomplishments. She continually provides our regional offices with names of available MBE's from computerized systems, magazines, minority firm inquiries, SBA data, etc.

The Postal Service is represented on 40 Minority Business Opportunity Committees. Staff liaison is maintained with the SBA and Department of Commerce. We attend minority business fairs and send postal representatives to

speak at meetings to encourage participation and explain procedures. We are represented on the Interagency Council for Minority Business Enterprises and the Minority Business Development Agency's Executive Minority Business Opportunity Committee and have our own Postal Service Executive Minority Business Enterprise Committee. We include information on contracting with minorities in our two handbooks which are distributed to the public. . .⁴

The Postal Service noted that it does not consider women-owned businesses as minorities and does not include them in its MBE program.⁵ It noted that in the Postal Service's Central Region in FY 1982 it awarded in connection with larger projects eight subcontracts valued at \$83,000 and 149 prime contracts to MBEs with a total value of \$4,849,000.⁶ It noted that the capacity to enter into direct negotiation for some smaller contracts does make it possible to utilize minority contractors more than would otherwise be the case.⁷ The Central Region of the Postal Service includes North and South Dakota, Nebraska, Kansas, Minnesota, Iowa, Missouri, Wisconsin, Illinois, Indiana, Michigan, Ohio and Kentucky.

The Urbandale branch post office project was advertised in the *Commerce Business Daily* on Aug. 3, 1982. According to the Postal Service, notice also appeared in local newspapers and trade magazines.⁸ The contract required that not less than five percent of the subcontracting work go to minority business enterprises.

On August 27-30, 1982 some minority contractors received a formal notice from a West Des Moines company that it was bidding for the prime contract and asking for subcontractor bids.⁹ Grooms and Co. also contacted Des Moines area MBEs but not the same ones reached by the West Des Moines firm. It told the Advisory Committee that it had made a significant effort to obtain minority subcontractors. Larry Grooms, the company's president, stated he had contacted the Master Builders Association, the Postal Service and a minority group in Des Moines for names. He reported being given the names of

² Ibid., attachment 2.

³ Ibid.

⁴ Gary L. Duncan, General Manager, Design and Construction Division, U.S.P.S., letter to CSRO staff, Oct. 15, 1982.

⁵ Ibid.

⁶ Gary Duncan, telephone interview, May 9, 1983.

⁷ Gary Duncan, letter to CSRO staff, Oct. 15, 1982.

⁸ D. Ray Frisby, USPS, letter to John Estes, Jr., Iowa Advisory Committee, Sept. 22, 1982.

⁹ John Estes, Jr., letter to Maxwell Sobolewski, USPS, Sept. 17, 1982.

several minority truckers and also contacting some minority plumbers and electricians.¹⁰ Several minority and female contractors did submit bids to Grooms. On Sept. 2, 1982, Grady Unlimited, Inc., submitted oral and written bids to do a variety of paving work elements. Grady Unlimited never received a response¹¹ and such work was not subcontracted.¹²

The U.S. Postal Service awarded the prime contract for the project to Grooms on Sept. 20, 1982. At that time the Postal Service stated it did not know who the subcontractors would be, only that it would get a list.¹³

On Oct. 12, 1982 a member of the Advisory Committee received a letter from Grooms asking for the names of minority contractors (the letter was dated Oct. 8, 1982).¹⁴ On Oct. 12, Grooms issued three subcontracts: for heating, electrical and plumbing work. None was to a Des Moines firm; and none was to a minority.¹⁵ On Oct. 12, 1982 an MBE electrician from Omaha drove to Des Moines to what he thought was an appointment with Grooms' representative there but no one met him at the jobsite. A copy of the electrical specifications was subsequently sent but, according to the MBE, lacked one page which made a bid submission impossible.¹⁶ Grooms and Company stated there was no such appointment.¹⁷ Another minority electrician told our colleague on the Advisory Committee that on Oct. 13, 1982 he had received an incomplete set of electrical specifications and that the Grooms telephone number in Des Moines had been disconnected. The potential contractor called Ottumwa and was told that the minority contractor chosen would be a landscaper from Omaha.¹⁸ Grooms has no memory of having considered such a firm.¹⁹ The company also stated its phone had never been disconnected.²⁰

A pre-construction meeting between the Architect/Engineer, Postal Service contracting officials,

Grooms and his three subcontractors was held in Des Moines on Oct. 15, 1982. At that time Grooms had not yet selected a minority subcontractor and was reminded by the Postal Service of "the importance of making every effort to award subcontracts to minority firms and to document [its] efforts to do so." The official "suggest they contact John Estes. . .for names of minority contractors. Des Moines Post Office also maintains a list of minority firms."²¹

Larry Grooms told Advisory Committee staff that it had received bids from some minority firms but was unable to use any but Gene Franklin Trucking. He also talked to some women truckers and painters but their prices were too high. He remembered an Omaha MBE electrician having submitted a bid that was extremely high.²² Grooms did finally award a trucking contract to a minority bidder on Nov. 10, 1982. That contract, a variable one, called for the trucker to deliver quarry products to the jobsite. Its value, including materials to be purchased from the quarry by the trucker, was to be in excess of \$13,000. (Materials purchased by MBE subcontractors can be counted toward MBE goals even when not purchased from an MBE.) A report of this contract was included in the first request for payment by the Postal Service submitted by Grooms on Nov. 24, 1982. Mr. Grooms reported that at subsequent meetings with Postal Service officials they had discussed the MBE program and effort.²³

The total value of subcontracts awarded by Grooms as of December 1982 was slightly over \$110,000.²⁴ Thus, only slightly over \$5,000 in contracts to MBEs would be necessary to satisfy the goal (about one percent of the total prime contact). This goal was based on the SMSA minority population.²⁵ At approximately the same time, the City of Des Moines was using a goal of seven percent MBE

¹⁰ Larry Grooms, President, Grooms and Company Construction, Inc., telephone interview, May 3, 1983.

¹¹ Nathaniel Grady, telephone interview, Apr. 8, 1983.

¹² U.S. Postal Service, Facilities Management System, *Subcontractor Information Input Form*, Dec. 1, 1982.

¹³ D. Ray Frisby, letter to John Estes, Sept. 22, 1982.

¹⁴ John Estes, Aide-Memoire, Oct. 23, 1982.

¹⁵ U.S. Postal Service, *Subcontractor Information Input Form*.

¹⁶ Tommy Adams, Adams and Son, telephone interview, May 5, 1983.

¹⁷ Larry Grooms, Grooms and Company, letter to Chairperson, Iowa Advisory Committee, May 31, 1983 (hereafter cited as Grooms and Company Comment Letter).

¹⁸ John Estes, Aide-Memoire, Oct. 23, 1982.

¹⁹ Larry Grooms, telephone interview, May 3, 1983.

²⁰ Grooms and Company Comment Letter.

²¹ USPS, Minutes of Pre-Construction Meeting for Urbandale Branch Post Office, Oct. 15, 1982.

²² Larry Grooms, telephone interview, May 3, 1983 and Grooms and Company Comment Letter.

²³ Ibid. and USPS, *Subcontractor Information Input Form*, Dec. 1, 1982 and D. Ray Frisby, telephone interview, May 4, 1983.

²⁴ Ibid.

²⁵ D. Ray Frisby, telephone interview, May 4, 1983.

and one percent WBE of the total value of the prime contracts.²⁶ Grooms and Company stated: "We feel we have made an extremely strong effort to locate and utilize minority subcontractors."²⁷

The primary responsibility for enforcing the MBE provisions of the contract rested with the Postal Service's contracting officer. But Postal Service officials stated they delegated this obligation to the architect/engineer who had on-site supervisory responsibility.²⁸ The architect/engineer noted that it did have a general obligation to remind the prime contractor of MBE responsibilities but did not believe it had authority to review compliance efforts or enforce them while it did have such responsibility for the actual construction and wage/hour rules. In fact, it never did review the Grooms compliance with the MBE provisions.²⁹

Postal Service officials stated that they checked compliance simply by reviewing the paper submitted by the prime contractor. They did not verify the accuracy of the submissions. In certain circumstances they would make a negative determination of compliance that would lead to contract termination but had no intention of doing so in this project.³⁰

The Postal Service was asked why an informal reply was provided in response to a letter sent noting significant deficiencies in the effort to ensure MBE participation. The Postal Service saw no difference between their response and what they would have done in the event of a formal complaint³¹ although regulations cited above would have required a determination of compliance/noncompliance and a report on that decision to

the complainant. Commenting on our draft report, the Postal Service stated:

Our letter of September 22, 1982 responds fully to Mr. Estes' questions of September 17, 1982 and meets the requirements of Real Estate and Buildings Bulletin No. DC-81-20, Section XIV covering complaints. In my opinion, subsequent contract enforcement efforts have been reasonably rigorous. There is no reasonable cause to believe that the contractor is in noncompliance. No one has made such a complaint and, in fact, your own report says there is no question that Grooms has satisfied the goal established in the contract. Perhaps the goal could have been set higher but I think the files clearly describe the extent of Grooms efforts to obtain MBE subcontractors and that those efforts constitute the good faith effort required by the contract and will actually result in his meeting his goal.³²

The history of the contracting/subcontracting process is filled with ambiguity and confusion. Why a goal of what eventually appears to have been about \$5,000 was set is unclear. It would appear that a much larger goal could have been established, based on the interest shown by potential MBE contractors. Grooms believes it made a maximum effort to obtain MBEs. There was no review of the subcontracting effort based on what could have been construed as a complaint. Similarly, the Postal Service has failed to review the effort to determine whether there is, in fact, compliance with Postal Service regulations. There is no question that Grooms has satisfied the goal established in its contract with the Postal Service. The question is rather of the sufficiency of that goal and the quality of effort made to ensure maximum MBE participation.

²⁶ City of Des Moines, Contract Compliance Program, n.d.

²⁷ Grooms and Company Comment Letter.

²⁸ D. Ray Frisby, telephone interview, May 4, 1983.

²⁹ Thomas Van Hon, telephone interview, May 4, 1983.

³⁰ D. Ray Frisby, telephone interview, May 4, 1983.

³¹ Ibid.

³² D. Ray Frisby, General Manager, St. Paul, USPS/FREBO, letter to Chairperson, Iowa Advisory Committee, May 26, 1983.

6. Conclusions, Findings and Recommendations

Conclusions

The Advisory Committee's review of contract compliance efforts of State agencies utilizing Pub. L. 97-35 block grant funds (excluding the Department of Public Instruction) reveals levels of effort that differ both between and within agencies. Perhaps the most effective are those utilized by the Office of Planning and Programming in connection with the community development block grant for non-entitlement communities. But other agencies and divisions with responsibility for block grant funding either had just begun to implement compliance programs, had ineffectual programs or no program at all. There was no statewide effort to ensure minimal standards nor to review the efficacy of efforts.

The Federal agencies are equally ineffective. The level of resources devoted to monitoring State efforts does not appear equal to the size of the funding, especially in programs administered by the Department of Health and Human Services. The block grant program regulations do not relieve the Federal administering agencies of any of their obligations to ensure compliance with Federal antidiscrimination laws and regulations. Whether because of confusion or simply lack of resources, the Federal agencies have clearly not monitored State compliance efforts as closely as they might.

Since State agencies have accepted Federal funds, and indeed the Governor has assumed *ex officio*

responsibility for doing so, the State of Iowa, as a whole, has an obligation to ensure compliance with the obligations that go with Federal funds.¹ The most important of these are full and complete compliance with Title VI of the 1964 Civil Rights Act and Sec. 504 of the Rehabilitation Act. The fragmentation and diversity of existing compliance programs suggests the need for a central coordinating mechanism to monitor compliance efforts or perhaps even to operate them. In the Iowa Civil Rights Commission the State has an existing entity capable, given the resources and authority, of performing these tasks. It already has some of the basic expertise required. Such coordination is all the more necessary as it appears unlikely the Federal agencies will provide adequate review, and indeed they may even attempt to transfer their responsibilities to the States.

The Federal agencies clearly do not have the resources to conduct comprehensive reviews of civil rights compliance by all recipients of Federal funds. They therefore should concentrate their efforts on assuring the adequacy of State compliance efforts and enforcement activities. This will require some review of grant recipients, but far fewer than if the Federal agencies attempt to monitor all grant recipients.

The Advisory Committee's review of one Federal agency's compliance efforts (the Postal Service) to

¹ 47 Fed. Reg. 29474 (July 6, 1982) and application letters cited in earlier Chapters.

ensure adequate opportunities for minorities and women raises questions about its efficacy. The Postal Service's established goal of five percent minority participation in subcontracting on the Urbandale Post Office, although based on population, clearly bears no reasonable relationship to the availability of minority contractors. Nor do the regulations ensure that the prime contractor must make a reasonable good faith effort to obtain minority contractors. The evidence in the Urbandale project is that despite considerable interest by minority contractors, a prime contractor was allowed to give only one minority contractor a piece of the work. There is no evidence that the Postal Service reviewed the prime contractor's efforts to ensure that there was good faith in its search for minority contractors. The Postal Service has done nothing to ensure opportunities for businesses owned by the handicapped or women in the construction program.

Findings and Recommendations

The following findings and recommendations are submitted under the provisions of Sec. 703.2(e) of the Commission's regulations, empowering the Advisory Committee to "Initiate and forward advice and recommendations to the Commission upon matters which the State Committee has studied."

The Advisory Committee presents the findings and recommendations for consideration by the Commission in its national program planning and for its consideration in advising the President and Congress on matters within its jurisdiction.

Finding 1: State efforts to ensure compliance with Federal antidiscrimination laws have, generally, been insufficient to meet the obligations the State and its agencies assumed in accepting such funds in the past. Although some improvements are contemplated, much of the future machinery is likely to be equally insufficient.

Recommendation 1: The Governor, as ex officio guarantor of compliance with Federal antidiscrimination laws, should consider ways by which the compliance efforts could be made sufficient. He might consider assigning full responsibility for monitoring to the Iowa Civil Rights Commission, and providing additional resources for that. He might further consider assigning full responsibility for all contract compliance efforts involving discrimination to the Iowa Civil Rights Commission and providing, in coordination with the legislature, adequate re-

sources for that, including the necessary authority, staff, and funding.

Finding 2: Absent any significant change in the allocation of responsibility for antidiscrimination contract compliance, the State agencies administering Federal funds could do much more than they are doing to ensure adequate enforcement of Federal and State antidiscrimination laws.

Recommendation 2: The agencies administering Federal programs should strengthen the quality of the evaluative tools used to assess compliance with antidiscrimination laws, heighten the priority assigned to antidiscrimination activities in general administrative reviews, and allocate additional resources to agency affirmative action officers so that they can effectively review the compliance of grantees, contractors, vendors with antidiscrimination contract provisions.

Finding 3: The level of resources available to Federal civil rights agencies to review contract compliance is clearly far less than needed to adequately monitor State compliance with antidiscrimination assurances and grantee performance.

Recommendation 3: The U.S. Commission on Civil Rights should consider conducting a new review of Federal contract compliance efforts in which it would consider how "New Federalism" principles could be used to make the entire compliance effort more effective.

Finding 4: The Advisory Committee finds with respect to the subcontracting of work on the Urbandale Post Office project that, as a consequence of regulatory deficiencies and deficient Postal Service review and compliance efforts, the Postal Service failed to take steps to ensure that a good faith effort was employed and that all responsible and competitive minority subcontractors could participate in the project. Further, the Postal Service issued no regulations to ensure that women or handicapped-owned businesses had a chance to participate. The Postal Service is unique in allowing contractors to count toward minority business enterprise (MBE) goals supplies purchased by MBE subcontractors from non-MBE sources.

Recommendation 4a: The Advisory Committee urges the Commission to review the Postal Service's contracting regulations closely and make appropriate recommendations to the Postmaster General for changes that would ensure full opportunity for participation by minority, women, and handicapped-owned businesses in the construction program.

Recommendation 4b: The Advisory Committee urges the Commission to suggest that the Postmaster General order a complete review of the process by which subcontracting was conducted for the Urban-dale Post Office project and review the monitoring efforts of his staff in ensuring compliance with Postal Service regulations and contracts. The Commission should request that the Postmaster General furnish a detailed report explaining the circumstances surrounding the subcontracting and monitor-

ing processes and indicating what corrective action he proposes to require to prevent repetition of any deficiencies.

Recommendation 4c: The Advisory Committee urges the Commission to suggest that the Postmaster General alter his procurement regulations to preclude "broker-type" subcontracts with MBE subcontractors being counted toward MBE goals for more than the value of the services furnished by the MBE.

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