

Harry J. Holzer
February 1998

Feb. 19, 1998

**LABOR MARKET FOR AFRICAN-AMERICANS:
TRENDS, CAUSES AND POLICY IMPLICATIONS**

I. Trends

A. Relative Earnings: Improvements throughout 20th Century;
Most Dramatic, 1965-75

1. South-to-North Migration
2. Improved Educational Attainment
3. Declining Discrimination: EEO, Affirmative Action

B. Stagnant/Declining Relative Earnings Since Then

C. Declining Relative Employment Over Many Decades

D. Poor v. Middle Class

Race
Economics of Race
(Holzer) |

II. Causes: Labor Demand Shifts; Supply Responses

A. Relative Skills Education, Cognitive Skills

These are more imp. in present economy.

1. Rising Labor Market Demand, Rising Returns

H.S. grad rates increased for Blacks, but college grad. rates didn't rise as quickly.

2. Black/White Gaps Persist

3. Reinforced by Industrial Changes, Unionism

4. Results: Reluctance to Hire Blacks where Skill Demands are High; Wage Gaps Attributable to Skill Differences

B. Hiring Discrimination Persists

(primarily @ hiring stage)

1. Evidence: Audit Studies; Applicant Data; Ethnographic Studies

2. Where: Small Establishments, Suburbs, White Customers

3. Whom: Blacks, Especially Males

4. Why? Statistical v. Pure Discrimination; Attitudes, Fear, etc.

Employers dramatically prefer immigrants and any other group ~~to~~ Blacks.

5. Affirmative Action: Relative Employment Effects; Credentials, Performance of Those Hired

especially of Black males. → perceiving of crime, laziness, etc. Fear of hassles, lawsuits.

C. Residential Patterns and Social Factors

1. Racial v. Economic Segregation

2. Implications: Neighborhood Effects; "Spatial Mismatch"

worsening over 10-20 years.

Also compared to W and all other groups.

EEO policy and how it affects employer analysis of risk. Employers can be afraid to hire Blacks, b/c could be sued if discharge, etc.

D. Supply-Side Developments

1. Rising Expectations: 1960's and 1970's

2. Growing Availability of Alternative Income (Crime)

Perceived higher return for criminal activity. Not actual.

3. Results: Declining Labor Force Participation, Rising Crime, Rising Female Headship

information and informal contacts.

David Cutler
Ed Glaser (?)
racial segregation papers

test score #s are flat or widening since mid-1980s.

60% of urban Black men in U.S. midwest were employed in durable manufacturing in 1970.

Now is about 15%. More likely to find Hispanics in these jobs.

The more subjective the hiring process, the worse it is for Blacks.

gaps in educ. attainment / test scores linked to poor schools.

III. Policy Implications

A. Skills

- ✓ — 1. Pre-School — Janet Currie
Head Start does not work as well for Blacks (?)
More intensive programs work better for Blacks.
- ✓ — 2. School Reforms, Choice — Why do Catholic schools do so well?
Way to replicate in a non-parochial setting (?)
- ✓ — 3. High Schools: Mentoring, School-to-Work
- ✓ — 4. Access to Post-Secondary Education (including Counseling)

Tom Keane

B. Mobility

- ✓ (✱) — 1. Residential (getting people out of inner-cities)
MTO @ HUD
- 2. Worker: Job Search, Placement, Transportation (improving prospects for urban workers to get to jobs)

C. Social/Economic Development in Urban Areas

- ✓ — 1. Enterprise/Empowerment Zones — more benefits targeted @ employees services to workers/residents.
Not good - program from 1980s.
- ② Access To Capital — especially for small businesses
- ③ Technical Assistance/Targetted Demand from Black-Owned Enterprises
- 4. Comprehensive Community Initiatives

hire more Black workers.

D. EEO/Affirmative Action

E. Job Creation, Welfare-to-Work, Crime, etc.

Wealth differentials are huge.
CDFI Lending Institutions

can do better w/ targeting.
Change incentives that small/medium establishments perceive.
EEO is meaningless to suburban employers.
Pressure on small employers to hire Black applicants

Table 4**Applicants, Employees and Newly Hired Workers: By
Race and/or Gender**

<u>Percent of Applicants Who Are:</u>	<u>Primary Central City</u>	<u>Suburbs</u>	<u>Other Areas</u>
Black Males	.229	.119	.186
Black Females	.189	.093	.145
Hispanics	.151	.137	.130
Asians	.057	.058	.047
<u>Ratio of Employees to Applicants For:</u>			
Black Males	.642	.555	.640
Black Females	.926	.581	.751
Hispanics	.974	.993	.731
Asians	.905	.759	.548
<u>Ratio of New Hires to Applicants For:</u>			
Black Males	.620	.496	.640
Black Females	.836	.699	.786
Hispanics	1.000	1.022	1.223
Asians	.930	.690	.596

NOTE: The employment and hires data refer only to jobs that require no college graduates.

Blacks in City are generally lower edue. / lower skills than
Blacks in suburbs.
Opposite is true for whites.

Table 2

**Percentages of Newly Filled Jobs into which Blacks are Hired:
By Skill Needs and Required Credentials**

	<u>All Jobs</u>		<u>College Required</u>		<u>No College Required</u>			
					<u>White-Collar</u>		<u>Blue-Collar/Service</u>	
<u>All Jobs</u>	.215		.114		.211		.268	
<u>Tasks Performed Daily:</u>	Yes	No	Yes	No	Yes	No	Yes	No
Customer Contact	.209	.233	.139	.007	.204	.249	.247	.310
Reading or Writing Paragraphs	.191	.271	.112	.133	.184	.267	.257	.285
Arithmetic	.173	.309	.089	.194	.175	.301	.220	.338
Computers	.188	.255	.128	.074	.196	.250	.245	.282
Any of the Above	.208	.357	.112	.000	.208	.399	.254	.388
<u>Credentials Required:</u>	Yes	No	Yes	No	Yes	No	Yes	No
High School Diploma	.191	.322	.114	-	.196	.289	.250	.318
GED Accepted	-	-	-	-	.197	.241	.247	.298
GED Not Accepted	-	-	-	-	.189	.215	.262	.269
General Work Experience	.193	.276	.116	.108	.178	.304	.248	.316
Specific Work Experience	.187	.271	.111	.126	.176	.271	.249	.301
Previous Training or Certification	.178	.246	.121	.114	.151	.251	.236	.294
Any of the Above	.205	.361	.118	-	.202	.347	.263	.326

NOTE: Sample consists of jobs filled by only whites or blacks.

CET (?)

↳ intermediary for employers/employees.

2.5/1 ratio of B/w unemployment has been fairly constant.

Tight labor markets are great, but don't address this.



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Washington, D.C. 20507

Commissioner
Paul Steven Miller

July 29, 1998

Julie -
Please handle.
Steve

Note to
Famaroff 9/9

Ms. Elena Kagan
Deputy Assistant to the President
for Domestic Policy
2nd Floor, West Wing
The White House
Washington, D.C. 20500

Dear Elena:

Recently I visited the White House Home Page (www.whitehouse.gov) and discovered that there is a link to a page entitled, *Commonly Requested Federal Services*. On that page are links to such services as benefits (Social Security Administration), student aid (Department of Education), passports (Department of State), emergency relief (FEMA) and consumer fraud (Consumer Product Safety Commission). I was struck by the absence of a link to the EEOC Home Page which provides information to persons who feel they have been discriminated against in the workplace, and to businesses which are interested in complying with EEO laws.

I do not know who controls the White House Home Page, but it may be worthwhile to consider a connection to the EEOC Home Page (www.eeoc.gov).

If there is any interest, please do not hesitate to have someone contact the EEOC to talk about that possibility. I hope you are enjoying your summer.

Very truly yours,

Paul Steven Miller
Commissioner

cc: White House Webmaster (via internet)
Paul M. Igasaki, Acting Chairman

PHOTOCOPY
MISC. HANDWRITING

[Text Version]

Commonly Requested

Federal Services

What's Hot

Propose

View by Agency

Feedback



[Text Version]

Commonly Requested Federal Services

*View by Agency**What's Hot**Propose**View By Subject**Feedback**Department of Agriculture**Consumer Product Safety Commission**U.S. Copyright Office**Department of Defense**Department of Education**Environmental Protection Agency**Federal Emergency Management Agency**Federal Trade Commission**General Services Administration**Global Learning and Observations to Benefit the Environment**Government Printing Office**Department of Health and Human Services**Housing and Urban Development**Department of Labor**U.S. Merchant Marine Academy**NASA**National Oceanic and Atmospheric Administration**National Science Foundation**Office of Personnel Management**U.S. Patent and Trademark Office**Peace Corps**Pension Benefit Guaranty Corporation**U.S. Postal Service**Railroad Retirement Board**Social Security Administration**Department of State**Department of Transportation**Department of Treasury**Department of Veterans Affairs**Woodrow Wilson International Center for Scholars*

C O V E R

FAX

S H E E T

To: Julie Fernandez
Fax #: 456-5581
Subject:
Date: July 20, 1998
Pages: 6, including this cover sheet.

COMMENTS:

From the desk of...

Benita Lucy
Confidential Assistant to Legal Counsel
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[Weekly Compilation of Presidential Documents]

From the 1998 Presidential Documents Online via GPO Access [frwais.access.gpo.gov]
[DOCID:pd01jn98_txt-18]

[Page 994]

Monday, June 1, 1998

Volume 34--Number 22
Pages 957-1002

Week Ending Friday, May 29, 1998

Executive Order 13087--Further Amendment to Executive Order 11478, Equal
Employment Opportunity in the Federal Government

May 28, 1998

By the authority vested in me as President by the Constitution and
the laws of the United States, and in order to provide for a uniform
policy for the Federal Government to prohibit discrimination based on
sexual orientation, it is hereby ordered that Executive Order 11478, as
amended, is further amended as follows:

Section 1. The first sentence of section 1 is amended by
substituting ``age, or sexual orientation'' for ``or age''.

Sec. 2. The second sentence of section 1 is amended by striking the
period and adding at the end of the sentence ``', to the extent permitted
by law.''

William J. Clinton

The White House,
May 28, 1998.

[Filed with the Office of the Federal Register, 8:45 a.m., June 1, 1998]

Note: This Executive order will be published in the Federal Register on
June 2.

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[Weekly Compilation of Presidential Documents]

From the 1998 Presidential Documents Online via GPO Access [frwais.access.gpo.gov]
[DOCID:pd01jn98_txt-17]

[Page 994]

Monday, June 1, 1998

Volume 34--Number 22
Pages 957-1002

Week Ending Friday, May 29, 1998

Statement on Signing an Executive Order on Equal Employment Opportunity
in the Federal Government

May 28, 1998

Today I have signed an Executive order entitled ``Further Amendment to Executive Order 11478, Equal Employment Opportunity in the Federal Government.'' The order provides a uniform policy for the Federal Government to prohibit discrimination based on sexual orientation in the Federal civilian workforce and states that policy for the first time in an Executive order of the President.

It has always been the practice of this administration to prohibit discrimination in employment based on sexual orientation in the civilian workforce, and most Federal agencies and departments have taken actions, such as the issuance of policy directives or memoranda from the agency heads, to memorialize that policy. The Executive order I have signed today will ensure that there is a uniform policy throughout the Federal Government by adding sexual orientation to the list of categories for which discrimination is prohibited in Executive Order 11478 (i.e., race, color, religion, sex, national origin, handicap, or age).

This Executive order states administration policy but does not and cannot create any new enforcement rights (such as the ability to proceed before the Equal Employment Opportunity Commission). Those rights can be granted only by legislation passed by the Congress, such as the Employment Non-Discrimination Act. I again call upon Congress to pass this important piece of civil rights legislation which would extend these basic employment discrimination protections to all gay and lesbian Americans. Individuals should not be denied a job on the basis of something that has no relationship to their ability to perform their work.

No. 850

401:4061

Executive Order 11478: Nondiscrimination in Federal Government

Following is the text of Executive Order 11478, initially signed August 8, 1969, as last amended by Executive Order 13087 on May 28, 1998, to include a prohibition against sexual orientation bias. The Executive Order also was amended by Executive Order 12106, effective January 1, 1979. The Order prohibits discrimination in federal employment on account of race, color, religion, sex, national origin, handicap, age, or sexual orientation. Executive Order 12106 transferred to the Equal Employment Opportunity Commission certain functions of the Civil Service Commission (currently the Office of Personnel Management), relating to enforcement of federal equal employment opportunity programs. These provisions supersede Part I of Executive Order 11246 (401:4023).

EQUAL EMPLOYMENT OPPORTUNITY IN THE FEDERAL GOVERNMENT

Under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

Sec. 1.

It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, national origin, handicap, age, or sexual orientation and to promote the full realization of equal employment opportunity through a continuing affirmative program in each executive department and agency. This policy of equal opportunity applies to and must be an integral part of every aspect of personnel policy and practice in the employment, development, advancement, and treatment of civilian employees of the Federal Government to the extent permitted by law.

Sec. 2.

The head of each executive department and agency shall establish and maintain an affirmative program of equal employment opportunity for all civilian employees and applicants for employment within his jurisdiction in accordance with the policy set forth in Section 1. It is the responsibility of each department and agency head, to the maximum extent possible, to provide sufficient resources to administer such a program in a positive and effective manner; assure that recruitment activities reach all sources of job candidates; utilize to the fullest extent the present skills of each employee; provide the maximum feasible opportunity to employees to enhance their skills so they may perform at their highest potential and advance in accordance with their abilities; provide training and advice to managers and supervisors to assure their understanding and implementation of the policy expressed in this Order; assure participation at the local level with other employers, schools, and public or private groups in cooperative efforts to improve community conditions which affect employability; and provide for a system within the department or agency for periodically evaluating the effectiveness with which the policy of this Order is being carried out.

Sec. 3.

The Equal Employment Opportunity Commission shall be responsible for directing and furthering the implementation of the policy of the Government of the United States to provide equal opportunity in Federal employment for all employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) and to prohibit discrimination in employment because of race, color, religion, sex, national origin, handicap, or age.

Sec. 4.

The Equal Employment Opportunity Commission, after consultation with all

401:4062

TEXT OF FEDERAL LAWS

No. 850

affected departments and agencies, shall issue such rules, regulations, orders, and instructions and request such information from the affected departments and agencies as it deems necessary and appropriate to carry out this Order.

Sec. 5.

All departments and agencies shall cooperate with and assist the Equal Employment Opportunity Commission in the performance of its functions under this Order and shall furnish the Commission such reports and information as it may request. The head of each department or agency shall comply with rules, regulations, orders and instructions issued by the Equal Employment Opportunity Commission pursuant to Section 4 of this Order.

Sec. 6.

This Order applies (a) to military departments as defined in Section 102 of Title 5, United States Code, and executive agencies (other than the General

Accounting Office as defined in Section 105 of Title 5, United States Code, and to the employees thereof (including employees paid from nonappropriated funds), and (b) to those portions of the legislative and judicial branches of the Federal Government and of the Government of the District of Columbia having positions in the competitive service and to the employees in those positions. This Order does not apply to aliens employed outside the limits of the United States.

Sec. 7.

Part I of Executive Order No. 11246 of September 24, 1965, and those parts of Executive Order No. 11375 of October 13, 1967, which apply to Federal employment, are hereby superseded.

Sec. 8.

This Order shall be applicable to the United States Postal Service and to the Postal Rate Commission established by the Postal Reorganization Act of 1970.

FACT SHEET**Revised July 14, 1998****EFFORTS TO REPEAL EXECUTIVE ORDER ISSUED MAY 28, 1998
PROHIBITING DISCRIMINATION IN THE FEDERAL CIVILIAN
WORKFORCE BASED ON SEXUAL ORIENTATION****Background:**

- Executive Order 13087 was issued on May 28, 1998. It amends an earlier executive order, Executive Order 11478. It restates the pre-existing policy of the Executive Branch of the Federal Government to prohibit discrimination based on sexual orientation in federal civilian employment.
- Representative Hefley of Colorado and others have indicated that they will attempt to amend the Treasury/Postal appropriations bill to prohibit the use of federal funds to implement, enforce or administer the Executive Order. The Administration opposes this effort.

What exactly does the Executive Order provide?

- The Executive Order will ensure that there is a uniform policy throughout the Federal Government by adding sexual orientation to the list of categories (i.e. race, color, religion, sex, national origin, handicap, or age) for which discrimination is prohibited in hiring, firing and promotion in the civilian federal workforce, as provided for in Executive Order 11478.
- This policy is about basic fairness, not about "special rights."

Does this affect affirmative action policy or create special treatment for certain groups?

- No. Executive Order 13087 does not mandate affirmative action based on sexual orientation. It does not allow preferential treatment. It does not require that agencies find out which of their employees are gay, or how many gay employees they have hired. There are not quota programs in place for federal civilian hiring, and Executive Order 13087 does not create one. Executive Order 13087 does not require reporting of sexual orientation, quotas, or any affirmative action program based on sexual orientation.

Is this a new policy?

- No. It has always been the practice of this Administration to prohibit discrimination in employment based on sexual orientation in the civilian workforce, and most federal agencies and department have taken actions, such as the issuance of policy directives or

memoranda from the agency heads, to memorialize that policy. The Executive Order states this policy uniformly and for the first time in an Executive Order of the President.

- Moreover, federal law has for a long time provided that discrimination in federal civilian employment based upon sexual orientation is a prohibited personnel practice if it is found that sexual orientation did not adversely affect the performance of the employee. [Title 5 of the U.S. Code, section 2302(b)(10) prohibits "discriminat[ion] for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others."]
- As far back as 1980, OPM has issued its interpretation of existing federal law stating that "applicants and employees are to be protected against inquiries into, or actions based upon, non-job-related conduct, such as religious, community, or social affiliations, or sexual orientation."

If this is not a new policy, why was an Executive Order necessary?

- The Executive Order states a uniform policy throughout the Executive Branch of the Federal Government.

What impact does this have on the uniformed military service?

- None. This order does not apply to the uniformed military service.

What, if any, enforcement rights are granted?

- This Executive Order states Administration policy but does not create any new enforcement rights. Those rights would be granted by legislation passed by the Congress, such as the Employment Non-Discrimination Act, which the President supports.

What is the authority for the President to issue this executive order?

- Presidents since George Washington have directed Executive Orders to their employees in the Executive Branch. In 1966, Congress specifically authorized the President to "prescribe regulations for the conduct of employees in the executive branch." 5 U.S.C. § 7301. Presidents have frequently exercised that authority over the federal workforce, issuing scores of Executive Orders. This particular Order by President Clinton amends Executive Order 11478, issued in 1969 by President Nixon, barring federal employees *et al* from discriminating based on race, color, religion, sex, national origin, handicap or age. The same authority that supported that Order supports this one. President Reagan issued Executive Order 12564, requiring a drug-free federal workplace, and Executive Order 12353, governing charitable fundraising by federal employees. President Bush issued Executive Order 12674, setting forth principles of ethical conduct for government

employees. It would be nonsensical to contend that the President can regulate the ethical conduct of federal employees, that he can prescribe standards for fundraising and require drug testing, but cannot instruct federal employees to refrain from discriminating on the basis of sexual orientation.

What is the meaning of the phrase "sexual orientation?"

- The President intends the term to have the common meaning stated in the Employment Non-Discrimination Act, "homosexuality, bisexuality, or heterosexuality." With regard to all these issues, as this is the President's order, the President's intent informs the meaning of the executive order. See Sea-Land Service, Inc. v. Interstate Commerce Commission, 738 F.2d 1311, 1314 (D.C. Cir. 1984) ("The 'law' at issue in this instance is an Executive Order promulgated by the President, and it is to his intent that we must turn for guidance . . .").

Is this an attempt to legislate by executive order?

- This executive order does not amend Title VII or create new rights or remedies for discrimination based on sexual orientation. It is the role of Congress, and not the Executive Branch, to amend federal statutes.
- Unlike Title VII, which applies to employers generally, including private employers, Executive Order 13087 merely sets internal employment policy for the Executive Branch.

Would the executive order require federal contractors or state and local governments to hire gays?

- This executive order applies only to employees of the Executive branch; it does not apply to federal contractors or grant recipients. Federal contractors are not "employees" of the Federal government.

Is there public support for the Executive Order?

- Recent national polls by Newsweek and the Associated Press indicate that between 84-85% of Americans favor equal rights for gay people in the workplace.
- The proposed federal legislation on this topic, the Employment Non-Discrimination Act, enjoyed strong bipartisan support in the 104th Congress, with 49 Senators voting for it and 139 House cosponsors. In addition, a majority of House Members and over two-thirds of the Senate have specifically indicated that sexual orientation ^{is} was not a consideration in their own employment practices.

~~workforce is comprised of less than 5% H-TB workers (and there is no pattern or practice of complaints) the Secretary would be able to investigate pursuant to a complaint and with her personal approval ?????.~~

Mary Smith
OLC
Eddie

Q: What is the position of Admin
re: what Exec. Order does /

① §
Exec. order: amend 1 by adding sexual
orientation.

② to the extent permitted
by law.

Signing statement:

Exec. order

cannot create any new rights

(such as ability to proceed before
EEOC)

* Personnel rule
Sex orientation
claims
through fed. sector
person (?)
(but no access
to CTS.)

* CFT not consulted
(confusing
issue likely to come up
trans. meaning.)

**THE VICE PRESIDENT ANNOUNCES SUPPORT FOR
LEGISLATION ON PAY EQUITY AND ADMINISTRATION
INITIATIVES TO COMBAT WAGE DISCRIMINATION**
April 2, 1998

Today the Vice President will announce the Administration's support for legislation, introduced by Senator Daschle and Congresswoman DeLauro, to strengthen the laws that prohibit wage discrimination against women. The Vice President also will announce several Administration initiatives aimed at reducing wage discrimination in the private sector and the federal government.

Legislation to Improve Enforcement of Wage Discrimination Laws. The Vice President will call on Congress to pass legislation to strengthen laws prohibiting wage discrimination. The highlights of this legislation include:

- Increased Penalties for the Equal Pay Act (EPA). The bill amends the EPA to allow for full compensatory and punitive damages. Currently, the EPA provides only for liquidated damages and back-pay awards. This proposal would put gender-based wage discrimination on equal footing with wage discrimination based on race or ethnicity, for which uncapped compensatory and punitive damages are available.
- Non-retaliation Provision. Currently, employers can take action against employees who share information on pay. The Daschle bill amends the EPA to prohibit employers from penalizing employees for sharing information about their salaries with co-workers. The ability to share such information makes it easier for women to evaluate whether there is wage discrimination.
- Training, Research, Education, and Outreach. The bill requires the EEOC to provide training for its employees, subject to the availability of funding, on matters involving discrimination in the payment of wages. The bill also requires the Department of Labor (DOL) to undertake research in the area of sex-based pay disparities; provide information on means of eradicating such disparities; assist State and local information and educational programs; and convene a national summit to discuss and highlight the issue of sex-based pay disparities.
- Pay Equity Award. The bill establishes "The National Award for Pay Equity in the Workplace," to be administered by DOL, to recognize and promote the achievements of employers that have made strides to eliminate pay disparities.

Administration Actions to Enhance Compliance with Equal Pay Laws. The Vice President also will announce a number of Administration initiatives including:

- Memorandum Of Understanding (MOU) Between EEOC and DOL. EEOC and DOL are developing an MOU to train each other's staff on pay issues, to refer potential violations to the applicable EEOC or DOL office for appropriate action, and to permit the DOL's Office of Federal Contractor Compliance Programs (OFCCP) to serve as the EEOC's agent for purposes of seeking damages for wage discrimination.
- 10-Step Voluntary Self-Audit for Businesses and Employees. To help employers who would like to improve their pay and hiring practices, DOL will place on the Internet a 10-step package that gives companies guidelines in determining whether they offer equal pay, hiring, and promotional opportunities. A similar checklist for employees, to help them determine if they are being paid equitably, will also be placed on the Internet.
- Self-Audit for Agencies. To make the federal government a "model" employer, federal agencies will conduct a self-audit, similar to the one described above, and use these results to monitor their efforts on equal pay.
- Increased Data Analysis on Pay Equity. DOL will publish an annual report on pay differences by gender. The purpose of this report will be to highlight the important issue of wage disparities.
- Guide to Recruitment and Retention of Women in the Federal Government. OPM is publishing a new Guide on Recruitment and Retention of Women in the Federal Government, which contains information to make agency managers aware of career opportunities for women and to provide guidance on recruitment and career development for women.
- Federal Contractor Best Practices. DOL will publicize successful programs of federal contractors by placing them on DOL's web site.

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SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS
COMMITTEE ON EDUCATION AND THE WORKFORCE

U.S. HOUSE OF REPRESENTATIVES
8348 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20516-8100

May 11, 1998

Copy to: Ellen
Jason
Mark
Leslie
Bill W.
Spencer

The Honorable Paul Igasaki
Chairman
U.S. Equal Employment Opportunity Commission
1801 L Street, N.W.
Washington, D.C. 20507

Dear Chairman Igasaki:

I write to you today about a matter that has only recently come to my attention but is of significant potential concern. It has recently been reported that the EEOC and the Department of Labor's OFCCP are working on a Memo of Understanding (MOU) that would give OFCCP the authority to seek damages under Title VII and the Equal Pay Act, a power OFCCP currently lacks. Apparently, the MOU would permit the OFCCP to serve as the "agent" of EEOC when it finds cases of "egregious discrimination" and wants to seek damages (where currently it would refer the case to EEOC). It is my understanding that under the 1991 Civil Rights Act, the EEOC can seek compensatory and punitive damages, but the OFCCP has no such authority under Executive Order 11246 (under which it operates).

I am concerned with whether the EEOC may lawfully delegate its enforcement authority to another agency through a mere Memorandum of Understanding. This change represents a significant expansion of OFCCP's enforcement function, which should be reviewed by Congress before being implemented. I am also troubled that such a change in the civil rights enforcement scheme to create overlapping jurisdiction may not be conducive to the most effective and efficient administration of the law. This new scheme lends itself to the mixing of the mission of the two agencies, something Congress did not intend.

My staff has contacted the Commission and been informed that no draft or outline of the MOU is available at this time. Please provide me with a detailed explanation of how this MOU would operate, what powers would be delegated to the OFCCP, and under what authority this delegation would be made.

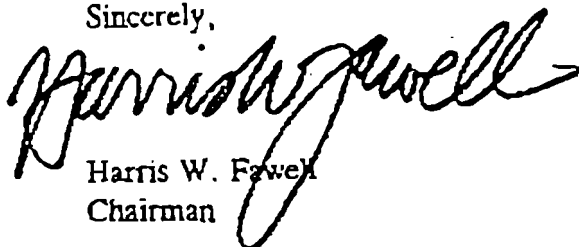
Finally, I am troubled that this plan has been interpreted by some to be an attempt to institute the highly controversial concept of comparable worth. I look for your assurance that

RECEIVED
5/11/98

such a significant change in interpretation of the law would not be made unilaterally, without Congressional review and approval.

If you have any questions about this request, please call me or contact David Frank of the Committee staff at 225-7101. Thank you for your assistance and for your continuing efforts to work cooperatively with this Committee to make the EEOC a more effective guardian of civil rights.

Sincerely,

A handwritten signature in black ink, appearing to read "Harris W. Fawell". The signature is fluid and cursive, with a long horizontal stroke at the end.

Harris W. Fawell
Chairman

MAJORITY MEMBERS:

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**SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS
COMMITTEE ON EDUCATION AND THE WORKFORCE**

U.S. HOUSE OF REPRESENTATIVES
B346 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

May 11, 1998

The Honorable Shirley J. Wilcher
Deputy Assistant Secretary
for Federal Contract Compliance Programs
U.S. Department of Labor
Room C3325
200 Constitution Avenue, N.W. 20210

Dear Secretary Wilcher:

I write to you today about a matter that has only recently come to my attention but is of significant potential concern. It has recently been reported that the EEOC and the Department of Labor's OFCCP are working on a Memo of Understanding (MOU) that would give OFCCP the authority to seek damages under Title VII and the Equal Pay Act, a power OFCCP currently lacks. Apparently, the MOU would permit the OFCCP to serve as the "agent" of EEOC when it finds cases of "egregious discrimination" and wants to seek damages (where currently it would refer the case to EEOC). It is my understanding that under the 1991 Civil Rights Act, the EEOC can seek compensatory and punitive damages, but the OFCCP has no such authority under Executive Order 11246 (under which it operates).

I am concerned with whether the EEOC may lawfully delegate its enforcement authority to another agency such as the OFCCP through a mere Memorandum of Understanding. This change represents a significant expansion of OFCCP's enforcement function, which should be reviewed by Congress before being implemented. I am also troubled that such a change in the civil rights enforcement scheme to create overlapping jurisdiction may not be conducive to the most effective and efficient administration of the law. This new scheme lends itself to the mixing of the mission of the two agencies, something Congress did not intend.

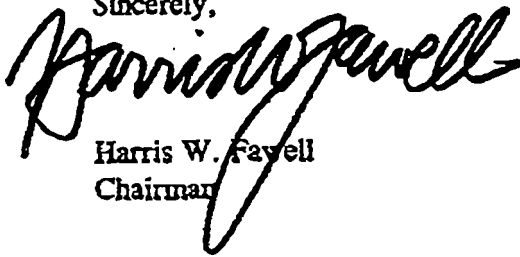
My staff has been informed by the EEOC that no draft or outline of the MOU is available at this time. Please provide me with a detailed explanation of how this MOU would operate, what powers would be delegated to the OFCCP, and under what authority this delegation would be made. Also, please clarify whether you believe OFCCP's authority to

seek relief under Title VII would be restricted to complaint investigations or whether such relief could be demanded for discrimination alleged in evaluating routine compliance.

Finally, I am troubled that this plan has been interpreted by some to be an attempt to institute the highly controversial concept of comparable worth. I look for your assurance that such a significant change in interpretation of the law would not be made unilaterally, without Congressional review and approval.

If you have any questions about this request, please call me or contact David Frank of the Committee staff at 225-7101. Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Harris W. Fayell". The signature is fluid and cursive, with a large loop at the end.

Harris W. Fayell
Chairman

FAX

Date:

7/8/98

Number of pages including cover sheet:

3

To:

Mary Smith

Phone:

456-5571

Fax phone:

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CC:

From:

Gale Black

OFCCP

OFFICE OF FEDERAL
CONTRACT COMPLIANCE
PROGRAMS

Phone:

202-219-9475

Fax phone:

202-219-6195

REMARKS:

☐

Urgent

☐

For your review

☐

Reply ASAP

☐

Please comment

☐

Per your request

☐

Per our conversation

JUN 12 1998

The Honorable Harris W. Fawell
Chairman
Subcommittee on Employer-Employee Relations
Committee on Education and the Workforce
U.S. House of Representatives
B346 Rayburn House Office Building
Washington, D.C. 20515-6100

Dear Congressman Fawell:

Thank you for your letter of May 11, 1998. You expressed a number of concerns related to the revision of the Memorandum of Understanding (MOU) between the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) and the Equal Employment Opportunity Commission (EEOC) regarding Executive Order 11246 and Title VII.

The OFCCP has responsibility for enforcing Executive Order 11246, as amended, and other federal contractor equal employment opportunity laws which prohibit employment discrimination on the bases of race, color, religion, gender, or national origin. EEOC has primary responsibility for enforcing Title VII of the Civil Rights Act of 1964 which prohibits discrimination on these same bases.

OFCCP has joined EEOC in implementing a number of Memoranda of Understanding in an effort to eliminate duplication of investigations, and to promote efficient enforcement of Executive Order and Title VII issues. Let me assure you that the purpose of the revisions to the OFCCP/EEOC MOU is to maximize the effectiveness of the anti-discrimination laws enforced by the OFCCP and EEOC. The MOU does not shift the enforcement authority from either agency, nor does it implement any new concepts of law. The MOU continues the agencies long-standing partnership and practice of sharing information in an effort to avoid duplication, and to maximize our respective program effectiveness.

Since 1981 a joint MOU has been in effect which addresses the processing of complaints filed with OFCCP. Under the MOU, OFCCP investigates systemic complaints under Executive Order 11246, and refers individual complaints filed under Title VII to EEOC. The proposed revisions to the MOU do not change these processing procedures. Instead, the revisions would grant OFCCP, as an agent of EEOC, the authority to engage in voluntary conciliation for damages for Title VII aspects of systemic complaints, consistent with EEOC's standards. OFCCP would not be allowed to impose damages, but would instead be authorized to seek damages up to the enforcement stage. If

~~the revisions would grant OFCCP, as an agent of EEOC, the authority to engage in voluntary conciliation for damages for Title VII aspects of systemic complaints, consistent with EEOC's standards. OFCCP would not be allowed to impose damages, but would instead be authorized to seek damages up to the enforcement stage. If enforcement is warranted the complaint may be referred to EEOC for processing through their litigation process. Further, OFCCP would not seek to expand its authority in monitoring routine compliance.~~

These revisions are based on the 1992 OFCCP/EEOC joint rule for processing disability complaints. This rule granted OFCCP authority to act as EEOC's agent for the purpose of receiving, investigating and processing the Americans with Disabilities Act (ADA) component of a Rehabilitation Act complaint under section 503, dual filed under the ADA. Included in this authority was authorization for OFCCP to attempt conciliation to obtain full compensatory relief for a complainant consistent with EEOC's standards for remedies.

The issue you raise of comparable worth is not a factor in the MOU revisions. The MOU is not an attempt to extend the law. It is an opportunity to utilize resources to maximize the efficiency under the respective laws enforced by OFCCP and EEOC.

I hope this information helps to clarify the intent of the revisions under consideration for the OFCCP/EEOC Memorandum of Understanding. Please feel free to contact me if I can be of further assistance.

Sincerely,

Shirley J. Wilcher
Deputy Assistant Secretary
for Federal Contract Compliance Programs