



DONALD G. OGILVIE
EXECUTIVE VICE PRESIDENT

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July 8, 1998

Domestic Policy Council
Ms. Julie A. Fernandes
Special Assistant to the President
Old Executive Office Building, Room 224
17th & Pennsylvania Ave., N.W.
Washington DC 20502

Dear Ms. Fernandes:

The American Bankers Association (ABA) and the Office of Federal Contract Compliance Programs of the U.S. Department of Labor invite you to a press briefing to unveil a new guidebook, *Equal Hiring Opportunity. Helping Banks Take Affirmative Action*. The briefing will be at 2 p.m. on Tuesday, July 21 at ABA's headquarters, 1120 Connecticut Ave, N.W., Washington, D.C., 7th floor Boardroom.

The guidebook was developed in conjunction with the Office of Federal Contract Compliance Programs and with representatives from community, regional and multi-state banks in the Washington, DC, area and local community organizations. It identifies key issues that banks or other employers should consider in recruiting and hiring employees. It also provides practical tips to help bank staffs reflect the communities they serve. We're proud of this new guidebook and hope that banks and other employers will find it to be a useful tool for their affirmative action programs.

Please RSVP by July 17 to Hector Cruz, ABA, at 202-663-5315.

I look forward to seeing you at the briefing.

Sincerely,

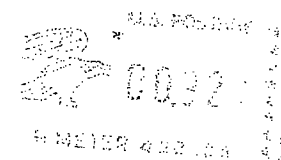
A handwritten signature in black ink, appearing to read 'Donald G. Ogilvie', with a stylized flourish at the end.

Donald G. Ogilvie

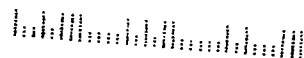


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COMMITTEE ON EDUCATION AND THE WORKFORCE U.S. HOUSE OF REPRESENTATIVES

2181 RAYBURN HOUSE OFFICE BUILDING
 WASHINGTON, DC 20515-6100

June 12, 1998

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The Honorable Alexis Herman
 Secretary
 U.S. Department of Labor
 200 Constitution Avenue, N.W.
 Washington, D.C. 20210

Dear Secretary Herman:

Pursuant to Rules X and XI of the Rules of the House of Representatives, and consistent with the responsibilities of the Subcommittees on Workforce Protections and Employer-Employee Relations (Subcommittees) of the Committee on Education and the Workforce, we are reviewing the activities of the Office of Federal Contract Compliance (OFCCP). Please provide two copies of the following information by close of business July 10, 1998. To assist us in reviewing the materials identified, please:

1. separately identify and mark each document;
2. restate the question and the subsection to which a response is provided; and
3. submit all materials on single-sided 8 1/2 x 11 inch paper.

Pursuant to the Subcommittees' oversight jurisdiction under Rules X and XI of the Rules of the House of Representatives, we request you to provide the following information:

1. The total number of compliance reviews authorized by the Office of Federal Contract Compliance (OFCCP) for calendar years 1997 and 1998.
2. A chart listing the name of all contractors which have been selected for and notified of a compliance review under Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, as amended, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, [38 U.S.C. Sec. 4212], and their implementing regulations at 41 C.F.R. Chapter 60, for calendar years 1997 and 1998. In preparing this information, please provide the following regarding each case identified.
 - A. the address of each contractor;
 - B. the type of business;
 - C. the basis of selection for a compliance review;

- D. whether any of the following phases of the process were pursued, i.e., a desk audit, an onsite review, or offsite analysis; and
 - E. the status of the review or disposition, if any.
3. If enforcement proceedings were initiated against any of the contractors in calendar years 1997 and 1998, please describe the nature of the enforcement action and provide a copy of the final disposition.
4. The amount of resources devoted by OFCCP pursuing compliance reviews in calendar years 1997 and 1998. In responding to this question, please interpret the term "resources" to include salaries, benefits, travel, per diem and other miscellaneous expenses and support related in any way to the review, investigation and/or preparation of compliance reviews. In addition, please explain the methodology used to derive the "resource" figure provided and divide your response into the following budget categories:
- A. personnel compensation;
 - B. temporary employee pay;
 - C. personnel benefits;
 - D. consulting costs;
 - E. travel and transportation; and
 - F. miscellaneous.

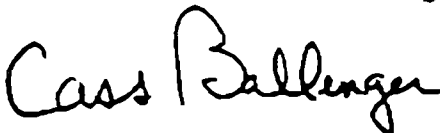
In responding to this inquiry, please note that we recognize that the OFCCP may not require its employees to do timekeeping by activity or otherwise.

5. The success rate for compliance reviews in 1997 and 1998. Indicate the definition used for "success rate."
6. A description of OFCCP's focused operational plan that targets contractors with a history of violations, growth industries, and first-time reviews. Please include a copy of the plan, including the methodology by which OFCCP targets contractors.
7. Progress on plans to streamline the process to (i) eliminate unnecessary paperwork requirements associated with the written affirmative action plan; (ii) use an expedited review process that will greatly assist in the agency's targeting of its limited resources on substantive violations first; and (iii) reduce the internal administrative procedures by at least 30%.
8. A detailed explanation of any plans (past, current, or future) for using testers. The number of times in which testers have been used in calendar years 1997 and 1998. Please include an explanation of how each "target" of the tester was selected.

9. In calendar years 1997 and 1998, the number of instances in which OFCCP reported violations of the Immigration Reform and Control Act of 1986 to the Immigration and Naturalization Service.
10. The number of complaints of discrimination received during 1997 and 1998. For each, indicate the status or disposition. How many were referred to the Equal Employment Opportunity Commission pursuant to a Memorandum of Understanding?
11. The number of attempts at conciliation in calendar years 1997 and 1998. If a conciliation agreement was reached include the outcome, i.e., back pay, seniority credit, promotions, or other forms of relief.
12. The number of cases against contractors which were unsuccessful in conciliation and were referred to Office of the Solicitor in calendar years 1997 and 1998. Please indicate the following:
 - A. The number of complaints settled.
 - B. The number of complaints litigated and the sanctions imposed.
 - C. The number of contractors debarred.
13. Copies of any audits/assessments/reviews/evaluations of the OFCCP for the period FY 1996 through the present. For any which exist, please provide the following information, including a copy of the document:
 - A. name of the agency/entity;
 - B. title of the document;
 - C. date of the document; and
 - D. major findings of the document.

If you have questions or need clarification, please do not hesitate to contact Lauren L. Fuller or David Frank at 202-225-7101. Thank you in advance for your cooperation.

Sincerely,



Cass Ballenger
Chairman
Subcommittee on Workforce
Protections



Harris W. Fawell
Chairman
Subcommittee on Employer-
Employee Relations

Cc: The Honorable Shirley Wilcher
Office of Federal Contract Compliance



BUSINESS & RACE

BY LEON E. WYNTER

Testing for Discrimination Gains Wider Acceptance

FEDERAL AGENCIES, spurred on by nonprofit groups, are increasingly embracing the use of undercover investigators to identify discrimination in the marketplace.

The federal Equal Employment Opportunity Commission now has launched a pilot project using so-called matched-pair testers—investigators of differing skin colors who pose as consumers to compare how they are treated—to monitor hiring in Chicago and Washington D.C. The effort follows a similar move last year by the Office of Federal Contract Compliance Programs.

The embrace of such testing by federal agencies could have a big impact on businesses. Unlike abstract statistical arguments, evidence from direct testing has compelling "six o'clock news" credibility, says William Milani, an attorney with Epstein Becker & Green, New York. It can look convincing to a jury in a discrimination lawsuit, he adds.

Testing has long been used to fight housing discrimination, but its

Critics say that setting up fake encounters, rather than looking at statistical data, to test fairness is tantamount to entrapment. "In many ways, testing is a more intrusive approach in that you have people going into the workplace, initiating the process, without any intention of working for you," says Mr. Milani. "That's what many employers find troublesome."

But the EEOC says it is counting on the cooperation of most businesses. "We're hopeful that a responsible testing program will support the companies that do what they can to avoid discrimination and help us find those who are not," says acting EEOC Chairman Paul Igaraki.

In fact, more companies are seeking to test their own employees before they are tested by watchdog groups. The Fair Housing Council of Greater Washington, a private, nonprofit group, last year used testers to show disparate treatment of minority shoppers by a department store for a report by the ABC-TV news magazine "20/20."

Since the report aired, several retail and service businesses, as well as

employer-liability insurers, have asked about the group's testing programs, says David Berenbaum, executive director of the Fair Housing Council of Greater Washington.

The FHC, in response, set up a separate, nonprofit consulting service called Fair Housing Partnership to work with the private sector. It offers model tests as well as testers for various consumer transactions in the marketplace.

"We're beginning to see the privatization of the civil rights movement," says Mr. Berenbaum. He says the group is working with eight corporations now and is in negotiations with six more.

"Wouldn't you want to make sure that your products are marketed consistently and professionally using a consistent service model?" asks Mr. Berenbaum. "That's what's winning over the CEOs."

World Cup Games Open Gate to Hispanic Market

MARKETERS IN the U.S. are taking advantage of the broadcast of the World Cup soccer games to gain access to Hispanic consumers. In turn, Spanish-language media firms are finding a golden opportunity to compete with their general-market counterparts.

"Advertisers recognize that this is a breakthrough moment to reach Latinos they might not reach the rest of the year," says Henry Cisneros, president of Univision, the largest Spanish-language TV network.

More than half the fans at the major-league soccer games last year were Hispanic. Univision's ratings for the individual soccer matches have consistently beaten ABC and ESPN, with heavy Hispanic viewing.

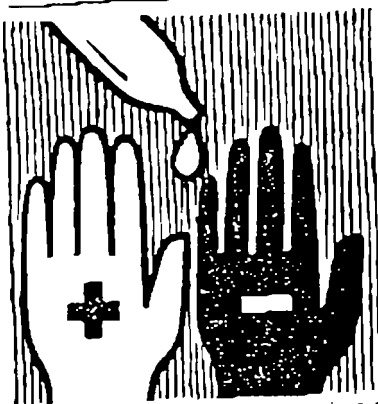
The network has reaped a bumper crop of soccer-related advertising leading up to the games. Foot-products maker Dr. Scholl's tapped Mexican superstar Hugo Sanchez to be a spokesman in its first Spanish campaign. Other firms running soccer-theme ads include AT&T, Honda, McDonald's and Valvoline, a Univision spokesman says.

The clout of Hispanic soccer fans has given the Dallas ad firm Dieste Partners a rare coup over its English-language rivals. In February, Major League Soccer moved its general-market along with its Hispanic ad accounts, to Dieste from McCann-Erickson.

Professional-soccer marketers are hoping that, much as salsa now beats ketchup in sales, Americans will eventually acquire a more Hispanic taste in sports. "What the general American public has not appreciated is how for fans it's more than just a game," says Dieste President Tony Dieste. "Soccer is about pride in country, played on a world-wide field."

MLS's marketing vice president, Paul Phipps, envisions future inter-league games between the best professional U.S. and European teams. The trick is getting Americans to feel as at home on the world stage as they are in their own backyards.

"The World Cup shows that no matter your ethnic origin, there is a commonality in appreciating the greatness of the sport, and the nationalistic aspects will ultimately make it very successful," Mr. Phipps says.



legal status in employment cases has been doubtful, until recently. A 1994 district-court ruling in Washington, D.C., coupled with the 1991 amendments to the Civil Rights Act, allows testers to give evidence about their treatment in lawsuits seeking damages, says Avis Buchanan, a lawyer representing the Fair Employment Council of Washington, D.C. The nonprofit group has been a pioneer of testing for hiring discrimination.

Leading the News

EEOC

Congressional Appropriators Moving to Bar EEOC Pursuit of Employment Tester Program

As Congress moves closer toward enacting next year's budget for the Equal Employment Opportunity Commission, appropriators are seeking to bar the agency from pursuing its controversial employment tester program. In return, GOP appropriators appear willing to give EEOC an overall increase in funding, but not the full amount requested by the administration.

EEOC would be under orders "not to pursue any policy that would use testers as a standard practice" if language included in the Senate version of the agency's fiscal year 1999 spending bill (S. 2260) remains intact when Congress sends a final measure to the White House. There are strong indications that the House version will contain similar language given House Speaker Newt Gingrich's (R-Ga.) recent call for an agreement that the agency not use its scarce resources for employment testers.

Under the language included in the Senate version of the funding bill, EEOC would be under orders "not to pursue any policy that would use testers as a standard practice."

Employment discrimination testing involves sending carefully matched, equally qualified pairs of individuals to apply for the same—generally entry-level jobs—to determine whether factors such as race, sex, disability or national origin appear to influence hiring decisions. The testers do not intend to accept the jobs.

The Senate Appropriations Committee passed the spending bill June 26, two days after the House subcommittee with jurisdiction over the measure completed its work. EEOC's budget is included in the spending bill covering the departments of Commerce, Justice, State, and the Judiciary, and related agencies.

Republican Support for Increase. The Senate bill calls for an increase in EEOC's budget of close to \$11.5 million, which would boost funding to about \$254 million. The Clinton administration had requested a 15 percent increase, which would raise the agency's budget to \$279 million compared to \$242 million for the current year.

The House measure allots \$19 million in additional funding to the agency, according to a summary of key

provisions in the subcommittee bill. The increase is earmarked for "mediation and investigation resources to support further reductions in EEOC's backlog of outstanding charges," the summary says.

Republican support for the increase was evident during recent oversight and budget hearings, as was the opposition to the employment tester program. In an unusual appearance before the Education and Workforce Subcommittee on Employer-Employee Relations in April, Gingrich said he was prepared to support an increased budget for the civil rights enforcement agency contingent on a series of reforms, including dropping the fledgling project on the use of employment testers (42 DLR AA-1, 3/4/98).

EEOC last year granted contracts to private civil rights organizations in Washington and Chicago to explore expanded use of employment testers (235 DLR AA-1, 12/8/97). There is "concern about these projects," each of which costs \$100,000, Senate appropriators wrote in the report accompanying the committee bill.

These pilot programs marked the first time the agency became actively involved in financial support of a testing program. However, the agency has a long-standing policy of supporting the use of testers.

The report language in the Senate bill directs the EEOC to report to the Appropriations Committee on the findings of the pilot programs. It also restricts the agency from adopting any policy in which testers would be used as a standard practice, while at the same time pointing out that the agency has said it has only a few tester cases pending.

Other Concerns Addressed. The Senate report also states that the Appropriations Committee expects EEOC to put some of its increased funding into expanding its use of alternative dispute resolution techniques. In addition, the report expressed the committee's concern about the agency's priorities and litigation practices, recommending that EEOC "allocate more of its limited public resources to investigating and resolving actual claims of discrimination filed by employees and applicants." The bill would require EEOC to report to the committee on its funding allocation and expenditures by March 1, 1999.

Expanded use of ADR and allocation of resources also are expected to surface as concerns in the House version of EEOC's spending bill, which is tentatively scheduled for full committee markup July 15. In a letter to Appropriations Committee Chairman Robert Livingston (R-La.) and Rep. Harold Roberts (R-Ky.), head of the Appropriations Subcommittee with jurisdiction over EEOC, Gingrich and key Republicans on the Education and the Workforce Committee said they would support a budget increase provided the agency makes certain changes (63 DLR A-2, 4/2/98).

LEADING THE NEWS

AA-2 (No. 131)

In addition to expanded ADR and a more appropriate allocation of resources to charge processing vis-a-vis litigation, the letter called on the appropriations panel to include in the bill language requiring:

- improvements to the investigative and intake processes (including greater supervision of the process by lawyers);

- a significant reduction to the backlog of cases and the length of time for case processing; and

- clarification of the criteria for litigation.

By DEBORAH BILLINGS



UNITED STATES DEPARTMENT OF LABOR
FACSIMILE TRANSMISSION

OFFICE OF CONGRESSIONAL AND INTERGOVERNMENTAL AFFAIRS

200 Constitution Avenue,
N.W.
Room S-1325
Washington, DC 20210

Confirmation:
202/219-6141

July 13, 1998/6:29pm

TO: JULIE FERNANDEZ

DEPARTMENT/COMPANY: DPC

FACSIMILE NUMBER: 456- 5581

FROM: DARLA LETOURNEAU

NUMBER OF PAGES INCLUDING COVER: 9

FACSIMILE REPLIES: CONGRESSIONAL AFFAIRS

INTERGOVERNMENTAL AFFAIRS

IMMEDIATE OFFICE OF THE ASSISTANT SECRETARY

202/219-5120

202/219-5736

202/219-5288

MESSAGE: Attached is the information on OFCCP "tester" issue.

Question

8. A detailed explanation of any plans (past, current, or future) for using testers. The number of times in which testers have been used in calendar years 1997 and 1998. Please include an explanation of how each "target" of the tester was selected.

Answer #8

OFCCP enforces Executive Order 11246, as amended, and other laws. The Executive Order prohibits Federal contractors from discriminating against individuals on the basis of race, color, sex, religion or national origin. As part of its compliance effort, OFCCP began conducting research on the feasibility of a pilot project that utilized testers.

OFCCP began an employment testers project in 1995, which we believe is the first time the Government has used testers in the employment area. The Federal Government has used testers to test for housing and banking discrimination for more than twenty years. For OFCCP, the testers project is an educational and technical assistance tool. It informs OFCCP as to the changing nature of discrimination and helps identify where to place our limited resources. For OFCCP, it has proven to be an effective tool in enhancing awareness of discrimination and compliance with the laws.

The 1995 pilot focused on the treatment of African-American males and their Caucasian counterparts within the Washington, D.C. metropolitan area. The typical face-to-face test involves sending to a test site two people who are similar in all respects material to the job they seek, except for their race. Their experiences are later compared to discern possible discriminatory treatment. A summary of the findings of the test results was made available via the Internet (<http://www.dol.gov/dol/esa>). In selecting industries, OFCCP focused on the four industries - banking, financial services, transportation and delivery - that were growth industries and had a history of reviews that were concluded with substantive conciliation agreements. Within these four industries, we identified the largest individual facilities located in, or near, Washington, D.C. that were both "flagged" by the program's Equal Employment Data System and that had not been reviewed in the past 24 months. Tests were conducted from among those establishments.

At the conclusion of the tests, OFCCP met with many of the contractors that were the subject of the first test to let them know the test results. OFCCP found that the industry responded by initiating its own self-monitoring and best practices education campaign. The American Bankers Association is planning to unveil its own best practices guide as a result of the tests conducted on banks.

OFCCP did not use testers in calendar years 1997 or 1998. However, the program is in the process of initiating a testers project in Chicago. These "testers" would provide information on employment discrimination against Hispanics in the workplace.

Question

9. In calendar years 1997 and 1998, the number of instances in which OFCCP reported violations of the Immigration Reform and Control Act of 1986 to the Immigration and Naturalization Service.

Answer #9

OFCCP conducts an I-9 inspection during each compliance evaluation. INS is notified of all outcomes. OFCCP reported apparent non-compliance with the Immigration Reform and Control Act of 1986 to the Immigration and Naturalization Service 349 times in Fiscal Year 1997 and 180 times during the first two quarters of Fiscal Year 1998. Third quarter information is not presently available.

**The Department of Labor's Office of Federal Contract Compliance Programs
Talking Points on Testers**

Q: Why is the testing program at OFCCP necessary to further compliance work?

A: Employment testing is an effective tool used by the OFCCP to identify possible discrimination in hiring that may otherwise go undetected. It is often difficult for an individual to detect disparate treatment without first knowing how other applicants were treated. This is especially true where discrimination may have occurred at the point of initial contact with a prospective employer. Testing allows a comparison of treatment among equally qualified applicants, who differ only in the category being tested (such as race, gender, or disability).

Federal contractors have a contractual and legal obligation not to discriminate and agree to monitor their practices to ensure non-discrimination. Testing gives the compliance agency a cost-effective tool to evaluate whether the employer is living up to its obligations. In addition, testing has served as the catalyst for employers to act pro-actively to correct possible problems before they become the subject of a potentially costly and embarrassing lawsuit.

Q: Why is testing not entrapment?

A: Testers do not invite or induce employers to discriminate -- they simply apply for jobs. Moreover, employment testers are specifically trained and instructed not to suggest, influence, or encourage the employer to discriminate. Anything less would call into question the validity of the test, and would therefore not be of use to the compliance agency. The OFCCP uses testers to serve educational -- not punitive -- purposes.

Q: Does the OFCCP have a policy not to use the results of the tests for enforcement purposes?

A: The OFCCP practice is to use the tester pilot for educational purposes. Following the completion of the test of 13 banks in the Washington, D.C. area, the agency shared the results of the tests with the banks who were the subject of the test. OFCCP found that the banking industry responded pro-actively by initiating its own self-monitoring and best practices education campaign. On July 21, 1998, the American Bankers Association (ABA) is planning to unveil a best practices guide that was developed by the ABA as an outgrowth of this testing project.

Q: How were the employers who were tested selected?

A: In selecting employers for the pilot test, the OFCCP first focused on growth industries that had a history of reviews that were concluded with substantive conciliation agreements. Within the four industries considered, OFCCP identified the largest facilities

located in or near Washington, D.C. The OFCCP made its final selection from among that group using criteria similar to that used to determine which federal contractors will be subject to compliance reviews.

Q: Is the OFCCP program a pilot?

A: Yes. OFCCP began its testers initiative in 1995. Though the OFCCP did not use the testers pilot in 1997 or 1998, they are in the process of initiating a testers project in Chicago. OFCCP does not conduct tests itself; rather, the program enters into contracts with private non-profits to conduct the tests.



DONALD G. OGILVIE
EXECUTIVE VICE PRESIDENT

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July 8, 1998

Domestic Policy Council
Ms. Julie A. Fernandes
Special Assistant to the President
Old Executive Office Building, Room 224
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Washington DC 20502

Dear Ms. Fernandes:

The American Bankers Association (ABA) and the Office of Federal Contract Compliance Programs of the U.S. Department of Labor invite you to a press briefing to unveil a new guidebook, *Equal Hiring Opportunity, Helping Banks Take Affirmative Action*. The briefing will be at 2 p.m. on Tuesday, July 21 at ABA's headquarters, 1120 Connecticut Ave, N.W., Washington, D.C., 7th floor Boardroom.

The guidebook was developed in conjunction with the Office of Federal Contract Compliance Programs and with representatives from community, regional and multi-state banks in the Washington, DC, area and local community organizations. It identifies key issues that banks or other employers should consider in recruiting and hiring employees. It also provides practical tips to help bank staffs reflect the communities they serve. We're proud of this new guidebook and hope that banks and other employers will find it to be a useful tool for their affirmative action programs.

Please RSVP by July 17 to Hector Cruz, ABA, at 202-663-5315.

I look forward to seeing you at the briefing.

Sincerely,

Donald G. Ogilvie

DRAFT

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Federal contractors have a contractual and legal obligation not to discriminate and agree to monitor their practices to ensure non-discrimination. Testing gives the compliance agency a cost-effective tool to evaluate whether the employer is living up to its obligations. In addition, testing has served as the catalyst for employers to act pro-actively to correct possible problems before they become the subject of a potentially costly and embarrassing lawsuit.

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Q: Does the OFCCP have a policy not to use the results of the tests for enforcement purposes?

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Q: How were the employers who were tested selected?

A: In selecting employers for the pilot test, the OFCCP first focused on growth industries that had a history of reviews that were concluded with substantive conciliation agreements. Within the four industries considered, OFCCP identified the largest facilities

located in or near Washington, D.C. The OFCCP made its final selection from among that group using criteria similar to that used to determine which federal contractors will be subject to compliance reviews.

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**Employment Testers at the Office of Federal Contract Compliance Programs (OFCCP)
at the Department of Labor**

- The OFCCP started an employment testing project in 1995 with the objective of assisting employers in their efforts to comply with Executive Order 11246 and other laws that prohibit federal contractors from discriminating against individuals on the basis of race, color, sex, religion, national origin, disability, or veteran status. Federal contractors have a contractual and legal obligation not to discriminate and agree to monitor their practices to ensure non-discrimination.
- The OFCCP has so far conducted one test that involved 13 banks in the Washington, D.C. area. Matched pairs of testers were sent to apply for entry-level jobs at various banks. These testers were matched in every respect, except for their race. OFCCP contracted with a local non-profit to run the test and, after getting the results, contacted the American Bankers Association (ABA), as well as each bank tested, to share the results.
- Though disappointed that discrimination was indicated in some instances, the ABA responded by initiating its own self-monitoring and best practices education campaign. Using this information (along with input from community, regional, and multi-state banks as well as local community organizations) the ABA has developed a best practices guide to be unveiled on July 21st. This guidebook identifies key issues that banks and other employers should consider in recruiting and hiring employees. It also provides practical tips to help bank staff reflect the communities they serve.
- The OFCCP does not use testers for enforcement purposes. Rather, they have used it as a tool for enhancing awareness of discrimination and compliance with the laws.
- The OFCCP plans to continue to use employment testers as part of its compliance work. The ABA has indicated to the OFCCP that they support their continued use of testers in their compliance efforts.

DP A ET

The Department of Labor's Office of Federal Contract Compliance Programs Talking Points on Testers

The Department of Labor has been told that Representative Bob Livingston (R-La.) intends to introduce a rider against the Department of Labor's FY 1999 appropriations bill. ~~Similar language has been introduced by the Senate appropriators against the Equal Employment Opportunity Commission.~~ *That would*

~~The House rider would bar the Department of Labor's OFCCP from using "testers as a standard practice".~~

Why is this testers program necessary?

The Department of Labor's OFCCP testers program has helped to identify pockets of discrimination that may otherwise go undetected. It has also served as the catalyst for employers to act pro-actively to correct possible problems before they became the subject of a potentially costly and embarrassing lawsuit. For these reasons, the program has been invaluable as a cost-efficient means of enhancing compliance.

OFCCP enforces Executive Order 11246, as amended, and other laws that prohibit Federal contractors from discriminating against individuals on the basis of race, color, sex, religion, national origin, disability, or veteran status. Most Federal Government contracts contain an EEO clause. Consequently, Federal contractors have a legal and contractual obligation not to discriminate and to take pro-active steps to ensure a discrimination free workplace. The Federal Government has an interest in ensuring non-discrimination for contracts funded by tax-payer dollars. OFCCP covers a quarter of the civilian work force. The agency is not able to conduct compliance reviews of all 200,000 contractor establishments. Contractors must conduct self audits. The Federal Government has used tester for more than 20 years in housing and banking.

Why isn't it entrapment?

It is not entrapment because the agency has not used the tests for enforcement purposes or otherwise to sanction contractors.

OFCCP began its testers initiative in 1995. The 1995 pilot focused on the treatment of African-American males and their Caucasian counterparts within the Washington, D.C. metropolitan area. The typical face-to-face employment discrimination test involves sending to a test site two carefully matched, equally qualified pairs of individuals to apply for the same job. The candidates are similar in all respects ~~material to the job they seek,~~ except for their race. Their experiences are later compared to discern possible discriminatory treatment.

Does the agency use testers for enforcement?

No. The OFCCP practice is to use the test^{ex} pilot for education purposes. ~~Further,~~ the agency did not recommend enforcement actions against any of the banks that were ultimately the subject of the pilot test. Instead, following the completion of the tests, the agency shared the results of the tests with the banks. OFCCP found that the banking industry responded pro-actively, by initiating its own self-monitoring and best practices education campaign. On July 21, 1998, the American Bankers Association is planning to unveil its own best practices guide as a result of the tests conducted on banks.

How were these Federal contractors selected?

In selecting contractors, OFCCP first focused on the growth industries that had a history of reviews that were concluded with substantive conciliation agreements. Within the four industries considered, OFCCP identified the largest individual facilities located in, or near, Washington, D.C. that were both "flagged" (or highlighted) by the program's Equal Employment Data System and that had not been reviewed in the past 24 months. These contractors were selected from among that group.

Using testers has proven to be a good use of dollars. It informs OFCCP as to the changing nature of discrimination and has proven to be an effective tool in enhancing awareness of discrimination and compliance with the laws. It fosters partnership with business community. OFCCP does not conduct tests itself. Instead, the program enters contracts to private civil rights organizations to conduct the tests.

OFCCP did not use the testers pilot in calendar years 1997 or 1998. However, the program is in the process of initiating a testers project in Chicago. These "testers" would provide information on employment discrimination against Hispanics in the workplace.

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The House rider would bar the Department of Labor's OFCCP from using "testers as a standard practice". OFCCP enforces Executive Order 11246, as amended, and other laws that prohibit Federal contractors from discriminating against individuals on the basis of race, color, sex, religion, national origin, disability, or veteran status. Federal contractors have a contractual and legal obligation not to discriminate and agree to monitor their practices to ensure non-discrimination.

OFCCP began a testers initiative in 1995. The 1995 pilot focused on the treatment of African-American males and their Caucasian counterparts within the Washington, D.C. metropolitan area.

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Following the completion of the tests, the agency shared the results of the tests with the banks that were ultimately the subject of the test. OFCCP found that the banking industry responded pro-actively, by initiating its own self-monitoring and best practices education campaign. On July 21, 1998, the American Bankers Association is planning to unveil its own best practices guide as a result of the tests conducted on banks.

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