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As requested, I have received the following: (1) "The Impact of Affirmative Action on the Employment of Minorities and Females," by Jonathan S. Leonard, summarizing conclusions of his research, funded by the Department of Labor (Draft, 335 pages, dated April 1983), (2) "Employment and Occupational Advance under Affirmative Action, by Jonathan S. Leonard (January 1983), (3) "The Impact of Affirmative Action on Employment and Turnover," by Jonathan S. Leonard (January 1983), and (4) "A Review of the Effect of Executive Order 11246 and the Federal Contract Compliance Program on the Employment Opportunities of Minorities and Women," prepared by the Office of Federal Contract Compliance Programs (OFCCP) and dated April 1983.

#### Background Information

The effect of affirmative action on employment opportunities of minorities and women employed by federal contractors

has been debated since first required by President Kennedy in Executive Order 10925 (March 6, 1961). Executive Order 10925 was superseded by Executive Order 11246, issued by President Johnson on September 24, 1964, and later amended by him on October 13, 1967 (through Executive Order 11375). Executive Order 11246, as amended, prohibits discrimination by federal contractors against employees and applicants for employment because of race, creed, color, sex or national origin, and, in addition, requires that federal contractors take affirmative action to insure nondiscrimination.

By regulation, Executive Order 11246 is made applicable to all contractors whose annual contracts with the government are equal to or exceed \$10,000. The Order provides that the affirmative action is to include not only employment, but also "upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships."

In addition to the above, also by regulation, contractors having 50 or more employees and a government contract of \$50,000 or more have been required to maintain written affirmative action programs that analyze their workforces and employment practices, and establish goals and timetables for the hiring and promotion of minorities and women where they are shown to be "underutilized" relative to their

availability. Special attention is paid to six categories of jobs for minorities and six for women, as follows:

Special Emphasis Categories

Minorities	Women
Officials and Managers	Officials and Managers
Professionals	Professionals
Technicians	Technicians
Sales	Sales
Office and Clerical	Skilled
Skilled	Semi-skilled

Jonathan S. Leonard is with the National Bureau of Economic Research and the University of California at Berkeley's School of Business Administration. His research, resulting in the reviewed reports, was commissioned by the Office of Assistant Secretary for Policy, Evaluation and Research of the Department of Labor. The occasion for the research was the availability of allegedly new data on employment opportunities for minorities and women employed by federal contractors. This data was provided by J. Griffin Crump, Special Assistant to the Director of the Office of Federal Contract Compliance Programs (OFCCP), Ellen M. Shong, through OFCCP's Division of Program Analysis. Mr. Crump is also the author of the OFCCP report analyzing the same data.

"The Impact of Affirmative Action on the Employment of Minorities and Females," by Jonathan S. Leonard (Draft, 335 pages, dated April 1983)

The Executive Summary of the above report, still in draft form, summarizes the major findings as follows:

(1) Black male employment share increased relatively more in contractor establishments under the affirmative action obligation than in non-contractor establishments between 1974 and 1980. This holds true in a number of specifications, controlling for establishment size, growth, industry, region, occupational structure, corporate structure, and past employment share.

(2) This positive employment impact has been relatively greater in the more highly skilled occupations, and has resulted in net occupational upgrading for black males.

(3) Compliance reviews have been an effective tool in promoting the employment of male and female blacks.

(4) The impact of contractor and review status on non-black minorities and on white females has been mixed.

(5) Females and black males at a sample of reviewed establishments had a lower share of terminations relative to hires than other workers. The employment gains engendered by affirmative action do not appear to be transient.

(6) Based on new data on more than 1700 class-action suits, litigation under Title VII of the Civil Rights Act of 1964 has played a significant role in increasing black employment, and has had a relatively greater impact than affirmative action.

(7) The relative productivity of females and minority males has not significantly declined as their employment share has increased, based on a new longitudinal production function data set. Similarly, changing demographics have not had a significant effect on corporate profits.

(8) The targeting of compliance reviews could be improved by reviewing with greater frequency establishments with relatively few blacks.

(9) The unionized sector of manufacturing has not performed worse than the non-unionized sector in terms of equal employment opportunity.

(10) The success of affirmative action in integrating the workplace has been limited by residential segregation.

(11) The goals agreed to by contractors under affirmative action are inflated, but those who promise to hire more do hire more minorities and females.

The Executive Summary is true to Leonard's own summary of his findings (pp. 322-25), except that Leonard described items 1-5 as "the heart of the work" (p. 322), items 6 and 7 as "more tentative than those from other chapters because they are based on more highly aggregated data with fewer controls" (p. 323); and pointed out that item 9 (item 8 on Leonard's Summary, p. 324) is based exclusively on data from "California manufacturing plants." Finally, the tautology represented by item 10 (observing the delimiting effect of "residential segregation" on affirmative action) is a rather unabashed solicitation of support from those civil rights activists who see court-ordered desegregation of housing as the new frontier.

A closer look at Leonard's summary report, and his two briefer reports listed in the first paragraph of this Memorandum, illustrate various points of vulnerability of

this research. Before I review these more subtle points, however, two very basic observations can be made. First, the conclusions themselves constitute a tautology, and (as we have discussed) might be rephrased: If you make something a condition precedent to receiving federal contracts, those who wish to continue to receive the contracts will comply with the imposed condition. This is particularly true where the universe of reviewed firms are those who, over a period of six years, continued to be federal contractors, thus ignoring all those that gave up federal contracts, went out of business, etc. The amazing fact is that it has taken this long for data to become available to substantiate this expected effect. To the contrary, most researchers in the past, whether sympathetic or critical of affirmative action itself, have found the Executive Order and implementing regulations very ineffective. These prior studies are reviewed briefly, infra.

Second, the report is, in effect, an inside job, analyzing data made available by OFCCP. Although the data and research methodology must be analyzed at some point by social scientists with competencies other than ours, the conclusions are certainly vulnerable to the charge that they are self-serving. The ineffectiveness of Executive Order 11246,

and the enforcement thereof, has been a recurring, bipartisan theme.\* As directed by Executive Order 12086, all enforcement responsibility of Executive Order 11246 was consolidated into the OFCCP on October 5, 1978. Since then, for mere self survival OFCCP has had a burden to turn around an admittedly ineffective enforcement record. This data, and the resulting advocacy reports interpreting it, is probably best understood as a reponse to that felt need.

Moving along to the various points of vulnerability of Leonard's conclusions, consider the following:

1. The data used in the study relies on information supplied on EEO-1 forms. However, employers themselves are responsible for indicating to the OFCCP whether they are federal contractors. Far fewer firms identify themselves than the Department of Labor estimates are in existence.

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\* In its 1977 report, for example, the U. S. Commission on Civil Rights wrote:

The problems the government is trying to solve, however, are difficult and persistent. In its 1974 report, this Commission reported that the Federal effort to end employment discrimination had "not been equal to the task," and in the year and one half between the publication of that volume and the end of 1976, Federal enforcement of equal opportunity laws had not measurably improved.



According to Leonard (p. 27), for example, in 1974 only 92,000 of the estimated 275,000 federal contractors so identified themselves, or roughly one-third. (This is partly overcome, according to Leonard, because affirmative action field officers typically assume that large firms are government contractors, whether or not they have so indicated on the EEO-1 form, but this certainly appears less than "scientific.")

2. According to Leonard, there have been "four major previous studies of the impact of the OFCC" (p. 32). All of the studies have concluded that the impact has been limited and that the broad purposes of Executive Order 11246 remain unaccomplished. Leonard claims that the new data goes the other way, but one can be properly skeptical of the objectivity of his conclusions. A list of the earlier studies and a brief description of each is attached as Schedule A.

3. The data used by Leonard (and the OFCCP report as well) is an elaborate set of information on nearly 70,000 establishments filing EEO-1 forms and identifying themselves as federal contractors in both 1974 and 1980. This data and the research methodology should be analyzed by impartial and competent social scientists if a thorough response is to be fashioned.

4. Leonard buries a bombshell in chapter 8, entitled, "What Should the OFCCP Do?" I speak of Leonard's assertion that it is a mistake to consider affirmative action as essentially reflecting an anti-discrimination policy. Rather, he contends, it has at its essence "an income redistribution policy." This may play well in academe, but to move away from the moral stand against racial discrimination -- and to a somewhat lesser extent, against sex discrimination -- can only erode popular support (to the extent that it exists) for affirmative action.

5. The monetary cost of the relatively minor gains is enormous. According to Leonard, the cost is "at least \$51 million and perhaps more than one billion a year in affirmative costs alone" (pp. 314-15). Elaborating, he continues:

In 1980, the OFCCP's authorized budget was \$51 million. Past studies, some politically motivated, have estimated direct costs of affirmative action on the order of \$50 to \$80 per employee. Cumulating very roughly results in more than a billion dollars in direct compliance costs for all non-construction contractors. Concerning just the direct costs of compliance reviews, a 1981 survey of 42 companies with an average workforce of 50,000 found that 80% of the reviewed were requested to submit data in addition to the AAP, at an average cost of \$3000. A similar survey by Senator Hatch's Labor Committee of 245 contractors with an average workforce of 2584 in 1981 reported that 60% were asked to submit additional data beyond the AAP, at an average cost of \$24,000.

"Employment and Occupational Advance Under  
Affirmative Action" by Jonathan S. Leonard  
(January 1983)

This briefer report (29 pages) is presumably absorbed in the longer report discussed above, but there are significant emphases omitted in the longer report which bear mention here. [The third Leonard report reviewed ("The Impact of Affirmative Action on Employment and Turnover") provided little of additional significance and is therefore not separately discussed.]

Although the paper argues that the more recent data shows "affirmative action under Executive Order 11246 has promoted occupational advance of minorities of both sexes, as well as increasing their employment among government contractors" (p. 15), that is not the whole story. Besides the points made in critique of the longer report which are equally applicable, the additional specifics are noteworthy.

1. Except for blacks (male and female), "[c]ontractor establishments did not increase their employment of other minorities or females significantly faster than non-contractors. White females and non-black minority males actually did significantly worse at contractor establishments" (p. 5, emphases mine).

2. Similarly, compliance reviews significantly increased black female employment, but had a significantly

negative effect on white females. An insignificant effect of compliance reviews on employment of minority males is also noted.

3. How much the noted occupational advance for blacks is actually upgrading, and how much is "cross-sector migration" (i.e., from non-federal contractors to federal contractors) is unknown, according to Leonard (p. 8). In other words, even the modest gains under Executive Order 11246 could be due to a reshuffling of qualified or already employed blacks, not due to net occupational advancement of blacks in the workforce.

"A Review of the Effect of Executive Order 11246 and the Federal Contract Compliance Program on Employment Opportunities of Minorities and Women" (prepared by OFCCP, dated April 1983)

The above report is even more clearly an advocacy piece than are Leonard's several reports, and statistics are arranged accordingly. thus, in partisan enthusiasm, the report summarizes its findings, using the same data it (OFCCP) supplied to Leonard, as follows:

The results of the analyses show that establishments covered by the Executive Order have posted significantly greater gains in the employment and advancement of minorities and women than those not covered and have done so in all of the categories to which special attention was to have been directed. Further, in those establishments covered by the Executive

Order where compliance reviews have taken place, greater progress has been made by minorities and women in the majority of special-attention categories, as well as the majority of all categories. . . . Federal contractor establishments have experienced a far greater growth in the percentage of jobs held by minorities and women than noncontractor establishments during this 1974-1980 period (pp. 7-8).

Similar generalizations are used to support the OFCCP's compliance review process, including that its process has been basically successful.

A closer look reveals the following points of vulnerability, in addition to those general points made supra, which are equally relevant to a critique of the OFCCP report.

1. With the exception of black males and black females, women and minorities have not had a greater share of employment under Executive Order 11246. In fact, white women and non-black minority males have done significantly worse in terms of share of employment with federal contractors, as compared to their experience with non-federal contractors.

2. As noted, compliance reviews have a statistically insignificant effect on minority male employment, and have actually had a significantly negative effect on white female employment with federal contractors.

3. Rather than confess these problems, obvious when the discrete categories of the "protected classes" are broken

down by race and sex, the report uses statistics to the desired advantage by speaking in larger terms -- such as "minority participation." The same is true when the report discusses the effect of compliance reviews and in terms of the occupational categories identified by the Executive Order. Where black women show gains and white women show losses, for example, the report speaks in terms of net gains for women. Similarly, where black men show gains but other minority men show losses, the report speaks in terms of net gains for minorities. The resulting statements may be technically true, but they fail to tell the whole story and are therefore misleading, calling to mind the book entitled How To Lie With Statistics.

4. It is noteworthy that even OFCCP's own expert (Leonard) felt compelled to confess the "mixed results" of affirmative action under the Executive Order. This difference is particularly apparent in the OFCCP report's unequivocal affirmation of OFCCP's compliance review process, when almost everyone else commenting upon it -- whether pro or con regarding affirmative action, including Leonard -- finds it poorly focused and ineffective. In fact, the admitted ineffectiveness of the compliance review process was at the heart of the eleven major management reforms listed by

Robert B. Collyer in his testimony before Senator Hatch's Committee on Labor and Human Resources on May 26, 1982. A copy of Mr. Collyer's prepared statement is attached as Schedule B.

## Schedule A

### Prior Studies of the Impact of OFCC

1. Burman, George. The Economics of Discrimination: The Impact of Public Policy, unpublished Ph.D. thesis, Graduate School of Business, University of Chicago, 1973. [Based on a nationally distributed sample between 1967 and 1970, Burman finds a .3% annual increase in black male employment, no increase in female employment (minority or white), and no increase in Hispanic employment. Further, Burman finds no evidence of occupational upgrading for minorities or women, and no impact of compliance enforcement activity.]

2. Ashenfelter, Orley and Heckman, James. "Measuring the Effect of an Anti-discrimination Program" in Orley Ashenfelter and James Blum, eds., Evaluating the Labor Market Effects of Social Programs, (Princeton: Industrial Relations Section, Princeton University, 1976), pp. 46-84. [Based on a larger sample of 40,445 establishments (relying on information supplied on EEO-1 forms) between 1966 and 1970, Burman's conclusions were largely confirmed. Although there was some relatively minor but statistically significant increase in black male employment, there was actually a statistically significant fall in the occupational status of black males relative to that of white males.]

3. Goldstein, Morris and Smith, Robert S. "The Estimated Impact of the Anti-discrimination Program Aimed at Federal Contractors," Industrial and Labor Relations Review, vol. 29, no. 4, July 1976, pp. 523-43. [Based on EEO-1 forms from 74,563 establishments from 1970 to 1972, black male employment actually fell by .49% per year relative to black male employment among non-federal contractors which were already integrated. This study found that compliance reviews had a statistically significant positive impact on black and white males, an insignificant impact on black females, and a significant negative impact on white females. As Leonard summarizes it, the study shows that under the Executive Order "males have advanced at the expense of white females." Further, the Goldstein and Smith study found that the occupational status for both black males and white females fell in the federal contractor sector, while that of white males and black females increased.]



4. Heckman, James J. and Wolpin, Kenneth I. "Does the Contract Compliance Program Work? An Analysis of Chicago Data," Industrial and Labor Relations Review, vol. 29, no. 4, July 1976, pp. 544-64. [Based upon information gleaned from EEO-1 forms between 1972-73 regarding 1645 Chicago area firms, this study focused on the demographic composition of firms awarded government contracts. In brief, the study found no significant impact on contract award of the percentage of black male employment, the change in percentage black male employment, or the percentage white-collar black male employment. Firms with more black or white females or other minorities, or with higher growth in these categories, were actually found less likely to receive government contracts (though the difference was statistically insignificant). The study found further that the decision to subject firms to compliance enforcement reviews were unrelated to employment of minorities or women, raising questions of effectiveness. These anomalies were blamed for the lack of female increases in employment by federal contractors, and the lower occupational status of minorities and females among federal contractors relative to non-federal contractors.]

SCHEDULE B

STATEMENT OF ROBERT B. COLLYER  
DEPUTY UNDER SECRETARY FOR  
EMPLOYMENT STANDARDS ADMINISTRATION  
U.S. DEPARTMENT OF LABOR  
BEFORE THE  
COMMITTEE ON LABOR AND HUMAN RESOURCES  
UNITED STATES SENATE

May 26, 1982

Mr. Chairman and Members of the Committee:

I am pleased to be here today to discuss the Labor Department's management of the equal employment opportunity compliance program for Federal contractors. I am accompanied by Ellen M. Shong, the Director of the Office of Federal Contract Compliance Programs (OFCCP).

OFCCP is the office in the Employment Standards Administration (ESA) which has the responsibility for administration and enforcement of the three equal employment opportunity mandates which make up the contract compliance program -- Executive Order 11246, Section 503 of the Rehabilitation Act of 1973 and Section 402 of the Vietnam Era Veterans Readjustment Assistance Act (VEVRA).

The Executive Order prohibits Federal contractors from engaging in employment discrimination and requires that they take affirmative action to ensure that applicants and employees are treated without regard to race, color, religion, sex or national origin. Section 503 of the Rehabilitation Act and Section 402 of VEVRA impose similar prohibitions

be found. In each of these four cities, the Commission took testimony from officials of major Federal contractor establishments, as well as from union officials and representatives of Federal agencies.

Discriminatory practices found included:

- Racially segregated facilities;
- Union contracts which permitted sons or relatives of white male incumbents to be given preference or exclusive entry rights into skilled trades;
- Racially discriminatory recruiting, seniority systems, apprentice selection systems and on-the-job training programs;
- Use of discriminatory screening and referral practices by State and private employment agencies; and
- Lower pay for equal or harder work.

Against this background, OFCCP was established in September 1965 with a mandate to ensure that Federal contractors undertake affirmative action.

Efforts by Federal contractors and by the government have eliminated most of the overtly discriminatory practices evident in the 1960's and have made substantial progress in addressing discrimination as it exists today. To help

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on basic public policy that discrimination on the basis of race, sex, religion, national origin, veteran status or handicap is wrong; that such discrimination wastes human talent, leads to workplace disruption, lowers productivity, efficiency and morale, and is fundamentally at odds with our free enterprise notions of "competition" and "freedom of contract."

The mission then -- indeed the mandate -- of OFCCP is to ensure that Federal contractors do not illegally discriminate in their employment practices and that human talent previously not fully utilized, is not wasted; but that Federal contractors make meaningful efforts at including persons in their workforce solely on the basis of individual ability and interest. These requirements are set out in statute and Executive Order language, both prohibiting discrimination and requiring affirmative action to ensure that employment policies and practices are, in fact, non-discriminatory.

To carry out this mission, we must be professionals. We must behave with both tact and firmness. We must have a sufficient presence in the contractor community so we can assist contractors who want to carry out their responsibilities and discourage illegal behavior by contractors who have less of a commitment.

for review; we are directing more resources toward improving job opportunities for handicapped individuals and Vietnam-era veterans; and we are markedly improving our ability to review more contractors at lower cost. In the short time that we have been responsible for this program, we have begun 11 major management initiatives in these areas. I would like to discuss each of them with you.

1. Selection Procedures for Scheduling Contractor Establishments for Review.

A system for establishment selection has been under development and is scheduled for implementation by the end of 1982. The procedures will permit us to review the equal employment opportunity performance of a greater number of contractor establishments with less available resources.

The system will standardize selection procedures across the country by establishing review priorities based on such objective criteria as (1) frequency of previous reviews, (2) contractor performance as reported on annual EEO reports, (3) existence of complaints filed against establishment and (4) economic conditions at the establishment (i.e., expanding or contracting workforce). For example, under our new procedures a greater number of contractors will have a desk audit of their written affirmative action programs than have had them in the past. Under this procedure,

Under the new system, contractors will receive copies of complaints filed under all three programs, as soon as OFCCP jurisdiction has been firmly established. Apart from the equity of notifying the employers of charges filed, we find that early notification leads to early -- and satisfactory -- settlements in many cases. We will use approximately 6,500 staff hours in the implementation of this system. Thereafter, the operational maintenance will require about 3,500 staff hours per year.

3. Compliance Standards Task Force.

The purpose of the Task Force was to determine the extent to which OFCCP demonstrates consistency and integrity in the application of its policies and procedures during investigations undertaken pursuant to Executive Order 11246, Section 402, and Section 503. On November 22, 1981, the group began reviewing correspondence generated by the complaint review process. As of March 12, 1982, the Task Force had reviewed 239 proposed or executed Conciliation Agreements, 170 Letters of Commitment, 70 Letters of Deficiency and 66 Notices to Show Cause. In addition, approximately a dozen administrative complaints have been evaluated as have 4 Notices of Alleged Noncompliance. The Task Force has concluded from its review of over 800 enforcement documents that compliance officers are generally adhering to

5. Improved Case Management.

In Fiscal Year 1981, OFCCP conducted 3,135 compliance reviews in contractor establishments employing more than two million persons. We investigated 2,135 complaints, of which 1,502 involved handicapped persons and 174 were from veterans. All told, OFCCP conducted 503 (19%) more compliance reviews and 410 (20%) more complaint investigations with 102 (8%) fewer employees and \$1.6 million less than the previous year, FY 1980.

We believe that high quality compliance reviews can be accomplished in less time than it now takes, resulting in savings to the contractor and increased ability of the compliance program to review its assigned universe. OFCCP plans to conduct 317 (9%) more compliance reviews and 582 (21%) more complaint investigations in FY 1982 with 253 (23%) fewer staff and \$7.9 million less than in FY 1981.

On March 4, 1982 the Director of OFCCP charged every Assistant Regional Administrator of the program with implementing a plan of case management that ensures the development of an efficient high-quality product. And we are beginning to get results. In the second quarter of FY 1982 each non-construction compliance review averaged 170 staff hours at a cost of \$2,783, compared with 199 hours and an average cost of \$3,233 for the second quarter of

(a) Introduction to Contract Compliance Training.

This course is designed to provide compliance officers with basic program knowledge and analytical skills needed to perform the job during the first 4-6 months of hire. The course materials address OFCCP's mission, the duties and responsibilities of the compliance officer, the conduct of a simple handicapped complaint investigation, and how to conduct desk audits of affirmative action programs.

The course is offered on a continuing basis and helps new employees become proficient and productive within a six-month timeframe. About 9,500 staff hours were devoted to the design of this course.

(b) Investigative Skills Course.

This course is designed to enhance the skills of compliance officers in basic data analysis techniques, data displays, data collection and interviewing. The objective of this course is to attain uniformity, consistency and efficiency in the conduct of a compliance review. We estimate that enhanced skills will reduce the average number of hours necessary to conduct a compliance review by 10%. This can amount to overall annual savings of 52,680 staff hours. A total of 186,700 staff hours were spent in this effort. On May 15, 1982, OFCCP completed delivering this course to all field personnel.



internal quarterly accomplishment reports, we will evaluate and measure average time and cost of compliance reviews before and after regulatory changes and the corresponding training. We project to accomplish this training within 45-50 days after final rulemaking.

(e) Complaint Intake Processing Training.

The purpose of this training is to improve complaint processing by identifying frivolous or non-jurisdictional complaints at the point of intake, thereby eliminating referral of such cases to the Area Offices for investigation. We estimate the current cost of handling non-justiciable complaints to be between 10-120 staff hours per complaint. With training, we estimate substantial savings in staff hours. For example, if we experience 100 fewer errors at 10-120 per case, we would realize a savings of 1,000-12,000 staff hours. It is expected that with an earlier determination of non-justiciable cases by the Regional Offices, we will see far fewer cases assigned for investigation only to be administratively closed by the Area Offices for lack of jurisdiction. Approximately 520 staff hours will be spent on this training activity.

In summary, OFCCP's training efforts will be directed toward improving the professionalism of our employees and eliminating unnecessary confrontation while emphasizing a bottom line approach to compliance.

area office personnel simultaneously of program information and policy direction thus improving communications, establishing uniform interpretation and reducing lapse time. About 1,100 staff hours were spent in implementing this system.

11. Contract Compliance Manual Revisions.

We expect to complete revisions to the Contract Compliance Manual within three months from issuance of the regulations. (In the interim, the directive system and a "hot line" to the National Office will be used to provide the necessary guidance to compliance officers.) The manual revisions will accomplish the following:

- Provide precise instructions in the implementation of the new regulations;
- Minimize questions over proper procedures and, therefore, potential disputes with contractors over procedures; and
- Provide supervisors with criteria for evaluating an employee's performance.

We will use approximately 1,000 staff hours on this project.

PROGRAM INITIATIVES: EMPHASIS ON NEW DIRECTION

Mr. Chairman, in addition to these management actions, we have begun three major program initiatives which I would like to describe to you: We have encouraged the development of liaison groups throughout the country; we are putting

Michigan (automotive), in Chicago (insurance), and in Utah and most major cities for the construction industry. Multi-industry groups include, among many others, the Northern California Industry Liaison Group comprised of major companies in the area; a liaison group of corporate offices in Fairfield County, Connecticut; and a liaison group of major companies and corporations in New York.

The liaison group initiative has also taken hold among colleges and universities. For example, the President of the University of Oregon is spearheading a liaison effort with university presidents from the States of Idaho and Washington.

The Texas College and University System has a liaison effort underway. In Massachusetts, several colleges and universities from the Boston area are forming a liaison group to discuss procedural requirements of the compliance program and their effect on institutions of higher learning.

Among other constituencies, a liaison group of handicapped individuals has formed in Portland to discuss barriers to employment, both attitudinal and physical, facing the handicapped workers. In Denver, another group of community leaders established a liaison activity with the OFCCP.

In Washington, D.C. the Director of the OFCCP has been meeting regularly with a medical community liaison

with the program activities of the Employment and Training Administration of the Department, the concept will be broadened to link local resources, drawing on vocational schools, U.S. Employment Service, craft unions, veterans organizations, trade associations and other existing groups, with business and industry. As we will note in our discussion of regulatory initiatives, OFCCP has proposed to approve for five years written affirmative action programs which contain an approved training program. The training and linkage initiative is designed to create incentives for contractors to take increased good faith efforts that enhance job opportunities for the handicapped, minorities, certain veterans, and women.

By codifying the training initiative in the regulations, we have proposed to institutionalize the concept on an ongoing, permanent basis.

o Voluntary Compliance Incentives. Where results are achieved and progress is being made, OFCCP will provide incentives for continued good faith efforts. Incentives for such efforts may include extended-duration affirmative action plans, certificates of merit and letters of commendation. While the specifics of this incentive program are still under development, the concept has been in our proposal. The OFCCP regional administrators were so informed in February 1982.

o Preaward Compliance Reviews. Currently, our regulations require us to determine a contractor's compliance with the Executive Order and statutes before a major contract is awarded. We propose to eliminate these preaward compliance reviews which would allow OFCCP greater flexibility and, hence, greater program impact. Instead of using our limited number of compliance officers to repeatedly review the same contractors, OFCCP would have the opportunity to review a greater number of covered contractors.

o Five-Year Affirmative Action Plan. We have proposed to approve five-year Affirmative Action Plans for contractors who establish OFCCP-approved linkage and/or training programs and who meet additional eligibility requirements currently under development.

You, Mr. Chairman, and most of the witnesses testifying before this Committee have repeatedly urged that greater efforts be directed toward training persons so that they may develop the skills to take advantage of equal opportunities. We share your concern and have determined that contractors who have already demonstrated compliance with the Executive Order should be provided incentives to increase their efforts in training.

During this 5-year period, the OFCCP would not conduct compliance reviews. Very simply speaking, the energies

and costly affirmative action programs; the proposal does not mean that those small contractors will not have to comply with the Executive Order requirements and take affirmative action. Although we have not yet finalized this threshold proposal--nor any other--we will continue to enforce the Executive Order for all covered contractors, whether or not they are required to develop written affirmative action programs.

o Backpay - While backpay is referenced as a remedy in our current regulations, there is no definition of when and for whom it is "appropriate". This proposal would incorporate the Title VII standard for seeking backpay remedies for victims of discrimination under the Executive Order program. The backpay provisions under this proposal include the following:

- Complete make-whole remedial relief for persons identified as victims of employment discrimination. The relief may include adjustments in benefits, compensation, seniority dates, and any other actions that would restore those individuals to what would have been their rightful place in the workforce had discrimination not occurred;
- Elimination of non-discriminatees from remedial considerations; remedies would not be available

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The eight-factor analysis currently used to estimate availability has proven to be very difficult and troublesome for both contractors and the OFCCP. Therefore, we have proposed to compute availability based on the estimated number of persons currently available for consideration (in the affirmative action year) either within the contractor's workforce or from certain external labor sources.

- We propose to retain the four factors in the existing regulations that most realistically estimate current availability and would eliminate those factors that add an element of guesswork and speculation to the process. Under the proposal, a contractor would have the option of using a weighted composite of these factors or, as an alternative, the civilian labor force data for the relevant Standard Metropolitan Statistical Area.

- o Goals. Currently, the regulations provide that a contractor must establish a goal for increased participation of women and/or minorities wherever it is currently employing fewer women or minorities than might reasonably be expected on their availability. Numerical disparities between availability and utilization may occur for reasons of chance. That fact, coupled with the imprecision with which we can calculate availability, has led us to propose some test of statistical significance to determine "underutilization."

group who are available and could reasonably be expected to be employed in the absence of discrimination. It is an estimate made by the employer and subject to review by OFCCP, and its test is that it be both reasonable and attainable. The goal is a measure of the contractor's progress in eliminating the discriminatory exclusion of minorities and women. Let me emphasize, there is no penalty solely for failure to reach a goal. If the goal is not reached, it means that the reasons for the failure should be determined. If it is shown that the goal was missed despite a good-faith effort to attain it, it may mean that the goal should be revised. But no penalty attaches in these circumstances. If, on the other hand, the contractor has not made good faith efforts, it may well be in violation of the Executive Order.

o Elimination of "how to do it" regulations. OFCCP is proposing to eliminate Subpart C of its existing regulations. That section sets out burdensome and often inflexible requirements for contractors concerning ways to implement affirmative action.

This elimination of procedural requirements is intended to reduce the likelihood for confrontation over suggested means for taking affirmative action as well as procedural "nit picking" over methodology.



nities and equitably and rationally select persons to fill them, the OFCCP should reasonably be expected to increase the likelihood that contractors will provide equal employment opportunity. Consequently, our primary measure of self-evaluation must be the number of placements effected under the contract compliance program.

Under Ellen Shong's direction, OFCCP has recently undertaken a preliminary analysis of the performance of Federal contractors subject to the Executive Order compared to that of non-covered contractors for the period 1974-1980. This analysis is the first time any attempt has been made by OFCCP to actually measure what impact, if any, the program has had in increasing job opportunities for the protected individuals.

Although the analysis is still preliminary and we are subjecting it to rigorous examination, it does provide some interesting conclusions about the program:

- (1) As a group, all employers (non-Federal contractors, as well as Federal contractors) reporting show increased employment levels of minorities and women;
- (2) Federal contractor establishments have experienced a greater percentage increase in the employment and advancement of minorities and women than non-contractor establishments during this 1974-1980 period; and

to act only where someone (individual, group or Commissioner) has filed a complaint. Affirmative action may be required under Title VII only after discrimination has been found, as part of the remedy for that discrimination.

Under Title VII, employers or unions need not actually do anything affirmative to include persons in the workforce so long as they do not unlawfully exclude them. By way of important contrast, the OFCCP does initiate its own investigations of discrimination. Moreover, the Executive Order and statutes enforced by OFCCP require that contractors take affirmative action to include minorities, women, handicapped persons and Vietnam-era veterans, in the first instance, as an added contractual condition of doing business with the Federal government. Affirmative action requires the contractor to make out-reach efforts to encourage the participation in the workplace of women, minorities, the handicapped, and veterans. In addition, victims of discrimination are protected even if they themselves are in fear of complaining or ignorant of the unlawful behavior that has disadvantaged them and the Federal government can protect itself against breaches of its contracts. In order to maintain the integrity of this effort, the government should not continue to do business with a contractor until discrimination is remedied and affirmative action is ensured.

to all kinds of people in all areas of economic endeavor. We are not so naive as to believe that all employers are fulfilling their contractual obligations. Both the statistics and our own review findings belie that hope. Neither are we so unthinking as to assume that enforcement strategies which may have been necessary in the 1960's or 1970's continue to be the most useful approach for the 1980's. In fact we need to be continually assessing our requirements and our enforcement tools to address the changing social and business environment.

We have and will continue to encourage and recognize voluntary compliance. By no means does this constitute any abandonment or weakening of our enforcement. Much progress has been made by contractors even without any enforcement by the government. We expect this progress to continue and improve.

There are those who would assert that "voluntarily" driving 55 miles an hour or paying one's taxes because of fear of the consequences rather than righteous commitment to the underlying principles of those laws is not enough. There are others who would assert that non-discriminatory hiring and affirmative action recruiting are hollow if the employer is concerned only about sanction and not about justice. Without becoming embroiled in the rhetoric sure



Preliminary Draft Submitted to the Department of Labor

Not for Quotation or Distribution

**THE IMPACT OF AFFIRMATIVE ACTION ON THE  
EMPLOYMENT OF MINORITIES AND FEMALES**

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April 1983

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- (7) The relative productivity of females and minority males has not significantly declined as their employment share has increased, based on a new longitudinal production function data set. Similarly, changing demographics have not had a significant effect on corporate profits.
- (8) The targeting of compliance reviews could be improved by reviewing with greater frequency establishments with relatively few blacks.
- (9) The unionized sector of manufacturing has not performed worse than the non-unionized sector in terms of equal employment opportunity.
- (10) The success of affirmative action in integrating the workplace has been limited by residential segregation.
- (11) The goals agreed to by contractors under affirmative action are inflated, but those who promise to hire more do hire more minorities and females.

The evidence in this study is that during their short and turbulent history, affirmative action and Title VII have been successful in prompting the racial integration of the American workplace.

*Compare to summary  
of conclusions in  
last report.*

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**The Impact of Affirmative Action on the Employment  
of Minorities and Females**

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effective regulatory tool in increasing both black and female employment. Turnover data from a new source which has not previously been analyzed, will be marshalled to demonstrate that these employment gains have not been transitory. I shall also examine evidence of occupational upgrading, and draw implications for the relative wages of minorities and females.

Secondly, I shall present evidence that litigation under Title VII of the Civil Rights Act of 1964 has played an important and independent role in advancing the employment of minorities, using data I collected on more than 1700 class action suits under Title VII.

Third, this study will address the controversial issue of whether affirmative action and Title VII have reduced discrimination or induced reverse discrimination by analyzing changes in productivity attendant upon demographic changes. Using aggregate production functions estimated from a new state by industry data-set, this study will suggest that there is no significant evidence that the increased employment of minorities and females has been associated with a decline in their relative productivity. This finding will call into question some of the large efficiency costs attributed to job redistribution under affirmative action and Title VII.

Fourth, this study will show that the employment share of blacks has increased faster in the union than in the non-union sector. This result is based on a sample of California manufacturing establishments, and suggests that at least in this case,

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April 28, 1983

Dr. John Raisian, COTR  
US Department of Labor  
ASPER, Room N4402  
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Dear John:

I hereby submit a draft report of my research under Purchase Order B9M12517. I look forward to hearing your comments.

Sincerely,

A handwritten signature in cursive script that reads "Jonathan Leonard".

Jonathan Leonard

jl/fwr

Enclosure

industrial unions have not been a substantial barrier to equal employment opportunity.

Fifth, residential segregation will be shown to limit the impact of affirmative action in employment. Growth in black employment share decreases with distance from concentrations of black population. *housing*

Sixth, the goals agreed to by contractors under affirmative action are inflated but are not empty. Comparing the projections and the subsequent employment demographics of more than 500 repeatedly reviewed establishments, I find that those which promise to employ more minorities and females subsequently do employ more.

These findings speak directly to those concerned with the position of minorities and females in our society, and with the role the federal government plays in improving their position. The single most certain aspect of affirmative action is that it is controversial. This study brings new evidence to bear on that controversy. Evidence that can enlighten discussions both of discrimination in the United States, and of the impact of government regulation. Affirmative action has been seen as a policy to fight poverty and discrimination by integrating blacks and females into the work force. It is not enough to give skills, if the skilled are not hired.

During the last two decades the trend rate of growth of the earnings of black males relative to whites has increased. Some

have argued that this is due to government anti-bias activity. To what extent can the increase in black male relative earnings be attributed to affirmative action?

The analysis of affirmative action here can also be taken as a case study of the development and functioning of government regulation. How did affirmative action develop? How has it actually been enforced? In practice, what ends is it serving?

Affirmative action cannot be understood without a detailed understanding of the legal obligations it imposes. Chapter 2 presents the legal foundation and historical development of affirmative action. This chapter also discusses past evaluations of the functioning and results of affirmative action.

Two heuristic models of affirmative action are developed in Chapter 3. The first is a two-sector general equilibrium model of affirmative action as a tax. The second is an information model in which affirmative action enters as a shock. The two models have very different implications for labor markets post-affirmative action. This chapter also discusses the methodology and the new highly detailed data to be used.

The impact of the contract compliance program on minority and female employment and occupational status is discussed in Chapter 4. Finding that the program has been effective, Chapter 5 estimates its effect on productivity and attempts to infer whether it has reduced discrimination or induced reverse discrimination. The sixth chapter analyzes the mediating role played by

## Chapter 1: Introduction

Affirmative action, mandated by Executive Order 11246 in 1965, is one of the most controversial government interventions in the labor market since abolition. While much has been said concerning the propriety of affirmative action in theory, little is known about the impact of affirmative action in practice. If affirmative action has not changed the employment patterns of non-whites and females, then much of the discussion since 1965 of its philosophical merits amounts to shadow-boxing. The goal of affirmative action is to increase employment opportunities for females and minorities. Has affirmative action been successful in achieving this goal?

I shall present six major empirical findings here. First, this study will argue that affirmative action as implemented under Executive Order 11246 has been successful in promoting the employment of black males. This result is based on a statistical comparison of the change in demographics at more than sixty-eight thousand establishments with more than 16 million employees between 1974 and 1980. I shall argue that black males' share of employment has increased more at establishments that are federal contractors, and so subject to affirmative action, than at non-contractors, and that this reflects changed behavior rather than the selection into contractor status of establishments with high or growing minority or female employment. Compliance reviews, while questionably targetted, will be shown to have been an



unions in equal employment opportunity. The interaction between employment and residential segregation is explored in Chapter 7. The eighth chapter analyses what the DFCCP should do to reduce discrimination or to redistribute income. The ninth chapter shows what it has done to enforce affirmative action. Chapter 10 studies the actual impact of the affirmative action goals among reviewed contractors. A summary of the major findings is presented in the concluding chapter.

genesis in discord and crisis of the first Executive Order by President Roosevelt is most instructive. To protest employment discrimination at the beginning of World War II, A. Philip Randolph, President of the Sleeping Car Porters Union, threatened to disrupt the defense effort by a mass demonstration of blacks in Washington, D.C. on July 1, 1941. Less than one week before the planned rally, Executive Order 8802 was issued and the demonstration called off.[1] In the words of the U.S. Commission on Civil Rights, "the Executive Order was prompted by the threat of a Negro March on Washington, which would have revealed to the world a divided country at a time when national unity was essential." [2] Accomodation was only reached under dire threat, and even then was of a limited nature.

The distance this country has come in terms of the growing import of affirmative action, expanding intervention by the federal government, and changing attitudes towards discrimination since 1941 can best be judged by considering the words of Mark Ethridge, first Chairman of the Fair Employment Practice Committee, established to supervise compliance with the executive order. In the following quote from Ruchames, Ethridge sharply limits the scope of anti-discrimination policy in a manner startling to modern eyes.

Although he defended the granting of civil rights and equal opportunity to Negroes, he also affirmed his personal support of segregation in the South. Stressing

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[1] Endnotes for this chapter begin on page 46 .